

Working Group VII

Working document 53

Working group VII – "External Action"

**Subject: "Some Questions and Answers regarding the 'Double Hat' of
High-Representative and Commissioner for External Relations"
– Paper by Mr Hans Martin Bury, alternate member of the Convention**

Members of the Working Group VII will find hereafter a paper by Mr Hans Martin Bury, German government representative, alternate member of the Convention.

Contribution by Hans Martin Bury to Working Group VII ("External Action")

"Some Questions and Answers regarding the 'Double Hat' of High Representative and Commissioner for External Relations"

I. Introduction

Our contribution to the working group on the 'Double hat' model (WD 17) has received support from many members of the Convention. In the discussions that we have had during the last weeks, a number of practical questions were raised which I would like to try to answer in the following document.

II. Some Questions and Answers

1. *Accountability.* It has been suggested that the 'Double Hat' would receive a mandate and be accountable to the Council for issues relating to CFSP. Would this arrangement be compatible with Art. 213 (2) EC, according to which members of the Commission shall be independent in the performance of their duties, and shall seek nor take instructions from any government or from any other body ?

Yes. Art. 213 (2) is applicable to the "Double Hat" in his or her function as a member of the Commission. Thus the Council would not be able to interfere in the discharge of the double hat's office of External Relations Commissioner, e. g., the double hat would not be bound to vote in the Commission in a particular way on an issue falling within the remit of the Commission, previously discussed in the Council. But the Council would mandate and give guidance to the double hat in the discharge of his or her function as High Representative, like e.g., the conduct of political dialogue.

2. *Right of initiative.* The Commission may submit proposals to the Council concerning any question relating to the CFSP (Art. 22 EU). Would this competence of the Commission – i.e. of the college - remain intact, or would it be transferred to the individual appointed as the 'Double Hat' ?

In practice it would probably make sense that the "Double Hat" transmit such proposals of the Commission to the Council. But it would e.g. be possible that the Commission decides to submit a proposal to the Council relating to the CFSP even if the double hat (in his or her function of External Relations Commissioner) had pronounced himself or herself in the College against such a proposal.

3. *Role in negotiations.* Who will be responsible for negotiations with respect to mixed agreements: the 'Double Hat' alone, or would member states be represented alongside him ? Would the responsible member of the Commission – e.g. the Trade Commissioner – have a role?

The EU should act as far as possible as one during international negotiations and at international conferences (as well as in international organisations) also in CFSP issues. It should be examined whether this task could be performed by the "double hat", unless another Commissioner is responsible (e.g. trade policy).

4. *Relationship to the Presidency.* Would the Presidency continue to represent the Union in matters coming within the common foreign and security policy (Art. 18 EU), or would the 'Double Hat' replace the Presidency ?

One fundamental weakness of the CFSP is the lack in continuity of external representation of the Union due to the 6-monthly rotating Presidency and the number of EU-representatives in the Troika. One of the aims of the 'Double Hat' model is thus that its bearer should replace the Troika in external representation below European Council level and thus be the single figure and voice of the Union there. This would also be the logic consequence of our suggestion that the 'Double Hat' chairs the GAERC in its sessions on external relations and in this function replaces the Presidency.

5. *Parliamentary control.* If a motion of censure on the activities of the Commission is adopted by the European Parliament in conformity with Article 201 EC, the Commission must resign. In such an event, would the 'Double Hat' have to resign as well ? Would he be resigning only as Commissioner for External Relations, but continue as the High Representative ?

In principle, there should be no problem as, if as a result of a motion of censure of the European Parliament the Commission would need to resign, all members of the Commission would continue in their functions until a new Commission has been appointed (Art. 215 and 201 EC). Nevertheless, special mechanisms might be envisaged for the resignation/replacement of the Double Hat.

6. *External competences of the Commission.* Some member states would appear to favour strengthening the control of the European Council over the external competences of the Commission, including those in relation to trade and development policy. Would the creation of a 'double hatted' Commissioner facilitate such a development ?

No. Under the concept of the double hat, the two offices, including the apparatuses, as well as the decision-making procedures would remain separate. Thus, there would be no development towards more European Council control over the external competences of the Commission.

7. *Competences of the Council.* Would the Council remain responsible for CFSP issues?

Yes. There will be no mix of competences: CFSP issues will be decided in the Council, not in the College of Commissioners. The Double Hat would thus, in CFSP matters, only be responsible to the Council. In addition, the apparatuses of High Representative and External Relations Commissioner would remain separate: in issues falling under the competence of the Commission, the Double Hat would rely on the General Directorate for External Relations; to implement CFSP matters he or she would rely on a newly created "European Foreign Policy Unit", which should consist of those parts of the Council Secretariat currently responsible for foreign policy (inter alia, Policy Unit and Situation Centre as well as the External Relations Directorate-General) and of civil servants seconded from the member states and the Commission.

8. *Independence of the 'Double Hat'.* Would the 'Double Hat' be bound in the Council by decisions of the Commission?

No, he would not be bound in the Council by decisions of the Commission with the exception of cases in which he would speak for the Commission on issues falling under its competence. In addition, he or she would have no vote in the Council. Thus, the Commission would not be able to exert (through him or her) additional influence on Council decisions in comparison with today's situation.

9. *Role of the European Parliament.* Would the European Parliament receive competence with regard to CFSP?

The creation of the 'double hat' would not alter the role of the European Parliament with regard to CFSP.

10. *Appointment procedure.* How would the 'Double Hat' be appointed?

The key role in appointing the Double Hat' rests with the Council. The Double Hat should be nominated by qualified majority by the Council and, following approval by the Commission President, be endorsed by the European Parliament. Due to his double function he needs to have the confidence of the Council, the Commission President, and the European Parliament.
