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Asunto: Contribución de D. Adrian Severin, miembro suplente de la Convención:
"La reforma institucional"

La Secretaría General de la Convención ha recibido de D. Adrian Severin, miembro suplente de la Convención, la contribución adjunta.

THE INSTITUTIONAL REFORM

Contribution of Mr. Adrian Severin, MP (Romania)

Brussels, 20-21 January 2003

The institutional reform is of paramount importance for the future of the European Union. The selection of the institutional architecture should however be preceded by the option for the sort of Europe we would like to have.

The starting hypothesis is that of **a future evolution of the Union's integration process towards a state-like entity containing significant federal elements**. Therefore, Europe should look rather like a European state than a mere Partnership of Member States. Opting for the former model, the new European Union would mark the evolution **from Europe-market to Europe-power**. Only in this way the future European Union will be able to respond efficiently to the challenges of the 21-th century.

The future European structure should be based on the **fundamental principles of national democratic traditions - the separation of powers and legitimization through parliamentary vote on laws and taxes**.

The problem of the European institutions is not the power of each one but the checks and balances among them.

At the same time it is of a paramount importance to assure the equilibrium between:

- a) The interests of the European citizens (the Union of citizens) and the interests of the European states (the Federation of the Nation-states).
- b) Legitimacy and efficiency

Therefore, the success of the future European political entity will very much depend on finding a **proper system of “checks and balances” at the community level**.

I consider that the Convention should propose a radical EU institutional reform patterned **on Montesquieu ’s three-branched power model including a clearly defined system of checks and balances**.

The EU should have **clearly distinct legislative, executive and judicial branches similar with that of classical nation state where it constitutes the foundation of the democratic decision-making**:

- A. The **executive branch** should be represented by **the Commission** and by the **“Executive Councils”/ Coordination Council**.
- B. The **legislative branch** should be represented by the **“Legislative Council”** and by the **European Parliament**.
- C. The **judicial power** should be vested in **a system of European Courts** and in a new **European Constitutional Court**.

Within the executive branch, the Council of Ministers would represent the interests of the Members States and will act for the consolidation of the synergy between the community's actions/decisions and the national actions/decisions. The Commission would represent the interests of the Community.

Within the legislative branch, the Legislative Council would represent the interests of the Members States and the European Parliament would represent the interests of the Community.

A. The Executive Power

I consider that the Council should be reformed/restructured as follows:

The Council of the European Union should be split into **an executive side – The Executive Council** - and a **legislative side – The Legislative Council**.

A1. The Executive Council

I. The Institutional Structure of the (Executive) Council

The **executive side of the Council of the European Union (The Executive Council)** has to be structured as follows:

- a) **The European Council** composed by the member countries' Heads of States and Governments
- b) **The Coordination Council** composed by the member countries' Ministers for European Affairs (the Coordination Council will be the successor of the actual General Affairs Council after the split of the Legislative Council and the Foreign Affairs Council)
- c) **The Foreign Affairs Council** composed by the member countries' Ministers for Foreign Affairs (it will be chaired by the Foreign Minister of the Union who will be, at the same time, the vice-president of the Commission)
- d) **The Sectorial Councils** composed by field ministers. The number of the Sectorial Councils should be limited to maximum 10. The chairmen of the Executive (sectorial) Councils, others than the Foreign Affairs Council, should be elected by their peers.

The Coordination Council, the Foreign Affairs Council and the Sectorial Council will form the Council of Ministers.

II. The Competences of the (Executive) Council

The Executive Council of the European Union will play **four main functions**:

1. The leadership function

1.1. The **European Council** will have the followings roles:

- a) will lay down the **main strategic targets for the whole Union**
- b) will provide the **political leadership for the Coordination Council**

- c) will **supervise the cooperative relations between the Commission and the Council of Ministers** and will take measures to **guarantee their sound functioning**.
- d) will be **the forum empowered to adopt the amendments to the European Constitution** proposed either by the European Parliament and the Legislative Council, in joint session or by the Congress of the Peoples of Europe (if any).

1.2. **The Coordination Council** will have the **right to decide** on the main **common strategies and political guidelines** in the community fields and eventually in those which do not fall into the community sphere of competences. In the latter case the decisions will be adopted by unanimity voting. For the rest of the decisions the QMV will be used.

2. The co-ordination function

The Coordination/Sectorial Council/s will ensure:

- a) The adoption of the decisions and the political action needed for the proper implementation by the member states' institutions of the laws and executive acts issued by the competent Union's institutions.
- b) The co-ordination and harmonization of the member states' policies in the matters that do not fall in the community competence.
- c) *The political consistency between the decision taken by the EU's institutions in accordance with the communitarian method, those taken within the frame of the intergovernmental cooperation and those taken at the national level.*

The coordination function will be gradually transfer towards the Commission to the extent in which the community method will expand to more matters than in the present time.

3. The implementation function

- a) **The Coordination Council/Sectorial Council/s** will have the right to adopt **executive acts** to be implemented by the national institutions concerned.
- b) **The Coordination Council/Sectorial Council/s** will have the right to initiate **implementation measures** to be considered by the Commission.
- c) The Coordination/Executive Councils will contribute to **the monitoring of the implementation process**. However, this function will be primarily the responsibility of the Commission.

4. A call-back function

The **Coordination Council** should have the **right of a call back**. If the Coordination Council appreciates that the implementation measures established by the Commission are not appropriate, it could ask for a call back. If the Commission does not agree to revise the disputed measures and policies, **the final decision on a call back** will be made by:

either

i) The **European Parliament** in a joint session with **the Legislative Council** by QMV.

or

ii) **The European Council** by unanimity.

The call back right could be exercised within three months from the date the measure or the policy in dispute was adopted/ announced to those concerned.

A2. The Commission

- a) The role of the Commission has to be defined in accordance with 3 *principles*:
 - i) The Commission has the monopoly¹ of the initiative in the strategic field;
 - ii) The Commission has the monopoly for the adoption of the decisions related to the implementation of the strategies;
 - iii) The Commission has the monopoly of the freedom to act and to adopt the executive acts within the frame of the communitarian competences.
- b) As the main executive body, the Commission has to manage the whole executive process². Therefore, the meetings of the executive Councils should be chaired by Commissioners.
- c) The Commission should be smaller but with direct democratic legitimacy. In this respect the President of the Commission should be elected by the Congress (see below), following a nominalization by the European Council.

B. The Legislative Power

B1. The Legislative Council

- a) The Legislative Council will be formed by the Personal Representatives of the member countries' Heads of States and Governments. It will become, in fact the second chamber of the European Parliament (the Senate).
- b) Its main role will be to moderate the activities and decisions of the Parliament and the Commission in order to bring them in line with the fundamental concerns and aspirations of the state entities forming the European Federation of the Nation States.
- c) **The Legislative Council should have the power to decide, by QMV, on proposals initiated by the Commission.** Any modification of the Commission's proposal should be made with the latter's approval. In the contrary case, when the Commission does not agree with the modification, the Legislative Council should decide by unanimous vote.
- d) The Legislative Council will have the monopoly of the ratification of the EU' s treaties signed with third parties.
- e) The Legislative Council will have the right of a call back. The call back procedure will be the same with that described in the paragraph for the executive power.

B2. The European Parliament

- a) The European Parliament will be elected by the European citizens trough direct vote within the frame of the **European constituencies**.

¹ The word "monopoly" is employed here to define a general practice expressing the enhancement of a principle and not of a strict rule. Therefore, one does not exclude exceptions in special cases indicated by the Constitution, if needed.

² The Commission will gradually become the government of the European Union.

- b) The European Parliament will have the legislative monopoly together with Legislative Council.
- c) **The European Parliament could also initiate legislation.** This legislation, once adopted by the European Parliament, should be also adopted in a second reading by the Legislative Council by simple majority.
- d) The EU budget will be adopted by the European Parliament and the Legislative Council in joint session.
- e) The President of the European Parliament and the Chairman of the Legislative will be elected by their peers, respectively.
- f) The **co-decision procedure** will be established for all decisions taken by the Legislative Council

Other institutional and procedural arrangements

There is an urgent need to increase the consistency and efficiency of the **EU's external representation** and to put an end to the overlapping responsibilities in developing the CFSP. In this respect one should take in consideration the following institutional arrangements:

- a) The functions of the HR for CFSP and the Commissioner in charge of external relations ought to be combined in one person: the new Foreign **Minister of the European Union (FMEU)**.
- b) **This person should be the Vice-President of the Commission**, in charged with the external representation of the EU within the strategic frame proposed by the European Commission and approved by the European Parliament and the Legislative Council.
- c) **The FMEU should enjoy the right of initiative in respect of the CFSP.** The FMEU alone or the European Commission should have the right to initiate common strategies and political guidelines which should have to be confirmed by the Coordination/Legislative Council. Any amendment to these proposals should be agreed in advance with the initiator. If an agreement cannot be reached the final decision will be taken by the Legislative Council by unanimous vote.
- d) **The FMEU should have a leading role in crisis management policies.**
- e) The idea concerning a permanent President of the Council should be rejected. However one might consider two alternatives as follows:
 - i) The President of the Commission will act as the President of the Council, thus wearing a "double hat".
 - ii) The presidency of the Council will be exercised for a three years mandate by a Troika formed by the representatives elected by the group of big, medium sized and small countries, respectively (The Presidency of the Troika will be exercised by its members by rotation on yearly basis). At the same time, the main problem remains to define competences of this Presidency since the general representation of the Union must remain with the Commission. Consequently, the EU Presidency should be competent mostly in the fields which are related to the need of achieving an internal cohesion of the Union.
- f) **The QMV should become the single procedural rule for decision-making** in the Council, including on foreign policy, with the possible exclusion of the situations when the implementation measures require military action.
- g) The Nice Treaty system of QMV should be simplified and I favor a **reweighing of votes that would make possible to adopt decisions which have the support of a majority of Member States, representing a majority of the population.**

C. The Judicial Power

a) **The setting up of a European judicial power** is not only a logical result of the division of powers, but there are other arguments in favor of the same conclusion.

- i) **By agreeing to a European status for citizens, we will subsequently have to provide rights for citizens, that, on their turn, claim new recourse ways to appeal bodies.**
- ii) On the other hand, the incorporation of the Charter of Fundamental Rights into the Constitutional Treaty, an option that has proved to have a broad backing among the conventionalists, and, in particular, among the socialist members of the Convention, must be accompanied by **the development of a European system of courts to cope with an increasing number of cases.**
- iii) Moreover, no matter how the relation between **Charter of Fundamental Rights** and **European Convention on Human Rights** is to be defined, it requires a **European judicial system to settle the potential conflicting verdicts of those two courts in the area of human rights.**

b) In the light of all those above, I believe that a common space of security and justice all over Europe will require **a system of European Courts functioning at the continental (Supreme Court), regional and national level.**

- i) Some of the cases should belong to the **exclusive competence of these Courts.**
- ii) Some other cases should be **addressed first by the national Courts, and the European Courts should intervene as fora for recourse only after the procedure in front of the National Courts is ended.**
- iii) Finally, in some cases, **only the national Courts will be competent.**

c) Establishing **a European Constitutional Court** which, among other powers, should have the competence to look on the matters concerning **the general conformity of the European and national legislation with the rights and freedoms recognized by the Constitutional Treaty**, will represent another way to constitutionalize the fundamental rights and freedoms of the European citizens.

The Congress of the Peoples of Europe

In order to make a decision on a future **Congress of the Peoples of Europe**, one has to define its competences. In this respect I would suggest that the Congress should have the following powers/competences:

- a) The Congress should act as a **Constituant Assembly** whose role will be to revise the European Constitution/Constitutional Treaty to draft and to suggest the modifications of the Constitution in accordance with the needs and the accumulated experience and trust.
- b) The Congress should look on any explicit and implicit **evolutive clause** of the Constitution and will formulate political guidelines in order to promote the further integration of the member states.
- c) The Congress should hear reports on the way in which the **principle of subsidiarity** was/is applied and will formulate the necessary guidelines and amendments to the norms and practices related to that principle, in such way as to create a political jurisprudence aimed to assure the transition from the theoretical character of the said principle to a real operative character.

- d) The Congress should hear the **reports of the relevant leaders of the Union about their political goals and strategies**. It will hold a debate on those reports which will help the Union's leadership to better feel the political sense of the member states, their expectations and aspirations.
- e) The Congress should **elect the President of the European Commission** who will be nominated by the Council with an opinion of the European Parliament. Likewise it **could elect the President of the Council among candidates nominated by the European Council**, as well as other high officials of the Union which the Convention might think appropriate (e.g. the High Representative for Foreign Affairs/ FMEU).

The Congress will not adopt legislation or any compulsory decision, except those concerning the amendments of the Constitution.

The membership structure of the Congress will be the same with the one of the actual European Convention.

The Congress/Convention will have only one ordinary meeting per year for a period of five days. The President of the Council, the President of the European Commission, and the President of the European Parliament may ask the Congress to meet in an extraordinary session whenever this might be necessary.
