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COVER NOTE

from Secretariat

to The Convention

Subject : Contribution by Mr Dick Roche, member of the Convention

“Appointment of President of Commission: Role of an Electoral College Paper”

The Secretary-General of the Convention has received from Mr Dick Roche, member of the Convention, the attached contribution, on behalf of the members and alternate members listed in the Annex.

**Appointment of President of Commission: Role of an Electoral College
Paper by Mr Dick Roche, Member of the Convention**

Current Situation

1. Article 2.22 of the Treaty of Nice, which is to enter into force on 1 February 2003, modifies current arrangements as follows:

“The Council, meeting in the composition of Heads of State or Government and acting by qualified majority, shall nominate the person it intends to appoint as President of the Commission; the nomination shall be approved by the European Parliament.

The Council, acting by a qualified majority and by common accord with the nominee for President, shall adopt the list of the other persons whom it intends to appoint as Members of the Commission, drawn up in accordance with the proposals made by each Member State.

The President and other Members of the Commission thus nominated shall be subject as a body to a vote of approval by the European Parliament. After approval by the European Parliament, the President and the other Members of the Commission shall be appointed by the Council, acting by a qualified majority.”

2. While the modified system has not yet operated, its key features seem to be:
 - the Council continues to play the predominant role, both in the initial and concluding stages of the process;
 - the change to qualified majority allows for a candidate to be nominated even when that candidate does not have the support of one or more Member States;
 - the European Parliament’s role remains essentially confirmatory; it has the potential to block, but not to propose;
 - the European Parliament operates by a simple majority of those voting;
 - the President and other Members of the Commission, while nominated in two stages, are approved and appointed as a bloc.

Proposals for change

3. There appears to be considerable support for some change to the arrangements agreed at Nice, even though they have yet to operate. It is argued that a more transparent and open method of appointing the President of the Commission would enhance the public profile, the perceived democratic legitimacy, and ultimately the authority of the office and thus of the Commission as a whole.
4. Many of those advocating change have proposed giving a greater role to the European Parliament. However, others have emphasised the potential danger of harmfully politicising the role of Commission President through making him/her beholden to a narrow partisan majority within the Parliament. Some have also queried whether shifting the balance of the procedure away from the Council to the European Parliament would in present circumstances be the best way of enhancing democratic legitimacy.
5. The Commission and Benelux papers of December 2002 both propose that the President of the Commission be elected by the European Parliament. The Commission paper envisages that this would be by means of a secret ballot and with the support of a two-thirds majority of MEPs - the Benelux propose a three-fifths threshold. The appointment would be approved by the European Council (the Benelux specify that this would be by qualified majority).

A Middle Way: An Electoral College

6. There appears to be broad agreement that the Commission should - reflecting the dual nature of the Union, as a union of states and peoples - derive its legitimacy both from the European Parliament and from the Member States. Both the current system, as modified, and the Commission/Benelux proposals seek to involve both other sides of the institutional triangle in the appointment of the Commission and of its President.
7. In practice, however, it seems clear that the key role in the process lies with the institution which controls the initial nomination or election of a single candidate. Critics of the system agreed at Nice would argue that the Member States (acting in the European Council) are excessively preponderant, with the Parliament being confined essentially to a rubber-stamping role.

8. However, others might criticise the proposal that the European Parliament should elect a putative President for confirmation by the Council, on the basis that the balance might be deemed to be tilted excessively towards the Parliament (though the Council would retain a lead role in regard to other Commissioners).
9. In principle, therefore, and while acknowledging the constructive proposals of the Commission and of the Benelux countries, there would seem to be a strong argument in favour of devising a system which would enable the Member States and the European Parliament to act together, simultaneously and with broad equality, in the appointment of a President of the Commission. From the outset of the Convention the Irish Government representatives have highlighted the attractiveness of this option and it now seems timely to sketch out in somewhat greater detail how such a system might operate.
10. At first glance, it might appear that such a system should involve the Council alongside the European Parliament, given that the Commission should be accountable to these two institutions. However, the great differences in the nature and composition of the Council and Parliament make it very difficult to conceive of an arrangement in which the two would easily operate directly alongside one another. Alternatively, therefore, conferring a shared role upon the European Parliament and the parliaments of Member States would also meet the fundamental objectives identified above. It would demonstrate and reinforce the principle of dual legitimacy, rooted both in the European and national political arenas.
11. An electoral process in which both national Parliaments and the European parliaments were involved would, additionally, be visible and accessible to the public. Depending on the system chosen, the involvement of national parliaments might also better reflect the diversity of views within the Member States.
12. The creation of an electoral college of this nature, convened solely for the purpose of electing the Commission President, is quite distinct from the separate issue of whether a Congress of the European Peoples should be established for other purposes.
13. Such a system might for shorthand purposes be described as “an electoral college”.

Issues for Consideration

14. If the basic principle of an “electoral college” is considered to have merit, a range of issues arises for consideration, including the following:
- **the balance between the European Parliament and national parliaments:** while alternative approaches are possible, equality of voting weight as between the European Parliament on the one hand and the collectivity of national parliaments on the other would most closely reflect the basic principle of parity;
 - **the balance between national parliaments:** it is proposed that each national parliament have the same voting weight (differences in size between Member States are reflected in the European Parliament, which would have 50% of the total votes);
 - **should each component of the college (the European Parliament and each of the national parliaments) cast a single vote or should it be able to split its vote to reflect its own internal composition and range of preferences?** Either approach is possible. The latter might, however, more fairly reflect the diversity of views and preferences across the Union. (Though in the US Presidential election, all of the electoral college votes of any one state go to the winner of the popular vote in that state, irrespective of the margin of victory.) It would be for each National Parliament to determine its own internal voting procedures, including in the case of bicameral legislatures the weights assigned to each House (a separate indent below deals with the issue of the method of election);

should there be a “corporeal” electoral college or should a vote be conducted electronically? This would in part be determined by the answer to the previous question. If it were decided to allow vote-splitting within a Parliament, the number of delegates sent to an electoral college should be sufficiently large to reflect differences of view. The assembling of an electoral college would add an element of potentially valuable “political theatre” to the process - and might allow for negotiation/discussion between the stages of a contested election. An alternative would be for the full membership of each parliament (national and European) to vote simultaneously and for the percentages obtained by each candidate across the Union to be aggregated;

- **nominations:** it is proposed that candidates could be nominated by any one of a variety of methods, to be considered by the Convention: these might include nomination by (a) by a minimum number of Member States [5?]; (b) by a

minimum percentage of MEPs [20%?]; (c) by some combination of the two [3 Member States and 10% of MEPs?];

- **campaigning:** there should be a gap between nomination and election. From the point of view of popular engagement, it would be desirable throughout the Member States for candidates to be profiled in the media, to debate and to be interviewed, and to make presentations before parliaments or their committees, as appropriate;
- **method of election:** various options could be considered. These would include (a) use of the alternative vote/single transferable vote system (b) a two-round system, with the top two candidates in the first round facing a run-off (c) immediate election of the candidate securing the highest plurality of votes (first past the post). The question of whether there be a threshold higher than 50% also arises. We propose the use of the alternative vote system, in which electors would be asked to rank candidates in order of preference. Should no candidate obtain 50% of the vote in the first round of voting, the candidate with the lowest number of votes would be eliminated and his/her votes reallocated. This process would continue until a candidate reached over 50% of the vote.
- **confirmation/appointment:** the Council might retain the right formally to appoint the successful candidate by QMV;
- **appointment of other Commissioners:** this might remain as at present, ie proposal of nationals by Member States individually, nomination of list by Council on QMV basis by common accord with President, approval by Parliament, appointment by Council by QMV.

Dublin, 13 January 2003