

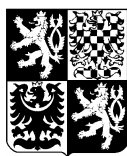
COVER NOTE

from Secretariat
to The Convention

Subject : **Text Forwarded by Mr Josef Zielenic, member of the Convention:**
 - “96th Resolution of the Senate of the Czech Republic concerning the future
 Constitutional Treaty of EU”

The Secretary-General of the Convention has received the attached Resolution from Mr Josef Zieleniec, member of the Convention, the attached Resolution “96th Resolution of the Senate of the Czech Republic from the 4th meeting dated 17th April 2003 concerning the future Constitutional Treaty of EU with special consideration of the delimitation of competencies and the position of national parliaments within EU” to which he wishes to draw the attention of the Convention.

PARLIAMENT OF THE CZECH REPUBLIC
SENATE



4th period of function

96th

SENATE RESOLUTION

from the 4th meeting dated April 17, 2003

**concerning the future Constitutional Treaty of EU with special consideration of the
delimitation of competences and the position of national parliaments within EU**

With reference to the fact that the approval of the future Treaty of the EU shall mean a qualitative change in the development of European integration, after the presentation of the final reports of the working groups of the Convention on the future of Europe in recent months, welcoming the publication of the proposal for constitutional articles relating to the problem of competences of the Union and the proposal for protocols on the application of the principle of subsidiarity and proportionality and on the role of national parliaments by the presidium of the Convention, the Senate of the Parliament of the Czech Republic formulates the following position on questions relating to its jurisdiction.

I

The Senate is devoting special attention to following the debate of delegates of the Convention on the question of division of **competences**. In connection herewith, the Senate states that sufficiently transparent and clear delineation of powers of the EU bodies is an essential measure to accompany the process of deepening European integration. The more the European Union has an effect upon the everyday life of the citizens of its Member States, the more exigently it is the interest of their legal certainty to precisely delineate the possibilities of intervention of EU bodies. In this the Senate considers clear delimitation of competences to be also a precondition of effective monitoring of the principle of subsidiarity. In connection therewith, the Senate, in

accordance with the conclusions of the Convention's working group for complementary competences (CONV 375/1/02) recommends:

- In the new Constitutional Treaty of the Union, to anchor the responsibility of national states for the performance of public authority in all areas where the Member States have not entrusted authority to EU bodies. The future Constitutional Treaty should express respect for the state identity of individual Member States which exercise exclusive sovereignty particularly upon formulation of the principles of the national constitutional order including the position of regional self-government. The Member States also determine standards of family policy and sensitive questions of ethical character without external interference.
- Within the area of shared competences, to preserve the diversity of social systems existing in the Member States of the Union as a factor which logically follows from the different levels of output of national economies. With reference to the conclusions of the Convention's working group for incorporation of the Charter of Fundamental Rights (CONV 354/02), the Senate acknowledges the impossibility of permitting individual lawsuits of persons for violation of rights declared by the Charter on the basis of special procedure before the European Court of Justice, whilst on the other hand the Senate agrees with the inclusion of the Charter of Fundamental Rights in the form of a protocol attached to the Constitutional Treaty.
- To delineate more precisely the provision of the existing Article 308 of TEC in such a manner as to prevent this from becoming an instrument of exceeding the Union's competences beyond the framework of regulation of the common market whilst also preserving the unanimous decision.

The Senate considers approval of any changes to the future Constitutional Treaty of the European Union as a key power exercised by national parliaments. In connection herewith, the Senate states that changes in the competences and powers of the Union within the sphere of individual European policies, as they shall be anchored in the second, executive part of the Constitutional Treaty of EU, cannot be passed without the consent of the national parliaments of Member States.

II

In connection with the conclusions of the Convention's working groups for subsidiarity (CONV 286/02) and **national parliaments** (CONV 353/02), the Senate states that:

- welcomes the intention to send proposals of non-binding documents and legislative acts of the European Commission directly to national parliaments and the intention to inform legislative bodies of Member States sufficiently in advance of the annual legislative plan of the European Commission,
- identifies with the results of both working groups on question of the control of subsidiarity principle, particularly concerning the matter that with regard to the political nature of this principle there is open up to national parliaments by means of the so-called early warning system the possibility of intervening in the legislative process in the Union in the case of impending collision of a certain legislative act with the principle of subsidiarity.

The Senate treats just the legislative bodies of Member States as the bodies competent to fulfil this role with regard to the basis of the principle of subsidiarity, which entrusts authority to the institution which is closest to citizens of the range of equally effectively acting institutions of a certain type. At the same time the Senate considers the proposed quorum of objections of 1/3 of national parliaments as a condition for review of the original legislative proposal of the European Commission to be suitable and does not support any attempts to raise this quorum.

In connection with the proposals submitted by the Convention's working group for the role of national parliaments in reaction to the conclusions of the working group for the principle of subsidiarity, the Senate believes that in the so-called early warning system:

- each national parliament should have two votes, in the case of bicameral parliaments each chamber is given one vote; the quorum of objections of 1/3 of national parliaments is ascertained by a simple total of votes of the chambers of national parliaments,
- the European Commission is obliged to re-examine a legislative proposal against which 1/3 of national parliaments have raised objections, and to provide justification for its position.

According to the conclusions of both working groups, the definitive ruling on the conformity of the already approved legislative act with the principle of subsidiarity in the case of persisting discrepancies should be subject to court authority. The Senate, invoking the opinion of the European Commission expressed in the document “For European Union. Peace, Freedom, Solidarity” dated December 4, 2002, emphasizes the right of all national parliaments or chambers thereof to independently challenge the already approved legislative act at the European Court of Justice, without regard to whether a certain parliament has raised an objection within the early warning system. With regard to the character of the principle of subsidiarity as principle based on a political vision of effectiveness and purposefulness, the Senate however does not believe that adherence to the principle of subsidiarity as such should be subject to judicial review. Only ascertainment of whether competences entrusted to EU bodies by the Constitutional Treaty were exceeded by the approval of a certain legislative act should be subject to judicial review.

Strengthening of the role of national parliaments requires an improvement in communication between legislative bodies of Member States. The Senate considers reform of the so far insufficiently functioning COSAC to be an appropriate means of attaining this target. A reformed COSAC could at the same time be an adequate answer to seeking a platform for discussion between national parliaments and the European Parliament without leading to the creation of new institutions.
