

The Institutional Debate: Who is Pre-empting the Convention?

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In its difficult and divisive debate on institutions in January, the large majority of the conventioners spoke against a permanent President of the European Council – but the six larger member states of the enlarged EU, together with Sweden and Denmark were in favour. But since then the Convention has not moved on to detailed papers, options or discussions to see how to close this deep gap.

Instead in its two February meetings, the convention first focused on social and regional policy and then on the first 16 articles of the draft constitution (on 27 and 28 February). At his press conference at the end of the February 28 session, Giscard d'Estaing not only announced that the institutional draft articles will not be discussed until February 24 by the Convention as a whole but he also emphasised repeatedly his preference for a stable presidency of the European Council. He stressed the deep European divisions over Iraq as a motivating factor as to why such a stable President was now needed.

Two questions arise here. Firstly, why is the Convention chairman, on such a deeply contentious issue, coming down on one side of the debate before any serious attempt at a compromise solution has been found? Secondly, and of yet more serious concern, why is so little time being allowed for the institutional debate, which lies at the heart of the challenge of building a strong and successful future for the EU? For subjects, for example, such as freedom, security and justice, the convention had a first discussion, then a long examination in working group and a report, then another plenary discussion, and next will have draft treaty articles. Yet the institutional debate is being drastically foreshortened on current plans.

Such an approach seems unlikely to be well received in the convention where the majority reject the dual presidency model as divisive and confusing – preferring either to maintain the rotating presidency or to have a single executive President for both Commission and Council (leaving a permanent or rotating chair for the Council in legislative mode).

But Giscard is not the only one pre-empting the Convention debates. Some of the countries who are proponents of the permanent President of the European Council idea are lobbying hard among the other governments – up to prime ministerial level – to win over support for their views. In at least one of the larger EU member states, talk is of many countries and leaders being won over or giving in to the permanent President idea, and the argument is heard, in *directoire* tones, that the views of the larger six must prevail.

This is also a pre-emption of the Convention. Having established the Convention to debate these issues and find solutions, some governments are now trying to obtain an intergovernmental agreement outside the Convention – which government representatives would then bring within the Convention. Not so much the IGC happening within the Convention but the IGC happening in parallel on the outside.

What will happen next? This depends on the actions and demands of the Convention members. Reasonable demands would be as follows:

- The Praesidium to produce a paper setting out options as to how to go forward on the institutional and executive structure of the Union and for a full plenary discussion of such a paper before any treaty articles are drafted on the institutions;
- Adequate time to be allowed to find the best institutional solution - if necessary going beyond the start of June deadline;
- At least two of the March sessions of the Convention to be devoted to institutions – to stop the pre-emption of the debate by governments negotiating outside the Convention.

If the institutional debate and split within the Convention is not handled with great skill, the Convention risks failing to agree on this issue. In that case, a series of options would presumably be put to the IGC – which would show that on the most central issue the Convention method had failed.

It is the responsibility of the chairman and Praesidium to ensure this does not happen by taking the debate and the decisions back to the Convention with a proper document outlining options and with as much time for debate as is necessary to reach a compromise that represents a real consensus.