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The Czech Debate on the Proposal of the Constitutional Treaty

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The Czech Republic being an accession country has not been so far too active in the Convention deliberations, like other candidate countries. However, the proposals that came up from the Secretariat, namely the document outlining the future skeleton of the EU Constitutional Treaty, has stirred the debate on this issue among politicians, academics, think tanks and journalists.

There are a few particular issues that drew the attention of experts that appeared in the draft document. They were namely the name for a new entity to be created by the Treaty, the idea of a double citizenship and introducing the “exit clause” into the text. Further points that are, however, raising most question marks are the idea of the Presidency and the possibility of establishing a Congress of the Peoples of Europe. In the following sections, let us analyse the state of debate on these issues one by one.

The question of what should be the name of the entity created by the Constitutional Treaty seems to be quite a consensual one. European Union is the most appropriate label which should be given to the one and only entity created herein, vested with a clearly articulated legal personality. Not only that European Union is a name that most of the Czech population is already familiar with – most people would probably not know at all that there are different entities called European Community or Euratom. If the name were changed in due course, it could also raise some questions. Citizens could ask how come they were suddenly joining the United States of Europe considering that we were negotiating membership in the EU.

As to the idea of a double citizenship, the current draft basically confirms the *status quo* with one slight exception – in the current EU treaty, there is no mention of duties attached to European citizenship. The document does not elaborate on what the duties mentioned are. The draft also stipulates that the EU citizens are free to use any of the two citizenships they like, which is not possible to imagine in all the situations as the rights and duties arising from each are very different. It is still necessary to view the European citizenship as a derived one, resting on the membership of one (or more) of the member states. The treaty does not provide for any possibility of granting the European citizenship in another way, thus dismantling the false fears of those who claim that this could lead to an uncontrolled influx of immigrants seeking EU citizenship.

A progressive idea appearing in the draft is that of the possibility to leave the European Union (“exit clause”). It has been a question raised many times in the past. The rationale behind this

is obvious – the acute danger of blocking constitutional reforms in the Union of twenty five members.

The ultimate possibility of “leaving” the Union can be viewed positively by some of the voters in a referendum – if only for the psychological momentum that we are not bound “to be there for ever and ever”. At the same time, some of the experts have pointed out to possible negative signs of this. It could equally be viewed as a lack of confidence in the European integration process and could be used by certain governments for putting pressure on others in the circumstances where further negotiations would normally take place.

The draft does not stipulate any mechanism how this could happen. Some of the ideas that appeared in this connection speculate about the inclusion of a clause that if a member state fails to ratify the Constitutional Treaty or its amendments, it would have to stay outside the structure. A possible safeguard would mean that for the Treaty to come into force, the ratification by countries representing some superqualified majority of EU population (say 90%) is required. Thus, if country like Malta or Estonia do not ratify, the treaty could still come into force, however, in case France or Germany fail, the treaty will have to be re-negotiated.

This would be a major breakthrough in one of the basic principles of international law, counting that an amendment of a treaty cannot come into force unless all the contracting parties ratify it. This sort of “qualified majority voting” on constitutional issues would seem very dangerous (on the other hand, at a national level we would not find any constitution that was adopted by unanimity, but could we really compare this with the EU?). Thus it might be more appropriate to think of other mechanisms – for example providing for the possibility of leaving the Union by the state itself (i.e. not implicitly by non-ratifying). If an adequate mechanism for closer co-operation or differentiated integration is developed, it can also solve some of the problems. Here, the states could go ahead with some policies without having to force the others to do the same. This could be partially enhanced by the division of the Treaty into constitutional and non-constitutional part.

Furthermore, it is doubtful from a purely legal point of view whether it is possible to insert such a clause in the new Treaty – some experts think that this would in any case require the modification of amendment procedure (including Giuliano Amato) of current treaties.

The crucial issues that the debate has focused on mostly are the idea of introducing a new body – the Congress of Peoples of Europe, and the concept of EU Presidency.

The Congress does not have a great support at least among the Czech governmental representation in the Convention. Even though it was acknowledged that it is a new entity that the Czech Republic as a new member state could identify with, and in this way it could be “sold” to the citizens as such. The Czech Republic could contribute more to the debate on what should be the role and powers of the Congress and help shaping it in a substantive way.

The prevailing view, however, considers Congress as quite a useless body. Firstly, it is not highlighted in the draft what should be its role and powers, and whether it would be a permanent or *ad hoc* body. It is possible to imagine that Congress could give further legitimacy for instance by approving – together with the European Parliament – a yearly legislative plan of the Commission, or even the President of the Commission which would further increase its democratic legitimacy. On the other hand, there are still doubts whether giving more role to the national parliaments at EU level can solve the problem of the democratic deficit of the Union, which seems to be a prevailing idea recently. One must not forget that the national parliaments derive their legitimacy from national elections, which do not often reflect the same sort of issues that are at a stake at EU level. The Czech

representation is quite strongly against creating any new bodies. Furthermore, there is already a platform for national parliaments at EU level, represented by COSAC – an ad hoc agenda ascribed to the Congress could be easily dealt with by this body. COSAC itself has adopted a resolution calling for not creating any new bodies or institutions. It is also felt that the Congress does not fit well with the Czech tradition – it is rather seen as being inspired by the tradition of the French Congress, or the German Federal Assembly. This particular issue may well reflect the personal ambition of the Convention’s President, Mr Giscard d’Estaing, to get this body into the treaty. A sort of compromise that would probably be acceptable for the Czech representation would be making the Congress a body for the preparation of possible constitutional amendments of the Treaty, thus practically replacing the Convention method.

Most controversy is raised by the issue of the Presidency. It is because this problem cannot be so easily separated from others and is concerned with the overall constitutional balance within the famous EU institutional triangle. The main questions at a stake here are: Should we support the current system of rotating presidency, or have a sort of permanent presidency for a longer period? Or should we just strive to abolish this mechanism at all?

Most of the experts agree that the current rotating system for the EU at 25 could be lethal – already now it is reproached for the lack of consistency in formulating the strategic goals of the Union. On the other hand, the Czech representation is not in favour of a strong EU president, the idea supported especially by the bigger member states of the Union. The draft constitutional treaty further does not refer to the President, but to Presidency of the Union. Another question that seems open is what would be the relation between the EU President and the Commission President – it could be equally dangerous for the Union to have two strong personalities that can often get in conflict. One of the solutions that the Czech representation is playing around with is merging the two – President of the Commission presiding the Council. In this respect, the President would combine both the political and bureaucratic feature, and it would very much depend on the individual personality which feature would prevail. The scenario highlighted here would be more likely if for example the legislative powers of the Council would be enhanced and the executive powers will shift more towards the Commission. This might then mean that the Commission would become more political and reflect the composition of the European Parliament. Realistically, there does not seem to be too much support for the politicisation of the Commission in the current EU. If this were the case, then it is quite likely that the Commission could not perform some of its neutral tasks, like competence in the area of competition policy.

It is interesting to note that most of the positions raised and described in this paper seem to be recently discussed and co-ordinated between the representatives of the V4 (Visegrad) countries – i.e. Poland, Slovakia, Hungary and the Czech Republic. Just before this paper was written (Nov 02), there was an informal meeting of the deputy foreign ministers in Prague regarding the Convention proposal. In course of a fortnight, two conferences on the Visegrad group were held in the Ministry of Foreign Affairs of the Czech Republic. The way Visegrad tries to act at the EU level is also by approaching the Benelux countries with as many “constitutional” issues could be of a similar interest. The Benelux seems to reflect this – another meeting between the two groups is envisaged for the beginning of 2003. It will be interesting to see whether this would evolve into a more long-term phenomenon and lead to a creation of some sort of Benelux-Visegrad axis within the future EU. Visegrad countries could for sure gain a credible and well experienced partners in the three founding members. On the other hand, strengthened co-operation on some issues between these two blocks could create to another gravity centre within the EU, thus equilibrating and complementing already

established axes of co-operation like the Paris – Berlin axis, Nordic States or the Southern - Wing block.