

THE EUROPEAN CONVENTION

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COVER NOTE

from	Secretariat
to	The Convention
Subject :	Contribution by Mr Jan Kohout, member of the Convention - “Non paper on the reform of EU institutions”

The Secretary-General of the Convention has received the contribution annexed hereto from Mr Jan Kohout, member of the Convention.

Non-paper on the reform of EU institutions

Contribution by the Representative of the Czech Government to the Convention Mr. Jan Kohout

European Commission

The election of the President of the European Commission should reflect the balance of both fundamental sources from which legitimacy for decision-making in the EU is derived. These sources are states and citizens and therefore both the European Council and the European Parliament should participate in the election and responsibilities;

Candidates for the President of the European Commission should be presented by the European Council to the European Parliament. On the basis of this list, the European Parliament would elect the President as well as individual Commissioners who would be selected by the President of the European Commission from among the candidates presented by the member states;

Should the European Commission be formed as a purely “parliamentary cabinet”, i.e. without the participation of the European Council, only on the basis of lists of candidates from the political fractions of the European Parliament prior to the election to the European Parliament, then such political profile would not enable the European Commission to perform well certain independent functions, e.g. regulation of competition, which is nowhere performed by institutions set up on purely political basis;

The election of the European Commission on the basis of a combination - European Council - European Parliament would better ensure to the smaller countries the seat of a fully-fledged Commissioner. The Czech Republic insists on the preservation of the principle one state - one Commissioner on the basis of which the general public in the member states - especially in the newly acceded ones - could more easily identify with the project of European integration as a whole. The European Commission with 25 members does not in itself mean less effectiveness. The President should have the right to determine the internal organisation of the European Commission;

The European Commission would be on a regular basis accountable for its activities to the

European Parliament. The European Council would assume its responsibility only in the case of “constitutional crisis” when the dissolution of the European Commission would be proposed by the European Parliament and when such proposal would have to be confirmed by the European Council;

Within the constitutional balance between the European Commission, the European Parliament and the European Council it is necessary to finalise the solution of who, when and how would be able to dissolve the European Parliament - this question should be dealt with by the Convention;

The privilege of legislative initiative should remain with the European Commission, with the exception of the situation in the CFSP, provided the High Representative primarily remains in the structure of the Council with the right of initiative - the High Representative would send his initiative to the European Commission for consideration of compatibility with the *aquis* and the European Commission would refer its position to the Council in a way similar to that of the classic community method;

Decision-making in the European Commission as a college: unanimity is no longer applied to politically sensitive matters (block exception as regards car market, common fishery policy, state aid EdF). What should be defined is a consensus, which means more than the qualified majority vote (QMV) but less than unanimity, i.g. in the 25-member European Commission - a consensus minus 2, i.e. 23.

Council

The reform towards a greater openness of the Council within its legislative function was launched already at the Seville Summit;

As regards the QMV, it is however necessary to define the so-called appeal procedure, when the Council can vote down the position of the European Parliament. Today this is possible on the basis of unanimity. In the future it could be e.g. a qualified consensus, in the 25-member Council a consensus minus 2;

The problem of general application of the QMV will continue to exist also in the future,

especially as regards the CESDP. The rate of efficiency in decision-making on CESDP issues, commensurate to the use of QMV, can be ensured by means of constructive abstention in the Council, its threshold should however not lead to blocking the decision-making;

European Parliament

In the European integration construction, it is not desirable to have any new institution of the type of the Congress of the Nations of Europe. Its establishment would lead to an upset of the basic institutional balance and would primarily weaken the European Parliament;

The mode of decision-making "European Parliament's co-decision - QMV in the Council" can basically be welcomed, nevertheless co-decision-making of the European Parliament can be introduced by the abolition of other procedures through which the European Parliament is associated to QMV in the Council, e.g. consultation, cooperation;

The above-mentioned does not mean that no progress can be made in QMV extension in the Council replacing unanimity;

Full budgetary rights for the European Parliament: in terms of procedure, the approval of the budget is expected to take its final phase in the European Parliament - now it is done by the confirming approval by the Council; within the full budgetary rights for the European Parliament the powers are so important that they cannot be systemically considered separately from the procedure enabling dissolution of the European Parliament;

Conditions for the dissolution of the European Parliament should be characterised in the future Constitutional Treaty: e.g. the dissolution of the European Parliament would take place after its repeated failure to approve the budget or a proposal of major importance for which the European Commission would win support in the Council/European Council;

Differentiation between mandatory and non-mandatory spending is linked with the way of funding different policies; non-mandatory spending is applied to policies that are co-funded; provided the abolition of non-mandatory spending means establishing the right to get a Community share for co-funding legally guaranteed, e.g. within the regional policy, this can only be welcomed.

Role of national parliaments

As regards the control of national governments and the monitoring of the application of subsidiarity in the community law, we support the proposals presented to the Convention by its Working Group on Subsidiarity: political control of national governments corresponding to the model used on the domestic scene; political control of subsidiarity applied by national parliaments at European level, i. e. the kind of control carried out yet before a piece of intended community legislation coming into effect, is called *ex ante*;

The European Commission would have to reconsider the legislative draft from the viewpoint of subsidiarity provided at least one-half of national parliaments raise objections to subsidiarity issues;

The right of a national parliament to apply judicial control of subsidiarity *ex post* permitted only for the respective national parliament that had expressed its objection *ex ante*;

Reservation to the potential right of regions to initiate judicial control of subsidiarity *ex post* through the European Court of Justice - the risk dwells in pushing for particular interests of a region of one member state vis a vis another member state as a whole;

A “double-hat” for the High Representative of the CFSP and Commissioner for External Relations

The Czech Republic basically agrees;

The idea could have the following shapes: the “double-hatted” representative would act as a Vice-President of the European Commission, he would have two deputies - one for external relations in the European Commission and one for external affairs in the Council;

The institution of the “double-hatted” representative is linked, inter alia, with ensuring financial resources for the CFSP, their reserves lay in development assistance which is insufficiently used for CFSP needs.

Presidency

The present model of rotating Presidency has its positive aspects, we are however aware of the need to adapt the form and performance of the Presidency to the EU “25” conditions;

The adaptation of the system of rotation in the Presidency should continue to respect equality of member states;

The balance of institutions must be maintained;

No permanent President of the European Council;

The Czech Republic supports the idea of combined team and sectoral Presidency with the preservation of balanced representation of large and small EU member states, the old and new ones, the rich and the poorer ones;

A feasible solution worth consideration appears to be a team Presidency with an 18-month term of office, composed of three member countries, each of which would hold Presidency in three sectoral Councils. At the same time the present GAERC would be divided into two units, one of them presided by the CFSP High Representative. Presidency along the coordination line "COREPER - Coordination Council or GAC - European Council" would be held in the team always by the same state, with the coordinating role between the members of the team Presidency rotating every six months. This would strengthen both the responsibility for coordination and the overall effectiveness.