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COVER NOTE

from :	Secretariat
to :	Convention
Subject :	Contribution submitted by Mr Alain Lamassoure, Member of the Convention – "Institutional balance"

The Secretary-General of the Convention has received the contribution annexed hereto from Mr Alain Lamassoure, Member of the Convention.

CONTRIBUTION TO THE WORK OF THE CONVENTION

THE BALANCE BETWEEN THE INSTITUTIONS

I – CURRENT SITUATION:

The European Union is not a State, but it has enormous political power of its own: considerable legislative powers, a budget of EUR 100 billion, a single currency, external powers, particularly in the commercial field, and, soon, military capability.

For historical reasons the Union has developed with very different institutions and ground rules from those of traditional political entities such as States or territorial authorities.

- *Legislative power* is shared, on the one hand, between a dozen or so different configurations of the Council of Ministers, and, on the other hand and secondarily, the European Parliament.

- *Executive power* is shared, on the one hand, between some twenty or so different configurations of the Council of Ministers, and, on the other hand, the Commission, a novel form of institution.

- The Commission is responsible for expressing the Union's common interest. It has an exclusive right of *judicial initiative*. It is the guardian of the Treaties and may bring proceedings before the Court of Justice against the Member States. It also has certain quasi-judicial functions. Its members are appointed, and their status is more that of a board of very senior experts than politicians. The Commission is designed to be neutral, above the States and above the political parties.

- *Political initiative* – a major function (although not recognised as such by political scientists, who classify it as belonging to the executive) – largely lies in the hands of the European Council: since it was set up, it is the European Council which has launched the main institutional reforms and new policies (the Lisbon, Tampere etc. 'processes'). For reforms relating more to everyday management, university studies show that political initiative is shared fairly evenly between the Commission, the Council and Parliament.

Historically this mechanism has the virtue of having brought us to where we are today. But it now has two major drawbacks: **the current doubling of the number of members of the Union will undermine the way in which the current institutions operate, and in some cases even their very nature**; above all, despite the fact that the European Parliament is an elected body, **the overall system remains incomprehensible to the general public and has no democratic legitimacy**, which is what gives States and local authorities their strength.

II – A NEW APPROACH:

Everyone agrees that the enlarged European Union must be simpler, more effective and more democratic than today's smaller Europe. The overall design should most probably be based on the federal model, but should take account of the European Union's special characteristics, in particular:

- the fact that **the Union does more than just exercise the powers that have been transferred to it: it also coordinates many of the Member States' national policies.** This is a novel feature (it is practically non-existent in the US federal system) which is generally poorly understood and yet is extremely useful, since it means that our governments are gradually developing a sort of universal, permanent benchmarking.

- the wide range of Member States in terms of wealth, demography, size and languages is considerably greater than in existing federations, except perhaps for the Indian Union.

The new structure must take account of these original features while being careful to accommodate our *citizens*, the *national governments* and the *small Member States* in particular.

1 – The common theme: citizens first.

For obvious political reasons, those Member States which hold referenda will have to submit the ratification of the future constitution to a popular vote, possibly even on the same day. The implications of this have not yet been accurately assessed, either by the governments or within the Convention. **It will be impossible to obtain a 'yes' vote if the man in the street still thinks that the Union does not have its own clearly identified leaders, and if those leaders, or at least some of them, are beyond the reach of his ballot paper.**

1.1. This clearly means ***adopting a uniform, straightforward and clear voting system for the European elections.*** Proportional representation is favoured by the vast majority of the countries concerned, **but we need to ensure that the constituencies are not too big**, so that everyone can identify candidates and know their MEPs. Also, the preferential vote should allow citizens to have the final word on the political parties' proposals.

1.2. However, public and media interest will focus primarily on the executive power. Electing a European President by universal suffrage is not an option today. The only possibility is to keep the parliamentary model, which is in any case in keeping with political tradition throughout Europe, by having ***the Commission President elected by the European Parliament, by a simple majority.*** This would mean that each of the major European parties would appoint a leader for the European elections who would also be their candidate for the office of Commission President. Thus **it would in fact be the citizens of Europe who would elect the Commission President**, just as the British, Spanish, Germans, Italians, etc., elect their Prime Minister.

This major reform is without doubt an absolute prerequisite if the referenda are to be won. But it will change the nature of the Commission: its neutrality towards the Member States will be much more securely guaranteed than now, but its political neutrality will disappear. It is the price that has to be paid for democracy. And in any case it is not clear why the European interest should have to be 'protected' from the political parties more than, or differently from, the national interest. In a modern democracy, only advisory bodies and the judiciary need to be politically independent; their members are chosen solely for their professional abilities. Legislative initiative and monitoring the application of legislation, on the other hand, lie at the very heart of political office.

1.3. Lastly, ***the introduction of a European referendum***, together with a right of petition, would do a lot to help generate a 'European spirit'. For example, a reform of the constitution or the adoption of a European law might be submitted to a referendum, either at the joint initiative of the Commission, Parliament and the Council, or at the initiative of x-million voters covering a required geographical distribution. Fortunately both Eurosceptics and Europhiles are already supporting this sort of proposal.

2 – The relationship between small, medium and large Member States:

This is an issue that never really arose before the Nice Treaty. By coincidence none of the previous enlargements altered the initial relationship between these three categories of Member States. This is no longer the case today.

In the present Union medium and small Member States see the Commission as the body which does most to defend the Community interest and the one where their influence is strongest: it alone can protect them from the 'large' Member States and their temptation towards hegemony.

However, in a Union of 25 or 30 members it is difficult to justify the idea of having one Commissioner per country. The fact that some governments are so insistent on keeping 'their' Commissioner also raises doubts about just how independent members of the Commission really are. Fortunately, **the sheer weight of numbers and the requirements of democracy are changing the problem and opening up completely new avenues.**

There is now a consensus within the Convention that the European Parliament must be given equivalent legislative power to that of the Council. **So the respective weight of the small, medium and large Member States will be measured in terms of these two chambers together, rather than just in the Council. The current situation will be reversed: in the enlarged Union it will be in the Council where the small Member States will tend to be over-represented,** as is usually the case in federal systems.

Two variations will then be possible.

- Either the current composition of Parliament will be changed to make it strictly proportional to the population of the Member States, subject only to a minimum for the smallest (2, for example, allowing 1 for the national majority and 1 for the current opposition). **In that case voting rights in the Council can simply be abolished altogether, since the end result will ensure that any European law has been approved by a majority of Member States (in the Council) and by representatives of the majority of citizens (in Parliament).** It is very important to note that, in the Union of 25, the requirement for this double majority will prevent the six largest countries, accounting for 74% of the total population, from imposing their law on the other 19 and, similarly, will prevent the 19 smaller countries from imposing theirs on the largest.

- Or the composition of Parliament will not be changed, leaving the medium and, above all, the small Member States over-represented. In that case it would make sense to retain a form of weighting for votes in the Council, or the requirement for a double majority there.

Force of habit will encourage people to go for the second option. Yet the first is much simpler and easier to explain to the public: there is a chamber for the governments, where 1 government = 1 vote, and there is a chamber for the citizens, where 1 citizen = 1 vote.

3 - The new Commission:

If its President is democratically elected, **the best solution is to allow him to put together his team of commissioners as he thinks best,** combining talents, political balances and geographical balances as would a mayor or head of government.

He should be allowed plenty of scope to ensure that his team is united and that it is able to act. However, it would be very useful to have a safeguard to prevent abuses by a political majority and to provide the best guarantee of geographical representation, particularly for the small countries: this would involve **requiring the European Council to confirm the entire Commission by a double simple majority vote or a qualified majority vote.**

The only disadvantage with this system is that it would encourage the Commission President to assemble a larger team than at present, rather than the smaller one envisaged at Nice. Not only is this not really a problem, particularly if a hierarchy is established between members, as already exists in all national governments, it could even be extremely useful for making a large-scale Union work, given that it would still have no EU administrative apparatus in the Member States. National MPs, the national media, the regions, cities and, ultimately, the public themselves will need to meet European leaders other than just their own representatives. The new Member States will need valuable lessons in the ways of the Community. The Commission President's team will have a role to play here which cannot be defined in a constitution, but which is absolutely vital.

One further word of warning. Since Parliament will be elected by proportional representation, it is likely that the Commission will be based not on one single party, but on a coalition (which incidentally guarantees a certain political pluralism). Any problems within the coalition must not be allowed to create an insoluble crisis. We are all familiar with the answers to this: the automatic dissolution of Parliament, or a constructive motion of censure, for example.

One final point. **If the Commission is put together in this way and given these tasks, it will no longer be a commission, even with a capital C.** It will be an executive, without the general powers and responsibilities of a national government, but at least similar to the executive of a territorial authority, exercising its own limited powers. **Its name will have to be changed.** (*European Authority, European Executive?...*)

4 - The new European Council:

When it was first created, with 9 members (10 with the Commission President), it was a steering board, a *directoire* or *Vorstand*.. With 26 members it too will become something different: this is more the size of a supervisory board, a *conseil de surveillance* or *Aufsichtsrat*. It will still play a prominent role, but its contribution to the Union will change.

- It will remain the European summit, the meeting of Europe's top leaders, the collective incarnation of the Union in all its national diversity. **The Union already has a President – a collective President.**

- It will continue to provide the main political impetus. However, in this field, its power of *political initiative* will now be shared with the power held by the Commission President, now elected by the public on the basis of a manifesto.

- Unlike the present situation, it will be the European Council rather than the Commission which will appear above the parties. The Commission, on the other hand, will be totally independent of the States: in this way **dual independence, which is so useful for defining the European interest, will be guaranteed by dialogue between the two institutions.**

- On foreign and defence policy, the European Council will direct the increasingly powerful role played by the Union. It will be given a Foreign Affairs Minister, who will also take part in the work of the Commission (conclusions of the CFSP Working Party).

- *Finally, the European Council will also have another unwritten, but vitally important role: developing a Community spirit between all its members, particularly the newcomers. This will be an 'educational' function which will complement that of the Commission.*

Thus transformed, the Council will have to have a full-time presidency with a reasonable period of office.

5 - The new Council of Ministers:

A reasonable consensus is emerging that a distinction should be drawn between the Council's *legislative* and *executive* functions. In its legislative configuration, the Council would operate exactly like an Upper Chamber, with public debates and votes.

A number of important contributions, particularly the one from Benelux, have raised some pertinent questions:

- Does the presidency for the two types of configuration have to be the same? Could not each Executive Council be chaired by the relevant Commissioner? And the legislative Councils could each have a different but longer-term presidency, which would mean that, for example, one country could chair the ECOFIN Council for three years, say, with another chairing the Justice and Home Affairs Council, a third the Environment Council, and so on. **For the small countries 'multi-presidency' is a much more useful option than keeping the current six-monthly rotation.**

- How many legislative configurations should we keep? Should the General Affairs Council remain the configuration for ordinary legislation, or should it instead become a collective super-secretariat preparing for the European Council's business? I have no opinion on these different options, which are more technical than political.

- Does the Council represent the States or just the governments? The current formula, which is centred just on the governments, should be made more flexible, along the lines of a Council of States. Each national delegation would be led by a Minister, who would be the only one able to vote. But **each State would remain free to choose its own delegation**, which might vary from Council to Council. Some already include representatives of the regions. **The involvement of national MPs would be highly desirable, particularly when it comes to coordinating policies which continue to be a national responsibility, in particular budgets and taxation.**

Alain Lamassoure
