

“Penelope” project on constitution

by Ferdinando Riccardi

Arising from polemic, Penelope project on constitution puts forward initial response to fundamental problem of countries that don't ratify constitutional points of treaty - other issues

Successful nickname. It only took the name of Penelope (the wife of Ulysses, who wove her web during the day and destroyed it at night while waiting the return of husband) for the draft of the Constitutional treaty elaborated under the Presidency of Romano Prodi and the Commissioner Members of the Convention, Michel Barnier and Antonio Vitorino, to become almost popular. Part of the press has spoken as much about this working document than the official contribution of the Commission to the Convention. Certain indiscretions have contributed to this success: we learned that several European Commissioners did not appreciate this initiative about which they found out at the last minute and Valéry Giscard d'Estaing was positively irritated about it, interpreting it as an intrusion into the work over which he presides.

It's not a question of personal sensitivity on the part of those who would have preferred to be informed about preparations in advance but rather, a question that is fundamentally linked to the collegiate nature of the Commission and relations built on trust between the President of the Convention and the President of the Commission. It would, nevertheless, be a shame if this issue draws more attention than the content of the document, the creator of which (there's no mystery about it) was Director General François Lamoureux, together with a close group of European officials. I am therefore going to talk about the document itself in the knowledge that deeper analysis remains necessary.

Important innovations contained in Penelope. Romano Prodi has done his best to minimise the importance, indicating that "Penelope" is limited to: the outline that takes up the development of the draft constitutional treaty that was distributed at the end of October by the Presidium of the Convention; the content, based on the work carried out by the University Institute of Florence, along with the innovations resulting from the Commission's own proposals. This is true. But as a result, there are considerable changes, which readers will be able to deduce after reading the following (incomplete and provisional) list.

A. The name of this draft project is "Constitution of the European Union" (and not "Constitutional treaty", as presented by Valéry Giscard d'Estaing ;

B. The draft project of the University Institute of Florence was established as with a "permanent legal currency": it simplified and rationalised the current treaties,

consolidating them in a single treaty, without modifying the different proposals. On the other hand, Mr Prodi indicated that "Penelope" introduced significant modifications that the Commission had proposed in its Communication.

C. The institutional choices of the Commission do not always correspond to those of Valéry Giscard d'Estaing. In advocating the Commission's choices, "Penelope" does away with the "Congress of the Peoples of Europe" (Article 19 of Valéry Giscard d'Estaing's paper) and intends making the European Council the largest grouping of the Council and not a separate institution. "Inter-governmental actions" includes among the possibilities of Valéry Giscard d'Estaing's architecture are also crossed out. Penelope is also a far cry from some of the positions of certain governments: the idea of the "long-term President" is unceremoniously thrown out; the Union "Minister of Foreign Affairs" becomes the Vice President of the Union; the election of the Commission President by the European Parliament is introduced, as well as "double majority" (countries and electorate) in the deliberations of the Council.

D. Union "common policies" are generally included in Penelope, such as those figuring in the current treaties, in an effort to keep the Community acquis intact along side "simplifications" and "modernisation". Nevertheless, without ignoring the Commission's political choices, this general principle of untouchability only applies to four specific cases:

1) Economic and monetary policy. Penelope takes up what the Commission has proposed: a) replacing Commission "recommendations" (which the Council uses as it deems fit) with proposals (that the Council can only change by unanimity) for co-ordinating economic policies, including monitoring of excessive deficits; b) the creation of an Ecofin council in the Euro-zone made up of Member States belonging to the single currency and enjoying decision-making powers; c) external Union representation in monetary policy given over to the Commission.

2) External relations policy is radically modified with the creation of a "Secretary of the Union" (or European Minister of foreign Affairs) and other well-known innovations;

3) The policy for strengthening the Freedom, Security and Justice Area is also largely new;

4) The provisions on Union funding are based on own resources that guarantee its financial autonomy and could take the form of European taxes.

Understandable reactions. It is understandable that such an innovating paper has provoked such sharp reactions. Everyone has a reason for their point of view.

Romano Prodi has clarified as much as he could that Penelope is not a Commission commitment but rather a working document of the services that translate the political guidelines of the Commission into legal terms, that it is not aimed at Convention Members and has not been distributed (but it can be consulted on the Commission website. What more can be said?

Valéry Giscard d'Estaing would undoubtedly have been irritated by this document (even if he's limited himself to making a few ironic remarks on its name) because responsibility for elaborating the constitutional draft treaty is the remit of the Convention and no-one else.

If Robert Badinter or Elmar Brok has established their own personal projects, nobody would have minded, they're part of the Convention and each individual contribution can be useful. But the Commission is something else. How can the public not confuse to a certain extent a Commission initiative with the exclusive right of initiative that it currently wants maintaining? Are Mr Prodi's safeguards enough to avoid any misunderstanding and console Valéry Giscard d'Estaing for seeing his "Congress of a European peoples" being written off and his Minister of European Affairs being promoted to Vice President of the Commission, even if certain formulas of Valéry Giscard d'Estaing, for example, "the Union closely coordinating the policies of Member States and managing certain common competencies on the federal mode", are integrally maintained in the Penelope paper.

European Commissioners who have not been consulted but simply informed at the last minute have no choice but to disassociate themselves from Penelope. And what can be said about the governments of Member States which do not find their idea of the constitutional treaties included in the paper at all?

The conclusion is that Penelope represents a genuine political operation.

An Additional Agreement. There is another aspect as well as the political dimension: Penelope also includes a totally new paper, which is called "Agreement on the entry into force of the treaty on the Constitution of Europe". This agreement contains provisions that aim to prevent the constitutional treaty disappearing if one of the Member States does not ratify it. It deals with the aspect that the Commission has in fact avoided making a decision about. The Commission has so far simply indicated in its contribution to the Convention that it should be further analysed. I have criticised this shortcoming (see this section on 7 December) and here we have the Penelope paper making good this shortfall with its Agreement paper in seven articles, which make up an integral part of the preliminary outline of the Constitution.

I am obliged to congratulate the authors of the paper because it responds to an overriding need, that of preventing the Convention's work collapsing due to the changing mood of a particular Parliament. It will, of course, be necessary to respect the verdict of a national Parliament, in whatever circumstances, if it believes that the Constitution emanating from the Convention is not adapted to the needs of their country and needs to be rejected. What would in fact be absurd, inadmissible and inconceivable would be the opinion of a Parliament stalling the project. The formula contained in Penelope is complicated and I want to consider it as an initial approach (although the legal experts are adamant that no simple legal solution exists). Nonetheless, it is clear

that, "if on a date that still needs to be determined, five sixths of Member States have ratified this agreement and the Agreement enters into force, the Member State that has not ratified it will be considered to have left the Union" (in the understanding that he will keep its vested rights and negotiate an association relationship with the Union). The commentator is able to add that the solution that has been put together "is in compliance with international law", the moment the Agreement offers the complete guarantee that the Member State concerned to maintain its vested interests and that it has itself refused to take advantage of them.

Avoiding permanent blackmail. So here we have the simple Penelope "working document" elaborating an initial solution to a major problem that the Commission has only dared give an inkling of a response. It is imperative that this issue is put on the Convention agenda as soon as possible. Several elements indicated that Valéry Giscard d'Estaing was even intending to do this. It is necessary that the Convention avoids continually being subject to blackmail from countries that reject the progress desired by Member States by threatening that their national parliaments won't ratify the particular motion being voted on. I repeat, I am not sure that the draft agreement in Penelope is the solution that will ultimately be retained but it is good that it exists. It's a way of going beyond Penelope and the polemic that its creation has created, as well as the reactions that are still to come. We've come to the bridge, now we need to cross it.