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"Lovgivnings- og budgetprocedurer"

Generalsekretæren for konventet har modtaget vedlagte bidrag fra Lamberto Dini, medlem af konventet.

Contribution by
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on
“Legislative and budgetary procedures”
(Conv. 216/02 and Conv. 225/02)

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Legislative and budgetary procedures

(CONV. 216/02 and CONV. 225/02)

1. Owing to the eminently juridical nature of the Union, as the promoter, unique in this respect, of rules that often affect citizens directly, the legislative and budgetary procedures are the aspects of greatest importance in measuring the legitimacy of the European construction. Yet these procedures' lack of transparency, especially when compared with those at national level, is one of the main reasons for citizens' disaffection with the Union.

The procedures are the result of successive stratifications, of additions without deletions, of intentions to improve that in practice resulted in steps backward (e.g. the decision-making process in the Council after Nice), and of the contradiction between the desire to pursue certain objectives and the refusal to adopt the instruments needed to achieve them.

Reforms aimed at simplifying and rationalizing must draw on the experience gained in the last fifty years and ensure the procedures are characterized by:

- effectiveness, insofar as they must permit rapid decisions in an ever larger Union that wishes to keep up with the challenges of globalization;
 - democracy, insofar as they must involve the institutions representing the Union's citizens, who will therefore be able to consider them as their own;
 - accountability, insofar as it must be possible to determine the origin of the procedures and the relative importance of the individual institutions involved, so as to permit an evaluation of the part each plays;
 - recognizability, insofar as there must be a limited number of well-defined processes that are comprehensible because they resemble those at national level, which constitute the essence of European citizens' political culture.
2. In the light of these propositions it is not difficult to set a course for simplifying and rationalizing the procedures based on the following points:

- a) abolition of the cooperation procedure, which has been rendered obsolete by the codecision procedure and no longer conforms to the equal roles of the Council and the European Parliament in the legislative sphere; in any event its application is now limited to a very few cases essentially in the context of Economic and Monetary Union. Cooperation was left in place, despite the Amsterdam and Nice reforms, because of the desire not to amend any part of Economic and Monetary Union on the eve of its entry into force (Treaty of Amsterdam) or in the initial phase of its implementation (Treaty of Nice). Once cooperation was abolished, the involvement of the European Parliament it envisaged would need to be replaced, according to the circumstances, by codecision or an opinion by the Parliament;
- b) codecision, which provides for complete parity between the Council and the European Parliament as the components of a two-chamber system, must remain the only legislative procedure. However, applying the criteria set out in point 1, suggests that some changes would be desirable;

- introduction of the concept of legislative act, with its distinctive features, which national experience indicates are abstraction and generality.

Introducing the concept of legislative act would allow a distinction to be made between purely administrative measures (which, instead, would be reserved to the Commission under the control of the Council and the European Parliament) and would reduce the excessive amount of legislation emanating from Brussels.

Several attempts have been made to include the concept of legislative act, which is to be found in the Constitution of more than one European country, in the Treaties, most recently in the Nice Treaty negotiations during the Portuguese Presidency. These attempts failed because earlier reforms were of a partial nature and never on such a broad scale as that with which the Convention has been charged.

The form measures take should not depend on their subject matter but on whether they are of a legislative or executive nature. For instance, in the field of agricultural policy general guidelines would be legislative and would justify the involvement of the European Parliament on an equal basis, which, instead, would not be appropriate when fixing agricultural prices.

- generalization of qualified majority voting in the Council, regardless of whether measures are of an executive nature (as in many of the cases referred to on page 26 of the document Conv. 216/02) or of a legislative nature and therefore to be adopted jointly with the European

Parliament.

This principle should have “constitutional” force and apply also to new tasks assigned to the Council in the future, apart from the exceptions requiring a simple majority (mainly for procedural questions) or unanimity, which should be restricted to a few cases of a constitutional nature (e.g. Treaty reforms, accessions, own resources and Article 308).

Even though the list of matters covered by the unanimity rules has been shortened at every revision of the Treaty, it is still depressingly long and is the main cause of paralysis in a Union that is about to double its membership (exemplary in this respect is the laborious start made on legislation in the field of justice and home affairs, despite the Commission’s efforts).

It is all the more necessary to abolish the remaining cases, even if there are only four, requiring unanimity within the Council under the codecision procedure: an aberration with respect to the logic underlying the legislative process in the Treaties.

Lastly, it is necessary to reject the hypothesis, for particularly sensitive matters currently requiring unanimity, of a supermajority that would be larger than today’s qualified majority, which is about two thirds of the votes cast in the Council and therefore already provides sufficient guarantees. The introduction of a third solution lying somewhere between unanimity and the present qualified majority would further complicate a mechanism that is already hard to comprehend.

- simplification of the qualified majority voting system used in the Council. At Nice it was agreed that qualified majority decisions should be approved by a majority of the votes cast, of the Member States, and of the populations of those constituting the qualified majority. Every country was primarily concerned with making it easier to build a blocking minority when it wanted, ignoring the need for rapid and recognizable decisions.

We must therefore return to a simpler system, although this will require sacrifices on the part of the larger countries, which, including Italy, opposed the proposal in this sense put forward by the Commission. The system could perhaps be the majority of the Member States and their populations. This would give effect to the dual legitimation of the Union based on its Member States and its peoples, which is also one of the founding principles, and strike a balance between the equality of the Union’s states and that of its citizens. This solution, although lacking the rigour deriving from America’s lack of history and the rationalism of its political system, would mirror the situation in the US Congress — equality of citizens in the House of Representatives, of states in the Senate.

It would also be possible, but this is a less important point, to simplify the present codecision procedure by modeling it, for example, on national legislative systems, with Commission proposals being discussed first in the Council and then in the European Parliament, with recourse to conciliation in the event of disagreement. The conciliation procedure itself, which in an enlarged Europe will be carried out by a small “parliament”, could be speeded up.

- reinsertion of the budgetary procedure within the ambit of the European Parliament by applying codecision.

In individual Member States the budget is no different from any other law. The Community budget could therefore be approved by the European Parliament and the Council with a codecision procedure (as Belgium and Italy proposed in the run-up to the Treaty of Amsterdam). This would also make it possible to eliminate the distinction between compulsory and non-compulsory expenditure, which unduly impinges on the powers of the European Parliament and frequently gives rise to interpretative uncertainties.
