

**Contribution of Mr. Józef Oleksy,
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in the Convention on the Future of Europe**

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Any discussion on the European Union's missions and powers of its institutions is bound to consider the kind of system of power in Europe. At this point it should be borne in mind that the circumstances in which the present discussion is held seem to be qualitatively different from those when similar debates were launched into last time, that is at the time when the Treaty of Maastricht was being drawn up and then, ratified, at the turn of the 1990s. In that former case, the reluctantly used word "federalism" created a sharp division among political elites of the EU Member States. To the course of the then political dispute it was important that one of the parties to that dispute, Euro-sceptics, was well organised around the British Conservative Party which continued to run the government.

The qualitative difference between the present and the former discussions lies, among other things, in the fact that today the camp sceptical about integration has no distinct leader who would be strong institutionally. Maybe this is a result of the public opinion and politicians having got accustomed to the political stage of integration. Regardless of the causes of such state of affairs however, one should give attention to the fact that this allows the Convention and the later 2004 Intergovernmental Conference to design ambitious undertakings.

The other difference lies in the fact that earlier, the European Commission was much more active in proposing grand solutions. That was obviously a product of the experience the Commission gained in the years that preceded the breakthrough period of the years 1988—1991. Today, in the face of the strictly political aspect of integration, when questions pertaining directly to the nature of the exercise of power in the modern, interdependent world become important, the Commission obviously becomes less active. It is the Member States who are now cast in the role of the leader. As the experience gathered in the sphere of internal security (the relevant provisions of the 1997 Treaty of Amsterdam, conclusions of the European Council's Tampere meeting in 1999, the Charter of Fundamental Rights of the year 2000) and in the sphere of external security (the relevant provisions of the 1992 Treaty of Maastricht, alterations in the Treaty of Amsterdam instruments, and last but not least the relevant decisions of the 1999 Cologne European Council on the formation of rapid reaction force) teaches us, the process controlled by Member States does not have to be paralysed from the very nature of things.

EU Missions: the Union and the Member States

Pondering on the scale of the missions entrusted to the Union, we must answer the question whether we want them to be larger than today or whether their scale should remain unchanged. The answer to this question will depend on all parties to the Convention and on

the Intergovernmental Conference. To all intents and purposes, Europe ushered in the political stage of European integration at the beginning of the 1990s, when it established the European Union. That was a decade of trial and error. The migration pressure and instability in the Balkans put the relevant solutions of the Treaty of Maastricht to the test, and caused changes effected in subsequent years (the treaties of Amsterdam and Nice, and decisions of successive European Councils). The political *acquis* of the European Union has been evolving.

Thus, maybe the time has come to make sure if an agreement of all participants in the European integration to accept the EU's new mission is achievable. I think here of broadening the Union competencies in the field of defence and security. The Convention certainly is a good place where to carry out such test of what we want to achieve together. The present international context should activate our thinking towards a certain degree of communautarisation of the Common Foreign and Security Policy, making it more effective and efficient. As it was rightly pointed out by Alain Lamassoure, we cannot stay silent together on the international security matters.

Modern politics does not yield easily to a division between constitutive and executive levels: the centre and the Member States. What the European Union resolves, Member States, their regions and local governments carry into effect. The efficiency of the Union as a whole depends on the effectiveness and quality of implementation at the levels of states, regions and self-government bodies. Looking at things from the opposite side, decisions taken by some states autonomously often bear on the others, and thus can create the need for the centre to intervene. This way a distinct division of powers between the Member States and the Union can impede or even render impossible the activities of both.

The so-called framework directives, which settle for a flexible approach, constitute a certain idea showing a way out from this dilemma. The centre—assisted by all the Member States—devises a certain compromise way which should then be adopted by particular states who would give heed to their own specific needs. The experience of dealing with framework directives teaches us however that with time they go into details and leave the Member States with little room for manoeuvre. The tendency of the EU to overlegislate becomes visible and makes the Union distant from its citizens. Let flexibility and proportionality be the answer to dealing with competencies in most areas, while standing firm on exacting fundamental principles.

Setting of the EU's future goals and missions should result from a judicious assessment of the possibility to finance them. If we devise a bold plan for the Union in the following decades, but leave it short of funds, the Convention is bound to disappoint the hopes set on it.

One of the crucial tasks facing the Convention is to lay down the principles according to which the Convention should consider the question of the Union's powers. An attempt to answer the question whether decisions ensuing from the Member States' powers bear on other states or not, may prove helpful in the determination of the division of powers between the Union and the Member States. If they bear a strong influence (e.g. decisions concerning environment protection), then the competencies should be raised to the Union level. If they do not or they bear just a little influence, then the powers may remain at the level of the Member States. The question of subsidiarity should, in my opinion, be perceived in a creative and effective manner. MEP Hanja Maij-Weggen pointed out that it is better to have fewer, but well defined European policies, than to have more, but without a guarantee that they will be clear and executed in a proper way. Touching upon the fundamental question of subsidiarity, I

think it is indeed hard to contest the fact that subsidiarity should not lead to a dismantling of common policies. Neither should it form a recourse to the intergovernmental method. But are we really incapable to face the challenge of introducing and effectively implementing new policies where this seems to be needed?

There is no doubt that the areas of the intra-EU cooperation with a large degree of interaction embrace: external economic relations and the trade policy, regulations applying to the Single Market, environment protection, quality standards of goods, food safety, the monetary and asylum policies. The security and defence policy also belongs to this category.

The principles guiding the process of dividing powers between the Member States and the Union require clarity, subsidiarity, precedence of the EU missions in relation to its competencies and a financial guarantee for the performance of competencies.

Obviously, establishing the division of powers between the Member States and the Union depends mostly on determining which institution is responsible for solving possible disputes between different levels of power. If we use a EU phrase: which institution decides on the compliance with the principle of subsidiarity.

It would be a judicial institution, composed of judges (e.g. the Supreme Court of the United States or the German Constitutional Court) or a political one, composed of politicians (e.g. the French Constitutional Council or the British House of Lords). The nature of the European Union, a *sui generis* nascent political system, seems to justify the need for assigning this task to judges, i.e. to the European Court of Justice. Thereby, the distribution of powers in horizontal sense (between the institutions) becomes clearer and the entire institutional system is easier for citizens to understand.

Conferring such a competence to the European Court of Justice will certainly raise doubts about its insufficient legitimacy to solve political disputes, particularly those between the Member States and the Union. That question was raised by MEP Andrew Duff. Nevertheless, the experiences of operation of the Court, whose well-established position in the economic-based process of integration is evident, proved it is a sensible institution capable of playing a particularly important role at a new stage of integration when the maintenance of a balance between the Union and its Member State will be of utmost significance.

There are two arguments against establishing a political body based on the model of the French Constitutional Council or the British House of Lords. First, introduction of such a new body into already complex institutional system of the EU will require the development of a new decision-making process. This, naturally, will not contribute to a better understanding of the European Union by the citizens. Secondly, at the current stage of integration, characterised by a lack of full-fledged pan-European political parties, political nature of the EU institutions means an involvement of the representatives of the Member States in solving matters concerning the compliance with the principle of subsidiarity. Involvement of the Member States may, in turn, be effected on the basis of a mechanism for balancing influence of small and big states. Such a mechanism, however, as the negotiations on Nice Treaty in 2000 proved, is perhaps most difficult to apply.

The powers of EU Bodies

The question which institution should be responsible for solving the matters of compliance with the principle of subsidiarity leads us to the issue of powers of the EU bodies, i.e. a horizontal division of powers. The most important problem arising from this issue is that the European Union cannot be compared to any classical state political systems. In the case of the European Union, there is no single body responsible for legislation (the Council and Parliament operate in this field, but the Commission also has a lot to say in this respect), neither can we speak about a uniform executive authority nor a government (the Council and the Commission are important in this respect and, then, the executives of the Member States). The judicial branch in the EU, i.e. the European Court of Justice together with the judiciaries of the Member States, is evidently most uniform. Even in this respect separation of the branches of power is not complete, since the Commission is the first “instance” deciding on matters relating to competition. Moreover, in matters of alleged violation of the fundamental principles of the EU (Article 6.1 of the EU Treaty) by any Member State, the European Council decides first and, afterwards, the European Parliament expresses its opinion.

The lack of clearness in the distribution of powers between the EU institutions results from an evolutionary nature of the process of integration in which the founding fathers endeavoured to combine two types of legitimising the actions at UE-level: by the governments of the Member States (the Council) and by supranational institutions (the Commission and, later, Parliament). The actual debate focuses on defining the sources of legitimacy of today’s Union. Should we judge more legitimate the elections to the European Parliament, which afterwards appoints the executive? (then the Commission gains more legitimacy). Or should we perceive it to be more legitimate to vote at national level with the national parliament forming its government, that represents the country at the European level? The question that arises is whether at the current stage of integration process this situation may be cleared and a clear system with a distinct distribution of competence introduced? Such a system should, necessarily, bring the EU closer to federalist solutions. Such institutional “revolution” seems to be unnecessary at this moment. Instead of building a new institutional system from scratch, co-operation between the institutions should rather be improved and explained, and the improvement and explanation should be conducted in such a manner as to add a symbolic meaning to the entirety of the European Union.

The stage of political integration, that we have witnessed in more than ten years, was inevitably associated with the symbolic sphere of the exercise of power in the European Union. Therefore, during that period the significance of the European Council considerably increased. The European Council attracts much attention of the media and the general public. Its meetings arouse interest of political observers incomparable with the attention paid to the European Commission or the European Parliament by lobbyists and specialist journals.

The European Council meetings, and not those of the Parliament or the Commission, not to mention the Council of the European Union, become a magnet for protesters demonstrating in the streets. Indeed, the European Council, which holds its meetings in various European cities (and this tradition should be maintained), has become a chief “ruler” of the European Union. Today, we may suppose, as time passes, citizens will identify the exercise of power in the EU, with the heads of states and governments forming a body called the European Council.

For the purposes of deliberations of the Convention we should assume that it will be a long process and the time of its duration may exert a negative influence on the level of acceptance and awareness of the EU among citizens. Therefore, the idea to appoint a President, i.e. a

person to be identified with the European Union both inside the EU and in its relations with the outside world, would be worthy of consideration. If European integration was construed as a process of combining two ways of legitimisation: through the governments and nation states on the one hand, and through a direct reference to the will of the Europeans, expressed in elections to the European Parliament, on the other, such an approach would complement the currently predominant intergovernmental legitimisation expressed at meetings of the European Council. The President would also become a permanent chairperson during the meetings of the European Council.

Implications for Poland

In the recent years, striving to make its voice heard in the debates on changing the way in which the EU operates, Poland declared for a Union which is strong, effective and close to the citizen. The work of the Convention and the Intergovernmental Conference to be held in 2004, in which Polish representatives participate, gives us an opportunity to translate these general phrases into concrete proposals. The effectiveness of operation of the Union and bringing it closer to the citizen may be achieved by appropriate adaptation of its institutions to the assigned tasks. The symbolic meaning of organisation of the European political space in a manner comprehensible to the citizen should serve as a superior criterion of shaping relations between the states and the Union and its institutions. The setting up of the office of President, as a sign of supranational legitimisation of Union's actions, is one of the methods of strengthening the symbolic sphere of the EU.

A powerful Union, both economically and politically, undoubtedly lies in Poland's interest. We should aspire to membership in such a Union. In the future, when we make a detailed review of Union's powers, applying a criterion of consequences of actions taken by one state in a given sphere for other states (which justifies assigning competence to the Union) we should remember social and economic disparities existing between the EU Member States. This fact has particular significance for Poland in relation to the discussion on the future reform of the common agricultural policy. Obviously, one can imagine a situation where the Union ceases to subsidise CAP and subjects it to general rules concerning state aid. This means that, within the limits specified by the EU competition policy, states would be allowed to subsidise independently and separately their own agricultural sectors. It is obvious that, due to the social and political significance of the agricultural sector in our country and the relatively large underdevelopment of this sector compared to the present EU members, such solution should be considered in Poland with a particular caution.