

## A System Out of Balance

### Further amendments need to be made to the EU's institutional structure

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The final round of the Convention has begun. After the draft articles concerning the institutions and EU external action have been made public, all the important provisions of the initial draft of the future Constitution are now available. In this decisive phase the arguments hinge on the question of who will be in a position to wield power in an EU of 25 and more member states. The Praesidium has presented a draft proposal which on the one hand portends a series of important changes, but on the other threatens to upset the institutional balance at the expense of the Parliament and the Commission. A considerable number of amendments remain to be made in the course of the four remaining plenary sessions.

#### We are in favour of ...

- a reduction in the number of Commissioners, since in this way the Commission will still be able to operate with 25 and more member states, and assign appropriate tasks to its members;
- strengthening the position of the President of the Commission with regard to his or her right to shape the Commission's internal division of labour, since he can then organize the Commission on the basis of rational considerations and not on the grounds of national proportionality;
- the division into a Legislative Council, which co-legislates with the European Parliament, and Council formations dealing with tasks in those areas in which no legislation is (as yet) adopted, or in which it is a matter of coordinating the implementation of EU law;
- the introduction of a President of the European Council elected by the Heads of State and Government who will prepare, chair and report on European Council sessions and represent the EU externally on his or her level, since this will enhance continuity, visibility and coherence in the representation of the EU internally and externally;
- the reduction of the European Parliament to a maximum of 700 members and the introduction of a proportional and degressive distribution of seats, with a minimum of four seats per member state, which in the end will both strengthen democratic legitimacy and facilitate future rounds of enlargement.

**We are opposed to ...**

- the European Council's right to submit nominations for the post of Commission President, since this would counter the significance of European elections as an act which enables citizens to decide and exercise control so that the positive effects with respect to the strengthening of the European Parliament and the personalization of European politics would evaporate;
- the introduction of lists on the basis of which the President of the Commission must select his Commissioners and possibly "delegated members" with voting rights. In contrast to this, we believe that the President of the Commission should have the right to prudently choose the Commissioners, to determine their number, and to assign them to appropriate positions;
- the imprecise definition of the division of labour between the President of the European Council and a future EU foreign minister, since the lack of a clear assignment of roles will weaken Europe's ability to exert influence, its credibility and its visible image in the world;
- the establishment of a praesidium within the European Council, since this might lead to the creation of structures parallel to those of the European Commission;
- the establishment of a European Congress, since new institutions would increase the complexity of Europe, and the Convention itself already constitutes a suitable forum for future reforms of the EU Constitution.

**For a politically legitimized Commission**

The European Commission is confronted with a growing tendency of being pushed to the strategic and political sidelines by the European Council. In order to enable the Commission, as the institution dedicated to common interests, to again become the driving force and catalyst for European integration, it will be necessary to strengthen its power base and political legitimacy.

The procedure by which the President of the Commission is elected is of crucial importance in this context. The proposals submitted by the Convention Praesidium envisage that the European Council (the Heads of State and Government), taking into account the elections to the European Parliament, will suggest a candidate for the office of Commission President on the basis of a qualified majority vote. Acting on this suggestion, the European Parliament will "elect" the President of the Commission on the basis of a majority of MEPs. In case there is no majority, the procedure will be repeated until a President of the Commission is finally elected.

However, this proposal indicates no progress compared with the Nice provisions. Moreover, the proposed procedure is not designed to enhance democracy and participation in the framework of European elections. The citizens' vote must have visible con

sequences. For this reason a number of crucial points contained in the proposals submitted by the Praesidium of the Convention should be amended.

- With regard to the start of the procedure, the President of the Commission should not be proposed by the Heads of State and Government, but nominated by the European parties in the run-up to EP elections on the basis of a common electoral programme. The President of the Commission should then be elected by the new European Parliament and subsequently be confirmed by the Heads of State and Government on the basis of a qualified majority vote. If a majority in the European Council is not forthcoming, Parliament should be able to confirm its candidate with a higher qualified majority vote, thereby overcoming a blockade situation against the wish of the electors. Such a procedure for the election of the President of the Commission would enhance the significance of European elections and strengthen the parliamentary character of the EU's political system.
- The procedure proposed by the Praesidium of the Convention in regard to the composition of the Commission college needs to be revised. The proposals state that each member state should submit a list of three people – among them at least one woman –, whereupon the President of the Commission selects the 13 members of the Commission from among the potential candidates. Here again the proposals of the Praesidium do not go far enough.
  - (1) The Commission President should be able to determine the members of the college himself. It should be left to the political acumen of the President of the Commission to form a college that is balanced in geographical and gender-specific terms and that reflects the political composition of the European Parliament and the European Council. The status of “delegated members” should not be introduced.
  - (2) With regard to the appointment of a future Foreign Minister, who will combine the previously separate positions of foreign policy Commissioner and High Representative for the CFSP (“double-hat”), the European Council should for an initial transitional period suggest suitable candidates to the Commission President.
  - (3) At the end of the procedure the entire Commission college should seek a vote of confidence from the European Parliament and receive confirmation from the European Council.
- With regard to the possibility of impeaching the Commission, the draft proposals of the Convention Praesidium suggest that the European Parliament may pass a vote of no confidence against the college, whereupon the Commission will resign en bloc. However, the impeachment procedure needs to be more specific inasmuch as Parliament can only dismiss the President of the Commission on the basis of a constructive vote of no confidence, in the course of which it also elects a new President. Furthermore, the Commission President should have the right to dismiss individual Commissioners.

**For a visible President of the European Council**

In its draft proposals, the Praesidium of the Convention suggests the appointment of a full-time President of the European Council for a period of two-and-a-half to a maximum of five years (if re-elected). This proposal points in the right direction. The departure from the current rotating presidency system and the establishment of a President of the European Council will promote continuity, efficiency and visibility of the EU inside and outside the Union. An elected President could enhance the process of finding consensus among the Heads of State and Government, maintain political momentum, and avoid stagnation.

According to the proposals made by the Praesidium, a future President of the European Council should, on “his level”, represent the Union in matters relating to the Common Foreign and Security Policy (CFSP), and, with regard to his internal role, chair the European Council, and prepare and head its meetings. However, in order to be able to do justice to his role and to avoid rivalry and friction with the Commission, a number of crucial points need to be specified.

- The President should not only represent the Union on the highest political level, but above all support the European Council as it defines the principles and general guidelines for the CFSP, including its security and defence dimension (ESDP). An experienced politician permanently active in Brussels could, at the head of the European Council, promote the consensus process among the Heads of State and Government and thus the definition of common European positions – positions which reflect the interests of all the member states and not merely of the larger member states, which is what critics of a President of the European Council fear.
- The President is elected on the basis of a dual majority, which comprises the majority of both citizens and member states. This regulation is thus a safety-catch clause for both large and small member states. Thus, in an EU of 25, neither the 6 largest nor the 19 smaller member states would be able to elect a President of the European Council on their own.
- In addition to the election of a President, the proposals of the Convention Praesidium envisage that the European Council can appoint a praesidium consisting of three of its members. However, there are no compelling reasons for the establishment of such a body. In order to perform his functions, the future President of the European Council should be supported solely by the General Secretariat of the Council. The overall coordination on the level of the Council should take place in the General Council. The establishment of a praesidium bears the risk that such a body might in the long run develop into a permanent institutional opponent of the Commission.

**For a clear separation of legislature and executive**

In view of the intergovernmental structures of the EU, the proposals of the Praesidium of the Convention involve not only a reform of the European Council, but also a restructuring of the Council of Ministers. The draft proposals specifically envisage the separation of the legislative and executive functions of the Council. In future, a Legislative Council will together with the European Parliament pass European laws. In addition to the Legislative Council, which resembles a Chamber of States, there will in future be at least four other Council formations. A General Council, which will coordinate the work of the Council of Ministers and, together with the Commission, prepare the meetings of the European Council, a Foreign Affairs Council, which will formulate the foreign policy of the Union in accordance with the strategic guidelines laid down by the European Council, and two other Council formations in the configuration of an Economic and Financial Affairs Council and a Council on Justice and Security.

The separation of the legislative from other political and operational functions of the Council is to be welcomed, since it increases the efficiency of the decision-making process, the ability of the EU to implement agreed policy goals in a consistent manner, and the general ability to assign political responsibility. Nevertheless, there is also a need for further improvement:

- The Constitution should assemble the provisions that pertain to the Chamber of States, which is co-responsible for all areas of legislation explicitly mentioned in the Constitution, in a separate article which will come after the provisions relating to the European Parliament, and not – as is envisaged in the current draft – to include them in an article dealing with both the Legislative Council and the other Council formations.
- With the exception of the Foreign Affairs Council, which is supposed to be headed by a “Minister of Foreign Affairs”, the heads of the other Council formations are not clearly specified. The proposal of the Convention Praesidium merely allows for the European Council to decide by consensus that the Presidency can be undertaken by a member state for a period of at least one year. However, the Convention should specifically state who will head the individual Council formations.
  - (1) The Legislative Council could, as in the past, make use of the rotating presidency system. Such a solution would maintain the advantages of rotation (prestige, socialization and input functions), which are in particular emphasized by the representatives of smaller EU member states, and which make it possible for member states to introduce their specific national policy priorities to the EU level.
  - (2) On the other hand and due to the need for coherence and coordination between the member states and the Commission, the non-legislative Council formations should be jointly headed by representatives of the member states and the Commission. Thus the General Council, which is responsible for the overall coordination, and at the same time prepares the meetings of the European Council

cil together with the Commission, should be headed jointly by the Commission President and the President of the European Council. The Economic and Financial Affairs Council and the Council on Justice and Security should be co-chaired by the responsible Commissioner (“Tampere Commissioner”, “Lisbon Commissioner”) and a representative of the member states.

### **Against a Congress of the Peoples**

The draft proposal submitted by the Convention Praesidium suggests the creation of a Congress of the Peoples of Europe, one-third of which will consist of members of the European Parliament and two-thirds of representatives from the national parliaments. The purpose of this body, which would convene once a year, is to “provide a forum for contact and consultation in European political life”. It is expressly forbidden to become involved in the legislative procedures of the Union. Furthermore, it is envisaged that the President of the European Council will report on the state of the Union, and that the President of the Commission will present the annual legislative programme.

The creation of this institution is unnecessary. It will not produce appreciable benefit, and in fact will lead to a wholly superfluous additional complication of the EU’s institutional system. Instead of founding new institutions, it would be better to enhance the competences of the European Parliament. The Parliament is the central parliamentary forum legitimated by the citizens of Europe, and should also be the place where the great debates about the future of Europe are conducted. The President of the European Council and the President of the European Commission should on an annual basis present an address on the state of the Union to the European Parliament. The heads of the national European affairs committees and the Presidents of the national parliaments can be invited to these sessions and accorded the right to speak.

And with regard to the preparation of the ensuing revisions of a new EU constitution, the Convention should do its work so well that it will make itself indispensable as a model for future bodies dedicated to reform.