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**LARGE AND SMALL MEMBER STATES IN THE EUROPEAN UNION:
REINVENTING THE BALANCE**

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FOREWORD

Of all the divisions which cause disagreement between the member states of the enlarged European Union and make the work of those at the Convention even more difficult, the division which pits “small” against “big” member states was not the most anticipated. However, this division is turning into the “question of the Prince” which, as the authors so aptly point out, is traditionally the most controversial of any constitutional debate.

While Notre Europe felt some time ago that this subject deserved to be dealt with in a positive manner, we have left Paul Magnette and Kalypso Nicolaidis very little time in which to do this. Although I have for many years been aware of their respective talents, I could not help but be surprised by the clarity, vigour and pertinence of a study which they wrote in such a short time.

The original balance rests on three pillars: the weighting of votes in the Council, the federal role of the Commission and the equal rotation of the Presidency. Although this has been maintained up to now, this has been at the expense of growing tensions and a notable increase in the complexity of the mechanisms (Nice outlined 9 categories of State for the weighting of the votes). The historical background allows us to understand why the Presidium provoked such a heated debate with its direct attack on the rotating presidency following the “hegemonic” Franco-German compromise. And in this kind of matter, it is important to begin by understanding both sides.

I agree with the authors when they point out that the question of the balance between Member States of different weights applies in each European institution in its own specific way. It would be unwise to imagine that this can be solved by bartering different, opposing solutions for each institution. Nothing could be more dangerous for the future of the Union than letting each group of member states identify itself with *its* institution (a risk which has been recurrent in the history of the European Union).

It is in slight contradiction with this sound principle, but because it is the ‘hottest’ question, that the authors courageously present us with their solution to the quadrature of the rotating presidency. This consists mainly in making the distinction between the Presidency of the Union and the Presidency of the European Council and maintaining the equal rotation of presidencies above and below the European Council, which in these circumstances could have a longer term ‘chairman’. I will content myself with saying of this proposition, which in its detail takes up certain conclusions of other previous works of Notre Europe, that it is clever, without wishing to put my name to it. If it could contribute to moving the current lines of confrontation, it would be perfectly in line with the purpose of Notre Europe in assisting to find positive compromises.

Jacques Delors

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INTRODUCTION

How should EU citizens be governed? To what extent should a new Constitution for the EU revisit the roles, composition and modes of designation of the various centers of power in Brussels? And how can it do so without upsetting the much lauded institutional balance in the Union? More than one year after the beginning of its works, and less than two months before the deadline fixed by the European Council, the Convention on the future of Europe has finally opened the debate on the institutions of the EU.

It may seem paradoxical to have waited for so long to open up this crucial question, which is the core of the Convention's mission. Indeed, as it progressively became clear that its members were writing something like a constitution, delegates have tiptoed around the issue of institutions, sometimes daring to dip more deeply as during the January plenary in response to the initial publication of the Franco-German proposal. But the lines were finally formally drawn when Former French President and chairman of the Convention Valéry Giscard d'Estaing presented his personal views to the press two days before the plenary session of April 24, 2003. In justifying the setting aside of the more consensual approach to making proposals adopted until then and in defending a proposal that would undoubtedly be opposed by a majority of convention delegates as well as member states President Giscard has not tired of reminding his interlocutors that his views reflect that of the five biggest EU member states and "therefore of 70% of the population." How better to make clear that the institutional debate pits big vs small member state more starkly and explicitly than ever before in the history of EU grand bargains?

The two camps have expressed their views almost since the beginning of the Convention. Leaders of the largest member states have long defended the idea of a permanent President of the European Council – a suggestion originally known as the ABC proposal for “Aznar, Blair and Chirac” but then integrated in the Franco-German proposal. Leaders of the Benelux countries have taken the lead of other medium-sized and smaller countries to represent a group at the Convention ranging from 16 to 19 member states strongly opposed to the whole idea. The “question of the Prince” has historically been the most contested aspect of any constitutional debate, and this Convention is no exception.

In short, these discussions have revealed the permanence of two major dividing lines in EU institutional debates, each of which reflects the old quarrel between large and smaller member states.

On the one hand, there is the temptation to strengthen either intergovernmentalism or supranationalism in the functioning of the Union. To be sure, we have witnessed a quasi-consensus inside and outside the Convention for preserving the Community method, the synthesis of these two dimensions. The leitmotiv of a vast majority of the Conventionnels is that the three poles of the institutional triangle (Commission, Council, EP) should be strengthened simultaneously. Nevertheless and implicitly, most members tend to support one pole more than the others. Specifically, as reflected in the ABC proposal, big states tend to favor the Council where they can more easily wield their power. By contrast, small states tend to champion the Commission as the guardian of the “common interest” and thus of the weaker and minority players in the game. But there is not a direct mapping. Germany for instance has long been a champion of the Commission; and Denmark is no supranationalist.

On the other hand, and more directly reflecting the big state vs small state split is the tension between the principle of equality between member states and democratic representation. Here again, the Community method has sought from the beginning to balance these two principles. But the Convention has had to ask more explicitly than ever before: at what cost and in what ways should equality between states be preserved in the running of the Union? This question underlines reform of all the institutions, from the composition of the Commission and the parliament to voting method in the Council and of course, to the question of the presidency of the European Council.

Can we say that there is really a “small country camp”? The heterogeneity of the group of smaller states is very deep, and they have never formed a stable coalition. The Irish Minister for Foreign Affairs, Brian Cowen, made this point very clearly when he said, in January 2003 : “We have affinities with countries like Sweden and Finland on security and defense. Our views on the Commission coincide with that of Benelux. We cooperate with the UK on taxation and with France on agriculture”¹. Each of the other smaller member states could have stated its own affinities electives, a fact reflected in the fluidity of intergovernmental negotiation in the EU. On substantive issue areas, one cannot find any systematic convergence of interests between small and medium countries. But as soon as institutional matters are on the table, the smaller member states tend to unite.

In this paper, we first review how this opposition based on the size of the countries has become ever more sensitive in the last ten years. The successive enlargements have made more acute a conflict of interest which had been present since the origins, and created the need to reinvent the original balance. We then analyze the current proposals made to reform the institutions of the Union, focusing in particular on the presidency and emphasizing how country size underpins these debates. In a third and last part, we suggest a compromise between the two dominant views, which we believe is not just a “cut and paste” but a real synthesis, and which could reinvent rather than replace the original balance of the Community model.

¹ Quoted in *Le Monde*, 04 April 2003.

I - A MATTER OF SIZE: SMALL AND LARGE MEMBER STATES IN THE INSTITUTIONAL BALANCE OF THE EU

There is no formal definition of small vs big in the Union; some prefer to talk about “small and medium”, or “smaller”; but it is clear that a member state with less than forty million inhabitants is not a big state.

The import of the size factor in EU politics is not new. As President Giscard noted in his introduction to the plenary session of April 24, the largest and the smallest member states in today’s Union were already part of the six Founders (although Benelux was created at the time in part to partially transform the three small founding states into a bigger one...). Moreover, the tensions between most and least populated states is a feature of any federal Union, and was one of the most sensitive conflicts of the Philadelphia Convention two centuries ago. But over time, the dynamic of enlargement has exacerbated these tensions in the EU, and has called for a revision of the mechanisms initially designed to cope with such diversity.

1.1. The original balance

The EC was founded on two contradictory impulses. On one hand, the six founding states came together to alleviate the temptations of hegemony on the part of any of the continent’s big state over the rest of the continent. In the new Europe, size should no longer equal might. On the other hand, one of the most fundamental ways in which the EC diverged from the outset from common standards of international law and institutions was in denying the full import of sovereignty and therefore of sovereign equality between states. The *de facto* reality was that small states would benefit disproportionately from the pooling of sovereignty, both as a way of managing interdependence on a small and dense continent and as a means of recovering sovereignty on the international scene.² Thus, a way had to be found to express

² See, *inter alia*, Max Kohnstamm and Guillaume Durand, “Common nonsense-Defusing the escalating ‘Big vs Small’ row” Brussels: European Policy Center, May 2003.

both of these sets of beliefs and combine the precept of international law and constitutional law into a new kind of governance system.

In the initial pact, the Paris treaty of 1951, three complementary constitutional mechanisms were designed to guarantee a fair balance between the three large and the three smaller states.

A system of weighed votes in the EC's major decision-making institution, the Council of Ministers

Although until the eighteenth century most federations and confederal Unions usually granted equal rights to the member states irrespective of their size, contemporary constitutionalism tends to accept asymmetries, thus balancing the principles of equality and democracy, as well as considerations of efficiency. Sophisticated systems of weighing votes, along with multiple representation, try to offer a degree of guarantee for the interests of the smallest states while giving the largest states a greater say in the decision. In the original negotiations, so-called objective criteria for size (such as GDP, budgetary contributions or population) were rejected because of their contingent character and in order to express the political character of the enterprise.

The EC's initial system of qualified majority voting (though rarely used until the end of the 1970s, given the importance of unanimity and the Luxembourg compromise) is a perfect illustration of this logic of "regressive proportionality" –a midway house between the principles of one-country-one vote and one-citizens-one vote reflecting the twin sources of legitimacy of the Union – This logic, incidentally, meant creating a category of "medium" states in between big and small. The three large member states were given four votes, Belgium and the Netherlands 2 votes, and Luxembourg 1 vote. In this system, although still over-represented, the largest states were 25 times "less represented" than the smallest one.

The key consideration in the negotiations was of course to agree on who should be able to form a blocking minority. Negotiators ended up agreeing that a decision could not be adopted against the will of two large states, or of one large and one medium state (Belgium and the Netherlands) but that the association of one large state and the one small state, Luxembourg,

should not be enough to block³. The qualified majority represented about 70% of the population. No state could, by his own, veto a decision under this rule.

The independence of supranational institutions

Supranational law and institutions are supposed to disproportionately serve weaker actors. Yet, the creation of a supranational High Authority, nominated by the governments but which was granted autonomous powers and guarantees of independence, was initially supported by France, and feared by the Benelux countries. Because they thought such an organ might be a Trojan Horse for France's interests, or the umbrella for a Franco-German *directoire*, the small countries required and obtained the creation of a Council of Ministers where they would be equally represented, and even, initially, have a veto.

History has reversed these original positions. Over time, the smaller member states have come to see the Commission as the best institutional protection of their interests, with its propensity to use the monopoly of initiative to fulfill its mission as guardian of the treaty and counterbalance the big states. As the Commission generally proved to be truly independent and driven by European interests, the Benelux countries became its most loyal supporters. So did the other small and medium countries who came to join the Union.

The composition of the Commission also explains in part its continued support by the small countries. Each member state sends at least one of its nationals to the college of Commissioners. While this person is not supposed to represent his or her government formally, "their" Commissioner often become the ears and voice of a country in the EU executive thus underpinning their trust and feeling of ownership towards the Commission. To be sure, there is a strongly degressive rule of proportionality in the Commission since the five largest states nominate two commissioners each instead of one for other members. But this asymmetry has not tipped the balance of support⁴.

³ Frédéric Bobay, "émergence d'un nouvel équilibre européen à Nice : Analyse de la réforme du Conseil de l'Union européenne à partir de la théorie des jeux", Association française de sciences économiques, 50ème Congrès, September 2001.

⁴ It is also worth recalling that the European Court of Justice by establishing early on the principles of supremacy and direct effect of Community law gave itself the power to deliver judgments countering the position of big member states. While there is a lively academic debate as to the extent to which the Court actually countered the interests of the most powerful players in the EU, there is little doubt that small countries have benefited from its case laws.

Avoidance of a permanent presidency

At the creation, small countries also feared that if they gave the EC a single figurehead at the top, this person would unavoidably be in the sway of the big and powerful. Thankfully, such a fear chimed with that of big country heads of state and government who wanted to avoid the emergence of an autonomous leader that could have undermined their own prestige. There was also widely shared agreement that a permanent presidency would risk generating rivalry with the young Commission.

Thus the original model established a system of equal rotation among the governments of the member states to chair the different formation of the Council of ministers, thus symbolically reflecting the equality between the Six member states. In a Community of six, each government could chair the Council (and later on the Coreper and the European Council) for a half-year every three years. With time and enlargement the gap between presidency is now of seven and a half years, but the basic philosophy of rotation has stayed the same.

These three elements formed a coherent institutional balance. The subtle system of weighing votes and seats – also applied to the Assembly (which became the European Parliament), the Court and the consultative bodies – created a balanced system of regressive proportionality combining elements of intergovernmentalism and supranationalism. As the same time, the rotating presidency of the Council was the only institution where equality between states was applied in its pure form. On the whole, it was accepted both by large and small states.

1.2. The exacerbation of the tensions

Such a consensus did not last. The “matter of size“ became more obvious in the 1970s and 1980s, under the twin effects of the extension of QMV on one hand, which made the weighing system more important, and of the successive enlargements on the other hand, which complicated the logic of regressive proportionality.

The first enlargement of 1973 called for a revision of the initial compromise, first of all by revisiting the original system of weighing votes. As Denmark and Ireland were somewhat smaller than Belgium and the Netherlands – and as it was implicitly admitted that the

founding states could preserve a certain privilege – a fourth category of states was introduced: the UK was given the same number of votes as the three large founding states, but Denmark and Ireland were given a slightly smaller weight than Belgium and the Netherlands. The four big states now had 10 votes each, Belgium and the Netherlands 5 votes, Denmark and Ireland 3 votes and the Luxembourg 2 votes. The threshold was now 42 votes out of a total of 58. In practice, this preserved the original logic of a “blocking minority” of two large or one large and two smaller states. The successive enlargements followed the same logic: in 1981, Greece was given the same weight as Belgium and the Netherlands, as well as Portugal in 1987; Spain was defined as a quasi-large state, with 8 votes (a bargain it latter came to resent). In 1995, the system had to be adapted again: Finland was given the same weight as Denmark and Ireland, while a sixth category was created for Sweden and Austria, which received 4 votes. Since then, a qualified majority requires 62 out of 87 votes; the blocking minority has become more complex, as it now requires the coalition of at least two large and two small states, one large and four small, or at least six small states. But the relative scale of representation – with a factor of one to five between the smallest and biggest state – remained unchanged until 2000.

1.3. Dealing with “the great enlargement” and the Lilliput syndrome

The end of the Cold War opened the door to the biggest enlargement in the history of the European Union, a prospect applauded and called for almost unanimously. But the prospect of enlargement to East and Central Europe which was to bring membership from 15 to 27 and eventually more was bound to exaggerate the tensions between the two principles of proportional representation and equality between states. Unsurprisingly, the big countries increasingly fell prey to what some referred to as the “Lilliput syndrome,” picturing themselves as the giants potentially held back by a crowd of mini countries. Clearly, weighted votes under-represent big countries relative to their weight in terms of population; thus past enlargement to small and medium size countries had already led mechanically as it were to a progressive “representational deficit” of big countries as a group in the Union. This effect would affect not only the political balance between big and small countries in the Union but also the democratic legitimacy of decisions taken in the Union. An implicit axiom of the original bargain was that decisions in the Council ought to be taken by a large majority of the EU population. But the minimal population for a QMV vote went from 68% with 6 members

to 58% with 15 and a project 50% in a Union enlarged to 27. Any further enlargement would bring this figure below the 50% threshold if the current method of calculating QMV was retained.

Put even more simply, this trend clearly challenged the relative transparency of the initial bargain as approximately half way between the one-state and one-person voting principles⁵. Even small countries recognized that this situation could not be dealt with effectively through the incremental logic of adjustment followed until then. But in assessing potential changes, they sought to preserve the “spirit of equality” embodied in the initial treaties.

The 1996 Amsterdam Treaty negotiations tried but failed to square this circle. The deal prepared at Amsterdam sought to establish a tradeoff between the reform of the voting system in the Council (granting more weight to big states) and Commission reform in favor of small states (one Commissioner by state). But the zero sum character of voting right reform combined with idiosyncratic demands of individual member states (like Spain) made reaching agreement impossible. Nevertheless, the basic outlines of a deal between the two dimensions was spelled out in the closing hours of the summit⁶.

The Nice Summit which followed in 2001 thus became the most exacerbated stage of this ever complex adaptation of the initial model. Although the candidate countries were not present, their interests were “represented” by some of member states. Leaders did in the end craft a package deal (to be applied as of January 2005) but the negotiations left a bitter taste.

On the question of voting, Nice changed three parameters: the revision of weights; the majority threshold (brought up from 71 to 74%); and the adoption of additional voting criteria. Above all, this was the first instance of revision of the relative weight of member states since the Treaty of Rome. Most candidate countries could be associated with existing groups of states, and be given the same number of votes: the Czech Republic and Hungary were equated with Belgium, Portugal and Greece; Bulgaria with Sweden and Austria; the

⁵ Frederic Bobay, “*op.cit.*” In his paper, Bobay presents an enlightening graphic representation of this evolving balance over time.

⁶ For details see Andrews Moravcsik and Kalypso Nicolaïdis “Explaining the Treaty of Amsterdam: Interests, Influence and Institutions”, *Journal of Common Market Studies*, Vol. 37, n1, March 1999, pp. 59-85; and Andrew Moravcsik and Kalypso Nicolaïdis “Federal Ideals vs Constitutional Realities in the Amsterdam Treaty”, Keynot article, *Journal of Common Market Studies*, Vol.36, Annual Review, pp.13-38, October 1998.

three Baltic states and Cyprus with Luxembourg. And France strongly refused the claims of a unified Germany, now much larger than the other big states, and preserved a unique category for the big ones, in the name of the solidarity between the Founding states. But Belgium did not manage to convince its Dutch partner to follow the same reasoning, and new categories were created for medium (Romania) or very small (Malta) states. There are now nine different categories of states in the weighing system of the qualified majority (regrouped below into three). In a nutshell, the Nice bargain achieved two results: the emergence of Spain and Poland almost on a par with the other 4 big states; the maintenance of the relative weights of the 6 big states, with the biggest states commanding ten times rather than the current five times more votes than the smallest ones. Overall, the Nice reforms actually over-compensates for the effects of enlargement to small states by bringing the system closer to the principle of one person one vote than in the original 1958 bargain.

Category	States	Number of votes	Nice
Big	FRG, UK, France, Italy	10	29
	Spain, <i>Poland</i>	8	27
Medium	Romania		14
	Netherlands	5	13
	Belgium, Portugal, Greece, <i>Czech Republic, Hungary</i>	5	12
	Sweden, Austria, <i>Bulgaria</i>	4	10
Small	Denmark, Finland, Ireland, <i>Slovakia, Lithuania</i>	3	7
	Luxemburg, <i>Latvia, Estonia, Slovenia, Cyprus</i>	2	4
	Malta		3
total		87	345

In addition to a re-weighting for QMV, Nice introduced two additional voting criteria: a simple majority of member states and 62% of population. Contrary to widespread belief the addition of these two criteria did not affect the relative weight of the different member states, coming in addition as they did to the QMV criterion.⁷ Calculations would of course be different if these two criteria were adopted on their own, instead of QMV, as many states suggested in Amsterdam and as discussed again later in the Convention.

The “question of size” has also affected the composition of the other institutions. The attribution of seats in the EP is even more proportional and therefore biased against small states, than in the Council. Germany has 12 more seats than the four other big states under the present system, thus breaking the tabou of institutional equality between France and Germany. The small states are three or four times less represented in the EP than the big ones, while they have nearly half of the large states’ weight in the Council⁸.

The Nice treaty also tried to cope with the question of the Commission’s composition. The application of the initial implicit rule (2 commissioners for a big state, 1 for a smaller one) has more than doubled the size of the college since 1973. While publicly defending the impartiality of the Commission, the smaller states have always refused to abandon their seat, and the largest one have been very reluctant to give up their second commissioner. At Nice, they reached a gradual compromise based on sequencing: they decided that, “When the Union consists of 27 Member States (...) the number of Members of the Commission shall be less than the number of Member States. The Members of the Commission shall be chosen according to a rotation system based on the principle of equality, the implementing arrangements for which shall be adopted by the Council, acting unanimously.” The compromise thus remained rather vague and open, since it required a new decision of the Council to be implemented.

In short, the Nice treaty was the apotheosis of a long lasting latent debate on the respective influence of more and less populated countries in the EU, which focused on the system of qualified majority in the Council and the composition of the Commission. While a deal was reached, all parties seem to walk out unsatisfied. A clause was added in the final provision of

⁷ Frederic Bobay, *op cit.*

⁸ Moreover, in order to limit the growth of the assembly, due to the adaptation of the attribution of seats after the next enlargement, the treaty of Nice has fixed a maximum number of 700 MEPs.

the Treaty calling for addressing other institutional issues. The Laeken Summit in December 2001 called for the convening of a Convention with an even broader mandate including the issue of competences and the role of national parliaments. But in spite of its deliberative spirit and its considerable investment in time and debate, the Convention has not so far narrowed the divide between large and small states. On the contrary, it has made it wider and more visible than ever before in the Union's history.

II - THE DEBATE WITHIN (AND AROUND) THE CONVENTION

As we discussed, two of the initial sets institutional issues that have traditionally divided big and smaller countries were revisited over the years: the voting system in the Council and the composition and the relative power of the Commission. Other issues were added over time such as representation in the European parliament. The most striking feature of this Convention has been to re-introduce in this complicated equation the one issue that had been left untouched in the original bargain: the presidency of the Council. While this is far from the only issue dividing big and small state, it has now become the focal point of their conflict.

Perhaps daunted by its highly divisive nature, the Convention has long delayed discussion of actual and concrete text on the Union's institutional order. Outside the plenary sessions, however, most governments have long made their positions known. We identify three phases in this story: positioning, hegemonic compromise and the search for a synthesis.

First, as one can expect in any big negotiation of this kind, different sides announced their "preferred position" during the spring and fall of 2002. Three of the largest states (France, Britain and Spain, erratically joined by a more divided Italy) came out together in support of the idea of creating a permanent Presidency of the European Council with extensive powers – an idea first floated by Tony Blair before the beginning of the Convention. This generated the sharp criticisms of the smaller countries who had started to coordinate early on as "the friends of the Community method". They supported the Benelux's counterproposal in December 2002 (see below for details).

The second phase was dominated by the kind of hegemonic compromise that have characterized Union politics since its inception: the "Franco-German compromise" put forward by the two countries on the occasion of the 40th anniversary of their bilateral treaty in January 2003 and discussed within and around the Convention, though it was not formally put on its agenda ; the proposal generated widespread opposition within the Convention but at the same time immediately became a focal point for subsequent debates. This phase was capped in April 2003, by the negotiations leading up to the formal proposals by the Convention Praesidium of its draft articles for title V on the Union's institutions. In a clever bargaining

tactic, President Giscard leaked to the press of his own views on the matter a couple of days earlier, which then made the Praesidium proposals appear like a more reasonable compromise – even though they looked conspicuously like the Franco-German one, previously considered as unacceptable by a broad majority. At that point, the criticism of the small countries turned into an open revolt, as much against the process followed as against the substance of the proposals.

We have now entered a third phase, that is the search for a synthesis inside the Convention, starting with the amendments and the plenary of May 15-16.

Through these three phases, the core debate has progressively shifted from *for or against* a permanent presidency of the Council to the conditions under which such a permanent presidency would be acceptable – although officially many countries are still only putting forth their opposition. Germany was the first to undergo this conversion. But what has made the end game of the Convention most challenging is that a relative consensus has emerged (albeit variants are still contested) on most of the core institutional issues – from the mode of designation of the Commission president, the creation of a European Minister for foreign affairs, the extension of QMV and co-decision. This makes agreement through linkages between institutional issues harder to envisage.

Moreover, there are no significant linkages that could be made with other, non institutional issues. Indeed, a month before its final deadline, the *acquis* of the Convention in terms of simplification is indisputable (merging and reorganisation of the treaties, suppression of the pillars, clarification of the delineation of competencies, simplification of the norms and procedures, incorporation of the charter...). In some way, retroactively as it were, we can read the story that has unfolded over the last year as an exploration of the following question: what concessions can the big countries be persuaded to make in exchange for the further reassertion of their prominence through the establishment of a European Council chair?

2.1. Positional bargaining: Permanent Presidency (ABC) vs. Improved status quo (Benelux and the smaller countries)

Prime Minister Jose Aznar and Blair together with French President Chirac were the first to officially advocate the election of a full-time President of the European Council, chosen from among former heads of government for a period of up to 5 years (both Mr Blair and Spanish Prime Minister Jose Maria Aznar have been tipped as possible candidates for the job, although both of them have denied interest in the position). The proclaimed rationale for a permanent president was threefold: to enhance the effectiveness of the Council's work by having a full time person in charge of managing it, to ensure greater continuity in terms of priority and long term planning, and to give a more permanent face to the EU in the rest of the world. Yet progress in and outside the Convention addressed the last two issues through the setting up of pluri-annual programmes and the creation of a foreign affairs minister. The first rationale however remains paramount.

It is important to note that the issue of presidency of the European Council was framed as of that moment as that of "Presidency of the Union", both by politicians and more generally by the media. The ambiguous semantics is not inconsequential. It conveys both the intent of the promoters and the fears of the opponents of the proposal. For the promoter, this new president of the European Council should indeed come to be seen as the president of the Union as a whole reflecting the role of the revamped European Council as the superior authority in the Union, directing and overseeing the work of other institutions. For opponents, this is exactly the outcome to be avoided: the concentration of power in a single individual leading the EU in the name of the most powerful heads of state in the EU.

This basic reaction informed t another coalition which had formed early on in the Convention: the self-styled "friends of the Community method" which first met in April 2002. This group comprised representatives of the countries later referred to as the group of small and medium countries and met regularly to flesh out a common position across issues. Some joked that they constituted the open conspiracy in the Convention, devoted as they were to upholding most of the status quo. Overtime, the group comprised between 16 and 19 countries, with the

Benelux in and out of the coalition.⁹ The group broadly supported the Benelux countries when they presented their counterproposal in December 2002. In a brief memorandum, the three countries outlined their priorities:

- (i) strengthening and expanding the scope of the Community method in the legislative fields (which meant generalizing the monopoly of initiative by the Commission, co-decision with the European parliament and QMV in the Council) ;
- (ii) enhancing the legitimacy of the Commission through the election of its president by the EP by a three-fifth majority (to try to avoid simply majority endorsement), and the confirmation of this election by the Council by qualified majority ;
- (iii) strengthening the executive role of the Commission, both in terms of adopting regulatory measures and of monitoring the coordination of economic policies ;

On the defensive, they also drew their lines in the sand:

- (i) the composition of the Commission had to follow the Nice decision, which meant that if its size were to be reduced, the new rules had to guarantee “the equality of all member states in both its operation as its composition, based on the principle of equal rotation” ;
- (ii) the Council presidency could be reformed, if the new rules were to “safeguard the principle of equal treatment of all member states, just as the balance between the institutions of the Union” ; in their view, “the proposal of a President of the European Council, appointed outside the circle of its members,

⁹ In its fullest configuration, the group included all member states and candidate countries except the six big states, Romania and Greece –the latter became an observer when it took on the EU presidency. The three Benelux countries however played an ambivalent role in this dynamic, sometimes posing as the leaders of this group when putting forth their early proposal, sometimes following a more autonomous line in order to position themselves as a mediating force in the Convention. This two-fold strategy may reflect their dual identity, on one hand as the traditional promoters of small countries interests since the creation of the EC, on the other hand “the Benelux”, an almost-big-country, a founding member with a greater claim to leadership than all the small newcomers.

does not come up to these conditions” ; this implied that “The Benelux will in any case never accept a President elected outside Council”.

Instead, the Benelux suggested another approach to enhancing the effectiveness of the Council through a clearer distinction between the executive and legislative functions of the Council. Executive functions should be, chaired by the Commission while rotation would be maintained “on the level of the European Council and specialised councils” in other words for legislative councils.

In this, the Benelux, and other small countries after them, defend the two basic principles laid out at the beginning of this paper. On the one hand, the role of the supranational bodies, specifically the EP-Commission pair; on the other hand, “equality of the member states”. While the latter’s import is self-evident, why should small countries continue to defend supranational institutions where representation is moving away from the equality principle? Since small states are better represented in the Council than in the EP, or even in the Commission below the level of the Commissioners themselves (whether the College will also move away from equal representation remains to be seen), a purely “realist” approach would suggest that they should defend the Council – as they actually did in the foundational period.

However, two trends in EU decision-making patterns have upset this logic. First, the rule of collegiality within the Commission prevents the commissioners from systematically defending their member state’s interest; the Commission is therefore seen as a guarantee of the “general interest” against the weight of the large states. Its monopoly of initiative counterbalances the fact that the Commission has always included one member for each state is not merely understood in terms of representation, but as a guarantee that the peculiar situation of the small states can be understood in the college. The Irish Minister for foreign affairs explains that if “the Irish public has a strong sense of the importance of the Commission as a guarantor of fair play and of the common interest” it is not “that commissioners act as national representatives, but that there is around the table a fair appreciation of the concerns of individual member states”¹⁰. For smaller states, who always fear that their colleagues from the large states are unaware of their peculiarities, this is a particularly important aspect. Second, empirical studies show that it is difficult for the small

¹⁰ Brian Cowen, Irish Minister for foreign affairs, Speech at the European Policy Centre, Brussels, 3 April 2003.

states to use their formal power of veto within the Council. And under QMV, it is usually understood that big states retain an informal veto – but certainly not small states. In a more fluid EP, where they can form ad hoc coalitions within transnational political groups, smaller state representatives tend to promote their interest better than in a rigid intergovernmental Council. Beside their “idealistic” defense of the Community model, a realist cost-benefit calculation explains their position.

2.2. The hegemonic compromise: The Franco-German “dual presidency”

In an attempt to bridge this divide over institutions while reasserting their own joint leadership, Schroeder and Chirac agreed, on January 15, 2003, a “common contribution to the Convention” on the institutional architecture of the EU. The contribution included the controversial creation of what became referred to as a dual EU Presidency with a permanent European Council President and an elected Commission President:

- **European Council President:** A five-year chair for the European Council elected by qualified majority (initially for 2 ½ years, but with the possibility of reelection) by its members tasked with: the preparation and chairmanship of European Council meetings; safeguarding effective implementation of Council decisions; and representing the EU on the international stage.
- **Commission President:** The direct election (by qualified majority) of the Commission President by the MEPs who subsequently selects his team of Commissioners (confirmed by the European Council).

Other key institutional features included:

- **Council of Ministers:** Split chairmanship. The Council of Ministers would have several chairs depending on the area under consideration: 1) the General Secretary of the Council of Ministers would chair general affairs; 2) a European Foreign Minister would chair meetings on foreign relations; 3) Ecofin, the Euro group and the Council on Justice and Home Affairs appoint their chair for two years from amongst themselves; 4) a rotation principle would be guarded for all other Council formations.

- **European Foreign Minister:** He/She would be responsible for the common foreign and security policy (as well as defense matters) and have rights of initiative in this area. He/She would be elected by qualified majority by the European Council and be a member of the Commission. He/She would be supported by a European Diplomatic Service.

The French-German Plan was discussed at the Convention's Plenary session on January 20 and 21, 2003 which was to be a preliminary exploration of institutional questions. Valéry Giscard d'Estaing reacted favourably calling it "a positive proposal [that is] going in the right direction [...] guaranteeing the stability of EU institutions".¹¹ Most Conventioneers did not share his enthusiasm, regretting a state of affairs where "positions are adopted in advance"¹² and the transformation of the Convention into an intergovernmental conference.¹³ One delegate talked about a "cut and paste" compromise putting divergent views side by side without reconciling them¹⁴.

At plenary, one convention member announced for the record that 64 speakers had spoken against the dual-Presidency plans, 11 in favor and 15 had remained neutral.¹⁵ Representatives of smaller EU member states in particular (such as Belgium, Greece, Ireland, Finland, Austria, Netherlands, and Portugal) were strongly critical.¹⁶ In addition, politicians from the

¹¹ See BBC News, 16.1.2003 and 20.1.2003.

¹² EU Observer, 21.1.2003.

¹³ EU Observer, 15.1.2003.

¹⁴ Cited from liberal Democrat British MEP Andrew Duff. Alain Lamassource, a French MEP and convention member commented that Paris and Berlin "want to give the impression of acting together but it is just for show."

¹⁵ Hanja Maij-Wegen – Dutch Christian Democrat MEP, cited in EU Observer 21.1.2003. Giovanni Grevi, of the European Policy Centre, counted 55 speakers against, 18 in favor, and 15 somewhat against. (see "Gloves off: the going gets tough in the Convention", Giovanni Grevi, EPC, 22.1.2003). While the precise numbers do not matter, the proportion against the appointment of a President of the European Council at that point was roughly 3:1.

¹⁶ At Ireland's pre-convention meeting of the smaller countries, the reactions to the double presidency were reported to vary between complete hostility to a definite lack of enthusiasm. See Irish Examiner, 21.1.2003. A Benelux position issued on the same day confirms and summarises these criticisms: "En ce qui concerne le Conseil européen, le Benelux demeure favorable au maintien de la rotation au niveau du Conseil européen et aussi pour les Conseils spécialisés. Il réitère son opposition au principe d'une présidence élue, à temps plein et en dehors du Conseil européen, qui risque de modifier l'équilibre institutionnel, surtout au détriment de la Commission et de provoquer par conséquent une confusion de compétences ainsi qu'une situation de rivalité entre institutions. Le Benelux estime qu'un acteur européen supplémentaire sur la scène internationale est susceptible d'apporter la confusion dans la représentation de l'UE dans les différentes enceintes internationales". *Prise de position des Premiers et des Ministres des Affaires étrangères du Benelux suite à la Contribution franco-allemande à la Convention*, Brussels, 21 January 2003.

10 Central and Eastern European countries, as well as national parliaments, the European Commission and the European Parliament expressed scepticism on several grounds:

- **Leadership rivalry:** The lack of clear division of labor between the two presidents and mechanisms to mediate between them perceived as fraught with risks. Concerns were also expressed that the scope for conflict between the Commission and Council would increase creating ineffective leadership structures and rival systems.¹⁷ Plenary speakers predicted “uncertainty and rivalry of a sibling kind which would not bring any benefits”¹⁸ and “confusion, acrimony and stalemate.”¹⁹ The Commission’s representative also emphasised the importance of avoiding the creation of two competing power centres. In addition, delegates said, the plan of a dual Presidency could unbalance the position of the High Representative/minister for foreign affairs and would not bring the EU closer to its citizens.
- **Upset in institutional balance:** Most parliamentary and smaller country delegates to the convention expressed concern that a permanent European Council President would undermine the role of the Commission by turning it into the secretariat for such a President and confining it to managing the internal market. The suggestion in the Franco-German proposal that the preparation and follow-up to the European Council would be the responsibility of the new President attracted most criticism (many analysts had long advocated the opposite, a greater role for the Commission in the management of the European Council). One convention member called the proposal a “coup d’etat against the institutions” fundamentally upsetting the overall institutional balance. European Parliament President Pat Cox saw it as inducing a shift in the balance of power without sufficient democratic control”²⁰.

¹⁷ Andrew Duff, Liberal Democrat MEP and convention member, see Guardian 21.1.2003.

¹⁸ Greek Convention Member George Katiforis, cited in UPI, 20.1.2003.

¹⁹ Dutch Foreign minister Gijs de Vries, cited in UPI, 20.1.2003.

²⁰ Pat Cox, cited in EPC, ‘What democratic future for Europe?’ 22. 1.2003.

- **Inconsistency.** The proposal was also criticised as inconsistent. On what grounds it was asked, did its promoters believe that EU heads of states and governments would recognise the authority of one among them, a former peer most likely at that. This was all the more true with regards to foreign policy in the context of the Iraq War. Would a former Prime Minister – the likely pedigree of a European Council President - have the political clout to represent the EU on the world stage? Would the EU heads of state accept to have their phone on permanent divert to Brussels? Would the French accept to be represented by a British citizen in Washington- or vice versa?
- **marginalisation of small countries:** But the most radical argument against the proposal was the smaller countries greatest trumpcard: the rotating presidency, which had for almost fifty years been the symbol of equality between the member states in the Union. Not only would the Council President most likely be selected from among the bigger countries but he, whoever he might be, would be the big countries' voice. As Austrian Foreign Minister Benita Ferrero-Waldner summarised it:

“We, like other medium-sized and smaller states, think it would be a pity to give up the rotating presidency, because it has not turned out at all that the small and medium countries are unable to do this job, and I see no additional value in such a European Council president at the moment. It is not so good to concentrate so much on one person and to establish such strong centralisation. After all, we are a Europe consisting of many individual states, and I think this should be taken in to account. One must ask which states might produce the European Council president. I am afraid it would be primarily the major states that would fill this post.”²¹

Her view was supported by the vast majority of speakers at the plenary.

Following the Franco-German proposal and the first round of reactions to it, variants were proposed. Most prominently, UK and Spain have proposed another version of this Permanent presidency, which tries to preserve some form of rotation *below* the European Council, by combining a permanent chair with team presidencies for the Council of ministers (see UK

²¹ Cited in BBC News, 16.1.2003.

non-paper circulated on January 20th, 2003 and Spanish proposal of March 7) In their contribution to the Convention in February 2003, Ana Palacio and Peter Hain argued that “the Chair of the European Council should be a full-time post. (...) His/her system of appointment should ensure the respect of the principle of equality among Member states.” In their views, the rotating Presidencies should be replaced by “one possible model in which a team of Member states will hold a collective Presidency during a two-year period. (...) This system is compatible with recourse to certain “Institutional presidencies”: that of the Chair of the European Council in the General Affairs composition of the Council (...) and that of the High representative in External Relations”²².

It is important to note, however, that the UK and Spain advocate an even stronger president than Franco-German. The British in particular seem to be motivated by substantive considerations (having someone in charge of the Lisbon process) as well as inter-institutional considerations. (strength vis a vis the European Parliament in the context of co-decision). Thus, their version of a super-president of the European Council includes the following tasks *inter alia*: Preparation of Council agenda; control of conclusion; Multi-annual agenda; Heading council secretariat that become his administration; Chairs GA council; Chairs teams of Council chairs; Attendance of sectorial council; Attendance at commission meeting when needed; Recommendation of appointment and dismissal of high representative, etc.

Beyond these variants and the divide over the question of the presidency per se, it is important to note that support was expressed early on regarding other aspect of the Franco-German proposal.

- **Directly elected Commission President:** There has been of course worries expressed about the risks of politicizing the Commission and endangering its autonomy. But greater partisanship and loss of autonomy seem to be the price to pay for greater legitimacy of the Commission. If it is to be more than a mere civil service than we need to bring “politics” back in. The election of Commission President by the EP however has broad support in the Convention,²³ including by President Giscard.

²² Contribution by Mrs Ana Palacio and Mr. Peter Hain, members of the Convention on “The Union institutions”, CONV 591/03, 28 February 2003. This position seems to be supported by some nordfic states : see Finnish Committee for EU affairs, *The Future of the EU and the Work of the Convention*, 17 January 2003 ; Speech by Mrs Lena Hjelm-Wallén at the Swedish Riksdag, 22 January 2003.

²³ A minority favours the electoral college consisting of MEPs and MPs.

However, there is still disagreement whether he should be elected by qualified majority or absolute majority. The outcome of this will probably depend upon the precise role the Commission President will be given in the end.²⁴ Crucially, the British position has evolved in this regard. Apparently, its traditional opposition to replacing a Commission President chosen by MS with an elected one, could be traded off against the “strategic prize” of a stronger leader representing EU governments on the world stage.²⁵

- **European Foreign Minister:** There is now a near consensus on the double hatted foreign affairs ministers as included in the Franco-German proposal and supported in the fall by a narrow majority in plenary. However, the precise division of tasks (in particular in terms of external representation) between a European Council President and the proposed European Foreign Minister in charge of the EU’s Common Foreign and Security Policy were unclear under the Franco-German plan and remain so to this day.
- **Council of Ministers:** Most members of the Convention agreed with the separation between executive and legislative Council formations (in line with Belgian proposals).
- **Procedural:** The extension of qualified majority voting, right of co-decision by the Parliament as a general rule, greater budgetary power for the Parliament, and a more efficient Commission/comitology procedure were welcomed by many states, especially those from the supranationalist camp.

2.3. Giscard’s “compromise” and the rebellion of the smaller states

As President of the Convention, Valéry Giscard d’Estaing has always known that he needs to help forge a compromise between small and big member states. But he is also personally much closer to the Franco-German compromise as well as sensitive to the British position. His detractors recall the fact that he himself “created” the European Council in 1974 and would therefore naturally want to make it the apex of the European system. They argue furthermore that his two foremost goals have been to support the claims of big countries and

²⁴ See “Gloves off: the going get tough in the Convention”, Giovanni Grevi, EPC, 22.1.2003.

²⁵ See Guardian, 21.1.2003, p. 14.

to weaken the Commission. His defenders retort that this only appeared to be the case because he seeks to ensure that “his” Constitution will not be radically altered by the IGC, and therefore the most powerful member states. Whatever the motivation, at some point, therefore before the official tabling of the draft articles on institutions, he chose to take sides and support the idea of a permanent President of the Council.

He first emphasized in various interviews the fact that the countries who support this idea represent the largest part of the European population. Before the plenary, he argued that the EU now comprises three categories of states: the six largest ones, with a population of more than forty million inhabitants, which, together, amount to 74% of the EU population; eight medium-sized countries, with a population between 8 and 16 million people, who represent 19% of the population; and eleven small states who, together, only include 7% of the population.

Some weeks later, at the Athens European Council, he explicitly drew the consequences of this analysis: since those who reject the idea of a permanent president for the Council only represent a quarter of the EU population, they should not be allowed to prevent the formation of a “consensus” (which, in Giscard’s mind, seems to mean a very large majority).

This argument could not, obviously, be accepted by the smaller states. It introduced in the procedure of the Convention a majoritarian logic (as in majority of population rather than member states), though this was alien to the EU’s traditional *modus operandi*, had not been foreseen by the Laeken mandate and had not governed their work so far. If this became the Convention’s rule, all the minorities could feel that the process does not respect their rights, and this could ruin the legitimacy of the whole enterprise.

The group of small and medium member states reacted very passionately against this argument. In the run-up to the formal debates on institutions issued a paper at the end of March to reiterate its common stance in favour of the community method²⁶. Most importantly they spelled out clearly where the distinction between big and small states ought to be relevant and where not: yes demographic factors are relevant for representation in the European Parliament and to voting weights in the Council of Ministers; no they should not

²⁶ “Reforming the Institutions: Principles and Premises” Conv 646/03, Brussels, 28 March 2003

lead to “any hierarchy of Member States” or “differentiate between them in terms of their entitlement to involvement in the operations of the institutions.” On the Council, while they acknowledged less than full consensus this meant that a rotating presidency ought to be the predominant aspect of a new system.

At a meeting in Luxembourg in early April, the 19 countries restated their support for many aspects of the Franco-German proposal (Minister for foreign affairs; extension of QMV and co-decision; election of the Commission’s President by the EP, confirmed by the Council...) and confirmed their rejection of the permanent Presidency of the Council. At the Athens meeting of the European Council on April 16 each country laid out its argument once again with little or no visible attempt to bridge the existing divide between big and small countries.

Giscard did not, however, change his strategy. Two days before the plenary session of 25-26 April, he presented his personal views to the press. The reactions of some members of the Praesidium forced him to revise his position on some points, but he nevertheless persuaded the Praesidium to present to the Convention a “compromise” which overall did not take into account the critics of the smaller countries. While a number of points in the Praesidium proposal deviate from Giscard’s initial draft, the main reforms opposed by small and medium states were left in:

Unchanged or marginally changed items:

- **The European Council president:** the European Council, by qualified majority would elect its own President, for a term of two years and half, renewable once (the person elected must be, or have been for at least a year, a member of the European Council): this President shall chair the European Council and drive forward its work, he would convene the European Council and “shall ensure that the Union at his level is effectively represented in the wider world”;
- **Council Formations:** the proposal doesn’t states clearly how the formations of the Council would be chaired apart from the Foreign affairs Council that would be chaired by the Minister for foreign affairs, elected by qualified majority by the European Council in agreement with the President of the Commission. (the initial draft proposed to have the Vice President chair the General Affairs Council): A legislative Council is

created mandated to consider all European laws (an initiative motivated by concerns about coherence and transparency and to be applauded);

- **Commission:** the president of the Commission would be elected by the EP by a majority of its members, but the candidate would be put forward by the European Council, taking into account the election of the EP: the Commission would not comprise more than 14 members (albeit an equal number of associate commissioners could be nominated) : each member state would put forward three candidates and the commissioners would be selected by the President-elect, taking into account the European political and geographical balance; the Commission would then be submitted as a body to a vote of approval by the EP;
- **Foreign Minister:** Appointed and mandated by the European Council ; also Vice President of the Commission.

Elements of Giscard's draft withdrawn or changed:

- **Slightly lower prominence of European Council and its President:** second instead of first on the list European institutions, he is not described as “highest authority of the Union”; suppression of the post of Vice President introduced by Giscard; deletion of his/her role as setting out strategic guidelines for the Union’s external action and guidance for action in the area of freedom, security and justice; the President does not give an annual report on the State of the Union to a Congress but instead gives the EP less grand reports after each meeting; the possibility of a Congress electing the President and vice president is scrapped; the proposal to create a board including the presidents of council formation (and therefore a potential competing College to the Commission) is transformed into an option to be adopted by unanimity;
- **Optional rotation:** The text of the Presidium’s proposal reintroduces some rotation at the level of the Council of ministers but only as an option, since the European Council can “decide by consensus that the Presidency of a Council formation, with the exception of the Foreign Affairs should be undertaken by a Member state for a period

of at least a year, taking into account European political and geographical balance and the diversity of all Member states”;

- **Qualified majority:** The praesidium draft follows Giscard’s choice in favour of the double majority of states (1/2) and population — the solution rejected at Nice but supported by a great number of small and medium states. However, the Praesidium lowers the population threshold from 2/3rd to 3/5th thus reducing the blocking capacity of big states;
- **Commission:** stronger language regarding its mission (safeguard rather than give voice to the general European interest; exercise of coordinating executive and management functions); Commissioners brought up from 10 in the Giscard draft to 14; additional members are now called deputy Commissioners instead of Commission counsellors; the parliament “elects” rather than “reaches a view” on the president of Commission; member states obligation to present a woman out of three candidates; agreement of Commission president necessary to appoint the foreign minister (not merely consultation); Commission is responsible to the European Parliament only, not also to the Council;

It is fair to say that the debates in the Praesidium led to some significant improvements in the direction of compromise relative to the original draft by the Secretariat and Giscard. Nevertheless, even in the version presented, the small countries were to loose on all sides, with a smaller Commission, a Commission president nominated by the Council rather than the Parliament, and the abolition of the rotating presidency. It is therefore no surprise that after President Giscard had presented this proposal, the Benelux published a very hostile letter, regretting the method used by Giscard presenting his own ideas, and the fact that he had not taken their position into consideration. Therefore, they promised to submit alternative proposals to the Convention²⁷.

²⁷ Lettre des trois représentants du Benelux à la Convention européenne, Jacques Santer, Louis Michel et Gijs de Vries, au président de la Convention, Valéry Giscard d’Estaing au sujet des propositions de réforme des institutions, Brussels, 25 April 2003.

The reaction of many in that plenary was best expressed by this cry from a German delegate:

"You have not listened to us, you failed to hear the views of the majority. For a year we have been working hard to find compromises, build consensus. You claim the opposite is the majority view. ... You have discredited this Convention in public. I would like to express my lack of confidence in you for the Europe of the Governments, states you are speaking for. We are the Europe of the people, of the citizens. You are speaking for a Europe of bureaucracy, executive board, of power – we are speaking for a Europe of partnership."

In addition to plain negative reactions, a number of new elements were introduced in the plenary and its immediate aftermath which rendered the end-game even more complex.

First, and in view of the available alternative, the phoenix of Nice re-emerged from the ashes. Understandably, representatives of Spain and Poland, joined quietly by some new members started waging a “give Nice a chance” campaign: why throw away an arrangement we have not even tried they asked? Why in particular revisit QMV and even the Commission composition. The strengthening of this position introduced a wedge in the big country camp.

Second, in view of the looming conflict, the Benelux countries produced their own updated proposal which, they claimed, contained some elements of a compromise with the big countries — a proposal supported orally by Joschka Fischer. Foremost among them was the creation of a two-tier Commission with equality of rotation, where only the full Commissioners would have the right to vote, but where all countries would nevertheless have their Commissioners.²⁸ The other 16 small countries did not officially go along with this, although there was a sense that a more egalitarian version thereof could constitute their ultimate fallback position. Moreover, contrary to the Benelux compromise, the other small countries continued to support the maintenance of rotation for the General Affairs Council rather than its chairing by the President of the Commission. Some also opposed the chairing of the Foreign Affairs Council by the Foreign Affairs minister, argued that the latter could not chair a body that was supposed to hold him accountable.

²⁸ The Commission variant on the two-tier option differs on two points: it would give a vote to each commissioner and it would give the president the power to reshuffle Commissioners between tiers.

Third, Foreign Minister George Papandreou introduced a new option for consideration in the plenary, namely the election of the president of the European Council by universal suffrage or through an electoral college. The proposal had little chance to fly in the short run but was meant in part to reintroduce the central consideration of democratic legitimacy in the Convention debate. If the Convention was to get rid of democratically elected prime ministers and heads of states to head the European council, the least it should do was to give the new figurehead a democratic pedigree. Moreover, such an election would give the president a source of legitimacy separate from the Commission and therefore reduce the potential rivalry between the two bodies by making the Council president a more supranational figure. To be sure, such an election had been advocated in the long run for the president of the Commission with the same intent: to bring EU institutions closer to EU citizens. It could be expressed through an evolutionary clause that would eventually lead to a single Union presidency as advocated by some in the Convention. Papandreou's proposal drew some support from Brutton, the Irish representative and a couple of other Conventioneers. Most importantly, it served to signal in plenary that there was no full agreement in the Praesidium.

Fourth, the candidate countries became more prominent and assertive in the wake of the Athens ceremony. In the press conference after the mid May plenary, Giscard acknowledged the legitimacy of their wish to have their own commissioners as a bridge to their own citizens and pointed to the interim arrangements as an avenue for compromise. Hitherto, the Constitution would not apply to the formation of the next Commission in 2005 which would therefore conform to the one-Commissioner per state agreement at Nice. It was hoped that the magic bullet here would lie with a compromise in terms of sequencing. But this offer of compromise on a short-lived one-off deal seemed to do little to serve the long term vision of the new members.

So, by May the opposition between small states and large states supported by the President of the Convention had reached its most dramatic stage. The synthesis we suggest in the remaining section of this paper is aimed at reducing this tension, by showing that a compromise is possible, which would reinvent, rather than substitute, the initial balance.

III - IN SEARCH OF A COMPROMISE

A synthesis should in our view start from the following premises:

1. **Minimize inter-institutional linkages:** While it will obviously need to take into account the legitimate claims of the two camps we believe it should refrain from seeking to do so through a deal *between* institutions — such as the Council for the big countries, the Commission for the small countries. To be sure, all federal bargains to some extent rest on adopting different principles of representation for different institutions exactly in order to address their divergent requirements (including through multiple chambers). As we have seen the EU was no exception. But part of the EU specificity lies in the fact that contrary to classical federations, it does not have a clear functional division of labour between its two executives. To base a final deal on a permanent president against a two tier Commission with one Commissioner per state would be a very unsatisfactory and counterproductive arrangement since considerations of efficiency and legitimacy apply to both bodies. Moreover, a two-tier Commission is hardly a concession made to small states relative to the status quo. Finally even if it was, small states have already paid a price in terms of qualified majority, whether through the Nice deal or the double majority solution.
2. **Real balance:** Preserving the overall institutional balance reflected in the Community method, e.g. the balance between intergovernmental and supranational approaches requires avoiding solutions which put the European council above all the other institutions or which tilt the accountability of the new Foreign Ministers towards the council; Moreover, strengthening the visibility, legitimacy and continuity of EU leadership will not be achieved by undercutting the Commission and its president; there needs to be clear mechanisms and processes in support of EU leadership and initiatives rather than competing power centres. In particular, enhancing the EU's capacity to act effectively on the world stage cannot necessary be resolved through the creation of “a single voice” or “a single position”;

3. increasing the effectiveness of the various EU institutions, particularly of the overall Council machinery this does not require constitutional change but a greater coordination between the Commission and the Council secretariat in the preparation and follow up of Councils
4. Last but not least, any institutional reform should give a premium to mechanisms and institutions that enhance democracy and legitimacy by bringing the EU closer to its citizens.

These principles have been supported by a vast majority within the Convention. Although it is more controversial, the principle of equality between member states should, in our view, also be upheld, albeit with the necessary concessions to the competing demographic principle when it comes to voting in the Council and representation in the parliament. Indeed, it is worth noting the contradiction in the current approach of the Praesidium which seems to say on one hand that the EU should remain to a great extent an intergovernmental system, with primacy for the European Council, while at the same time wanting to apply to it the logic of a nation state, eg the primacy of proportional representation on a euro-wide basis, in the negotiations over the design of its institutions.

Since the EU is not a state but a federation of states, its legitimacy largely depends on the trust of all its constitutive parts: if some states felt that they are considered as minor elements by the large states, their confidence would be low and the overall level of legitimacy of the EU would be undermined. This is the reason why, we think, the rotating presidency should be maintained, although under a revised form.

3.1. In defense of rotation

A compromise solution also needs to retain some elements of rotation in the EU's institutional construct. For a start, the rotating Presidency does neither seem to appear obsolete nor fraught with insurmountable difficulties. Moreover, its virtues should not be underestimated. Thus our proposal for compromise seeks to retain these virtues –especially at the symbolic level, while addressing its the drawbacks.

It should first be noted that the shortcomings of rotation have not been seriously demonstrated. This system is supposed to lack visibility and cause problems of coherence continuity in the EU's action. But these drawbacks are due to first and foremost the weakness of the coordination between different formations of the Council – a question addressed by the European Council itself at the Seville Summit. Here, the role of a new General Affairs Council is key. Moreover, serious efforts have been made in the recent past to bring greater continuity and coherence through simple mechanisms such as the coordination of a Presidency with its successor and predecessor and longer-term planification, or a better preparation of Councils jointly by the Commission and the Council Secretariat. In particular, a reinforced full-time Secretary-General, clearly distinguished from the person responsible for foreign affairs, would be in a position to improve the coordination of the Council. Making the Council work does not necessarily require deep constitutional reforms.

Obviously rotation has been defended by most small states (including from the candidate countries) as the key visible expression of the equality between states. It is in recognition of the importance of this sharing of the tasks and authority in the eyes of small countries that some of the variants on many proposals include some elements of rotation *below* the European Council.

Beyond this “defensive” argument, however, rotation must be defended as the key symbol of what European integration is about. It is a hybrid institution: intergovernmental in inspiration and in terms of its institutional focus but supranational in its actual functioning: when a country holds the presidency it is expected to act more like the Commission than like a member state, and to put the general interest and the search for compromise. In terms of efficiency, it creates a healthy competition between the administrations of member states while at the same time socializing the respective administrations as well as peoples into “thinking European” alongside, if not above, thinking national. As stated in the small countries’ paper it allows for the regular infusion of fresh energy and new perspectives in the running of the Union which otherwise can easily fall prey to bureaucratic routine. The paper also points out that its automaticity avoids a diversion of energies into campaigning for the chairs of the Council formations. Moreover, it creates a dynamic of long term reciprocity with the EU, as member states try to respond to each presidency’s ambition to show some achievement in the expectation that the same will be done for them. Deadlines have a greater

chance to be set and respected under rotation. And most observers agree that smaller countries have not been less effective at presiding than bigger ones.

Perhaps most importantly, rotation in leadership of the EU has important symbolic value as it provides a constant reminder to European citizens that European integration is not “made in Brussels” but is a shared and decentralized enterprise conducted everywhere in Europe. Ironically, even the demonstrations of NGOs accompanying the Summits around European capitals demonstrate that the presidency is a very visible bridge between the European peoples and the Union. This later arguments counters the often heard criticism that rotation becomes meaningless when only every 12-15 years, since its value lies is also in the eyes of the citizens whose country *does not* hold the presidency. In short, rotation should also be defended less as the “thing” of the small states and more as the soul of the EU itself.

This point was made very clearly by the Irish Minister for foreign affairs: “I accept that the current system of rotation will require some adaptation. The concern about discontinuity in a Union of twenty five or more is a legitimate one. But let us start from realities, not caricatures. Rotation is not a kind of leftover from a smaller and simpler Union. It is not a “feel-good factor” for member states whose confidence needs a boost. The rotating presidency has endured for 50 years, through successive enlargements, because of what it has brought in terms of ownership, vitality, renewal and solid achievement. And there is the added benefit that its automaticity avoids a diversion of energies into campaigning for office.”²⁹

These benefits in terms of European identity, legitimacy and civic education are not to be thrown away lightly. Bringing the EU closer to its citizens should also mean holding as many Council meetings in many different European cities, rather than in Brussels, which is a remote to many citizens. What then can we retain from the rotation system in the search for a synthesis?

²⁹ Brian Cowen, Speech at the European Policy Centre, Brussels, 3 April 2003.

3.2. The Shape of a Synthesis

A real synthesis should be built on three principles. First, it should preserve the essence and the virtues of the rotation, as required by most smaller states. Second, it should improve the continuity and coherence of the Council, in order to preserve its profile in the institutional triangle, as asked by some larger states and acknowledged by most others. Third, the new compromise should not be more complicated than the status quo, an argument all parties could accept since the quest for clarity and simplification is the Convention's leitmotiv.

The synthesis we suggest is based on the idea that the Presidency of the Council should be distinguished from the Presidency of the EU as such. This distinction would make it possible to combine the most legitimate claims of the two camps. It would free the European Council from rotation while retaining rotation *above and below the European Council*.

1) A *presidency of the Union* would be created as called for by the promoters of the single presidency. But it would be rotating (every 3 or 6 months) and its role would be minimal. Such a collective presidency would convey the fundamental character of the Union, that is as a system of shared sovereignty that definitely eschews concentration of power. It would provide the clearest sign possible that the EU is not a state in the making, reproducing at the EU level the parliamentary or presidential governance found in the member states. It would allow for the continuing holding of European heads of states meeting around city landscapes thus bringing the EU closer to its citizens and helping citizens to become more familiar with each other's histories and cultural artefacts. In practice, this would be a *symbolically* upgraded and *practically* downgraded system of rotation concentrating its functions as host of the European Summits (and possibly co-chair) and chairing and coordinating the legislative Councils. The EU presidency would not hold external functions.

2) On the other hand, a *permanent President or Chair of the European Council* would be created, as called for by the large states. The European Council needs to retain its current role. The decisions taken at European Council meetings are a major impetus in defining the general political guidelines of the European Union. In order to reach consensus on these broad guidelines, a permanent, rather than a rotating chair, liaising constantly with the Commission and the Council Presidency, can ensure greater effectiveness and coherence. The members of the European Council should be free to appoint such a chair without upsetting the institutional

balance of the EU. There are of course important questions to resolve as to the mode of nomination of such a Chair. Some, like George Papandreou, have even argued that if there is to be such a post then we need to envisage its election by universal suffrage. In the short term, however, agreement in the Council seem to be the preferred option. Such a chair would as in the current Praesidium draft:

- Prepare and co-ordinate the agenda of the European Council, in close cooperation with the Commission and the chairs of the different Council of Ministers. This may involve a ‘tour des capitales’ together with the Commission President before European Council meetings
- Coordinate with the Presidency and the Commission in preparing the European Councils
- Chair meetings of the European Council with the overall goal of facilitating consensus on the general political guidelines in the European Council;
- Publicize the Commission’s monitoring of the progress towards the EU’s key objectives;
- represent the European Council in the other EU institutions; and
- be constantly informed by the EU’s Foreign Minister and the Council Presidencies

This new President would not and should not be thought of as the President of Europe. He would not normally represent the EU on the external scene, as this would undermine the authority of the Minister for foreign affairs. He would not have his/her own administration that would compete with that of the Commission. The overall preparation of the European Councils would be conducted by the Commission and the Council Secretariat, which renders it unnecessary to provide the European Council chair with his own diplomatic service. Moreover, the role of the chair is to give impetus and act as a mediator; it is not to replace the Commission in the management and monitoring of policies.

One way of emphasizing this role as a mediator would be to give the European Council chair political functions that would symbolise this function. He could for example be granted the right to invoke art 7 (sanctions for violation of democratic principles) and perhaps even to censor the Commission or dissolve the EP. This kind of power is not likely to be exercised in practice - though these mechanisms could be useful in case of political crisis and strong institutional conflicts, especially if the President of the Commission depends more clearly on a parliamentary majority. But they would emphasize the profile of the President of the European Council as a mediator, an arbiter and wise man above the fray.

In sum, such an institutionalized chair would incorporate both the big member state's wish for greater coherence at the highest level and the small member state's wish not to upset the institutional balance. Rather than creating rival systems with ineffective leadership structures, the European Council chair would be a dealmaker not only between its members, but also with the other European institutions. As external affairs would stay within the realm of the newly created European Foreign Minister, the European Council chair would not unbalance this role.

3) In addition, the rotating presidency for the **Council of Ministers** -- overburdened with its key functions -- needs to be reformed by sharing out its current preparatory, managerial and representational roles in the most logical and constructive way. Most importantly, its rationalization could rely on the distinction between executive and legislative functions described in the Amato report and the Benelux proposal. In this light, executive Councils could be presided by the relevant Commissioners (except external) --since the Commission is not the originator of proposals. There are of course objections to this distinction arguing that the it is not always so easy to say what is executive function -- but this problem could probably be overcome, sometimes even on an ad-hoc basis.

- **Executive functions:** The Commission could chair Council meetings when executive functions are exercised (i.e. in the cases of co-ordination of national policies). Examples include EMU, the Lisbon process, JHA, and the open method of coordination. These are all areas in which the Commission has no right of initiative (matters of regulations and co-ordination). It would be the Commission who takes the role of the neutral broker rather than the Council Presidency.

- **Legislative Functions:** When the Council is performing legislative functions acting upon Commission proposals and liaising with the European Parliament, ministers or representatives from the rotating Presidency should be in the chair (the Commission needs to be able to be a party to the negotiations).

4) In the spirit of avoiding a cross-institutional bargain, the solution adopted on the **Commission** should not simply maintain the status quo, giving as it were, “their” Commission to the small states while asking them to grant the Council presidency. To the extent that a linkage should be established, it should be connected to the functions rather than the composition of the Commission: the strengthening of the Commission should be a *quid pro quo* for the (partial) loss of rotation (in effect, since the upgrading is symbolic) and the general strengthening of the European Council. This is the main message of the “friends of the Community method” and flows more from a concern over institutional balance than mere equality between states ³⁰

On the composition front, the rationale for one Commissioner per country lies more with the Commissioners’ presence rather than power in the college. The “national” Commissioner is not only his country’s voice in the Commission but perhaps most importantly the Commission’s face in the country’s media. On both count, the one Commissioner per country rule is as much a warrant of efficiency in the design and implementation of EU laws and programme as it is a sign of equality between states. Nevertheless, as suggested by the Benelux and the Commission, there are possible variants compatible with the maintenance of a so-called nominally large Commission such as the proposed two tier system —there is no real difficulty in creating an effective cabinet at 25, perhaps with such senior and junior Commissioners) Under such a proposal, even the notion of equal rotation could be understood to encompass some variation in the type of portfolio distributed, as long as every member states had access to the position of voting Commissioner. It is tempting to follow those who argue that in the long run, the President of the Commission himself or herself should be left free to determine the composition of the Commission.³¹ But who doubts that, in (rightly) seeking to maximize Commission power, such a choice would be highly biased in favour of

³⁰ Also, the role of the Commission as “guardian of the treaties” should be reaffirmed. This could be done *inter alia* through the appointment of a Commissioner in charge of that function specifically; this would be a less political and more judicial and mediating role than other Commissioners. It would be a way of avoiding the growing tension between Commission-as-initiator and Commission-as-guardian.

³¹ Max Kohnstamm and Guillaume Durand, *op cit*

big states. Such an approach would require a degree of political maturity not yet reached by the Union.

In short, the proposal retains some elements of the three dominant options on the table while providing an answer to the most credible arguments opposing each of them.

As with the *improved status quo proposal, a la Benelux* and smaller countries, it retains rotation and its symbolic value even if with a much more narrow scope. But it addresses the strongest criticism of the rotating EC presidency, eg continuity in the functioning and leadership of the European Council.

As with the *single presidency proposal*, it creates a new notion of a “European presidency” which is neither intergovernmental nor supranational but a combination of both. Contrary to the single presidency it does not lead to the danger of excessive concentration of power in the Union and the drift towards a presidential regime which is alien to most European traditions.

As with the *franco-german proposal* it generates greater continuity in the European Council, greater visibility and legitimacy of the leadership of the Council and the Commission. But it puts a “cap” over both presidents/chairs and helps alleviate the fears of those who foresee that the EC president would be too powerful or that the EU would become locked in a struggle of legitimacy and turf rivalry between the two functions. A rotating European presidency acting as a symbolic cap over both the Commission and the European Council would not eradicate speculations about who will be “the real head of the Union”, but it would at least take the sting out of them. At least none of the two post holders could claim to be the “President of the Union”.

It is important to note that this approach builds on a series of proposals already put on the table in the spirit of a compromise that would uphold the legitimacy of the Convention. The supporter of the permanent chair proposals have themselves accepted the desirability of introducing some guarantees of equality in the designation of this Chair. On the other side, in public statements as well as formal amendments to the draft proposals, the representatives of the 19 small and medium states have tended to accompany their support for retaining a rotating presidency with devices to ensure greater continuity such as transferring foreign policy to the new minister for foreign affairs or enhancing the role of the Commission and

Council Secretariat in the long term strategic planning of the Council programme. In the same spirit, many delegates have argued that if some version of the permanent chair is adopted then rotation ought to be retained elsewhere. Three main locus for rotation have been proposed in tabled amendments:

- 1) rotation in some or all of the Council formation;
- 2) rotation in a “college” or “presidential board” composed of team of heads member states and assisting or overseeing the European Council Chair (building on current draft article 16a and the original Giscard proposal);
- 3) rotation in the meeting place for European Council Summits every six months.

The problem with adopting these proposals separately is that the first two are invisible to the population as a whole and therefore do little to bring Europe closer to the citizens; and the third alone while a very important move may not, by itself, have the symbolic gravitas that it deserves and be perceived to be a simple logistical detail. The creation of a rotating European Presidency would bring the three types of proposals together as it were and package them to create symbolic meaning.

In sum, we need to create a governance system in the EU which both reflects its diversity and ensures continuity by including:

- A presidency of the European Union as a whole, rotating between member states. This in effect would bring rotation *over and above* as well as *below* the European Council.
- A permanent Chair of the European Council.
- A president of the EU Commission elected by the European Parliament.
- A President of the EU parliament.
- An EU foreign minister accountable to the European Council and the Commission, with full participation of the European Parliament.

CONCLUSIONS

The tension between large and small countries has always been part of EU politics – a trait shared with all federal experiences. Three mechanisms established by the founding treaty have long helped reduce the intensity of these conflicts : the system of weighed votes in the Council, the role and “representativity” of the Commission and the rotating presidency have all preserved the basic principle of equality among member states, while giving to the larger ones a preponderant role.

Successive enlargements have made these mechanisms ever less adapted to the functioning of the Union. As the number of small states has grown much more rapidly than the number of large states, the institutions which guaranteed the equality among states have seemed less defensible to the larger ones. Until the mid-1990s, enlargements were dealt with by adapting the first two mechanisms and establishing a tradeoff between them overtime: voting would become more proportional while the Commission would hang on to the equality principle. But with 9 out of the 10 new member states small or medium-sized, even this basis tradeoff could not do the trick anymore. By the time the Convention was convened, a new bargain was needed to reconcile the principles of equality among states and proportional democratic representation in the EU.

Critics of the status quo have argued that sheer numbers simply meant that the balance between the two principles could not be upheld anymore: equality between states had to give way in the name of effectiveness. Not only would the Commission become too large to remain efficient, but the rotating presidency, which until now was the only one of the three original elements of the bargain to have remained untouched, was no longer be viable.

The argument over effectiveness is less than convincing. Even if each member state preserved one commissioner, the Commission would still not be much larger than a national government. Internal re-organisations could guarantee the efficient working of the College, while preserving its representativity. In the same spirit, the coherence and continuity of the Council’s work could be improved through a better coordination between member states, better collaboration between the Council secretariat and the Commission, and a simplification

of Council formations – reforms which have already been initiated by the Council itself without requiring a major Constitutional reform.

The true rationale for the reform proposed by the bigger countries lies elsewhere. It is simply one of balance of power in the Union. A smaller Commission, a double majority or a permanent European Council Chair would all help reduce “the tyranny of the minority” in the Union.³²

This concern should be taken seriously. At this stage of the Constitutional convention, it would be contrary to the spirit of this Union for the large states to simply impose their viewpoint; but equally, the small states who only represent a quarter of the EU population cannot simply reject wholesale the most important request of the large states. We have argued, however, that simply replacing the rotating presidency by a permanent president in exchange for a modified status quo in the Commission would not, per se, be a satisfying solution. First, because this would do away with a system of rotation which has had and could continue to have crucial symbolic and integrative effects. Second, because this would generate new forms of tensions: the balance between states might be addressed under this scenario, but at the expense of the institutional balance.

The compromise we have proposed here seeks to forge a real synthesis between the positions of the large and small states, and to preserve the virtues of the present system, while correcting its most obvious defects.

For one, such a compromise does not rely on establishing sharp linkages between the different dimensions of institutional reform. The suggestion that small countries could accept a permanent chair in exchange for retaining their Commissioner each seems excessively asymmetrical. Indeed, even on the Commission front, the small states are likely to make a concession by accepting to move to a two tier system that would necessarily disadvantage them. The other traditional linkage, between Commission reform and voting arrangement also seems mute with the adoption of a double majority system which favours more populated states but is supported by small states nevertheless. Under such a scenario the two principles

³² Indeed, the laudable efforts by the Convention to streamline the enhanced cooperation procedure constitute an alternative way to cope with this problem as perceived by the big states. And here again, we need to ask what are the guarantees for weaker players associated this new form of cooperation

of equality between states and proportional representation are combined in their purest form in the voting system itself. The bigger states acquire a disproportional blocking capacity but the smaller states can now constitute a partial majority together. In short the balance to be reinvented between small and big states cannot fundamentally rely on linking different concessions. Instead, it must be found at the level of each institution, including the presidency.

We have argued that the presidency system can be redesigned to address the demands of both sides. On one hand, a chair of the European Council can be useful, if its role is clearly defined, and if he/she is considered as a “wise man/woman” and mediator rather than that a classic leader as in national epics. On the other hand, preserving some form of rotation for the Council of Ministers along the lines of the Benelux proposal would guarantee the rights of the small states and contribute to their integration in the Union – a particularly important concern, as 9 of the 10 new states are small or medium-sized states. But this in itself does not do much to retain the democratic benefits of rotation –eg bringing the EU closer to its citizens. To address this concern, we advocate the creation of a new EU wide presidency, *over and above* the European Council.

Under this framework, the goal of the big countries would be achieved by shifting rotation *outside* the European Council and therefore delink it with its management which would be left to the newly created Chair. This Chair would engage in long term strategic planning for his or her institution. In contrast, the EU presidency would be dissociated from most of the tasks currently associated with the rotating presidency of the European Council. Above all, it would host the European Summit held during its mandate and coordinate with all EU institutions in doing so, in addition to chairing the formations of the Council – with the possible exception of the Foreign Affairs Council. This focus on the rotation of EU Summit location is predicated on the belief that Summits held in national capitals constitute events which bring the EU closest to its citizens both those in the host Member State and those from the other Member States. Like other heads of state in our democracies, the role of the EU presidency would be above all ceremonial. Crucially, there would be no new bureaucracy created around this new EU presidency and therefore it would not constitute a new institution *per se*.

Such an approach would be both innovative and faithful to the spirit of the Treaties. A new rotating EU presidency would not detract from the profoundly important insight of those who

insist on the need for a permanent Chair of the European Council to provide the much needed continuity and long term planning for this institution. On the contrary, it would make it acceptable to the small and medium size countries. Indeed, every EU body should have a single, permanent and accountable head, recognized inside and outside the EU as responsible for running his or her shop. This is the hallmark of all democracies: In the United States, the Congress and the Senate each have their president, even while there is also a president for the whole country. But let the EU as a whole continue to stand for another concurrent ideal of decentralised, transnational and shared governance through the creation of a collective and rotating EU Presidency. In this sense, and freed from its sole attachment to the European Council, the EU presidency will be neither an expression of intergovernmentalism nor of supranationalism but the point where both meet, as each presidency in turn would act as a temporary embodiment of the EU as a whole.

True, one might object that this synthesis doesn't make the EU much simpler. But it does not make the EU more complicated than it is now either. We believe that such a status quo in terms of simplification should be acceptable if this helps build a consensus around a revised institutional framework. Simplifying the EU is a noble objective, but it would become counter-productive if it generated new tensions and frustrations. The EU has never been simple ; it probably needs to remain somewhat complex to preserve its efficiency and its legitimacy in the eyes of all those who form it.

And come to think of it, would the average European citizen not be able to appreciate the simple logic of the construct: a new symbolic collective EU presidency, and a head for each separate EU institution? Would the wavering EU supporter not appreciate such a guarantee of EU pluralism and thus perceive the EU as closer to her concerns? It seems worth making this bet, and in the process mend the deepest divide in our Constitutional dialogue.

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