

## **EPIN Comment**

### **The Future of Europe Convention:**

#### **What Prospects for compromise on Institutional Questions in the Convention endgame?**

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#### ***No compromise on the table***

The convention's debate on the key institutional questions for the draft constitution (on May 15 and 16) left as many questions open at the end of the debate as were on the table at the start. The large majority of contributions were restatements of already known positions, highlighting once again the differences of view between larger member states on the one hand and smaller member states together with the European Commission and European Parliament on the other.

This unproductive debate was more or less inevitable once the praesidium had tabled draft articles that did not aim to reach a consensus or compromise across the convention, but rather reflected the views of the larger member states. Contrary to the successful approach adopted for the other major issues addressed by the convention - such as foreign policy or freedom, security and justice - no longer papers were put forward exploring the challenges faced by the current institutional structure and the options for change (although it appears the secretariat had produced a number of institutional papers which even the praesidium did not discuss). In the absence of any paper putting forward options or potential compromises, it was inevitable that this crucial May meeting rested on restating existing positions.

The result of this failure by Giscard and the praesidium to lead a genuine debate searching for compromise is that the real discussions, debates and potential deals have now vanished from the convention floor and are taking place in corridors and behind closed doors. And this behind-the-scenes discussion leaves the praesidium remarkably free in what amendments they choose to make in the revised version of the institutional articles that will be produced by the end of May (when the whole redrafted treaty will be tabled).

Whether the convention will come to a final compromise over their institutional disagreements is as yet unclear - listing different options is still a possible outcome. This would, however, effectively pave the way for the IGC to take over negotiations on the most sensitive institutional chapters. No one believes that this would lead to any better result than what was achieved at Nice, which was widely regarded as a failure in equipping EU institutions for enlargement. On the other hand, if a poor bargain is struck at the last minute in the Convention, the outcome could be a messy compromise, failing once again to build the democratic efficient institutions that the enlarged EU will so urgently need.

- Convention still split with most restating existing positions;
- Debate moved from convention floor to behind-the-scenes negotiation;
- Outcome still open – it could be a messy compromise; an effective, democratic solution; or a listing of options.

### ***Bad bargains under discussion***

Deep differences continue between large and small countries over retaining the rotating presidency or having a new full-time chair or president of the European Council. But it is suggested that a compromise here may be based upon agreeing to have a full-time European Council president in return for retaining one commissioner per member state i.e. an ever larger and more unwieldy Commission. This would be a ridiculous compromise for the smaller countries to agree since it would in fact be a double weakening of the Commission: firstly, strengthening the institutional power of the European Council, and secondly, weakening the power and efficiency of the Commission.

Nor does such a compromise do anything for democracy and simplicity. The new European Council president - or chair - will be a former politician, with no current electoral mandate and no proper accountability to the European Parliament. Supporters, such as the UK's Peter Hain, rather disingenuously suggest the new president will do no more than the job of the existing presidency. But since a part-time job would become a full-time job then some considerable expansion of the role can be expected together with potentially damaging and unwelcome turf fighting not only between Commission and Council but also with the new EU Foreign Minister.

Debates behind the scenes suggest that a number of convention members believe the permanent European Council chair is inevitable and that the key issue is to limit institutionally his or her role in a damage limitation exercise. Hence proposals, from Benelux among others, to let the Commission President chair the General Affairs Council, and emphasis by some in the convention's discussions on the importance of the Commission preparing a multiannual agenda for agreement by the European Council. Others hope that it may be possible to include a transition clause setting out the longer run aim of having a single, double hatted President (an aim supported in the convention debate by George Papandreou). Damage limitation may be necessary but it is not the most productive way to build a new transparent efficient and democratic Union.

- Smaller and larger countries might strike a bad deal trading off a permanent European Council President for one Commissioner per member state;
- Such a bad deal would be a double weakening of the Commission, would encourage institutional rivalry and would not promote democracy ;

- Behind-the-scenes efforts to limit power of any new President of the European Council.

### ***Leadership and accountability of the European Commission?***

Prospects also look uncertain for a genuine increase in both the effectiveness and legitimacy of the Commission.

If a deal is struck which retains one commissioner per member state - which will be many more than the number of relevant portfolios - then the possibilities of the Commission exercising effective joint leadership as a college will be correspondingly reduced. An option which would be still undesirable but less damaging would be to have a two tier Commission, with only the first tier having voting rights. But it would still produce a Commission unwieldy in size and tending towards the intergovernmental. Jacques Santer for the Benelux did suggest a possible compromise in the longer run of a smaller Commission with equal rotation across the member states. This would be the best possible outcome and is the one that should be fought for at the convention.

The proposals for 'electing' the Commission President put forward by Giscard and colleagues are currently so weak that they would add little or nothing to the legitimacy of the Commission President and the Commission as a whole. If the European Council proposes a single candidate, then the Parliament can either rubber stamp it, which is no great democratic leap forward, or reject the person, resulting in political crisis due to disagreements between Council and Parliament on such a key issue. And if the Commission President does not get any greater legitimacy, then it is not appropriate that he or she should have an entirely free hand in choosing his or her commissioners (with the sole guidance of taking account of geographical and political balance).

A genuine election must still be argued for - both on grounds of democracy in the Union and to strengthen the Commission. There must be a genuine choice of candidates presented to the European public by European political parties during the electoral campaign for European election. The Parliament should then vote (a two-stage procedure can be envisaged, whereby only the two candidates who collected more votes at the first scrutiny would stand for election at the second vote), and the European Council could confirm. One of the big risks in the behind the scenes bargain going on at present is that there is such a focus on the permanent president of the European Council and the number of commissioners, that insufficient attention is paid to this key democratic issue.

- Two-tier Commission better than large unstructured Commission but still unwieldy and risks tending to the intergovernmental;
- Current proposals for 'electing' the Commission President add nothing to legitimacy;
- A genuine election by the European Parliament with a choice of candidates must be argued for.

### ***Openness and efficiency in the Council?***

The current stand-off over the role of the permanent President of the European Council is also acting to some extent to limit an effective and thorough debate over reform of the Council of Ministers. One proposal is for a team presidency to operate below the permanent President of the European Council - possibly four countries over two years, but rotating around the sectoral chairs every six months. But such a team presidency - though it gives the smaller countries some retention of rotation - will not add to clarity nor will it provide the continuity that supporters of the permanent President idea stress. It would, moreover, lead to setting up a second 'college' of presidents in the council, parallel to the Commission and inevitably interfering with its tasks of agenda setting and coordination.

Another possibility is agreement on permanent chairs for the General Affairs Council and the External Affairs Council (though there is disagreement over whether the proposed EU Foreign Minister should chair the latter) and then rotating chairs for other Council formations - again a less than simple or clear solution. Most importantly, there is no agreement on who should take over the permanent chair of the GAC. This is, however, essential to boost the performance of the European Council by adequately preparing its work and following up its decisions;

Of considerable importance but also remaining unclear for now is whether some sort of 'bureau' or board will be created around the permanent President - possibly made up of the team presidency, possibly made up of a subset of European Council members. This would also lead to a second Brussels-based executive rivalling and competing with the European Commission. Any proposal to this end should therefore be rejected.

In two other areas where the praesidium made important proposals for simplifying and democratising the operation of the Council, it is unclear if the convention will agree. While there is much support for opening up the Council when it is in legislative mode, a vital democratic reform, some such as the UK have indicated their strong opposition to a separate legislative Council. If there is not a separate legislative Council, there is a strong risk that the sectoral councils will not be fully opened up in a completely transparent and democratic way. In the absence of a clear distinction between the legislative Council and executive Council formations, moreover, the separation of powers in the EU would remain blurred. That would prevent enhanced synergy between the Commission and executive Council formations in fulfilling executive tasks, and deprive the Union of the capacity for strategic agenda-setting and coordination across different policy domains.

On decision-making, the praesidium draft makes the important balanced and simple proposal of a system of double majority voting - requiring a majority of both populations and countries (with a 3/5 requirement on population). But a number are now strongly defending the opaque and complex Nice decisions on weighting of votes.

- Team presidency proposal will not add to clarity or continuity and risks overlap with the Commission;
- Decision on chair of the General Affairs Council is central to effectiveness of the European Council;
- Proposal for a bureau or board around the presidency would conflict strongly with the Commission and should be rejected;
- Separate legislative Council a vital step, together with the proposed double majority voting system.

### ***Keeping to the Laeken goals***

Convention members should keep their courage in these final crucial weeks and not forget the main Laeken goals of creating a more democratic and more efficient enlarged Union. These goals can still be attained. Proposals have been made by many convention members and in the wider debate that would allow the creation of a more efficient and legitimate Commission and a more efficient and legitimate Council. The risk is that through crude behind the scenes bargaining - and a failure to follow the more deliberative approach used successfully for the rest of the convention - a messy and bad compromise is reached. An EU with three visible faces on the international scene – the President of the Commission, the President of the European Council and the EU Foreign Minister - with a large, unwieldy Commission with no increased legitimacy, and with a complex operation of the Council with inadequate opening up and simplifying of the legislative and decision-making process, would be a poor result indeed. But this is the worst case outcome. Convention members have four weeks to agree the answers that will still meet the Laeken goals and show that a successful positive outcome can be achieved.

- A more democratic and efficient EU can still be achieved;
- Convention must avoid a messy and bad compromise.