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Vedr.: Bidrag fra Pervenche Berès, suppleant til konventet  
– Hvilken udøvende myndighed er der behov for i EU?

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Generalsekretæren for konventet har modtaget vedlagte bidrag fra Pervenche Berès, suppleant til konventet.

## WHAT KIND OF EXECUTIVE FOR EUROPE?

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*This contribution to the European Convention quotes an article from Pervenche Berès published in october 2002 in "Après-demain", journal of the French Human Rights League.*

### by Pervenche Berès

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The original, sui generis nature of the European Union's institutional system is confusing. To make it more intelligible, it is highly tempting to take advantage of the current reform to align it on our time-worn national configurations. This has prompted many to ask whether Europe needs a government or not. Because of the European Union's double legitimacy, of States and Peoples, the European legislative and executive are shared by three institutions (the European Parliament, Council and Commission), which often leads to an overlap, but never a merging, of powers. As a consequence, we hesitate to give a clear answer to the question of a European government, often preferring the term "governance" in order to avoid using too definite concepts. However, beyond convenient turns of phrase it is time to engage a fundamental reflection on the issues at stake and the manner in which we might resolve the question of the European executive and its presidency. This question will be at central to many of the debates initiated by the European Convention. Let us try to discern the traps and potential of these debates with a view to proposing a democratic, effective, transparent model, with one certainty: **the European Convention will be a success only if it offers a genuine alternative for the new Europe now forming. We should choose neither an intergovernmental approach, nor a strict community method, but move beyond this method to endow the Union with the government, the executive it needs.** At stake is the Union's capacity to decide, to act within and outside Europe, and to exercise leadership.

### I. What are the possibilities for a European executive?

The question of "who governs in the European Union" immediately comes up against the material difficulties linked to the running of the institutions and the nature of the European Union itself. The question is which political system for the new Europe will emerge from the proceedings of the European Convention, the follow-up Intergovernmental Conference and the reunification of Europe. The sovereignists dream of an alliance of States, but European integration has already overshoot this stage. Any step backwards would be irresponsible and, let us hope, impossible. Some idealists dream of a federal European State, but Europe will not be achieved by ignoring the member States, which remain the first level of identification and cohesion for the citizens of Europe. The Europe of tomorrow is midway between these extreme alternatives. The expression "European Union with federal competencies" has been used<sup>1</sup>. Together with the members of the group "For a new

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<sup>1</sup> By President Valéry Giscard d'Estaing, at the European Parliament's Committee on Constitutional Affairs, 10 October 2001.

*federalism*" that I coordinate, I think that the most appropriate and accurate denomination is **"Federation of States and Peoples"**, which refers explicitly to the Union's double legitimacy. Around this concept, we can build a Europe, not of variable geometry, but of variable competencies, including both exclusively federal and exclusively national competencies, but where **most competencies would be shared. Their distribution would not be determined by a catalogue, as some suggest it, but by the implementation of the principles of efficiency and proportionality or intensity. In this spirit, harmonisation or coordination, depending on whether we are in a legislative area or not, is necessary in matters with a cross-border dimension. Other matters come under mutual recognition, which can require common rules of procedure to establish the necessary trust**, as Commissioner Antonio Vitorino explained so clearly to the Convention<sup>1</sup>. Consequently, a European government does not imply a European State; it will only "determine and conduct" Europe's policy in areas where it's allowed to act. Where the three pillars of the Union were merged, the European government would act accordingly and proportionally to its assigned attributions to it. The stake is to assert the voice of a united Europe, both within Europe and internationally, through an identifiable common executive that, as it has always been done, intervenes whenever the defined objectives need to be implemented by common means. However, **because the European Union is not a State, the constitutional process cannot and must not be considered independently of the objectives that the Union sets itself. For this reason, the institutional question cannot be examined independently of the common policies that we wish to conduct. Within a State, where history has defined the elements of cohesion and borders, the institutional debate shall be *in abstracto*. This is not the case for the Union.**

## **II. Where shall we found the European executive ?**

Among the ideas circulating about a future European executive, there is one that I think can be ruled out for now. This is **the election by direct universal suffrage of the President of the Union**. At the current stage in the creation of the European public space, this proposal seems to me in the realm of non-creative utopia. Moreover, it has not been seriously proposed by anyone in the Convention. Rather, we should examine the possibilities for developing an executive from the Commission or the Council.

### **1.1. First hypothesis: the President of the Commission would become the President of the Union**

The intensification of the community method has encouraged some to propose that the President of the Commission would become the President of the Union, and that the Commission would become the government of the Union.

Under this hypothesis, the President of the Commission and the Commission would have the capacity to decide. Before the Nice European Council and the Nice Treaty, two scenarios for organising this capacity had been considered. The first consisted in limiting the number of commissioners within a **restricted Commission**. Before Nice, this proposal should or could have been the unshakeable basis for a Franco-German position. It was not. The outcome, anticipated by the Prodi Commission itself before Nice at the risk of self-mutilation, is that **each member State will have its commissioner. Nothing indicates that it will be possible in practice to change this rule once membership exceeds the current threshold of 27<sup>2</sup>. While it gives the impression of extending the essence of the Commission's composition, including giving up the rule of two commissioners for the "large" countries, in the reality of the new Europe the rule of one**

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<sup>1</sup> Speech at a plenary session of the European Convention, 24 May 2002.

<sup>2</sup> Article 4.2 of the Protocol on the Enlargement of the European Union, appended to the Treaty of Nice.

**commissioner per member State is a shift away from the "spirit" of the Commission and therefore of the community method.** In a Commission of 27 members thus appointed, we are highly likely to see a nationalisation of behaviour, and, as Chairman Valéry Giscard d'Estaing indicated at the outset of the Convention's proceedings, it will be impossible to hold votes in such a structure.

The other possible scenario was to **rank the posts of the commissioners**. This proposal also failed at Nice for practically the same reasons as the previous one, i.e. because the "small" countries fear losing "their commissioner" in such a structure. This fear is genuine and expressed even by founding countries with a strong community spirit such as Belgium. It is surprising when we consider that the fact that Luxembourg's Jacques Santer came from a "small" country did not prevent him from becoming President of the Commission, after the UK vetoed a national from another "small" country, Belgian Jean-Luc Dehaene. We could also cite Karel Van Miert, appointed to the post of Competition Commissioner. It is **incorrect to claim that representatives from small countries cannot hold key responsibilities in the Union**. Furthermore, all other things being equal, in the Union's most federal institution, the Executive Board of the ECB, not all the countries are represented and the current President comes from a "small" country. The reality is probably that **the balance between "small" and "large" countries is easier in a Union of 6 or 15 than it will be in an enlarged Europe**. After making the mistake of abandoning the idea of a restricted Commission before Nice, Romano Prodi recently expressed his support for the second scenario of a Commission where vice-presidents would be entrusted with the supervision of groups of competencies. This initiative made some representatives of "small" States regret working so hard to keep "their" commissioners. This gives an indication of the consensus that could emerge around this proposal. However, even if such a consensus were to emerge, we would have to check that **the Member States would agree to strengthen the powers of the future Commission in the areas where it is considered essential to develop integration and the Union's leadership capacity. The point of coordination between the objectives of the Union and its institutional organisation warrants needs to be discussed.**

One of the major stakes of the Convention is to go further than the current stage of a **Union constructed on pillars. This Byzantine architecture was invented in Maastricht because it was the only one that enabled the Member States to accept significant progress in the areas of common foreign and security policy, which became the second pillar, and justice and home affairs, which became the third pillar.** The immense majority of the conventioners will agree to progress, but there will be no agreement on radical communitarisation, and that is true for the three pillars.

In the first pillar, the community method has been effective in the areas of competition and common trade policy. It appears to meet with much greater resistance from the Member States when applied regarding regulation and solidarity issues in the single market. In order to make progress, this led to the invention of the "Open Coordination Method" (OCM) at the Lisbon European Council.

In the area of Economic and Monetary Union (EMU), Pierre Bérégovoy was the first to propose the creation of an economic government, concretised in the establishment of the Eurogroup. The expression was perhaps unfortunate because it suggested that a government could be in the hands of the finance ministers only and that economic objectives could be pursued separately from social objectives. In fact, it reflected an awareness of the need—in addition to that of having a counterweight to the ECB—for institutional mechanisms to coordinate economic policies, an area where strict application of the community method was not relevant. Today it is around the Eurogroup that the Member States of the euro area agree to strengthen the coordination of their economic policies and are making proposals to provide it with a more permanent presidency, including to represent the euro area internationally, and to endow it with the capacity to decide.

In the second pillar, the impossibility of strict application of the community method led to the appointment of Mr CFSP in addition to the External Relations Commissioner. This construction

allowed advances that have now reached their limit. It gives a confusing image of the Union on the international scene, it does not provide for a single European voice in international institutions like the United Nations, and means that the tools for attaining common foreign and security policy objectives are in the hands of, if not rival, then at least several actors. Last but not least, advances in the area of defence since the Maastricht Treaty have further increased the complexity of the mechanisms.

Lastly, in the area of justice and home affairs, the transition stage defined in Amsterdam will soon expire, but the question of the monopoly of initiative remains relevant, as does that of the capacity of the Union to conclude international agreements in these areas.

This brief overview highlights the **gap between the ambitious objectives and the complex mechanisms for circumventing the community method** that have been implemented over the years. It also forces us to conclude that even a reinforced Commission cannot be the government of the Union, for the simple reason that the Member States refuse to use the method that they accepted for competition in areas where integration must now progress. However, the Member States are aware of the limitations of the current system of pillars, and the Convention needs to propose a new stage.

But first, we should examine the proposals aimed at strengthening the Council.

### **Second hypothesis: the President of the Union would come from the Council**

At its conference on the future of Europe (7 and 8 November 2001), the French national assembly contributed the results of an online questionnaire answered by some 1,500 web-users<sup>1</sup>. Seventy-five percent of the online respondents were in favour of a European government. "Those in favour of the idea of a European government break down fairly evenly between the three options proposed: a Government derived from the European Commission (157 votes), from the Council of Ministers (159), or from the European Council (219)". These figures show that a majority of French online respondents support the idea of a government derived from one of the intergovernmental institutions.

This is also the approach of the representatives of the European Council, such as Jacques Chirac<sup>2</sup> and José-Maria Aznar<sup>3</sup>, the latter supported by Tony Blair (with sources close to Mr Blair has suggested that he might have a personal interest in the post of President). This approach is inspired partly by the proposals in the report by the European Council's Secretary-General Javier Solana on reforming the Council<sup>4</sup>, of which the Seville European Council adopted some elements of cosmetic reform.

At the Convention, a majority has not yet formed, even if its Chairman is both the founder of the European Council and owes the Council his appointment. There is also the uncertainty stemming from an awareness of **the inevitable reform of the Council, which would enable it to recover its guiding function**. Some conventioners are annoyed by the reforms proposed or initiated by the Council. This reproach seems to me groundless given that the reforms undertaken do not prevent the Convention from proposing innovative, comprehensive solutions. Even before the Treaty of Nice, the European Parliament was sufficiently worried about the Council's capacity to self-reform not to criticise it when it does, even if it is pushed in this direction by the existence of the Convention.

Apart from this external pressure, **the reform of the General Affairs Council has become inevitable with the development of the technical councils on one hand, and Ecofin and the European Council on the other, causing the General Affairs Council to lose its initial**

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<sup>1</sup> [Http://www.assemblee-nat.fr/europe/themes/questionnaire.asp](http://www.assemblee-nat.fr/europe/themes/questionnaire.asp)

<sup>2</sup> Speech of 6 March 2002, Strasbourg.

<sup>3</sup> Speech of 20 May 2002, Oxford.

<sup>4</sup> *Preparing the Council for Enlargement*, 7 March 2002.

### **coordination function.**

The Council also suffers from the **system of a rotating presidency** every six months, which means that:

- the agenda changes every half-year with no political continuity: yesterday combating terrorism, today enlargement;
- the system will be increasingly incompatible with community competencies that do not involve all the Member States. What is the visibility of a Union presidency currently exercised by Denmark, which is not a member of the euro and which has reservations about participating in the second and third pillars? Greece's presidency of the Eurogroup is exacerbating this Byzantine system;
- Member States will have an opportunity to exercise the presidency only once every 12 years.

The **operation of the troika**, which is supposed to compensate for the shortcomings of the system, has reached its limits, particularly with regard to foreign policy.

Lastly, as at the Commission, a debate has begun at the Council on **the problem of the increasing number of portfolios**. This led to the number of portfolios being limited to nine at the Seville European Council.

In this general context, we should analyse the so-called "Blair-Aznar" proposals to modify the current system of presidencies. Under these proposals, the President of the European Council would enjoy a five-year term. The President would be a person who must not occupy other political post in his/her own country, but who must have been a member of the European Council and who would be assisted by a team of five or six Heads of State and Government presiding over sector councils. With a minimum of intellectual honesty, we must recognise that these proposals seek to answer real questions. None of the points of the analysis can be contested and some aspects of the proposed solutions deserve to be adopted. **If the Heads of State and Government are prepared to recognise the need to end the system of rotating presidencies, to entrust the Presidency of the Union to someone who will exercise this function full-time and to restructure the competencies at the level of the Union, let us take them up on it.** It is our role to demonstrate to them and convince them that, in order to be viable and represent the common interest, the system must emanate from community legitimacy and **move beyond the community method towards a more governmental form.**

In my view, the consensus-building that will be the rule at the European Convention will not make it possible to decide this question in a binary manner. From now on, we must prepare to choose the best option among the possible compromises. Some might find this premature. I think a synthesis must be presented now. First, because it shows that there is a system that would allow for progress on content. Second, because it would enhance the credibility of the proposals of the European Parliament, thus increasing its legitimacy as a mature institutional actor that has moved beyond the stage of self-centred institutional battle.

### **III. Bringing the European executive into being**

The initial proposition presented below is based on the work of Jean-Louis Quermonne<sup>1</sup>. It extends the existing system by offering a way to "move beyond the community method" and by integrating many of the proposals that have been put on the table. Some may find it provocative because too audacious. I think it is one of the few ways forward if we still believe in European integration. If, contrary to what I hope, the time is not ripe for such a change, it will at least have the merit of being

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<sup>1</sup> *L'Europe en quête de légitimité*, Jean-Louis Quermonne, December 2001. See also the report of the group that he chaired for the French Planning Commission: *L'Union européenne en quête d'institutions légitimes et efficaces*, October 1999.

an intellectual contribution along the lines of my suggestion, prior to the Treaty of Amsterdam, to split the General Affairs Council in two, an idea now accepted by everyone and almost on the point of happening. **I therefore argue for a government “founded on a highly structured synergy between the Commission and the Council”.** It seems to me that whatever the outcome of the trial of strength between the two executive institutions, there is an appropriate solution to organise coordination between them.

If the European Convention wants to reconcile a capacity to advance with effectiveness and legitimacy, it should chose the option of **a common president of the Executive Council and the Commission, who would be the President of the Union.** To fulfil the requirements of democracy and the double legitimacy of the Union, the president could be elected via two alternative formulas relatively different in nature.

The first is based on the proposal of Notre Europe in 1999 aimed at **making the election of the President of the Commission a campaign issue for the political parties during the European elections.** This proposal has sometimes been interpreted in a way that betrays the intention of its authors, namely when it is considered as leading to the European Parliament appointing the President of the Commission. Jacques Delors recently had the opportunity to recall with force that this was not his proposal and that he was opposed to the election of the President of the Commission by the European Parliament, which would render the President hostage to the political group or groups that had elected him or her.<sup>1</sup> We must return to the original spirit of the proposal, with two additional suggestions. First, the President is appointed to exercise the twofold function of President of the Commission and of the Council in its executive capacity and is appointed together with the vice-presidents of the Commission. Second, **the appointment procedure must involve the European Council and the European Parliament in a bicameral mechanism, reflecting the double legitimacy of the Union, even if this means making the Commission doubly accountable, to both the European Parliament and the European Council.**

The second formula would be to call a **Congress or Conference**, which would be another way to show the double legitimacy by gathering representatives of the European Parliament and national parliaments shortly after the European elections. In my view, the disadvantage of this solution is that representatives are not the institution and that the members of the European Council may not agree to delegate their power of appointment to their national parliamentarians. It has the immense advantage of involving the national parliaments at a strong political moment in community life. **This congress, held once every five years, could also be an occasion to adopt an initial contract of legislature, which the President would be responsible for implementing, like all heads of democratic executives, and for which the Council and the European Parliament would receive a mandate as co-legislators. Subsequently, it could ratify changes to the distribution of competencies and amendments to the non-constitutional mechanisms of the Treaty.**

Under both scenarios, the change should be accompanied by **a change in the voting system for the European elections** so that it makes a genuine contribution to the expression of the Union's double legitimacy. **Ten percent of European parliamentarians should be elected from transnational lists and the remainder from regional lists. This reform would revitalise the European public space and lead to the dissolution of the Committee of the Regions.**

**The President of the Commission thus elected would have the necessary legitimacy to act as President of the Council (in its executive mode) in charge of its *general affairs* portfolio. At the same time, four or five vice-presidents, who would have the confidence of the European Council and would not hold any other political office, would be elected, for the same period or a half-term, to be in charge of the key areas of Union policy (economic and social affairs; freedom, security and justice; foreign affairs) and preside over the specialised portfolios of the**

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<sup>1</sup> Roundtable organised by the Institut Européen d'Études Stratégiques, Paris, 1 July 2002.

**Council.** This body, which would not be called board or praesidium, but government of the Union, would have the advantages of:

- clarifying the twofold nature of the Council, working with the Commission in its executive mode and with the European Parliament in its legislative mode;
- resolving the question of the rotating presidencies;
- taking account of the current discussions, both at the Council and the Commission, on the number of portfolios or groups of competencies;
- integrating byzantine constructions such as Mr CFSP and the Chairman of the Eurogroup into a single structure;
- drawing on the experience of the only area where the Community has a real capacity to make its voice heard on the international scene, namely common trade policy. When Pascal Lamy addresses the WTO he is entitled to do it because he is under a mandate from the Council, with which he negotiates and works constantly, with the support of the European Parliament.

The operation of this streamlined institutional triangle will guarantee the sustainability of the community method and the role of the Commission (in particular its capacity for initiative in all the pillars), while ensuring the continuity of the executive.

The presidency of the European Union is a material stake European democracy and its efficiency. It must provide for the existence and embodiment of political power at European level, contribute to the creation of a public space to deal with issues of common interest, and allow the appointment of a person to represent the Union internationally. The presidency is at the heart of all the institutional questions: the role of the European Council, the reform of the Council and Commission, the involvement of national parliaments, and the promotion of the European elections. It is therefore vital to give this question the attention it deserves. To do this, the supporters of the Council and the Commission will need to take a step towards each other. I hope I have contributed here to defining what might be this relevant area to find an agreement.

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