



WALTER HALLSTEIN-INSTITUT
FÜR EUROPÄISCHES VERFASSUNGSRECHT
HUMBOLDT-UNIVERSITÄT ZU BERLIN

WHI – Paper 1/03

**DEMOCRATIC LEADERSHIP IN EUROPE:
THE EUROPEAN COUNCIL AND
THE PRESIDENT OF THE UNION**

PROF. DR. INGOLF PERNICE

THIS CONTRIBUTION IS MADE FOR THE 3RD INTERNATIONAL SEMINAR OF THE EUROPEAN CONSTITUTIONAL LAW NETWORK, ORGANISED BY THE INSTITUTE FOR EUROPEAN STUDIES, SAN PABLO-CEU UNIVERSITY OF MADRID IN CO-OPERATION WITH THE REAL INSTITUTO ELCANO DE ESTUDIOS ESTRATÉGICOS E INTERNACIONALES AND THE WALTER HALLSTEIN-INSTITUTE THE 23RD-25TH JANUARY 2003 IN MADRID ON "THE GOVERNMENT OF EUROPE - INSTITUTIONAL DESIGN FOR THE EUROPEAN UNION".

JANUAR 2003

DEMOCRATIC LEADERSHIP IN EUROPE: THE EUROPEAN COUNCIL AND THE PRESIDENT OF THE UNION

*by Ingolf Pernice, Berlin**

www.whi-berlin.de/pernice-leadership.htm

Introduction.....	2
I. Structure and Functions of the European Council at Present.....	4
II. European Council and EU Presidency in the Political Discussion	6
1. Political Statements	8
2. Draft Constitutions.....	10
a. Rotating Presidency.....	10
b. Presidential Solutions	12
c. Joint Presidencies.....	13
3. Elements Developed by the Convention and Its Working Groups.....	13
III. European Council and Presidency in a New Institutional Setting.....	15
1. Critical Analysis of the Options Regarding the Presidency	16
2. Conclusions: For a President of the Union	18
3. Draft Articles on the European Council and the President of the Union	21
Conclusion	24

Introduction

The constitutional process of the European Union has come into its critical phase. A number of important questions have been resolved tentatively by the diverse working groups of the European Convention and the principle seems to be accepted that the Convention will submit to the Intergovernmental Conference a complete draft constitution for the European Union to be adopted by the European Council of Rome. Yet, one

* Professor Dr. jur. Ingolf Pernice, Managing Director of the Walter Hallstein-Institute for European Constitutional Law of the Humboldt-University of Berlin www.whi-berlin.de. This contribution is made for the 3rd International Seminar of the European Constitutional Law Network, organised by the Institute for European Studies, San Pablo-CEU University of Madrid in co-operation with the Real Instituto Elcano de Estudios Estratégicos e Internacionales and the Walter Hallstein-Institute the 23rd-25th January 2003 in Madrid on "The Government of Europe - Institutional Design for the European Union". The author expresses his gratitude to Daniel Thym for constructive comments and assistance to the completion of this study.

crucial question is still pending, and this is the design and organisation of the Government and, in particular, the Presidency of the Union. No working group has been established to find and propose solutions for this, and President Giscard d'Estaing seems to envisage that the plenary of the Convention takes up this issue on the basis, no doubt, of his own proposals. The document on "The Functioning of the Institutions" circulated recently by the Presidium¹ gives a description only of the existing situation, problems and proposals, but does not conclude with any clear recommendations.

The European Constitutional Law Network has decided to take up this point as the subject of its present Madrid Seminar, and I would like to address my deepest gratitude to the Institute of European Studies, its President Marcelino Oreja Aguirre and my colleague José María Beneyto, both of the San Pablo-CEU University who are hosting and have organised this Seminar in close co-operation with the Real Instituto Elcano de Estudios Estratégicos e Internacionales and with my friend Antonio Lopez Pina from the Universidad Complutense de Madrid. Many thanks to all of you and to all my friends and colleagues from Europe and the USA who have taken time and courage to come and participate in this Seminar on a subject a solution for which will be decisive for the future of the enlarged European Union.

It has been decided to start the seminar with the European Council, then focus on the Council of ministers at the second session, discuss the Commission after lunch and conclude the discussion of this first day with the question of democratic accountability and control by the European and the National Parliaments. Models and ideas developed during these four sessions will be looked at, the second day, from various specific perspectives, starting by the role of the regions and going all the way through to the organisation of the foreign affairs and the economic government of the Union. As it is our firm intention to come to draft articles on the "government of Europe", it is important that our debate focuses the proposals submitted in written and circulated in advance by the respective speakers and discussants.

The subject of this first session must be understood in a broad and open sense. What shall be the role of the European Council, and how should it be institutionalised as a part of the government of the Union. It is clear from the outset that it will have a leading political function and that the presidency of the Union must in some way be related to the European Council. We all know the so called ABC-proposal made and supported last year by Aznar, Blair and Chirac. But we are also aware of the strong reservations of Germany and a number of smaller Member States against a president which would be appointed by the Heads of State or Government from among themselves for a period of five or more years. It would be too easy, however, to reduce the debate to not more than on a power-struggle between intergovernmentalists and supranationalists, and more recent draft constitutions and political statements, such as from Tony Blair from late December 2002² show that thoughts are developing.

Leadership in the European Union does not, of course, regard the European Council only, and the analysis and proposals will necessarily touch other institutions which are to be dealt with in other parts of this seminar. Seeking to limit this study as much as possible to the discussion around the European Council, it seems to be worth defining the func-

¹ The Functioning of the Institutions, CONV 477/03 of 10 January 2003.

² George Parker, "UK softens line on European presidency", Financial Times of 31 December 2002.

tions of the European Council under the present Treaties first (infra I.) and summarising the most important proposals recently made (infra II.), before developing some proposals relating to the European Council and the Presidency within a governmental system which responds to the general needs of effectiveness and democratic legitimacy in an enlarged European Union (infra III.).

I. Structure and Functions of the European Council at Present

As opposed to the Council, the Commission, the European Parliament and the Court of Justice, referred to in Article 5 EU and Article 7 EC, the European Council is not an institution of the European Community. It is an institution of the European Union only, and Article 4 EU gives it the task to “provide the Union with the necessary impetus for its development” and to “define the general political guidelines thereof”. While the Council consists, according to Article 203 EC, of a representative of each Member State at ministerial level, only, Article 4 (2) EU says that the European Council “shall bring together the Heads of State and Government of the Member States and the President of the Commission”, thus the Commission is given a formal status in the European Council, what it is not in the Council of ministers. The national ministers for foreign affairs and one more member of the Commission assist their heads in the European Council, which meets at least twice a year “under the chairmanship of the Head of State or Government of the Member State which holds the Presidency of the Council”. Strictly speaking - and the political practice does not reflect this difference - there is only a “chairman” of the European Council, and no President. Consequently, while according to Article 13 (1 and 2) EU the European Council has the task to define the principles and the general guidelines for CFSP and to decide on common strategies, it is for the Presidency (of the Council) to represent the Union and to implement the decisions taken in CFSP (Article 18 (1) EU)³.

The European Council may decide, under Article 17 (1) EU on the definition of a common defence policy, and takes a unanimity decision if a matter is referred to it under Article 23 (2) EU. A similar provision in Article 40 (2) EU for the decision on enhanced co-operation has been amended by the Treaty of Nice giving now a Member State the right to ask that the European Council discusses an authorisation before the Council decides by qualified majority (Article 40a (2) EU). In the framework of economic and monetary policies, the European Council is in charge to “discuss conclusions on the broad guidelines of the economic policies of the Member States and the Community” (Article 99 (2) EC), while it is the “Council, meeting in its composition of the Heads of State or Government” who confirms, by Article 121 (4) EC which Member States fulfil the necessary conditions for the adoption of a single currency and discusses, under Article 122 (4) EC, which Member States with a derogation fulfil the criteria to join the single currency. Moreover, the European Council is given the function of considering, each year, the employment situation in the Community and to “adopt conclusions thereon, on the basis of a joint annual report by the Council and the Commission” (Article 128 (1) EC).

³ A comprehensive overview of the status quo and reform proposals of the ‘Treaties’ institutional and legal regime governing the formulation and articulation of European foreign policy are described by Ingolf Pernice and Daniel Thym, “A New Institutional Balance for European Foreign Policy?”, *European Foreign Affairs Review* 7 (2002), Issue 4 forthcoming.

It is clear that the political practice is going far beyond these limited functions of the European Council provided for in the Treaties. It has developed to the supreme decision-maker in the Union, arbiter where the Council is blocked and progressively busy with some "micro-management" contrary to its original function⁴. The "open method of co-ordination" as instituted by the "Lisbon Process" in March 2000⁵ is actually discussed to be codified in the Constitution of the Union as an additional (soft) instrument of action for the Union⁶. During the Spanish Presidency, the European Council of Sevilla in June 2002 has concluded on measures to enhance its efficiency by a better preparation and a better organisation of its deliberations and conclusions⁷. Following the terms of Article 4 EU the number of persons attending the meetings of the European Council was confirmed to be two per delegation. The "Presidency Conclusions" of the Copenhagen Summit of 12 and 13 December 2002 show that this modest exercise had already the desired effect to produce shorter and, may be, more concise conclusions⁸.

Legally speaking the European Council's functions, therefore, are that of political orientation, co-ordination and leadership, but it has - as opposed to the Council (Article 202 EC) - no real decision-making powers and is, as a consequence, not subject to the jurisdiction of the Court of Justice (Article 46 EU). Its political function is underlined by the fact that the principle of limited attributed powers laid down in Articles 5 EU, 5 (1) and 7 EC is applicable to the institutions of the Community and does not cover the European Council. The European Council, finally, has no Presidency but a "chairman" only and the representation of the Union is the task of the Presidency of the Council, as it is for the (President of the) Commission in the areas of Community competence.

Contrary to its limited role under the Treaties, the European Council plays a dominant role in reality, not only on general political orientation, but also as the highest decision-making body of the Union in numerous important political questions. The Chairman calling itself wrongly "Presidency" exercises the central power. As Tony Blair pointed out in his Cardiff speech of 28 November 2002: Its "purpose" now is "setting the agenda for

⁴ See also Franz C. Mayer, *Nationale Regierungsstrukturen und europäische Integration. Verfassungsrechtliche Vorgaben für den institutionellen Rahmen der Europapolitik auf nationaler und europäischer Ebene*, *Europäische Grundrechte Zeitschrift* 29 (2002), 111, 114.

⁵ Critical remarks on the suitability of the open method of coordination for the reform of the European Treaties lately Caroline de la Porte, "Is the Open Method of Coordination Appropriate for Organising Activities at European Level in Sensitive Policy Areas?", *ELJ* 8 (2002), 38-58 and Ingo Linsenmann and Christoph Meyer, "Dritter Weg, Übergang oder Teststrecke? Theoretische Konzeption und Praxis der offenen Koordinierung", *Integration* 2002, 285-296.

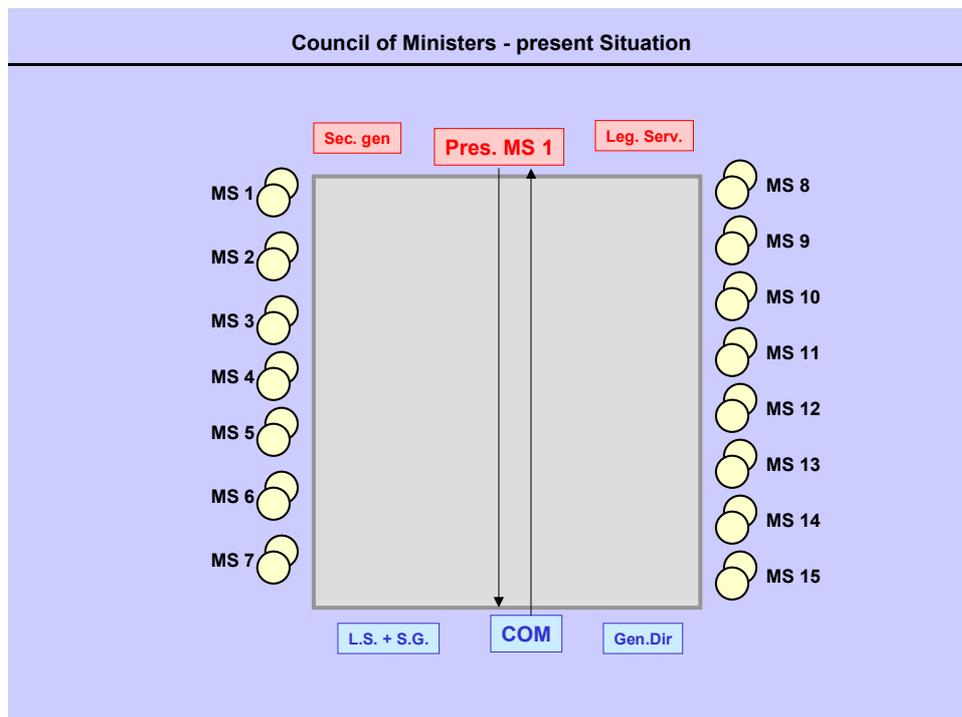
⁶ See Working Group V of the European Convention on "Complementary Competencies", 4 November 2002, CONV 375/1/02 Rev. 1 (WG V 14), p. 7. Similarly, Art. 67 of the Draft Constitution submitted by the European Policy Centre, "The Europe We Need. Constitution of the European Union", 17 September 2002 <www.theepe.be/home.asp?SEC=news>, also to be found under "Draft Constitutions" at <www.whi-berlin.de>.

⁷ European Council of Sevilla, 21 and 22 June 2002, SN 2002/02, Annex 1. See already the letter of Gerhard Schröder and Tony Blair of 25 February 2002 to the Presidency <www.bundesregierung.de/dokumente/Artikel/ix_70350.htm>, asking to reduce the agenda of the European Council to a few priorities only.

⁸ The status quo and earlier reform proposals in the mid-1990s are described by Sven Hölscheidt and Thomas Schotten, "Die Präsidentschaft im Europäischen Rat und im Rat der Europäischen Union", *Thüringer Verwaltungsblätter* 1997, 6-10.

Europe"⁹. The place and influence of the Commission is marginal, while - because of its monopoly to make proposals, its role as a neutral mediator and its power, under Article 250 EC, to amend its proposals during the legislative process - it plays a central role in the Council. This difference is reflected in the different physical settings of the European Council and the Council of Ministers. At the latter, the Commission is seated in front of the Presidency on one of the top ends of the table. The Commissioner is assisted by its Secretary General and Legal Service, as is the President by the respective services of the Council. At the meeting of the European Council the Chairman is backed by the Secretary General and the Legal Service of the Council, while the President of the Commission with the Commissioner for foreign affairs are seated among the other delegations and are assisted only by the Secretary General of the Commission. Though the Commission may submit recommendations and ideas to the European Council, there is no institutionalised strategic interplay between the Chairman and the Commission, and all initiatives and powers are concentrated with the Chair of the European Council which plays the role of a real Presidency for its six months at office.

The following drawings my illustrate the difference: The first table shows how the Presidency, the Member State delegations and the Commission are seated in the Council of Ministers:

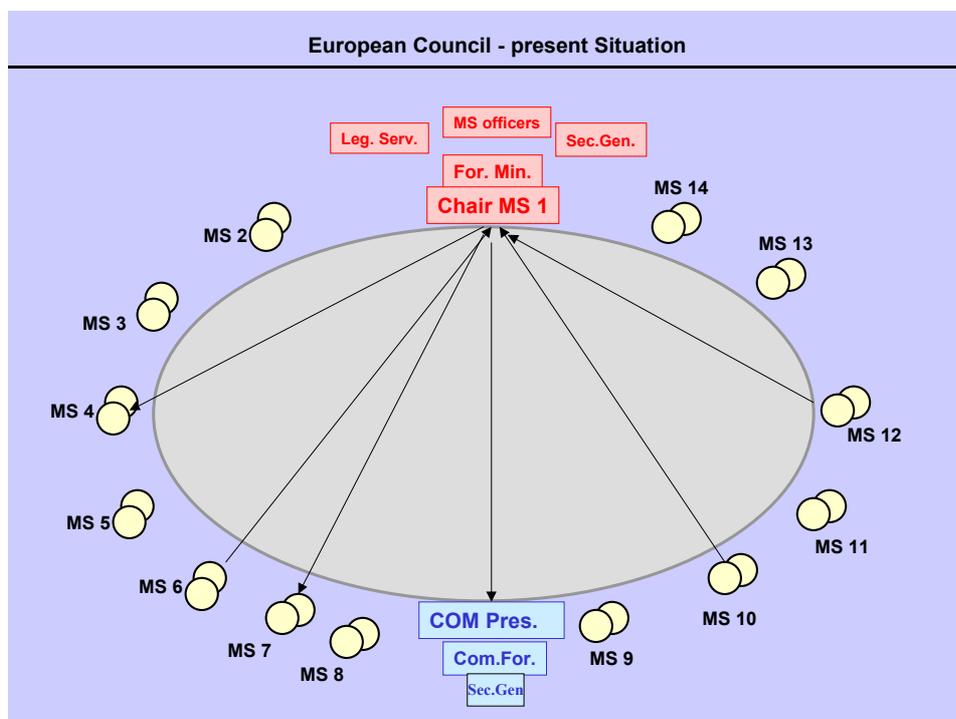


In this normal Council setting, there is a balance between the Commission and the Council's Presidency, while the Member State's delegations are seated along the table.

⁹ Tony Blair, "The Future of Europe: Strong, Effective, Democratic", Speech at the Old Library, Cardiff, 18 November 2002 <www.number-10.gov.uk>. More generally on the British contribution to the constitutional debate see Daniel Thym, "A Superpower, not a Superstate" - Der britische Beitrag zur europäischen Verfassungsdiskussion", *Integration* 2001, 356-368.

While the President organises and chairs the meetings, the Commission is free to defend its proposal and to mediate, in co-operation with the Presidency, among the Member States. It is advised and assisted by its services, as is the Presidency by the services of the Council.

The normal setting of the European Council is different:



The central position of the Chair in this setting is apparent. The Commission is seated in front of the Council, but its delegation is not stronger than the delegation of any Member State, nor does it dispose of any specific function or power in the European Council. It is the Chairman who sets the agenda, and who governs the discussion at the meetings.

II. European Council and EU Presidency in the Political Discussion

There seems to be a consensus that with 25 and more Member States the system of rotating Presidencies for the Union would not satisfy the needs of continuity and identity of the European policies. Let me quote, again, Tony Blair:

“The six-monthly rotating Presidency was devised for a Common Market of 6: it is not efficient nor representative for a Union of 25 and more. How can a Council with constantly shifting leadership be a good partner for the Commission and Parliament? How can Europe be taken seriously at international Summits if the Chair of the Council is here today, gone tomorrow? The old system has reached its limits. It creates for Europe a weakness of continuity in leadership: a fatal handicap in the development of an effective Common Foreign and Security Policy.

What's worse, each Presidency sees itself as setting its own distinctive agenda for the Union. The Lisbon Summit agreed a ten-year programme of economic and social reform for the Union. But it has not been easy to ensure proper attention to the co-ordinated follow up of that agenda across a wide range of sectoral Councils, each with their own bobby horses and vested interests. This is an example of where the rotating Presidency makes life more difficult for the Commission - and more seriously, where institutional weakness has led to higher unemployment than Europe need have suffered.”¹⁰

The Convention-Presidency's recent document on “The Functioning of the Institutions” just concludes that “any reform of the Presidency system would need to address the two requirements of stability and adequate representation of all Member States¹¹. Recent political statements (infra 1.) as well as drafts submitted since summer 2002 for a Constitutional Treaty or a Constitution of the European Union (infra 2.) show different ways to tackle these problems, all of them, however, maintain the European Council as the supreme body responsible to lay down the general political guidelines for the Union and provide it with the necessary impetuses for its development. There is broad agreement, also, on the (traditional) composition of the European Council by the Heads of State or Government of the Member States and the President of the Commission, though foreign ministers and another member of the Commission are not mentioned¹². The Convention, its Working Groups and its President, Valéry Giscard d'Estaing have only given very limited and vague indications of how the European Council and a Presidency could finally be construed (infra 3.).

1. Political Statements

Given the opposition of smaller Member States, in particular, feeling that a fixed Presidency for an office of up to five years would lead to the large nations dominating and the Commission being downgraded, Tony Blair proposed “some form of 'team Presidency' which allows the chairs of the principal Councils to be divided amongst Member States for a decent length of time, with the more permanent Chair of the European Council to co-ordinate that team”¹³. More precisely, Jack Straw has pointed out that, with the system of “team Presidencies”, it would be for the “hauptamtlichen” Chair of the European Council to co-ordinate them¹⁴. With a view to the French-German proposals at the 40th anniversary of the Elysée Treaty in January 2003, this British position seems to have been softened towards a compromise strengthening both the Commission and the Council:

¹⁰ Blair *ibid.* Deficiencies of the Rotating Presidency are also examined by Pernice and Thym, *supra* note 3, in section 4.1; Willem Van de Voorde, “Rotationsverfahren in der Ratspräsidentschaft der Europäischen Union”, *Integration* 2002, 318-324 and Steve Everts, “Time to Abolish the EU's Rotating Presidency”, 21 CER Bulletin (December/January 2001/02), 1.

¹¹ See *supra* note 1, point 17.

¹² See the exceptions, however, of the Badinter-Draft (no President of the Commission) and the European Policy-Center's draft (includes the President of the European Parliament), *infra* II.2.

¹³ Tony Blair, *supra* note 9.

¹⁴ Jack Straw, “Eine Team-Präsidentschaft soll Europa lenken”, *Frankfurter Allgemeine Zeitung* Nr. 280 of 2 December 2002, p. 12.

"We could live with an elected Commission president, provided we also get a strong chairman of the European Council"¹⁵.

Such a move regarding the election of the President of the European Commission has not yet been made by the French government. In his Marseille speech of December 2, 2002, the French Minister for Foreign Affairs, Dominique de Villepin, has confirmed his doubts regarding the changed balance of powers resulting from this between the Commission and the Council¹⁶. He also confirmed the view of President Chirac that the President of the European Council should be appointed by its colleges for a period longer than six months¹⁷, with a Minister for Foreign Affairs on his side, who is responsible to ensure the coherence of the external action of the Union. He went even a step further saying that, in a longer evolution, the idea of a unique President both for the Commission and the Council should be explored, and he seems to follow the lines proposed by Pierre Lequiller in October 2002¹⁸ and join a project of the German Foreign Minister Joschka Fischer, who proposed such a top level "double hat"-solution at almost the same time: This President should be one of the former Heads of State or Government, Foreign or Finance Ministers of a Member State and be elected by the national governments and represent the leading political family in the European Parliament¹⁹.

The Prime Minister of Belgium, Guy Verhofstadt, in his Bruges speech of November 18, 2002, found this "an interesting idea". Furthermore, he pointed out that he is strongly in favour of the President of the Commission to be elected by the European Parliament and thereafter confirmed by the European Council, but clearly against "a President of the European Council from outside the membership of this body and this for a longer period of time"; in a Union with a multitude of peoples and cultures, he said, "a presidential regime is anyway not adequate"²⁰. In his view, the essential feature of the new architecture of the Union is "that the executive power becomes a genuine executive power, a European Government as it were", that "directs and streamlines the European Project", which is "co-ordinated and conducted from one nerve centre. And obviously, that nerve centre must be the Commission". It is for the Commission to chair the Council meetings that take executive decisions, the President for the General Affairs Council and for the For-

¹⁵ The words of a British diplomat, quoted by Parker, *supra* note 2.

¹⁶ Dominique de Villepin, "L'Union Européenne et la Méditerranée", Speech of 2 December 2002, www.france.diplomatie.fr/actu/article.asp?ART=30071. For a detailed analysis of the French view and its relation with proposals from other Member States see Vlad Constantinesco, "La question du gouvernement de l'Union européenne", Europe Juillet 2002, Chroniques pages 3-7 and the forthcoming publication of the same text in Roberto Miccú/Ingolf Pernice (eds.): *The European Constitution in the Making: Challenges and Possible Achievements of the Brussels Constitutional Convention* (Nomos, 2003, forthcoming).

¹⁷ In this sense also the proposals of the Bertelsmann Foundation and Center for Applied Policy Research, "Bridging the Leadership Gap: A Strategy for Improving the Political Leadership in the EU", Working Paper of the Thinking Enlarged Group, December 2002, point 2.1, with the idea of a "team-presidency" as the second best solution.

¹⁸ Pierre Lequiller, A President for Europe, CONV 320/02, CONTRIB 108 of 7 October 2002, see in particular *ibid.*, p. 5, 7, 11: a President "nominated by the Council and confirmed by the Congress".

¹⁹ "Fischer fordert EU-Superpräsidenten", *Der Spiegel* 50/2002 of 07 December 2002, www.spiegel.de/spiegel/vorab/0,1518,226151,00.html.

²⁰ Guy Verhofstadt, "Montesquieu and the European Union", Address of Prime Minister at the College of Europe, Bruges, 18 November 2002 europa.eu.int/futurum.

ign and Defence Policy Council the Vice-President of the Commission, who executes with a double hat the duties of High Representative for the CFSP and of Commissioner for External Relations. Quite in line with these ideas is the Memorandum of the Benelux of 4 December 2002 which emphasises, in addition, that they favour to maintain the rotation system for the European Council as well as for the specialised Councils and would "never" accept a Presidency from outside the Council²¹.

To maintain the principle of rotation for the Presidency of the European Council as well as for the General Affairs Council, is also the option favoured by the Commission in its Communication on the Institutional Architecture of 4 December 2002. The reason is basic: The exercise of the Presidency is an important tool for the mobilisation of the national administrations and the recognition of the European commitment of each Member State. The need for continuity, on the other hand, is taken into account by the Commission by the proposal that the Presidency of the other Council formations is exercised by one member elected by its colleagues for the period of one year and the abolition of the representative functions of the Council Presidency in CFSP issues²².

2. Draft Constitutions

The various models for the organisation of the European Council in its relation to the Commission, and the question of the Presidency as they can be found in the Drafts for a Constitution of the European Union submitted by political groups, individual deputies and academia may be grouped into those maintaining a rotating system (*infra a.*), the presidential approach (*infra b.*) and the team presidency (*infra c.*).

a. Rotating Presidency

Very concrete terms for the establishment and functions of the European Council are set out in the "Feasibility Study" (FS) of the Commission's working group of 4 December 2002²³. Article 42 of this FS-Draft defines the European Council as the Council meeting at the level of Heads of State or Government and includes expressly the President of the Commission. The office of its President is determined according to the rotation system. Article 42 (3) gives the European Council - apart from the powers conferred to it by other provisions of the Treaty - specific decision-making powers regarding the revision of the Treaties, the financial perspectives of the Union and the appointment of the President of the Commission, which has been designated by the European Parliament and of the other Members of the Commission according to the procedure laid down in Article 47. The concern of continuity in external relations is met by the function of a "Secretary of the Union", which is appointed by the European Council in agreement with the President of

²¹ Benelux countries, "Memorandum der Benelux: Ein ausgeglichener institutioneller Rahmen für eine erweiterte Union mit mehr Effizienz und Transparenz", 4 December 2002 <europa.eu.int/futurum>.

²² European Commission, "Communication: For the European Union – Peace, Freedom and Solidarity", 4 December 2002, KOM (2002) 728 in section 2.2.2.

²³ Feasibility Study, "Contribution to a preliminary draft Constitution of the European Union", Working document prepared by a group of experts at the request of the President and Commissioners Barnier and Vitorino, 4 December 2002 <www.europa.eu.int/futurum>.

the Commission and must be approved, together with the rest of the Commission, by the European Parliament (Article 47 (3) and (5) of the FS-Draft)²⁴.

Like the Commission, Andrew Duff, in Article 11 (1) of his early and short Draft of 3 September 2002, proposes the European Council to be "chaired by a head of state or government by rotation for a period of six months". The tasks of the European Council are to "establish the work programme of the Union, and to give overall political direction to the Union"²⁵. The President of the European Commission shall be elected, according to Duff, by "the Congress", which comprises the European Parliament and an equal number of representatives of member state parliaments (Articles 9 (3) and 13 (2)). Likewise, the European Policy Centre's Draft Constitution of 18th September 2002, which sees the President of the European Parliament to be a member of the European Council (Article 30) proposes the office of the President to be rotating among the Member States (Article 31). It gives the European Council the specific power to approve the revision of the Constitution (Article 32 (2))²⁶.

A rotating Presidency is also the solution in the Paciotti-Draft for a European Constitution (Articles 67 (2) and 78 (2))²⁷, in the "First Green Draft for a European Constitution" of September 2002²⁸, the Draft Constitution of Jo Leinen of 23 October 2003, though here the modalities relating to duration, order of succession etc. are left to the agreement within the European Council (Article 87)²⁹, and of Rupert Scholz in his Draft Constitution for the European Union presented in fall 2002. The chair of the European Council is held by the Head of State or Government of the Member State which holds the Presidency of the Council, which is rotating in a six month's rhythm³⁰. The draft maintains the function of the High Representative for CFSP (Article 312 (2)), but establishes the Commission as the executive of the Union (Articles 286 (1), 317 (1)) insofar as the executive function is not conferred - like for matters of responsibility of the Member States (intergovernmental co-operation) - to the Council (Article 286 (2) of the draft). Yet, the concern of continuity and identity of European (external) policies has not found at-

²⁴ The implication of the various reform proposals concerning the Council's rotating Presidency are discussed in more detail by Pernice and Thym, *supra* note 3, in section 4.1. See also for the abolition of the rotation system regarding the operative policy function of the Council, and its replacement by elected co-chairs (with the Commission) for "four Steering Council formations": Bertelsmann Foundation and Center, *supra* note 17, point 2.2.

²⁵ Andrew Duff, "A Model Constitution for a Federal Union of Europe", 3 September 2002, CONV 234/02 CONTRIB 82.

²⁶ F. Dehousse/W. Coussens, "The Europe We Need. Constitution of the European Union", 17 September 2002 <www.theepc.be/PDF/BasicTreaty.pdf>.

²⁷ Elena Ornella Paciotti, "A Draft Constitution for the European Union", 19 November 2002, CONV 335/02 CONTRIB 117 (Revised version).

²⁸ Seifert, Lührmann, Nouripour, "First Green Draft Constitution", September 2002 <www.forward-studies.net>.

²⁹ Jo Leinen, "Entwurf: Verfassung der Europäischen Union - Vorschlag an den Konvent 'Zukunft der Europäischen Union'", 23 October 2002 <www.joleinen.de/dokumente.html>, also to be found under "Draft Constitutions" on <www.whi-berlin.de>. See also Article 20 (2) of the "Berlin-Draft" presented by Günter Gloser and Michael Roth, "Berliner Entwurf. Verfassung für die Europäische Union", *ibid.*, where specific provisions on the Presidency of the European Council are not made (Article 18).

³⁰ See Articles 275 (2) and 307 (2) of the Draft elaborated by Rupert Scholz, "Die Verfassung der Europäischen Union", 17 Zeitschrift für Gesetzgebung (2002), Special Edition.

tion in this draft. It is, however, taken into account in Article 82 (4) of the Paciotti-Draft: the High Representative for CFSP is appointed by the Council in agreement with the President of the Commission, carries out the tasks of a Vice-President of the Commission and "shall be subject to specific obligations vis-à-vis the Council and the European Parliament"³¹.

b. Presidential Solutions

This is the driving force, however, of all the "presidential" solutions. Contrary to the drafts mentioned so far, the most radical change regarding Presidency and political leadership is proposed in the Draft for "A European Constitution" of Robert Badinter, submitted to the Convention on 30 September 2002³², starts its part V on the institutions by the "President of the European Union", which shall be "chosen among persons from the Union having rendered eminent services to Europe" and elected for a term of five years, on a proposal from the European Council, by an absolute majority of the members of the European Parliament - without any debate (Article 26). This President presides the European Council without a right to vote, represents the European Union on the international stage, sign (though not negotiate) treaties of the Union, open sessions of the European Parliament and may send messages to it (Article 27). Article 30 does not mention the President of the Commission as a member of the European Council, the powers of which are similar to the present situation (Article 31), with one exception: The European Council designates the Prime Minister, who, after approval by the European Parliament (Article 34), takes the functions, for a period of five years, of a real head of government: the Commission, presides the Council of Ministers and attends the meetings of the European Council (Article 35). In addition, a "High Representative" appointed by the Council of Ministers among the members of the Commission, is proposed to be responsible for the CFSP and "accept all tasks and relevant instructions from the Council of Ministers" (Article 42).

A solution which keeps much more similarity to the present situation, though the rotation of the presidencies is replaced by the election of one of the ministers of the Council "for a term x" is presented by the Discussion Paper of the EPP Convention Group meeting in Frascati of 10 November 2002.³³ This formula chosen in Article 76 (2), last paragraph, for "whenever the Council does not act in its legislative function" is the key also for the chairmanship of the European Council which under Article 72 (2) of the draft is linked to that of the Council. The European Council not only comprises the Heads of State and Government of the Member States and the President of the Commission, but also the Ministers for Foreign Affairs, the Commissioner for External Relations and one other member of the Commission. While the President of the Commission is proposed by the Council to the European Parliament "in the light of the results of the European Parliaments elections", and must be approved by the absolute majority of the members of the Parliament, it is his right to nominate the other members of the Commission - for

³¹ Paciotti-Draft, *supra* note 27, in Article 82 (4).

³² Robert Badinter, "A European Constitution", 30 September 2002, CONV 317/02 CONTRIB 105.

³³ "The Constitution of the European Union - Discussion Paper", 10 November 2002 <www.epp-ed.org/home/de> (Text of the EPP Convention Group meeting in Frascati), available also under "Draft Constitutions" at <www.whi-berlin.de>.

approval by the Council and election by the European Parliament - and, in particular, to appoint one of the Vice-Presidents as the "Commissioner for Foreign Relations" (Articles 78 and 79 (4) of the EPP-Draft).

c. Joint Presidencies

The idea of "joint presidencies" has been taken up by the "Freiburg Draft" submitted by Jürgen Schwarze on 11 November 2002: According to Article 54 of this Draft, the Presidency of the Council is rotating among groups of three Member States respectively for 24 months each. The composition of the groups and the order of rotation is determined by unanimous decision of the Council. It is from among the respective group of Member States in office of the Presidency, that the European Council elects the one of the Heads of State or Government as its President (Article 51 (3) of the Freiburg Draft)³⁴. This draft in Article 59 proposes the nomination of the President of the Commission by the qualified majority of the Council, meeting in the composition of the Heads of State or Government, to be approved by the European Parliament; in case such approval is not given, a new candidate has to be presented to the vote of the European Parliament³⁵. The High Representative for CFSP chairs the Council for external relations (Article 54 (4)), has the office of the Vice-President of the Commission in charge of external relations (Article 60 (2)) and is nominated by the qualified majority of the Council meeting in its composition of the Heads of State or Government, in agreement with the designated President of the Commission. He appointed for a five years period provided the European Parliament approves his nomination with the majority of its members (Article 100).

3. Elements Developed by the Convention and Its Working Groups

The Convention has not yet discussed the institutional settlement and, in particular, the question of the European Council and the Presidency. As President Giscard d'Estaing has pointed out in his speech to the French National Assembly on 3 December 2002, the question is how to ensure that the three institutions, the Parliament, the Council and the Commission, may ensure an efficient, democratic and transparent functioning of the United Europe after its enlargement³⁶. For him, the rotation system must be stopped, because of its absurdity for a Europe of 25 and in that it carries the germs of the great deficiencies of contemporary politics: Anonymity and instability. He stressed that the role of the President of the European Council would not be changed by the mode of his designation, he would rather co-ordinate and mediate than command and decide, Europe should avoid any excessive centralisation of power³⁷. Regarding the Commission and its President, he pleaded for the maintenance of its monopoly of initiatives, but to avoid its

³⁴ Europa-Institut Freiburg e.V. (Direktor Jürgen Schwarze), "Freiburger Entwurf für einen Europäischen Verfassungsvertrag", 12 November 2002. This view is also supported by Bertelsmann Foundation and Center for Applied Policy Research, *supra* note 17, point 2.2.

³⁵ A similar solution is proposed by the Paciotti-Draft, *supra* note 27, in its Article 82 (2), though according to this draft the Council nominates "two or more candidates" and the European Parliament may elect one of them.

³⁶ Valéry Giscard d'Estaing, "Allocution sur l'Avenir de l'Europe devant l'Assemblée Nationale", Paris, 3 December 2002 <european-convention.eu.int/docs/speeches/5793.pdf>.

³⁷ *Ibid.* p. 21-23.

"politisation". As the Preliminary draft Constitutional Treaty presented the 28 October 2002 by the Praesidium to the Convention³⁸ in its Articles 15bis, 17bis and 18bis just keeps the room for a later establishment of "the term of office and appointment procedure for the Presidency of the European Council", the Council and the Commission respectively, only some remarks from the final reports of the Working Groups of the Convention allow speculations on which way the Convention may choose.

Thus, Working Group III on Legal Personality repeatedly stresses the need not only for a single position, but also for a single voice and its representation by a "single Union delegation" in its external political action. This is said to be necessary both in the areas of Union competence as well as in those where the Member States are responsible, in international negotiations as well as in international organisations³⁹. Working Group VIII reports that "a large trend" existed within the group in favour of the merger of the functions of the High Representative for CFSP and the Commissioner for external relations in one person, preferably a Vice-President of the Commission who is appointed by the Council meeting in its composition of Heads of State or Government in agreement with the President of the Commission and approval by the European Parliament. It is this "European External Representative" who should "ensure the external representation of the Union, replacing the current Troika"⁴⁰. A considerable group within the Working Group, however, voted for a full integration of this Representative in the Commission⁴¹. Another proposal was to create a "Minister for foreign affairs" who would combine the two functions of the High Representative and the Commissioner for external relations, and be placed under the direct authority of the President of the European Council⁴².

The Working Group recognised that there is a link between the reform regarding external representation and the organisation of the Presidency of the European Council⁴³, and it took the view that it should be the role of the European Council to define the general orientations and strategic guidelines of the EU's foreign policy⁴⁴.

4. The "Elysée-Proposal" of Chirac and Schröder

With their proposal of 15 January 2003 the French President and the German Chancellor have found a compromise which combines the "presidential" solution with the election and democratic control of the President of the Commission by the European Parliament. The President of the European Council would have to prepare and chair the meet-

³⁸ Praesidium, "Preliminary Draft Constitutional Treaty of the European Union", 28 October 2002, CONV 369/02.

³⁹ Final report of Working Group III on "Legal Personality", 1 October 2002, CONV 305/02 (WG III Working Document 29), paras. 35 to 38.

⁴⁰ Final Report of Working Group VII on "External Action", 16 December 2002, CONV 459/02 (WG VII Working Document 17), paras. 5, 33 and 34.

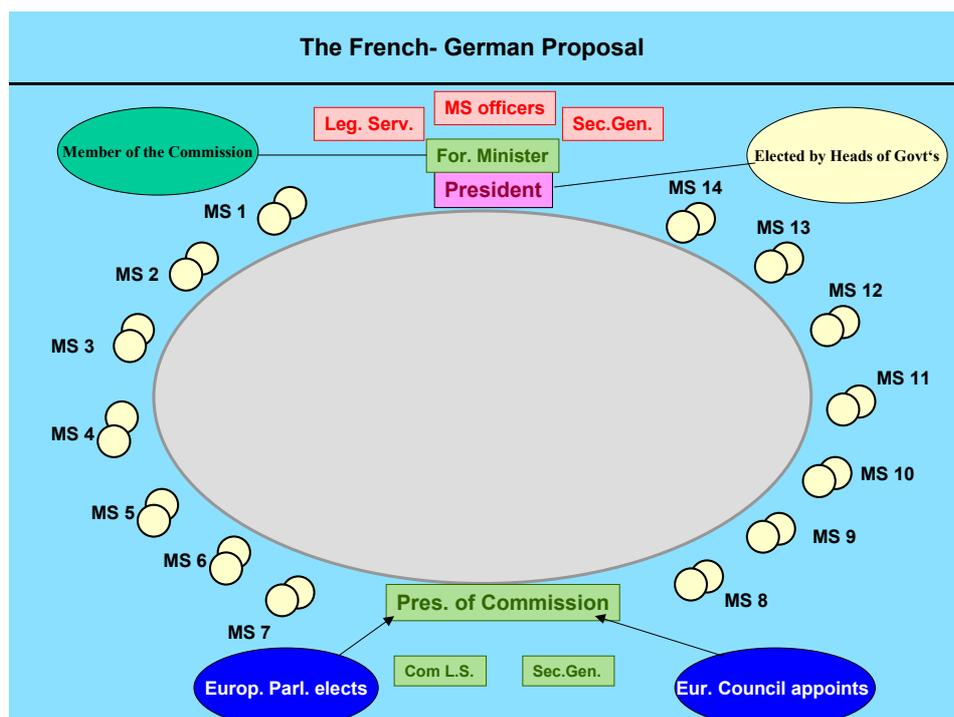
⁴¹ *Ibid.* paras. 31 and 32.

⁴² *Ibid.* para. 38. See on the deficiencies of the current system and the academic implications of the various reform options the analysis by Pernice and Thym, *supra* note 3, in section 4.

⁴³ Working Group VII, *ibid.* para. 39.

⁴⁴ *Ibid.* para. 24.

ings and works of the European Council as well as to monitor the implementation of its decisions. He/she would, in particular, represent the Union at international summits, notwithstanding the competencies of the Commission and its President and being understood that the operative foreign and security policies are a matter for the European Foreign Minister. The President of the European Council would be appointed by the European Council for a five - or a renewable two and half years - term during which period he/she would not exercise other functions.



III. European Council and Presidency in a New Institutional Setting

Given the political statements, proposals and drafts for a Constitution as summarised above, there seems to be common ground on the desire, in a future Constitution for the European Union, to maintain the European Council as a supreme institution of the Union with the power of defining its political guidelines, giving impetus and setting its general political agenda⁴⁵, and by this means to

- ensure more continuity, coherence and visibility to Europe, thus to give it effective means for action, single representation, in short: a face at the international level,

⁴⁵ For a challenging drafting in this respect see Article 16 of the “Dashwood-Draft”, Alan Dashwood, Michael Dougan, Christophe Hillion, Angus Johnston, Eleanor Spaventa, “Draft Constitutional Treaty of the European Union and Related Documents”, 16 October 2002, CONV 345/02 REV 1:

“1. The European Council shall bring together the Heads of State or Government of the Member States and the President of the Commission.

2. Under the guidance of its President, the European Council shall provide the Union with the necessary impetus for its development and shall define the general political guidelines of the Union. It shall establish a programme of policy objectives to be achieved by the Union. The programme shall be implemented by the other institutions of the Union in accordance with their respective powers.”

- join the functions of the High Representative for CFSP and the Commissioner in charge of external relations in one person which could be a Vice-President of the Commission,
- enhance the democratic legitimacy of the Commission by a co-decision of the Parliament and the European Council on the appointment of its President - or even his/her election by the European Parliament,

while merits and drawbacks of the rotation system, a presidential approach, the idea of a "team-presidency" and the "Elysée-Proposals" leave the debate open on how, *in concreto*, the European Council shall be organised and, in particular, how the question of the Presidency could be resolved. Being confronted with the various political options and taking into account the need to find a balance between the intergovernmental and the supranational preferences among the Member States and their governments, it seems to be useful to examine further the general options (*infra* 1.) before coming to a conclusion on the possible role for a "President of the Union" (*infra* 2.) and trying to present a draft for the relevant articles (*infra* 3.).

1. Critical Analysis of the Options Regarding the Presidency

a. The system of rotating presidencies leads to the difficulties set out by Tony Blair and clearly put forward by President Giscard d'Estaing: The lack of continuity and effectiveness, the anonymity of government, but also the absence of accountability at the European level. It is, on the other hand, essential for the European motivation and mobilisation of the national administrations in that it gives them an opportunity to really participate at, and contribute to the politics and development of the Union, and hosting the European Council means to the citizens of the respective Member State that Europe is present within the country. Yet, these virtues were more relevant at the times when the Community had only six Member States, as it will be in the future with twenty-five or thirty, while the difficulties named will become more important.

b. Will these difficulties be set aside by the largely supported double-hat solution of a "Foreign Affairs Secretary", a "Foreign Minister" or as Working Group VII is to name it, a "European External Representative" having the functions both of the High Representative for CFSP and the Commissioner for external relations? The virtues of this solution are evident in that it would "institutionalise" more coherence of external policies of the Union covering intergovernmental co-ordination in CFSP and supranational action in the area of Community competencies, and it should ensure that the Union speaks with one single voice and mouth to the external world. Yet, this Representative would be the servant of two authorities, the Commission and the Council, the policies of which - though he/she may have a right of initiative - he/she may influence only to a limited extent. And is it realistic to assume that these authorities, their Presidents, as well as certain Heads of State or Government and, in particular, the President of the Council will restrain from being representatives of the Union. When they are approached by the President of the United States, will they really defer him to the Vice-President of the Commission? This is

difficult to imagine, though at the operational level this "ministerial double-hat" solution would be a great step forward⁴⁶.

c. The presidential system is most probably the best solution for ensuring continuity and efficiency, single representation and unity of the European Union towards the external world, but also vis-à-vis the citizens. A great authority having proved his capacities and commitment for Europe already as a Head of State or Government or an important Minister of a Member State would be able both to exercise strong leadership in Union politics and to be accepted by the leaders of third countries as *the* person representing the Union as a political entity. The parliamentary election of the President of the Commission proposed by Chirac and Schröder would well make him accountable to the European Parliament and give him more democratic legitimacy, but would not threaten the authority of the President of the Council.

Important doubts against such a presidential solution, however, have to be considered:

- The Presidency of the European Council has considerable powers already now. What made it acceptable, so far, is the short period of office giving the other Member States the certainty of balance, providing them equal rights and, in the worst case, limiting the "damage". Extending the period of office to five years would imply an enormous increase and centralisation of power for the President of the European Council.
- Such a President would exercise its power without being democratically accountable and controlled at the European level. Though he depends on the co-operation of, and will be controlled by, the - democratically elected - Heads of State or Government of the Member States, there is no means either of the European Parliament or of national Parliaments to censure him in case his policies are felt inadequate or wrong.
- The presidential system would favour, it is said, the bigger Member States and threaten, therefore, the principle of equality within the Union. Yet, the President could be from any of the Member States. But would those Member States who support the presidential solution really accept that a five years Presidency with the powers it implies, is held by a person from any other than their own country?
- The parallel existence of a President of the Council and a President of the Commission would enhance the establishment of parallel and competing administrations and bureaucracies, create confusion about who is finally responsible for what and put into question the original executive function of the Commission being the institution which is to represent and serving the common, European interest.
- The central powers attributed to the President of the Union would reduce the role of the President of the Commission to a mere (subsidiary) secretariat-function for European policies. Would it be possible to find an adequate candidate for such a post with reduced powers, and would the election of the President of the Commission by the European Parliament in this case, not rather weaken than strengthen its position?

d. The model of a "team presidency" would deal with some of these questions, in that it ensures that all the Member States are equally involved in the role of presidency and have

⁴⁶ Cf. on different options to establish a "European Secretary for Foreign Affairs" merging the functions of the High Representative for CFSP and the Commissioner responsible for external relations by Pernice and Thym, *supra* note 3, in section 4.

periodically the chance to have this position. The centralisation of power would be balanced, at least in part, by the need to agree the basic policies among the three members of the respective team in each case. Responsibilities and democratic control, however, would be even more diffused, and the advantages of the rotation system would be neutralised. In case the President of the European Council would be elected from among the team-Member States, the arguments put against the presidential system would become relevant again, except that the period of office would be reduced from five years to eighteen months. Yet, this again would compromise in part what are the real advantages of the presidential system.

2. Conclusions: For a President of the Union

None of the models discussed so far can be said satisfying. They do not take into account the fact that a broad consensus can be seen developing on the new modalities for the appointment of the President of the Commission: His election and direct political control by the European Parliament and the European Council, to whom both he will be accountable. This is the necessary consequence of the development over the years of his - and the Commission's - role from a neutral administrative institution of an agency created to establish the Common Market, to a political actor in a political Union⁴⁷. The Commission is the European body where, through the monopoly to present proposals, the European public interest is tentatively framed, in a process of trial and error, before a decision is taken upon such legislative proposals by the Council and the European Parliament; it is the body to which the execution of these decisions is entrusted, as well as the control of the respect, by the Member States and other actors, of the common rule and interest.

In the light of the philosophy of the European construction, thus, the representation of the European interest, of the unity of the Union is the essential task of the Commission⁴⁸. This seems to be a strong argument to consider under which conditions the President of the Commission could be the person who should represent the Union at the international level as well as vis-à-vis the citizens of the Union. It has been proposed to simply give him/her the function of the President of the European Council as well, and Joschka Fischer's "double-hat" solution seems to follow this way⁴⁹. Continuity of the EU-representation would be ensured, this "President of the Union" would be from among the members of the European Council and still, by the institutional neutrality of his function and independence from any Member State, incorporate European unity and identity. He/she should be democratically elected and controlled by the European Parliament, to which he/she is accountable as much as to the Heads of State or Government meeting in the European Council. A direct popular election of the President of the Commission,

⁴⁷ Emphasis is given to this important change also in the recent Contribution by Mr. John Bruton, A proposal for the appointment of the President of the Commission as provided for in Article 18bis of the Draft Constitutional Treaty, CONV 476/03 CONTRIB 182 of 9 January 2003, p. 3.

⁴⁸ Similarly Nicolas Moussis, "Pour une réforme drastique des institutions européennes", *Revue du Marché Commun et de l'Union européenne* 2002, 670-675 at 672: "Le président de la Commission, élu démocratiquement, serait en fait le président du gouvernement européen et donc le Président de l'Union."

⁴⁹ See *supra* note 19 and Ingolf Pernice, "Multilevel Constitutionalism in the European Union", *EL Rev.* 27 (2002), 511 at 527-529.

instead⁵⁰, would reduce the role of the European Parliament and make any democratic control of the Commission by the Parliament ineffective.

Yet, the concentration of power in the hands of the democratically elected President of the Commission being also the President of the Council would not be acceptable nor desirable. Though he/she would not be a member of a national government, but - as a part of the Commission - a genuine European institution, the legitimacy of such a President drawn from the European Parliament and its power drawn from its function as the President of the Commission coupled with the special powers of the Presidency at the European Council would centralise political power and leadership to an extent which is incompatible with the principle of institutional balance. Furthermore, the important advantages of rotating Presidencies cannot be underestimated, nor the positive experience - in a forty-years Community practice - of interaction and common strategies, within the Council, of the (rotating) Presidencies and the Commission in its role of European initiator of European policies, mediator among national interests and watchdog for the respect of the common rules and interest. This strategic axe between the Chair and the Commission in the Council, which gives the Commission more strategic freedom of action within the negotiation at the Council, is the key for the success and efficiency of the Council as a legislative institution of the Community, and it is doubtful whether a merger of the specific function of the Commission with that of the chairman in the Council at either level would be a progress in any respect.

Consequently, the system of rotating Presidencies of the Council and, accordingly, of a rotating chairmanship at the European Council should be maintained, while the President of the Commission, drawing his legitimacy from its election by the European Parliament, should be the "President of the Union". As a member but not the chairman of the European Council he/she should have the function of executive leadership and representative of the Union, propose and implement European policies which are decided by the (European) Council. This setting, by the way, reflects the general practice of the Community in international negotiations. Whether or not the issue is one of Community competence, before a position of the Community (and its Member States) is taken by the representative of the Commission - or, in areas of national competence, by the delegate of the Member State which holds the Presidency of the Union - the European position must be co-ordinated in a meeting in which the seats and functions are distributed in a fashion which is similar to any normal Council meeting. The proposed change would only relate to the representation of the co-ordinated position: It would in all cases be the Commission in its function as the executive of the Union, while each Member State may also get the floor or participate in the negotiation on its own, according to the conclusions reached in the co-ordination meetings, or as an actor in a common strategy of shared roles and tasks.

Accordingly, the President of the Union - being the President and representative of the Commission in the European Council - should be seated in front of the chairman of the European Council, be assisted by the "Secretary for Foreign Affairs" and be backed by the Commission's Secretary General and Legal Service. He/she should have the right -

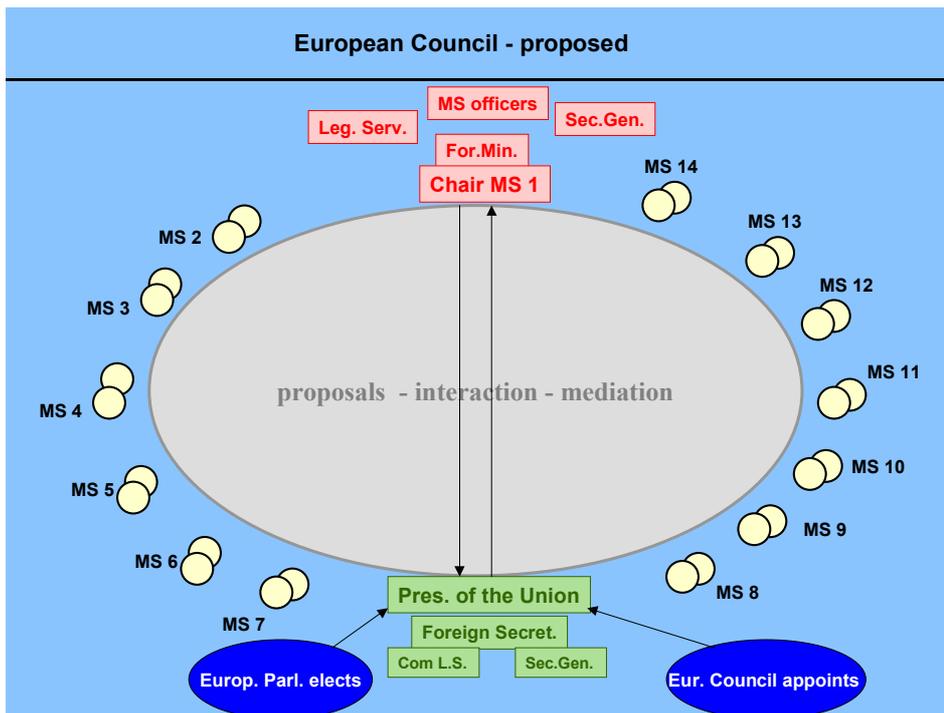
⁵⁰ With the proposal to elect the President of the Commission directly and simultaneously with the election of the European Parliament, and to subject the appointment of the College of Commissioners to the ratification of the European Parliament, see John Bruton, *supra* note 47, in particular p. 6.

though not the monopoly - of initiative for the co-ordination of the European policies including external, economic and social policies within the European Council and also be responsible for the implementation of its decisions or conclusions by the Commission, or for the monitoring of the implementation of any co-ordinated strategy by the Commission and the Member States. The President of the Commission should have the right to put the question of confidence to the European Parliament if contradictory pressures from the Council and the European Parliament are blocking a coherent strategy or policy. If the confidence is not given and no other President is elected within a given period, the European Parliament shall be dissolved and the path shall be opened for new European elections..

This institutional setting has not only the merit of simplicity, but ensures, for the reason given, democratic accountability, continuity, coherence and efficiency of the European Policies. It is not far from the "Elysée-Proposal", but it maintains rotation of the "presidencies" of the Council, since the continuity of representation would be ensured by the President of the Union. It also avoids parallel bureaucracies and gives the leadership and representation of the Union into the hands of a person which is, by its position, not a representative of a Member State, but neutral regarding the various national interests, and accountable primarily to the European Parliament. It would be the (European) Council, however, who - under the chairmanship of its Presidency - in any event takes the decisions and determines the policies to be implemented and represented by either the President of the Union, the Foreign Secretary, the Commission and/or, as the case may be, by the Member States. The proposed solution, therefore, would streamline the institutional setting of the Union, produce the necessary synergies, give the Union a face by merging, at the top level, its supranational and intergovernmental pillars. Yet, it would not change the institutional balance or challenge the system of checks and balances on which the functioning of the Union is based. Most importantly: In a process of revising the Constitution of the Union with the aim to achieve more simplicity, transparency and democratic accountability, would a permanent President of the Council, a person who is appointed by its colleges to take the leadership, but who is not subject to parliamentary control, really be acceptable as the President for the citizens of the Union ?

Though the "Elysée-Proposal" leaves room, as Alain Lamassoure recently put it, for giving the "honours" to the President of the Council, while the "powers" are with the - elected - President of the Commission, it seems to be more adequate, for the reasons given, to avoid splitting the top of the Union and to leave its representation to the head of its executive, the President of the Commission.

The following table shows the proposed setting of the European Council with the President of the Union being the head of the European executive:



3. Draft Articles on the European Council and the President of the Union

The Articles on the European Council, the chairmanship thereof and the function of the President of the Commission as the President of the Union and, insofar, the Head of the European executive, bringing together, at the top level, the supranational and the inter-governmental elements of the European Union, should be part of the chapter on institutions in the new Constitution and touch upon the various titles regarding the Council, the European Parliament and the Commission. They could read as follows:

Article 1 (Institutions of the Union)

(1) The tasks entrusted to the Union shall be carried out by the following institutions:

- The President of the European Union
- The European Parliament
- The European Council
- The Council
- The European Commission
- The European Court of Justice
- The European Court of Auditors
- The European System of Central Banks

Each institution shall exercise its powers under the conditions, for the purposes and within the limits of powers provided for in this Constitution

(2) The European Parliament, the Council and the Commission shall be assisted by a Committee of the Regions and a Committee for Sustainability⁵¹ acting in an advisory capacity.

Article 2 (President of the European Union)

(1) The President of the European Union shall represent the Union in all matters coming within the competence of the Union internally as well as on the international level. He/she shall be responsible for a coherent development of the European policies in accordance with the general orientations and guidelines adopted by the European Council.

(2) The President of the European Union shall be elected by the European Parliament acting by an absolute majority of its members and appointed by the Council meeting in its composition of the Heads of State or Government, acting by qualified majority, for a period of five years. He/she may be forced to resign, by a motion of censure of one of these institutions acting by qualified majority of its members.

(3) The President of the European Union shall

- be member of the European Council to which he/she shall submit recommendations and proposals, but shall not cast votes;
- have the function of the President of the European Commission;
- ratify, in the name of the Union, international treaties concluded with third countries or international organisations;
- report to the European Parliament and to the European Council on the implementation of European policies and the progress achieved by the Union.

(4) In areas of co-ordination of the Member States' policies the President of the Union shall act in conformity with the common positions adopted by the Council and in close co-operation with the competent authorities of the Member States. He shall be assisted by the Secretary for Foreign Affairs in all matters related to the Common Foreign and Security Policy.

(5) The President of the Union may put a question of confidence to the European Parliament. In this case the European Parliament may confirm the President or elect, by a majority of its members, a new President and a new Commission shall be formed. If no new Commission has been formed within a period of two months, the European Parliament shall be considered dissolved.

Article 3 (European Council)

(1) The European Council shall provide the Union with the necessary impetus for its development and shall define the general political orientations and guidelines thereof on the initiative of the President of the Union. Any member of the European Council may request the Chair to put a specific issue on its agenda for debate and conclusion.

(2) Decisions of the European Council shall be made by consensus, unless one of its members requests a vote. In that case the decision shall be made by a reinforced

⁵¹ Former Economic and Social Committee. See for this proposal: The European Consultative Forum for Environment and Sustainable Development, "Sustainable governance: Institutional and Procedural Aspects of Sustainability", 2000 <www.europa.eu.int/environment/forum>, where, as an alternative, also a Sustainability-Council is proposed, which would be composed by the national sustainability ombudsmen.

qualified majority being a two-thirds majority of Member States representing at least half of the total population of the European Union.⁵²

(3) The European Council shall bring together the Heads of State or Government of the Member States and the President of the Union. They shall be assisted by the Ministers for Foreign Affairs of the Member States and by the Secretary for Foreign Affairs. The European Council shall meet four times a year, under the chairmanship of the Head of State or Government of the Member State which holds the Presidency of the Council.

Article 4 (Council of the European Union)

(1) The Council of the European Union shall consist of a representative of each Member State at ministerial level, authorised to commit the government of that Member State. The Council shall be chaired in turn by each Member State for a term of six months in the order decided by the Council acting unanimously.

(2) In its legislative capacity the Council shall be a permanent body of the Union. It shall have power to take decisions, acting together with the European Parliament on the proposal of the Commission in accordance with Articles (250-251). Its meetings regarding legislative decisions shall be in public.

(3) In the areas of foreign and security policy, economic policies, employment policies and in any other executive function the Council shall co-ordinate the positions and policies of the Member States in accordance to Articles (xxx) upon the initiative of the Commission. It may authorise the Commission to implement its decisions in the framework of the guidelines as it may issue to it, or to monitor the developments in each of the Member States as well as the consistency of the policies of the Member States and the Union with its decisions and guidelines.

Article 5 (European Commission)

(1) The European Commission shall be the executive power of the Union.

(2) The Commission shall consist of members the number of which shall not exceed the number of Member States. Its members shall be chosen from nationals of the Member States on the grounds of their general competence and experience. Among the Members of the Commission and the President of the Union two persons may not have the nationality of the same Member State. The Members of the Commission shall, in the general interest of the Union, be completely independent in the performance of their duties; they may not, during the term of their office, engage in any other occupation, whether gainful or not.

(3) The Commission shall be chaired by the President of the Union and work under its guidance. It shall act by a majority of the number of its Members.

(4) The members of the Commission shall be nominated by the President of the Union and approved by a qualified majority of the Council as well as by the majority of the Members of the European Parliament.

⁵² Modalities taken from the Badinter-Draft, *supra* note 32.

Conclusion

The proposed solution may seem to be radical at first sight. But at second glance, it is much less far-reaching and more in line with the present institutional structure than most political proposals presented earlier. The proposed solution takes seriously the original role of the Commission, avoids the parallelism of two similar and competing administrations (Commission and Council) and, above all, would give the European Union a visible face, both vis-à-vis the foreign countries and regarding the citizens of the European Union. Furthermore, to maintain the separation of the functions of Presidency (chairmanship) and European Executive representing the European public interest within and outside the (European) Council would both, avoid excessive concentration of power and secure efficiency and identity of European action. With the election and democratic control of the President of the Union by the European Parliament to which the President of the Union would be accountable, transparency and democracy would also be enhanced in the new Constitution of the European Union.