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by

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Prospects of Future of Europe (Giscard d’Estaing Convention)

European Convention and Future EU Scenarios

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1. Introduction: Background of Debate on Future EU

European Integration is said to have been based on the so-called “Monnet method” which means a gradual process of integration on a project-based approach in the economic area, with no mapping out of the final goal, other than “an ever closer union among the peoples of Europe”.

To prepare for enlargement, the European Union is now in the process of putting their house in order, taking into consideration the achievements made so far like a patchwork. The aim is to overhaul the European Union in the light of subsidiarity, democracy and efficiency, without launching any new project such as a Common Market, an Internal Market or an Economic and Monetary Union, except for an enlargement project planned in 2004.

The Nice Treaty, which will enter into force soon, focuses only on the institutional reform for enlargement, without any substantive objective launched, but it was criticized for diplomatic negotiation behind the closed door, lacking transparency. The Member States, conscious of the limits of reforming the EU through an IGC only, decided to convene a Convention to make it carry out the preparatory work, inspired by the successful adoption by the first Convention of the Charter of Fundamental Rights. The “Declaration on the future of the Union” annexed to the Nice Treaty set out the list of such questions as allocating competence based on subsidiarity, an incorporation of the Charter of Fundamental Rights into a Constitutional Treaty, a simplification of the Treaties and enhancing the role of national parliaments.

Following the Nice treaty, the Laeken Declaration¹, adopted by the European Council

* This paper was rewritten on 24 November 2002.

¹ “Laeken Declaration on the Future of the European Union”, Annex I , *Presidency*

on 14 and 15 December 2001, identified many questions which would be posed to the Convention. This Declaration enumerated not only the questions related to the list in the above-mentioned Declaration, but also added new questions on the institutions, namely the Commission, the Council and the European Parliament.

These questions are, for example, “How can we increase the democratic legitimacy and transparency of the present institutions?”, “How can we improve the efficiency of decision-making and the workings of the institutions in a Union of some thirty Member States?” etc². These questions suggest that the institutional reform achieved by the Nice is *modus vivendi*, i.e. only provisional.

According to the Laeken Declaration, the Convention “will draw up a final document which may comprise *either* different options, indicating the degree of support which they received, *or* recommendations if consensus is achieved³”(emphasis added). Although “the final document will provide a starting point for discussions in the Intergovernmental Conference, which will take the ultimate decisions⁴”, if the Convention succeeds in adopting recommendations in the final document by consensus in a democratic process, the Member States at the next IGC will be forced to accept them. This is why the Convention has decided to submit a draft Constitutional Treaty⁵ to the European Council held on 20 and 21 June 2003 in Greece.

2. The European Convention (See Figure 1)

The Table 1 shows the composition of the European Convention, which includes representatives of the national parliaments of the Member States and of the candidate countries as well as members of the European Parliament. The Praesidium made up of 12 members shown in the Table 2, is set up to provide the impetus for the Convention’s proceedings and to prepare draft agendas for plenary sessions.

Conclusions, Laeken European Council, 14 and 15 December 2001, SN 300/01, <http://europa.eu.int>.

² *Ibid.*, p. 5, 6.

³ *Ibid.*, p. 8.

⁴ *Ibid.*

⁵ As a legal analysis on this issue, see Koen Lenaerts and Marlies Desomer, “Bricks for a Constitutional Treaty of the European Union: Values, Objectives and Means”,

And the Convention has set up ten Working Groups, shown in the Table 3. All the chairpersons of the Working Groups are also members of the Praesidium. Up to now, six of the ten Working Groups have adopted each final report containing recommendations. The remaining Working Groups are scheduled to report back by the end of this year. On the other hand, the issues on the institutional reform, which are most sensitive, are not dealt with by any working groups, but will be debated in plenary.

The recommendations of the Working Groups are not binding upon the Convention. But if they are approved at the plenary session, they will be recorded and if views on the recommendations diverge among the members of the Convention, they will be considered subsequently within the Praesidium, which is then to make proposals to reconcile those views. In this way, the conclusions of the plenary debate on the Working Groups' recommendations are to be the building bricks used to achieve the end product, i.e. the recommendations of the Convention⁶.

On the other hand, Giscard d'Estaing has presented an outline of a future EU Constitutional Treaty to the Convention at its plenary session on 28 and 29 October.

3. Current Results

First of all, on 23 September, the Working Group on Subsidiarity adopted the recommendations: first, reinforcing the taking into account and the application of the principle of subsidiarity by the institutions participating in the legislative process (i.e. the European Parliament, Council and Commission) during the drafting and examination phase of the legislative act, including the idea of a "subsidiarity sheet" containing in any legislative proposal; second, setting up an "early warning system" of a political nature, intended to reinforce the monitoring of compliance with the principle of subsidiarity by national parliaments; third, broadening the possibility of referral to the Court of Justice for non-compliance with the principle of subsidiarity⁷.

European Law Review, Vol. 27, No. 4, 2002, pp. 377-407.

⁶ *Summary Report on the Plenary Session – Brussels, 3 and 4 October 2002*, CONV 331/02, the Secretariat of the European Convention, Brussels, 11 October 2002, p. 1, <http://european-convention.eu.int>.

⁷ *Conclusions of Working Group I on the Principle of Subsidiarity*, WG I 15, CONV

Then, on 1 October, the Working Group on legal personality of the Union adopted the following recommendations: first, a single legal personality for the Union, replacing the existing legal personalities of EC/Euratom and, second, merging the Treaties into a single text with a possible abolition of the "3-pillar" structure⁸.

During the plenary session on 3 and 4 October, the debates were made, first, on the final report of the Working Group III on legal personality of the Union and, second, on the report of the Working Group on subsidiarity. The Convention endorsed the conclusions of both Working Groups. But, while there was broad consensus on all the recommendations on legal personality, there was less consensus on some of the recommendations of the Working Group I on subsidiarity, although, on the whole, there was a clear tendency towards giving some power back to the Member States, i.e. the national parliaments, on the basis of the principle of subsidiarity⁹.

The issue of subsidiarity is inextricably linked to that of the role of the national parliaments. The Working Group IV on this issue recommended: first, ensuring the scrutiny of governments' action in the Council; second, that the Council should act in public in all cases where it exercises its legislative functions; third, that the Commission should transmit all legislative proposals simultaneously to national parliaments, the European Parliament and the Council; fourth, that a mechanism should be set up to allow national parliaments to convey early on in the legislative process their views on the compliance with subsidiarity and, lastly, that the Convention should examine the idea of a Congress involving both national parliaments and the European Parliament¹⁰.

In this connection and in the context of the role of the national parliaments, Giscard

286/02, the Secretariat of the European Convention, Brussels, 23 September 2002, <http://european-convention.eu.int>.

⁸ *Final Report of Working Group III on Legal Personality*, WGIII 16, CONV 305/02, the Secretariat of the European Convention, Brussels, 1 October 2002, <http://european-convention.eu.int>.

⁹ Summary Report on the Plenary Session – Brussels, 3 and 4 October 2002, *op. cit.*, p. 4, 5, 10.

¹⁰ *Final Report of the Working Group IV on the Role of National Parliaments*, WGIV 17, CONV 352/02, the Secretariat of the European Convention, Brussels, 22 October 2002,

d'Estaing had proposed setting up a "Congress of the peoples of Europe", meeting once a year, which would gather members of national parliaments and the European Parliament. It would be in charge of holding confirmation hearings for key EU posts, consultation on EU enlargement, deciding on greater powers for the EU institutions and hearing annual reports by the presidents of the Council and the Commission¹¹. This idea was inserted into the preliminary draft Constitutional Treaty presented on 28 October.

On 22 October, the same day when the Working Group IV on the role of national parliaments adopted its report, the Working Group II on the Charter of Fundamental Rights/the European Convention on Human Rights (ECHR) also adopted the following recommendations: first, an incorporation of the EU Charter of Fundamental Rights in a form which would make the Charter legally binding and, second, the creation of a constitutional authorisation enabling the Union to accede to ECHR.

During the plenary session on 28 and 29 October, when the debates were made, first, on the report of Working Group IV on the role of national parliaments and, second, on the report of Working Group II on the Charter/ECHR. Concerning the report on the role of national parliaments, broad support for its report and recommendations was revealed among the members of the Convention. However, some doubt was cast on the idea of a Congress, since creating such a new institution could further complicate the institutional architecture of the Union¹². And, concerning the report on the Charter/ECHR, full endorsement was expressed by the President after the debate¹³.

On the other hand, the Working Group on Economic Governance submitted its report adopted on 21 October to the plenary session on 7 and 8 November. The report includes the following recommendations, which are very modest:

- the current structure, whereby exclusive competence for monetary policy within the Eurozone lies with the Community, exercised by the ECB and competence for economic policy lies with the member States, should be maintained;

<http://european-convention.eu.int>.

¹¹ *Future EU: Key Issues*, 21/10/2002,

<http://www.euactiv.com/cgi-bin/cgint.exe/?targ=1&204&OIDN=500716> .

¹² *Summary Report on the Plenary Session – Brussels, 28 and 29 October 2002*, CONV 378/02, the Secretariat of the European Convention, Brussels, 31 October 2002, p. 3-6, <http://european-convention.eu.int>.

¹³ *Ibid.*, pp. 7-12.

- there is a need for improved coordination between the economic policies of the Member States and economic policy coordination should be reinforced;
- the importance, in the light of enlargement, of amending Article 10(2) of the ECB statutes relating to the working methods of the ECB's Governing Council;
- budgetary and financial coordination of the Member States with the objective of monetary stability as a basis for sound economic growth is of utmost concern;
- the competence of the Union in the area of fiscal policy as set out in Articles 93, 94 and 175 TEC should be maintained;
- no measures should be taken which would prevent the possibility of informal discussions among finance ministers of the Eurogroup, the ECB and the Commission;
- the effectiveness of the current informal arrangements for representing the Eurozone in international organisations should be improved¹⁴.

Then, on 31 October, the Working Group on Complementary Competences adopted the final report, which submitted the recommendations to the plenary session on 7 and 8 November, as follows:

- the term "supporting measures" should be used, instead of the term "Complementary Competences";
- a future Treaty should comprise a separate title devoted to all issues of competence and the reference to "an ever closer Union" in TEU Article 1 should be rephrased or clarified;
- A basic delimitation of Union competence in each policy area should be part of a future Treaty;
- supporting measures apply, in principle, to policy areas where the Member States have not transferred competence to the Union;
- matters of supporting measures should be: employment, education and vocational training, culture, public health, trans-European networks, industry, research and development;
- supporting measures authorise the Union to adopt recommendations, resolutions, guidelines, programmes, and other legally non-binding act as well as legally

¹⁴ *Final Report of Working Group VI on Economic Governance*, WGVI17, CONV 357/02, the Secretariat of the European Convention, Brussels, 21 October 2002, <http://european-convention.eu.int>. Concerning the debate on this report at the plenary session, see *Summary Report on the Plenary Session – Brussels, 7 and 8 November 2002*, CONV 400/02, the Secretariat of the European Convention, Brussels, 13 November 2002, pp. 1-8, <http://european-convention.eu.int>.

binding decisions other than regulations and directives, with some exceptions;

- exclusive competence and shared competence and those areas should be defined in the future Treaty in accordance with existing jurisprudence of the Court of Justice;
- an explicit text stating that all powers not conferred on the Union by the Treaty remains with the Member States should be inserted into a future Treaty;
- the essential elements of the national identity (TEU Article 6(3)) should include fundamental structures and essential functions of the Member States, notably their political and constitutional structure, including regional and local self-government, their choices regarding language, national citizenship, territory, legal status of churches and religious societies, national defence and the organisation of arms forces;
- the reference to "an ever closer union" in TEU Article 1 should be rephrased or clarified in order to avoid the impression that future transfer of competence to the Union remains in itself an aim and objective of the Union
- TEC Article 308 should be maintained to provide a necessary flexibility with unanimity in the Council¹⁵.

During the plenary session on 7 and 8 November, the debates were made, first of all, on the report of Working Group VI on Economic Governance and, then, on the report on Working Group V on Complementary competences. In the plenary debate on the former report, while there was consensus on maintaining the current allocation of the competence in the Economic and Monetary Union, the need economic and social objectives in the new constitutional treaty and giving the Commission the power to issue an initial warning on the implementation of the Broad Economic Policy Guidelines directly to the Member States concerned, no consensus was reached on the other issues like the idea of formalizing the Eurogroup¹⁶.

When the plenary debate was made on the report on Complementary competences, disagreement was expressed with the Working Group's proposals such as using the new name "supporting measures", rewording the expression "an ever closer union", inserting in the new constitutional treaty a separate title covering all matters relating

¹⁵ *Final Report of Working Group V*, WGV 14, CONV 375/02, the Secretariat of the European Convention, Brussels, 31 October 2002, <http://european-convention.eu.int>. Concerning the debate on this report at the plenary session, see Summary Report on the Plenary Session – Brussels, 7 and 8 November 2002, *op. cit.*, pp. 10-14.

¹⁶ Summary Report on the Plenary Session – Brussels, 7 and 8 November 2002, *op. cit.*, p. 1-8.

to competence and a “basic delimitation of Union competence”, the ban on using legislative instruments in the context of complementary competence and including policy areas like social policy or research in the list of complementary competence areas, while there was broad consensus on maintaining Article 308 as a “flexible clause” with unanimity in the Council¹⁷.

The other four Working Groups are due to report back by the end of this year. Table 4 shows the questions considered by those groups. And a Working Group on a “Social Europe” will be created, since, in the plenary debate on 7 November, there was considerable support for it¹⁸.

Meanwhile, Mr. Giscard d’Estaing presented the preliminary draft Constitutional Treaty¹⁹, drawn up by the Praesidium, to the plenary session on 28 October 2002. This draft is only a skeleton outline, but there are important proposals made in it, tilting the balance towards more integration with some intergovernmentalism, as follows:

- “Treaty establishing a Constituting for Europe” consists of two parts, i.e. Part One: Constitutional Structure and Part Two: Union Policies and their Implementation;
- a single legal personality, replacing the existing ones;
- options for a new name: European Community, European Union, United States of Europe or United Europe;
- voluntary withdrawal;
- explicit reference to “certain common competences *on a federal basis*” and “the primacy of Union Law”(emphasis added);
- the list of the categories of Union competence(exclusive, shared, etc.) with clear descriptions of the different instruments for the exercise of each competence;
- a concept of “dual citizenship”, composed of national citizenship and European citizenship;
- reference to “participatory democracy”;
- recognition of the role of National Parliaments in monitoring subsidiarity;
- establishing a “Congress of the Peoples of Europe”;
- the Presidency of the European Council, the Presidency of the Council and the Presidency of the Commission, appointed in each procedure, which is left open;

¹⁷ *Ibid.*, pp. 10-14.

¹⁸ *Ibid.*, pp. 6-8.

¹⁹ *Preliminary Draft Constitutional Treaty*, CONV 369/02, the Secretariat of the European Convention, Brussels, 28 October 2002, <http://european-convention.eu.int>.

- maintaining the Commission's monopoly of initiative;
- leaving open the issues, such as the size of the Commission and the voting rules of the Council including the definition of the qualified majorities; the role and future rank of the High Representative for CFSP, representing the Union in international relations (a new post of EU foreign secretary to be created^{20?})

At the plenary session on 28 and 29 October, it was noted that "the architecture of the future Treaty was favourably received"²¹. The Praesidium will submit to the Convention the texts drawn up in the light of the plenary debates in the beginning of 2003²².

4. Progress outside the European Convention (See Figure 1)

In the meantime, outside the Convention, some progress was made, which does not require Treaty amendments²³. The Seville European Council adopted the following in its conclusions:

- adoption of the rules for the preparation, conduct and conclusions of the proceedings of the European Council²⁴

²⁰ *Convention to Discuss First Outline of EU Constitution*, 28/10/2002, <http://www.euractiv.com/cgi-bin/cgint.exe/?targ=1&204&OIDN=1504154> .

²¹ Summary Report on the Plenary Session – Brussels, 28 and 29 October 2002, *op. cit.*, p. 13 and Summary Report on the Plenary Session – Brussels, 7 and 8 November 2002, *op. cit.*, p. 8-9. See also *A Constitution for the Union*, 14/11/2002, <http://www.euractive.com/cgi-bin/cgint.exe/2426987-409?1100=1&204&OIDN=250756&t...>; Stanley Crossick and Giovanni Grevi, *Strengthening the Foundations of the European House*, 08/11/2002, <http://www.euractive.com/cgi-bin/cgint.exe/2426987-409?1100=1&204&OIDN=250740&t...>; The Deutsche Bank Research, *EU Convention: Preliminary Draft Constitutional Treaty: "Basic Structure" Includes a Few Surprise*, 12/11/2002, <http://www.euractive.com/cgi-bin/cgint.exe/2426987-409?1100=1&204&OIDN=250743&t...> .

²² Summary Report on the Plenary Session – Brussels, 7 and 8 November 2002, *op. cit.*, p. 9.

²³ According to Presidency Conclusions, Laeken European Council, 14 and 15 December 2001, *op. cit.*, p. 1, para. 4, "In parallel with the proceedings of the Convention, a certain number of measures can already be taken without amending the Treaties. In this context, the European Council welcomes the Commission's white paper on governance and the Council Secretary-General's intention of submitting, before the European Council meeting in Barcelona, proposals for adapting the Council's structures and functioning to enlargement The European Council will draw the operational conclusions from it at its meeting in Seville."

²⁴ "Rules for Organising the Proceedings of the European Council", Annex I ,

- reduction of the number of the Council formations from 16 to 9
 - General Affairs and External Relations
 - Economic and Financial Affairs
 - Justice and Home Affairs
 - Employment, Social Policy, Health and Consumer Affairs
 - Competitiveness(Internal Market, Industry and Research)
 - Transport, Telecommunications and Energy
 - Agriculture and Fisheries
 - Environment
 - Education, Youth and Culture²⁵
- opening Council meetings to the public when the Council is acting in accordance with the procedure for codecision with the European Parliament(during the initial and final stages of the procedure only)²⁶

But the Seville European Council failed to agree to split the General Affairs Council in two: General Affairs Council and External Relations Council, owing to the opposition of Austria, Benelux, Greece and Portugal, and instead they agreed to create a new “General Affairs and External Relations Council”²⁷. And the Spanish proposal to introduce majority voting during European Council meetings was rejected²⁸.

On the other hand, according to Mr. Stanley Crossick, Director and Founding Chairman of the European Policy Centre, “the Decisions at the Seville Summit that the Council establish multiannual strategic programmes and annual operating programmes should not have been taken and could be a further erosion of the role of the Commission and also an unreasonable exclusion of Parliament”²⁹. This argument

Presidency Conclusions, Seville European Council, 21 and 22 June 2002, SN 200/02, pp. 19-21, <http://europa.eu.int>.

²⁵ “Measures concerning the Structure and Functioning of the Council”, Annex II, Presidency Conclusions, Seville European Council, 21 and 22 June 2002, *op. cit.*, p. 22, 23.

²⁶ *Ibid.*, p. 25. The Danish Presidency will submit a report on the present system of six-monthly rotation of the Presidency to Copenhagen European Council on 12 and 13 2003 (Presidency Conclusions, Seville European Council, 21 and 22 June 2002, *op. cit.*, p. 2, para. 5).

²⁷ *Future EU: Institutional reform*, 11/10/2002, <http://www.euractiv.com/cgi-bin/cgint.exe/2026855-686?target=1&204&OIDN=500693> .

²⁸ *Ibid.*

²⁹ Stanley Crossick, *Seville Summit – Creeping Council Influence at Commission’s Expense*, 03/07/2002,

shows that there is some danger that the internal reforms of the Council and even of the Commission could bypass recommendations which will be made by the Convention.

The Commission has been also in the process of its internal reform. At the press conference pre-Seville in Brussels on 18 June 2002, the Commission President, Romano Prodi, keeping in mind the provisions on the Commission in the Nice Treaty³⁰, has presented a general outline of the Commission's internal reform, to be implemented in 2004.

First, Mr. Prodi referred to the reorganisation of the Commissioner's areas of responsibility, due to be ready by the end of 2003, as follows:

"Commissioner's areas of responsibility will be recognized around tasks that are essential to the functioning of the Union. Work will be prepared by groups of Commissioners responsible for a general policy area, mirroring the changes that are likely to be made to the structure of the Council.

After thorough consultation of my fellow Commissioners I shall designate a number of Vice-Presidents from among them to supervise each group of areas. Each Vice-President will work closely with two or three Commissioners depending on the scope of the fields covered".³¹

Second, the Commission President mentioned the rationalizing the Commission's decision-making process, as follows:

"While fully complying with the principle of collegiality we have to modernize the way decisions are made and prepared. Under my leadership the Vice-President will

<http://www.euravtive.com/cgi-bin/cgint.exe/1982595-545?714&1tain015=2&1014=epc96>

³⁰ Article 217 of the Treaty of European Community , which is amended by the Nice Treaty, stipulates that:

"1. The Commission shall work under the political guidance of its President, who shall decide on its internal organization in order to ensure that it acts consistently, efficiently and on the basis of collegiality.

2. The responsibilities incumbent upon the Commission shall be structured and allocated among its Members by its President. The President may reshuffle the allocation of those responsibilities devolved upon them by the President under his authority.

3. After obtaining the approval of the College, the President shall appoint Vice-President from among its Members.

4. A Member of the Commission shall resign if the President so requests, after obtaining the approval of the College."

³¹ Romano Prodi, *Speaking Points concerning the Seville European Council*, SPEECH/02/290, Brussels, 18/06/2002, <http://europa.eu.int>.

prepare the decisions to be taken by the Commission. They will meet at least once a week to prepare the meeting of the College and to take decisions that the College has authorized them to take.

The full Commission will continue to meet once or twice a month to set the political priorities and plan the work.

All decisions in principle will be taken by the College, as well as those it is required to take under the Treaties. The Vice-presidents supervising groups of Commissioners will take on an increasingly important role in implementing political priorities and decisions”³².

This internal reform, while the principle of the collegiality is emphasized, implies that the Commission will be divided into an inner cabinet of senior Commissioners (Vice-Presidents) and an outer circle of junior Commissioners³³.

If this reform is carried out not in 2004 but as early as possible, because the relevant provision will be entered into force soon, and the present College of 20 Commissioners can prove to be efficient and effective by the time the next IGC is convened, the argument made by the smaller countries could gain ground that the Commission should continue to be composed of one national from each Member State, acting at the same time in the general interest and as a spokesman of his/her own country, although the Nice Treaty provides that after the 27th country accedes to the EU, the number of the Commissioners shall be less than the number of the Member States, based on a rotation system³⁴.

Mr. Giscard d’Estaing, President of the Convention, is acting also outside the framework of the Convention. He has been making lots of contacts with political leaders of the Member States. But his way of doing things is criticized. Mr. Peter Norman, a journalist of the Financial Times, said “He has tended to concentrate on meeting big country leaders” and “Giscard’s bilateral meetings are less transparent”³⁵. And Professor Jean-Victor Louis, Free University of Brussels, warned about his

³² *Ibid.*

³³ *Future EU: Institutional Reform*, <http://www.euractiv.com/cgi-bin/cgint.exe/2026855-686?target=1&204&OIDN=500693> .

³⁴ Article 4 (2) of the Protocol on the enlargement of the European Union, which is annexed to Treaty on the European Union and to the treaties establishing the European Communities by the Nice Treaty.

³⁵ Peter Norman, *The European Convention: the End of the Beginning*, paper

behaviour, as follows:

“The risk, that has somewhat materialized, and was not to be feared during the election of the Charter [of Fundamental Rights], is that the President would play a personal role, through his contacts with Governments, ‘en marge’ of the Convention and through the launching in the public of personal initiatives that have not been tested before within the Convention.”³⁶

5. Institutional Reform

The most sensitive issue is the institutional reform of the EU. The Convention has not discussed this issue yet, but the debate is moving forward among Member States, outside the Convention.

Various ideas have been aired particularly by the political leaders of the big countries. They are, for example, a permanent President of the European Council with the six-month rotating presidency abolished, the Commission with its President elected by the European Parliament, and, merging the functions of the External Relations Commissioner and the High Representative for CFSP.

The key question is: In which direction will the institutional balance tilt? ; Which institution will lead the EU: the European Council and the Council guided by the big countries *or* the Commission acting independently in the general interest?

The British Prime Minister, Tony Blair, expressed his view that the present system of the rotating presidency should be abolished and that, instead, the Member States should appoint a past or serving head of government or state to be a full-time EU President, whose function would include chairing the European Council, supervising the delivery of policy decisions by the European Council and representing the EU externally³⁷.

The French President, Jacques Chirac, also advocated the idea of a permanent EU

presented at Keio University, Tokyo, Japan, on 9 June 2002, p. 8.

³⁶ Jean-Victor Louis, *The Reform of the Treaties and the Convention*, paper presented at Keio University, Tokyo, Japan, on 7 November 2002, p. 7.

³⁷ *High Representative Solana Skeptical about Proposals for EU President*, 16/10/2002, <http://www.euractiv.com/cgi-bin/cgint.exe/?targ=1&204&OIDN=1504074> .

President on the same line³⁸, which is also backed by Spain and Italy³⁹.

By contrast, the small countries and the candidate ones are against the proposal for an EU President, because they think that it will be a threat to their interests. Those countries prefer to be represented by a strong Commission elected by the European Parliament⁴⁰.

And Javier Solana, High representative for CFSP, expressed doubts whether appointing an EU President would really create a single voice for Europe⁴¹.

On the other hand, The German Chancellor, Gerhard Schröder, took the middle stance between the other big countries and the small countries, saying that he would support the plan for an EU President, under the condition that it did not undermine the work of the European Commission. At the same time, he supported the idea that the Commission President should be reinforced and be elected by a majority vote in the European Parliament⁴².

The position of the Commission has not been clearly defined yet. However, the

³⁸ *Ibid.*

³⁹ Future EU: Key Issues, *op. cit.*

⁴⁰ High Representative Solana Skeptical about Proposals for EU President, *op. cit.*

⁴¹ *Ibid.* He made several suggestions for a more effective EU foreign policy: (1) External representation should be delegated by the Council to the High representative; (2) The High Representative should be empowered to present proposals in his own right; (3) A permanent chair for the External Relations Council is necessary (the High Representative could be this permanent chair); (4) Unanimity of 25 (or more) on every foreign and security policy issues will make decision making very difficult, therefore majority voting should be considered; (5) Pooling of diplomatic resources for the collective goals of EU foreign policy should be considered (*Ibid.*).

⁴² *Schröder backs strong EU President*, 11/10/2002, <http://www.euractiv.com/cgi-bin/cgint.exe/?targ=1&204&OIDN=1504049>. The main roles of the Commission are to make legislative proposals as the sole initiator in the Community sphere, to implement the policies adopted as an executive, to watch the observance of the Member States' obligations under the EC Treaty and to supervise state aids and competition. If the President of the Commission is elected by the majority of the European Parliament, then the Commission will not be independent and the roles of watching and supervising will have to be played by another independent institution.

Commission President Romano Prodi rejected the Franco-British proposal for the European Council President to be elected for five years instead of the current system of a six-month rotating Presidency.⁴³

The Trade Commissioner Pascal Lamy also criticised the idea of an EU President. He said, in a speech at the Brussels Free University on 14 October, “This change would certainly be to the detriment of the Commission, which would be transformed into an administration serving the Council” and “only the Commission, because it is pluralistic in terms of nationality, culture and political allegiances, can hope to represent the general interest”⁴⁴.

As for the idea of merging the functions of the External Relations Commissioner and the High Representative for CFSP, the Commission proposed, in the Communication on “A Project for the European Union”, that “the High Representative/the Commissioner for External Relations should be chosen by joint agreement by the President designate of the Commission and by the Council at Head of States and Government level, specifically to perform this task *under the authority of the President of the Commission*”⁴⁵(emphasis added).

In short, this idea is to merge “Solana” into “Patten”, while the opposite idea of merging “Patten” into “Solana” is emerging from France, which would be acceptable to the United Kingdom⁴⁶.

6. Concluding Remarks

One can think that the European Union will be streamlined along the lines defined by the Convention, such as enhanced application of the principle of subsidiarity with no

⁴³ Commission’s “Future EU” Plans under Fire, 15/11/2002, <http://www.euractive.com/cgi-bin/cgint.exe/2426967-325?1100=1&204&OIDN=1504271&...>

⁴⁴ *Ibid.*

⁴⁵ Commission of the European Communities, *Communication from the Commission: A Project for the European Union*, COM(2002) 247 final, Brussels, 22.5.2002, p. 14, <http://europa.eu.int>.

⁴⁶ Kirsty Hughes, *Where is the Real Debate in the Future of Europe?*, Centre for European Policy Studies, 17/10/2002, <http://www.euractiv.com/cgi-bin/cgint.exe/?targ=1&204&OIDN=250673>.

strict catalogue of competence, reinforced roles of national parliaments, a Constitutional treaty with a human rights catalogue, simplified legislative procedures, a single legal personality and a stronger single voice, if the governments of the Member States accept such recommendations at the next IGC.

On the other hand, the main battle will be fought between the big and small countries around the role of the Commission played in the Community method. The Commission occupies the core position in the Community method, given the monopoly of the right of initiative exercised in the light of the general interest.

The Community method means “a system whereby the Commission - the institution representing the general European interest - has a monopoly on initiating legislation, i.e. presents proposals for legislative acts, and the Council - an institution comprising representatives of the Member States governments and the European Parliament - representing the people of Europe – adopt these acts in codecision”. “In particular, the Council votes by qualified majority, with unanimity being required if it wishes to amend the Commission’s proposal”⁴⁷.

The idea is floating that the monopoly of the right of legislative initiative by the Commission should be abolished and that this right should be shared with the Council and the European Parliament⁴⁸. This would be a serious blow to the Commission. And this would also be against the interests of the minority Member States (usually the small countries), because the initiatives by the Council and the European Parliament would reflect not the general interest but the interest of the majority (usually the big countries) in the voting within those institutions.

In addition, if the right of initiative is given to the Member States, the consequences might be much more harmful, since “in the case of national initiatives, the minority Member States do not have the protection which results from the Commission’s consent. Their protection lies solely in the need for a unanimous decision”.⁴⁹

⁴⁷ *Contribution from Mr. Barnier and Mr. Vitorino, members of the Convention: “the Community method”*, CONTRIB 80, CONV 231/02, the Secretariat of the European Convention, Brussels, 3 September 2002 (05.09) , p. 3, <http://european-convention.eu.int>.

⁴⁸ Future EU: Key Issues, *op. cit.*

⁴⁹ *Contribution from Mr. Barnier and Mr. Vitorino, members of the Convention: “the Commission’s right of initiative”*, CONTRIB 79, CONV 230/02, the Secretariat of the

The more the qualified majority voting in the Council is extended coupled with the codecision with the European Parliament which decides by majority voting, the more necessary the Commission's right of initiative will be to protect the minority Member States in the light of the general interest. And there should be a system of "double simple majority" in the Council, proposed by the Commission, which means a simple majority of Member States and a majority of the total population of the EU. Such a procedure is so democratic and transparent that the legitimacy of the EU would be beyond any doubt if it were adopted.

Mention should be also made of enhanced cooperation. The Nice Treaty has the provisions on enhanced cooperation which reformed the Amsterdam version to make much it easier to launch such cooperation and extended such a possibility to the field of the CFSP. Professor Christian Lequesne, Deputy-Director of Centre d'Etudes et Recherches Internationales (Paris, France), is in favour of making enhanced cooperation more workable, but against the idea of a "core Europe" within an enlarged EU, composed of a limited number of the Member States moving towards more federalism. Instead, he advocates developing 'functional' enhanced cooperation stipulated in the Nice Treaty⁵⁰. However, such 'functional' enhanced cooperation on a case by case basis would not necessarily guarantee the forming of a center of gravity towards more integrationist Europe in a diversified Union.

A "core Europe" should be formed in the economic field, because cooperation in the field of external action, defence or police cannot avoid being developed on a more or less intergovernmental basis. Rather, the present author sees the possibility in the EMU. In 1990 "the Statement by the Deutsche Bundesbank on the establishment of an Economic and Monetary Union in Europe" says, "In the final analysis, a Monetary Union is thus an irrevocable joint and several community which, in the light of past experience, requires a more far-reaching association, in the form of a comprehensive political union, if it is to prove durable". A centre of gravity might be an enhanced Eurogroup inside the EMU, with more integrated economic policies including social security and taxation, although there is no indication of such a move, as is shown in

European Convention, Brussels, 3 September 2002 (05.09), p. 3,
<http://european-convention.eu.int>.

⁵⁰ Christian Lequesne, *Future Prospects of EU Enlargement*, paper presented at the IIPS International Conference "Enlargement and the Future of Europe 2002", ANA Hotel, Tokyo, Japan, on 12-14 November 2002, p. 4.

very modest recommendations of the Final report of Working Group V on Economic Governance.

Lastly, two scenarios could be thought on the future of the Union. One is a more intergovernmentalist EU dominated by big countries, with an permanent EU President, a High Representative/External Commissioner in the Council and a small College of the Commission (which does not necessarily reflect intergovernmentalism but is proposed by big countries). In this scenario, the monopoly of the right of initiative of the Commission might be abolished and shared with the Council and/or the Member States. The other is a more integrationist (or more supranational) EU favoured by small countries, with a Commission President elected by the European Parliament, a High Representative/External Commissioner in the Commission and the Commission composed of one member from each Member State (which is supported by smaller countries)⁵¹. The monopoly of the right of initiative of the Commission would be maintained.

At any rate, the trend seems to be that the balance would shift more towards the first scenario. The casting vote could be in the hands of Germany. In this connection, interesting enough, Mr. Fischer is said to represent the German Government at the Convention and produce a strategy paper on the future of Europe, arguing in favour of a stronger Commission⁵². The story will be continued.

⁵¹ On this issue, see John Temple Lang, "How Much Do the Smaller member States Need the European Commission? The Role of the Commission in a Changing Europe", *Common Market Law Review*, Vol. 39, No. 2, 2002, pp. 315-335.

⁵² *Joschka Fischer to represent German government at EU Convention*, 13/10/2002, <http://www.euractive.com/cgi-bin/cgint.exe/?targ=1&204&OIDN=1504095>.

[Postscript]

1. The present author had an opportunity to visit Bruxelles between 1 and 7 December 2002 (in order to participate in the 6th ECSA-World Conference on 5-6 December 2002) and had an interview with Mr. Jean-François Brakeland, Administrateur principal, Task Force Avenir de l'Union in Secrétariat général of the Commission on 2 December.

According to him, (1) the Working Group VII on External Action has decided to recommend that the HR for CFSP and the Commissioner responsible for external relations should be merged into a “European External Representative” as full member of the Commission while having a separate mandate from the Council for CFSP issues. The present author thinks that a person having such a post might tend to face more towards the Council than towards the Commission and prejudice the authority of the Commission President. My view was shared by him.

(2) And he criticised the idea of an permanent EU President as only cosmetic and making the institutional framework more complicated. Such a role would be played by the above-mentioned post of a “European External Representative”. The Presidency as chairpersons of the European Council and the Councils should remain on the present rotation system.

2. Meanwhile, on 4 December, the Commission adopted the communication “From the European Union: Peace, Freedom, Solidarity” on the institutional architecture (Brussels, 4.12.2002, COM(2002) 728 final). The impact of this document on the Convention remains to be seen for the present.