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Institutionalization of the Czech Membership in the EU

Policy paper

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Introduction

The Czech accession to the EU will bring about – with small exceptions – its full involvement in the decision-making processes and an adequate representation in the principal Union institutions. Already upon signing the Treaty of Accession, the Czech Republic will be entitled to participate in the meetings of EU bodies as an observer without voting rights. To be able to get involved in an everyday life of the Union, the Czech Republic will have to create structures capable of formulating and enforcing Czech interests.

These structures should be:

- Efficient, to prevent the fragmentation of positions leading to their difficult enforceability
- Transparent, to be able to derive clear political consequences arising from possible mistakes

The aim of this paper is a deliberation over two fundamental questions:

What models for formulation of positions decided at the EU level can be envisaged, with a view of maintaining the two basic structural presumptions (effectiveness and transparency)?

What will be the control of these mechanisms, including the role of the Parliament?

Due to its limited scope, the paper will focus only on the formulation and co-ordination of the European policy at the national level, thus on the enforcement of Czech interests in the Council. The decision-making processes in other Union institutions – in the Commission, in the European Parliament and in the Court of Justice are autonomous questions and will not be treated here.

Another problem arising with this study is the fact that some of the premises it builds on (e.g. the functioning of the Council, the question of EU presidency, the relationship between the Council and the Commission) will most probably be subject

to substantial changes in the forthcoming year as a result of the European Convention deliberations and subsequent IGC. It is therefore necessary to closely follow the progress of the Convention and prepare for the adoption of possible institutional changes. In any case, the new (Constitutional) treaty will not be signed before the end of 2003, thus meaning that the Czech Republic will join the EU under the institutional framework provided for by the Treaty of Nice.

Current state

At the moment the Czech Republic is not a member state of the EU and hence it does not have all the necessary structures. The issues of relations with the EU focus on the negotiation of the accession conditions and the implementation of the European legislation. In other words, it means ensuring the compatibility of the Czech legislation with the *acquis*. These tasks are tackled by a few key institutions. The most important of these are:

- Government Council for European Integration, established on basis of the Government decision 1161 of 7 November 2001, Government Working Committee for European Integration and the European Integration Department of the Office of Government
- Ministry of Foreign Affairs – Section of the State Secretary for European Integration (Department of Co-ordination of Relations with the EU, Department of EU Communication Strategy and Department of the Countries of the EU and Western Europe), including the Permanent Mission to the European Communities
- Department of Compatibility with EU legislation at the Office of Government

Apart from this, other institutions have a stake in these processes as well, for example Ministry for Regional Development (steering body for the framework Community support) or the Foreign Aid Centre of the Ministry of Finance (steering body for the pre-accession EU instruments).

Changes arising from the Czech accession to the EU

The EU accession will have a major impact on the formulation of European policy of the Czech Republic. The country will actively participate at the decisions taken in Brussels. This will bring about some major structural changes:

Participation of Czech representatives in the Council at the level of ministers or their delegates. The ministers of EU member states will decide on issues that will bind the Czech Republic as a member country but in some other cases also other entities (Czech authorities applying the *acquis*, possibly also natural and legal persons in case of regulations). The ministers will directly participate in the Union legislative process which will become (in case of regulations) an integral part of Czech legislative order but even in case of other forms of legislation (directives, decisions) will have far-reaching consequences for the country.

Transformation of the Permanent Mission to the European Communities to the Permanent Representation to the EU. The permanent representation will play a key

role in terms of participating at the sessions of the Committee of Permanent Representatives (COREPER) in Brussels. Our diplomatic mission will pre-negotiate the agenda of the Council of Ministers and co-ordinate the positions with those of other member states. This will require strengthening of the current mission as well as its effective line-up to the decision-making chains formulating the Czech positions for the Council (see further), as well as the permanent representations of other member states and active communication with them.

The Council will also meet at a lower level of specialized committees and ad hoc working groups consisting of the representatives of public authorities of the member states. The negotiations at this level will be very important as many decisions will be taken already at this stage with the consequent formal approval of the COREPER and the Council. This will increase the requirements imposed on the negotiating and language capabilities of the Czech officials that will take part in these negotiations. Even though the Council meetings are interpreted into the official languages of the Union, one must not forget that many important decisions are taken at an informal level (breaks, working lunches and dinners etc.).

This raises some basic questions:

Who will represent the Czech Republic at the Council sessions? Will this representation differ when the Council will meet in the legislative and executive formations? What mechanisms will be chosen for formulating the Czech positions for Council negotiations? Who will be responsible for the overall administration of the "European" agenda?

Let us now explore these questions and suggest possible solutions.

The Council at the level of ministers meets in different formations according to the scope of the questions discussed. Apart from that, it basically acts in two functions – as a legislative body provided that it rules on the proposals of the legislative acts, or as an executive body if it rules on other, non-legislative matters. At the moment, several so-called sectoral Council formations exist (e.g. Justice and Home Affairs Council, ECOFIN Council for Financial and Economic Issues, Environment Council etc.). A privileged position among the Council formations is conferred to the so called General Affairs Council (GAC) dealing with issues that involve several departments (e.g. internal market, transport and environment) and consists of the ministers of foreign affairs of the member states. At the Seville European Council, it was decided that the GAC will be further divided into the External Relations Council and the Council for horizontal issues where the member states usually delegate ministers or state secretaries for European affairs. Formally, however, each country decides who will represent its government.

It can be assumed that in the individual Council formations the Czech Republic will be represented directly by ministers. At the same time, however, we must take into account the current discussion on the Council reform. The Convention will also deal with the limitation of Council sectoral formations. This is because sectoral Councils hardly ever decide on issues that fall within the competence of one single department. As a result of this, the decision of a minister committing the government as a whole and leading to an unjustified preference of his department can be easily challenged. Other proposals focus on the division of the Council into the legislative

and executive formations (at present, the Council always acts in both functions). Especially where the legislative issues are at stake, there is absolutely no control over the negotiation and possible voting of the representatives as the Council meets behind closed doors. It is thus possible and plausible that legislative and executive functions will be separated, the former being public. In this way, national control over the voting of government representatives will be fostered.

The first alternative thus means that the Czech Republic will copy the current practice of the member states. It will delegate the representatives of the individual departments (i.e. ministers) or their deputies. In the General Affairs Council, the country will be represented by the Minister of Foreign Affairs.

An alternative could be the creation of the post of a permanent European minister (Minister for European Affairs). This minister would be charged with representing the Czech Republic in the Council and chairing the committee deciding on national positions (see further). He or she would not be charged with chairing any ministry. His or her task would be only to “execute” the will of the government in compliance with the mandate conferred to him/her. It is possible that this will become a common practice in other countries especially due to the current state of debate and upon the separation of the legislative Council.

The advantage of this system is that the Minister for European Affairs could participate in the continuously ongoing meetings of the Council (especially in case of Council formations meeting more frequently, like the GAC of ECOFIN Councils). This minister would become quite familiar with the EU milieu and the negotiation tactics that he will need during his deployment. He would also ensure an external continuity of articulating the Czech positions.

This would, however, mean that he would have to travel continuously between Prague and Brussels. Another disadvantage would be the minister’s insufficient expertise in the sectoral questions – this could prevent him from reacting operatively to counter-proposals of his colleagues. This could be eliminated by inviting ad hoc experts from individual ministries which is already a usual practice. He could also be assisted by experts from the Permanent Representation.

Another possibility is charging the State Secretary for European Affairs with representing the Czech Republic. He would be – unlike the Minister for European Affairs – administratively subordinated to the Minister of Foreign Affairs. This would decrease his accountability to the Government as such. It would be worth considering whether he could be a sort of junior minister, responsible for issues concerned with the Council rulings, having the apparatus of the Ministry of Foreign Affairs or Office of Government at his disposal, and working at the same time under the Minister of Foreign Affairs. This regulation would probably require an adoption of a special act of parliament.

How to formulate Czech positions?

The model of co-ordination of EU matters is in most of the member states divided between political and administrative levels. In most of the member states these two levels are also inter-connected, for the high state officials cannot decide on important

EU-related issues unless they receive a political mandate. The political co-ordination is closely linked to the distribution of political power in the country whereas the mutual co-operation of parties in power and non-governmental political parties represented in the parliament exists.

It seems improbable that after the accession, due to the complexity of issues discussed in Brussels and an enormous increase of agenda, only the Government Council for European Integration (at the moment, it meets monthly while the COREPER in Brussels meets every week). On the other hand, due to the scope of agenda it is not possible that all the issues will be dealt with directly by the Government. In many cases the questions will be so technical that having them on the Government agenda would not make much sense (e.g. European environmental legislation, food safety, transport, etc.)

The decision-making should thus be structured at two levels:

In a special body (let us call it, for instance, EU Committee) that will meet at the level of high state officials of the ministries concerned. These officials would be either state secretaries of the individual departments or the deputies responsible for a given issue. This should be enabled by the State Administration Act that will come to force upon the EU accession.

Due to the inter-departmental nature of the EU Committee it is suitable that it be presided by the Minister for European Affairs or the State Secretary for European Integration. In case of a Minister and therefore the member of Cabinet, he would have at his disposal a Secretariat that would be formed by the transformation of the current European Integration Department of the Office of Government (see further). In case of the State Secretary, this task could be performed by the Department of Co-ordination of Relations with the EU (OKEU). In any case, it would be more suitable that the State Secretary be responsible directly to the Government, not to the Minister of Foreign Affairs. The question is whether this would be possible under current legislation. This is due to the fact that agenda of this State Secretary will not be so much a matter of foreign policy with a strong inter-departmental scope.

The EU Committee will also issue internal instructions to individual officials that would participate in the preliminary negotiations in the Council working groups in Brussels. Here it is difficult to suggest a uniform system – for some issues it would be advisable to leave more discretion to the officials and formulate the instructions very generally. Other times it might be necessary to formulate these more precisely. The time factor is important, too – sometimes the positions must be formulated very quickly making it impossible to ensure that the decision is made at the highest appropriate level. Even the practice of current member states is not uniform – some countries (like Italy or Belgium) prefer to leave more discretion to their officials, while others (like France) do not attach too much attention to the working group conclusions and leave the key decisions to the ministerial level.

If the EU Committee does not reach a consensus on a common position, the issue at stake will have to be decided directly by the Government. The Government should, however, in any case retain the right of attraction – i.e. the right to intervene at any time and rule on any question if it deems appropriate. The question is how to assure

the monitoring of the EU Committee work. Here, the key role will be performed by the body administering the European agenda.

Administration and Co-ordination of the European Agenda

The EU Committee will need an administrative apparatus so that it can negotiate all the EU-related questions in time and that would be capable of supplying all the “dossiers” for the agenda, especially the legislative proposals of the European Commission.

In view of this, several models of co-ordination of the European agenda can be considered.

The first model supposes that the Ministry of Foreign Affairs will be after the accession, on basis of an amendment to the Competence Act, entitled to administer the co-ordination, information and administrative agenda in relation to the EU. The ministry (the Minister of Foreign Affairs or the State Secretary for European Integration) will co-operate closely with the Prime Minister and his Cabinet, other departments, the Parliament and the Permanent Representation in Brussels. This option is the least demanding from both the human resources and financial allocation perspectives for it would require only the development of the status quo. On basis of the Government decision of 13 December 1999, the Minister of Foreign Affairs and Vice-Premier who is acting also as the Executive Vice-chairman of the Government Council for European Integration, was entrusted with the overall co-ordination of the integration process. A separate department for the co-ordination of relations with the EU has existed since 1999.

The question is how the whole issue would be tackled if the co-ordination and steering of European affairs is conferred to a special Foreign ministry department headed by the State Secretary who will be obliged to refer directly to the Prime minister in case of inter-departmental collisions. What would then be the role of a foreign minister to whom the State secretary is administratively subordinated?

Apart from that, it is necessary to bear in mind that the EU-related issues will not be a purely foreign agenda but a part of an everyday internal policy. From this perspective, it might seem more appropriate that the co-ordination body is placed outside the Foreign ministry structures.

Another alternative is that the aforesaid task will be conferred to the Office of Government. This role will be incorporated in the Competence Act again. For this purpose, the Office of Government will set up a special department (e.g. Secretariat for European Affairs or Office for European Affairs) directly steered by the Prime Minister that will co-operate with other departments, the Parliament and possibly the Permanent Representation. This model exists in some of the member states (e.g. European Secretariat of the Cabinet in the UK, Chancellor’s Office in Germany, EU Government Secretariat in Finland etc.). This body will best fulfil the task described. Another advantage is its direct connection to the Cabinet. The Foreign Ministry will be further charged with the competencies in foreign policy domains (e.g. bilateral relations with EU countries, Common Foreign and Security Policy etc.). The current European Integration Department at the Office of Government is, however, far smaller than the State Secretary Section of the Foreign Ministry. Thus, some adjustments in this respect might be needed. A possible problem that might arise

here is that some of the experts will not be ready to leave their ministries and shift to a different position. This concerns especially the Ministry of Foreign Affairs that at the moment has the highest number of EU experts who might not be ready to leave the perspective of a diplomatic career.

It is also possible to consider the creation of a new Ministry for European Affairs that will be entrusted with undertaking all the required co-ordination, information and administrative tasks. Again, it is necessary to amend the current Competence Act. Some of the member states as well as candidate countries have already set up such an authority or consider establishing it. This alternative would, however, mean substantial re-allocation of financial resources and is also time demanding. Its indisputable advantage will consist in the overall administration of the agenda arising from EU membership, including the responsibility for the implementation of EU legislation, training in European matters, public relations and the control of financial flows from EU funds. This would, however, bring about large interventions in the individual ministries' and other central authorities' competencies. The steering of EU agenda would be on the other hand very efficient and transparent. The problem encountered in some of the member states is that the minister for European affairs is usually the so-called junior member of Cabinet that makes it more difficult to enforce his positions in the Government.

The models considered also can be combined in a way that the European Secretariat of the Office of Government will work under the Minister for European Affairs (hence not under the Prime minister directly). This minister would not direct any special department (ministry), only the Secretariat. At the same time he would ensure its liaison to the political sphere. He would closely co-operate with the Foreign Ministry that will be responsible for the communication flow with the Permanent Representation, as well as for bilateral relations with EU countries and other EU foreign policy issues. It will be necessary to make sure that there is no duplicity of competencies between this body and the Ministry of Foreign Affairs.

Control of European policy by the Parliament

The question of how the Government or individual ministers will be controlled by the Parliament must be perceived with two considerations. Firstly, the national parliaments still do not have any formal competence at the EU level. Furthermore, a large portion of legislation approved in Brussels is by nature implementing, thus falling within the competence of the Government and individual ministries, being so technical that it is unlikely that the Parliament would deal with it. On the other hand, we must consider this matter in relation to the ongoing Convention deliberations. The outcomes of the working groups on Subsidiarity and National parliaments indicate that the national parliaments could be vested with some formal powers at EU level. This could lead to exerting more pressure on the governments and more vigorous control of their European policies including the voting in the Council. If the sessions of ministers become public, the parliaments can get yet another lever how to control the ministers during their Brussels meetings.

At the moment, the only provision that regulates the relationship between the Parliament and the Government in the European issues is Article 10b of the Constitution that was incorporated with the so-called "Euro-amendment" whose aim

is to provide grounds for the complex preparation for EU membership. This article reads:

- (1) *The Government regularly and in advance informs the Parliament on the questions related to the obligations arising from the membership in international organisation or institution referred to in Art. 10a (understand EU)*
- (2) *The chambers of Parliament pronounce on the prepared decisions of such international organisation or institution in a way set forth by their respective rules of procedure.*
- (3) *Act on the Contact and Proceedings of Chambers between them as well as in relation to third parties can confer the execution of the competence of Chambers provided for in paragraph 2 to a joint body of Chambers.*

It is evident that the regulation set forth in the Euro-amendment of the Constitution is too vague and enables quite an extensive and diverging interpretation. Firstly, it is not clear what is meant by the obligations arising from the EU membership. An extensive interpretation would enable one to understand this as informing on all the prepared legislation as well as on the decisions of an executive nature. On the other hand, many acts taken at the EU-level are self-executing (all the regulations, majority of decisions etc.), not requiring any further implementation by the national legislation. Even if the acts are not self-executing (like e.g. the directives), they are usually transposed to the national law by secondary legislation in the form of government regulations or ministerial decrees.

This implies that the consultations with the parliament should concern such decisions of a fundamental nature like the issues discussed at the EU summits or questions of the current Second and Third pillar (i.e. the Foreign and Defence Policy or Judicial and Police Co-operation in criminal matters). Most of the decisions are of a technical nature and the members of Parliament do not have sufficient expertise to rule on them.

Another question is the frequency of briefing the Parliament. The regularity can mean informing once a year (e.g. on the legislative programme of the Commission or the strategic goals of the Council presidency), but also prior to every Council session. The practice of the current member states is not uniform. The fact is that the majority of the national parliaments is rather passive in relation to European issues and leaves the initiative up to the governments. If any control exists, it is *ex post* rather than *ex ante* control. The only notable exception is the Danish Folketing whose European committee regularly meets with the Danish representatives in the Council (every Friday). The ministers concerned inform its deputies on the positions of their departments or the government for the Council meeting and in some cases it confers the mandate directly to the ministers.

This model does not seem to be very convenient for the Czech Republic. From the point of view of effectiveness of the representation of Czech interests in the Union it would be better if the briefing of deputies and senators concerns only fundamental questions that the Parliament will have to rule on anyway. These are, for instance, the intended amendments of the founding treaties requiring the parliamentary ratification in the member states (or association agreements), the IGC decisions, decisions on deployment of the EU Rapid Reaction Force, etc. As for paragraph 3 of

the cited provision of the Constitution, we can only say that it would be more efficient that the Government inform the Chamber of Deputies and Senate together. Therefore, a joint body for this purpose should be set up as it cannot be realistically expected that the two chambers would meet very often in a joint session.

The vagueness of the quoted article of the Constitution requires that an implementing act of Parliament be adopted by amending the Rules of Procedure of both chambers and apart from that by an act defining more precisely the Government – Parliament relation in the EU questions. Even here, however, we have to bear in mind that the position of national parliaments will plausibly change with the upcoming IGC that might confer upon them new powers at the EU level. For instance, with the ex ante control of the subsidiarity principle, the parliaments will be entitled to ask the Commission to review its legislative proposals. If they consider them to be in breach of this principle they will have the right to nullify those acts of EU institutions that came already into force, or they will participate in the election of a future EU president. It is necessary that the Parliament closely follow this debate so that it can adopt a relevant legislation in time.

Recommendations:

- The Czech Republic must develop such a mechanism of dealing with issues discussed at the EU level which will enable it to formulate acceptable positions and where possible failures will point to a clear political accountability.
- The formulation of Czech positions on questions decided in the Council should be conferred to the EU Committee replacing the current Government Council for European Integration. The Committee should meet at the level of state secretaries of concerned departments. In case that an agreement on a position cannot be reached, it is the Cabinet that will decide.
- A function of the Minister for European Affairs should be created. The minister will preside over the sessions of the EU Committee and would possibly represent the Czech Republic in the Council, especially if its legislative and executive formations are separated. The minister would be the member of Cabinet (which would enhance the consistency of Czech EU policy) and to him it shall be accountable.
- The co-ordination of the European agenda would be conferred to the European Secretariat of the Office of Government. It would convene the meetings of the EU Committee upon the instruction of the Minister for European Affairs, prepare the agenda on the basis of the individual dossiers discussed in the Council and prepare all the necessary materials for the Committee members.
- Due to the pre-negotiation of the positions in the COREPER it is necessary to strengthen the Czech Permanent Representation in Brussels and ensure its effective liaison with the European Secretariat. This should be done through the EU Co-ordination Department of the Foreign Ministry, including the information on the positions of other member states and other stakeholders towards issues concerned.

- It is necessary to strengthen negotiating and language capabilities of the public officials that will take part in the Council working groups. Special training modules should be developed in negotiating techniques in co-operation with the Institute for Public Administration and certified EU trainers.
- As far as the parliamentary control is concerned, it is indispensable to adopt an implementing act to Article 10b of the Constitution that will define more precisely in what issues and with what frequency the Government shall consult the Parliament with regard to the EU agenda. This briefing should be automatically mandatory in those cases where a subsequent assent of the parliament will be required (e.g. treaties negotiated at the EU level, directives that need implementing parliamentary legislation, etc.). In connection with this, the rules of procedure of both chambers must be amended respectively.