

CONSULTATIONS ON THE INSTITUTIONAL REFORM OF THE EUROPEAN UNION: CZECH REPUBLIC'S POSITION

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I. Introduction

The European Union (EU) is an integration grouping based on a continuously evolving legal framework. One of the reasons for this legal framework to change is the increasing number of EU's Member States which translates into a need for an effective functioning of the Union. The 2001 Laeken European Council concluded that the existing treaty base – the Treaty of Nice – is not enough to guarantee effective and democratic functioning of an enlarged European Union.

The Treaty establishing a Constitution for Europe, a document of international law seeking to become a comprehensive successor treaty to the existing treaties, was drafted in answer to questions posed in the Laeken Declaration. The aim was to enable effective, transparent and democratic functioning of the European Union of 25+ Member States. In spite of the majority of EU Member States having accepted the Treaty, it has been rejected in the Netherlands and France. Several states have since been quite hesitant about ratifying the Treaty, some concluding that further discussions of the Treaty are futile after two of the Union's key Member States rejected the Treaty. Therefore, the original text of the Treaty appears not only impossible to vote through but also unfit for the EU of today. Neither has the Treaty met the original purpose of the Laeken Declaration nor has it assisted in unifying opinions in the EU.

Following this failure, Member States have been seeking alternative ways to meet the requirements of the Laeken Declaration. Germany, presiding over the EU Council in the first semester of 2007, took a leading role in this process. The German Presidency is bound by a mandate formulated by the June 2006 European Council: to present in the first semester of 2007 a report to the European Council based on extensive consultations with the Member States. This report should contain an assessment of the state of discussion with regard to the Constitutional Treaty and explore possible future developments. The outcome will serve as a

basis for further decisions by the European Council on how to continue with the reform process.

Institutional Reform Schedule

The Government of the Czech Republic holds in high regard the endeavours of the German Presidency to revive the debate on the institutional reform of the European Union. The German Presidency is planning to include in the conclusions from the European Council meeting held between June 21 and 22, 2007 a schedule of further discussions and a detailed political mandate setting out further direction in the discussions and indicating the nature of the final treaty. A new treaty (or an amendment to the existing treaty framework) shall be first adopted at the intergovernmental conference by heads of state and government of Member States and then submitted for ratification. The ratification method – through referenda or national parliaments – shall be determined by the outcome of the discussions. It is in the EU's interest to present an outcome acceptable to all Member States and while, true to the spirit of the Berlin Declaration, “placing the European Union on a renewed common basis.” And it is in the interest of the Czech Republic that this process be concluded before 2009.

II. Discussions on the New Treaty Basis for the European Union

The Government of the Czech Republic has been an active and responsible participant in institutional reform discussions launched under the German Presidency. The government coalition agreed on a Czech position in the negotiation of the new EU treaty framework. Further discussions should be based on the current draft of the Treaty on the Constitution for Europe. The Government of the Czech Republic will, however, maintain that the new or amended treaty must bring more transparency, clarity and simplicity. Instead of dividing Europe, it shall unite it.

General Outline of the Position of the Government of the Czech Republic in the Discussions of the Future EU Treaty Framework

The Government of the Czech Republic maintains that the Union is not in a crisis. This is indeed evident from everyday activities of the Union. Studies show that, contrary to

conventionally held belief, the accession in 2004 of new Member States did not cause any slow-down in the Union's work and that, for example, the EU has been adopting new rules and regulations some 25% faster since the 2004 enlargement. Any reform steps should therefore be taken with a sense of extreme responsibility and with an understanding that the quality of future functioning of the Union must be at the heart of this process.

In this respect, the Government of the Czech Republic shall request that the future EU treaty framework guarantee fair treatment of all EU Member States irrespective of their size or length of membership. The new treaty must not aggravate the current position or weight of the Czech Republic and countries of similar size in the voting procedure. The EU's democratic legitimacy shall derive from balancing out the equality of representation of citizens and states.

The Government of the Czech Republic puts a strong emphasis on the transparency of the decision-and law-making processes. These processes shall be clear and open to control by governments and parliaments of Member States. Bureaucracy and over-regulation shall be cut down and reduced to the minimum. Also, the Government of the Czech Republic supports the keeping, or a more extensive use, of the subsidiarity principle so that the Union acts only where its objectives cannot be achieved at the national, regional or local government levels.

The Government of the Czech Republic's objective is that the new treaty framework under preparation now encourages internal and external openness of the Union. Internally, the single market building process must be completed through consistent adherence to the four fundamental freedoms (free movement of persons, goods, services and capital). Externally, barriers to trade with third countries must be removed within the WTO framework, particularly with the view of developing relations with less-developed states. The Union shall, on the basis of the new treaty, be institutionally ready to accept new members while having mechanisms in place to play a stabilisation role – both in general and in the Union's immediate neighbourhood.

On "Constitutional" Elements

The Government of the Czech Republic believes that the current draft of the Treaty on the Constitution for Europe, a large part of which is just a consolidation of the existing EU treaty

framework, can be used as a basis for discussing the new treaty or an amendment to the treaty in force. However, it is necessary to remove all attributes of “European statehood” such as the term “constitution” in any form of its use; the confirmation of quasi-state symbols of the Union; the term EU “Foreign Minister” etc., i.e. all misleading attributes which may give a false impression of the treaty leading to an establishment of a super-state structure. The European Union was established as a union of equal, sovereign states and, as such, exercises powers conferred unto the Union by Member States while making decisions in the most transparent way and as close to the citizens as possible. Member States therefore remain the masters of the Treaty.

For a More Credible European Union

If we want to increase the popular trust in the working of the EU institutions, one of the Czech Republic’s priorities, it is necessary to reinforce the principles of subsidiarity and proportionality in the implementation of European policies. If set objectives can be better achieved at the national level, Member States must be given enough room to adopt the necessary measures. Democratic control of the subsidiarity principle exercised through national parliaments is therefore crucial. Also, control mechanisms foreseen in the original draft of the constitutional treaty must be further deepened, allowing national parliaments to review European Commission legislative drafts with the possibility to reject any legal draft compromising the subsidiarity principle, especially in areas substantially affecting state sovereignty, such as in judicial co-operation in criminal matters.

Transparency in Union activities hinges on a clear and precise delimitation of its competences in respect of the powers of Member States based on the principle of “conferring” powers according to Article 5 of the Treaty Establishing the European Community. Member States shall therefore decide, through founding treaties, which powers to confer upon the European Union and which to keep at the national level. Areas which, according to the Government of the Czech Republic, shall, in line with the existing proposal of delimitation of competences, remain under the competence of Member States ČR, include pension systems, social security, culture, education, health care, tax systems, etc.

The concept of exclusive and shared competencies from the original draft constitutional treaty is, without doubt, a positive step forward and a basis for further debate. This concept aims at a

more precise delimitation of powers between the Member States and the Union, which is one of the Czech Government's priorities. The number and scope of this competence in general and shared competence in particular must be clearly defined to prevent any potential extension of EU powers without democratic control by and political will of Member States.

The transfer of powers in the area of shared competence, however, shall not be a one-way process. The execution of powers should not be transferred only from the Member States to the Union where the exercise of competence at the Union level is more effective in the area of shared competencies. According to the subsidiarity principle, it should be possible to initiate a transfer of the exercise of a certain competence back to the Member State level if and when the exercise of competence at the Union level proves to be ineffective. This principle stipulating that Member States shall exercise their competence to the extent that the Union has decided to cease exercising is already set under Article I-12 of the existing Treaty on the Constitution for Europe. Nevertheless, a mechanism for the review of the effectiveness in the exercise of competence at the Union level will have to be provided for, along with a procedure for the Union's decision-making in cases where it is considering to cease executing its competence in a specific area. Such a concept of "two-way flexibility" with a clearly defined role of the Member States and national parliaments, i.e. a two-way transfer-of-power option, would certainly boost the Union's credibility in the eyes of its citizens.

Guaranteeing European Human Rights Standards

The European Union is a political project drawing upon European cultural, religious and humanistic heritage. Protection of fundamental human rights and freedoms is part and parcel of this legacy and must be an integral part of all EU policies. To ensure European human rights standards, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950, hereinafter "the European Convention") to which the EU subscribes in Article 6(2) of the Treaty on European Union, it is necessary to allow for the accession of the EU to the European Convention. This will ensure common European standards in the area of human rights and freedoms without a risk of particularisation of the protection through a legally binding Charter of Fundamental Rights. A new EU treaty framework shall thus not include the Charter of Fundamental Rights but provide for the accession of the EU to the European Convention which will clearly define the standards of protection with respect to activities of the European Union and its institutions.

Further EU Enlargement under Clearly Defined Criteria

The Government of the Czech Republic holds in high esteem the openness of the European Union and the success of its enlargement policy aimed at guaranteeing stability and prosperity in the European region. The successful enlargement in 2004, taking in ten new Member States, demonstrates the benefits of the EU enlargement policy. The Czech Republic believes that the European Union shall not be closed to regional and strategic partners in the future. At the same time, it must be stressed that EU membership requires meeting some clearly set-out rules. These rules have been defined, on the Union level, as the Copenhagen criteria, covering political (democracy, rule of law, human rights, respect for and protection of minorities), economic (functioning market economy and competitiveness) and institutional requirements (ability to take on responsibilities following from *acquis communautaire*) for candidate countries.

Clear rules for any further enlargement of the European Union shall be outlined, along with the institutional reform, in the new or amended EU treaty framework in a way that would allow for future successful EU enlargement rounds, particularly with respect to candidate countries from the Western Balkans and regional strategic partners.

III. Conclusion

The steps taken by the Government of the Czech Republic in negotiating the new or amending the existing EU treaty framework will be determined by whether the final document brings a material increase in the internal and external functionality and operational capacity of the Union while ensuring that the Union does not unnecessarily interfere with Member States' competencies in areas where EU common goals may be achieved at a lower level.

Unlike the draft constitutional treaty, negotiations of the new treaty must not fall prey to ambitions which are far removed from European reality. The Czech Government approaches the discussions with a sense of shared responsibility for the future of Europe and with a deep belief that, in the words of the Berlin Declaration, "we must protect [the success of European unification] for the good of future generations." We cannot afford another failure on our journey to this shared objective.