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EU CONSTITUTIONAL REFORM PRIORITIES FOR THE ITALIAN PRESIDENCY

by Istituto Affari Internazionali

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Introduction

This document is intended to:

- highlight the main achievements of the Constitutional Treaty drafted by the European Convention which should be fully endorsed by the Intergovernmental Conference (IGC);
- emphasise some critical points of the Draft Constitutional Treaty that need to be revised to ensure an effective functioning of the European Union, avoid the risk of a decision-making paralysis and make possible future constitutional adaptations;
- suggest further modifications to the Draft Constitutional Treaty which appear necessary for a truly, effective constitutional reform of the Union

1. Main achievements of the Convention

1.1. Constitutional recognition of the EU citizens' rights

For the first time in EU history, the rights of its citizens are laid down in a legally binding document. This is a key element of the process of constitutionalisation of the Union promoted by the Convention.

1.2. Simplification of the instruments and of the procedures

First of all, the current Treaties have been reduced to one single document, in line with one of the fundamental objectives of the constitutional reform.

Secondly, the EU has been finally granted the legal personality, which will enable it to sign an international treaty, which was not possible in the past.

The confused pillar structure has been eliminated, which will contribute to the simplification of the EU's working.

The great variety of legal instruments has been basically reduced to only two (EU law and EU framework law), which will contribute to enhancing transparency. Also, a more clear-cut distinction between legislative and executive powers has been introduced.

1.3. Supremacy of the EU law

The Draft Constitutional Treaty also incorporates the principle that the EU law overrides national law. Previously, the supremacy of the European law over national law was based on the jurisprudence of the European Court of Justice.

1.4. Institutional renewal

An elected and stable President of the European Council will ensure greater continuity and consistency. By contrast, with the current six-month rotating Presidency, it is much more difficult to ensure the needed coordination between the different EU activities and the adoption of pro-active policies. The promotion of the Union's standing and credibility is also an impossible task with a Presidency changing every six months.

With a stable Presidency of the European Council, which amounts to a partial denationalisation of the Council system, the Union's programmes and priorities will no longer be conditioned by the national interests and priorities of a single country. In addition, the Treaty includes a provision of crucial importance stating that, when the situation so requires, the President shall convene an additional meeting of the European Council. This will encourage, if not oblige, member states to find a common position at a time of an international crisis.

The fear that a stable Presidency will be a pure expression of intergovernmentalism appears largely unfounded. On the contrary, as an institutional figure without a national mandate, he or she is likely to adopt a supranational approach in performing his/her tasks. In addition, the proposed Minister of Foreign Affairs, who will take over the functions currently exercised by the High Representative for Common Foreign and Security Policy (CFSP) and the Commissioner for External Relations, will be able to ensure more consistency to the EU external action. Thanks to its large power of initiative, he or she can also contribute to the expansion of the sphere of the EU's external action. The Foreign Minister will also have extensive external representation duties, which would help the EU to speak with a common voice on the international scene.

1.5. Adoption of the system of "double majority" for QMV

The envisaged adoption by 2009 of the system of "double majority" for qualified majority voting (i.e. the majority of the member states representing three-fifths of the population of the EU) will contribute to facilitating the decision-making within the Council and increasing its Transparency

1.6. Extension of the Community method

The Community method has been significantly extended. Codecision has become the normal EU legislative procedure with an increased decision-making power of the EU Parliament in such sectors as justice and home affairs, agriculture and structural funds. The power of legislative initiative of the European Commission has also been extended.

1.7. Introduction of new forms of flexibility

Important new forms of flexibility, such as structured cooperation, have been introduced in the European Security and Defence Policy (ESDP) area. Moreover, the general provisions regulating closer cooperation in other fields have been considerably streamlined. This should make it easier to activate them if needed.

2. Critical points

2.1. Split executive power

Although the establishment of a Minister of Foreign Affairs may significantly contribute to a more coherent policy in the field of external relations, the Convention has generally failed to create adequate instruments to ensure a closer coordination between the executive powers of the Commission and those of the Council.

2.2. Exceptions to qualified majority voting

The unanimity rule will continue to apply to such crucial areas as taxation, social issues and foreign and security policy. This entails a serious risk of decision-making paralysis in those areas, especially in an enlarged EU.

2.3. Treaty-revision procedures

Little has been done concerning Treaty-revision procedures. While the method of the Convention has been extended to future revisions of the Treaty, the procedure still requires that the amendments to the Treaty be ratified by all Member States. This means that even in a 25-member Union the individual member states will continue to have a veto right on any revision of the Treaty. This could easily become a major obstacle to any future constitutional reform of the Union.

2.4. Appointment procedure for the Commissioners

The Convention has made a major effort in defining the criteria for an equitable representation in the Commission. However, the proposed appointment procedure for the Commissioners appears to be complicated and not sufficiently transparent. Also, the role of the President of the Commission with respect to the appointment of the Commissioners could easily become a matter of controversy.

2.5. Limited role for the Commission in the economic governance

In spite of a few innovations, the role of the Commission in the economic policy coordination has remained too limited.

3. Proposals

3.1. Closer coordination between the executive powers of the Council and of the Commission

There is a need to delineate a path of gradual convergence between the executive functions of the Council and those of the Commission. To that end, a clause should be introduced,

whereby, starting from a defined date, for instance 2015, the functions of the President of the Council and those of the President of the Commission should be merged. While the establishment of a stable President of the Council represents a major improvement compared with the very inefficient system of the six-month rotating Presidency, it must be recognised that a two-headed EU may give rise to institutional competition. It is also hardly understandable for the ordinary citizens. A future merger of the two institutional figures would also increase the consistency of the EU's action especially on the institutional scene. For the same reason, all the executive formations of the Council of Ministers should be chaired by the relevant Commissioners. For instance, the Commissioner for Justice and Home Affairs will chair the Justice and Home Affairs Council and the Commissioner for Economic and Monetary Affairs will chair the Economic and Monetary Affairs Council. There is no compelling reason to perpetuate the system of national presidencies for the executive Council formations, while closer coordination between the Council of Ministers and the Commission will be beneficial to the Union's capacity of action.

In view of a gradual de-nationalisation of the Council of Ministers, the Presidency of the General Affairs Council should also be attributed to an institutional figure, i.e. the Secretary-General of the Council.

3.2. Appointment procedure of the Commissioners

The President-elect of the Commission should be given the right to choose directly the members of the College, instead of selecting them from a list submitted to him by the Member States. This will not only increase his power - in line with the proposal to entrust him with the power to dismiss individual Commissioners - but also make the appointment of the Commissioners at the same time more transparent and efficient.

However, the appointment procedure for the Minister of Foreign Affairs should remain as proposed by the Convention.

3.3. Extension of the qualified majority voting (QMV)

In order to avoid the concrete risk of a decision-making paralysis in the enlarged Union, QMV should be extended to all policy areas, including taxation, social issues and foreign and security policy. A "passerelle clause" has been incorporated in the Treaty, whereby the European Council can decide by unanimity to extend the QMV system to other policy areas.

However, this provision is unlikely to prove very useful, since it does not eliminate the veto power of each member states on any extension of QMV.

As an alternative to an immediate extension of the QMV, a date, i.e. November 2009, should be fixed, by which the extension of QMV would take effect.

As a compromise solution the so-called super qualified majority voting can be adopted for the more sensitive areas, such as Common Foreign and Security Policy (CFSP).

In the CFSP field, it is advisable that the External Relations Council should decide by QMV on proposals formulated by the Minister of Foreign Affairs, whether or not they can be solicited by the European Council.

3.4. Simplification of the ratification procedures

It is essential that the provisions for the revisions of the Treaty be simplified. In particular, new mechanisms should be established to prevent one or few countries from blocking the ratification process. For instance, the amendments to the first part concerning the EU institutions and competencies should be ratified by a body composed of members from the European Parliament and the national parliaments. Moreover, the approval by the European Council and the European Parliament should be sufficient for the entry into force of revisions of the parts of the Treaty regulating the various EU policies. As an alternative, it can be established that a treaty revision shall take effect if a certain number of national parliaments, for instance two-thirds of the total, have ratified it within a fixed period of time.

3.5. Enhanced role of the Commission in the coordination of economic policies

The Commission should be given the right to make formal proposals rather than only recommendations on the Broad Economic Policy Guidelines (BEPG).