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CONTRIB 313

NOTE DE TRANSMISSION

du: Secrétariat

à la: Convention

Objet: Contribution présentée par M. K. De Gucht, membre de la Convention:
- "La Commission européenne: chronique d'une mort annoncée?"

Le Secrétaire général de la Convention a reçu la contribution figurant en annexe de
M. K. De Gucht, membre de la Convention.

‘The European Commission: Countdown to extinction?’

It is often stated that what distinguishes the European Union from more classic modes of international cooperation is its supranational factor. In many areas of Union political activity, policy does not result merely from intergovernmental bargaining between diplomats representing states. Instead, the fathers of the European Economic Community created a ‘European Commission’ to be an independent political body representing EU interests -with no affiliation with member states- forming the core of Union integration. The task of this Commission as an independent European executive was and is to further EU integration by implementing legislation where necessary, enforcing established European law and making legislative proposals to the EU legislature. Concerning this last competence the Commission has an exclusive right of policy initiation in all areas of EU policy-making except justice and home affairs and foreign- and security policy, meaning that the Council of Ministers needs unanimous approval to amend Commission proposals. This right can justly be called the bastion of Commission power over EU legislation. It is the core of EU supranationalism.

It is common ground to claim that this innovative and distinguishing ‘supra-national’ idea has been one of the most decisive elements in the enormous progress made in Europe in recent decades, for instance in integrating markets. It is asserted that states would never have agreed upon so much integration if left to themselves. The establishment of an independent Commission that brokers agreement between states and enforces what has become law is deemed essential for historical unification of Europe. It forms also the nucleus for a more federal Europe in the future.

However, for some time now I have witnessed an advance of intergovernmental forces at the cost of this supranational EU. In short, some member states still refuse to accept supranationalism in all its consequences and efforts are made to draw back power from the Commission towards the two main intergovernmental fortresses in the EU, the Council of Ministers and the European Council of heads of state and governments.

Allow me to give you some examples.

Throughout the nineties there has been an increasing trend to redefine ‘the European legislature’ on the basis of a fully fledged bicameral system involving both the European Parliament and the Council of Ministers on equal footing. Europe is represented by its states and by its people and makes law by ‘co-decision’ between both legislative chambers.

This trend should be celebrated but it has come at a great cost, namely erosion of core Commission influence over legislation, because following treaty procedure the Commission loses brokering power if European Parliament and Council cannot agree on legal texts after a first reading. Direct dialogue between Commission and legislature at large is replaced by direct dialogue between Council and European Parliament without further substantial involvement of the Commission.

Another example. At the Convention there is growing consensus on the need to ‘strengthen’ the European Commission by altering the mode of appointment of its President: instead of election by the heads of state and governments, the European Parliament would elect the Commission. Its choice would afterwards be approved by the Council.

This new procedure could perhaps increase *symbolic legitimacy* of the European Commission towards citizens by increasing the level of parliamentary democracy in appointing its leader. It will also politicise the Commission and make the European Parliament more relevant to the citizen. But let us for a moment question the effects of this new mode of appointment not from the lens of *symbolism* but from the perspective of *practical power in the legislative process*. Will member states accept a Commission President when they have substantially lost power over his appointment? I doubt it. The Commission risks to become a symbol without content. The Commission President will have more legitimacy with the Parliament and perhaps the public but less so with member states. In current Union political life and considering closeness of cooperation between Commission President and member states in the Council this could be a dramatic price to pay: he might no longer be ‘one of us’ for the governments. This could initiate or accelerate feelings of alienation between the Union and (some of) its constituent member states, a lack of trust that can be disastrous in the long run. Aren’t we sowing the seed of future bitterness between some member states and the Commission?

Moreover, there is an even greater danger in this proposal. In the past, any increase of Union supranationalism was always accompanied by an increase of the position of governments in the Union. To give one example, when in the seventies the European Parliament was given increased democratic legitimacy by having its members directly elected, the European Council – intergovernmental by nature- was installed to provide overall political leadership over European policy at large. Currently, proposals for strengthening Commission democratic legitimacy are balanced with ideas for permanence of Council Presidency. The danger of this new trade-off for the position of the Commission in the EU can hardly be overstated: It amounts to no less than the installation of a rival intergovernmental EU at the side of the celebrated supra-national system. What we are witnessing in proposals for permanent European presidency (no doubt to be supported by a strong and new administration) is the negation of foundational ideas of Monnet and Schuman, fathers of the supranational method. What we are witnessing is a minor *intergovernmental coup d’état* by certain member states, for this time installation of intergovernmental elements is not seen as a temporal step –infused by a feeling of realism in the face of European politics dominated by states- on the road towards a more supranational Europe. This time there are no provisions of temporality, no ‘passerelles’. This time Europe must become *and remain* intergovernmental.

Furthermore, it is the Council President that will possess the possibility of becoming the *real symbol of Europe’s Union*. In the end, electing the Commission through the Parliament might not at all increase its symbolic function. Why? Let me answer this question by posing another one: What good does it serve to increase symbolic legitimacy of the Commission President if the stuff that really makes symbols –representation in foreign affairs, presiding over the European Council which takes the main political decisions- is given to the Council Presidency? Symbols acquire relevance by a combination of conducting visible policy that matters to people –like foreign affairs and setting the political agenda for the EU- *together with* the establishment of democratic legitimacy. I invite you to take a closer look at national democratic systems and what makes leaders relevant to people there. The current crisis over Iraq serves as an excellent example: foreign relations define leadership symbolism far greater than competence to conduct economic policy, because it has a much deeper emotional and ethical value for citizens. Given that premise, what deep symbolic legitimacy in the hearts and minds of the citizen will the Commission ever have if it is never to play another role than one of technocracy? Establishing a permanent intergovernmental Europe with a President that risks to have the type of policy that attracts most if not all of the public’s attention under his wings won’t help much. If one really wants to increase symbolic legitimacy of the Commission, if one wants to bring the Commission closer to the citizen, one should also give it politically visible functions and couple this to some form of democratic election. What is now debated falls short of that by far.

Don't misunderstand me, I am not *at this point in time* proposing to make the Commission competent for foreign- and security policy. The hypothesis is used here to exemplify the effect of current proposal circulating at the Convention.

In this interpretation of proposals circulating at the Convention we must seriously contemplate if we are willing to pay a price this high for a possible increase of Commission symbolism. Is it not better to drop this whole trade-off all together? Offsetting a very modest at best increase in symbolic legitimacy with a possibly important decrease in practical brokering power in the Council complemented by the instauration of a rival intergovernmental Europe -with all trumps to deliver the real symbol of the EU- is a very hard deal to swallow if one means serious business with the Commission and a supranational Europe.

Besides, in which national political systems of checks and balances construct is the head of the executive directly *elected* by the parliament? I cannot think of one.

The proposal to separate legislative from executive Councils could also lead to erosion of Commission power.

At present there is no such formal distinction. The right of legislative initiative of the Commission applies to all Council decisions.

Implementing measures at Union level -complementing legislation- are as a rule taken by the Commission albeit in accordance with the so called 'comitology' system. This system entails that the Commission must collaborate with state-controlled committees over which it presides when the Council so desires. Presidency over these committees entails also Commission power of policy initiative: proposals can only be modified by qualified majority vote.

At the Convention, approval for splitting up the Council into two branches is almost unanimous. One branch would become a full legislative chamber, another would be part, not of the legislature, but of the executive.

This proposal deserves support only if the Commission presides over the executive branch, leaving intact its exclusive right of initiative. If the Presidency befalls someone else, say a member state, and this Presidency formulates proposals and steers Council debate over policy we witness another severe intrusion into Commission power compared to the current situation sketched shortly in this paragraph.

Let us now turn to the 'double hatted' European Minister of Foreign Affairs.

Currently there is a distinction between 'external affairs' –exclusive EU competence managed by the Commission- and 'foreign- and security policy', the so called 'second pillar', managed by the states themselves on a purely intergovernmental basis.

There is a Commissioner for External Relations and for matters falling under the second pillar member states created a 'High Representative' to assist them and represent common EU positions abroad.

In practice this duplicity has lead to complicated institutional and procedural structures only understandable to a blessed few Union specialists and academia.

Consequently there is great support at the Convention to unify the personalities of High Representative and Commissioner External relations into one 'double hatted' European Minister for Foreign Affairs. While this seems a sound and healthy solution at first glance, it might be disastrous to the integrity of both the Commission and the Minister: the Minister would be appointed by the

Council and he will be working in close cooperation with member state capitals for his competences in foreign affairs. These elements could be crucial, for he will become politically affiliated with the member states, working with them in daily life while at the same time being part of the Commission where he takes care of external Union competence. My doubts can be stated as follows: Won't this day-to-day schizophrenia influence the Minister's confidential/working position in the Commission? Will it not give the impression to the public that *all* competence in the field is intergovernmental, thereby undermining an accurate understanding of Union competence? Let us not forget that it will be the foreign affairs part of his work that will put the Minister in the spotlights, not the external relations aspect albeit an exclusive competence of the EU. The public will not adequately grasp the artificial distinction between both parts of his job and it might think the Minister is in all cases the associate of the states.

If all this *might* be a problem, it definitely *will be* if read in the wider context of proposals for a permanent president of the European Council. In these, the European Minister would exercise his intergovernmental functions under the leadership of a permanent president, again no doubt supported by a large administration. This will increase dramatically the practical day-to-day absorption of the Minister in a Europe of states.

Finally, emblematic for the evolution elaborated here is the trend to approach the Commission *itself* intergovernmentally in the modalities of its composition: states refuse to give up 'their' Commissioner even in the face of a dramatic EU expansion eastwards and a concomitant overcrowded Commission. What should be an exercise in composing a supranational body based mainly on merit but qualified with some method of political and geographical balance is turned into an exercise making the Commission an intergovernmental body composed on the same principle as composition of the Council of Ministers.

To conclude, this article aims to suggest we should seriously contemplate the question if intergovernmentalism will serve European integration better than supranationalism, the celebrated method responsible for nearly fifty years of successful European integration, bringing i.a. prosperity, rising European economic power in the world, a single currency and most of all peace between the peoples and states of Europe.

But it also wants to remind members of the Convention and others that we should not conduct the debate on the future of the Union in abstract terms only, juggling with heavy concepts and ideas without considering the concrete influence of some of the conceptual proposals for the practical and political day-to-day position of the Commission in the political life of the Union.
