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COVER NOTE

from Secretariat

to The Convention

Subject : **Contribution by Mr John Bruton, member of the Convention:**
 "A proposal for the appointment of the President of the Commission as
 provided for in Article 18.bis of the Draft Constitutional Treaty"

The Secretary-General of the Convention has received the contribution in Annex from
Mr John Bruton, member of the Convention.

**Contribution from John Bruton T.D.,
Member of the Convention on the Future of Europe, for consideration by the
Convention
Monday 6th January 2003**

**A proposal for the appointment of the President of the Commission as provided
for in Article 18 .bis of the Draft Constitutional Treaty**

1. The Democratic Challenge.

In the Laeken Declaration there is recognition at the highest political level that “citizens are calling for a clear, open, effective, democratically controlled Community approach, developing a Europe which points the way ahead for the world.” In seeking these objectives the first question posed is “how can we increase the democratic legitimacy and transparency of the present institutions. How can the authority and efficiency of the European Commission be enhanced? How should the President of the European Commission be appointed?; by the European Council, the European Parliament or should he or she be directly elected by the citizens.”

The bedrock of our democracies is universal suffrage in electing our principal magistrates .Given the political ambition we hold for the Union and the key role envisaged for the Commission it is logical that we should directly elect by universal suffrage the President of the European Commission.

President Giscard D’Estaing looks to the constitution being drafted in the Convention as lasting fifty years without needing major changes. To achieve this we had better ensure we provide a constitutional framework audacious and robust enough to provide the democratic basis for the political system to facilitate the range of ambitions we have for the Union over such a timeframe.

We have moved from a custom union, to an internal market, on to a monetary union. Each of these stages has brought us to closer economic union. But we are now moving from concerns of economic and trade calculus. We have the ambition to develop policies which are the corner stones of a political union: we want to cooperate together in matters of justice and security, issues touching on our personal and individual freedoms. We have the ambition to create an external profile, one which portrays the Union as seeking a humane and just global governance. We are addressing the politically sensitive question as to how to organize our defense and security needs in a post September 11th World.

These are policies which go to the core of our political beliefs. We hold personal and often passionate opinions as to how these are to be organized. We must create a European polity in which people have the opportunity to express their views at the ballot box. The citizens of Europe must feel that they can, through their vote, change the direction and the personnel in charge of European policy making. The capacity that voters have at national level to “put the Government out of office” is a vital democratic safety valve. That capacity does not exist at European Union level. The new constitutional treaty must create such a capacity. If it fails to do so EU policies will lack sufficient visible democratic mandate and the Union will founder.

2. The Creation of a European Political Identity.

At the end of the day politics is about flesh and blood. It is about people, and what people think about other people. The great genius of the United States system of government is that it has a Presidential election every four years. There is one day every four years when all Americans are invited at the same time to consider the same question- who is best suited to be President of the United States. The particular choice itself may or may not be vital. The point is everybody, everywhere in the United States has to consider the same question. This creates an American political space.

We need to create a European political space, a European public opinion, a European sense of oneness. This will entail a European common debate with a common political language.

This is an end worth working for. This is a task which we will achieve over time. The journey begins with the holding of a European presidential election, an election to choose the President of the Commission who will need to enjoy the confidence of the majority of his or her fellow citizens. The process of choosing this person will integrate Europe emotionally and psychologically.

3. Popular support for the election of the President of the Commission.

The latest Eurobarometer taken in October of 2002 reports strong public support for the direct election of the President. A majority of citizens regards reform of the EU institutions and their functioning as a priority. A very large majority approves the principle of a European Constitution. As part of this process the idea of direct election of the Commission President by citizens of the European Union is not only the most popular but also the one which is gaining ground most rapidly.

The Convention needs to offer a bold and imaginative response to this popular momentum. In making such a proposition it will have gone further along the democratic road than did its distinguished American predecessor over two hundred years ago.

There is little doubt that decisions taken in the name of the European Union are becoming more important to the daily lives of its citizens. The political system must ensure direct accountability to citizens for these decisions.

Both the European Parliament and the Council of Ministers are directly accountable to electorates. The European Commission is not. As we enlarge the Union it is an ideal occasion to redress this democratic deficit. This is an action which can capture the public interest in the future of Europe. It will enhance the public's involvement in the Union's decision making at the heart of the EU institutions. It will also stimulate public debate on a continental scale on the key issues facing the Union.

Making this happen now is a practical proposition.

4. The Separation of Powers

James Madison, writing about the United States constitution in 1788, said "In order to lay a due foundation to that separate and distinct exercise of the different powers of Government which is

admitted on all hands to be essential to liberty, it is evident that each department should have a will of its own, and consequently should be constituted, that members of each should have as little agency as possible in the appointment of members of the others.”

These considerations, the preservation of the “essential liberty” of states and citizens, apply in the European Union today and they argue for ensuring that both the legislative and the executive arms of EU Government have “as little agency as possible in the appointment of members of the other”.

Baron de Montesquieu, the French eighteenth century political philosopher, put it more precisely. He said “When the (law making) and (law enforcement) powers are united in the same person.....there can be no liberty”.

With the direct election of the President of the European Commission the three institutions would be on equal footing in terms of democratic legitimacy and accountability. This would strengthen the separation of powers between the legislature and executive arms of Government which is important to the success of multi level government of the kind practiced in the European Union.

Prime Minister Verhofstadt reminded us recently of the need for a clear separation of powers in the exercise of the functions of the three principal organs of the Union. He described the Commission as the nerve centre of the Union. This reflects the central role the Commission must play in the legislative and executive functions of the Union. The separation of powers is critical to the proper functioning of the Union’s institutions.

Montesquieu’s wisdom has served the United States well for well over 200 years. It has served the Community institutions well over their first fifty years. We must ensure that we continue to benefit from this sound constitutional principle in the new institutional architecture we are building. A vision of democracy in Europe that substituted parliamentary supremacy for the present separation of powers would overturn the Union’s basic constitutional structure.

Without constitutional safeguards the European Commission will not be guaranteed the freedom to act independently in performing the central role designed for it in exercising both its initiative in the legislative process and in carrying out its executive responsibilities.

The Convention is addressing the evolution in organizing the legislative functions of both the Council and the Parliament as these represent the interest of the member states and of Europe .The Commission is the nerve centre of the Union. It is essential for the new architecture that the Commission has the clear authority to act as the centre of executive decision-making.

The argument for the Commission President to be elected by the European Parliament goes counter to the principle of the separation of powers because it would intertwine the electoral mandate of the legislature and executive independence of the Commission. It would make the Commission dependent on a particular parliamentary majority and create an unhealthy tension between it and the parliamentary minority which had opposed the election of the President.

The current power of the Parliament to remove the Commission from office give it sufficient power to hold the Commission to account, without taking the further step of allowing parliament, not the people, to elect the Commission President.

5. Integrating the election of the President into the EU structure.

The election can be integrated relatively easily into the EU's decision-making structures .The detail of the role of the President, the formation of the Commission, its powers and responsibilities are defined elsewhere. For the present the proposed sequence of events is:

- the simultaneous election of the President and the European Parliament;
- following the election the other commissioners will be appointed in a manner to be determined;
- the European Parliament will ratify the College of Commissioners as a whole.

The direct popular election of the President of the Commission, as proposed in this paper, does not presuppose any extra powers for him or her, nor does it presuppose any particular method of selection of the other commissioners. Direct popular election will add value in any scenario. In some European countries there is direct popular election of a President with restricted powers, in others with stronger powers. In all cases, direct popular election gives the people a valuable sense of direct involvement in the political process.

There is indeed a considerable body of scholarship available on the modalities for such an electoral process.¹ The research paper cited below provides a review of the advantages and disadvantages of different issues in organizing the election of the President of the Commission. Any electoral system will need to set rules as to, for example , who is eligible, how nominations are made and the actual electoral mechanisms available.

6. Nomination of Candidates.

A nomination procedure will need to address:

- the eligibility of individuals for nomination as candidates; and
- the procedure by which eligible individuals are nominated as candidates.

In determining the technical rules as to individual eligibility one may be guided by existing practice in operation for the European Parliament as to for example; age, citizenship, residency, moral standing etc...One may be guided by the wish to require minimal requirement to maintain as open as possible eligibility procedure.

Any nomination procedure must seek to ensure that an appropriate number of candidates are in the field-neither too few nor too many. Given that one of the purposes of popular elections is to give the people of Europe the opportunity for a full and genuine choice the problem of too few candidates is perhaps more important than too many.

In determining the procedures there are a range of technical options to choose from including nomination by:

- electors, subject to a minimum number of signatures;
- governments;
- national parliaments/parliamentarians;
- members of the European Parliament; and
- both national parliamentarians and members of the European Parliament.

¹ Electing the President of the European Commission ; Trinity Blue Papers in Public Policy. Authors; M. Laver, M. Gallagher, M. Marsh, B. Tonra. Department of Political Science , Trinity College, Dublin.

The last option is favored. It would reflect the democratic mandate at both Member State and Union level. It is proposed that candidates be eligible to stand for election if nominated by a minimum of 20% of Deputies in each of six parliaments, including the European Parliament.

7. Method of Election

There is richness in the diversity of electoral systems in the expanded European Union. In choosing one for the election of the President of the European Commission one needs to be guided by considerations of transparency, fairness and balance between the member states.

Having reviewed a number of systems, the choice proposed is a two round system. Under the system there would be a first ballot in which voters are presented with a list of candidates where they indicate their first choice of candidate as in the simple plurality system. If no candidate wins a majority of all votes cast a second ballot is held two weeks later coinciding with the election for the European Parliament.

In such a two round system the vote counting process is simple. It would give those who had voted for unsuccessful candidates a second chance to make their vote count. The period between the two rounds of voting would be valuable in familiarizing voters with the two leading candidates. Linking the two elections would increase voter interest in Union matters.

Conclusion.

Some arguments against the proposal can be anticipated:

- How would presidential candidates communicate with such a vast electorate which speaks so many different languages? The media have a well developed capacity for translating the words of public figures. Candidates would be judged by their policies which would be in written form and translated in advance.
- Would direct popular election of the Commission President tend to favor nationals of bigger states? It is impossible to predict the role, if any, that nationality would play in European Presidential elections but it is likely that policy issues and differences would play a much bigger role than nationality.

This proposed system of electing the President of the Commission will provide an open, fair, and practical method for meeting the requirement of giving citizens a genuinely democratic say in the election of a leading figure in the life of the Union. It will place all three Institutions on equal footing in public accountability. It will do so respecting Montesquieu's principle of the separation of powers. Parliamentarians as democratic representatives of electorates, both at member state and Union level , play a key role in the nomination process.
