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Position of small countries towards institutional reform – from tyranny of the Small to directoire of the Big?

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»Rien n'est possible sans les hommes, rien n'est durable sans les institutions.« (Jean Monnet)

Introduction

The Convention, despite the progress on many important issues, faced unprecedented divisions over some of the most fundamental questions of power balance in the EU of twenty-five or more members. The diverging stances have been presented as a clash between the smaller and larger member states of the Union. As we cannot naturally assume that the positions taken by smaller countries are the same on all the issues and neither are those of the big ones, for the ones where there seems to be major disagreements –i.e. the institutional questions - this rule largely applies.

Looking at the arithmetic, in May 2004 there will be only six large member states (Poland included) out of twenty-five, who will, however, account for roughly three quarters of the Union's population. This is an entirely different situation from the original European Communities for which the institutions were designed. Although the respective major institutional players underwent some changes in the period, no major reshuffling of power took place. Since then the number of small countries increased and even more so will it be after ten new countries join in May next year. That is why the attempts are being made to redesign the institutions to suit a different Europe that we know from until recently.

The issue was recently exacerbated in the politics of the Convention. On one hand, the Presidium and its chairman Giscard d'Estaing has been consistently refusing to incorporate the proposals of the small countries or come up with a compromise solution. The Convention boss even acknowledged to some European media¹ that one should not naturally assume that the states are equal. This caused an allergic reaction and counter-proposals of a vast majority of smaller countries in the

¹ "Citizens are equal – but some states more equal than others". Article by Dana Spinant in *European Voice*, 22-28 May 2003.

Convention. The compromise of the Convention will be presented by Mr Giscard to the European Council in Thessaloniki 20 May 2003. Even if the Convention in the end managed to come up with one single proposal there are still room for bargaining in the upcoming IGC. There is a risk that the ambition of the Convention is going to be watered down and the EU is going to end up in a similar institutional muddle as after Nice.

This paper tries to explore the stances taken by small countries of the Union on two issues that seem to be overwhelmingly fundamental to them – the question of the Council presidency and the question of the size, composition and legitimacy of the Commission.

Council presidency reform – who will hold the Sceptre?

The Council reform seems to be one of the main issues addressed by the Convention where the cleavage between the smaller and larger EU member states (both current and candidates) clearly emerges.² While those advocating the current proposals in the draft Constitution creating the post of a permanent European Council Chair (Britain, France, Italy, Spain, Germany, Poland, Sweden and Denmark) argue with the need to increase the efficiency of the Council, the opponents emphasise the necessity of sticking to equality between members. On the other hand, all the states feel the need for a Council reform of some kind, as it is one of the most unstable and vulnerable institutions.³ Only if we take into account its ever-changing composition, the Council – unlike the Commission or the European Parliament – is not vested with a clear-cut mandate and makes it dependent on the current political situation in the individual member states⁴.

The Council is the EU institution representing most the inter-governmental element of the Union. The small countries by far do not have the same views of what role should be taken by this body – some tend to favour stronger position of the Council (e.g. Estonia). Others like Belgium, the Netherlands or the Czech Republic are inclined to take more equilibrated approach, with an equally strong role of the Commission and the European Parliament. But this is largely given by the current political representation – it is quite likely that if the opposition was in power in the Czech Republic, for example, the picture would look completely different and the country would find itself much along the British and Scandinavian

² Giovanni Grevi and Kirsty Hughes, “What Prospects for Compromise on Institutional Questions in the Convention Endgame?”. EPIN Comment, European Policy Centre (EPC) and Centre for European Policy Studies (CEPS), Brussels, May 2003, http://www.epin.org/pdf/comment_GreviHughes_may03.pdf.

³ Guillaume Durand, *The need for Council reform*, EPC Working Paper, European Policy Centre, Brussels, 15 October 2001, http://www.theepc.net/europe/strand_one_detail.asp?STR_ID=1&REFID=553&TWSEC=EPC%20Working%20Papers&TWDOSS.

⁴ This idea was expressed for example by Gisela Stuart, member of the Convention Presidium, at the Annual Conference of the European Institute in Sofia in November 2002.

positions. However, over the questions of the Council presidency a small-large cleavage pattern is quite obvious.

The first observation we can make clearly is that an absolute majority of smaller member states insists on the preservation of the *status quo* in terms of the current rotating Presidency system or envisage the preservation of some sort of rotation at least⁵. Denmark and Sweden are the only notable exceptions, which might be explained by the fact that these countries have a tendency to favour an inter-governmental approach. The idea put forward in several other proposals, and most recently by the Convention Presidium in the draft Articles of the Constitution, envisages a different system of a permanent president/chair of the European Council for the period of two and half years, renewable once. Let us now explore what are the main concerns of the smaller countries here.

Internal EU agenda setting

The smaller member states view the rotating presidency as one of the main pre-conditions for keeping the balance between the big and the small. The presidency is one of the occasions where the smaller member states can clearly grasp the EU agenda and manage it. It also gives them an opportunity to give an additional impetus to the development in the EU. The fact that the country is seen once in a time as the one running the EU, even though for a limited period, is important in the eyes of its own citizens.⁶ Especially if the presidency is generally considered to be a successful one it helps to an overall increase of popularity of the EU in a particular country. This point should not be underestimated particularly in relation to the smaller newcomers as it can play an important role in increased visibility of such a country in the European polity as well as in more identification with the Union among the citizens.

On the other hand, the role of the presidency must not be overestimated either. Nowadays, the presiding country can add some of its priorities to the overall EU agenda but to a large extent this is a self-driven process⁷.

It also inherently brings some dangers when a country comes up with an ambitious plan but its successors in the presidential capacity are not able to push on its pursuit so much. To take just two recent examples: the Finnish presidency that came up with the Tampere Scoreboard in Justice and Home Affairs or the Portuguese presidency that invented the Lisbon agenda. The outcomes of these ambitious plans so far have been quite

⁵ See for example the Czech government non-paper on the institutional reform, available at www.mzv.cz/missionEU/convention.

⁶ See the Speech by Slovenian Foreign Minister, Dr. Dimitrij Rupel, at the Conference “After Copenhagen – the Larger and Closer Union”, Copenhagen, 24 March 2003, www.gov.si/mzz/govori/03032401.html.

⁷ Kirsty Hughes, “Franco-German Plans for a Dual Presidency – a Short Comment”, EPIN Comment, CEPS, Brussels, 16 January 2003, http://www.epin.org/pdf/comment_hughes_jan03.pdf.

limited. One of the reasons is that countries switching each half a year in EU leadership do not have enough courage and ambition to push on the pursuit of these long-term goals but rather carry on by necessity. There is simply not enough time to negotiate any substantial shifts forward. This could pose a potential problem for the overall dynamics of the EU integration process.

The role of the presidency can be crucial as that of the broker and deal facilitator between particular groups of countries within the EU on various issues. However, as the experience has shown many times, it is not always the case. Let us take a recent example of the Danish presidency. There is no doubt that for the Danes, finishing the enlargement negotiations with ten candidate countries was number one on the agenda. However, the role, which the Presidency played in making the final deal, was not crucial. It is doubtful whether it would be possible to reach a deal in Copenhagen without prior Franco-German agreement made in Brussels in October which was the real driving force behind.

Another fact that speaks against the 6-month rotating presidency comes with the implications of the enlargement. If the current system is to be maintained, it would mean that each country would hold the presidency once in every 13 years. Given the limited time scope, no one can really hope that a country would be able to influence the EU development in any substantive way. Also the symbolism becomes less important here as the country will be just one of many running the EU. Another argument against keeping the rotating presidency is the fact the politicians and the civil servants working during one presidency will be replaced more often than every 13 years. The institutional memory of the Council would then be shorter than the time-span of the rotating system after enlargement.

Why are then the smaller states so anxious about keeping the current system if most of the arguments speak against it? There are several explanations. The first is that the current system works and is highly predictable, albeit with many reservations. With a system of permanent chair, no one can really say at the moment what would happen with the inter-institutional equilibrium. It is almost inevitable that an administrative apparatus would emerge around the President that could potentially rival the European Commission who is, as we explain further, thought to be the best friend of smaller countries. They usually support the Community method and would therefore like to see even the strategic direction emerging from the Commission rather than from the Council. This, however, leads to further questions of democratising, legitimising and perhaps even politicising the Commission for these tasks and whether the EU is moving more towards intergovernmental or supranational political finality. This issue will be treated further on in the paper.

When we are considering the legitimacy of streamlining the strategic direction the EU wants to have, we have to pose the same question in

relation to the permanent Council chair. The position could potentially develop into a highly influential and powerful one. Will the President be accountable only to his or her pairs in the European Council? It could be quite worrying as the EU leaders tend to behave very differently at the summits, often forgetting that they have their governments, parliaments and voters behind their backs. This lack of accountability is a serious concern. On the other hand, the point, which is sometimes mentioned – that the Council chair will only listen to the big ones – does not have to worry the small ones so much. There will be more small countries than the big ones, thus more candidates for the Council chair emerging from this category⁸. Furthermore, even newly suggested qualified majority voting (QMV) system would still assure they cannot be outvoted by the “Big Six” in the bid.

Role in the external relations of the Union

For the EU, the one thing that is often stressed is that the current system does not provide for enough continuity and efficiency in running the EU foreign policy and leads to an insufficient visibility of the EU in the world. That is probably true. The question is whether adopting the position of a permanent Chair would make the EU foreign policy more visible in the world as well as more efficient.

The Convention President Valéry Giscard d’Estaing has stressed that recent Iraq crisis and deep divisions of Europe arising thereof proved the necessity of having a permanent president. Draft Article I-21 para 2 of the Constitution goes along with this, stipulating that “the President of the European Council shall at his or her level and in that capacity ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the responsibilities of the Union Minister for Foreign Affairs”⁹. This could be interpreted in at least two ways. The first one is that the permanent president will, in fact, create the EU foreign policy. It is highly doubtful to envisage that the EU heads of state and government will be able to confer this competence on a single person. The other interpretation is that the President will be, in the realm of foreign policy, just a spokesperson of the European Council, at the very best the broker between the heads of state on foreign policy issues (like in EU internal affairs). This might lead to some doubt as to what would be the role of the European Foreign Minister, which will be discussed later in the paper. The proposal put forward by the Presidium in

⁸ Max Kohnstamm and Guillaume Durand, “Common Nonsense – Defusing the Escalating ‘Big versus Small’ Row”, European Policy Centre – The Europe We Need, Brussels, May 2003, http://www.theepc.net/europe/strand_one_detail.asp?STR_ID=1&REFID=1163&TWSEC=Commentary&TWDOSS. Although it is necessary to mention here that the eventual draft of the Constitution does not stipulate the condition of the European Council Chair being former member of the Council, thus potentially limiting the scope of candidates from small countries.

⁹ *Secretariat of the European Convention*, CONV 820/03. Brussels, 20 June 2003, <http://register.consilium.eu.int/pdf/en/03/cv00/cv00820en03.pdf>.

this respect is weak because it is not coming up with any more precise job description for the permanent president in the area of foreign policy, apart from this very broad and inconsistent formulation in the draft Article I-21.

Given the virtual non-existence of the EU common stand on some of the crucial foreign and security policy issues, it is highly unlikely that the heads of state and government will manage to appoint a person that will be able to exercise a sufficient influence over them and speak for the EU in the international arena. Could such a person be a counterpart to Putin or Bush? Probably not, at least because he or she would not make the European foreign policy but would be solely the European Council spokesperson. Even more importantly, he or she will not enjoy as strong legitimacy as Putin or Bush have which will make it difficult for him or her to be put on equal footing with them. The potential competition with the Commission President who will be – whether we want it or not – vested with some sort of external representation powers, is also more than evident.

Most of the smaller countries are in favour of seeing a genuine common position on many foreign policy issues. This is because for smaller countries it is easier to reach a common stand in the area of a foreign policy, as they generally do not have global interests but particular ones. But even with regard to their particular concerns, hardly ever they have enough structural power to push them through. Influencing them through the EU structures can be one of the ways of gaining this structural power. This can explain why some of the small countries would like to see a stronger role of the Commission in foreign policy. If not, they can rely at least on enhancing the issues during their presidency. For sure, creation of the permanent Council chair would make these efforts of smaller states much more difficult to achieve.

European Foreign Minister – what relation to the Council president?

It is often stressed that one of the ways to make the foreign policy more efficient is to create a sort of permanent post for running the EU external relations that would replace the current “troika” system. Small countries generally assume that this task could be performed by the double-hatted European Foreign Minister (EFM), and that is why they supported the initiative in the Convention. The only problem is still possible encroachment with the position of the Council president.

The views on the institutional position of a European Foreign Minister, however, differ. Some countries would prefer to have this position based solely in the Commission (Finland, Belgium); others would prefer the EFM to be based in the Council (Estonia). The current proposal in Article I-27 stipulates that the Foreign Minister will be appointed by the Council in concert with the Commission President, thus creating a double-hatted post as the Foreign Minister would also be one of the Vice-Presidents of the

Commission¹⁰. It seems that this could be a sensible compromise for smaller countries majority of whom does not favour shifting the external representation of the Union completely to the Council. Still, many questions remain left open in the proposal. For instance, as a member of the Commission, will the Foreign Minister also have to be approved by the European Parliament? Some might say not, as he or she will be representing the Council and the European Parliament does not have much say in CFSP. On the other hand, he or she will be responsible for Union's external action in a much broader sense than the current High Representative, including the external relations falling within the Community pillar and thus scrutiny from the European Parliament would be logical. To what extent will he or she be bound by the collegiality in the Commission?

With relation to the previous discussion, the post of the European Foreign Minister would not be entirely equal to heads of state and government, thus his or her influence on formulating and pronouncing on the European foreign policy issues will be even more limited than that of the President. However, the current draft of the Constitution states that he or she should conduct the Union's common foreign and security policy (Art I-27 para 1) and chair the Foreign Affairs Council (Art I-23 para 2)¹¹. Especially the first part of this job description creates further confusion of what would be the relation between the Foreign Minister and the European Council Chair. Some efficient division of powers between these two functions could still be imaginable – while the Foreign Minister will run EU foreign policy on a day-to-day basis, the European Council President will speak on the head of state level, i.e. as counterpart to Mr Bush or Mr Putin.

However, one must not forget that the problem lies elsewhere. Neither the permanent European Council Chair, nor the European Foreign Minister will make much difference unless the system of decision-making in CFSP is radically changed to QMV or at least some more efficient form of constructive abstention. It might bring less confusion for the EU counterparts on the world stage but will hardly make in itself the EU foreign policy more efficient or visible in a wider world. But there are not enough countries that are ready to concede this step at the moment, and certainly not even all of the small ones.

The other necessary step – and not necessarily an easier one to make -is to try to identify genuine European foreign policy interest that all the 25 countries can agree on or at least do not have a problem with. Europe needs to find the lowest common denominator in foreign policy in areas where it can make difference rather than try to be a global policeman

¹⁰ *Secretariat of the European Convention*, CONV 820/03. Brussels, 20 June 2003, <http://register.consilium.eu.int/pdf/en/03/cv00/cv00820en03.pdf>.

¹¹ *Secretariat of the European Convention*, CONV 820/03. Brussels, 20 June 2003, <http://register.consilium.eu.int/pdf/en/03/cv00/cv00820en03.pdf>.

while its foreign policy is still being shaped¹². It is sure that such an interest can be found, most probably in the immediate environment of the Union. In the draft Constitution there is even a specific title on it (Title VIII), and thus we can presume it will get a “privileged” treatment. The first EU- run corps in Bosnia and Macedonia prove this. But besides Balkans other areas can be considered like the Southern Mediterranean, the Middle East, Ukraine and Russia.

Thus the permanent EU president is not much of an advantage to smaller countries neither in foreign policy nor in the internal business. It might bring slightly more continuity into the external representation, but will not make much more difference towards driving the EU strategically. Even those countries that support the permanent president do not have the same ideas about his job description – while the French might like to make him a strong body potentially developing to the Union president, others like the UK or the Scandinavians (Denmark, Sweden) would rather like to see him as a representative figure¹³. For the time being, he is likely just to “chair” European Council sessions.

It is surprising, that the small countries who are so much opposed to it do not come with any strong and reasonably argued counterproposals as most governments agree that the current system needs revision. The first really courageous initiative was tabled by Benelux - yes to the permanent chair in return for the Commission President chairing the GAC.¹⁴ But this sounds like an attempt to make the sort of trade off that we know of from Nice. Many more innovative proposals could have been made by smaller countries opposing the permanent president, ranging from the double hatting of the Council and Commission presidents to the redesign of rotating presidency so that it is more effective, strategically thinking and yet representative of different groups of countries in the Union and maintaining their equal share on guiding the EU. These proposals have already appeared but they were not taken up or elaborated on further by small countries. For instance, the Czech government in one of the early stages of deliberations adopted the idea of having double-hatted President, which was then turned to team presidency and then to maintaining the status quo. Instead of this, the small countries let this point to be hijacked by the big ones.

Unfortunately, it is too late to do this in the Convention. The only chance for the small countries is to make a strong push during the IGC. Given the

¹² See Steven Everts, in *New Designs for Europe*, Centre for European Reform, London 2002.

¹³ Anna Michalski, Matthias Hnise, *European Convention on the Future of Europe: An Analysis of the Official Positions of the EU Member States, Future Member States and Candidate States*, Clingendael Working Paper, April 2003. Retrieved from <http://www.epin.org/pdf/MichalskiCLINGENDAEL.pdf>

¹⁴ *Memorandum of the Benelux*, “A balanced institutional framework for an enlarged, more effective and more transparent Union”, Brussels, 4 December 2002, http://europa.eu.int/futurum/documents/press/oth041202_en.htm.

fact that it will be run by a country whose government favours the current proposal, it will be difficult, at least as much as with the President of the Convention.

European Commission reform

The size – shall everybody have his man or woman in Brussels?

Within a fragmented and relatively blurred inter-institutional framework the Commission plays a multiple role (Art. 211, TEC); ranging from initiating the legislative process to ensuring respect for the Treaty and of derived legislation; from enacting executive measures to supervising policy implementation. Moreover, the Commission is essential for ensuring the overall consistency of policy developments at the European level and for the conciliation of divergent national and institutional interests. Effectiveness of the Commission in carrying out its core task largely depends on constructive relations with the other actors involved, namely the Council of the EU, the European Parliament (“the Holy Trinity”) and national administrations.”¹⁵

The importance of the debate on the role of the Commission in the future institutional architecture of the EU from the perspective of small countries is more than relevant. There are at least two arguments, which speak in favour of this statement:

- the Nice negotiations resolved the question of the composition of the Commission only partially. It seemed to be a starting point for undertaking all other necessary institutional reforms, especially concerning intergovernmental Council and the European Parliament. However, during the negotiations the reform of the Commission remained in the shadow of other Amsterdam left-overs, especially that of the redistribution of votes in the Council to which all member and applicant states attached much greater importance.
- with exception of Poland and Romania all candidate countries are among small states. Thus, not only will the fifth enlargement almost double the membership of the Union, it will also, above all, increase the number of so-called small states.

European integration has always included large and small members. The divergence of interests between them was a reality, which the European Communities had to take into account at the beginning of the integration process and is a reality that the EU as well has to take into

¹⁵ Giovanni Grevi, *A strong President for a strong Commission*, EPC Working Paper, Brussels, 15 October 2001, http://www.theepc.net/europe/strand_one_detail.asp?STR_ID=1&REFID=551&TWSEC=EPC%20Working%20Papers&TWDOSS.

consideration.¹⁶ In order to understand why the composition of the Commission is so important for the small countries, we should also look into the circumstances under which it emerged as a very good ally of smaller member states in the Union.

To prevent the predominance of larger states over smaller ones the »founding fathers« of the European Coal and Steel Community had to comply with the demand of small states (Benelux) to create an additional intergovernmental body next to the supranational High Authority because of their fear that the latter would protect merely the interest of larger states. Apart from that, the voting arrangements in the Council were made in favour of small states in order to comfort them in joining larger neighbours in the supranational community.

In the framework of the European Economic Community and Euratom, centrality in the institutional setting had been shifted from the Commission to the Council. Because of the enforcement of the majority voting principle in the Council¹⁷, smaller states paradoxically realised their interests to be better pursued through a stronger role of the Commission and the Community method.¹⁸ A step aside was represented by an intermediate period of Luxembourg compromise¹⁹ (since 1966), which inaugurated again the unanimity voting, in accordance with which all states, small and large, had the opportunity to veto a decision and were thus placed on the equal footing. It is also in the context of the Luxembourg compromise that the larger states were not worried with the impacts of enlargement, which began to change the relative voting power in the Council between smaller and larger states in favour of the former, especially through their possibility to create a blocking minority.

The community method on which the process of integration has been based since the Rome treaties can be described as suitable for current and

¹⁶ Max Kohnstamm and Guillaume Durand, “Common Nonsense – Defusing the Escalating ‘Big versus Small’ Row”, European Policy Centre – The Europe We Need, Brussels, May 2003, http://www.theepc.net/europe/strand_one_detail.asp?STR_ID=1&REFID=1163&TWSEC=Commentary&TWDOSS.

¹⁷ As John Temple Lang and Eamonn Gallagher have stated “The founders of the Communities were convinced that if a veto is exercised on all issues by each member state, the Community would not work. Unanimity on every issue was not, therefore, a viable option. The Treaty of Rome, consequently, prescribed what had never been done before – majority voting in an international organisation.” John Temple Lang and Eamonn Gallagher, “What sort of European Commission does the European Union need?” European Policy Centre – Challenge Europe, Brussels, 14 February 2002, <http://www.theepc.net/challenge/topdetail.asp?SEC=documents&SUBSEC=insight&REFID=679>.

¹⁸ As Temple Lang and Gallagher have explained “In the multinational environment, where the confidence of all parties must be gained and retained, the mediator body should be, and should be seen to be, representative of all the parties so that the special problems of each party can be taken into account. The Community method necessitates an independent and fully representative Commission with the sole right to propose legislation to be adopted by the Council and the Parliament. Only the Community method can ensure that the European Union remains acceptable in all the Member States”. John Temple Lang and Eamonn Gallagher, “What sort of European Commission does the European Union need?” European Policy Centre – Challenge Europe, Brussels, 14 February 2002, <http://www.theepc.net/challenge/topdetail.asp?SEC=documents&SUBSEC=insight&REFID=679>.

¹⁹ Neil Nugent, *The European Commission*, Basingstoke and New York: Palgrave, 2001, p.31.

future small EU Member States. The importance of this method is most obvious in relation to the core Commission's competence as an exclusive legislative initiator. According to the founding treaties the Commission has the exclusive task of making legislative proposals in the interest of the whole Community, that means in the interest of small and large States.²⁰ This task was assigned to the Commission as a necessary compensation for the enforcement of the majority voting principle in the Council²¹, which has naturally often led to the out-voting some states. Furthermore because of the weighted-voting in the Council the probability of out-voting smaller states had been greater than that of the larger ones. In order to ensure that the process of integration would not be hampered by dissatisfaction of out-voted states, it was necessary to create mechanism through which interests of all parties would be considered. As Temple Lang and Gallagher have noted "[...]To make sure that the Commission would act in the interests of all, the Commission's independence and its composition, representing the whole Community, were guaranteed. All this was, and is, needed to make majority voting acceptable"²². This is the main reason why, according the Community method, the Commission and not the European Parliament was given the competence of sole legislative initiator, as it would be considered more logical from the perspective of domestic political systems.

To strengthen the role of the Commission means exactly to reinforce the Community method, which on the one hand filters out the unilateral pursuit of national interests, and on the other hand - which is equally important from the standpoint of candidate countries - tends to generate solidarity-oriented outcomes. The Commission itself has proposed in the White paper on European Governance²³, published in July 2001, some suggestions how this method could be reinvigorated. To mention just few proposals: simplification of legislative acts, possibility to withdraw proposals in the event of inter-state bargaining, strengthening the executive role, elimination of national committees in the comitology

²⁰ John Temple Lang and Eamonn Gallagher have pointed out that "[I]f this system is to work, two rules must be respected. The first is that the parties may only discuss proposals, which have been made by the mediator and not discuss competing proposals made by others; the second is that, although the mediator's proposal may be adopted by a majority, it may be amended only by the mediator or by a unanimous decision of the parties". John Temple Lang and Eamonn Gallagher, "What sort of European Commission does the European Union need?" European Policy Centre – Challenge Europe, Brussels, 14 February 2002, <http://www.theepc.net/challenge/topdetail.asp?SEC=documents&SUBSEC=insight&REFID=679>.

²¹ John Temple Lang and Eamonn Gallagher have concluded that "[T]here is a link between the Commission's role as the single proposing body of European Community measures and majority voting". John Temple Lang and Eamonn Gallagher, "What sort of European Commission does the European Union need?" European Policy Centre – Challenge Europe, Brussels, 14 February 2002, <http://www.theepc.net/challenge/topdetail.asp?SEC=documents&SUBSEC=insight&REFID=679>.

²² John Temple Lang and Eamonn Gallagher, "What sort of European Commission does the European Union need?" European Policy Centre – Challenge Europe, Brussels, 14 February 2002, <http://www.theepc.net/challenge/topdetail.asp?SEC=documents&SUBSEC=insight&REFID=679>.

²³ *European Governance - A White Paper*, COM(2001) 428 final, Brussels, 25 July 2001, http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001_0428en01.pdf.

procedure. Obviously, all these proposals are aimed at enhancing the Commissions' role.

Commission is namely aware of the fact that under the qualified majority voting in the Council it will be more difficult to find an approval of its legislative initiatives. At the same time it seems to be pressed between the influence of larger states and the aspirations of the European Parliament to strengthen its legislative role. Any limitation of Commission's legislative competence which the European Parliament is striving for would lead to the increase of power of the larger states and would consequently ruin the established inter-institutional balance and weaken the Community method.²⁴

The other reason why the role of the Commission is so important lies in the so-called "democratic deficit". As Temple Lang and Gallagher have stated "[T]he deficit in transparency and accountability in the EU does not lie with the Commission, but with the Council. The executive power in the EU has increased and parliamentary power decreased because Governments meet behind closed doors and make agreements on both constitutional matters and on legislation"²⁵. The feedback control mechanism over the decisions they take in respect to European issues is quite limited. In many EU countries the Parliaments do not actually care too much about what their government is negotiating in Brussels (notable exception being mainly Danish Folketinget). Namely, the ministers are nominated by their governments and are not chosen by their national parliaments. Thus, for European issues they are accountable neither to their national parliaments nor to the European Parliament.

Thus, it is not surprising that small states in the future inter-institutional architecture advocate a strong Commission, capable of representing general interest of the Union and above all able to counterbalance the power of larger states in the Council. From the perspective of the accession countries the positive experience so far obtained during the accession process should also not be neglected. The Community method has facilitated the enlargement and enabled to overcome political factors and bilateral prerequisites, not directly interconnected with the enlargement process itself (such as dispute on the property restitution

²⁴ "The erosion of the Community method tends to favour the larger Member States, which would gain influence from the move towards inter-governmentalism. The Commission was created primarily to safeguard the interests of the Union as a whole and to be thoroughly aware of minority interests so as to justify majority voting. Under the Treaty it was given a status that was and is unique in international law and practice. This was never explained in the EC/EU Treaties and the result is that many Europeans do not know why the Community was designed as it was." John Temple Lang and Eamonn Gallagher, "What sort of European Commission does the European Union need?" European Policy Centre – Challenge Europe, Brussels, 14 February 2002, <http://www.theepc.net/challenge/topdetail.asp?SEC=documents&SUBSEC=insight&REFID=679>.

²⁵ John Temple Lang and Eamonn Gallagher, "What sort of European Commission does the European Union need?" European Policy Centre – Challenge Europe, Brussels, 14 February 2002, <http://www.theepc.net/challenge/topdetail.asp?SEC=documents&SUBSEC=insight&REFID=679>.

between Slovenia and Italy)²⁶. It is also a model that respects the sovereignty of newly established states.

Regarding this core competence of the Commission it is thus necessary for all states to be represented in this organ. The provisions of the Treaty of Nice for the time being take into account such composition, but provide for a break when membership finally reaches 27. It concluded that when the number of Member States reaches 27, the Commission will be reduced to less than the number of the Member States – namely each member state will not have its own Commissioner and consequently the Commission will not be fully representative. The consequences of this shift could be serious: states not represented by a Commissioner could claim not to be obliged to fulfil the decisions and this may have detrimental effects on the pace of further integration. As one expert observer has noted “at any given time there could be several member states which [...] would not be represented in any sense in the Commission. They could be unwilling to accept what the Commission has proposed, or, more seriously, what the Commission may have done within the limits of the powers which the Commission itself is authorised to exercise”²⁷

There are some alternatives to such position, advocated mainly by the large states, because they all in some ways ensure the preponderance of their position. The most advocated solutions are: rotation, which according to some countries should be limited only to smaller states, classification of portfolios according to their importance and hierarchy of Commissioners (on junior and senior) – the latter two options have both undeclared intention that the most important DGs and posts would remain in the hands of bigger ones. None of them is satisfactory for small states.

Despite the most obvious arguments of proponents of a position that the Commission as an independent and impartial body does not need to be fully representative (one Commissioner per Member State) because it pursues the Community interest and should not reflect national interests, the reality shows rather different picture. In reality we should distinguish between the Commissions as a supranational organ and on the other hand its more intergovernmental nature in which the Commissioners act as a link between the Commission and the nation state. Despite the principle of their independence and impartiality, it is a tacit rule that Commissioners represent member states in a way that they observe and then mediate which legislative proposals are politically acceptable and which are not in respective capitals. At the same time they represent the channel of communication for the requirements of Commission to the member states. This makes an indispensable part of the process of preparing legislative

²⁶ See Irena Brinar and Marjan Svetličič, “Enlargement of the European Union: the case of Slovenia”, *Journal of European Public Policy*: Vol.6, No.5, 1999.

²⁷ John Temple Lang and Eamonn Gallagher, “What sort of European Commission does the European Union need?” European Policy Centre – Challenge Europe, Brussels, 14 February 2002, <http://www.theepc.net/challenge/topdetail.asp?SEC=documents&SUBSEC=insight&REFID=679>.

drafts. A reasonable argument in favour of equal representation in the Commission stresses “a need for someone to personify ‘the Union’ in each member states and to convey a European message in the national media and in the respective national languages. Although a vision of the European interest cannot be the result of the addition of national interest, it is important that the institution possessing the monopoly of legislative initiative in the vast majority of policy areas is able to take national specifics and sensitivities into account. Having one Commissioner per member state is, at least in theory, the best guarantee that this actually happens.”²⁸ Greater consideration of national interests by the Commission was also demanded by member states themselves, which resulted, *inter alia*, in the incorporation of the comitology procedure regarding the single market legislation. The possibility of non-compliance with the Commission’s decisions regarding its executive function, shared with the Council, and the legal one (as a guardian of the legal framework), is also highly probable under such system. Although it is true that in the executive and legal sphere the representativeness of all states is not as necessary as in the legislative sphere, it would nevertheless invigorate its legitimacy. Namely, the Commission has four quite distinct kinds of powers. Apart from its basic role as the independent and sole policies and legislation proposing institution it also performs tasks that cannot be carried by the Council or the Parliament, i.e. powers to negotiate international agreements on the basis of the mandate of the Council; to take decisions on the compatibility with Community law, and after all to bring Member States before the Court of Justice if they do not fulfil their obligations under the Treaties. For these reasons the Commission must stay equally independent of all the Member States, and must be fully representative of all of them. Only that way it can fulfil its central roles of preparing measures in the interests of the whole Union, of safeguarding the *acquis communautaire* and of representing the Community/Union. These are much more important than its “executive” role in the narrow sense.

Regardless of the fact that the strong position of small states is to preserve their own Commissioner is watered by the present proposal of the Convention, acceptance of this part of the Constitutional Treaty could have negative effects on the process of integration as such. On the contrary it may contribute to the widening of the democratic deficit.

²⁸ Max Kohnstamm and Guillaume Durand, “Common Nonsense – Defusing the Escalating ‘Big versus Small’ Row”, European Policy Centre – The Europe We Need, Brussels, May 2003, http://www.theepc.net/europe/strand_one_detail.asp?STR_ID=1&REFID=1163&TWSEC=Commentary&TWDOSS.

The election of the Commission President – decreasing the democratic gap but weakening the Commission?

As was already explained previously, the Commission is often referred to as being the best friend of the smaller member states, at least in theory. This is based on the assumption that the Commission as a guardian of the Community interest would not take undue respect to interests others than the ones of the Union as a whole. It is beyond the scope of this paper to examine whether this is really the case, therefore this paper is based on the assumption that it is in the interest of the smaller member states to have a stronger role for the Commission. One way of straightening the Commission's legitimacy, it is assumed, is by increasing the democratic legitimacy of the President of the Commission.²⁹

According to the present system the European Council, acting by a qualified majority, nominates the person it intends to appoint as President of the Commission (Article 214 TEC). The European Parliament then approves the nomination by an absolute majority (Article 198 TEC). If no majority is received the procedure has to be repeated. The other Members of the Commission are nominated by the Council and then the Commission, as a body, is subject to a vote of approval by the European Parliament. After approval the Council appoints the President and the other Members of the Commission.

In the proposal of the Convention the President of the Commission shall be elected by the European Parliament.³⁰ According to draft Article I-26 of the proposal, the European Council, deciding by qualified majority, puts forward its candidate for the Presidency of the Commission. When nominating a candidate the European Council shall take into account the elections to the European Parliament. The nominated candidate shall then be elected by the Parliament by a majority of its members. If the majority support of the Parliament is not received the European Council shall within one month put forward a new candidate. Furthermore, the President and the nominated Commissioners, as a body, shall be approved by the European Parliament. Thus, two new elements are added in the proposal compared to the present system.

First, according to the proposal the European Parliament will elect the Commission President. Compared to the present system the proposal does, in fact, not change the position of the European Parliament since only one candidate is put forward the Parliament. Thus no options, other

²⁹ Wouter Coussens and Ben Crum, *Towards, Effective and Accountable Leadership of the Union, Options and Guidelines for Reform*, EPIN Working Papers, No. 3, Royal Institute for International Relations of Belgium (KIIIB-IRRI) and Centre for European Policy Studies (CEPS), Brussels, January 2003, p. 8. (available at http://www.epin.org/papers/Working%20Papers/03_CoussensCrum_Leadership.pdf).

³⁰ *Institutions – draft articles for Title IV of Part I of the Constitution*, CONV 691/03, Brussels, 23 April 2003, <http://european-convention.eu.int/docs/Treaty/CV00691.EN03.pdf>.

than approval and non-approval, are open to the Parliament. An election usually means that there are several options, at least in democratic multi-party systems. The Parliament can, of course, not elect the candidate but this would only mean that another one-option election would be made within one month. So, instead of approving the nominated person, as is the case now, the European Parliament will according to the proposal elect the nominated person. Will this improve the democratic legitimacy of the President? Since the Parliament will not have any options the proposal seems to be far from satisfactory in this regard. If the democratic legitimacy is supposed to be strengthened the Parliament should at least be given a choice between several candidates, for instance three or five. On the other hand, symbolically the proposal changes the institutional balance, by explicitly stating that the European Parliament, and not the Council, elects the President of the Commission.³¹

Second, the proposal states that the European Council, when nominating the candidate, shall take into account the elections to the European Parliament. It is difficult to foresee what this will actually mean since no qualification is made regarding this in the proposal. It seems as if the European Council can, in fact, disregard the election to the European Parliament. Therefore the proposal does not imply any significant change of the nomination procedure or the legitimacy of the Commission President.

It should also be noted that the Commission would still be responsible to the Parliament according to the Convention proposal (Article I-26 para 3), which stipulates that the Parliament may pass a censure motion on the Commission. If such a motion is passed, the members of the Commission must all resign (see also Article 201 TEC).

Is the proposal then in line with the interest of the smaller states? Some of the states do want the Parliament to elect the Commission President, for example Austria, Greece, France, Germany, Belgium, Bulgaria, the Czech Republic and the Netherlands. Others want to keep status quo like Sweden, Finland, Portugal, UK, Estonia and Spain. Ireland and Denmark support the model of an electoral college to elect the President of the Commission. Slovakia supports the idea of a super-majority and Malta supports the idea of a congress of national parliamentarians to elect the President.³² Looking at the proposed amendments submitted by some of the representatives of the smaller states to the Convention the positions are in some cases different.³³ For example, the Swedish representative

³¹ See John Palmer, "SOS democracy – Commission Presidents should be elected, not appointed", European Policy Centre – The Europe We Need - Commentary, Brussels, 30 April 2003, http://www.theepc.net/europe/strand_one_detail.asp?STR_ID=1&REFID=1155&TWSEC=Commentary&TWDOSS.

³² *National debates and positions* on the Future of Europe compiled by EPIN, available at <http://www.epin.org/national/index.html>.

³³ *Proposed amendments to Article 26: The President of the European Commission*, available at <http://european-convention.eu.int/Docs/Treaty/pdf/41899/global41899.pdf>.

has suggested that the national parliaments and the European Parliament should elect the candidate. The Danish representatives have suggested that an Electoral College should elect the President out of a list of at least three candidates. Also the Irish representative is proposing that the national parliaments should be involved in the election process. The Cyprus and Portuguese representatives and also some of the Finnish representatives are proposing a list of at least three candidates to be put forward the European Parliament. The Greek representatives are proposing that the political groups of the European Parliament should put forward the candidates. The Slovak representatives are supporting the proposal but are suggesting that a three fifth majority of the votes in the Parliament would be required. As we can see, the member states are split regarding this issue. The dividing line, though, is not between small and large member states; instead it seems as if the division goes between traditionally so-called federalist states and states favouring inter-governmental co-operation.

The election of the president by majority in the European parliament has some drawbacks.³⁴ It is sometimes alleged that the election of the Commission President will lead to a greater politicisation of the Commission. This could be a problem, firstly because the Commission would not be able to exercise some of its strongly apolitical tasks of a purely administrative body e.g. in competition policy, secondly because it would depend more on the political composition of the European Parliament than nowadays and hence can be more vulnerable to the possible motion of censure. The fears are, however, quite vain. Firstly, the real politicisation would only come about if the political fractions in the European Parliament nominate their candidates. But this does not seem to be a very likely option as nobody is advocating this strongly. Secondly, it must be borne in mind that any system basically assumes the Commission President to be elected in some concert between the European Council and the European Parliament and the composition of the Council does not necessarily have to correspond to that of the European Parliament.

Another problem with the proposed system is a low turnout in European elections, which cannot at the moment provide much more legitimacy for electing the Commission President. On the other hand, it might be the election of the Commission President that will increase the citizens' interest in the role of the European Parliament.³⁵ Supposing that the electorate will see the election of the Commission President as a natural

³⁴ Wouter Coussens and Ben Crum, *Towards, Effective and Accountable Leadership of the Union, Options and Guidelines for Reform*, EPIN Working Papers, No. 3, Royal Institute for International Relations of Belgium (KIIIB-IRRI) and Centre for European Policy Studies (CEPS), Brussels, January 2003, p. 13-14. (available at http://www.epin.org/papers/Working%20Papers/03_CoussensCrum_Leadership.pdf).

³⁵ See John Palmer, "SOS democracy – Commission Presidents should be elected, not appointed", European Policy Centre – The Europe We Need - Commentary, Brussels, 30 April 2003, http://www.theepc.net/europe/strand_one_detail.asp?STR_ID=1&REFID=1155&TWSEC=Commentary&TWDOSS.

outcome of the European Parliament elections, they will finally see it as fulfilling one of the main roles that any Parliament actually has – that of giving the mandate to the “government”. The inter-governmentalists are likely to fear this step, as this would shift the system towards what can once become a classical parliament-government relationship. This would further have to be accompanied by some measures that will make this procedure more visible, for instance, bringing the investiture of the new Commission upon the European Parliament elections.

Another option proposed by some states is to elect the Commission President by national parliaments, or by an electoral College consisting of national and European parliamentarians. The system could be based on the population criteria, as reflected in the number of seats in the European Parliament, which would determine the share of the vote given to each national MP. In order to ensure a fair representation, over-representation of smaller member states should be allowed. Such system would at the same time indirectly enhance the role of national parliaments. But if this is the case, it would very much weaken the role of the European Parliament. It would also create a slightly awkward situation when the Commission President or Commission as a whole would be elected by a body different to the one who can censure it.³⁶ It should also be kept in mind that the legitimacy of the President of the Commission depends on other factors as well, such as the possibility for her or him to appoint the other Members of the Commission.

Finally, direct election of the Commission President could be an alternative. But this does not seem to be very feasible for the smaller states since the results would be determined by more populous, thus larger, states (which, needless to say, is a mere consequence of the democratic principle; one man or woman – one vote). Given the non-existence of European demos, it would be difficult to persuade the French or Brits to vote for a Finnish or Irish candidate. Different again would be the case when pan-European political parties come up with their candidates – this might help to overcome the national prism of the candidates. But this situation is still far from reality. The real challenge is to build an institutional balance reflecting both the democratic principles and the fact that the Union is a union of states. An interesting proposal made by the Convention in this regard is that in 2009 every Member State will have one vote in the Council, according to draft Article I-24.

Coming back to the current proposal. Supposing that it is in the interest of small Member States to have a strong Commission and that therefore the democratic legitimacy of the Commission needs to be strengthened. One

³⁶ Wouter Coussens and Ben Crum, *Towards, Effective and Accountable Leadership of the Union, Options and Guidelines for Reform*, EPIN Working Papers, No. 3, Royal Institute for International Relations of Belgium (KIIB-IRRI) and Centre for European Policy Studies (CEPS), Brussels, January 2003, p. 16-17. (available at http://www.epin.org/papers/Working%20Papers/03_CoussensCrum_Leadership.pdf).

way of strengthening the democratic legitimacy could be to give the European Parliament the power to elect the President of the Commission as is suggested by the Convention. The proposal, though, does in fact not change the position of the European Parliament in this regard other than symbolically. The Parliament should, at least, be presented by several options or a list of candidates if the goal is to give the Parliament the power to elect the Commission President.

Even if it is not more than of a symbolic value to the Parliament, the current proposal might still be supported by a number of Member States, small as well as large, since the dividing line between the Member States regarding this issue seems to go between so called federalists and inter-governmentalists. The more federalist oriented states in favour of a strong Commission could be supporting the proposal from the Convention for two contradictory reasons - because the proposal states that the Parliament in theory at least elects the President of the Commission or because the proposal in fact does not strengthen the parliamentary control of the Commission and thus leaves the Commission independent. The intergovernmental oriented states could also support the proposal because it would still leave the factual power of the election of the Commission President to the Council, when nominating the President candidate.

Conclusions

From what has been said, it seems that the smaller member states should not be very happy with the current proposal tabled by the Convention in respect to the three major issues discussed – the permanent President of the European Council, the size and composition of the Commission and the election of the Commission President. The permanent Council chair as suggested in the Presidium proposal will not be much of an asset to the small members nor to the EU as a whole. Also there are strong arguments in favour of equal representation of member states in the Commission rather than creating a two-tier system. With respect to the election of the Commission President, the stance of the small states is more divergent and seems to go more along pro-federalist versus inter-governmentalist patterns. Most small countries though favour enhancing the democratic legitimacy of the Commission but the current proposal is not likely to enhance the democratic legitimacy of the President.

If the smaller member states want to achieve any sensible shift forward in the power sharing mechanisms of the future Union of 25+, they should advocate more ambitious and perhaps even more provocative proposals than they have done so far. The Convention has tabled its proposal to the Thessaloniki European Council and its chairman, Valéry Giscard d'Estaing has suggested that no substantial questions should be reopened at the IGC. This idea is well supported by some member states, notably France and

Germany, who worked hard to reach a compromise on institutional questions. The only chance for the smaller states is to prepare well for the upcoming IGC. Given the current distribution of power, they should perhaps co-ordinate their positions as most of the points discussed are not issues where their interests would diverge dramatically. Despite the fact that some attempts to co-ordinate the positions of "like-minded countries" constantly appear (e.g. the Prague meeting at the beginning of September), the small countries do not want this group to appear as an institutionalised or co-ordinated body. If however no co-ordinated position of the small countries appears, the whole battle is likely to end up at the horse trading at the upcoming IGC. If the small countries do not succeed, they risk that the current "tyranny of the Small" will become "directoire" of the Big.

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