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DIRECTORATE-GENERAL FOR THE PRESIDENCY  
EUROPEAN PARLIAMENT

# THE EUROPEAN PARLIAMENT AND THE PROCEEDINGS OF THE EUROPEAN CONVENTION

A STUDY OF THE PROCEEDINGS OF THE EUROPEAN CONVENTION  
ACCOMPANIED BY ARCHIVE DOCUMENTS

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*Printed in Luxembourg*

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## PREFACE BY THE SECRETARY-GENERAL

By publishing this booklet produced by its Archive and Documentation Centre, the European Parliament aims to provide a brief summary of the debates which have taken place within the European Convention and in Parliament itself. The publication appears at a time when, after the crisis caused by the rejection of the Draft Constitution by two countries, the European Union is keen to move on and produce a new reform document.

The Brussels European Council of June 2007 enabled a compromise to be reached on a new text. It seemed useful, in the context of the work of the Intergovernmental Conference, to recall the objectives the Convention had set itself, with the backing of the European Parliament.

The European Parliament was very much in favour of the Convention, which it saw as a way of making the drafting of basic texts affecting all EU citizens more participatory. It monitored the work in detail, either through its delegation to the Convention, or by adopting specific resolutions on key subjects of debate.

This was not a matter of merely supporting an entity whose creation it had strongly encouraged, but of the desire to put all its weight behind the choices made and thereby confirm its central role in decision-making and its capacity to reach positive compromise, a role which was confirmed not only in the work of the Convention, but also through the direct involvement of Parliament in the various Treaty revision procedures and in the everyday exercise of its powers.

The European Parliament thus comprehensively fulfilled its primary function as a directly-elected European institution, namely to imbue the European decision-making process with increased democracy and transparency, to act in conjunction with the other institutions for the general benefit of Europe, and to contribute to the Union's political development - all of which has gone hand-in-hand with outstanding cooperation with national parliaments.

This booklet is intended by Parliament to serve not only as its testimony but also as a valuable contribution to the ongoing process of reflection.

A handwritten signature in black ink, reading "Harald Rømer". The signature is written in a cursive, flowing style with a large initial 'H'.

Harald RØMER



## NOTICE

This work mainly consists of a study aimed at describing the proceedings of the European Convention, on a thematic basis. Archive documents indicating Parliament's positions on the Convention are also annexed.

### ARCHIVE AND DOCUMENTARY SOURCES

This study is mainly based on the European Convention<sup>1</sup> archives at the European Parliament's Archive and Documentation Centre (CARDOC). The archives contain 1191 documents in 159 files; these are official Convention documents and European Parliament documents. In terms of the latter, the archives contain both official documents (see, for example, the resolutions through which Parliament pushed for the setting up of the Convention) and informal documents that members of the European Parliament Delegation or parliamentary officials produced or received (e.g. memos, emails, etc.).

The study mainly covers the official acts of the Convention, research on unofficial documents being left to researchers wishing to pursue more detailed historical studies through CARDOC.

Journalistic sources were also consulted; for reasons of drafting economy, these are almost exclusively from Agence Europe.

### STRUCTURE OF THE STUDY

The approach adopted is one of reviewing the Convention's work on the most significant themes of the European Constitution. The document focuses in particular on those institutional themes (competences, structures and decision-making procedures) for which it was felt, prior to the Convention, that the treaties needed to be reformed to find solutions more in keeping with the new dimensions of a Union of 25 Member States which may well be further enlarged in the next few years. This has made it possible to extend the scope of this study to the debate leading to the establishment of the Convention and the accompanying debate on themes which were felt to be more politically sensitive in European political circles: relations between the institutions and the decision-making process, issues which are shot through with basic questions such as the balance of power between the Member States and between the Member States and the Union. The main issue raised by the former was voting systems within the Council and the main issue raised by the latter was national and Union competences. Structural questions related in particular to relations between the institutions and in particular between the Council and the Commission.

These themes provide the outline of this document: the first two chapters look at the 'background' to the Convention, i.e. the events and the debate which led to its creation and organisation.

The third chapter looks at the initial stages of work, during which the Convention asked itself the preliminary question: *Which Europe?* Even though the debate was fairly wide-ranging during this stage, it was to some extent systematic, providing much food for thought: a kind of constitutional brainstorming session.

This stage was followed by a thematic approach, via the Working Groups, and lastly by the drafting of the text of the Constitution. This is examined in the four main chapters of this study. The fourth chapter looks, to use a term specific to constitutional law, at the 'form of state' of the Union, i.e. at its components and the relations between

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<sup>1</sup> Most of the official documents of the European Parliament Delegation are also available online via the European Parliament's website: <http://www.europarl.europa.eu/parliament/archive/index.en.shtml>.

the Member States and the Union. The fifth chapter examines competences, a very thorny issue which is not just limited to the distribution of competences between the Union and the Member States, but also concerns the question of subsidiarity, which is of considerable interest to legal as well as political commentators, and the replacement of the existing three pillars by a single political and institutional system, albeit with differences in decision-making processes imposed by the Member States' sovereignty over matters such as foreign policy and justice. The sixth chapter examines the institutional issue in the strict sense: institutions and the decision-making process.

The final chapter examines three public policies of major interest to public opinion in Europe: economic governance, a term which covers economic and financial policy and monetary policy; social policy, which is at the core of the debate on the reform of the welfare state; and, lastly, the issue (which is not a public policy in the strict sense) of services of general interest. These three themes have been chosen from among the other common policies because they have been at the heart of the debates surrounding the referendums on the European Constitution and because the Convention went further with these policies than with other common policies.

# **PART 1**

## **THE EUROPEAN PARLIAMENT AND THE PROCEEDINGS OF THE EUROPEAN CONVENTION**





# CHAPTER I

## FROM THE TREATY OF NICE TO THE EUROPEAN CONVENTION

### 1. The political debate in the 1990s

The European Convention, established by the Laeken European Council, was part and parcel of a process of development, first of the Community, and then, after Maastricht, of the Union, which has accompanied, at a faster pace at some times than at others, the whole of the history of Europe over the last fifty years<sup>1</sup>. The process sped up in the 1990s as a result of the collapse of the Soviet Union, whose main repercussions were, from a political point of view, a rapid overhaul of the system of international relations and in particular its balances, and, from an economic point of view, the launch of the process of globalisation of the world economy.

Faced with these new challenges, the Community tackled the new system of international relations by introducing a common foreign and defence policy.

On the European chessboard, the collapse of the Soviet Union led to closer links with the former Warsaw Pact and Comecon countries and the launch of negotiations for their accession.

These events, the launch of the common foreign and defence policy and German re-unification, meant that there was an increasingly urgent need for a far-reaching reform of the Community institutions and its decision-making processes in order to enable the Union to cope with changes and new challenges. One of the main problems was the governability of a Union likely to include thirty or so members. It was feared that voting mechanisms in the Council, with unanimity required for decisions on some matters and the power of veto, would exponentially increase the problems that they had already raised for the Europe of ten, twelve and fifteen.

The Treaties of Maastricht, Amsterdam and Nice were signed in the last ten years of the twentieth century. In 1999, at the same time as the Intergovernmental Conference which prepared the last of these treaties, major figures from the Member States began to discuss their constitutionalisation.

The first to take this line was the German Foreign Minister, Joschka Fischer, who, in a speech on 12 May 2000 at the Humboldt University in Berlin, and stressing that he was speaking personally without committing his government, outlined a European federation based on a European Parliament and a European Government with the roles typical of a federal state; this federation was to be achieved through a constitutional treaty providing Europe with a new political foundation. In Fischer's view, the constitutional treaty would decide how sovereignty was to be divided between Europe and its Member States, as European political integration could not otherwise be achieved. This involved a European Parliament with two houses, one made up of national MPs. In substance, Fischer wanted a streamlined and efficient Europe with a European Constitution centred around *'basic, human and civil rights, an equal division of powers between the European institutions and a precise delineation between European and nation-state level'*<sup>2</sup>.

In two speeches on 27 June and 28 August 2000, Jacques Chirac, for his part, outlined a reform which would lead, over a few years, to a European constitution setting out a clear division of competences between the various

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<sup>1</sup> The European Parliament, right from its first direct election, played a key role in this development, for instance through the Spinelli and Hermann plans.

<sup>2</sup> Agence Europe, No 7716 of 13 May 2000, Article 1.

levels of government and formulating the Union's fundamental norms in a more coherent and comprehensible way than in the past<sup>3</sup>.

At the same time, the Italian President, Carlo Azeglio Ciampi, speaking in Leipzig on 6 July 2000, mooted the idea of a European constitution in two parts: the first comprising a charter of fundamental rights and the second dealing with the division of competences between the Union and the Member States<sup>4</sup>.

The British Prime Minister, Tony Blair, speaking in Warsaw on 6 October 2000, took a different line. Rather than a European constitution, he preferred a declaration of principle setting out what should be decided at European or at national level, a kind of charter of powers which would be a political and not a legal document. From a more specifically institutional point of view, Blair felt that representatives of national parliaments should be more closely involved, suggesting the creation of a second chamber of the European Parliament whose task would be one of democratic scrutiny not just of common policies, but also of the foreign and security policy at European level<sup>5</sup>.

For its part, the European Parliament approved, on 25 October 2000, a resolution on the constitutionalisation of the treaties, setting out what should be included in the proposed European constitution and calling for a process of reform with wide participation. It would cover:

- *the common values of the EU,*
- *the fundamental rights of European citizens,*
- *the principle of the separation of powers and the rule of law,*
- *the composition, role and functioning of the institutions of the Union,*
- *the allocation of powers and responsibilities,*
- *the subsidiarity principle,*
- *the role of European political parties,*
- *the objectives of European integration*<sup>6</sup>.

As regards the reform process, Parliament made three main proposals:

12. *Proposes that the constitutional process be initiated at the Nice European Council in December 2000 with the adoption of a declaration annexed to the next Treaty, laying down a mandate, procedures and a timetable for the commencement of the drafting of a Constitution for Europe;*
14. *Proposes that, in view of the collegial, transparent and valuable work carried out by the Convention, which has drawn up the draft Charter of Fundamental Rights, the same formula be used in order to draft the future Constitution of the Union;*
20. *Hopes that, in order both to ensure the quality of the democratic debate and to create a bond between the peoples and their Constitution, the citizens of the Union will be consulted in due course by means of a referendum;*
21. *Calls for this referendum to be held on the same day in all Member States*<sup>7</sup>.

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<sup>3</sup> EP, Report by the Committee on Constitutional Affairs on the constitutionalisation of the treaties (A5-289/2000), p. 10-11.

<sup>4</sup> *Ibid.*, p. 11.

<sup>5</sup> The speech is reported on the website of the Prime Minister's Office <http://www.number-10.gov.uk/output/Page9.asp>. See also, for a summary, Agence Europe 7815 of 7 October 2000.

<sup>6</sup> European Parliament Resolution of 25 October 2000 on the constitutionalisation of the treaties, paragraph 7.

<sup>7</sup> *Ibid.*, paragraphs listed in the text.

There are three proposals here: the declaration annexed to the Treaty of Nice, the Convention and the European referendum. The first two would be accepted by the Member States, while some Member States would accept the third in the form of a national referendum. The proposal of a European referendum, as set out in paragraphs 20 and 21 of the Resolution, would be relaunched by the Austrian Chancellor after the French and Dutch rejection of the Constitutional Treaty.

## 2. From the Treaty of Nice to the Göteborg European Council

Declaration 23 on the Future of the Union annexed to the Treaty of Nice<sup>8</sup> outlines a sequence of institutional changes, whilst stressing that *'... with ratification of the Treaty of Nice, the European Union will have completed the institutional changes necessary for the accession of new Member States'*<sup>9</sup>.

The task of the Swedish and Belgian Presidencies in 2001 would be to promote wide-ranging discussions of the future of the Union with all interested parties (national parliaments, political, economic and university circles, and representatives of civil society) and to include the candidate states in these discussions. The Declaration also suggests the agenda of these discussions in a fairly detailed way:

- *'how to establish and monitor a more precise delimitation of powers between the European Union and the Member States, reflecting the principle of subsidiarity;*
- *the status of the Charter of Fundamental Rights of the European Union, proclaimed in Nice, in accordance with the conclusions of the European Council in Cologne;*
- *a simplification of the Treaties with a view to making them clearer and better understood without changing their meaning;*
- *the role of national parliaments in the European architecture*<sup>10</sup>.

The European Parliament, in its resolution on the Treaty, welcomed Declaration 23 and clearly set out how the 'constitutional' process launched by the Declaration should be conducted:

- '39. *Is of the opinion that the ultimate outcome of the next reform of the Treaties will depend crucially on the preparations; for this reason, recommends the establishment of a Convention (to start work at the beginning of 2002), with a similar remit and configuration to the Convention which drew up the Charter of Fundamental Rights, comprising members of the national parliaments, the European Parliament, the Commission and the governments, the task of which would be to submit to the IGC a constitutional proposal based on the outcome of an extensive public debate and intended to serve as a basis for the IGC's work;*<sup>11</sup>

On 7 March 2001, the Swedish Presidency launched the debate, on which the European Parliament took a clear line in its resolution on the preparation of the Göteborg European Council, which reiterated its previous stance:

- '8. *Believes that reform of the Treaties should be preceded by a large-scale and detailed public debate and that this debate should take place at European and national level; calls for the establishment of national committees or other types of bodies chosen by the national authorities, to be responsible for organising this debate;*

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<sup>8</sup> Signed on 11 December 2000.

<sup>9</sup> Paragraph 2 of Declaration 23 annexed to the Treaty of Nice.

<sup>10</sup> Paragraph 5 of Declaration 23 annexed to the Treaty of Nice.

<sup>11</sup> European Parliament Resolution of 31 May 2001 on the Treaty of Nice and the future of the European Union.

9. Believes that the final outcome of the forthcoming reform will depend essentially on how it is prepared, and therefore calls for a Convention to be established with an organisational set-up and mandate similar to those of the Convention which drafted the Charter of Fundamental Rights and:

- *made up of members of the national parliaments, of the European Parliament, of the Commission and of the governments, as well as of observers from the applicant countries,*
- *responsible for drawing up constitutional proposals to serve as a basis for the discussions of the IGC,*
- *and to start work at the beginning of 2002<sup>12</sup>.*

### 3. The opposing visions of Schröder and Jospin

Some of the ideas mooted in the first half of 2001 were particularly significant: especially the so-called *Schröder Blueprint* for the Congress of his party, previewed by the magazine *Der Spiegel* on 30 April, and a speech by the then French Prime Minister Lionel Jospin. The German Chancellor stirred matters up with a highly Europeanist document structured around certain fundamental points:

- a) *the European Commission would become the real government of the EU, gaining the existing powers and competences available to it together with the Council;*
- b) *the Council would become a second chamber of Parliament;*
- c) *the bicameral Parliament would acquire full powers over the budget;*
- d) *at the same time, the Member States would regain some powers over agricultural, regional and structural matters<sup>13</sup>.*

The strength of the Schröder blueprint was that it offered a solution to the democratic deficit of the Union, whose legislative assembly, the Council of Ministers, is the only assembly in the world, with the exception of Cuba and North Korea, to meet behind closed doors, in secret and without publishing its debates. Its conversion into a Chamber of States would make it transparent<sup>14</sup>. The creation of a bicameral system, with a second chamber representing national interests, would also make it possible to give the European Parliament exclusive budgetary powers, thereby placing it in the same position as its national counterparts as regards their national governments.

Its other strength lay in the division of competences between the Union and the Member States. The Chancellor's proposal pursued the aim of better defining the level of government responsible for a particular policy, not always correctly identified by citizens, and in substance applied the subsidiarity principle more rigorously than was practice at that time and was more in keeping with the letter of the Treaty. However, the corollary of this return of powers was co-financing of the CAP and therefore a reduction of agricultural expenditure, whose main beneficiary was France, in order to transfer resources to other policies. This would help to reshape the Community budget, for which there had been many calls.

An alternative to the German federalist plan came from Lionel Jospin, who, in a speech on 28 May 2001, took up the traditional French line and sketched out a future for Europe which could be defined as a federation of nations.

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<sup>12</sup> EP Resolution on the preparation of the European Council (Göteborg, 15-16 June 2001).

<sup>13</sup> This outline is adapted from Agence Europe No 7957 of 4 May 2001, p. 1.

<sup>14</sup> A. Politi, *L'Europa a consulto su Schroeder ma la sua ricetta piace a Prodi*, 'La Repubblica' 1 May 2001.

The French Prime Minister included institutional reforms in a plan for European society with enhanced solidarity between Member States (sketching out a recession prevention fund) and cooperation on social matters (Jospin imagined a European social treaty) and on general services and in particular the police:

*‘As regards reform of the institutions, Jospin is of the view that it would not be possible to plan institutional architectures, without having reflected in advance on the political meaning to be given to Europe. “Making Europe without unmaking France – or other European nations: this is my political choice”, says Lionel Jospin who also says that he fully supports the formula of a federation of nation states forged by Jacques Delors, a notion which, in his view, rightly reflects the founding tension of the European Union. To progress towards this type of federation, the respective competences of the Union and the Member States will need to be clarified, without, however, calling into question shared competences and rejecting any “renationalisation” of policies such as the agricultural and structural policies. In Jospin’s view, this federation would make it necessary for national parliaments to be more involved in European integration, and he suggests that a genuine political role should be given to a common body – a standing conference of parliaments or a “Congress” – enabling them to monitor compliance with subsidiarity and to discuss the “State of the Union” every year. As regards the main European institutions, Jospin in particular suggests:*

- (1) *a far-reaching reform of the method by which the European Parliament is elected (a ballot combining proportional representation and a system of large national constituencies). Jospin also suggests that the European Council should have the right to dissolve the EP;*
- (2) *the appointment of a President of the Commission (an institution whose authority and political legitimacy needs to be strengthened) from the European political grouping winning the European elections;*
- (3) *a strengthening of the Council: - fully enshrining the European Council in the future Treaty and in particular giving it the task of approving a genuine multi-annual programme of legislation; the Council should also meet more often, for instance every two months; - creating a “Standing Council of Ministers” whose members, acting as a kind of Deputy Prime Minister, would coordinate European matters in their national governments.<sup>15</sup>*

#### 4. The Göteborg European Council

The Presidency Conclusions of the Göteborg European Council of 15-16 June 2001 considered the initiatives undertaken to be encouraging and felt they should be pursued in future years. Member States were invited to summarise national discussions in preparation for the 2004 Intergovernmental Conference. The Conclusions in particular mention *‘the possible creation of an open forum’* as a method of participation in the work of the 2004 IGC<sup>16</sup>.

The European Parliament, however, took a negative view in its resolution on this European Council:

6. *Regrets the European Council’s proposal for “the possible creation of an open forum” in order to prepare the next IGC, and demands that a properly constituted Convention representing Member States’ governments and parliaments, the European Parliament and the Commission is established by the Laeken European Council in December;*
7. *Expects the Belgian Presidency to make an ambitious and detailed proposal along these lines, which should be adopted at the European Council at Laeken in order for the Convention to start its work, and to make constitutional proposals to serve as the basis for the work of the IGC;<sup>17</sup>*

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<sup>15</sup> Agence Europe No 7972 of 28 May 2001, p. 1.

<sup>16</sup> [http://ue.eu.int/ueDocs/cms\\_Data/docs/pressData/it/ec/00200-r1.i1.pdf](http://ue.eu.int/ueDocs/cms_Data/docs/pressData/it/ec/00200-r1.i1.pdf), paragraph 15 of the Presidency Conclusions - Göteborg, 15 and 16 June 2001.

<sup>17</sup> European Parliament Resolution of 4 July 2001 on the European Council Meeting of 15-16 June 2001 in Göteborg.

## 5. The European Parliament's appeals to the Laeken European Council

Some months later, returning to the issue with a view to the Laeken European Council, Parliament set out a detailed working agenda and suggested how the reform process should be conducted; the aim of the agenda was to ensure a complete solution to the problems involved and maximum transparency and participation was to be achieved by these working methods. The agenda was worded as follows:

3. *Considers that besides the four topics in Declaration No 23, which will be addressed in specific resolutions, political, economic and social progress, security and well-being for Europe's citizens and peoples and the affirmation of the Union's role in the world require:*
  - (a) *the establishment of a foreign, security and defence policy which incorporates the principles and the general guidelines of the CFSP and common defence and whose aims should include the fight against terrorism;*
  - (b) *the incorporation of the CFSP into the Community pillar, with all the provisions relating to the various aspects of foreign policy to be brought together within a single chapter;*
  - (c) *the recognition of the legal personality of the Union;*
  - (d) *the consolidation, within the Treaty, of fundamental rights, citizens' rights and all other provisions relating directly or indirectly to action taken by the European institutions for the benefit of individuals in their capacity as holders of a fundamental right;*
  - (e) *the elimination of the lack of transparency that characterises the work of the European Central Bank at present and the establishment of a well-balanced economic and monetary system resulting from the consolidation of economic and social cohesion policy and closer coordination of Member States' economic policies;*
  - (f) *development of the Union into a genuine area of freedom, security and justice by, in particular:*
    - *the merging, within the Community framework, of police and judicial cooperation in criminal matters with judicial cooperation in civil matters, the measures relating to the movement of persons and the other measures to protect fundamental rights and citizenship within the Union;*
    - *the recognition of the full jurisdiction of the Court of Justice in respect of all measures relating to the establishment of this area of freedom, security and justice;*
    - *the integration of Eurojust and Europol into the Union's institutional framework;*
    - *the establishment of a European Public Prosecutor's Office accountable to the Court of Justice';<sup>18</sup>*

As regards the reform process, the European Parliament reiterated its insistence on a Convention<sup>19</sup>, and in particular laid down its timetable:

21. *Hopes that the Convention will start work immediately after the Laeken European Council and complete its work in time to allow the Intergovernmental Conference to wind up its proceedings by the end of 2003 under the Italian Presidency so as to enable the new treaty to be adopted in December of that year, thereby ensuring that, in 2004, the European elections can act as a democratic fillip to European integration and that, together with the Commission, the European Parliament will be able to play its part in that process under the best possible conditions; considers that the period between presentation*

<sup>18</sup> European Parliament Resolution of 29 November 2001 on the future of the Union.

<sup>19</sup> *Ibid.*, paragraph 6.



*of the results of the Convention and the opening summit should be as short as possible, and in any case not longer than three months;*<sup>20</sup>

## 6. The establishment of the Convention

The Laeken European Council of 14 and 15 December 2001 established the European Convention with a mandate of one year from 1 March 2002, when it would first meet. Its mandate was as follows:

*The Convention will consider the various issues. It will draw up a final document which may comprise either different options, indicating the degree of support which they received, or recommendations if consensus is achieved.*

*Together with the outcome of national debates on the future of the Union, the final document will provide a starting point for discussions in the Intergovernmental Conference, which will take the ultimate decisions.*<sup>21</sup>

The matters to be studied by the Convention were set out in Annex I to the Conclusions and the European Council listed them under two challenges facing the Union: internal and external. They can be summarised as follows:

*'... citizens are calling for a clear, open, effective, democratically controlled Community approach, developing a Europe which points the way ahead for the world. An approach that provides concrete results in terms of more jobs, better quality of life, less crime, decent education and better health care. There can be no doubt that this will require Europe to undergo renewal and reform.'*<sup>22</sup>

The second section of the Annex groups the questions under four headings: division of competences between the Union and Member States, simplification of the Union's instruments, improved democracy and transparency in the Union, and the advisability of a European Constitution.

The theme of the division of competences was the key question and had always perturbed any 'constitutional' development first of the Community and then of the Union, since other matters of fundamental importance also depended on the allocation of competences: matters requiring unanimous voting by the Council<sup>23</sup> and the use of the Community's financial resources. The criterion of subsidiarity set out in the Treaties, although acceptable in theory, was in practice interpreted in different ways. The Laeken Council therefore put a series of questions to the Convention, of which the main were:

*'... Can we thus make a clearer distinction between three types of competence: the exclusive competence of the Union, the competence of the Member States and the shared competence of the Union and the Member States? At what level is competence exercised in the most efficient way? How is the principle of subsidiarity to be applied here? And should we not make it clear that any powers not assigned by the Treaties to the Union fall within the exclusive sphere of competence of the Member States? And what would be the consequences of this?'*<sup>24</sup>

A second set of questions related to the normative sources of Community law, a question which was not just legal in scope, but political as well, as it affected the tricky issue of relations between Community and national legislation:

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<sup>20</sup> *Ibid.*

<sup>21</sup> Laeken European Council, *Presidency Conclusions*, Annex I, section III.

<sup>22</sup> *Ibid.*, section I.

<sup>23</sup> When a matter involving sensitive national interests is conferred upon the Union, these interests are guaranteed by the requirement of unanimity in Council decisions on these matters.

<sup>24</sup> Laeken European Council, *Presidency Conclusions*, Annex I, section II.

*'... should a distinction be introduced between legislative and executive measures? Should the number of legislative instruments be reduced: directly applicable rules, framework legislation and non-enforceable instruments (opinions, recommendations, open coordination)? Is it or is it not desirable to have more frequent recourse to framework legislation, which affords the Member States more room for manoeuvre in achieving policy objectives? For which areas of competence are open coordination and mutual recognition the most appropriate instruments? Is the principle of proportionality to remain the point of departure?'*<sup>25</sup>

The third set of questions was more significant from the point of view of the balance of the Union since it related to its institutions and echoed the debate that had taken place two years previously:

*'The first question is thus how we can increase the democratic legitimacy and transparency of the present institutions, a question which is valid for the three institutions.*

*How can the authority and efficiency of the European Commission be enhanced? How should the President of the Commission be appointed: by the European Council, by the European Parliament or should he be directly elected by the citizens? Should the role of the European Parliament be strengthened? Should we extend the right of co-decision or not? Should the way in which we elect the members of the European Parliament be reviewed? Should a European electoral constituency be created, or should constituencies continue to be determined nationally? Can the two systems be combined? Should the role of the Council be strengthened? Should the Council act in the same manner in its legislative and its executive capacities? With a view to greater transparency, should the meetings of the Council, at least in its legislative capacity, be public? Should citizens have more access to Council documents? How, finally, should the balance and reciprocal control between the institutions be ensured?*

*A second question, which also relates to democratic legitimacy, involves the role of national parliaments. Should they be represented in a new institution, alongside the Council and the European Parliament? Should they have a role in areas of European action in which the European Parliament has no competence? Should they focus on the division of competence between Union and Member States, for example through preliminary checking of compliance with the principle of subsidiarity?*

*The third question concerns how we can improve the efficiency of decision-making and the workings of the institutions in a Union of some thirty Member States. How could the Union set its objectives and priorities more effectively and ensure better implementation? Is there a need for more decisions by a qualified majority? How is the co-decision procedure between the Council and the European Parliament to be simplified and speeded up? What of the six-monthly rotation of the Presidency of the Union? What is the future role of the European Parliament? What of the future role and structure of the various Council formations? How should the coherence of European foreign policy be enhanced? How is synergy between the High Representative and the competent Commissioner to be reinforced? Should the external representation of the Union in international fora be extended further?'*<sup>26</sup>

The fourth set of questions related to the structure of the Treaties and contained the essential question on the advisability of a European constitution. The significance of this set of questions was more than merely formal. The first question was whether the distinction between Union and Community and the division into three pillars should be reviewed<sup>27</sup>. In other words, should the Union be given specific competence for the second and third pillars, and the existing intergovernmental cooperation discontinued. Another politically sensitive question was the invitation to think about

*'... whether the Charter of Fundamental Rights should be included in the basic treaty and whether the European Community should accede to the European Convention on Human Rights?'*<sup>28</sup>

<sup>25</sup> *Ibid.*, section II.

<sup>26</sup> *Ibid.*, section II.

<sup>27</sup> *Ibid.*, section II.

<sup>28</sup> *Ibid.*, section II.



Lastly, the fundamental question which gave rise to the Convention:

*'The question ultimately arises as to whether this simplification and reorganisation might not lead in the long run to the adoption of a constitutional text in the Union. What might the basic features of such a constitution be? The values which the Union cherishes, the fundamental rights and obligations of its citizens, the relationship between Member States in the Union?'*<sup>29</sup>.

## 7. The Parliamentary debate on the establishment of the Convention

In keeping with Parliamentary practice, the President of the Council of Ministers, Guy Verhofstadt, reported to Parliament on the outcome of the European Council which concluded the Belgian Presidency and took the opportunity to sketch out the political significance of the Convention:

*'...In short, I think that the Laeken Declaration is intended to set the ball rolling for a process of constitutionalisation in the Union. In that context, I believe the form to be as important as the content. The Laeken Declaration has established a fresh method for amending treaties. In the past, a treaty would be amended behind closed doors, I would almost say in the trenches of the European Council – even though they are not always trenches, certainly not in Laeken – with diplomats and personal representatives of the Heads of State and Government, which meant that, in fact, only the leftovers from the previous conference would be discussed.*

*For the first time in the history of the European Union, a treaty amendment will be prepared by a Convention which also includes MEPs. I am naturally aware of the fact that there has been, still is and will no doubt continue to be a discussion about whether the Convention is or is not bound by this Laeken Declaration and whether the IGC will or will not be bound by the ultimate achievements of this Convention. In my opinion, the Laeken Declaration and the Convention above all represent an opportunity to take a different approach, and an opportunity for a new Europe. If the Convention produces a decent final report, then no one will ever be able to brush aside what it does and the IGC will have to take that into account...'*<sup>30</sup>.

This notion was reiterated by the President of the Commission, Romano Prodi, who stressed the importance of institutional reform with a view to enlargement:

*'...The enlargement of the European Union is an irreversible process that is already well advanced. Indeed, we must not forget that this is one of the main reasons why we need the Convention. Without institutional change, the enlarged Union would simply be unable to function. Without open discussion, we would be in danger of losing the support of the citizens of the Union and the candidate countries. Furthermore, we must not underestimate the importance of the candidate countries being involved for the first time in an institutional process that has constitutional implications. It is their future, as well as the future of the existing fifteen Member States, that is being decided here...'*<sup>31</sup>.

Involving the European Parliament in the reform of the treaties was the new development for which the House had been calling for some time and was obviously dealt with at some length in the following speeches. The President of the EPP-ED Group, Hans-Gert Pöttering, had the following to say:

*'...What is most significant, in my view, is our new working method, the fact that the reform of the European Union is being made into a parliamentary process. A majority of the Convention are members of parliament, and we hope that this will also mean that the media will contribute to actually making our work public, because it is all very well to hold public meetings, but this is not of course sufficient on its own; it is only*

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<sup>29</sup> *Ibid.*, section II.

<sup>30</sup> European Parliament, Verbatim Report of Proceedings, 17 December 2001.

<sup>31</sup> *Ibid.*

*effective if the media cover these meetings so that the public has access to them, and this is a request which we wish to make of the media today...<sup>32</sup>.*

Moreover, this 'parliamentary process' might well be inadequate:

*'...I am concerned that the European Constitution is going to be drafted by just 60 people, who it is to be hoped will be worthy of the task but are still a small number to represent hundreds of millions of citizens. A constituent assembly would have been more appropriate...<sup>33</sup>.*

The President of the Socialist Group, Enrique Barón Crespo, looked at the questions put to the Convention:

*'...You have done something which I believe to be positive, and that is that with regard to the four issues raised in Nice, in Annex IV, Declaration 23, you have posed 64 questions. We have done our calculations and we make it 64. Some will be million euro – rather than dollar – questions. There are some questions on relations between national and European parliaments which I do not believe are very well worded, but we will help you to correct them and, above all, the important thing is that a constructive momentum is being created for the Convention...<sup>34</sup>.*

Mr Barón Crespo opened the door to other speeches more critical of the questions put to the Convention:

*'...First, there is nothing on strengthening the powers of the Court. Secondly, there is nothing on revising the formula of a qualified majority in the Council. Thirdly, there is nothing on strengthening the role of the regions within the political system of the Union and, fourthly and finally, we would have appreciated some critical self-assessment of the functioning and performance of the European Council itself...<sup>35</sup>.*

*'...You did not ask, for example, how constitutional regions, including Flanders, Wallonia, the Basque Country, Catalonia, Scotland and Wales could emphatically be involved in European decision-making...<sup>36</sup>.*

*'...the declaration does not contain any convincing references to the social State, what some people somewhat sheepishly call the social model, sustainable development, viable development, autonomy and hence, if I may put it thus, a viable Union profile...<sup>37</sup>.*

The stance of the eurosceptics, largely against the constitutional solution, mirrored these criticisms of the questions, or of some of them at least. Jens-Peter Bonde of the EDD Group put it as follows:

*'...The Convention should draft two texts: a constitution, as desired by the majority, and an agreement between independent nations which cooperate on cross-border matters that we cannot solve ourselves in our own countries' parliaments...<sup>38</sup>.*

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<sup>32</sup> *Ibid.*

<sup>33</sup> *Speech by Francesco Speroni, MEP, Non-attached, ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> *Speech by Andrew Duff, MEP, Liberal, ibid.*

<sup>36</sup> *Speech by Bart Staes, MEP, Green, ibid.*

<sup>37</sup> *Speech by Mihail Papayannakis, MEP, GUE, ibid.*

<sup>38</sup> *Ibid.*

## CHAPTER II

# ORGANISATION AND FUNCTIONING OF THE CONVENTION

### 1. The composition of the Convention

Annex I to the Conclusions of the Laeken European Council, as well as setting out the political remit of the Convention through 64 questions, laid down its basic organisational rules and appointed its Chairman and two Vice-Chairmen; the Chairman was the former President of the French Republic, Valéry Giscard d'Estaing, whilst the Vice-Chairmen were two former heads of government of their respective countries: the Italian Giuliano Amato and the Belgian Jean-Luc Dehaene.

In addition, the Convention was to include a representative of the Head of State or Government of each Member State, two representatives from each national parliament, sixteen members of the European Parliament and two Commission representatives, giving a total of 66 full members. These members were supplemented by representatives of the thirteen accession countries at that time<sup>1</sup>, whose votes could not 'prevent any consensus which may emerge among the Member States'<sup>2</sup>; members also included a representative of the Head of State or Government and two national MPs from the accession countries<sup>3</sup>, bringing the total number of members to 105. In addition to the members, there were also observers: three from the Economic and Social Committee, three from the social partners, six from the Committee of the Regions and the European Ombudsman, while the Presidents of the Court of Justice and the Court of Auditors were entitled to speak. This composition, in particular the fact that the Chairman and Vice-Chairmen did not represent their respective governments, was the result of a compromise in the European Council which was viewed in different ways in the European press. It was viewed positively by the commentator from Agence Europe, in a wider-ranging reflection on the composition of the Convention, who assessed its political set-up as follows:

*'The controversy surrounding the composition of the Convention has had a positive effect: it has made it more visible, thereby encouraging politicians to take part in it. We had the impression initially that most Heads of Government were thinking along the lines of appointing experts, professors or diplomats. Leaving aside the composition of the Presidency (a former President of the French Republic and two former Prime Ministers), we have seen Ministers (Moscovici, Michel) and a Deputy Prime Minister (Fini) putting themselves forward as candidates. Judging by the information we have available, national parliaments have followed this trend by nominating people who have a genuine standing in the politics of their countries (as the Chairman of the Convention pointed out ...). Although there have been some disputes in the European Parliament, especially among the Socialist Group, these have come about because leading MEPs want to be nominated to take part in the Convention. Among its members, a very large number have an in-depth knowledge of European integration or are fully committed to it, which is essential, in my view, because I am increasingly convinced that Europe's main enemy is the ignorance of its objectives, its meaning and its operation. It is also significant, from this point of view, that the Spanish and Luxembourg Prime Ministers have decided to appoint two MEPs (Ana de Palacio and Jacques Santer).'<sup>4</sup>*

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<sup>1</sup> Cyprus, Estonia, Latvia, Lithuania, Malta, Hungary, Poland, Slovakia, Slovenia, Czech Republic, which acceded on 1 May 2004, Bulgaria and Romania, which had signed accession treaties, and Turkey, with which accession negotiations would begin on 1 October 2005.

<sup>2</sup> Laeken European Council, *Presidency Conclusions*, Annex 1, section III.

<sup>3</sup> Belgium nevertheless appointed its two Parliament 'representatives' from outside Parliament.

<sup>4</sup> F. Riccardi, *Beyond the News*, Agence Europe, Daily Bulletin 8142 of 2 February 2002.

## 2. Internal organisation: the Praesidium

Within the Convention there was to be a Praesidium made up of the Chairman, the two Vice-Chairmen, and nine Convention Members: the government representatives of Spain, Denmark and Greece (the three countries holding the Presidency during the term of the Convention), two national parliament representatives and two representatives each from the European Parliament and the Commission.

An initial area worth exploring as regards the organisation of the Convention is the role of the Praesidium, whose leadership of the work of the Convention was quite different from the merely regulatory role of counterpart bodies of national Parliaments and the European Parliament.

This particular feature raised political questions, an example of which is to be found in a statement by an experienced Convention member, Elmar Brok, representing the European Parliament. His statement, of 20 February 2002, was reported by Agence Europe as follows:

*‘...A Praesidium that was too powerful would run counter to the interests of parliamentarians and to the new method which aims to parliamentarise the debate on the future of European integration. For this reason Brok told journalists that the idea of giving the Praesidium too powerful a role had to be ruled out. In his view, there was a problem of legitimacy: Convention decisions had to be supported by a majority of parliamentarians forming part of the Convention. Brok fears in particular that a Praesidium that was too powerful would tend to make the Convention into a Convention of acclaim rather than a Convention of work...’<sup>5</sup>.*

There seem to have been two main reasons for giving the Praesidium a guiding role. The first was the particular nature and character of the Convention which, albeit highly representative, was not an elected assembly, had no permanent status and no deliberative or, in the strict sense, consultative powers, but whose task was to prepare for the work of an Intergovernmental Conference: it was not therefore the Praesidium of a body in which majorities and oppositions met head on, but of a kind of congress with a particular authority resulting from its inclusion in an institutional framework.

The second was the highly representative nature of the members of the Praesidium<sup>6</sup>, not only because they were relatively large in number, twelve out of 105 members, but also because of the prestige of its members who included a former Head of State (Giscard d’Estaing), three former Prime Ministers (Amato, Bruton<sup>7</sup> and Dehaene), a former President of the European Parliament (Hänsch), a Foreign Minister (Papandreou), and a former Deputy Prime Minister (Vitorino).

The Praesidium was therefore to be the driving force of the Convention and would be responsible for taking political initiatives, drafting the various chapters of the preliminary draft of the Constitution and, through the Convention Secretariat, keeping documentary records. All this material would provide a basis for the discussions of the Convention. When work was completed, the Praesidium would review the text of the draft Constitution, mediating between the Convention’s various members and political groups<sup>8</sup>.

It should nevertheless be borne in mind that quite a few Convention Members would criticise and complain about this working method throughout the term of the Convention. The statement by Elmar Brok, reported above, is the most comprehensive criticism.

<sup>5</sup> Agence Europe of 21 February 2002 (8155), Article 5.

<sup>6</sup> Valéry Giscard d’Estaing, Giuliano Amato, Jean-Luc Dehaene, Alfonso Dastis, Henning Christophersen, Georges Papandreou, John Bruton, Gisela Stuart, Klaus Hänsch, Íñigo Méndez de Vigo, Michel Barnier and Antonino Vitorino.

<sup>7</sup> Prime Minister of Ireland from 1994 to 1997.

<sup>8</sup> European Convention, *Summary report of the plenary session – Brussels, 9-10 July 2003*, Brussels, 23 July 2003.

### 3. Internal organisation: the Working Groups

In addition to the Praesidium, the Convention would also have Working Groups tasked with drawing up papers on their particular topics to provide a basis for discussion in plenary. Unlike the committees of a parliament, which normally cover all the matters on which parliament can deliberate, the Working Groups were concerned with specific themes which did not exhaustively cover all matters to be dealt with. The groups essentially dealt with particularly sensitive matters, where it was preferable for working documents to be the outcome of a wide-ranging consultation of opinion. Each group would deal with a set of questions set by the Laeken European Council. The initial six groups<sup>9</sup> were extended to ten<sup>10</sup> and an eleventh was subsequently set up<sup>11</sup>. The complete list of the Working Groups, with details of their mandates<sup>12</sup>, is as follows:

- I. **Subsidiarity:** How can verification of compliance with the principle of subsidiarity be ensured? Should a verification mechanism or procedure be introduced? Should such a procedure be political and/or judicial in character?
- II. **Charter:** If it is decided to include the Charter of Fundamental Rights in the Treaty, how should this be done, and what would be the consequences thereof? What would be the consequences of accession by the Community/Union to the European Convention on Human Rights?
- III. **Legal personality:** What would be the consequences of explicit recognition of the legal personality of the EU and of a fusion of the legal personalities of the EU and the European Community? Might they contribute to simplification of the Treaties?
- IV. **National Parliaments:** How is the role of national Parliaments carried out in the present architecture of the European Union? What are the national arrangements which function best? Should new mechanisms/procedures be envisaged at national or European level?
- V. **Complementary competences:** How should 'complementary' competence be treated in future? Should Member States be accorded full competence for matters in which the Union at present has complementary competence, or should the limits of the Union's complementary competence be spelled out?
- VI. **Economic governance:** The introduction of the single currency implies closer economic and financial cooperation. What forms might such cooperation take?
- VII. **External action:** How should the interests of the Union be defined and formulated and how should the instruments available to it be coordinated? What can be done to ensure that the decision-making process allows the Union to act rapidly and effectively on the international stage and, in particular, how far could the Community method be extended to other fields of action and how could it be made more effective? What lessons may be drawn from the experience of the High Representative for the CFSP? What amendments to arrangements for the external representation of the Union would increase the Union's influence at international level and achieve a better synergy with the diplomatic activity of the Member States?
- VIII. **Defence:** Since the Union has decided that it must have a genuine operational capability, including a military capability, what can be done to ensure that the Member States have the military capabilities needed to guarantee the credibility of the Union's defence policy? Should provision be made for extending enhanced cooperation to defence matters? What can be done to ensure that decisions can be taken quickly

<sup>9</sup> European Convention, Note from the Praesidium to the Convention of 17 May 2002, *Working Groups*.

<sup>10</sup> European Convention, Note from the Praesidium to the Convention of 19 July 2002, *Working Groups: Second Wave*.

<sup>11</sup> European Convention, Note from the Praesidium to the Convention of 22 November 2002, *'Social Europe' Group*.

<sup>12</sup> These mandates are taken from the documents cited in the three previous footnotes, verbatim in some cases and as a summary in others.

during a crisis management operation and ensure coherent planning of crisis management operations? What methods should be used to ensure greater efficiency and economies of scale in arms procurement, research and development? Should the creation of a European Armaments Agency be envisaged?

- IX. **Simplification:** How can the number of legislative procedures be reduced and simplified with particular reference to the cooperation, codecision and budgetary procedures? Should qualified-majority voting in the Council be extended to all codecision procedures? How can the number of legal instruments referred to in the Treaties be reduced and could they be given names which indicate their effect more clearly?
- X. **Freedom, security and justice:** What improvements would have to be made to the Treaties in order to promote genuine, full and comprehensive implementation of an area of freedom, security and justice. In particular, what improvements would have to be made to instruments and procedures? What could be done to identify more clearly those criminal law issues which require action at Union level and how could judicial cooperation in criminal matters be stepped up? What adjustments could be made to Community competence in the area of immigration and asylum matters?
- XI. **Social Europe:** the mandate of this last group to be set up was to look in detail at the social aspects of some points of the preliminary draft Treaty; it was tasked with specifying the Union's social values and objectives, studying its present competences in this field and possibly identifying new competences, studying the potential relationship between the coordination of economic policies and coordination of social policies and, regarding procedures, the extent to which codecision and qualified-majority voting could be extended to matters for which unanimity is currently required and, lastly, the role of the social partners.

Three discussion circles were also set up on the Court of Justice, the budget procedure and own resources.

#### 4. Working method

The Praesidium took an important decision at this first meeting, which is reported succinctly in the minutes:

*'Members of the Praesidium recognised that, given the non-homogenous character of the composition of the Convention, it was not appropriate to resort to a vote. The Convention should aim at achieving consensus or, at least, a substantial majority'<sup>13</sup>.*

This meant, in practice, that the work of the Convention would end with a declaration in which the Chairman would record that a broad consensus had been obtained on the whole of the draft treaty establishing a Constitution for Europe<sup>14</sup>. The legal basis for this procedure was the Laeken Declaration which stated in this respect:

*'The Convention will consider the various issues. It will draw up a final document which may comprise either different options, indicating the degree of support which they received, or recommendations if consensus is achieved'<sup>15</sup>.*

The Chairman of the Convention seemed to be referring to this statement when, in response to calls from various Convention members for a vote on the amendments on the preliminary draft treaty, he pointed out that:

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<sup>13</sup> European Convention, *Summary of Conclusions – first informal meeting of the Praesidium*, 22 February 2002, item 1.2.

<sup>14</sup> European Convention, *Summary Report of the Plenary Session – Brussels, 9 and 10 July 2003*, op. cit., p. 7.

<sup>15</sup> Laeken European Council, *Presidency Conclusions*, Annex I, section III.



*...the Convention's working method as established by the Laeken Declaration was that of consensus and excluded voting which would not be representative in an assembly of the present type<sup>16</sup>.*

In all likelihood, the reasons for this choice did not just have to do with the composition of the plenary but also with the non-normative nature of the instruments approved and the fact that they were preparing for the subsequent diplomatic conference which would have found it difficult to amend a plan supported by the majority of a highly qualified political body.

This decision was not included in the working methods which, as discussed above, differ from the corresponding rules of national parliaments by giving the Chairman and the Praesidium a more extensive role, from the point of view of content as well. The decision on the final adoption of the draft treaty was part and parcel of this 'authoritarian' conception of the Convention.

In keeping with this working method, discussions on all matters would conclude with a speech by the Chairman summarising the debate and selecting the proposals that the Praesidium would use as a basis for further improvement of the text of the treaty.

### 5. Participation by civil society: the Forum

While, as can be seen from the preceding paragraphs, the organisation and the procedures of the Convention were based on normal parliamentary methods, particular emphasis was placed on participation, i.e. on dialogue with civil society, whose support seemed essential for the work and outcome of the Convention<sup>17</sup>. This implemented an important point of the Laeken Declaration which took up an initiative already suggested by the Goteborg European Council<sup>18</sup>:

*'In order for the debate to be broadly based and involve all citizens, a Forum will be opened for organisations representing civil society (the social partners, the business world, non-governmental organisations, academia, etc.). It will take the form of a structured network of organisations receiving regular information on the Convention's proceedings. Their contributions will serve as input into the debate. Such organisations may be heard or consulted on specific topics in accordance with arrangements to be established by the Praesidium.<sup>19</sup>*

The Forum was seen as a way of structuring participation in a Convention whose members were not solely government appointees, in order to ensure that better account was taken of the points of view put forward in the Forum. In the Praesidium, Vice-Chairman Dehaene was responsible for this issue, and put forward the following recommendations which would be followed to the letter:

*'A Forum Internet site to serve as the basis of an open network of organisations, with the main objective of allowing for the submission of written contributions as input to the work of the Convention.*

A letter to editors for publication in all leading European newspapers, to "advertise" the existence of the Forum, and to encourage them to launch their own debates on the future of Europe.

The establishment of regular and coordinated contacts with civil society (as far as possible through contact groups of organisations), both at the European and national level.

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<sup>16</sup> *Summary Report of the Plenary Session, Brussels, 15 and 16 May 2003, Conv 748/3, p. 2.*

<sup>17</sup> *The Convention and the Forum, Annex II to the Note Follow-up to the inaugural session of the Convention, Conv 8/02.*

<sup>18</sup> *See Chapter 1, section 4.*

<sup>19</sup> *Laeken European Council, Presidency Conclusions, Annex I, section III.*

An encouragement to the Economic and Social Committee, Committee of the Regions and social partners to make full use of their role as a bridge between the Convention and civil society.

A structured approach to the organisation of public hearings, in particular through the careful selection of participants depending on the subject matter:<sup>20</sup>

Initial contacts with civil society were quickly organised and the above recommendations to some extent formalised contacts which had already been forged, in some cases at the initiative of civil society itself. On 18 February 2002, in view of the inauguration of the Convention which was scheduled for ten days' time, non-governmental organisations in the environmental, social, development and human rights protection fields and the European Trade Union Confederation (ETUC) in particular set up a contact group to forge structured relations with the Convention, calling for regular meetings with the Praesidium<sup>21</sup>.

A total of 160 organisations would take part in the Forum, including 17 public institutions (chiefly representing intra-national tiers of government), 16 groups representing social and economic interests (chiefly professional) and 28 representing university and cultural circles. The remaining 99 were not classified and included non-governmental organisations<sup>22</sup>. Consultations were organised into eight contact groups: social field, environment, academic world and think tanks, citizens and institutions, local and regional authorities, human rights, development and culture.

Another participation initiative was the Youth Convention, proposed by Valéry Giscard d'Estaing at the inaugural session on 9-10 July, which would reach ambitious conclusions<sup>23</sup>.

## 6. Timetable

The meetings of the Convention took place from 28 February 2002 (inaugural session) to 10 July 2003 and included a total of 48 sessions, of which the seven following the inaugural session, from March to September 2002, were *listening* sessions in which there were wide-ranging debates on general themes (the June 2002 session debated the Forum). This name was coined by Chairman Giscard d'Estaing who highlighted their political function for those European citizens who *'felt that their voice was not being heard on the future of Europe'*<sup>24</sup>. In practice, five of these sessions were debates of the Convention on matters of general interest in order to provide a guideline for its work. These debates were organised by the Praesidium on the basis of questionnaires. The session of 24 and 25 June 2002, during which the contact groups were heard, was devoted to listening to civil society.

The final reports of the Working Groups were discussed at the following six sessions, from October 2002 to February 2003. The remaining sessions were given over solely to discussion of the draft treaty, which had been presented by President Giscard d'Estaing as early as 28 October 2002. It should be borne in mind that the initial draft treaty, providing a basis for discussion, was drawn up by the Praesidium.

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<sup>20</sup> *The Convention and the Forum...*, op. cit.

<sup>21</sup> Agence Europe, No 8153 of 18 and 19 February 2002, Article 10.

<sup>22</sup> *Digest of contributions to the Forum*, Conv. 112/02.

<sup>23</sup> *Final text adopted by the Youth Convention*, Conv 205/02.

<sup>24</sup> *Note on the plenary session, Brussels, 21 and 22 March 2002*, Conv. 14/02, p. 1.



## CHAPTER III

### THE LISTENING SESSIONS (MARCH-SEPTEMBER 2002)

#### 1. What do you expect of the European Union?

This was the overall agenda of the meeting on 21-22 March 2002, the first after the inaugural session. The timescale within which Convention members were to discuss their expectations was, as the Chairman pointed out in his introduction<sup>1</sup>, the next 25-50 years: in historical terms, this represented a maximum of two generations equivalent to the length of time that the European Community had already existed.

Over eighty members of the Convention took part in the debate, which started with an assessment of the current situation. Successes of European integration included the single market, the four freedoms of movement and the euro and the Schengen area although these were limited to some Member States. The main weakness was nevertheless that Europe did not listen to its citizens enough and citizens did not feel that they could hold to account those in positions of power who took decisions on Europe's behalf. The democratic components of the Union's institutional system<sup>2</sup> were obviously inadequate and citizens had to be able directly to choose and remove those at the helm of the Union<sup>3</sup>.

Institutional mechanisms seemed complex and difficult to understand with the result that Europe was perceived as abstract and distant. *A number of speakers thought that Europe tended to be too prominent at the expense of the independence and freedom of nation states*<sup>4</sup>.

In keeping with the latter point of the assessment discussed above, some members expressed the wish that the Union should be more respectful of Member States' cultural identities and its action be limited to certain fields in which the Union could be of real use<sup>5</sup>.

In contrast, and with a broader consensus, there were calls for a greater Union presence in the area of security and justice, in particular as regards the war on terrorism, immigration and its role on the international stage. There were also specific calls for the coordination of fiscal and budgetary policies, especially between the twelve Member States which had adopted the euro<sup>6</sup>.

Taking these general expectations as a starting point, the debate also covered more specific aspects which embodied them in practice. First of all, it was a widely held view that there should be:

*...a simpler division of powers and responsibilities under which it would be clear to all what was the domain of the Union and what was covered at national, regional or even local level...<sup>7</sup>.*

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<sup>1</sup> *Note on the plenary meeting, Brussels, 21 and 22 March 2002, Conv. 14/02, p. 1.*

<sup>2</sup> **These democratic components were felt in the debate to be the election by universal suffrage of the European Parliament, the fact that Ministers meeting in the Council represented governments accountable to their national parliaments and the fact that the Commission was accountable to the European Parliament.**

<sup>3</sup> *Note on the plenary meeting, Brussels, 21 and 22 March 2002, Conv. 14/02, p. 2.*

<sup>4</sup> *Ibid.*

<sup>5</sup> *Note on the plenary meeting, Brussels, 21 and 22 March 2002, Conv. 14/02, p. 3.*

<sup>6</sup> *Ibid.*

<sup>7</sup> *Note on the plenary meeting, Brussels, 21 and 22 March 2002, Conv. 14/02, p. 4.*

This issue, bringing to mind the Schroeder blueprint<sup>8</sup>, was logically linked with the need for clarification of the principle of subsidiarity and the creation of mechanisms to ensure compliance with that principle<sup>9</sup>.

From a more strictly institutional point of view, members wanted the treaty that the Convention was to prepare to have constitutional status, the introduction of a hierarchy of rules, and the extension of qualified-majority voting in the Council and of codecision procedures<sup>10</sup>.

The architecture of the institutions was tackled in radical terms, perhaps because political concerns played less of a part, in the hearing of the 'Academia and Think-Tank' contact group during the session on civil society. This group proposed:

*'...including more widespread use of majority voting and the codecision procedure, election of the Commission President by the European Parliament, opening up to the public the debates of a – reformed – Council when acting as legislator, and strengthening of the Commission's executive role and authority to control application of the subsidiarity principle.'*<sup>11</sup>

The radical nature of these proposals lay less in their originality, since they had all been put forward before, than in the fact that they were presented not as isolated components but as an overall architecture.

Another civil society contact group, 'Local and regional authorities', looked at institutional aspects and called for the Committee of the Regions to become an institution and group members from the regions with legislative powers called for the latter to be given the right to bring actions before the Court of Justice<sup>12</sup>.

## 2. The missions of the Union

These were examined at the session of 15 and 16 April 2002 on the basis of four questions that the Praesidium had drawn up in order to look in more depth at the suggestions that had emerged in the previous session<sup>13</sup>. The first question was:

*'Taking into account the new dimension of the Union, the present international environment, its present remit, and the aspirations of its citizens, would you give the Union more tasks? If so, what should be added? Or would you give it fewer tasks? If so, giving which tasks back to Member States?'*<sup>14</sup>

During the debate the second option put forward above, i.e. the removal of tasks from the Union, received little support with only two out of 86 speakers in favour, but there were major differences among the large numbers in favour of the first option. A first group felt that an approach based on instruments of action, and their intensity, was preferable to drawing up a list of competences. In this respect, the treaty should specify the competences of the Union and the instruments that could be used for them. Speakers taking this line also felt that the division of Community policies into three pillars should be discontinued<sup>15</sup>.

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<sup>8</sup> See Chapter I, Section 3.

<sup>9</sup> Note on the plenary meeting, Brussels, 21 and 22 March 2002, Conv. 14/02, p. 4.

<sup>10</sup> *Ibid.*

<sup>11</sup> Note on the plenary session, Brussels, 24 and 25 June 2002, Conv 167/02, p. 8.

<sup>12</sup> *Ibid.*, p. 10.

<sup>13</sup> *Europe: what is its purpose? The Union's missions*, annexed to the Cover Note on the Convention Session of 15-16 April 2002, Conv 16/02. For the previous session to which reference is made in the text, see section 1 of this chapter.

<sup>14</sup> *Europe: what is its purpose?...*, *op. cit.*

<sup>15</sup> Note on the plenary meeting, Brussels, 15-16 April 2002, Conv 40/02, p. 3-4.

The majority of speakers, taking the traditional line of defining competences by subject, largely reiterated the wishes already put forward at the previous session, focusing their calls for reinforcement on the common foreign policy and freedom, security and justice (in practice the second and third pillars). These were supplemented by the introduction of *economic governance*, extending Monetary Union to other policies, although there were different degrees of consensus for different policies. Among potential extensions of competences, there was dissent in particular about competences over education, vocational training and teaching, where speakers in favour of an extension were opposed by those who felt that these should remain a competence of the Member States. Differences emerged in particular on the inclusion of 'culture' among those matters which should remain a competence of Member States. Other issues on which there was lively debate included the internal organisation of Member States, public services and social security. It was felt that this list of possible extensions of Union competences was not exhaustive and that Union action to encourage cooperation between States in certain matters falling within their competence should not be ruled out<sup>16</sup>.

The second question put by the Praesidium, which logically should have been the first, was:

*'In expressing your preference, what criteria do you use for deciding which missions should be carried out at Union level? And what, in your view, should be the principles on which the Convention should base such decisions?'*<sup>17</sup>

The answers to this second question were fairly unequivocal in view of the consolidated Community principle of **subsidiarity**; while its application was in some cases criticised, its theoretical value, and the need for its reinforcement, was not called into question. In the Convention as well, the majority of speakers were in favour of this principle, pursuant to which some speakers stressed that the Union should take action only in those areas in which it alone could do so or could do so more effectively. Another principle that was widely discussed was that of **proportionality** pursuant to which '*...The Union should not go beyond what was necessary to achieve the objectives pursued*' although the type and intensity of action was felt to be more appropriate than its justification as a Community competence. Some speakers also raised the principle of **solidarity**<sup>18</sup>. An original contribution on this matter came from the 'Local and regional authorities' group of the Forum which proposed the principle of **connexity**: the Community legislator should take responsibility for the financial consequences of its decisions on local and regional finances and therefore give territorial entities the necessary resources<sup>19</sup>.

The third question put by the Praesidium, mirroring the previous question, was:

*'Should the Treaties explicitly decide that responsibilities not covered by the missions of the Union remain with Member States? Or should these competences be spelt out in the Treaties? What in your view should be such responsibilities, and what criteria do you use in drawing up your list? And what, in your view, should be the principles on which the Convention might base such decisions?'*<sup>20</sup>

Most speakers were in favour of the residual criterion, i.e. that Member States should be responsible for all unlisted competences not allocated to the Union<sup>21</sup>. This was a criterion based on the conventional federal constitutions in which the competences of the higher tier of government (the federation) were laid down and any competences not listed were the prerogative of the lower tiers of government (the federal states).

The fourth and final question put by the Praesidium was:

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<sup>16</sup> *Ibid.*, p. 4.

<sup>17</sup> *Europe: what is its purpose?... op. cit.*

<sup>18</sup> *Note on the plenary meeting, Brussels, 15-16 April 2002, Conv 40/02, p. 5.*

<sup>19</sup> *Note on the plenary session, Brussels, 24 and 25 June 2002, Conv 167/02, p. 10.*

<sup>20</sup> *Europe: what is its purpose?... op. cit.*

<sup>21</sup> *Note on the plenary meeting, Brussels, 15-16 April 2002, Conv 40/02, p. 5-6.*

*'Should the missions of the Union be settled now, for all time? Or should the possibility of further evolution be foreseen?'*<sup>22</sup>

Most speakers were in favour of a flexible system allowing for some adaptation of the Union's missions to the new challenges<sup>23</sup>. Achieving this flexibility was a trickier problem than formulating the principle. There were already some instruments of flexibility and some speakers were keen to preserve them. These included, in particular, Articles 95 and 308 of the Treaty, providing respectively for the approximation of domestic legislation in respect of the internal market and entitling the Community to take measures, for which there is no express provision in the Treaties, to attain one of the objectives of the Community as regards the common market. Another instrument of flexibility put forward in the debate consisted in introducing different arrangements for treaty revision: more rigid arrangements for the basic provisions and more flexible arrangements for other provisions.

The issue of the checks needed to counterbalance this flexibility was then debated, especially as regards compliance with the principles of delimitation of competence and responsibility and whether these checks should be political or judicial in nature. Those in favour of political checks hoped to involve national parliaments which could appoint their own representatives to a supervisory body in which some speakers also felt that the European Parliament could participate. Those in favour of judicial checks of compliance felt that the competent body should be made up of members of national constitutional courts or that a cooperation mechanism should be created between the latter and the Court of Justice. There was a call for regions to participate in these checks, but this came up against major and reasoned opposition based on the exclusively national character of Member States' legal orders<sup>24</sup>.

The debate on the missions of Europe also highlighted the concern not only for Member States to retain their competences, but for a rationalisation of those of the European Union, an idea already put forward by Gerhard Schroeder<sup>25</sup>, and for national parliamentary or judicial bodies to be able to monitor any instances in which the Union had exceeded its own competences.

### **3. Achieving the Union's missions: efficiency and legitimacy**

The Convention session on 23 and 24 May 2002 was devoted to this issue, on which the Praesidium had presented two weighty documents: one on *'Delimitation of competence between the European Union and Member States: existing system, problems and avenues to be explored'*<sup>26</sup>, and the other on *'The legal instruments: present system'*<sup>27</sup>. The first document in particular, touching on matters that had proved particularly sensitive right from the first session, shaped the debate. The second looked at a more technical and specific matter.

As regards the delimitation of competences, the main points of the March session were reiterated, in particular endorsing the current distribution, with calls for a strengthening of second and third pillar matters. The problem lay largely in making this distribution clearer and more rigorous.

The means discussed in the debate for this purpose firstly included: the general competence of Member States to be enshrined in the Treaty for all matters not allocated to the Union, a better division of Union competences, a more precise definition of its objectives, a clearer separation of the Union's legislative and executive power and

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<sup>22</sup> *Europe: what is its purpose?...*, *op. cit.*

<sup>23</sup> *Note on the plenary meeting, Brussels, 15-16 April 2002, Conv 40/02, p. 6.*

<sup>24</sup> *Ibid.*, p.6-7.

<sup>25</sup> See Chapter I, section 3.

<sup>26</sup> Conv 47/02.

<sup>27</sup> Conv 50/02.

lastly the inclusion of the case law of the Court of Justice in the provisions on the approximation of legislation<sup>28</sup>, as well as the adoption of measures to achieve the internal market when specific powers were lacking<sup>29 30</sup>.

The concerns of Convention members related to political monitoring of compliance with the delimitation of competences and the proposal for a strengthening of the role of the national parliaments was also reiterated at this session. Judicial monitoring also had to be stepped up by creating a specialist section within the Court of Justice or by providing a specific right of appeal to the latter for infringements of the principles of delimitation and subsidiarity. Some speakers proposed political and judicial arbitration on this delicate issue<sup>31</sup>.

#### 4. Instruments and procedures

The session of 23 and 24 March was devoted to this issue, within the wider theme of 'efficiency and legitimacy', as was the session of 12 and 13 September 2002 from the particular point of view of their simplification<sup>32</sup>.

As regards the legal instruments for Union action, the two debates highlighted a widespread need for a clear hierarchy of rules and for a clearer naming of these rules<sup>33</sup>. The main idea was that of a three-tier hierarchy: constitutional provisions (the treaties), laws and regulations; many Convention members felt that this hierarchy had the advantage of distinguishing the second, resulting from the legislative function of the Council and the European Parliament, from the third, which reflected the executive function which some speakers felt should be the exclusive competence of the Commission. Some Convention members nevertheless had reservations about applying a rigid separation of powers to the Union<sup>34</sup>. A number of speakers suggested that the pillars, or at least the first and third pillars, should be aligned from the point of view of the legal instruments set out in the Treaty<sup>35</sup>.

There was nevertheless little support for the proposal to link each competence to the use of one or more predetermined legal instruments. The tendency of Community legislation to be overly detailed was also criticised<sup>36</sup>.

The debate on the decision-making process contrasted two different positions on the issue of legislative procedures: those Convention members calling for a simplification and reduction<sup>37</sup> were opposed by other speakers who argued that a simplification would be limited by the 'diversity' of the Union and that the real problem was one of rendering procedures more transparent and comprehensible to citizens. A proposal put

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<sup>28</sup> Articles 94 and 95 of the Treaty.

<sup>29</sup> Article 308 of the Treaty.

<sup>30</sup> Note on the plenary session, Brussels, 23 and 24 May 2002, Conv 60/02, p. 4.

<sup>31</sup> *Ibid.*, p.5.

<sup>32</sup> The two debates are examined together here.

<sup>33</sup> On the basis, in particular, of the principle 'familiar things should be called by familiar names' it was proposed that current binding regulations should be known as *European laws* and current directives should be known as *European framework laws*, while the term *regulations* should be kept solely for implementing rules. Note on the plenary session, Brussels, 12-13 May 2002, Conv 284/02, p. 3.

<sup>34</sup> *Ibid.*, p. 4.

<sup>35</sup> Note on the plenary session, Brussels, 23 and 24 May 2002, Conv 60/02, p. 6.

<sup>36</sup> *Ibid.*

<sup>37</sup> The debate on simplification in September 2002 highlighted proposals to replace the budgetary procedure by the codecision procedure and to include the mechanism of interinstitutional agreements on the financial perspective in the treaties. Note on the plenary session, Brussels, 12-13 May 2002, Conv 284/02, p. 6.

forward by civil society, and specifically by the social contact group, was that the Treaty should regulate open coordination, integrating social dialogue into it<sup>38</sup>.

Many speakers argued, as regards the decision-making process within the Council, for an extension of qualified-majority voting and the abolition of the veto, which could be replaced by a super-qualified majority voting.

The role of parliaments, both national and European, in the Union's legislative procedure proved to be a sensitive issue. Two schools of thought emerged about the role of national parliaments: one proposing a new organ through which they could play a direct part in the Union's decision-making process, and the other advocating fine-tuning of the monitoring of their respective governments in the Council. As regards the European Parliament, the extension, and even the generalisation, of codecision was widely supported. Some Convention members focused on the Commission's monopoly of the legislative initiative and were in favour of extending this to the European Parliament, with other speakers considering that it should also be extended to the national parliaments and the Council<sup>39</sup>.

Lastly, several speakers in the debate criticised the procedure for adopting implementing rules and in particular *comitology*, which lacked the necessary transparency: there were calls not just for a reduction of the number of committees but also for monitoring of the adoption of implementing rules by the legislator. There was broad consensus in the debate that the quality of legislation needed to be improved. This improvement could be achieved if the Council and Parliament were to adopt a mechanism to improve the quality of legislation along the lines of the system that the Commission had introduced, or if there was intensified consultation of the spheres concerned to which it could be possible to give greater self-regulation<sup>40</sup>.

## 5. Area of freedom, security and justice: the role of the Union and the Member States

This theme, covered by the debate at the session of 6 and 7 June 2002, raised many expectations in public opinion on both of the main issues that it covered: asylum policy and immigration, which fell within the first pillar<sup>41</sup>, and justice and domestic security, which fell within the third pillar.

Convention members calling for more Europe in these areas reflected public opinion: in the case of justice and security because the Member States found it difficult to combat cross-border crime (although what was meant exactly by that term?) on their own. The debate on the right of asylum and immigration seemed more structured with those calling for greater harmonisation or even, in the case of asylum, for a common system, being opposed by supporters of national policies and those separating asylum policy, to which the relevant international agreements had to be applied, from immigration policy, which met other considerations.

In this context, and in line with the various positions discussed above, the debate was structured around the institutional question that these policies raised: should their division into two pillars be maintained or should the first and the third pillars be merged? Those in favour of more Europe tended to call for a merger, while others objected that Community procedures were not suited to the whole area of security and justice or supported a pragmatic and gradual approach. If the third pillar were to be maintained, this raised the question of legal instruments, as the convention seemed to many to be an inappropriate instrument because of the long periods needed for ratification procedures: directly binding Community legal instruments were preferred by many speakers.

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<sup>38</sup> *Note on the plenary session, Brussels, 24-25 June 2002*, Conv 167/02, p. 2. Open coordination is a working method designed by the Lisbon Council in 2000 to step up cooperation between the Member States by focusing their various national policies on certain shared objectives.

<sup>39</sup> *Note on the plenary session, Brussels, 23-24 May 2002*, Conv 60/02, p. 6-7.

<sup>40</sup> *Ibid.*, p. 7-8.

<sup>41</sup> **By decisions of the Council, requiring unanimity, which many speakers argued should be abolished.**

Particular attention was paid to democratic scrutiny in these areas, leading on this occasion to a division in the Convention between supporters of an enhanced role for the European Parliament and supporters of an enhanced role for national parliaments: what needed to be monitored was Europol and some speakers were of the view that Eurojust should be monitored as well. Various models were put forward for this scrutiny: a special parliamentary committee (along the lines of OLAF), supervision by the Commission or the creation of a High Representative for the third pillar.

Improved democratic scrutiny was the prerequisite for stepping up the legal powers and resources of Europol which needed, however, to be able to ask national police forces to open investigations and play its part in these investigations. Eurojust could also become a European public prosecutor.

Broad consensus also emerged in the debate on the idea of stepping up border controls and many speakers proposed a common border guard unit, while others felt that closer cooperation between the Member States was needed. Some intermediate solutions discussed included a support unit or, with a view to financial solidarity, burden-sharing in favour of those Member States more exposed to migratory flows<sup>42</sup>.

## 6. The role of national parliaments in the European architecture

In addition to the previous topic, the session of 6 and 7 June 2002 also looked at this topic on the basis of five questions put by the Praesidium<sup>43</sup>. This was a thorny issue as it touched on the Member States' constitutional provisions on relations between national parliaments and their respective governments. Convention Members were nevertheless keen to discuss those national mechanisms which were functioning best and turned their attention here to the practice in the Scandinavian countries of giving governments a negotiating mandate which represented an ex ante political control. Some speakers mooted the idea of making the legislative work of the Council public or of including a representative of the respective parliament in government delegations. Another way of stepping up the role of national parliaments might be to make it compulsory to consult them on matters in which the European Parliament played less of a role, such as the second and third pillars.

On a practical level, improved controls on national governments could be achieved if the Commission forwarded its legislative proposals to national parliaments at the same time as it forwarded them to the Community's political institutions. Strengthening the Conference of Community and European Affairs Committees of Parliaments of the European Union<sup>44</sup> was another instrument that could be of assistance.

There was little support for the idea of a 'second chamber' of the European Parliament in which national parliaments would be represented or for a separate institution. Ensuring that the European Parliament elected by universal suffrage was not weakened was felt to be the main concern. Some Convention members argued for the establishment of a Congress of representatives of national parliaments with the task of electing the President of the Commission<sup>45</sup>.

## 7. The Union's external action

This topic was debated at the session of 11 and 12 July 2002 on the basis of a Praesidium document<sup>46</sup>, which, after a detailed review of the situation, put questions and food for thought to Convention members.

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<sup>42</sup> *Note on the plenary session, Brussels, 6-7 June 2002, Conv 97/02, p. 1-7.*

<sup>43</sup> *The role of national parliaments in the European architecture, Conv 68/02.*

<sup>44</sup> **Abbreviated to COSAC.** See <http://www.cosac.org>.

<sup>45</sup> *Note on the plenary session, Brussels, 6-7 June 2002, Conv 97/02, p. 7-10.*

<sup>46</sup> **Conv 161/02.**



Although external action involved various fields, including the strictly economic field of trade policy, Convention members focused their attention on the second pillar, the common foreign and defence policy, as a result of which there was very little discussion of other fields of external action. The debate centred on some particular aspects: the nature of this policy, institutional aspects and, in the case of defence, its relations with NATO.

Although it was unanimously agreed that a more dynamic Union foreign policy able to react better to the various international situations was needed, there was a wider range of opinions on the ways in which this could be achieved. The key issue was the dilemma between a common and a single policy which raised the question of nature. In this respect, some Convention members pointed out that the intergovernmental nature of the CFSP had not provided satisfactory results and therefore felt that the role of the Commission should be enhanced by making it a mediator of common interests. They were opposed by those who, taking the close links between foreign policy and national sovereignty as their starting point, considered that the inadequate results of foreign policy were the result of that link and not of the instruments which needed to be adapted to the actual situation.

These considerations were a preliminary to considerations of institutional aspects. Two basic conceptions collided here. On the one hand, there were supporters of the abolition of the division of the various fields of external action into two separate pillars, or at least of the attribution of the two functions of High Representative for CFSP and Commissioner for External Relations ('double hatting') to a single person who would be a Vice-President of the Commission. Others felt that it would be preferable to improve coordination between these two posts.

This structural approach was supplemented by a further procedural approach which focused on decision-making mechanisms: some members argued that qualified-majority voting should be extended to foreign policy decisions, and others argued that the principle of unanimity should be retained and backed up by an improved mechanism able to bring about better convergence between the Member States. This second school of thought focused on the ways in which a more dynamic and proactive Union foreign policy could be achieved. Some members felt that unanimity did not rule out the use of qualified-majority voting in specific cases such as the approval of common strategies or decisions on joint proposals from the High Representative and the Commission; others felt that the instruments should be enhanced cooperation and constructive abstention. This debate on the institutional aspects of foreign policy also brought up the equally important problem of the democratic deficit in the second pillar. There were two schools of thought on this issue as well: one calling for an enhanced role for the European Parliament, possibly using codecision, and the other stressing the central role played by national parliaments in this area.

One institutional question that was raised related to the financing of the CFSP. There is no mention in the summary of the debate of the option, discussed on other occasions, of including this item in the general budget, but only of increased financing.

In the specific field of security and defence, relations with NATO were a fundamental issue; some Convention members saw defence as primarily an issue for NATO with Community policy being limited to a role of consultation with the Atlantic Pact. Others saw this area as ideal ground for enhanced cooperation or for a staged approach allowing for a gradual development of military capabilities. In this respect, some speakers stressed the technical and military aspects of interoperability and research into and development of armaments systems. This led speakers to suggest that an armaments agency be created and that the production of and trade in arms and munitions should be excluded from Article 296 which gives Member States responsibility for some areas of security<sup>47</sup>.

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<sup>47</sup> *Note on the plenary session, Brussels, 11-12 July 2002, Conv 200/02, p. 2-5.*



## 8. Union policies

This theme was discussed chiefly in the session devoted to civil society on 24 and 25 June 2002, during which the Forum contact groups were heard.

A common thread in the contributions from the various groups was the call to incorporate the Charter of Fundamental Rights into the treaty; some felt that the Charter should be reviewed from a technical point of view or to bring it into line with the Community *acquis*<sup>48</sup>. Other groups called for its extension, such as the 'Environment' group which felt that the right to own property and the right to own land should be included<sup>49</sup>. Another common thread was the call for an extension of the codecision procedure with wider-ranging involvement of the parties involved and greater use of qualified-majority voting in the Council.

On individual policies, the '**Social Sector**' contact group felt that the treaty should include a legal basis for social dialogue and that all Union policies should be at the service of social development, and that there should be specific rules on gender equality, a specific commitment to combat poverty and an explicit recognition of services of general interest<sup>50</sup>.

The 'Environment' contact group criticised the **Common Agricultural Policy** and called for its replacement by a 'Common Agricultural and Rural Policy' based on the principle of sustainable development and including the right to healthy food and clean water<sup>51</sup>. This group also felt that the existing treaty was inadequate from the point of view of **environmental policy** but merely called for procedural changes<sup>52</sup>.

The contact group dealing with **development** called for a stronger development policy suggesting, as ways of achieving this objective, a close link between development and the Union's internal policies, the inclusion of poverty eradication among foreign policy objectives and a clearer definition of Member States' competences<sup>53</sup>.

In the area of **culture and education**, the relative contact group felt that the principle of cultural diversity should be included in the treaty and that national policies should be recognised as services of general interest. In this respect, the provisions on state aid<sup>54</sup> and the common commercial policy<sup>55</sup> should take account of the specific nature of culture and education. From a strictly procedural point of view, the contact group felt that cultural matters should be subject to qualified-majority voting in the Council<sup>56</sup>.

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<sup>48</sup> The 'Human Rights' contact group. *Note on the plenary session, Brussels, 24-25 June 2002*, Conv 167/02, p. 11.

<sup>49</sup> *Ibid.*, p. 5.

<sup>50</sup> *Ibid.*, p. 3-4.

<sup>51</sup> *Ibid.*, p. 5.

<sup>52</sup> *Ibid.*, p. 5.

<sup>53</sup> *Ibid.*, p. 12.

<sup>54</sup> **Article 87 of the Treaty in force.**

<sup>55</sup> **Article 133 of the Treaty in force.**

<sup>56</sup> *Note on the plenary session, Brussels, 24-25 June 2002*, Conv 167/02, p. 13-14.



## CHAPTER IV

# EUROPEAN UNION, MEMBER STATES AND CITIZENS

### 1. The characteristic features of the European Union

The Praesidium presented the draft of the first sixteen articles of the Constitution<sup>1</sup> at the session of 6 and 7 February 2003 and, after members had tabled amendments, these were debated at the session of 27 and 28 February 2003<sup>2</sup>.

The first four articles related in particular to the nature of the Union and its values and objectives. The more specifically political question raised by the **nature** of the Union related to the expression *'on a federal basis'* to which Article 1 of the Praesidium's text referred without, however, stating that the Union was *'federal'*. According to some members of the Convention this reflected the existing situation, while for others, in the majority, it went further than the existing situation and could be interpreted differently in different Member States. Alternative solutions were put forward such as *'federation of nation states'* and the replacement of *'federal basis'* by *'supranational'* or, as would be the case in the final draft, by *'Community'*. Many members of the Convention were in favour of keeping the present name of 'European Union' which would be included in the final draft; others wanted the concept of *'national identity'* to be amplified by the addition of further terms relating to the structures of the state, but this call was not taken up and this concept would be moved to Article 5 of the final draft on the relations between Member States and the Union<sup>3</sup>.

The question of the nature of the Union has to be connected with that of its **legal personality**, and although there was little discussion<sup>4</sup> of its recognition, set out in Article 4 of the Praesidium's draft and then finally included in Article 6 of the final draft, the presentation of the final report of the Working Group on this question<sup>5</sup>, which eliminated most of the effects of the Union's legal personality, met with broad consensus. The main effect was to make the Union into a subject of international law with the consequent ability to enter into international treaties; another effect was the possibility of merging the various Treaties governing Europe into one Treaty.

For the sake of completeness, the debate of 3 and 4 October 2002 on the Working Group's report should be mentioned. During this debate, many members of the Convention stressed that the Union's single legal personality meant that its division into three pillars would become anachronistic, thereby paving the way for a simplification of the normative texts, although some specific procedures such as those of the CFSP would be maintained<sup>6</sup>.

The question of values, covered by Article 2 of the Praesidium's draft, had a significance which was not just formal but, as the Chairman stressed, depended on correctly defining how the principles and values of the Union could be breached and lead to a Member State's membership rights being suspended. From the point of

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<sup>1</sup> Conv 528/03.

<sup>2</sup> *Note on the plenary session, Brussels, 27-28 February 2003*, Conv. 601/03.

<sup>3</sup> *Ibid.*, p. 1-2.

<sup>4</sup> *Ibid.*, p. 8.

<sup>5</sup> Conv 305/02.

<sup>6</sup> *Note on the plenary session, Brussels, 3-4 October 2002*, Conv. 331/02. p. 2-5.

view of content, many Convention members proposed including a reference to religion which the Praesidium, as the Chairman noted, felt would be better placed in the preamble whose draft had yet to be presented<sup>7</sup>.

Religion became a very controversial problem, not least because of the intervention by major religious authorities. During the session of 27 and 28 February 2003, the question of its location and the question of content were discussed. On content, there was a clash between the various conceptions of the relationship between church and state which had troubled European history for centuries and had been resolved in different ways in different Member States<sup>8</sup>. In line with the various national solutions, Italian, Polish and German members of the Convention supported the mention of a religious heritage, while the French in particular were opposed<sup>9</sup>. Underpinning this was the insistent request, from the Catholic church in particular, for a mention of Europe's Christian origins.

The question was debated again at the session of 11 to 13 June 2003 in the discussion of the revised text of the first part of the draft treaty which also included the preamble<sup>10</sup>, which the Praesidium presented to the plenary. During the debate, dealing chiefly with other issues, the divisions that had surfaced in February came to the fore again: some Convention members considered that the preamble should contain an explicit reference to Christianity or to Christian values, while others were opposed<sup>11</sup>. It seems useful here to cite the explanations given by Valéry Giscard d'Estaing and Giuliano Amato:

*'Giscard d'Estaing said that the values set out in Article 2 (respect of human dignity, liberty, democracy, the rule of law, and respect of human rights) might provide a basis for sanctions against Member States and, in the event of serious breaches, might lead to the suspension of their right of membership of the Union. They had to have a well-defined legal scope. For his part, Giuliano Amato explained that religious values were not shared by all Europeans or were not expressed everywhere in the same way and could not be included among the values deemed to be mandatory under penalty of sanction.'*<sup>12</sup>

The Union's objectives were also discussed in detail and, as might be expected, very wide-ranging proposals were put forward, most supplementing or accentuating some aspects of Article 3 of the Praesidium's draft on objectives. A large majority of members of the Convention felt that this article was politically balanced. The various proposals reflected the political leanings of Convention members, some of whom proposed placing greater stress on social aspects, while others proposed greater stress on market and economic objectives and others on the control of inflation. In economic matters, there was a particularly heated debate about the objective of 'full employment' which many members wanted to replace by 'a high level of employment'. In the case of international relations, some members called for a mention of the United Nations and its Charter<sup>13</sup>.

The revised text presented in June 2003 accepted many of these proposals, but not the proposal that departed most from the Praesidium's text; this did not relate to the content of the objectives but to the means by which they were to be achieved. The Praesidium in practice identified the appropriate means as those in line with the competences of the Union, while some Convention members wanted to commit the Union to providing itself with the means needed to achieve its objectives and to implement its policies<sup>14</sup>.

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<sup>7</sup> *Note on the plenary session, Brussels, 27-28 February 2003, Conv. 601/03, p. 4.*

<sup>8</sup> *Ibid.*, p. 4-5.

<sup>9</sup> **Agence Europe**, Daily Bulletin 8411 of 1 March 2003, Article 2.

<sup>10</sup> **Conv 797/03**.

<sup>11</sup> *Note on the plenary session, Brussels, 11-13 June 2003, Conv. 814/03, p. 3.*

<sup>12</sup> **Agence Europe**, Daily Bulletin 8400 of 14 February 2003, Article 1.

<sup>13</sup> *Note on the plenary session, Brussels, 27-28 February 2003, Conv. 601/03, p. 6-7.*

<sup>14</sup> *Ibid.*, p. 8.

For completeness, Article IV of the Final Draft, which established the symbols of the Union, should also be mentioned. This article, confirming the current flag (a circle of twelve gold stars on a blue background) and the current anthem (Beethoven's *Hymn to Joy*), creates a motto (*Unity in Diversity*), makes 9 May a general public holiday celebrating the Union, currently limited to the Community offices, and, deeming the euro to be the European currency, considers it in practice to be a symbol of the Union. Various members of the Convention had made strong calls for this article<sup>15</sup>.

## 2. Fundamental rights and citizenship of the Union

One of the issues on which there was broadest consensus during the listening sessions, among both Convention members and representatives of civil society, was the inclusion in the treaty of the Charter of Fundamental Rights<sup>16</sup>. The Working Group set up to study how the Charter could be included came to the conclusion, in its final report<sup>17</sup>, that its inclusion was warranted in order to provide the Charter with binding legal force and constitutional status. The Group suggested three possible technical options for its incorporation: inclusion of the Charter in the text, the option which would be ultimately be accepted<sup>18</sup>, a reference to the Charter in the text with the result that it would remain a separate document with the same legal value as the Constitution and lastly, as suggested by a single member of the group, an indirect reference.

The binding legal value that would be brought about by its incorporation in the Constitution (and by a reference to it in the Constitution) would enable citizens to initiate legal proceedings to assert the fundamental rights enshrined in the Charter before the courts of Member States and, in some cases, before the Court of Justice.

The Working Group also examined the Union's accession to the European Convention on Human Rights; it viewed such accession positively, leaving it to the Council of Ministers to decide on the methods and timetable of this step which would provide Union citizens with the same rights that they already enjoyed in their own country, but only in respect of Union law. Accession to the Convention did not entail the Union's accession to the Council of Europe.

The Praesidium's first draft, although taking up the first option, made some formal changes to the text of the Charter including the important innovation of the right of access to the documents of the Union, which was extended beyond the scope of the Treaty of Amsterdam<sup>19</sup>.

In the debate of 27 and 28 February on the Praesidium's draft, there was broad consensus on the option of incorporating the Charter in the Draft Treaty, although some speakers favoured the other two options; there was no opposition to its incorporation. It was also noted that this made Article 6 of the Praesidium's text – prohibiting discrimination on grounds of nationality – superfluous, as well as a large proportion of Article 7 which, by establishing citizenship of the Union, gave citizens certain rights<sup>20</sup>.

The revised text of the Praesidium's initial draft of the preamble of Part II, containing the Charter, specified that the explanations provided by the Convention Praesidium were to be used to interpret the Charter. There were

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<sup>15</sup> *Note on the plenary session, Brussels, 4 July 2003, Conv. 849/03, p. 2.*

<sup>16</sup> **The Charter of Fundamental Rights was approved by the Nice European Council of 10 and 11 December 2000 and then by the European Parliament on 14 December 2000.** It recognises the rights of citizens deriving from the traditional values that have historically shaped European political culture (dignity, liberty, equality, solidarity, citizenship and justice) and incorporates the specific values recognised by the European Treaties and the Community Charter of Social Rights as well as those needed to enshrine basic values in the light of technological development.

<sup>17</sup> *Conv 354/02.*

<sup>18</sup> **The Charter of Fundamental Rights, with some changes of character, forms the second part of the Draft Treaty.**

<sup>19</sup> *Conv 726/03.*

<sup>20</sup> *Note on the plenary session, Brussels, 27-28 February 2003, Conv. 601/03, p. 8.*

many reservations about this particular point which the Chairman of the Working Group, Antonino Vitorino, answered by saying that this was *'a compromise which was needed by at least five Member States so that inclusion of the Charter in the Constitution as proposed by the Praesidium could be ratified'*<sup>21</sup>.

### 3. The democratic life of the Union

Closely linked to citizens' fundamental rights, the democratic life of the Union was essential in increasing its democratic legitimacy and, for this reason, was a key component of the Laeken Declaration. This was the context for the articles dealing with this issue in the Praesidium's initial draft whose purpose was to enable citizens to monitor the Union's decision-making process and to play their part in shaping this process. The draft covered the equality of citizens<sup>22</sup> and regulated participatory democracy<sup>23</sup>, the Ombudsman<sup>24</sup>, the role of the political parties<sup>25</sup>, the transparency of the proceedings of the institutions<sup>26</sup>, the protection of personal data<sup>27</sup> and the status of churches and non-confessional organisations<sup>28</sup>.

The innovations as regards the current texts were the articles on equality and participatory democracy, although from the point of view of content, the innovative provisions were those on participatory democracy, transparency and personal data, while the provision on churches would be the focus of a debate reflecting the discussion on the inclusion of Christian values in the preamble.

**Participatory democracy** was defined as the right of every citizen to participate in the democratic life of the Union, providing that the institutions should give individuals and their associations *'the opportunity to make known and publicly exchange their opinions on all areas of Union action'* through appropriate means which were not specified, apart from mentioning that the institutions should maintain an open, transparent and regular dialogue with representative associations.

On **transparency**, in addition to establishing the general principles of the right of access to Union documents, it was established that the Council, when acting as legislator, would hold its meetings in public. As regards protection, the article established the legal basis for Union laws on this subject.

During the debate, many speakers asked for more details about the content of participatory democracy, and suggested ways of supplementing it based on their own political leanings; there were calls in particular for an article on representative democracy which, in addition to the systems already in force, included European referendums.

On the issue of transparency, many speakers were in favour of extending the provision to all Community bodies and wanted a clear definition of those Council sessions that would not be held in public.

There was lively discussion of Article 37 on the **status of churches** which, taking up Declaration 11 of the Treaty of Amsterdam, referred matters regarding churches, religious associations and communities to national legislation, equating non-confessional philosophical associations with these, and called for a dialogue between

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<sup>21</sup> *Note on the plenary session, Brussels, 11-13 June 2003, Conv. 814/03. p. 3.*

<sup>22</sup> **Article 33 of the Praesidium's initial draft, Conv 650/03.**

<sup>23</sup> **Article 34 of the Praesidium's initial draft, Conv 650/03.**

<sup>24</sup> **Article 35 of the Praesidium's initial draft, Conv 650/03.**

<sup>25</sup> **Article 35a of the Praesidium's initial draft, Conv 650/03. In substance, this was Article 191 of the TEC.**

<sup>26</sup> **Article 36 of the Praesidium's initial draft, Conv 650/03.**

<sup>27</sup> **Article 36a of the Praesidium's initial draft, Conv 650/03.**

<sup>28</sup> **Article 37 of the Praesidium's initial draft, Conv 650/03**

the Union and all the bodies covered by Article 37. Although there was broad consensus on this provision, the equation of *'non-confessional philosophical associations'* with churches was criticised because many Convention members felt that the term philosophical was not at all clear. There were also calls to exclude confessional and non-confessional organisations *'which endangered the integrity of the individual and did not respect the values enshrined in the Constitution'* from the dialogue<sup>29</sup>.

There were some changes as regards democratic life in the revised text of the draft Constitution following the April plenary. The principle of representative democracy, on which the functioning of the Union was founded, was included, while participatory democracy implicitly took on the role of a complementary instrument. This principle gave citizens the right to participate in the democratic life of the Union, and the provision on political parties was included in the provision on representative democracy<sup>30</sup>. Another article was also included recognising the role of the social partners at Union level and committing the Union to facilitate dialogue with them while respecting the various national systems<sup>31</sup>.

In the subsequent debate on this new text, there were calls for the introduction of an initiative by citizens into the article on participatory democracy<sup>32</sup>, which was included in the Convention's final draft: one million European citizens, coming from a significant number of Member States, could invite the Commission to present proposals on a specific issue<sup>33</sup>.

#### 4. Union membership

The Treaties in force already contained provisions on the procedure for the accession of a new Member State and on the temporary suspension of membership rights. The Praesidium's initial draft<sup>34</sup> did not modify these in substance, but introduced a provision on the criteria for accession: European states whose peoples share and respect the Union's values and are committed to promoting them together, with accession implying acceptance of the Union's Constitution<sup>35</sup>. More innovative was the article on voluntary withdrawal, under which provision was made for the negotiation and conclusion of a withdrawal agreement with the state wishing to withdraw, taking account of the future relations between the two parties<sup>36</sup>.

The Convention debate<sup>37</sup> focused on this latter provision in particular. Some speakers called for it to be removed because the Vienna Convention on Treaties applied to the withdrawal of a Member State and it was therefore superfluous and, if this Convention did not apply, the planned provision would change the nature of the Union. This comment, in the author's view, goes to the heart of a basic problem: whether the Union Constitution is a Treaty or a genuine Constitution.

A number of speakers, while accepting the principle, proposed stricter provisions for withdrawal in terms of both conditions and procedures, and went as far as proposing that withdrawal should not be a unilateral act by a state. Some speakers argued in this context that withdrawal could take place only in exceptional cases, for instance when the Constitution was being amended or possibly in the case of failure to ratify an amendment

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<sup>29</sup> *Note on the plenary session, Brussels, 24-25 April 2003, Conv. 696/03. p. 5-7.*

<sup>30</sup> **Article I-45 of the revised draft, Conv 724/03.**

<sup>31</sup> **Article I-47 of the revised draft, Conv 724/03.**

<sup>32</sup> *Note on the plenary session, Brussels, 5 June 2003, Conv. 798/03. p. 3.*

<sup>33</sup> **Article 46(4) of the Final Draft.**

<sup>34</sup> *Title X: Union membership, Conv 648/03.*

<sup>35</sup> *Ibid.* Article 43.

<sup>36</sup> *Ibid.* Article 46.

<sup>37</sup> *Note on the plenary session, Brussels, 24-25 April 2003, Conv. 696/03. p. 9-11.*

to the Constitution. Some speakers mooted the creation of a particular status of associated state for states that withdrew.

The final draft, taking up some of the comments of Convention members, reworded the criteria for admission, relating respect for the values of the Union<sup>38</sup> to states rather than to peoples, although this was the only substantive change to the Praesidium's draft on Union membership.

## 5. Relations between the Union and the Member States

Competences are a key issue in relations between the Union and the Member States and their division between the two tiers of government is a way of measuring the degree of integration of the Union understood as a legal order. This was the main argument on which the various schools of thought on the future of Europe clashed and was also the area likely to bring about the most substantial political conflicts between the Union and the Member States.

This was the background to the inclusion of the recognition of national identity, already part of the Treaty on European Union, which did not, however, define it in any way<sup>39</sup>. The innovation introduced by the Convention was precisely that of defining national identity, giving it, however, a content which seemed to refer more to the sovereignty of states than to the main community that had given them life<sup>40</sup>.

The Praesidium's preliminary draft placed it<sup>41</sup> among the provisions on the application of the fundamental principles for the exercise of competences. In this case national identity was linked to essential state functions, *'especially their political and constitutional structure, including the organisation of public administration at national, regional and local level'*. This wording perplexed the Convention<sup>42</sup>, but in the Final Draft it would become the key component of the article on relations between the Union and the Member States<sup>43</sup>, specifying their essential functions: *'ensuring the territorial integrity of the state, maintaining law and order and safeguarding internal security'*.

Respecting national identity has to be linked with the principle of the primacy of Community law which the Praesidium's preliminary draft and the Final Draft dealt with in the context of competences. On the basis of this principle, worded in a different way in the two texts, the Constitution and Community law have primacy over the law of Member States. This issue was touched upon at the sessions of 27 and 28 February and 5 March 2003. Critical speakers were in the minority, both those rejecting the inclusion of this primacy in the Constitution in order to prevent the case law of the Court of Justice from being formalised in too rigid a way<sup>44</sup> and those calling for a less direct wording or a negative wording, i.e. indicating that national law could not derogate from Union law<sup>45</sup>.

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<sup>38</sup> Article 57(1).

<sup>39</sup> Article 6(3) of the TEU.

<sup>40</sup> The Working Group on complementary competences had recommended a definition of national identity. *Final report of Group V*, Conv 375/02, p. 12.

<sup>41</sup> Article 9(6).

<sup>42</sup> Note on the plenary session, Brussels, 5 March 2003, Conv. 624/03. p. 3.

<sup>43</sup> Article 5.

<sup>44</sup> Note on the plenary session, Brussels, 27-28 February 2003, Conv. 601/03, p. 11.

<sup>45</sup> Note on the plenary session, Brussels 5 March 2003, Conv. 624/03, p. 3.



## 6. The role of the national parliaments

A particularly delicate issue raised by the relations between the Union and the Member States was the role of the national parliaments, governed up to then by a Protocol to the Treaty establishing the European Community which enshrined their right to information and recognised the Conference of Foreign Affairs Committees (COSAC)<sup>46</sup>, giving them some opportunities for intervention.

This delicacy of this issue lay in the balance between the institutional role of the European Parliament and that of national parliaments. Even before the Convention had begun, the European Parliament had come out against the possibility of a second European Parliament chamber made up of representatives of national parliaments which

17. ... would not solve the problems experienced by some parliaments in scrutinising the European policy of their governments in particular, but would only serve to prolong the Community legislative procedure, to the detriment of democracy and transparency;
18. Points out, furthermore, that dual legitimacy – a Union of States and peoples – already finds expression at European level in the legislative sphere through the participation of the Council and the European Parliament, that is not advisable to make the decision-making process more cumbersome or more complicated and that is necessary to avoid a confusing superposition in the respective roles of European and national institutions;<sup>47</sup>

This rejection of a new chamber went together with an awareness that the national parliaments played a role in European integration that was on a par with the European Parliament, although they remained within their respective state orders, especially as regards scrutiny of the European policy of governments and in particular the positions taken by these governments in the Council of Ministers<sup>48</sup>. The European Parliament resolution proposes two ways of strengthening the powers of its national counterparts: enhanced powers vis-à-vis their governments and cooperation between the European Parliament and national parliaments.

From the first point of view, primarily part and parcel of each state's constitutional choices, improving the information already provided for by the Protocol on the National Parliaments annexed to the Treaty of Amsterdam was an important European contribution. As regards interparliamentary cooperation between the various structures, the proposal of an interparliamentary agreement between the European and the national parliaments in order to organise cooperation through programmes of multilateral and bilateral meetings and the exchange of information and documents was of particular importance<sup>49</sup>.

This resolution, approved by a massive majority, has the merit that it goes a long way towards clarifying a difficult issue and puts forward constructive proposals to govern relations which had proved difficult at times.

The European Parliament blueprint was taken up in substance by the Convention. The national parliaments are given more of a role in the Final Draft, especially as regards the monitoring of subsidiarity<sup>50</sup>. Leaving aside this particular issue, this role was examined in detail by a Working Group which recommended some changes to the Protocol in force, the main changes being as follows:

<sup>46</sup> Set up in Paris in 1989. It has a website <http://www.cosac.org/>, to which reference should be made for further information.

<sup>47</sup> European Parliament Resolution of 7 February 2002 on relations between the European Parliament and the national parliaments in European integration, paragraphs 17 and 18.

<sup>48</sup> *Ibid.*, paragraph 1.

<sup>49</sup> *Ibid.*, paragraphs 9-16.

<sup>50</sup> See later in this Chapter.

- legislative proposals and other politically sensitive Commission documents, as well as the annual report of the Court of Auditors, should be forwarded to the national parliaments at the same as they are forwarded to the Council and the European Parliament;
- Council Working Groups and Coreper should not acknowledge preliminary agreements until the term currently available for the adoption of decisions has elapsed<sup>51</sup> and parliamentary scrutiny reserves should be given a clearer status in the Council's rules of procedure;
- The Council should act in public when it exercises its legislative functions;
- COSAC should have a clearer role and become a platform not just for contacts between the European Affairs Committees of national parliaments, but also for their sectoral standing committees<sup>52</sup>;
- national parliaments and the European Parliament should be involved in a forum on the larger political orientations and strategy of the Union which could take the form of a Congress<sup>53</sup>.

The Group's proposals were widely supported by the Convention, especially the proposal that Council meetings should be held in public. The only exception was the creation of a Congress, which it was felt would complicate the architecture of the institutions<sup>54</sup>.

In its preliminary draft, the Praesidium in substance took up the Working Group's recommendations, especially those on information and consultation of national parliaments but did not, however, take up the proposal to prohibit preliminary agreements; rather than taking the Union route as regards their involvement in discussions of the Union's strategies, examination, together with the national parliaments, of the most appropriate forms of interparliamentary cooperation, was referred to the European Parliament<sup>55</sup>. The document was welcomed by the Convention and most speakers focused on technical aspects. In the case of interparliamentary cooperation, which was a more politically sensitive issue, no reference was made to the creation of a Congress, but there were calls in this respect for a stronger commitment by the European Parliament which should not merely examine, but promote, interparliamentary cooperation in which, according to some speakers, COSAC also had to be involved<sup>56</sup>. The final draft is more or less identical to the Praesidium's draft.

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<sup>51</sup> Article 3 of the Protocol annexed to the Treaty of Amsterdam provides that a six-week period shall elapse between the date on which a Commission initiative is made available to the European Parliament and the Council and the date on which it is placed on the agenda of these institutions; the Convention Working Group proposal tries to prevent the Council from evading this provision by agreements which pre-constitute the formal decision, thus depriving national parliaments of their opportunity to put forward their views.

<sup>52</sup> *Final report of Working Group IV 'Role of the national parliaments'*, Conv 353/02, p. 8-9.

<sup>53</sup> *Ibid.*, p. 15.

<sup>54</sup> *Note on the plenary session, Brussels, 28-29 October 2002*, Conv. 378/02, p. 4-5.

<sup>55</sup> *Draft protocols on the application of the principles of subsidiarity and proportionality and the role of national parliaments in the European Union*, Conv 579/03.

<sup>56</sup> *Note on the plenary session, Brussels, 17-18 March 2003*, Conv. 630/03, p. 8-10.

## CHAPTER V

# THE COMPETENCES OF THE UNION

### 1. Union competences: the principles of delimitation and use

The Praesidium's preliminary draft laid down some principles in respect of competences: conferral, subsidiarity, proportionality and loyal cooperation which are to be found in different places in the texts accompanying the Convention's discussions. The Praesidium's preliminary draft considered them overall, laying down principles for the delimitation and use of competences<sup>1</sup>. The first two principles come from the constitutional tradition, especially of the federal states.

The Final Draft considers the principle of conferral to be a principle of delimitation of competences and those of subsidiarity and proportionality to be principles of use<sup>2</sup> and places the principle of **loyal cooperation** in Article 5 on the relations between the Union and the Member States, making it into a provision on mutual assistance between the two higher tiers of government.

Under the principle of **conferral**, a tier of government exercises only those competences expressly conferred upon it; another level of government normally exercises the remaining competences (residual criterion). This is precisely the path taken by the Treaty establishing the European Community, which limits the action of the Union to the competences conferred upon it in the Treaty, other competences remaining with the Member States<sup>3</sup>.

The principle of **subsidiarity** nevertheless has a role to play in the conferral of competences. Administrative science has identified some objective criteria for subsidiarity, the most important of which are functional homogeneity<sup>4</sup>, internalisation of effects<sup>5</sup> and economies of scale<sup>6</sup>. Subsidiarity is a complementary principle with respect to these criteria, on the basis of which a higher tier of government may replace a lower tier which is unable to exercise a competence efficiently enough as a result of its structural inadequacies.

It is currently governed by Article 5 of the Treaty<sup>7</sup>, which sets out the two conditions under which the Community can exercise competences which the Treaty does not confer exclusively upon it: the inadequacy of state intervention to achieve the objectives of the planned action or, in contrast, the ability of the Community level to achieve these objectives from the point of view of economies of scale and the internalisation of effects.

Subsidiarity legitimates action in the context of non-exclusive competences, linking it to a kind of replacement of state action; **proportionality** lays down its limits in both legislative terms and in terms of the means used, linking the action to the objectives of the Treaty, rather than to the function of replacement of state action.

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<sup>1</sup> Article 8 of the Praesidium's preliminary draft, Conv 528/03.

<sup>2</sup> Article 9.

<sup>3</sup> In Article 8(2) of the Praesidium's preliminary draft and then, unchanged, in Article 9 of the Draft Treaty.

<sup>4</sup> A competence may be effectively exercised when, as a result of its links with the other competences of the same tier of government, the respective actions may create synergies.

<sup>5</sup> The repercussions within the territory of a tier of government of the normal effects of the action taken in the context of a competence.

<sup>6</sup> The achievement of actions under a competence at the minimum possible cost, also taking account of monitoring costs.

<sup>7</sup> An annexed protocol governs its application.

The principle of subsidiarity is linked to the principle of proportionality which Article 5 of the Treaty defines as the achievement of an action which does not go beyond what is strictly needed for the achievement of the objectives of the Treaty.

Over time, there were doubts about the application of these principles, as can be seen from the debate preceding the Laeken Declaration and not just among the so-called Eurosceptics: as mentioned above, Gerhard Schröder had also called for a redefinition of Community competences in the form of a substantial granting back of some competences to the Member States<sup>8</sup>.

Doubts about the application of these principles also emerged in the initial Convention debates and in the consultations of civil society, although there was broad agreement on their definition; local authorities even proposed the introduction of a new principle of *connexity* in respect of the repercussions on local and regional bodies of Community actions<sup>9</sup>, a sign that the latter were in some cases seen as a burden by inter-state levels of government, running completely counter to the aim of the principle of subsidiarity.

This view (agreement on the principle and doubts about its application) logically focused attention on the monitoring of its application, although views differed as to whether this should be political or judicial in nature; it was also proposed that a specific body should be set up by the national parliaments to carry out such monitoring<sup>10</sup>.

## 2. Union competences: the Working Group on subsidiarity

Taking this as a starting point, the Working Group on subsidiarity did not seem interested in discussing the content of the principle but instead focused on its monitoring. The path that the Group took was largely one of political monitoring involving the national parliaments, although it ruled out the establishment of a body representing them.

The lynchpin of the planned system was integrated monitoring of the legislative process. This would make it necessary for the Commission to include a *subsidiarity sheet* in any legislative proposal enabling the other legislative institutions and the national parliaments to appraise compliance with this principle; monitoring would take place through an *early warning system* giving the national parliaments an opportunity to give their views on compliance with subsidiarity and obliging the Commission to review its proposal if, within six weeks of forwarding of the proposal, one third of national parliaments had sent reasoned opinions. In practice, it is incorrect to use the term 'monitoring' for the proposed system: the national parliaments would in fact have a right of intervention.

This was supplemented by a subsequent judicial control through the extension of the *right of appeal to the Court of Justice* to national parliaments which had given opinions in the early warning system and by the Committee of the Regions<sup>11</sup>. The Working Group expressly ruled out the extension of this right of appeal to the Regions with legislative powers, for which the 'local authorities' contact group had called, reiterating the principle that regional participation in the drafting of Community legislation and monitoring of subsidiarity should take place solely at a national level<sup>12</sup>.

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<sup>8</sup> See Chapter I, section 3.

<sup>9</sup> See Chapter II, section 2.

<sup>10</sup> See Chapter II, section 2.

<sup>11</sup> Conv 286/02.

<sup>12</sup> *Ibid.*, p. 8.

The Group's recommendations were broadly supported by the Convention, and speakers commented more on methods than on substance: the different weight of single and double chamber parliaments for the purposes of achieving the one-third threshold required for review of the proposal, possible abuses of the early warning system by national parliaments in order to ensure that they could appeal to the Court of Justice and the fact that the Commission proposal to which the early warning system related might comply with the principle of subsidiarity but not the proposal approved at the end of the legislative process. Some Convention members, referring in particular to the six weeks available to the national parliaments to set in motion the early warning system, had concerns about the lengthening of procedures<sup>13</sup>.

In its draft, the Praesidium took up the Group's position, leaving it to each national parliament to decide on the arrangements for consulting each chamber in the case of bicameral parliaments<sup>14</sup>.

A concluding debate on this issue took place at the session of 17 and 18 March 2003. The problem of bicameral parliaments was resolved in a different way to the one outlined by the Praesidium: for the purposes of calculating the one third of parliaments required for review of the proposal unicameral parliaments would have two votes, and the 'threshold' would be retained, although some members of Convention felt that the threshold should be reduced to one quarter and others that it should be increased to two thirds. There was very strong opposition, however, to the proposal of a second 'threshold' of two thirds which, if reached, would mean that the proposal had to be completely withdrawn. There were two schools of thought in this opposition: the first relating to the decision-making autonomy of the European institutions, and the second, more pragmatic, was that opposition by two thirds of national parliaments would make it politically necessary for the Council to reject the proposal.

On appeals by regions with legislative powers to the Court of Justice, which was also discussed, the Chairman, in his conclusions, asked the Praesidium to think about ways of taking them into account<sup>15</sup>. Following this debate, the Praesidium made slight amendments to the text on which the Convention would finally agree.

### 3. Union competences: categories in the Treaties in force

The Treaty in force did not classify competences and did not even give a full list, as was generally the case in the constitutions of countries with a non-unitary state. They were set out in the specific provisions on the various common policies for which different Community powers were laid down; the only, rather summary, reference was in Article 5 of the Treaty in force, which laid down how subsidiarity was to be applied to non-exclusive powers.

The criteria for conferral were not laid down either, but can be reconstructed: one criterion is objective-based (for instance the achievement of the single market) and another is subject-based; the two criteria are not necessarily coordinated.

On this basis, a commonly accepted classification of the Union's current competences is as follows:

- **Exclusive competences** (only in the first pillar), in which legislative power rests solely with the Union and the Member States may exercise this power only as far as they are authorised; this includes monetary policy in the Eurozone states, the common customs tariff, common commercial policy and the conservation of living marine resources in the context of the common fisheries policy.

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<sup>13</sup> *Note on the plenary session, Brussels, 3-4 October 2002*, Conv. 331/02, p. 6-8.

<sup>14</sup> *Draft protocols on the application of the principles of subsidiarity and proportionality and on the role of the national parliaments in the European Union*, Conv 579/03, p. 7.

<sup>15</sup> *Note on the plenary session, Brussels, 17-18 March 2003*, Conv. 630/03, p. 5-8.

- **Shared competences**, in which the Union and the Member States may legislate, but Member States may do so only if the Union has not exercised its power. In the first pillar, these competences include citizenship, visas, asylum and immigration, freedom of movement, agriculture, fisheries, transport, energy, tourism, trans-European networks for energy and telecommunications (only as regards interoperability), the environment, competition, consumer protection, economic and social cohesion, social policy and taxation; foreign and security policy is a shared competence under the second pillar and all matters coming under the third pillar are shared competences.
- **Complementary competences**, in which the Union supplements action by the Member States through incentive or coordination measures. This category includes economic policy, employment, customs cooperation, education and vocational training, policy on youth and culture, as well as health, trans-European networks (matters not covered by shared competences), industry, research and development and cooperation; defence policy in the second pillar is also a complementary competence<sup>16</sup>.

The European Parliament gave its overall view on this issue on 17 July 2002 calling for three categories of competence: competences exercised as a matter of principle by the Member States, resulting from the application of the principle of conferral by the residual method<sup>17</sup>, the Union's own competences, resulting from the application of the principle of direct conferral<sup>18</sup>, and including, among others, structural policies, the four freedoms, financial services and association agreements, and shared competences, a category which includes shared and complementary competences<sup>19</sup>.

#### 4. Union competences: the debate on categories

The issue of competences was examined in various debates, although the main debate took place at the sessions examining the report of the Working Group on complementary competences<sup>20</sup> and the articles of the Praesidium's preliminary draft relating to competences<sup>21</sup>.

The report of the Working Group on complementary competences stressed the particular need to look at competences that remained national. For greater clarity, the Working Group recommended that they be renamed *supporting measures* and a regulation which, as well as specifying their applicability in areas in which the Member States had not transferred their competence to the Union, made the common interest of the Union and the Member States a condition for the adoption of instruments which were not legislative instruments (except in certain cases listed in the Treaty)<sup>22</sup>. In keeping with this approach, the Group proposed a list of areas in which supporting measures could be adopted. This list was limited to the first pillar and was smaller than the current list, since some areas were to be covered by shared competences, as they were primarily covered by Community legislative instruments<sup>23</sup>.

<sup>16</sup> This discussion of the current situation as regards competences draws largely on the Praesidium note *Delimitation of competence between the European Union and the Member States – existing system, problems and avenues to be explored*, Conv 47/02.

<sup>17</sup> Member States are competent for matters not conferred on the Union.

<sup>18</sup> The Union has competence only for those matters expressly conferred upon it.

<sup>19</sup> Resolution of 16 July 2002, *Delimitation of competences between the European Union and the Member States*.

<sup>20</sup> 7-8 November 2002. The summary note for this session is Conv 400/02.

<sup>21</sup> 5 March 2003. The summary note for this session is Conv 624/03. The articles of the Praesidium's preliminary draft on competences are Articles 8-16; in the final draft, they became Articles 9-17.

<sup>22</sup> *Final report of Working Group V*, Conv 375/02, p. 5.

<sup>23</sup> *Ibid.*, p. 8-10.

The Working Group also drew up recommendations for other competences, calling in particular for the dividing line between exclusive and shared competences to follow the case law of the Court of Justice and for the open method of coordination to be applicable to all competences<sup>24</sup>. Particular attention was paid to the reform of Article 308 of the TEC which enabled the adoption, by a unanimous vote of the Council, of measures needed for the achievement of the single market, for which the Treaties did not provide the necessary powers. The Working Group recommended establishing a specific legal basis for matters governed up to now by this article and the addition of specific provisions enabling better control of its application<sup>25</sup>.

In the debate on the Working Group's report, there were various reservations, relating in particular to the fact that legislative instruments could not be used for supporting measures and to the reform of Article 308. It was pointed out, as regards the first issue, that abandoning legislative instruments would reduce the role of the European Parliament in areas in which codecision was required; and, as regards Article 308, which was felt to be an appropriate way of ensuring flexibility, albeit with highly guaranteed mechanisms, the proposal of measures to monitor its application was criticised, with a clear preference for monitoring by the European Parliament and the national parliaments<sup>26</sup>.

The debate of 5 March 2003 on the articles of the preliminary draft on competences seemed piecemeal probably because the general themes had already been divided up.

The preliminary draft provided for five categories of competence: exclusive, concurrent (to be called shared), economic policy coordination, definition and implementation of a common foreign and security policy and lastly supporting measures (i.e. the existing complementary competences)<sup>27</sup>. Various alternatives were put forward during the debate: the creation of a specific coordination competence which would be separate from supporting measures and a further division of matters subject to shared competence depending on the intensity of the planned action; some members of the Convention opposed economic policy coordination and the CFSP category<sup>28</sup>.

Various proposals were also put forward as regards the areas to be included in each category, most aiming to include or exclude them from this or that competence. More general proposals included a proposal that there should not be a list of areas for shared competence and supporting measures, thereby making their scope general and residual, while there were two opposing schools of thought on economic policy coordination, with some speakers calling for its extension to employment and some aspects of social policy, other speakers rejecting an economic policy coordination competence for the Union, but claiming it for the Member States meeting in the Council, and, lastly, other speakers who felt that the proposed text was reductive as regards the Treaty establishing the European Community which spoke of economic policies and not just of their coordination<sup>29</sup>.

## 5. Union competences: the Convention's proposals

The categories of competence ultimately laid down in the Final Draft were largely based on those proposed by the Praesidium:

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<sup>24</sup> *Ibid.*, p.7.

<sup>25</sup> *Ibid.*, p.17.

<sup>26</sup> *Summary note on the session, Brussels, 7-8 November 2002*, Conv 400/02, p. 13.

<sup>27</sup> **Article 10 of the Praesidium's preliminary draft.**

<sup>28</sup> *Summary note on the session in Brussels, 5 March 2003* Conv 624/02, p. 3-4.

<sup>29</sup> *Ibid.*, p. 6-7.



- **exclusive competences**<sup>30</sup>, with no change to the existing concept and areas covered, and a single extension of competence to customs union as a whole in respect of its tariffs<sup>31</sup>;
- **shared competences**<sup>32</sup>, whose concept remained unchanged, while the list of areas included was amended to become: the competition rules needed for the functioning of the internal market and the internal market itself, the area of freedom, security and justice<sup>33</sup>, agriculture and fisheries, transport and trans-European networks, energy, social policy<sup>34</sup>, economic and social cohesion, the environment, consumer protection, common safety concerns in public health matters, research and technological development, development cooperation and humanitarian aid. In the last two areas, Union action would not rule out action by the Member States<sup>35</sup>. This detail provided a justification for using the term *shared competence* in the Praesidium's draft since, as mentioned above, in the case of concurrent competences the Member States exercise their competences to the extent that the Union has not exercised its own competences, while in this case the competence of the Union is additional to the national competence.
- **promotion and coordination of economic policies and employment**<sup>36</sup>; the term 'promotion' did not appear in the Praesidium's preliminary draft or in the specific article dealing with this competence<sup>37</sup>;
- **definition and implementation of a common foreign policy**, including the progressive framing of a common defence policy<sup>38</sup>; content is described generally with reference to *'...all areas of foreign policy and all questions relating to the Union's security...'*, reiterating the principle of loyal cooperation in respect of this competence<sup>39</sup>;
- **supporting, coordination and complementary action**<sup>40</sup>, in the areas of industry, human health, education, vocational training, youth and sport, culture and civil protection<sup>41</sup>, without such actions being able to replace action by Member States<sup>42</sup> or harmonise their laws and regulations<sup>43</sup>.

These competences were supplemented by the so-called **flexibility clause**, under which the Union, by a unanimous vote of the Council, could be endowed with the powers for which the Treaty did not provide, but which were needed to achieve an objective laid down by that Treaty in the framework of the policies set out therein<sup>44</sup>.

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<sup>30</sup> Article 11 of the Final Draft.

<sup>31</sup> Article 12 of the Final Draft.

<sup>32</sup> Article 11 of the Final Draft.

<sup>33</sup> This shared competence eliminates the third pillar.

<sup>34</sup> The content of this competence is detailed in Part III of the Final Draft to which reference should be made.

<sup>35</sup> Article 12 of the Final Draft.

<sup>36</sup> Article 11 of the Final Draft.

<sup>37</sup> Article 14 of the Final Draft.

<sup>38</sup> Article 11 of the Final Draft.

<sup>39</sup> Article 15 of the Final Draft.

<sup>40</sup> Article 11 of the Final Draft.

<sup>41</sup> Article 16 of the Final Draft.

<sup>42</sup> Article 11 of the Final Draft.

<sup>43</sup> Article 16 of the Final Draft.

<sup>44</sup> Article 17 of the Final Draft.



## 6. Area of freedom, security and justice

This issue involves some Community competences and the third pillar. The former, largely placed on a Community footing by the Treaty of Amsterdam, include immigration and asylum, internal and external border controls, visas, judicial cooperation in civil matters and administrative cooperation. The third pillar includes police and judicial cooperation excluded from the Community field, i.e. largely cooperation in criminal matters. This cooperation is promoted by two bodies: Europol and Eurojust.

The Working Group on this area focused on the third pillar which it wished to abolish: this meant that the whole area would be governed by Community instruments paving the way for much more coherent judicial efficiency. In substantive terms, the Group recommended including the principle of mutual recognition of judgments and a harmonisation of criminal law in the draft Constitution, setting out common rules for its constituent elements, penalties for more serious crimes and the approximation of some criminal procedure rules.

In keeping with the Convention's stance on procedure, the codecision procedure was normally to be used for this area, although a unanimous vote of the Council would continue to be required for some cases, such as the approximation of criminal law; moreover, Member States should have a right of initiative under the conditions laid down by the draft Constitution. This would make it possible for the inclusion of the area in the Community sphere and national requirements having a particular impact on the relative decisions to be concurrent.

From a practical point of view, the Group called for an improvement of the founding regulations of Europol and Eurojust and for political control of Europol by the European Parliament. In the case of Eurojust it mooted the possibility of moving towards its conversion into a European public prosecutor which it did not, however, actually propose. For the management of the external borders it proposed an integrated system and the creation of a European body for supervision, as well as solidarity, including financial solidarity<sup>45</sup>.

The Group's proposals were supported by the Convention and were largely included in the Praesidium's draft. Although there was consensus at the December 2002 session, during which the Group's final report was discussed, some issues were examined in further detail. In the case of **asylum, immigration, border controls and visas**, many speakers were in favour of a more general legal basis, applying codecision and qualified-majority voting and enshrining a principle of solidarity between the Member States as regards the management of immigration and the external borders. The inclusion in the Constitution of a legal basis enabling European regulations on the long-term residence conditions of third-country nationals was also mooted.

On the **approximation of substantive criminal law**, there were calls for an extension of this objective to a larger number of crimes, although there were also criticisms of the notion of 'cross-border dimension' and the application of the principle of unanimity.

One point in the Group's report on which there was a heated debate was the question of the **creation of a European public prosecutor**, which had supporters, who felt that the Group had been too cautious on this issue, and fierce opponents. There were nevertheless two schools of thought among supporters of a European public prosecutor: those who wanted its powers limited to the protection of the Union's financial interests and those who wanted to extend these powers to more serious crimes.

Lastly, as regards, **judicial cooperation in civil matters**, a topic which was somewhat separate from the others, there was no overall thread to the debate which looked at specific questions. Some members felt that the link between such cooperation and the functioning of the internal market and the cross-border dimension

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<sup>45</sup> Conv 426/02.

should be abolished while other members felt that codecision was needed for judicial cooperation in family law, especially as regards parental responsibility<sup>46</sup>.

The Praesidium's draft<sup>47</sup> regulates the area of freedom, security and justice in Article 31 and in the second part of the Constitutional Treaty; the Praesidium was keen to stress, alongside each article, how it corresponded to the Working Group's proposals. The Praesidium's text was included with no substantive changes in the Final Draft.

A definition of this area is given in Article 1 of Part II, which subsequently became Article 158 of Part III of the Final Draft<sup>48</sup> which reads as follows:

1. *The Union shall constitute an area of freedom, security and justice with respect for fundamental rights, taking into account the different legal traditions and systems of the Member States.*
2. *It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. For the purpose of this chapter, stateless persons shall be treated as third-country nationals.*
3. *The Union shall endeavour to ensure a high level of security by measures to prevent and combat crime, racism and xenophobia<sup>49</sup>, and measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as by the mutual recognition of judgments in criminal matters and, if necessary, the approximation of criminal laws.*
4. *The Union shall facilitate access to justice, in particular by the principle of mutual recognition of judicial and extrajudicial decisions in civil matters.'*

Article 31, then Article 41 of the Final Draft sets out the practical methods for action by the Union in this field, the role of national parliaments and the right of initiative open to one quarter of Member States. This is one of the two particular features of this provision: the other is operational cooperation between national authorities. This article was criticised by many Convention members, as it seemed to them surreptitiously to resurrect the third pillar<sup>50</sup>. There were similar criticisms of Part II of the Praesidium's draft<sup>51</sup> giving the European Council the task of drawing up strategic guidelines for legislative and operational planning, since this gave the Council a role which it did not have in other fields and which in practice would limit the powers of the Community legislator as regards the area of freedom. Other Convention Members pointed out that the solution adopted was part and parcel of the compromise that had made it possible to abolish the pillars<sup>52</sup>.

Article 41 and Article 158 of the Final Draft, cited above, regulate the area of freedom detailed in the Title dealing specifically with this issue in Part III of the Final Draft. Article 161 of the Final Draft is original and makes provision for European regulations and decisions laying down the arrangements under which the Member States, in collaboration with the Commission, are to evaluate national implementation of Union policies in this area. This is a very rare, if not unique, example of monitoring work being delegated directly to the Member States.

<sup>46</sup> *Note on the plenary session, Brussels, 5-6 December 2002, Conv. 449/02.*

<sup>47</sup> *Conv 614/03.*

<sup>48</sup> *In the Final Draft, the provisions on the area of freedom, security and justice form Title IV of Part III.*

<sup>49</sup> *The reference to racism and xenophobia in this paragraph is the only politically significant change that the Final Draft makes to the Praesidium's wording.*

<sup>50</sup> *Note on the plenary session, Brussels, 3-4 April 2003, Conv. 677/03, p. 2.*

<sup>51</sup> *Not numbered as its location had not been decided by the Praesidium. Article 159 in the Final Draft.*

<sup>52</sup> *Note on the plenary session, Brussels, 3-4 April 2003, Conv. 677/03, p. 3.*

It should be noted, lastly, that the politically sensitive question of the European public prosecutor was dealt with by setting out the possibility of a future European law setting it up *'from Eurojust'* in order to *'combat serious crime having a cross-border dimension, as well as crimes affecting the interests of the Union'*<sup>53</sup>.

## 7. Foreign and defence policy: the existing situation

At present, Union action in the area of foreign and defence policy is split between the first pillar and the second pillar.

The first includes **commercial policy**<sup>54</sup>, which is an exclusive competence, and **development cooperation**, which is a shared competence<sup>55</sup>. Other shared competences include relations with third countries in other sectors, such as monetary policy, research and the environment. The Community method is applied to these issues.

The **common foreign and security policy (CFSP)**, which forms the second pillar, and the **European security and defence policy (ESDP)** are competences introduced respectively by the Treaty on European Union<sup>56</sup> and the Treaty of Amsterdam, which details the CFSP and in substance confirms the existing situation. The intergovernmental method is applied to this policy.

The Treaty sets out the general objectives of the CFSP and obliges Member States to support it loyally and not to take contrary initiatives<sup>57</sup>, and to inform and consult one another *'within the Council on any matter of foreign and security policy of general interest in order to ensure that the Union's influence is exerted as effectively as possible by means of concerted and convergent action'*<sup>58</sup>. It follows that the use of the CFSP depends on the will of Member States to coordinate their positions in order to make them more effective.

The instruments through which CFSP action takes place are:

- **common strategies** on regions and issues where the Member States have common interests; these are decided unanimously by the European Council;
- **joint actions** relating to particular situations in which specific action by the Union is deemed necessary;
- **common positions** defining the Union's approach to a regional or thematic question;
- **decisions** not defined in detail by the Treaty on European Union.

Instruments other than common strategies are approved by the General Affairs Council or, when they are implementing a common strategy, by qualified majority. When unanimity is required, a Member State may abstain and in this case the instrument is approved if the abstaining states do not exceed one third of the votes weighted for the purposes of calculating the qualified majority. Abstaining states do not have to apply the adopted decision, but have to consider it to be a Union position and refrain from any contrary action<sup>59</sup>.

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<sup>53</sup> Article II-20 of the Praesidium's draft and 175 of the Final Draft, substantially identical.

<sup>54</sup> Articles 131-134 of the Treaty establishing the European Community.

<sup>55</sup> Articles 177-181 of the Treaty establishing the European Community.

<sup>56</sup> Title V, including Articles 11-28.

<sup>57</sup> Article 11 of the Treaty on European Union.

<sup>58</sup> Article 16 of the Treaty on European Union.

<sup>59</sup> Article 23 of the Treaty on European Union.

The Presidency of the Council represents the Union in CFSP matters and is responsible for implementing relative decisions. It is assisted by the Secretary-General of the Council, acting in this case as High Representative for the common foreign and security policy. The High Representative is in turn assisted by a *policy planning and early warning unit* and has become increasingly important as a result of his role in managing international crises on behalf of the Union.

The European security and defence policy<sup>60</sup> has to take account of the fact that only some of the Member States are members of NATO and that consequently, despite sharing common political values, their international position differs. The framing of a common defence policy, to be achieved by voluntary cooperation between Member States in the field of armaments, is therefore deemed *progressive*, i.e. a policy whose content may be extended without amending the Treaties, but by leaving the Council to take the necessary decisions. The ESDP also includes humanitarian and rescue missions, peacekeeping missions, and missions of combat forces in crisis management, including peacemaking.

There is a particular type of cooperation, taking the form of incorporation, with the WEU, whose functions needed to deal with its new responsibilities were vested in the Union by the Cologne European Council of June 1999, which declared that the WEU had completed its purpose as an organisation<sup>61</sup>.

ESDP decisions and procedures are subject to the same provisions as described above for the CFSP. A Political and Security Committee has been established in the Council and is chaired, under the Treaty of Nice, by the High Representative, with tasks of strategic direction and political control in times of crisis, as well as a general staff.

## 8. Foreign and defence policy: the debate outside the Convention

If the division of Union action into pillars was to be abolished, it would be necessary to look for more appropriate ways of safeguarding the fundamental interests of Member States which were substantial enough to mirror the importance of this area as regards the exercise of their sovereignty. In the view of political circles, prior to the Convention, it was especially important to find such methods as in some countries the opposition to 'more Europe' could have shifted from public opinion to their governments bringing about a CFSP in which not all Member States participated<sup>62</sup>. The issue was not just one of coherence between the positions of the Union and Member States on the international stage, but was also one of mobilising all the available instruments which were split between several policies: for instance armaments which came under industrial as well as defence policy. The creation of an specific agency for armaments was proposed in various circles.

The application of the Community method meant in practice that the CFSP had to be subject to majority decisions within the Council, placing some countries in a minority and forcing them to give up certain positions that they considered fundamental for their policy<sup>63</sup>. In practice, it was possible, and this was put to pragmatic use later, to create a varying balance between the Community method and the intergovernmental method for different policies and possibly also for different areas of the same policy.

The second problem was that of merging the functions of the High Representative and the Commissioner for External Affairs. The solution most widely favoured at the beginning of the Convention was that of conferring

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<sup>60</sup> Article 17 of the Treaty on European Union.

<sup>61</sup> Cologne European Council of 3-4 June 1999, *Conclusions of the Presidency*, Annex 3(5).

<sup>62</sup> In the debate on defence policy, use of the 'monetary union' model was also suggested, where only those countries meeting specific criteria participated, as well as enhanced cooperation. F. Riccardi, *Beyond the News*, Agence Europe, Daily Bulletin 8305 of 26 September 2002.

<sup>63</sup> F. Riccardi, *Beyond the News*, Agence Europe, Daily Bulletin 8213 of 17 May 2002. The author cites the former French Foreign Minister Hubert Védrine.

both functions on a Vice-President of the Commission who, as regards the CFSP, would have to act according to the instructions of the Council, creating a potential conflict for the same person with adverse effects on the Commission's independence.

An important proposal, which helped to stimulate the debate, came from the Belgian Prime Minister, Guy Verhofstadt, who, in a letter to Tony Blair and Jacques Chirac, proposed:

- a) *a mutual security guarantee between the Member States of the EU;*
- b) *a European Headquarter which would in some ways act as an integrated command of existing multinational forces;*
- c) *a restructuring and convergence of Europe's armies "to better achieve together what we are less and less capable of doing separately"; the creation of a "European Agency" for armaments with the involvement of the European Commission*<sup>64</sup>.

The High Representative, Javier Solana, made some practical proposals, some of which would not require amendment of the Treaty, in his address to the Convention's Working Group on external action:

*'External representation should be delegated by the Council to the High Representative, where appropriate in collaboration with the Commissioner responsible for external relations.*

The High Representative should be empowered to present proposals (and joint proposals with the Commission) especially in the framework of crisis management.

A permanent Chair for the External Relations Council is necessary; some of the aims already mentioned would be easier to achieve if the High Representative were to be designated as this permanent chair ("as many have proposed").

Unanimity at 25 (or more) "on each and every CFSP issue will make decision making very difficult" and it is therefore necessary to reflect on the possibility of "enlarging the existing possibilities for majority voting while taking full account of the interests and specific situations of Member States" and also to reflect on the issue of "constructive abstention and reinforced cooperation".

It would be very useful to pool diplomatic resources "pragmatically", offering the potential for the development of a "European Foreign Ministry" at a pace and in a manner that the Member States feel comfortable with<sup>65</sup>.

## 9. Foreign and defence policy: the Convention's Working Groups

The final report of the Working Group on external action<sup>66</sup> did not directly tackle the issue of abolishing the division of external action into two pillars, but proposed that all the provisions on external action should be grouped in a single section of the Treaty, for which the Treaty would define principles and general objectives in keeping with the Union's fundamental values. For this purpose, it proposed the wording of an article which was included in full in the Final Draft<sup>67</sup>. As regards the division of competences between the European Council and the Council of Ministers, the model was largely based on the existing one, and the issue of legal instruments was not addressed as the Group obviously took it for granted that external action would abide by the general instruments for which provision was made. As regards Council majorities, the report more or less reiterated the

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<sup>64</sup> F. Riccardi, *Beyond the News*, Agence Europe, Daily Bulletin 8305 of 26 September 2002.

<sup>65</sup> F. Riccardi, *Beyond the News*, Agence Europe, Daily Bulletin 8320 of 17 October 2002.

<sup>66</sup> Conv 459/02.

<sup>67</sup> Article III-193.

existing rules. It called for the Treaty to confer on the Union the power to enter into international agreements in areas for which it was responsible.

The institutional question, i.e. relations between or the merging of the functions of the Council, the Commission and the Member States, was addressed simply by calling for an improvement of the coherence and efficiency of their action, although the Group's report notes that different views had been put forward on the institutional issue and also that many members had been in favour of a solution merging the two existing functions of High Representative and Commissioner for External Relations. A new person would be introduced and known as the *European External Representative*, a title which would not correspond to any title used at national level.

The European External Representative would be appointed by the European Council with the approval of the President of the Commission and the endorsement of the President of the European Parliament. He or she would be a full member of the Commission and preferably a Vice-President, and could receive mandates from the Council in respect of which he or she would have a right of initiative which, when exercised, would prevent the Commission from taking a competing initiative.

In its final report<sup>68</sup>, the Working Group on Defence looked at the four issues of crisis management, the war on terrorism, armaments and the institutional framework.

On the first issue, it advocated expanding the Petersberg tasks<sup>69</sup> to include conflict prevention, joint disarmament operations, military advice and assistance for third countries, post-conflict stabilisation, and support for third countries in combating terrorism. If they were to be expanded in this way, the Petersberg tasks required more coherent and efficient implementation methods such as the delegation of powers of decision by the Council to the Political and Security Committee, as was provided for, moreover, by the Treaty of Nice, and an enhancement of the role of the High Representative who, in urgent cases, should be able to make decisions and, in actual operations, would be represented by Special Representatives. From the more strictly decision-making point of view, incentives to use constructive abstention could usefully be provided.

As regards the war on terrorism, the Group proposed a solidarity clause in respect of Member States affected by terrorism, mobilising all the instruments available to the Union.

In the case of armaments, it proposed a European Agency in which Member States would participate voluntarily. The task of this Agency would be to promote a policy of harmonised procurement among Member States and to support research and technical development in the field of armaments and space research. This would strengthen the European armaments industry and optimise military spending by the Member States.

From an institutional point of view, the Working Group reiterated the existing arrangements, calling for the creation of a function, preferably to be held by the High Representative, of guidance of the Union's action in the defence field and of coordination of Member States' activities in this field.

There was broad consensus in the Convention on these two reports, albeit with the objections and differences which issues of this kind inevitably raise. Discussions focused on institutional questions, especially the use of qualified-majority voting and the role of the High Representative. On the first question, speakers' views tended to be shaped by whether they supported the extension of the role of the Union or the defence of national interests. The former were split between those supporting the notion of leaving the Council to decide on the extension of majority voting and those who wanted it included directly in the draft treaty; the latter stressed

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<sup>68</sup> Conv 461/02.

<sup>69</sup> These are the tasks, listed in Article 17(2) of the Treaty on European Union, which were decided for the WEU in the 1990s in order to deal with the crises that took place in that decade.



that *'it would not be acceptable for a Member State to find itself in a minority on a matter where it had vital interests at stake, and therefore favoured a safeguard clause...'*<sup>70</sup>.

As regards the External Representative, Convention members either supported the position taken by the majority of the Working Group on External Action, whilst understanding the problems of a figure who would have to be accountable to two separate institutions, or felt that the functions of High Representative and Commissioner for External Relations should be kept separate, recommending practical measures to ensure coherence between the CFSP and external relations.

## 10. External and defence policy: the Praesidium's draft

The Praesidium took up both Working Groups' proposals as a result of two considerations arising from the international political situation and the Iraq crisis in particular: the development of the common foreign and security policy was inevitable, and more efficient institutional mechanisms needed to be found to underpin and assist this development<sup>71</sup>.

It set out the objectives of the policy in particular, taking up the Working Group's draft article in full and establishing that, for the achievement of the Union's 'strategic interests and objectives', approved by the European Council in place of the existing 'common strategies', the Council could authorise the Union to mobilise instruments from different policy areas in order to provide strategic support for a country or a region. From an institutional point of view, the main innovation was the establishment of a **Union Minister for Foreign Affairs**, the title chosen for the European External Representative proposed by the External Action Working Group: the Minister would be appointed by the European Council with the agreement of the President of the European Commission, would combine the functions of High Representative and Commissioner for External Affairs and would have a right of initiative in respect of the European Council equivalent to that of the Member States. The Minister would also be responsible for the Commission delegations in third countries which would be renamed Union delegations.

Qualified-majority voting was extended, in particular where the Council was voting on joint proposals of the Minister and the Commission; the European Council could also further extend majority voting within the Council.

The recommendations of the Defence Working Group on the European security and defence policy, whose link with the CFSP was confirmed, were also taken up, in particular the expansion of the Petersberg tasks, forms of enhanced cooperation and the establishment of an armaments agency.

A specific legal base was also introduced for humanitarian aid and new provisions for the rapid financing of urgent CFSP measures.

There was broad consensus on the Praesidium's draft within the Convention<sup>72</sup>, which noted the lack of harmonisation of the general instruments in the new unitary framework of the provisions on the CFSP.

In the debate, a wide range of opinions were put forward on institutional questions, focusing in particular on the impact that the creation of a Minister for Foreign Affairs would have on the role of the Commission in this area, on the external representation of the Union and on the Presidency of the 'General Affairs' formation of the Council. His right of initiative was also questioned; speakers pointed out that if he had to present his proposals jointly with the Commission he would be subject to the collegial practices which governed the work of the

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<sup>70</sup> *Note on the plenary session, Brussels, 20 December 2002, Conv. 473/02. The quotation in italics is on p. 5.*

<sup>71</sup> *Draft articles on external action in the Constitutional Treaty, Conv 685/03, p. 2.*

<sup>72</sup> *Note on the plenary session, Brussels, 15-16 May 2003, Conv. 748/03.*

executive, and would not have the monocratic character that a Minister generally possessed. Some speakers also proposed the establishment of a Union diplomatic service.

Various proposals were made as regards qualified-majority voting, predominantly with a view to making it the general rule, with the exception of decisions with military implications.

There was also broad consensus on matters more strictly connected with defence, although there were differing views on the advisability of voluntary coalitions of Member States acting within the framework of the Union and on forms of enhanced cooperation in this area.

The Praesidium's draft ultimately became, with no significant amendments, Title V of Part III of the Convention's Final Draft.

## 11. Enhanced cooperation

This kind of cooperation was introduced by the Treaty of Amsterdam to govern a situation already existing outside of an institutional framework: if some Member States found it problematic to achieve a particular Community objective in the manner provided for by the Treaties, or if unanimity could not be reached, they could pursue this objective directly and jointly. The single currency, which related only to those Member States which had acceded to it, can be seen as cooperation of this type.

The Treaties provide that enhanced cooperation has to involve at least eight Member States authorised by the Council by qualified majority and relate to a non-exclusive competence of the Union. It cannot, moreover, undermine the internal market or distort competition. Pursuant to this 'institutionalisation', the cooperating Member States may make use of Community institutions, procedures and mechanisms.

The Praesidium's preliminary draft aimed to make this cooperation not just a mechanism for overcoming decision-making problems, but also a flexible instrument taking account of the objective differences between States.

The Praesidium's preliminary draft in particular proposed making some significant innovations to the existing rules which were largely retained. The minimum number of cooperating States was set at one third of the Member States and any Member State wishing to join in subsequently could do so. Both at the time of authorisation and of subsequent accession, any conditions laid down in respect of the cooperation were nevertheless to be respected<sup>73</sup>. In addition, only the cooperating Member States would vote in the Council dealing with this cooperation<sup>74</sup>. In the context of foreign policy, particular provisions were proposed giving the Council or the Minister for Foreign Affairs the powers generally conferred on the Commission<sup>75</sup>. Lastly, the provisions on enhanced cooperation would not apply to actions in the context of defence policy, which were specifically governed by the framework of this policy<sup>76</sup>.

The Praesidium's draft was welcomed, although there were reservations about the minimum threshold, with proposals for its reduction or determination on a case-by-case basis, and about the application of cooperation to defence. On this particular point, the Praesidium's position was generally supported, but some Convention members recommended that the general rules should be applicable to the creation of an armaments agency and others felt that only the general mechanism of enhanced cooperation should be used for defence, ruling

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<sup>73</sup> Articles 32b and N of the Praesidium's preliminary draft, Conv 723/03.

<sup>74</sup> Article 32b of the Praesidium's preliminary draft, Conv 723/03.

<sup>75</sup> Articles M(2) and N(2) of the Praesidium's preliminary draft, Conv 723/03.

<sup>76</sup> Article I of the Praesidium's preliminary draft, Conv 723/03.



out any specific mechanisms<sup>77</sup>. The Praesidium's revised draft no longer provided for the non-applicability of the general provisions to measures governed in the framework of defence policy; the remainder of the text was largely the same as the prior text apart from some formal amendments<sup>78</sup>. No further amendments were made in the Final Draft<sup>79</sup>.

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<sup>77</sup> *Summary report on the plenary session, Brussels, 30-31 May 2003*, Conv. 783/03, p. 2-5.

<sup>78</sup> **Article I-43 of the Revised text of Part One**, Conv. 797/03 and Articles III-318/III-325 of the *Draft Constitution, Volume II*, Conv. 848/03.

<sup>79</sup> **Articles 43 and III-322/III-329**.



## CHAPTER VI

# INSTITUTIONS AND PROCEDURES

### 1. Starting positions

The institutional question, including both the issue of the constitutional structure of the Union, and of the quorum for Council decisions, was the trickiest issue facing the Convention; in practice it touched on the power relationships between the Member States within the Union and between the Union's institutions. It is not therefore surprising that the debate outside the Convention, between the Member States and the institutions, was extremely lively and had a significant influence on the internal debate. The Convention documents relating to this matter do not provide a sufficiently exhaustive picture of the problems involved and journalistic sources are essential in fleshing them out<sup>1</sup>.

Two important new developments had an impact on this institutional question: the major increase in the number of Member States which, with enlargement in 2004, would grow from fifteen to twenty-five and the plan to review the position of the foreign and defence policy. The first development would have an impact on the practical functioning of the Commission and the Council with a larger number of members: in the case of the executive, a way needed to be found to organise the work of the college and, in particular, to distribute portfolios between the Commissioners, while in the case of the Council the increased number of Member States would make it more difficult to achieve majorities and in particular unanimity. In this context, the proposal, at the centre of a wide-ranging debate, of a President of the Council of Ministers, which subsequently became a proposal for a President of the European Council, was discussed largely from the point of view of balance with the President of the Commission.

The second development, the repositioning of foreign and defence policy, not only raised problems from the point of view of the division of competences between the Union and the Member States, but also from the point of view of the form that these policies could take; the main implications that this raised, in addition to the achievement of majorities, related to the external and unitary representation of the Union in a framework differing from the existing framework in which a High Representative of the Union existed alongside the Foreign Ministers of individual Member States.

These themes were underpinned by the Community method/intergovernmental method dilemma. The *Community method* is the form of government historically developed first in the Community then in the Union, and based on three institutions sharing decision-making powers to a different extent and each representing a particular interest: the Commission, representing European interests, with preponderant executive power and an exclusive right of initiative, the Council representing national interests and sharing executive powers with the Commission and legislative and budgetary powers with the Parliament, and Parliament as a repository of democratic representation sharing the above-mentioned powers with the Council. The *intergovernmental method* is a form of government, typical of international organisations, in which decision-making powers are concentrated in the body in which the national governments are represented and to which the executive bodies are accountable. The political forces and the Member States keenest on integration were essentially in favour of the first method, with those taking a more cautious line on this issue preferring the second. This distinction, which could be termed ideological, should not, however, be seen as absolute because there are countless variants of the two methods and because they can co-exist, with one method being applied to some

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<sup>1</sup> Exclusive reference is made in this section to the Daily Bulletins of Agence Europe.

policies and the other to other policies. Using the Community method for common policies (the 'first pillar') was not normally contentious, whereas the intergovernmental method was preferred for foreign and defence policy.

There was a second demarcation line on institutional questions between the larger Member States and the small and medium-sized Member States which were keen to defend, or increase, their weight within the Commission and the Council. For instance, up to the Treaty of Nice, the five larger Member States were on a par and appointed two Commissioners each. Under the Treaty of Nice which, with a view to enlargement to twenty-five Member States, provided for one Commissioner for each Member State, the small and medium-sized Member States would have eighteen members against the six from the larger Member States which nevertheless accounted for 80% of the Union's population<sup>2</sup>. As regards the Council, up to enlargement in 2004, the quorum for qualified-majority voting was set at 62 votes with 39 votes assigned to the ten small and medium-sized Member States<sup>3</sup> and 48 to the larger Member States<sup>4</sup>, making it necessary for at least three smaller Member States to agree to the common stance taken by the five larger States to enable a decision to be approved. Following the accession treaties, this quorum had been raised to 232 votes, with the six larger Member States having 170 votes<sup>5</sup> and the other Member States having 131 votes<sup>6</sup>; this would make it necessary for at least six of these smaller Member States to agree to the stance taken by the larger Member States<sup>7</sup>. It should be noted that prior to enlargement the qualified majority also required a majority of States (eight out of fifteen), whereas after enlargement twelve out of twenty-five Member States would form the required majority.

From an institutional point of view, the European Parliament was keen to widen its competences, especially by extending the application of the codecision procedure and was opposed to the second chamber of States mooted in some proposals, in particular the proposal from Chancellor Schroeder<sup>8</sup>. Generally speaking, the European Parliament supported the Community method and the removal of the three-pillar division.

The Commission took an essentially defensive position: it wanted to keep its nature and competences and therefore supported the Community method, although in the course of the debate it also went as far as to argue that the Heads of Government should be more involved since they were the necessary guarantors of the nature of the EU as a Union of States and, as they were democratically elected, they had a strong position in their public opinions and could therefore help to form a popular consensus on European choices.

## 2. The composition of the Commission

The formal balance between the larger and smaller Member States in the Council and the primacy of smaller Member States in the Commission were counteracted by the likelihood of a decision-making process where the Member States were opposed from the point of view of their size which many people found difficult to

<sup>2</sup> F. Riccardi, *Beyond the News*, Agence Europe, Daily Bulletin 8454 of 3 May 2003.

<sup>3</sup> Article 205 of the Treaty in force prior to enlargement: four States (Belgium, Greece, Netherlands and Portugal) with five votes, two States (Austria and Sweden) with four votes, three States (Denmark, Ireland and Finland) with three votes and one State (Luxembourg) with two votes.

<sup>4</sup> *Ibid.* Each of the larger States had 10 votes apart from Spain with eight votes.

<sup>5</sup> Article 205 of the Treaty after the amendments made by the accession treaties: Germany, France, Italy and the United Kingdom with 29 votes each and Poland and Spain with 27 each.

<sup>6</sup> *Ibid.*: the Netherlands with 13 votes, five States (Belgium, Czech Republic, Greece, Hungary and Portugal) with 12 votes, Austria and Sweden with 10 votes, four States (Ireland, Lithuania, Slovakia and Finland) with seven votes, five States (Estonia, Cyprus, Latvia, Luxembourg and Slovenia) with four votes and Malta with three votes.

<sup>7</sup> The provisions on the post-enlargement qualified majority were signed on 7 April 2003, before the Convention had completed its work.

<sup>8</sup> See Chapter I, section 3.

envisage. On the question of the balance between the larger and smaller Member States, the latter nevertheless demonstrated a high level of awareness.

In this respect, the Commission, in its Communication *For the European Union, peace, freedom and solidarity*, stressed that its members should be appointed and politically accountable, proposing that the President of the Commission should be elected by the European Parliament, based on a two-thirds majority and by secret ballot; the Council would endorse this appointment and, by common agreement with the elected President, would then choose the Commissioners; Parliament would then approve the College<sup>9</sup>.

The debate on this thorny issue came and went, but an initial review could be made as early as July 2002:

*'Both Delors and Prodi came to the conclusion that the formula of a restricted Commission (with fewer Commissioners than Member States) is politically impossible, since it is difficult to say that the Commission will be the central axis of the EU's institutional system and then to say that a large number of Member States will not be represented on it (even temporarily). No country wants to be excluded. If, however, the Commission is larger, it will have to be radically overhauled. For this purpose, Prodi has launched a plan to rationalise and reorganise the work of the Commission, which is not final or perfect, but which opens the debate (it could be implemented under existing Treaties).'<sup>10</sup>*

### 3. Presidency of the Council

The issue dealt with here reared its head because of the problems raised by the six-monthly rotation system, which most people felt should be abolished. A radical contribution was made by an initiative by Aznar, Blair and Chirac<sup>11</sup>: the creation of a President of Europe who, as the political debate progressed, was initially to be President of the Union and then simply President of the Council and lastly President of the European Council. Irrespective of the definitions, the President would in particular chair European summits without being a head of government and would remain in office for a period of years, with suggestions ranging from two and a half to five years<sup>12</sup>.

There was strong opposition to this proposal. The position of the smaller States is well illustrated by the Benelux position which, with an eye to the Seville European Council, presented a memorandum on this issue:

*'As regards the Presidency of the Council of the EU in particular, the Benelux countries consider that the idea of electing a President of the European Council for an extended period is not a satisfactory alternative to existing practice. Benelux, chaired at present by the Netherlands, is aware that the six-monthly system of rotation of the Presidency of the European Council is not without drawbacks (especially the lack of continuity in the external representation of the EU), but also stresses the advantages of this formula (fresh impetus every six months, visibility of the EU in the Member States, valuable experience for the authorities of Member States) and considers that any alternative to this system which may be examined should respect the principle of parity between the Member States and the existing institutional balance.'<sup>13</sup>*

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<sup>9</sup> Agence Europe, Daily Bulletin 8226 of 6 June 2002, Article 1.

<sup>10</sup> F. Riccardi, *Beyond the News*, Agence Europe, Daily Bulletin 8251 of 10 July 2002.

<sup>11</sup> The three statesmen are listed here in alphabetical order as none of them can be seen as the author of the idea which had always been part of the debate on the European institutions. Chirac was perhaps the first to put it forward again rather sensationally in his speech in Strasbourg on 6 March 2002, from which the following section may be quoted: *'The European Union needs a President. I have proposed this in the past and I am proposing it again: let us have a head of the European Council who is elected by its members for a sufficient period of time. This President would embody Europe in the eyes of the rest of the world and would give the institutional system the stability that the Union needs in order to be strong.'* (<http://www.elysee.fr>)

<sup>12</sup> F. Riccardi, *Beyond the News*, Agence Europe, Daily Bulletin 8214 of 18 May 2002.

<sup>13</sup> Agence Europe, Daily Bulletin 8226 of 6 June 2002, Article 1.

The Commission, in its Communication For the European Union, peace, freedom and solidarity, rejected the idea of a President of the European Council and the General Affairs Council and Coreper, and proposed keeping the rotation, while for the other formations the Ministers could elect a President from within<sup>14</sup>.

The reference to parity between the Member States in the Benelux memorandum highlights the most worrying concern for the small and medium-sized Member States, while the Commission Communication is shot through by the fear that a President of the Council might overshadow the role of the President of the Commission.

Another suggestion was that the Council be chaired by the President of the Commission, a suggestion which was not taken up because of objections '*based on the different role of the President of the Council (who has to seek out compromises which can resolve the differences between the Member States so that decisions can be made) and the role of the Commission which has to defend plans and proposals that are in Europe's interest*'<sup>15</sup>.

#### 4. The Praesidium's draft

The wide-ranging debate on institutional issues provided food for thought for the Convention, and a starting point for discussion of the Praesidium's draft on this issue<sup>16</sup> of 23 April 2003, i.e. at a stage when the Convention's work was very advanced.

This draft, without making any distinction between institutions and other bodies of the Union, set out an *institutional framework* including the European Parliament, the European Council, the Council of Ministers, the European Commission, the Court of Justice of the European Union, the European Central Bank and the Court of Auditors<sup>17</sup>. The Committee of the Regions and the Economic and Social Committee were advisory bodies of the Union<sup>18</sup>.

The **European Parliament** would have a maximum number of members of seven hundred and their distribution between the Member States would be calculated using degressively proportional methods (the 'd'Hondt method') with a minimum of four members per Member State<sup>19</sup>.

In the case of the European Council, of which the *European Foreign Minister* was also to be a member, provision was made for a *President of the European Council*, elected by qualified majority by the Council itself from among the Heads of State and Government in office on the date of the elections and those who had occupied such a position for at least two years; the President could not be a member of another European institution or hold a national mandate. The President of the European Council would remain in office for two and a half years, renewable once, and '*on issues concerning its common foreign and security policy he shall ensure that the Union at his level is effectively represented in the wider world*'; he would also chair the work of the European Council<sup>20</sup>. The fact that the President could not hold a national mandate entailed an absolute division of functions which meant that the President of the European Council would not vote<sup>21</sup>. From a political point of view, this made it difficult for a Head of State or Government in office to accept this post.

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<sup>14</sup> Agence Europe, Daily Bulletin 8355 of 6 December 2002, Article 1.

<sup>15</sup> F. Riccardi, *Beyond the News*, Agence Europe, Daily Bulletin 8251 of 10 July 2002.

<sup>16</sup> Conv 691/03.

<sup>17</sup> Article 14(2) of the Praesidium's draft, Conv 691/03.

<sup>18</sup> Article 23 of the Praesidium's draft, Conv 691/03.

<sup>19</sup> Article 15(1) of the Praesidium's draft, Conv 691/03.

<sup>20</sup> Article 16a of the Praesidium's draft, Conv 691/03.

<sup>21</sup> Article 17b(2) of the Praesidium's draft, Conv 691/03.

The European Council would decide by consensus, except where the Constitution provided otherwise<sup>22</sup> and, as regards qualified-majority voting in particular, the provisions on the Council of Ministers, summarised below, would apply.

As regards the **Council of Ministers**, the Praesidium's draft made provision for some formations:

- the General Affairs Council would ensure that the work of the various formations was consistent, and would prepare, with the assistance of the Commission, meetings of the European Council;
- the Legislative Council, which would be responsible for the Council's legislative work;
- the Foreign Affairs Council, which would draw up the Union's external policies on the basis of the strategic guidelines and would be chaired by the European Foreign Minister;
- the Economic and Financial Affairs Council;
- the Council on Justice and Security.

The General Affairs Council could create other formations. The European Council could decide that the presidency of a formation, other than of the General Affairs Council, could be held by a Member States for a minimum of one year<sup>23</sup>.

The proposal on qualified-majority voting was very important as it was no longer based on a weighting of votes, but on a majority of Member States representing three fifths of the Union's population<sup>24</sup>.

In the case of the **Commission**, the Praesidium proposed a substantial overhaul of its composition: its members would include the President of the Commission, elected by the European Parliament, the Foreign Minister appointed by the European Council with the rank of Vice-President, a maximum of thirteen Commissioners and possibly Associate Commissioners whose number should not exceed that of the Members of the Commission (the European Commissioners and the Foreign Minister)<sup>25</sup>. In total, the Commission could therefore have 29 members.

The President of the Commission was to be put forward as a candidate by the European Council, taking account of the elections to the European Parliament in order to make it possible for majority support to emerge for this candidate within Parliament. The European Parliament would elect the European Council's candidate by a majority of its members. If the candidate failed to obtain this majority, the European Council would put forward a new candidate within a month, following the same procedure as before<sup>26</sup>.

No more than thirteen European Commissioners and possibly Associate Commissioners were to be selected by the President of the Commission, taking account of political and geographical balance and naturally of competence, European commitment and guaranteed independence. The choice would be made from lists of three people, one of whom had to be a woman, presented by each Member State. The President and the persons chosen were to be voted for as a college by the European Parliament<sup>27</sup>.

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<sup>22</sup> Article 17(3) of the Praesidium's draft, Conv 691/03.

<sup>23</sup> Article 17a(6) of the Praesidium's draft, Conv 691/03.

<sup>24</sup> Article 17b(1) of the Praesidium's draft, Conv 691/03.

<sup>25</sup> This passage draws on the following articles of the Praesidium's draft: 18(3), 18a(2) and (5) and 19(3).

<sup>26</sup> Article 18a(1) of the Praesidium's draft, Conv 691/03.

<sup>27</sup> Article 18a(2) of the Praesidium's draft, Conv 691/03.

The European Foreign Minister was, as mentioned above, to be appointed by the European Council, deciding by qualified majority, with the agreement of the President of the Commission. He would automatically be a Vice-President of the Commission and would be responsible for handling external relations and other aspects of the Union's external action and would also be responsible for the common foreign and security policy<sup>28</sup>.

The provisions on the Court of Justice, the European Central Bank and the Court of Auditors largely reiterated the provisions already in force. A new body, strongly supported by the Chairman of the Convention, was the **Congress of the Peoples of Europe** for which the Praesidium's draft made future provision. It was defined as a forum for contact and consultation in European political life, would not intervene in the legislative procedure, but would be reported to by the President of the European Council on the state of the Union. It would have a maximum of 700 members, one third being members of the European Parliament and two thirds being representatives of national parliaments<sup>29</sup>, and would meet once a year<sup>30</sup>.

## 5. The debate within the Convention

On the institutional part of the Praesidium's draft, two kinds of amendment were put forward by Convention members: those accepting the approach and proposing changes to it, and those wishing to maintain the current situation<sup>31</sup>.

The position taken in the second type of amendment was echoed in the debate of May 2003 in speeches by members keen to keep the Treaty of Nice which, in their view, was an acceptable compromise able to meet the challenges of an enlarged Europe; it would be difficult, in particular, to explain to the peoples of the accession countries who had voted for accession on the basis of the institutional provisions in force, that these provisions were about to change; others felt that the calling of the Convention and the Laeken Declaration were in themselves a recognition that the Treaty of Nice was unsatisfactory.

Over and above the desire to change the existing text, some basic principles and considerations emerged: the respect of the principle of equality of the Member States and the search for a consensus solution acceptable to all<sup>32</sup>.

There was lively debate on the issue of the **European Council and its Presidency**, although the Praesidium's solution was widely supported. It was pointed out that the duties of the President were not dissimilar from the existing duties of the six-monthly rotating President, and it was argued that the existing method was more in keeping with the principle of equality of the Member States and strengthened the feeling of European integration. It was proposed that the President of the European Council be elected by universal suffrage and that, in future at least, that post be merged with the post of President of the Commission.

As regards specific problems within the Praesidium's solution, there was particular concern about the overlapping functions of the President of the Commission and the Foreign Minister on external action issues; the problem of the administrative apparatus available to the President of the European Council was also raised<sup>33</sup>.

On the **Council of Ministers**, the new qualified majority system was largely accepted, although attention focused on the Presidency for which there were calls to keep the six-monthly rotation or for a multi-annual programme

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<sup>28</sup> Article 19 of the Praesidium's draft, Conv 691/03.

<sup>29</sup> The Praesidium's draft did not give any breakdown between the national parliaments.

<sup>30</sup> Praesidium's draft, p. 12, Conv 691/03.

<sup>31</sup> Introductory remarks by the Chairman of the Convention. *Summary report on the plenary session, 15 and 16 May 2003*, Conv 748/03, p. 2.

<sup>32</sup> *Summary report on the plenary session, 15 and 16 May 2003*, Conv 748/03, p. 4.

<sup>33</sup> *Ibid.*, p.5.



of presidencies. Some proposed that the President of the Commission should chair the General Affairs Council. In the case of the Council formations, it was felt that their reduction should not go beyond what had been decided at the Seville European Council. In particular, the concentration of all legislation in a single 'Legislative Council' formation was criticised by those who feared that the other formations would be encouraged to take no interest in legislation; this formation was nevertheless supported by those who saw it as a chance to improve the coordination of European legislation<sup>34</sup>.

The **composition of the Commission** was another sensitive issue, with many speakers in favour of including at least one member per Member State in the executive in order to foster equality, although there were also those among their ranks who were prepared to accept a number of Commissioners smaller than the number of Member States provided that the principle of rotation of Commissioners' seats among the Member States was accepted. Those in favour of the Praesidium's proposal pointed out that the Commission's vocation was to interpret the Union's general interests.

The **Presidency of the Commission** was also discussed, and there was no broad consensus on election by the European Parliament: some felt that the Praesidium's proposals did not go far enough, while others suggested compromise solutions. One proposal was that the European Parliament should be dissolved if it adopted a motion of censure regarding the Commission<sup>35</sup>.

## 6. The institutions in the Final Draft

The provisions in the Final Draft form Title IV of Part I (Articles 18 to 31) and are more or less identical to those proposed by the Praesidium. The most important amendments are discussed below.

The maximum number of MEPs was increased by 36, bringing it to 736, and a paragraph was added under which the European Council would unanimously decide on the breakdown of MEPs between the Member States in advance of the 2009 elections. This decision would abide by the criteria laid down by the Constitution<sup>36</sup>.

The President of the European Council could now be a member of another European institution, but could not combine this post with a national mandate<sup>37</sup>.

The formations and qualified-majority voting of the Council of Ministers were substantially amended, and the possibility of modifying the legislative procedure was introduced. In the case of the formations, the 'General Affairs' Council and the Legislative Council were merged and, in addition to this formation, there was only one other 'Foreign Affairs' formation, leaving it to the Council to decide on any others<sup>38</sup>.

Majority voting was defined differently: the system proposed by the Praesidium<sup>39</sup> was accompanied by a qualified majority calculated in a different way: *the vote of two thirds of the Member States representing at least three fifths of the population of the Union*. This second qualified majority would apply to cases in which the European Council or the Council of Ministers were not voting on a proposal of the Commission or an initiative of the Foreign Minister. Lastly, the European Council could unanimously decide to apply the ordinary legislative

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<sup>34</sup> *Ibid.*, p. 7.

<sup>35</sup> *Ibid.*, p. 6.

<sup>36</sup> Article 19 of the Final Draft, Conv 850/03. The criteria for the distribution of MEPs are illustrated in section 4 of this Chapter.

<sup>37</sup> Article 21 of the Final Draft, Conv 850/03.

<sup>38</sup> Article 23 of the Final Draft, Conv 850/03.

<sup>39</sup> A majority of the Member States, representing three fifths of the population of the Union. See section 3 of this Chapter.

procedure when the Constitution made provision for a special procedure, after a period of at least six months of consideration of such a decision<sup>40</sup>.

The most significant changes in the Final Draft related to the composition of the Commission, with a view to improving the application of the principle of equality between Member States. A system of equal rotation between the Member States was expressly laid down for the selection of the thirteen Commissioners. The European Council would decide how the system of rotation was to be introduced taking account of two criteria: no Member State could have more than two Members of the Commission (including the President and Minister for Foreign Affairs and non-voting Commissioners) and *'each successive College shall be so composed as to reflect satisfactorily the demographic and geographical range of all the Member States of the Union'*. As regards the choice of individual Commissioners, the competence criteria that the Praesidium's draft had introduced were endorsed, but the President of the Commission could choose only one from each of the lists of three submitted by the Member States<sup>41</sup>. Moreover, in place of the Associate Commissioners, whose position had intentionally not been determined in the Praesidium's draft, provision was made for non-voting Commissioners from Member States not otherwise represented in the Commission. Their maximum number was not specified, but it can be assumed from the approach of the Final Draft that the policy would be to appoint a non-voting Commissioner for each country not represented in the College. The Final Draft endorses the procedure for the election of the President of the Commission by the European Parliament and the executive's political accountability to the latter and makes it mandatory for a Commissioner to resign if so requested by the President of the Commission<sup>42</sup>.

In the case of the Minister for Foreign Affairs, the Council could end his tenure using the same procedure as for his appointment<sup>43</sup>. As regards the other institutions and advisory bodies, the Final Draft did not depart significantly from the Praesidium's draft which had in turn made few innovations to the existing situation. The Final Draft did not include the proposal to create a Congress of the Peoples of Europe.

## 7. The Union's instruments and legislative procedures

The reclassification in the Draft Treaty of the legislative and other instruments through which the Union exercises its competences is a technical argument which nevertheless has political implications. This emerges from the report of the Working Group on *Simplification*, a name which underscores the Convention's aim in this area, an aim which had already been set out in the Laeken Declaration.

The Group's final report<sup>44</sup> took as its starting point the observation that some of the fifteen types of instrument for which provision was made or which had become consolidated in practice<sup>45</sup> had similar effects and that they could be reduced using the criterion of their legal efficiency. Instruments could be grouped into two categories: binding acts and non-binding acts.

The following were included in the category of binding acts:

- regulations, with binding force directly applicable in the Member States, which the Group proposed to call *European Union laws*,

<sup>40</sup> Article 24 of the Final Draft, Conv 850/03.

<sup>41</sup> In keeping with the approach taken in the Final Draft, the lists of three were to be submitted only by the Member States determined by the rotation system.

<sup>42</sup> Articles 25 and 26 of the Final Draft, Conv 850/03.

<sup>43</sup> Decision by qualified majority with the agreement of the President of the Commission. Article 27 of the Final Draft, Conv 850/03.

<sup>44</sup> Conv 424/02.

<sup>45</sup> Regulation, Directive, Framework Decision, two types of Convention, three types of Decision, General principles and guidelines, Common Strategies, Joint Actions, two types of Common Position, Recommendation and Opinion.

- directives, binding on the Member States, to be implemented by national instruments, generally legislative, complying with these directives, which the Group proposed to call European Union framework laws;
- decisions, in the form of non-legislative instruments binding on their addressees and able to be used very flexibly; for this reason, the Group suggested that they should be used for CFSP matters;
- implementing rules setting out the methods by which a European Union law is to be applied.

Non-binding instruments included the *recommendation* and the *opinion*.

The political implication of this simplification of instruments lay in the fact that it did away with the pillars, whose rationale was shaped precisely by the differentiation of instruments.

In the case of procedures, the Group recommended extending the scope of application of codecision which would become the normal procedure for legislative acts, abolishing the cooperation procedure and replacing it by the consultation procedure, and restricting the assent procedure solely to the ratification of certain international agreements.

The Convention welcomed the Group's proposals, but inevitably had some reservations about particular points, in particular the creation of the category of delegated acts, although these reservations tended to be more requests for further detail than outright opposition; the potential for the legislator to arrogate the adoption of delegated acts to itself was in particular mentioned. One proposal which emerged from the Convention debate was the extension of the national powers of Member States when applying Union law domestically; this proposal introduced the fundamental political issue of the Community versus the intergovernmental method into this largely technical debate<sup>46</sup>.

The Praesidium's draft of Articles 24-33 took up the Working Group's proposals and the Convention's debate on them<sup>47</sup>. This approach was endorsed in the subsequent draft of the text<sup>48</sup> and the debate on each of these proposals did not depart in substance from the debate in December 2002 summarised above. There were few amendments to the rules in force on legislative procedures.

## 8. The Union's finances: from the Working Group to the Praesidium's draft

The Working Group on simplification also looked at the budget and drew up some recommendations, some merely formal, such as a specific article enshrining the budgetary principles, split between six articles of the existing Treaty, and others substantive, with a view to maintaining Parliament and the Council as the dual budgetary authority; the former would have a final say over expenditure and the latter over resources, the regime for which would be adopted by the Member States, and over the financial perspective which would provide a framework for the annual budgetary procedure and receive a legal basis.

The Group proposed the model of simplified codecision for the annual budgetary procedure, including conciliation meetings either between Parliament's first reading and the adoption of the Council position or between the adoption of the Council position and Parliament's second reading. As regards the majority quorum needed, it proposed extending the current rules for non-compulsory expenditure to the budget as a whole, thereby removing the existing distinction between the two expenditure categories: a majority of MEPs at Parliament's first reading and a qualified majority in favour of adopting the Council's position.

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<sup>46</sup> *Note on the plenary session, Brussels, 5-6 December 2002, Conv. 449/02, p. 4-6.*

<sup>47</sup> *Conv 507/03.*

<sup>48</sup> *In the Final Draft, the Union's instruments are governed by Section I, Title V of Part I, Articles 32 to 38.*

If the Council position made no amendments, the budget would be deemed adopted; for its part, Parliament could accept all the Council amendments by a majority vote or amend or reject them by a majority of votes of MEPs accounting for two thirds of the votes cast.

The Group also proposed medium-term financial planning which would incorporate the agreements on budgetary discipline and would include a global resources ceiling and annual expenditure ceilings per heading. The medium term would coincide with the terms of office of Parliament and the Commission. This planning would be adopted, on the initiative of the Commission, by the Council with the assent of Parliament.

Lastly, it proposed a link between legislation and the budgetary procedure based on the Interinstitutional Agreement of 1999 which requires the preliminary adoption of a legislative act for the implementation of any budget appropriation<sup>49</sup>.

In the Convention debate, many speakers criticised the merging of the voting methods for compulsory and non-compulsory expenditure which would have an adverse impact on the current institutional balances, preventing the Council from having a final say on some major expenditure, such as agricultural expenditure<sup>50</sup>.

The Praesidium's draft took up the Group's stance on own resources, reproducing the text of the Treaty in force<sup>51</sup>, and including a specific article on the budget principles and discipline<sup>52</sup> based on articles of the Treaty in force and the Interinstitutional Agreement of 1999. Of the principles generally recognised in legal circles, those of unity, balance and annual nature set out in Articles 268 and 271 of the Treaty in force and the principle of sound financial management<sup>53</sup> were enshrined, although the more significant section was on the budget discipline which 'constitutionalised' the Interinstitutional Agreement mentioned above, providing for a legislative act for the execution of an appropriation and obliging the Commission to ensure in advance that there was budget coverage for any proposal or measure with a financial impact.

On the budget procedure, the Praesidium's draft took account of the lack of support that the Working Group's recommendations had received in the Convention and merely outlined '*a procedure reflecting the lowest common denominator of the opinions expressed by the Convention members*', calling for subsequent discussion<sup>54</sup> in a restricted discussion circle whose initial findings would be presented to the Convention<sup>55</sup>. These findings consisted in broad support for the legal efficiency of the financial perspective, with a particularly detailed review of the principles that should govern it, and the removal of the distinction between compulsory expenditure and non-compulsory expenditure, although it had not been possible, by the time the findings were presented, to reach a full consensus on the annual procedure: the procedure should be a codecision procedure with a single reading and a conciliation stage. The sticking point was the procedure in the event of a disagreement between Parliament and the Council.

The Convention seemed fairly divided on this issue. As regards the own resources adoption procedure, those in favour of keeping the existing situation were opposed by those who felt that this would be prejudicial to the Union's future development as it was not suited to the creation of 'genuinely' own resources, whereas a European tax, called for by some Members, could be. There was consensus, however, on the proposal on the financial

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<sup>49</sup> Conv 424/02, p. 19-21.

<sup>50</sup> Note on the plenary session, Brussels, 5 and 6 December 2002, Conv. 449/02, p. 6-7.

<sup>51</sup> Article 38 of the Praesidium's draft, Conv. 602/03. This article reproduces Article 269 TEC verbatim.

<sup>52</sup> Article 39 of the Praesidium's draft, Conv. 602/03.

<sup>53</sup> The principle of sound financial management is not a budget principle, i.e. a principle governing its formation, but a principle of income and expenditure execution.

<sup>54</sup> Article 40 of the Praesidium's draft, Conv. 602/03. The passage in italics is a quotation from the commentary on this article in p. 9 of the draft.

<sup>55</sup> Note on the plenary session, Brussels, 3-4 April 2003, Conv. 677/03, p. 12-14.

perspective and the abolition of the distinction between compulsory and non-compulsory expenditure, while the Convention seemed to take a similar view to the discussion circle on the issue of the annual procedure: consensus on the simplified procedure, but doubts about the provisions governing cases of disagreement between the two arms of the budget authority<sup>56</sup>.

## 9. The Union's finances: towards the Final Draft

Following on from this debate and subsequent more detailed examination in the executive, the provisions on the **Union's finances** formed Title VIII of the Praesidium's revised draft of the whole of Part I of the Constitution. Own resources were to be set by a European law, approved unanimously by the Council, following consultation of the European Parliament, *to the extent required* for the achievement of the Union's objectives. However, this law would not come into force until the Member States had approved it in accordance with their respective constitutional requirements. A further law adopted by the Council, after consulting the European Parliament, in accordance with the general rules applicable, would lay down detailed arrangements for the Union's resources<sup>57</sup>.

The financial perspective, now called the **financial framework**, would take the form of a European law of the Council, following approval by a majority of the members of the European Parliament. The financial framework would lay down the annual ceilings for commitment appropriations and, reflecting the consensus achieved right from the start of the debate on this issue, would therefore be binding on the budget<sup>58</sup>.

The **budget** would take the form of a European law<sup>59</sup>, incorporated chiefly into Part III of the revised draft of the Constitution setting out the procedure for its approval based on a simplified version of the legislative codecision procedure:

- the Commission would submit the draft budget to the two arms of the budget authority by 1 September of the year preceding the year to which the budget related;
- by 1 October following, the Council would adopt its position and forward it to Parliament;
- if, within 40 days of forwarding<sup>60</sup>, Parliament approved the Council position or gave no opinion, the budget law would be deemed approved in accordance with the Council position;
- if Parliament, within the same term and by a majority of its members, approved amendments to the Council position, the conciliation stage would be opened, unless the Council, in the following ten days, approved all Parliament's amendments; in such a case, the budget would become law in accordance with the Council position amended by Parliament;
- attempts were to be made in conciliation to reach a common position within 21 days of its convocation;
- if conciliation had a positive outcome, the common position would be put to the vote by both arms of the budget authority; Parliament by a majority of votes cast and the Council by qualified majority;

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<sup>56</sup> *Ibid.*, p. 14-16.

<sup>57</sup> Article I-53 of the Praesidium's revised draft, Conv. 724/03.

<sup>58</sup> Article I-54 of the Praesidium's revised draft, Conv. 724/03. This article is supplemented by Article III-304 of the revised draft of Part III, Draft revised text, Conv 802/03.

<sup>59</sup> Article I-55 of the Praesidium's revised draft, Conv. 724/03.

<sup>60</sup> In the Final Draft, the number of days was set at 42.

- if conciliation had a negative outcome, Parliament acting by a double quorum (the majority of members and three fifths of the votes cast) would approve its own amendments;
- the budget would become law, incorporating the amendments approved by Parliament and the Council position on the budget lines in respect of which Parliament's amendments had not been approved<sup>61</sup>.

The provisions of the revised draft were incorporated into the Convention's Final Draft with minor changes. The politically significant comments on the revised draft made in the Convention debate are nevertheless worth noting. There were two important and substantive comments: some speakers were against the principle of adequacy with respect to the Union's objectives, while others called for the creation of a Union tax and were opposed by other Convention members. In terms of the decision-making process, there was opposition to national ratification of the European law.

Procedural questions were central to the debate on others points of the provisions examined here. In the case of the multi-annual financial framework, some Convention Members advocated codecision while others preferred unanimous voting by the Council. In the case of the budget procedure, some Convention members advocated that the lowest amount should be adopted if there was disagreement between Parliament and the Council<sup>62</sup>.

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<sup>61</sup> Article III-306 of the revised draft of Part III, Draft revised text, Conv 802/03.

<sup>62</sup> Note on the plenary session, Brussels, 30-31 May 2003, Conv. 783/03, p. 8.

## **CHAPTER VII**

### **ECONOMIC AND SOCIAL POLICY**

#### **1. The policies of the Union in general**

Part III of the draft Constitution deals with the policies and functioning of the Union and in substance reiterates the text of the existing Treaty establishing the European Community, merely extending qualified-majority voting in the Council. The provisions on the various policies remained substantially unchanged to the extent that some Convention members complained that the provisions on the Common Agricultural Policy had not been updated to take account of more recent developments<sup>1</sup>.

The discussions and proposals relating to policies coming wholly or partly within the second and third pillars have been examined in previous Chapters. It seemed useful here to look at the discussions and proposals on economic and social policy, the former because it is playing an ever increasing role in the life of the Union and the latter because it is central to an extremely lively debate on the welfare state which has for some years been a matter of concern throughout public opinion in Europe. The issue of services of general interest has been separated out for the reasons explained in the final section of this Chapter which deals with that issue.

#### **2. Economic and monetary policy**

Economic policy is a key Union matter, especially since the Treaty of Maastricht set the objective of economic and financial convergence and created the single currency for some of the Member States. Economic policy, while deemed to be of Community interest, is a national competence; monetary policy is an exclusive competence of the Community which exercises it via the European Central Bank.

The Working Group on Economic Governance<sup>2</sup> reiterated this approach, suggesting improved coordination of economic policies and calling for a debate in the Convention on the possible introduction of new economic policy objectives in respect of which it would seem that the Group had failed to find any internal consensus.

The Group focused largely on procedural aspects, but even here the report did not seem to put forward recommendations, but rather summarised the arguments put forward in its own debate which featured ongoing opposition between supporters of the Community and intergovernmental methods. As regards the broad guidelines<sup>3</sup> adopted by the Council, some Group members considered that the Commission should present a formal proposal rather than a recommendation, while others rejected this idea as it could make the Member States feel that they were being 'deprived' of their prerogatives. The Group was also divided on the implementation of the guidelines, with some members supporting an enhanced role for the Commission and those who wanted to retain the existing situation. The former, in particular, were keen to allow the Commission to send early warnings to Member States failing to comply which would also be excluded from voting on the final decisions to be adopted on Commission proposals. Overall, however, the Group seemed to agree that Parliament should be more involved.

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<sup>1</sup> *Report on the plenary session of 4 July 2003, Conv. 849/03, p. 4.*

<sup>2</sup> *Final report of Group VI on Economic Governance, Conv 357/02.*

<sup>3</sup> **Article 99 of the Treaty establishing the European Community.**



The majority of the Group agreed that the Commission should play more of a role in excessive deficit procedures<sup>4</sup>, while some of its members felt that Member States failing to comply should be excluded from decisions relating to them. The majority of the Group considered that the Stability and Growth Pact, as it was a specifically political measure, should not be included in the Constitution.

On the issue of taxation, the Group recommended keeping the current provisions with a majority calling for changes to the decision-making process in order to facilitate progress on fiscal matters. This progress should not take the form of Community taxation, or personal or property taxation, but the objective should be to work towards a harmonisation of rates, minimum standards and tax bases in the area of direct and company taxation.

In the case of monetary policy, the Group's report echoed the debate on the European Central Bank that had been ongoing since its creation. While, therefore, the Group did not recommend changes to the current provisions<sup>5</sup>, some of its members argued for the inclusion of growth and employment in the Bank's mandate and for the Bank to be more accountable and transparent.

More clear-cut suggestions emerged from the debate in the Convention<sup>6</sup>. It endorsed the approach taken in the existing Treaty, giving the Union competence for monetary policy and the Member States competence for economic policy, and agreed that the Stability Pact should not be part of the Constitution for the reasons already put forward by the Working Group.

There was nevertheless a consensus that the economic and social objectives should be included in the Constitution and also that the Commission should have the power to send a first warning to Member States failing to apply the broad guidelines; only a few Convention members shared the view that Member States failing to comply should be excluded from voting on decisions relating to them, whereas a larger number of Convention members were in favour of this exclusion when the decisions related to excessive deficit. On taxation, the Convention largely took the Group's view, but there was strong opposition to any abandonment of unanimity in Council decisions in this area.

On monetary matters, there was no consensus on the formalisation of the Euro Group, although there was a clear preference for its international representation.

The Praesidium's preliminary draft on economic and monetary policy<sup>7</sup> drew on the recommendations of the Working Groups on Economic Governance and on Simplification and included a protocol on the Euro Group.

The preliminary draft took up the recommendation that the powers of the Commission as regards implementation of the broad guidelines should be enhanced, giving it the power to send a first warning to Member States failing to comply, and opted for the exclusion of those Member States from subsequent decisions of the Council relating to them<sup>8</sup>. Substantially identical provisions were introduced for the excessive deficit<sup>9</sup>.

As regards the Euro Group, in addition to its formal recognition by the protocol mentioned above, provision was made for its international representation. The Euro States and the Commission would coordinate their positions in the competent international instances, working with the Central Bank which would remain independent, and

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<sup>4</sup> Article 104 of the Treaty establishing the European Community.

<sup>5</sup> Apart from an amendment to Article 10(2) of the ECB's Statute in relation to the functioning of its Governing Council with a view to enlargement.

<sup>6</sup> Report on the plenary session of 7 and 8 November 2002, Conv. 400/02, p. 1-6.

<sup>7</sup> Conv 727/02, p.8-26.

<sup>8</sup> Article III-68 (ex Article 99) of the Praesidium's preliminary draft, Conv. 727/03.

<sup>9</sup> Article III-73 (ex Article 104) of the Praesidium's preliminary draft, Conv. 727/03.



the Council, on the basis of this coordination, *'may adopt appropriate measures to ensure unified representation within the international financial institutions and conferences'*<sup>10</sup>.

In the case of taxation, the Praesidium's final draft proposed majority voting for administrative cooperation and for combating tax fraud in respect of a series of taxes, provided that the Council, acting unanimously, had previously established that the Commission's proposal related to such matters<sup>11</sup>. Unanimous voting would continue to apply to all other matters.

The groups that had already formed in November 2002 were to be found again in the debate on the Praesidium's draft<sup>12</sup>. In general, it was felt that progress had been made from the existing situation, but some felt that this progress was not enough. There were various calls for greater involvement of the European Parliament in the drafting of the guidelines, and a genuine ECOFIN was proposed for the Member States in the Euro Group. Some speakers also felt that it would be possible for the international representation of the Euro States to be conferred on the Commission and others felt that it should be conferred on the President of the Euro Group.

Some Convention members also proposed the creation of an institutional post which, along the lines of the Foreign Minister, would merge the functions of Commissioner for economic and financial affairs with those of the Chairman of ECOFIN. Many Convention members felt that progress on taxation had been disappointing, although there was strong opposition to qualified-majority voting in this area.

The Final Draft was substantially identical to the Praesidium's draft<sup>13</sup>.

### 3. Social policy

Mirroring the high degree of interest in public opinion in Europe, social policy was an issue of considerable interest to Convention members. It was debated at the same time as the final report of the Working Group on Economic Governance and on the basis of two requests to set up a specific Working Group on this issue.

Many speakers stressed that social policy should be addressed in a sufficiently ambitious manner in the Constitution in order to create a European social market alongside the market in its conventional sense. It would include: *'... basic social rights, social protection, full employment, gender equality and the need to protect services of general interest'*<sup>14</sup>.

Opinions on how this content could be structured as policies differed. Some Convention members felt that the Union's existing competences should be extended to include European legislation on employment and the coordination of national policies on social matters. Others felt that a horizontal clause should be included in the Constitution making it possible for social policy to be taken into account in all European legislation. The role of the social partners was also discussed. A single speaker felt that it was not possible to create a single European social model and that an extension of the Union's competences on social matters was inadvisable<sup>15</sup>.

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<sup>10</sup> Article III-81 of the Praesidium's preliminary draft, Conv. 727/03.

<sup>11</sup> Articles III-59 (ex Article 93) and III-60 of the Praesidium's preliminary draft, Conv. 727/03. The taxes to which majority voting would apply were described in the text as those on company revenue, turnover, consumption and other indirect taxes.

<sup>12</sup> Summary report on the plenary session of 30-31 March 2003, Conv. 783/03, p. 5-7.

<sup>13</sup> Economic governance is regulated by Articles III-59 to III-96 of the Final Draft and the Protocol on the Euro Group.

<sup>14</sup> Summary report on the plenary session of 7 and 8 November 2002, Conv. 400/02, p. 6.

<sup>15</sup> Summary report on the plenary session of 7 and 8 November 2002, Conv. 400/02, p. 6-8.

The Working Group, set up after the November 2002 plenary, produced its report quickly<sup>16</sup>. It recommended that the values of the Union should include social justice, solidarity and equality with particular reference to equality between men and women. The objectives of the Union should be:

*'...full employment, social justice leading to social peace, sustainable development, economic, social and territorial cohesion, social market economy, quality of work, lifelong learning, social inclusion, a high degree of social protection, equality between men and women, children's rights, a high level of public health and efficient and high quality social services and services of general interest.'*<sup>17</sup>

As regards competences, the Group considered that the existing competences were adequate, but called for an extension in the area of public health and services of general interest. The main point seemed, however, to be the recommendation that European action should focus on the social aspects of the functioning of the single market and on transnational questions.

On qualified majority voting, the Group's recommendations were specific. The focus was on Article 137 of the Treaty of Nice on social policy objectives, where the proposal was to move away from unanimous voting on measures to protect workers in the event of redundancy, collective representation and protection of workers' and employers' interests, and on the employment conditions of third-country nationals<sup>18</sup>, leaving the requirement of unanimity solely for issues of social security and workers' protection<sup>19</sup>. A minority was strongly opposed to this recommendation. The Group also considered that qualified-majority voting could be extended to measures to combat discrimination on grounds of gender, ethnic belonging and religion and to social security measures in cross-border situations<sup>20</sup>. The Group lastly recommended that the social partners be recognised in the Constitution.

In the discussion of the Group's report, on which there was broad consensus, the most hotly debated issue was the extension of qualified-majority voting to the matters provided for by Article 137 of the Treaty of Nice, as might have been foreseen in the light of the wide-ranging discussion to which this recommendation had given rise in the Group. The main opposing argument was

*'... that the Treaty of Nice had recently entered into force and that a transition to QMV was therefore possible provided that was the Member States' intention. Those members confirmed that they did not want to reopen the provisions agreed at Nice in that area.'*<sup>21</sup>

Many Convention members also felt that qualified-majority voting should be further extended to all matters governed by Articles 13 and 42 of the Treaty establishing the European Community and by Article 137 of the Treaty of Nice<sup>22</sup>. Another significant argument was the proposal to include measures to ensure coherence between economic and social policies at the spring European Council. There were also calls for the extension of the Union's existing competences in the area of public health in order to combat cross-border epidemics and bioterrorism.

The Praesidium presented its proposal on this issue in the draft text on all parts of the Constitution following Part I<sup>23</sup>. The text in substance took up those of the Group's recommendations on which there had been

<sup>16</sup> Conv 516/I/03 and the corrected version bearing the same number.

<sup>17</sup> Final report of Working Group XI on Social Europe, Conv 516/I/03, p. 2.

<sup>18</sup> Letters d, f, and g of Article 137(1) of the Treaty of Nice.

<sup>19</sup> Letter c of Article 137(1) of the Treaty of Nice.

<sup>20</sup> Article 42 of the Treaty establishing the European Community.

<sup>21</sup> Summary report of the plenary session of 6-7 February 2003, Conv. 548/03, p. 4-5.

<sup>22</sup> The content of these provisions is given earlier in this section.

<sup>23</sup> Draft Constitution, Volume II – Draft text of Parts II, III and IV, Conv 725/03.

consensus in plenary, without taking account of the reservations expressed by fairly substantial numbers of Convention members, and there was no subsequent debate on this particular issue. The Praesidium's final draft did not depart from the Praesidium's proposed text.

#### 4. Services of general interest

This issue was originally debated in the context of social policy and was dealt with independently only in the later stages of the proceedings of the Convention. The importance that it had assumed in the referendum campaign in France had shown that it should be examined separately.

The question related essentially to the revision of Article 16 of the Treaty establishing the European Community. This lays down a principle under which the Community and the Member States undertake, *'each within their respective powers and within the scope of application of this Treaty'*, to ensure that *'such services operate on the basis of principles and conditions which enable them to fulfil their missions'*, without prejudice to the provisions of the Treaty on competition and State aids.

As drafted, this provision does not provide for an independent Community policy, or lay down specific objectives for the Member States apart from the very general objective of the sound running of these services.

Many of the members of the Group on Social Europe had already called for universal access to services of general interest to be an objective of the Union and wanted this principle to be included in Article 16<sup>24</sup>. This stance was echoed by the plenary discussion of the report and reflected by the proposal to make Article 16 into a legal base from which Union legislation on services of general interest could be developed<sup>25</sup>. This call was reiterated in the discussion of the draft text of Part III in which the Praesidium had not made any amendments to Article 16<sup>26</sup>:

*'Several Convention members expressed the desire for more open recognition of the importance of services of general interest, with some in favour of a legal basis aimed at promoting them. Some Convention members stated in this connection that such recognition by no means prevented the public authorities from entrusting the management of such services to the private sector.'*<sup>27</sup>

Possibly persuaded by this argument about the private sector, the Praesidium, in the text that it presented at the end of work, in July 2003, took up this call, and added a final phrase to the article which was otherwise more or less unchanged: *'A European law shall define these principles and conditions'*<sup>28</sup>, which also appears in the Final Draft.

In general, this wording was approved by the Convention, although some speakers complained that the scope of application of the provision remained, as in the existing Treaty, limited to economic services which were therefore subject to the rules on competition. Other speakers, diametrically opposed, criticised the creation of a legal base which disturbed the balance between the competences of the Union and the Member States<sup>29</sup>.

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<sup>24</sup> *Final report of Working Group XI on Social Europe*, Conv 516/I/03, p. 11.

<sup>25</sup> *Summary report on the plenary session of 6-7 February 2003*, Conv. 548/03, p. 4.

<sup>26</sup> **Article III-3 (ex Article 16) of the Draft Constitution, Volume II – Draft text of Parts II, III and IV**, Conv 725/03.

<sup>27</sup> *Summary report on the plenary session of 30-31 May 2003*, Conv. 783/03, p. 11-12.

<sup>28</sup> **Article III-3 (ex Article 16) of the Draft Constitution, Volume II**, Conv 848/03.

<sup>29</sup> *Summary report on the plenary session of 4 July 2003*, Conv. 849/03, p. 11-12.



## CHAPTER VIII

# THE EUROPEAN PARLIAMENT'S POSITIONS

### 1. Assessment of the draft Constitution: the Gil-Robles - Tsatsos report

Following the presentation of the Convention's draft Constitution<sup>1</sup>, the European Parliament gave its opinion on the draft on the basis of a report by the Committee on Constitutional Affairs<sup>2</sup>. At the centre of the report is a conviction that seems to lie behind all the assessments and which is worth quoting in full, since it aptly summarises the position, and at times the concerns, that have always characterised Parliament, even as its majorities have changed:

*'Europe can only derive its democratic vitality from a dual legitimation: the direct legitimation coming from the European citizens and the legitimacy of the Member States, which in turn is based on democratic national elections. The European Parliament, as the expression of Europe-wide direct universal suffrage, is the institution specifically dedicated to representing the Union of the people of Europe. It is from its endorsement that the Commission derives its democratic legitimacy. This then complements the other source of legitimacy, namely the Member States represented in the Council. Enhancing the intergovernmental model at the expense not only of the Commission but also, ultimately, of the Council, which is also a Community institution, would therefore undermine the democratic nature of the whole European enterprise.'*<sup>3</sup>

On the whole, the assessment is largely positive and particularly welcomes the central role occupied by the citizen, especially through the incorporation into the draft of the Charter of Fundamental Rights and the right of initiative for the people, progress in the integration process in many sectors and the elimination of the separation of the Union's competences into three pillars. In particular, with regard to the European Parliament:

*'...its legislative and budgetary authority is fully recognised and strengthened. In addition, the new 'ordinary legislative procedure', which corresponds to codecision, becomes the general rule for adopting legislation. The President of the Commission will be elected by the European Parliament, and the entire college of Commissioners, including the Foreign Minister, will be subject to a vote of approval by Parliament.'*<sup>4</sup>

*The assessment is not, however, without criticism. The main and most politically significant criticisms are as follows:*

*'... the extension of codecision, as well as of qualified majority voting, still does not cover all legislation. The same concern applies to the failure to extend judicial control by the Court of Justice to all Union acts. Finally, questions about the complexity of the institutional system remain. The activities of the new European Council President, who will be elected by qualified majority for a term of two and a half years by the European Council, will have to be monitored closely by the European Parliament. Much will depend on practical implementation. In any case, it is essential that the President acts as a standing chair and not as an executive body'*<sup>5</sup>.

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<sup>1</sup> On 20 June 2003 to the Thessaloniki European Council for the first three parts and on 18 July 2003 to the Italian Presidency for the remaining parts.

<sup>2</sup> *Report on the draft Treaty establishing a Constitution for Europe and the European Parliament's opinion on the convening of the Intergovernmental Conference (IGC)* (Report by J.M. Gil-Robles Gil-Delgado and D. Tsatsos), A5-0299/2003.</Depute>

<sup>3</sup> *Ibid.*, p. 19.

<sup>4</sup> *Ibid.*, p. 15.

<sup>5</sup> *Ibid.*, p. 15.

In this context the report identifies two outstanding issues:

- *the revision procedure: with an ever increasing number of Member States it will become more and more destructive that unanimity and national ratification are still required, even for small policy changes in part III,*
- *own resources: with a view to the upcoming budgetary negotiations in 2006 it is very likely that the present instruments to manage and control the Union's budget (annual budget and multiannual financial framework) will lead to deadlock and bitter conflicts. In the medium term, the Union will need resources which are not dependent on contributions from the Member States in order to carry out its extensive tasks*<sup>6</sup>.

## 2. Assessment of the draft Constitution: Parliament's resolution

Parliament followed up the report with its resolution of 24 September 2003<sup>7</sup>, which adopts the report and includes a welcome for the Union's single legal personality, which makes it possible, *at least formally*, to overcome the separation of its competences into 'pillars', even if the Community method does not fully apply to all decisions<sup>8</sup>. In addition, it

*'welcomes the separation of the Euratom Treaty from the legal structure of the future Constitution; urges the Intergovernmental Conference to convene a Treaty revision conference in order to repeal the obsolete and outdated provisions of that Treaty, especially those relating to the promotion of nuclear energy and the lack of democratic decision-making procedures*<sup>9</sup>

From a more strictly institutional viewpoint, Parliament welcomes the fact that it is to elect the President of the Commission, and the new legislative procedure, which strengthens Parliament's role; both are undoubted improvements to democracy at European level. However, it demands the role of responsible parliamentary body with respect to foreign policy, and security and defence policy. With regard to the Council, the resolution

*'attaches great importance to the extension of qualified majority voting in the Council, as far as legislation is concerned; welcomes the improvement of the system, while underlining the need for further extensions of qualified majority voting or for the use of special qualified majority voting ...'*<sup>10</sup>.

The draft Constitution does, however, have some negative aspects, particularly the failure to accept some previous positions adopted by Parliament. Specifically, the resolution cites the call for a consolidation of economic and social cohesion, closer coordination of national economic policies and better integration of employment, environmental and animal welfare aspects into EU policies. On the institutional front, the European Parliament regrets the failure to suppress the requirement of unanimity in the Council in the area of foreign and defence policy, and certain areas of social policy. In the light of the debate in France during the referendum campaign it seems useful to quote in full Parliament's regrets concerning public services:

*'...full recognition of the role played by public services, based on the principles of competition, continuity, solidarity and equal access and treatment for all users'*<sup>11</sup>.

As well as giving an assessment of the Convention's draft Constitution, the resolution also expresses an opinion on the IGC that was due to start work four days later. It urges the Intergovernmental Conference to respect the

<sup>6</sup> *Ibid.*, p. 19.

<sup>7</sup> *Resolution on the draft Treaty establishing a Constitution for Europe and the European Parliament's opinion on the convening of the Intergovernmental Conference.*

<sup>8</sup> *Ibid.*, paragraph 11.

<sup>9</sup> *Ibid.*, paragraph 14.

<sup>10</sup> *Ibid.*, paragraph 16.

<sup>11</sup> *Ibid.*, paragraph 29. The quoted text is the paragraph's second indent.

consensus reached by the Convention, and calls on the political parties and associations, which represent civil society, to reflect on the Convention's draft and the European Parliament's views.

### 3. Assessment of the Constitution

At the start of the sixth legislative term, when the Intergovernmental Conference had already completed its work, the European Parliament gave its opinion on the text drafted by the conference on the basis of a substantial report by the Committee on Constitutional Affairs<sup>12</sup>, which first explained in depth the constitutional history of European integration and then listed the fundamental points of the text that would be subject to ratification by the States:

- endowing the Union with a Constitution which, far from creating a 'superstate', represents for the Member States and for citizens *formal safeguards against Community action going too far*<sup>13</sup>;
- creating a single European entity, the European Union, as compared with the current three pillars, and defining the principles and values on which it is founded, as well as its objectives;
- placing citizens at the heart of the Union, by incorporating the Charter of Fundamental Rights into the Constitution;
- clearly defining the Union's competences;
- laying down a revamped, democratic and transparent institutional framework, whose main innovations concern the role of Parliament, which is enhanced, and the Council. With regard to Parliament:

*'its role as a colegislator is fully recognised, thanks to the general application of the existing codecision procedure, which is elevated to the rank of the ordinary legislative procedure, but also thanks to an increase in Parliament's participation in special legislative procedures. In future the public will have a clear perception that European law is adopted by the chamber which represents them and by the chamber which represents States; in parallel, in the field of international agreements its approval will also be required as a general rule;*<sup>14</sup>

With regard to the Council, the most politically sensitive question was that of voting and on this issue the report's assessment is articulate:

*'It was indeed the double majority system proposed by the Convention that was finally adopted instead of weighting of votes. It may reasonably be considered that, although the thresholds have been set higher than proposed by the Convention (the Constitution now requiring 55% of States rather than 50%, and 65% of the population rather than 60%), the new system will make decision-making easier, as, in many combinations, the weighting system required far higher population thresholds for the adoption of a decision, and because, in many cases, the fact that at least four Member States will be required to form a blocking minority will have the effect of considerably reducing the 65% population threshold.'*<sup>15</sup>

With regard to the Commission, the report welcomes both the election of the President of the Commission by Parliament and its enhanced role in directing the work of the Commission and its structures, but the most politically important question is the composition of the executive:

*'... The solution ultimately opted for, with its implementation deferred, deviated from the Convention's proposal, but it corresponds better with political reality and may be considered positive: it makes it possible*

<sup>12</sup> *Report on the Treaty establishing a Constitution for Europe* (Rapporteurs: R. Corbett and Í. Méndez de Vigo), A6-0070/2004.

<sup>13</sup> *Ibid.*, p. 16.

<sup>14</sup> *Ibid.*, p. 23.

<sup>15</sup> *Ibid.*, p. 24.

*to respect the new Member States' aspiration to be represented in the Commission during the first years after their accession, although in future, after a reasonable lapse of time (2014), the vital reduction in the number of Commissioners (to 2/3 of the number of Member States, which - even in a 27-member EU - would already mean that there were fewer Commissioners than at present). Based on a rotation system which preserves equality between Member States, this solution will thus make it possible to contain the size of the Commission within acceptable limits. The frequency of the period when any given Member State will not nominate a Commissioner will be once in every three terms.<sup>16</sup>*

Endorsing the Constitutional Treaty, Parliament announced its intention of using the right of initiative conferred upon it by the Treaty and called on both the institutions and the Member States to inform the public about the Treaty<sup>17</sup>.

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<sup>16</sup> *Ibid.*, pp. 26-27.

<sup>17</sup> European Parliament resolution of 12 January 2005 on the *Treaty establishing a Constitution for Europe*.



## LIST OF EUROPEAN PARLIAMENT DELEGATES TO THE CONVENTION

### Members

BONDE Jens-Peter	DK, Independence/Democracy Group (IND/DEM)
BROK Elmar	DE, Group of the European People's Party (Christian Democrats) and European Democrats (EPP-ED)
DUFF Andrew	UK, Group of the Alliance of Liberals and Democrats for Europe (ALDE)
DUHAMEL Olivier	FR, Socialist Group in the European Parliament (PSE)
HÄNSCH Klaus	DE, Socialist Group in the European Parliament (PSE)
KAUFMANN Sylvia-Yvonne	DE, Confederal Group of the European United Left - Nordic Green Left (GUE/NGL)
KIRKHOPE Timothy	UK, Group of the European People's Party (Christian Democrats) and European Democrats (EPP-ED)
LAMASSOURE Alain	FR, Group of the European People's Party (Christian Democrats) and European Democrats (EPP-ED)
MAIJ-WEGGEN Hanja	NL, Group of the European People's Party (Christian Democrats) and European Democrats (EPP-ED)
MARINHO Luis	P, Socialist Group in the European Parliament (PSE)
McAVAN Linda	UK, Socialist Group in the European Parliament (PSE)
MENDEZ DE VIGO Y MONTOJO Iñigo	ES, Group of the European People's Party (Christian Democrats) and European Democrats (EPP-ED)
MUSCARDINI Cristiana	IT, Union for Europe of the Nations Group (UEN)
TAJANI Antonio	IT, Group of the European People's Party (Christian Democrats) and European Democrats (EPP-ED)
VAN LANCKER Anne	BE, Socialist Group in the European Parliament (PSE)
VOGGENHUBER Johannes	ÖS, Group of the Greens/European Free Alliance (Greens/EFA)

### Alternates

Abitbol William	F, Union for Europe of the Nations Group (UEN)
Almeida Garrett Teresa	PO, Group of the European People's Party (Christian Democrats) and European Democrats (EPP-ED)
Berès Pervenche	FR, Socialist Group in the European Parliament (PSE)
Berger Maria Margarethe	ÖS, Socialist Group in the European Parliament (PSE)
Carnero Gonzales Carlos	ES, Confederal Group of the European United Left - Nordic Green Left (GUE/NGL)
Cushnahan John	IRL, Group of the European People's Party (Christian Democrats) and European Democrats (EPP-ED)
Dybkjaer Lone	DK, Group of the Alliance of Liberals and Democrats for Europe (ALDE)
Kauppi Pila-Noora	FI, Group of the European People's Party (Christian Democrats) and European Democrats (EPP-ED)
MacCormick Neil	UK, Group of the Greens/European Free Alliance (Greens/EFA)
Paciotti Elena	IT, Socialist Group in the European Parliament (PSE)
Queirò Luis	PO, Group of the European People's Party (Christian Democrats) and European Democrats (EPP-ED)
Rack Reinhard	ÖS, Group of the European People's Party (Christian Democrats) and European Democrats (EPP-ED)
Seppänen Esko Olavi	FI, Confederal Group of the European United Left - Nordic Green Left (GUE/NGL)
Stockton (The Earl of)	UK, Group of the European People's Party (Christian Democrats) and European Democrats (EPP-ED)
Thorning-Schmidt Helle	DK, Socialist Group in the European Parliament (PSE)
Wuermeling Joachim	D, Group of the European People's Party (Christian Democrats) and European Democrats (EPP-ED)





**IMAGES FROM THE CONVENTION**  
**(accompanied by quotations from members of the EP's delegation)**



28 February 2002

Mr José Maria Aznar Lopez, President-in-Office of the Council and Spanish Prime Minister,  
opens the constituent meeting of the Convention on the Future of Europe

left, Pat Cox, President of the European Parliament,  
right, Romano Prodi, President of the European Commission



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28 February 2002

**Inaugural session of the Convention on the Future of Europe**

First row, from left to right: Giuliano Amato, Vice-President of the Convention; Valéry Giscard d'Estaing, President of the Convention; and Jean-Luc Dehaene, Vice-President of the Convention

Second row, from left to right: Josep Borrell Fontelles, Representative of the Spanish parliament; Elmar Brok as member of the delegation of the EP

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28 February 2002

**Inaugural session of the Convention on the Future of Europe**



**BONDE Jens-Peter, DK, IND/DEM**

*'We can slim down the EU and form an international agreement between sovereign nation states allowing for legislation only on cross-border issues of common concern. This is the Euro-realist model' (from The Convention about the Future of Europe, Conv. 277/02 p. 3).*



**BROK Elmar, D, PPE**

*'(...)The citizens want to know: Who does what in Europe? The Constitution of the Europe must, in its Part One, give a very clear answer to this question. The results produced by the Convention in this respect will decide whether the European Union will not only function, but also gain the respect and the confidence of the Member States and the citizens on which it is based' (from The competences of the Union, Conv 541/03, p.2).*



**DUFF Andrew, UK, ALDE**

*'Enhanced cooperation is not about variable speeds but variable goals. It is, therefore, as the Convention has agreed, perfect for the security and defence dimension where Member States do not agree on a single political strategy. It is a much less satisfactory way to manage disagreements over the core competences of the Union to which all member states have in any case to subscribe, and where the integrity of the acquis is at stake' (from Do we really need enhanced cooperation\*, Conv 759/03, p. 3)*

\* Taking issue with the Praesidium document Conv 723/03 on enhanced cooperation.



**DUHAMEL Olivier, F, PSE**

*'In our opinion, the status of general interest services in the European corpus of law cannot be reduced in effect to secondary legislation without confirming its residual nature compared to primary competition law. We should therefore (...) develop an autonomous body of law on general interest services within the provision of the Treaties which currently constrain them and constitute fundamental legal references. If we wish to assert the role and durability of the public services in the European social model, it would appear to be essential to enshrine them in the law in the basic texts' (from 'For a European Law on Public Services', p.3).*



**HÄNSCH Klaus, D, PSE**

*'Hitherto the intergovernmental conferences were the yardstick of progress in uniting Europe. From today, intergovernmental conferences will be measured against this convention... We have drafted a Constitution for 25 States, and more, whose centuries-long aim had been mutual pillage, murder and destruction ..., that wanted to retain their own history, traditions, languages and identity, but nevertheless have pledged in future to shape a common destiny. There has been no other example of this in history.' Speech by Klaus Hänsch at the last sitting of the European Convention, 10 July 2003.*

**KAUFMANN Sylvia-Yvonne, D, EUL-NGL**

*"(...) it is essential to give binding legal force to the EU Charter of Fundamental Rights which contains essential fundamental social rights, by incorporating it in the constitutional part of the Constitutional Treaty. On the one hand, this would give all citizens legally binding fundamental social rights, and the possibility of bringing any infringements of those rights before the European Court of Justice. Secondly, at the same time all the institutions of the European Union would be obliged to guarantee and uphold these fundamental rights in all their policy and political decisions and in all areas in which they are competent to act' ( from 'A Constitutional Treaty for a Social Europe', Conv. 190/1/02\*, p. 4).*

\* This document is not included among the archives currently available at CARDOC; this extract has been taken from the European Convention website: <http://european-convention.eu.int>.

**IRKHOPE Timothy, UK, PPE**

*'The outcome of the European Convention should be a new Treaty simplifying the existing Treaties rather than a European Constitution. A Constitution would represent a step towards a Superstate. A simplifying Treaty would make the European Union more understandable and hence more accountable' ( from A simplifying Treaty for a European Community: a conservative alternative to the Presidium draft, Conv 807/03, p.3)*

**LAMASSOURE Alain, F, PPE**

*'(...) The enlarged Europe must be simpler, more effective and more democratic than today's smaller Europe. The overall design should most probably be based on the federal model, but should take account of the European Union's special characteristics (...). It will be impossible to obtain a 'yes' vote if the man in the street still thinks that the Union does not have its own clearly identified leaders and if those leaders, or at least some of them, are beyond the reach of his ballot paper' (from 'Institutional Balance', Conv 507/03, pp. 2-3)*





**MAIJ-WEGGEN Hanja R.H., NL, PPE**

*'It is clear that animal protection should be given a higher priority in Community legislation and policy making. Therefore, apart from the reference to animal protection in Article 3 and adding animal protection to the list of shared competences in Articles 13, animal protection should be included in the horizontal policy principles of Part III-Article 2 as well as clearly defined in each relevant policy area such agriculture, environment, consumer protection and research' (from Animal protection in part III of the European Constitution, Conv 842/03, p. 3).*



**MARINHO Luis, P, PSE**

*'Strengthening, economic, social and territorial cohesion is a major challenge for the European Union in view of persisting regional disparities. The European Union must concentrate its efforts on the regions lagging furthest behind. That is why asserting the unique nature of the European Union's most remote regions is an important element which must be included in the next constitutional treaty' (from 'The Most Remote Regions: a unique and original aspect of the European area\*', Conv 527/02, p.3)*

\* In collaboration with P. Berès and Carlo Carnero González



**McAVAN Linda, UK, PSE**

*The new constitution will act as the agreed rulebook for the 'resident's association' of our continent, who have come together after centuries of bloody warfare and division to find a better way of doing business together. It merits our support. (from The proposed EU constitution in <http://www.lindamcavanmep.org.uk>)*



**MENDEZ DE VIGO Y MONTOJO Iñigo, ES, PPE**

*Mr President, when Mr Giscard d'Estaing was asked last week who had won, he said that in terms of this Constitution the European Parliament had won. I believe the citizen has won. I believe this is a triumph for the European citizens, who are going to have a Union capable of producing better results, a more transparent Union and, above all, a more efficient Union. And allow me to say that, as Chairman, I have been very honoured to carry out this task. (Speech during the session of EP on 18 June 2003)*

Mr Mendez was a member of the Praesidium and chairman of the Working Group on Subsidiarity at the Convention.



**MUSCARDINI Cristiana, I, UEN**

*'Respecting the historical and cultural traditions of the States and peoples of which it is made up, the Union underlines its reference values which are identified in Greco-Roman philosophy, the Judeo-Christian tradition along with lay and liberal thought' (from Proposition for the Preamble, Conv 660/03 p. 2).*

**TAJANI Antonio, I, PPE**

*'(..) Tomorrow's Europe must pay particular attention to independent sporting associations, the unique characteristics of every branch of sport and the traditional sporting culture of Europe's nations and regions. In a word, we must recognise the special nature of sport in Community law. We must also recognise that, in line with the guiding principles of the new European Union, subsidiarity and proportionality, it is essential for sport to continue to be a matter for the individual Member States (from 'Protection of the special nature of sport under Community law', Conv 337/02, p. 3).*

**VAN LANCKER Anne, B, PSE**

*'A true social Europe presupposes that social objectives are not made subordinate to economic objectives. That is the reason why it must be made clearer in the basic articles of the Constitutional Treaty that the common market and Economic and Monetary Union (EMU) must serve social objectives such as full employment' a high level of social protection, equality and the quality of life.' (from Socio-Economic Governance in the Constitutional Treaty, Conv. 86/02, p. 3).*

**VOGGENHUBER Johannes, A, Verts/ALE**

*'The political unity of Europe would remain incomplete and exposed to threat if it were not to become a sphere of social security, justice and solidarity. This sphere is the reply, which the citizens of Europe expect, to the risks posed by globalisation. That political activity be socially responsible is, after democracy, the second fundamental element of European identity. In its social and employment policy, as well as in its fight against poverty and social exclusion, the Union must therefore assume additional tasks within shared responsibility and develop new instruments.' (from The Unity of Europe, Conv 499/03, p. 9)*





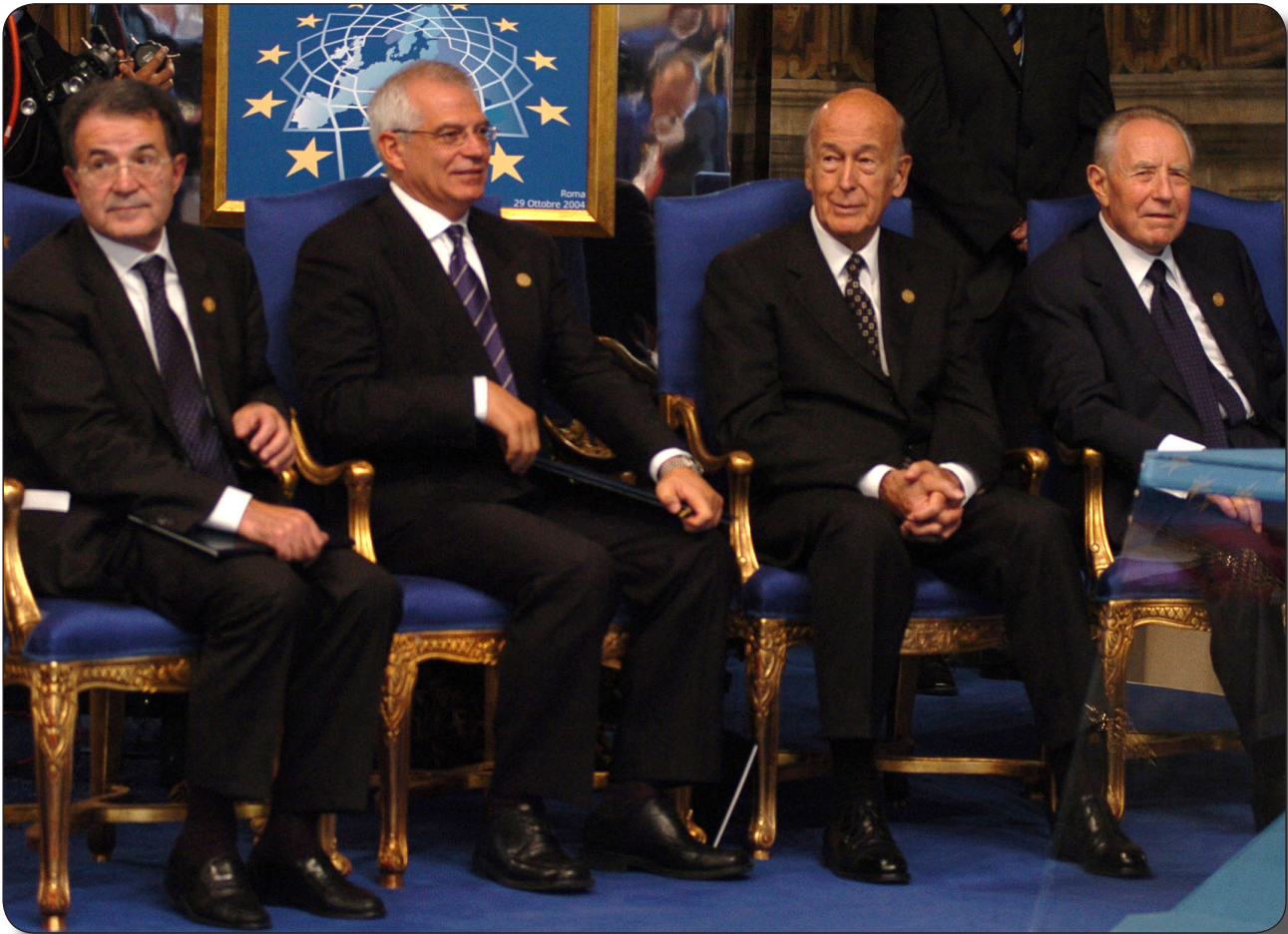
18 July 2003

Handing over of the report of the presidency of the Convention on the Future of Europe  
to the President of the European Council

From left to right:

Giuliano Amato, Vice-President of the Convention on the Future of Europe;  
Valéry Giscard d'Estaing, President of the Convention on the Future of Europe;  
Silvio Berlusconi, Italian Prime Minister and President-in-Office of the Council;  
Gianfranco Fini, Italian Deputy Prime Minister and member of the Convention on the Future of Europe;  
and Jean-Luc Dehaene, Vice-President of the Convention on the Future of Europe





29 October 2004

**On occasion of the signing of the European Constitution**

From left to right:

Romano Prodi, President of the European Commission;

Josep Borrell Fontelles, President of the EP;

Valéry Giscard d'Estaing, President of the Convention on the Future of Europe;

and Carlo Azeglio Ciampi, President of the Italian Republic

**Source of the photos:**

1, 4 -19            [http://www.europarl.europa.eu/news/expert/freetext\\_page\\_press/20050818FTX00221-1202/default\\_en.htm](http://www.europarl.europa.eu/news/expert/freetext_page_press/20050818FTX00221-1202/default_en.htm)  
2, 3, 20, 21      <http://ec.europa.eu/avservices/>

# **PART 2**

## **DOCUMENTS**



**A1**

**European Parliament resolution  
of 31.5.2001  
on the Treaty of Nice  
and the future of the European Union**





Thursday 31 May 2001

#### 4. The Treaty of Nice and the future of the European Union

A5-0168/2001

##### European Parliament resolution on the Treaty of Nice and the future of the European Union (2001/2022(INI))

*The European Parliament,*

- having regard to the Treaty signed in Nice on 26 February 2001,
  - having regard to its resolutions of 19 November 1997 on the Amsterdam Treaty <sup>(1)</sup>, 18 November 1999 on the preparation of the reform of the Treaties and the next IGC <sup>(2)</sup>, 3 February 2000 on the convening of the Intergovernmental Conference <sup>(3)</sup>, 13 April 2000 containing its proposals for the Intergovernmental Conference <sup>(4)</sup>, and 25 October 2000 on the constitutionalisation of the Treaties <sup>(5)</sup> and on closer cooperation <sup>(6)</sup>,
  - having regard to the conclusions of the Tampere, Helsinki, Feira, and Nice European Councils,
  - having regard to Rule 163 of its Rules of Procedure,
  - having regard to the report of the Committee on Constitutional Affairs and the opinions of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, the Committee on Budgets, the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, the Committee on Industry, External Trade, Research and Energy, the Committee on Employment and Social Affairs, the Committee on Agriculture and Rural Development, the Committee on Fisheries, the Committee on Culture, Youth, Education, the Media and Sport, the Committee on Women's Rights and Equal Opportunities and the Committee on Petitions (A5-0168/2001),
- A. whereas the Intergovernmental Conference that concluded in Nice on 11 December 2000 had been given the task of carrying out the necessary reforms to the Treaties and of satisfactorily dealing with the matters which had been left in abeyance at Amsterdam, in order to prepare the Union for enlargement,
- B. having regard to Parliament's repeated calls for a reform of the Treaties as a whole in sufficient depth to satisfy the imperatives of democratising the institutions and improving their effectiveness in anticipation of enlargement,
- C. whereas because the end result of enlargement will make for a more diverse spectrum of national interests, effective institutions and decision-making procedures will need to be in place in order to avert the risk of paralysis in European integration,
- D. whereas responsibility for giving assent to accession treaties lies with Parliament,
- E. whereas once monetary union has finally been attained, a counterweight in the form of political union will be indispensable,
- F. whereas the Treaty of Nice failed to complete the process of political union set in motion by the Maastricht Treaty,
- G. having regard to Declaration 23 annexed to the Treaty on the future of the Union, which stipulates that a fresh reform will be undertaken in 2004; whereas the Declaration opens the way to a new method for reforming the Treaties,

<sup>(1)</sup> OJ C 371, 8.12.1997, p. 99.

<sup>(2)</sup> OJ C 189, 7.7.2000, p. 222.

<sup>(3)</sup> OJ C 309, 27.10.2000, p. 85.

<sup>(4)</sup> OJ C 40, 7.2.2001, p. 409.

<sup>(5)</sup> 'Texts Adopted', Item 7.

<sup>(6)</sup> 'Texts Adopted', Item 8.

Thursday 31 May 2001

- H. having regard to the speeches on the reshaping of Europe which preceded the Intergovernmental Conference and which prompted the discussions on the future of the Union,
- I. having regard to the hearing with the national parliaments of the Member States and the candidate countries, held in Brussels on 20 March 2001,
1. Notes that the Treaty of Nice removes the last remaining formal obstacle to enlargement and reaffirms the strategic importance of EU enlargement as a step towards the unification of Europe and as a factor of peace and progress; realises that the Treaty has made improvements in certain areas but considers that a Union of 27 or more Member States requires more thoroughgoing reforms in order to guarantee democracy, effectiveness, transparency, clarity and governability;
  2. Regrets profoundly that the Treaty of Nice has provided a half-hearted and in some cases inadequate response to the matters encompassed within the already modest Intergovernmental Conference agenda; hopes that the deficits and shortcomings with regard to the establishment of an effective and democratic European Union can be dealt with in the course of the post-Nice process;
  3. Emphasises that it has consistently set two criteria as yardsticks for the success of the Intergovernmental Conference on institutional reform: the implementation of measures which fully guarantee the ability of an enlarged Union to take action, and a significant reduction in the democratic deficit; neither of these objectives was achieved in Nice;
  4. Draws attention, amongst the most unsatisfactory aspects of the Intergovernmental Conference, to the fact that Union decision-making has become more confused and less transparent, that the principle of extending codecision to cover all the matters in which legislation is adopted by a qualified majority has not been followed and that the Charter of Fundamental Rights of the European Union has not been incorporated into the Treaties;
  5. Considers that the preparations for and negotiations on the Treaty of Nice demonstrated, as in the case of the Amsterdam Treaty, that the purely intergovernmental method has outlived its usefulness for the purpose of revising the Treaties, as the governments eventually implicitly recognised when they adopted Declaration 23 (annexed to the Final Act of the Treaty);
  6. Insists that the holding of a new IGC should be based on a radically different process which is transparent and open to participation by the European Parliament, the national parliaments and the Commission and which involves the citizens of the Member States and the candidate countries, as provided for in Declaration 23, and that the new IGC should initiate a constitutional development process;
  7. Recognises that the Treaty of Nice marks the end of a progression that began in Maastricht and continued in Amsterdam and demands the opening of a constitutional development process culminating in the adoption of a European Union Constitution;

### ***Fundamental rights***

8. Notes the fact that the Charter of Fundamental Rights of the European Union, drawn up by the Convention comprising representatives of the governments, the national parliaments, the European Parliament, and the Commission was solemnly proclaimed in Nice; renews<sup>(1)</sup> its commitment to upholding the rights and freedoms recognised in the Charter; notes with satisfaction that the Commission and the Court of Justice of the European Communities have already declared that they will do likewise, and calls on the other Union institutions and bodies to give an undertaking to the same effect;
9. Renews its call for the Charter to be incorporated in the Treaties in a legally binding manner so that the rights which it grants to each and every individual may be fully guaranteed, and calls on the Union institutions to respect as of now in their activities the rights and freedoms acknowledged in the Charter;
10. Applauds the prevention and 'alarm' system now incorporated in Article 7 of the EU Treaty, which cements the Union's commitment to the values of democracy, freedom, human rights and the rule of law; welcomes the fact that, over and above the right of initiative, Parliament has to give its assent;

<sup>(1)</sup> Decision of 14 November 2000 approving the draft Charter of Fundamental Rights ('Texts Adopted', Item 3).

Thursday 31 May 2001

***Institutional reform***

11. Notes that the new qualified-majority voting system in the Council stems from a power-sharing agreement among the fifteen Member States which formally opens the door to enlargement but which, as regards the efficiency and the transparency of the decision-making process, is no improvement on the present system, a fact which gives cause for serious anxieties as to how it might operate in a Union of 27 Member States;
12. Regrets that no step has been taken to make Council proceedings more transparent, in particular when the Council is acting as legislator, and calls on the Council to meet in public when adopting legislation;
13. Considers the agreement on the composition of the Commission to be acceptable because it will enable the Commission to be constituted according to the needs of the enlargement process;
14. Welcomes both the introduction of qualified-majority voting for the designation and appointment of members of the Commission and the fact that the powers of the Commission President are strengthened, thereby emphasising the supranational and independent nature of the Commission;
15. Deplores the fact that the proposed make-up of the European Parliament does not follow any clear logic; expresses its surprise at the decision to exceed the limit of 700 Members laid down at Amsterdam; warns of the risks that might ensue if its membership were to rise too high during the transitional period, and calls on the Council to pay careful heed to those risks when it lays down the accession timetable;
16. Calls, when the respective accession treaties are negotiated, for the number of representatives in the European Parliament specified for Hungary and the Czech Republic to be corrected to match the 22 seats allocated to Belgium and Portugal (countries with a similar population) and for this already to be taken as an opportunity to make the decision-making procedures more transparent, more effective and more democratic;
17. Regrets the fact that the pillar structure of the treaty has been retained and that, above all in the sphere of the CFSP, unnecessary duplicate structures have been established; calls for the tasks of the Commissioner with responsibility for external relations and the High Representative for the CFSP to be placed in the hands of a Commission Vice-President with specific obligations vis-à-vis the Council;
18. Notes the transitional system provided for in Declaration 20 on the enlargement of the European Union (annexed to the Final Act of the Treaty) to enable the institutions gradually to be adapted while the accessions are taking place; declares its intention of keeping those adjustments under careful review and taking them into account when it delivers its binding decision on the accession treaties;
19. Welcomes the fact that, under Article 230 of the EC Treaty, it is entitled to bring actions on its own initiative for review of the legality of acts adopted by the other institutions;
20. Expresses its satisfaction at the substantial reforms to the structure, operation and powers of the Court of Justice and the Court of First Instance which are intended to expedite the administration of justice in the Union and preserve the unity of Community law, thus consolidating the Union's judicial role;
21. Deplores the fact that the members of the courts will continue to be appointed by common accord of the Member States and that their case therefore constitutes the only exception to the general rule established by the Treaty of Nice whereby appointments are made by decision of the Council on the basis of a qualified-majority vote;
22. Considers that the provisions relating to the Court of Auditors will enable it to perform its role more easily and calls on its President swiftly to set up a contact committee in collaboration with the chairmen of the national audit institutions (as provided for in Declaration 18 annexed to the Final Act of the Treaty) in order to improve cooperation between the Court and those bodies;
23. Reiterates its view that a European public prosecutor should be appointed with the task of combating fraud against the Union's financial interests;

Thursday 31 May 2001

24. Applauds the provisions relating to the Economic and Social Committee, which make it more representative of the various sectors of society, and to the Committee of the Regions, the democratic legitimacy of whose members is strengthened;

25. Welcomes the fact that the Treaty incorporates a legal basis that will enable a statute for European political parties and rules governing their funding to be adopted under the co-decision procedure;

26. Recognises that progress has been made in the change from unanimity to the use of decision making by qualified-majority vote to adopt the statute for MEPs, but deplores the fact that the latter rule has not been extended to cover tax matters;

### ***Decision making***

27. Notes the change whereby decisions under 35 legal bases are to be taken by qualified-majority vote; expresses its dissatisfaction at the fact that many vital issues will remain subject to the unanimity rule, which will impair the consolidation of the enlarged Union;

28. Draws attention, in this connection, to the pressing need for it to be more closely involved — as a factor for democratic participation and scrutiny — in the common trade and external economic relations policy, as regards both the framing of policy and the negotiation and conclusion of agreements; takes the view that its involvement is essential now that the national parliaments no longer have any powers in the sphere of EU trade policy;

29. Reiterates its view that wider use of decision making by qualified-majority vote, going hand in hand with codecision, is essential in order to achieve a genuine interinstitutional balance and is the key to the success of enlargement, and considers, therefore, that the changes brought about by the Treaty of Nice have fallen some way short of the desirable outcome; states once again that qualified-majority voting must, as regards legislation, go hand in hand with codecision involving the European Parliament as a fundamental guarantee of the democratic nature of the legislative process;

30. Deplores the fact that the Intergovernmental Conference did not extend the co-decision procedure to cover those legal bases already providing (before and since Nice) for legislation to be adopted by qualified-majority vote; believes that the new Treaty has given insufficient recognition to the co-decision procedure, as set out in Article 251 of the EC Treaty, as the general rule governing Union decision-making;

31. Expresses its disquiet at the complications that the Treaty of Nice brings to many legal bases under which decisions are to be taken by qualified-majority vote and calls on the Council, before the accessions are completed, to pursue the opportunities for a change to qualified-majority voting and codecision under some of the amended articles, especially in Title IV of the EC Treaty;

### ***Enhanced cooperation***

32. Supports the changes relating to enhanced cooperation, made at its request and at that of the Commission, especially the abolition of the veto on grounds of national interest, and welcomes the fact that enhanced cooperation is to be regarded as a means to be employed as a last resort to advance European integration and the communitarisation of the areas concerned;

33. Considers the role assigned to it to be insufficient and undemocratic where authorisation of enhanced cooperation is concerned, especially in the vital areas in the first pillar where unanimity is retained in the Council;

34. Regrets that the intergovernmental method typically employed under the second pillar has also been laid down for enhanced foreign and security policy cooperation and that, consequently, a Member State may use its veto, its own role is reduced to a right to be informed and the Commission can do no more than express an opinion;

35. Deplores the fact that common strategies and defence policy are excluded from the scope of enhanced cooperation;

Thursday 31 May 2001

***Declaration on the future of Europe***

36. Endorses Declaration 23 on the future of the Union because it constitutes an innovation in the procedure for a reform of the Treaties based on efficient shared preparations and preceded by wide-ranging and thorough public debate;

37. Believes that the debate should take place at both European and national level; considers that the national governments and parliaments will be responsible for carrying on the debate and assessing the outcome, in particular at national level; recommends that Member States and candidate countries alike should each set up a committee consisting of government and parliamentary representatives and Members of the European Parliament to set the direction of and foster the public debate;

38. Takes the view that the debate must be open to society as a whole and must be accompanied by an appropriate information campaign in order to explain to Europeans what is at stake and to encourage them to participate actively in the debate; hopes that the debate will produce practical results, that all contributions will be taken into account in the preparations for the reform of the Treaties and that the debate will continue until the Intergovernmental Conference has ended, which means that the necessary budgetary funding will have to be made available in the 2002 and 2003 financial years;

39. Is of the opinion that the ultimate outcome of the next reform of the Treaties will depend crucially on the preparations; for this reason, recommends the establishment of a Convention (to start work at the beginning of 2002), with a similar remit and configuration to the Convention which drew up the Charter of Fundamental Rights, comprising members of the national parliaments, the European Parliament, the Commission and the governments, the task of which would be to submit to the IGC a constitutional proposal based on the outcome of an extensive public debate and intended to serve as a basis for the IGC's work;

40. Takes the view that the accession countries should be involved in the Convention as observers until the accession treaties have been signed and as full members thereafter;

41. Takes note of the fact that the four subjects specified in Declaration 23 are not exclusive and maintains that a debate on the future of Europe cannot be limited, for which reason it will submit practical proposals in preparation for the Laeken European Council; will take due account of the issues which have already been raised by its specialist committees in the opinions which they drew up for the purposes of this resolution and which are appended to the report by the Committee on Constitutional Affairs (A5-0168/2001);

42. Believes that the IGC should be convened to meet in the second half of 2003 so as to enable the new treaty to be adopted in December of that year, thereby ensuring that, in 2004, the European elections can act as a democratic fillip to European integration and that it, together with the Commission, will be able to play its part in that process under the best possible conditions;

43. Believes that the future operation of the Union will depend on the outcome of the next reform and will take that factor into account when it is called upon to give its assent to the accession treaties;

44. Calls on the national parliaments, when expressing their views on the Treaty of Nice, to manifest their firm commitment to the convening of a Convention;

45. States that the Treaty of Nice will be seen in the light of the results of the Laeken European Council, which could open a possibility for overcoming its weaknesses; decides, furthermore, to take into account the results of Laeken when it is asked for its opinion on the opening of the next IGC;

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46. Instructs its President to forward this resolution to the Council, the Commission, and the governments and parliaments of the Member States and candidate countries.



**A2**

**European Parliament resolution  
of 13.6.2001  
on the preparation of  
the European Council on 15/16 June 2001 in Göteborg**





Wednesday 13 June 2001

#### 4. Preparation of the European Council (Göteborg, 15/16 June 2001)

**B5-0405, 0406, 0408 and 0409/2001**

##### **European Parliament resolution on the preparation of the European Council on 15/16 June 2001 in Göteborg**

*The European Parliament,*

- having regard to the Council and Commission statements on the preparation of the European Council meeting on 15/16 June 2001 in Göteborg,
- having regard to the conclusions of the European Council meetings in Cardiff (June 1998), Helsinki (December 1999), Lisbon (March 2000) and Stockholm (March 2001),
- having regard to the Commission communication 'Ten years after Rio: preparing for the World Summit on sustainable development in 2002' and to the Commission consultation paper on sustainable development,
- having regard to its resolution of 31 May 2001 on Environmental policy and sustainable development: preparing for the Göteborg European Council<sup>(1)</sup>, to its position of 31 May 2001 on The Community Environment Action programme 2001-2010<sup>(2)</sup>, and to its resolution of 31 May 2001 on the communication from the Commission to the Council and European Parliament on bringing our needs and responsibilities together — integrating environmental issues with economic policy<sup>(3)</sup>,
- having regard to its resolution of 31 May 2001 on the Treaty of Nice and the future of the European Union<sup>(4)</sup>,
- having regard to its resolution of 17 May 2001 on the situation in the Middle East<sup>(5)</sup>,
- having regard to its resolution of 15 March 2001 on conflict prevention and civil crisis management<sup>(6)</sup>,
- having regard to its resolution of 17 May 2001 on the Transatlantic Dialogue<sup>(7)</sup>,

##### **Enlargement**

1. Recalls the fact that the reunification of Europe in an area of peace, security, prosperity and stability remains the historic task of the European Union and the definitive challenge in Europe;
2. Warns about the lack of momentum of the enlargement process due to the fact that in the Member States the emphasis now lies on the consequences of enlargement for existing EU policies; acknowledges that the principles of the current cohesion policy need to be maintained; invites EU governments to prepare society properly for enlargement;
3. Calls on the European Council to ensure that enlargement negotiations are pursued at an accelerated pace so that candidate countries with whom negotiations have been concluded may have the prospect of participating in the 2004 European elections;

<sup>(1)</sup> 'Texts Adopted', Item 11.

<sup>(2)</sup> 'Texts Adopted', Item 5.

<sup>(3)</sup> 'Texts Adopted', Item 10.

<sup>(4)</sup> 'Texts Adopted', Item 4.

<sup>(5)</sup> 'Texts Adopted', Item 6.

<sup>(6)</sup> 'Texts Adopted', Item 4.

<sup>(7)</sup> 'Texts Adopted', Item 7.

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4. Warns of the impact on public opinion in the candidate countries of any delay in accession, and notes with great concern the falling support for accession in Central and Eastern Europe, requiring more efforts by the governments concerned to convince their citizens of the advantages and benefits of joining the EU;
5. Welcomes the recent agreements reached on a common EU position for negotiations with candidate countries;
6. Calls on the European Council to ensure that, in future negotiations on enlargement, there is no 'bundling' between issues such as freedom of movement and readjustment of the financial perspectives and that each candidate country's application is treated on its merits; agrees that, in a limited number of areas, transitional periods could be provided for but on condition that they be made as short as possible;
7. Regrets moves towards long transition periods for the free movement of labour and calls on as many Member States as possible to opt for the shortest possible period in this respect;

***Future of the Union***

8. Believes that reform of the Treaties should be preceded by a large-scale and detailed public debate and that this debate should take place at European and national level; calls for the establishment of national committees or other types of bodies chosen by the national authorities, to be responsible for organising this debate;
9. Believes that the final outcome of the forthcoming reform will depend essentially on how it is prepared, and therefore calls for a Convention to be established with an organisational set-up and mandate similar to those of the Convention which drafted the Charter of Fundamental Rights and:
  - made up of members of the national parliaments, of the European Parliament, of the Commission and of the governments, as well as of observers from the applicant countries,
  - responsible for drawing up constitutional proposals to serve as a basis for the discussions of the IGC,
  - and to start work at the beginning of 2002;
10. Believes that the IGC should be convened for the second half of 2003 so that it can finalise its work by the end of that year;
11. Notes the result of the Irish referendum which rejects the Treaty of Nice; insists that the European Council accept full responsibility not only for the drafting of the treaty but also for its ratification; reaffirms its own insistence on a radical reform of the method for future treaty amendment, involving a transparent process of constitutional development with broad participation by citizens;

***Sustainable development***

12. Welcomes the special prominence given by the Swedish Presidency to the theme of sustainable development and calls on the Göteborg European Council to give significant new impetus to a European policy aiming at a long-term development strategy, including economic, social, and environmental aspects; considers it essential that the European Council should develop a strong political leadership in this field; welcomes the Commission's consultation paper for the preparation of a European Union strategy for sustainable development, but regrets that it was not forwarded to the European Parliament in time for it to give its opinion on the specific proposals contained therein;
13. Supports the strategy outlined in the consultation paper, in particular the cross-industry proposal to ensure greater coherence and cost-effectiveness for political decisions on the one hand, and the setting of priority targets and EU-level measures to meet the greatest sustainable development challenges not covered by the Lisbon strategy, namely climate change, threats to public health, depletion of natural resources and soil use on the other;

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14. Believes that in order to keep its fundamental leader-role on the international scene the EU must first and foremost define and adopt concrete and realistic internal objectives to address pressing unsustainable trends;
15. Calls on the Commission to add the topic 'Sustainable Food' to the six fundamental topics of the European strategy for sustainable development and to present concrete proposals concerning urban and territorial development;
16. Is of the opinion that broad economic policy guidelines can easily incorporate the objectives of environmental sustainability and stresses that there is no contradiction but a genuine complementarity between the aim of creating jobs, economic development and sustainable development strategies;
17. Underlines that social inclusion is a key dimension of any sustainable development strategy; access to essential services of general interest is a key element in such development; promoting quality of life including the development of more and better jobs should be part of this strategy, and the social agenda, which recognises the importance of a long-term viable pensions system, should therefore be an important element in this context;
18. Stresses that there is a link between sustainability and solidarity, between regions and populations; therefore asks the Commission to draw up a declaration on 'economic and social cohesion in the context of the enlargement of the European Union', based on the need to place the debate on the Structural and Cohesion Funds in a positive perspective and in a spirit of solidarity in line with the Treaties and historical experience;
19. Considers that global responsibility must be a key feature of the strategy and there should therefore be a significant EU contribution to the Rio+10 Summit to be held in Johannesburg in 2002;
20. Notes that the Cardiff process has been instrumental in supporting new environmental integration in the Commission, the Member States and the Council;
21. Firmly believes that the Cardiff process is the key to best achieving the provisions of Article 6 of the EC Treaty and calls, therefore, on the Heads of State and Government in Göteborg to reaffirm their commitment to the Cardiff process;
22. Demands the adoption of a clear and precise action plan in Göteborg for the effective implementation of an EU sustainable development strategy together with deadlines for action and a commitment to review the situation at a subsequent summit;
23. Calls for the introduction of a mandatory environmental impact assessment for all decisions and legislative proposals by the European Commission and publication of the results; looks forward to the adoption and implementation of EU environmental liability legislation, but notes that prevention of environmental damage, for example through environmental audit mechanisms, remains the most sustainable way of protecting the environment;
24. Welcomes the Commission proposal to modify support from the CAP in order to reward high-quality products and practices rather than quantity and to phase out tobacco subsidies while putting in place some measures to develop alternative sources of income and economic activity for tobacco workers and growers;
25. Draws attention to the fact that an EU sustainability strategy can only be effective if it is given the necessary budgetary resources;
26. Stresses the importance of creating an independent 'Sustainability Round Table' with the mandate of monitoring, evaluation and follow-up on the basis of political priorities and sustainability indicators; this consultation body should reflect the different stakeholder interests in the European Union and in the candidate countries and report regularly to the Council, Parliament and the Commission; Parliament should be represented in this body and consulted on the nomination of its members;

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27. Instructs its President to review Parliament's own methods of working with a view to devising working practices which promote sustainable development and to organise a yearly plenary debate on sustainable development; instructs Parliament's committees to regularly monitor the progress of the implementation of sustainability in EU policies;

### ***Climate change***

28. Expects all the EU leaders to reconfirm their commitment to the Kyoto protocol on climate change, and calls on them to step up their diplomatic contacts on Capitol Hill in view of recent political developments in Washington, in order to bring the US Administration back on board;

29. Welcomes recent Commission proposals to set an objective for greenhouse gas emissions for 2020 and the phasing-out of subsidies on fossil fuel production and consumption by 2010;

### ***Foreign Policy***

#### *European security and defence policy*

30. Reminds the Council of the various proposals contained in its previous resolutions on European security and defence policy (ESDP), and reaffirms, in particular, its belief that a parliamentary dimension for the ESDP must be ensured;

31. Welcomes the efforts made by the Member States over the past two years to set up a 60 000-strong European Rapid Reaction Force ready to be deployed within 60 days by 2003, and expresses its hopes for an initial operating capability by the end of 2001;

32. Reminds the Member States of their commitment to maintain their defence budgets at the level needed to reach the ambitious objectives of the ESDP;

33. Welcomes the Swedish Presidency's initiatives in the field of conflict prevention and civil crisis management; invites the European Council to adopt a strong and efficient programme concerning conflict prevention through its Common Foreign and Security Policy; underlines that such a programme must be implemented without delay and must focus on structural aspects of conflict prevention as well as on civil crisis management;

34. Calls on the Council to reaffirm its commitment to rigorous export controls as well as support for regional peace initiatives, as important ways of addressing the problem of missile proliferation, while also noting that such efforts need to be complemented by global and multilateral approaches;

#### *Transatlantic relationship*

35. Insists that close cooperation between the United States and the European Union is essential not only to both US and European interests, but also to global interests in tackling issues such as the fight against poverty, safeguarding the environment, global trade, cultural and information diversity, the digital divide and organised crime;

36. Is convinced that cooperation within the Atlantic Alliance continues to be of decisive global importance for security and stability;

37. Is concerned about the US missile defence system proposals; stresses the necessity for the US to consult its European partners and all countries concerned prior to developing a missile defence system; urges the Council, in its discussions with the US President, to ensure that multilateral negotiations and dialogue should precede any new developments as regards the ABM Treaty;

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*The Middle East*

38. Expresses its deepest regret at the lives claimed by the conflict, and addresses its condolences and sympathy to the victims' families; firmly condemns the terrorist act perpetrated in Tel Aviv, as well as the use of excessive military force and all other acts of violence whatever their origin;

39. Notes the previous declaration of the EU Presidency that 'the progress made on all major issues during the last negotiations should form the basis for future talks on the permanent status' of the Middle East region;

40. Invites the Council to take the lead on an international initiative on the Israel/Palestine conflict based on the Mitchell report and to investigate possible joint action with the US; such a plan should include a platform for fresh negotiations between the two parties, the dispatch of an international observers' force, proper mechanisms for fighting terrorism, freezing of settlements, protection of the civilian population, and full respect for human rights and the Fourth Geneva Convention;

*FYROM*

41. Condemns the acts of the terrorist forces coming from the UCK and other armed groups on the territory of FYROM; welcomes the initiatives of the Council, CFSP High Representative Solana and Commissioner Patten; supports the latest peace plans from the FYROM government and from all the democratic parties which are seeking a political solution to the country's problems;

42. Urges the Commission to provide the necessary aid in full co-operation with the FYROM Government, so as to assist the refugees and the civilian population involved in the conflict;

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43. Instructs its President to forward this resolution to the European Council, the Council, the Commission and the parliaments of the Member States.

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**A3**

**European Parliament resolution  
of 29.11.2001  
on the constitutional process and the future of the Union**





Thursday 29 November 2001

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## 19. Future of the European Union

**A5-0368/2001**

### **European Parliament resolution on the constitutional process and the future of the Union (2001/2180(INI))**

*The European Parliament,*

- having regard to the treaty signed in Nice on 26 February 2001 and in particular Declaration No 23 on the future of the Union,
  - having regard to the communication from the Commission on certain arrangements for the debate on the future of the European Union (COM(2001) 178),
  - having regard to the report on the future of the Union presented to the Göteborg European Council by the Swedish Presidency,
  - having regard to its resolution of 31 May 2001 on the Treaty of Nice and the future of the European Union<sup>(1)</sup>,
  - having regard to its resolution of 25 October 2000 on the constitutionalisation of the Treaties<sup>(2)</sup>,
  - having regard to the report from the European Council on the progress achieved by the European Union in 2000,
  - having regard to the motion for a resolution tabled by Richard Corbett on the High Representative at the Commission (B5-0680/2000),
  - having regard to Rule 163 of its Rules of Procedure,
  - having regard to the report of the Committee on Constitutional Affairs and the opinions of the Committee on Economic and Monetary Affairs and the Committee on Legal Affairs and the Internal Market (A5-0368/2001),
- A. having regard to Declaration No 23 annexed to the Treaty of Nice, which provides for reform of the Treaties in 2004 preceded by a new process of preparation that is open and public,
- B. whereas the public debate that has taken place throughout 2001 has revealed a very broad consensus in support of a new method of reform of the Treaties based on the work of a Convention which would prepare the IGC,

<sup>(1)</sup> 'Texts Adopted', Item 4.

<sup>(2)</sup> OJ C 197, 12.7.2001, p. 186.

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- C. whereas dialogue with citizens has been inadequate hitherto and must therefore be intensified and extended throughout the process of reform of the Treaties,
- D. having regard to the hearing held in Brussels on 10/11 July 2001, in which the parliaments of the Member States and the candidate countries participated,
- E. whereas, in the light of recent world events, the challenges relating to external and internal security have resurfaced as an urgent issue on the Union's agenda,
- F. having regard to its opinion on the Treaty of Nice (which this resolution follows up and builds upon), the weak points of which are indicative of the current drift towards intergovernmental methods and the consequent weakening of the Community method,
- G. whereas European citizens desire, above all, that the policies and procedures adopted to determine the future course of the Union will make the Union more democratic, more effective, more transparent, more vigorous and more responsive to social issues,
- H. whereas one of the aims of the forthcoming reform must be to ensure that the general public fully embraces the process of European integration, for which purpose it needs to understand clearly who does what in the European Union, what the latter is required to do and how it should set about it,
- I. whereas, in all instances where the new Constitutional Treaty of the Union refers to physical persons, both the feminine and masculine genders will be used (principle of gender neutrality), and this principle should therefore apply to this resolution,

### ***Future challenges facing Europe***

1. Reiterates its commitment to a European Union which fulfils its fundamental role as a union of peoples and states and provides a stable and durable response to the requirements of democracy, legitimacy, transparency and effectiveness, which are essential if there is to be further progress in European integration, particularly with a view to enlargement, whilst in no event allowing the democratic nature of the Union to be sacrificed for the sake of effectiveness; considers that the aim of the 2003 Intergovernmental Conference must be a Constitution for the European Union;
2. Points out that the list of four topics in Declaration No 23 annexed to the Treaty of Nice is not exhaustive; considers, therefore, that the scope of the forthcoming reform and, consequently, the topics selected for discussion by the Convention must be based on a rigorous in-depth analysis of the strengths and weaknesses of the Union and the role it will have to play in the 21st century;
3. Considers that besides the four topics in Declaration No 23, which will be addressed in specific resolutions, political, economic and social progress, security and well-being for Europe's citizens and peoples and the affirmation of the Union's role in the world require:
  - (a) the establishment of a foreign, security and defence policy which incorporates the principles and the general guidelines of the CFSP and common defence and whose aims should include the fight against terrorism;
  - (b) the incorporation of the CFSP into the Community pillar, with all the provisions relating to the various aspects of foreign policy to be brought together within a single chapter;
  - (c) the recognition of the legal personality of the Union;

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- (d) the consolidation, within the Treaty, of fundamental rights, citizens' rights and all other provisions relating directly or indirectly to action taken by the European institutions for the benefit of individuals in their capacity as holders of a fundamental right;
  - (e) the elimination of the lack of transparency that characterises the work of the European Central Bank at present and the establishment of a well-balanced economic and monetary system resulting from the consolidation of economic and social cohesion policy and closer coordination of Member States' economic policies;
  - (f) the development of the Union into a genuine area of freedom, security and justice by, in particular:
    - the merging, within the Community framework, of police and judicial cooperation in criminal matters with judicial cooperation in civil matters, the measures relating to the movement of persons and the other measures to protect fundamental rights and citizenship within the Union;
    - the recognition of the full jurisdiction of the Court of Justice in respect of all measures relating to the establishment of this area of freedom, security and justice;
    - the integration of Eurojust and Europol into the Union's institutional framework;
    - the establishment of a European Public Prosecutor's Office accountable to the Court of Justice;
4. Points out that the institutional reforms are not a closed chapter and considers that the agenda for the reform of the Treaties should include issues which were not tackled or not resolved under the Treaty of Nice and which are essential if the Union institutions are to operate more democratically and more effectively, such as:
- (a) an updating of the tasks which fall to the European Council, the General Affairs Council and the Council meeting sectorally;
  - (b) the system for nominating the Presidencies of the European Council, the General Affairs Council and the Council meeting sectorally;
  - (c) simplification of legislative procedures (with the latter subject to transparency) on the basis that the general principle in legislative matters must be qualified majority voting in the Council and codecision involving the European Parliament, so as to make the Union more democratic; in addition, the Council should deliberate and take decisions on European legislation in public;
  - (d) the removal of the distinction between compulsory and non-compulsory expenditure, with the budgetary procedure for non-compulsory expenditure thus being applied to the expenditure part of the budget as a whole, and the incorporation of the European Development Fund into the EU budget;
  - (e) the establishment of an independent European Public Prosecutor's Office empowered to bring cases before the competent Member State jurisdictions in the context of the protection of the Community's financial interests;
  - (f) the introduction of a hierarchy of Community acts;
  - (g) full involvement of the European Parliament in the common trade policy, in external economic relations and in the implementation and development of enhanced forms of cooperation;
  - (h) the election of the Commission president by the European Parliament;
  - (i) appointment of the members of the Court of Justice and the Court of First Instance by means of a qualified-majority vote and with the European Parliament's assent;
5. Will give detailed opinions on the scope of the reform in subsequent resolutions addressed to the Convention;

### ***Composition of the Convention***

6. Insists on the need to establish a Convention whose composition reflects European political pluralism and in which, consequently, the European and national parliaments are well represented, as was the case for the Convention that drafted the Charter of Fundamental Rights; considers that a Convention of this kind can represent an innovation indispensable for the success of the democratic reform of the EU;

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7. Takes the view that the principle governing the composition of the Convention should be the same as that used to determine the composition of the Convention that drafted the aforementioned Charter, with the representation of the European Parliament in proportionate to that of the other component groups remaining the same;
8. Considers it essential that the candidate countries should be involved in preparing the reform of the Treaties and, consequently, that they should participate in the work of the Convention as permanent observers, with two representatives of the parliaments of each State and one representative of each government;
9. Proposes that the Court of Justice should be entitled to appoint an observer to the Convention; considers that the Committee of the Regions and the Economic and Social Committee should participate in the Convention through two permanent observers from each body, so that the regional and local authorities and representatives of the various categories of economic and social activity are also involved;
10. Points out that the composition of its own delegation will endeavour to ensure adequate representation of both sexes, and calls on the other delegations to follow this principle when appointing their representatives;
11. Considers that, in order to be effective, the work of the Convention should be supervised by a Presidium acting in a collegiate fashion, composed of the Chair, the Commission representative, two members chosen by the representatives of national parliaments, two representatives of the European Parliament and a representative of the Presidency-in-Office of the Council and of the following Presidency;
12. Believes that the Chair of the Convention has a key role and therefore considers that this position should be held by a distinguished European political figure with parliamentary experience; believes that the Chair should be elected by the Convention;
13. Considers that the Presidium must be responsible for maintaining relations with the European Council on a regular basis;
14. Considers that, after the work of the Convention has been wound up, the Presidium should participate fully and actively at all stages and levels of the IGC which is to ratify the reform of the Treaties prepared by the Convention;

#### ***Working methods of the Convention***

15. Considers that the Convention should be free to decide how to organise its work, the Chair, assisted by the Presidium, being responsible for implementing procedural decisions adopted by the four component groups by common accord;
16. Considers that it would be useful for the Convention to be assisted by an interinstitutional Secretariat endowed with substantial resources, particularly in terms of the budget and staff, to ensure that the work of drafting and consultation can be carried out effectively;
17. Believes it is essential for the proceedings of the Convention to be fully transparent with regard to the conduct of debates and deliberations and with respect to documents, where all possible steps must be taken to guarantee public access;
18. Considers it essential that the European Parliament, the national parliaments and all the European institutions should support the work of the Convention through an active dialogue with citizens so that public concerns can be taken into account;
19. Fully supports the proposal for a civil-society forum as proposed by the Belgian Presidency at the informal Council meeting at Genval, which would enable the Convention to keep in close touch with public opinion so as to ensure that the outcome of its work takes account of the concerns, ideas and priorities for the future expressed by civil society; proposes that the Convention should also organise public hearings in the Member States for this purpose;

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***Mandate and timetable for the Convention***

20. Considers it vital, with a view to effective reform of the Union, that the Convention should have a decision-making procedure under which it can draft a single coherent proposal by consensus and present it to the Intergovernmental Conference as the sole basis for negotiation and decision;

21. Hopes that the Convention will start work immediately after the Laeken European Council and complete its work in time to allow the Intergovernmental Conference to wind up its proceedings by the end of 2003 under the Italian Presidency so as to enable the new treaty to be adopted in December of that year, thereby ensuring that, in 2004, the European elections can act as a democratic fillip to European integration and that, together with the Commission, the European Parliament will be able to play its part in that process under the best possible conditions; considers that the period between presentation of the results of the Convention and the opening summit should be as short as possible, and in any case not longer than three months;

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22. Instructs its President to forward this resolution to the Council and Commission and to the Heads of State and Government and the parliaments of the Member States and the candidate countries.

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**A4**

**European Parliament resolution  
of 7.2.2002  
on relations between the European Parliament  
and the national parliaments in European integration**





Thursday 7 February 2002

P5\_TA(2002)0058

## Relations between the EP and national parliaments

### European Parliament resolution on relations between the European Parliament and the national parliaments in European integration (2001/2023(INI))

*The European Parliament,*

- having regard to the meetings arranged by the Committee on Constitutional Affairs with the European affairs committees of the national parliaments of the Member States and the candidate countries on 20/21 March 2001 and 10/11 July 2001,
  - having regard to the recent statements by a number of Heads of State or Government on Europe's future,
  - having regard to the contribution by the XXIVth COSAC in Stockholm on 22 May 2001,
  - having regard to the French Senate's report of 13 June 2001 on a second European chamber,
  - having regard to the resolution adopted by the Committee of the Regions on 14 November 2001 on the preparations for the Laeken European Council and the further development of the European Union within the framework of the next Intergovernmental Conference,
  - having regard to the contribution by the XXVth COSAC in Brussels on 5 October 2001,
  - having regard to the text adopted by the Follow-up conference on the parliamentary dimension of the European security and defence policy on 7 November 2001 in Brussels,
  - having regard to the Conference of the Presidents of the parliaments of the European Union and the candidate countries on 16 and 17 November 2001 in Stockholm,
  - having regard to the extraordinary meeting of COSAC in Brussels on 30 November and 1 December 2001,
  - having regard to the Laeken Declaration on the Future of the European Union,
  - having regard to Rule 163 of its Rules of Procedure,
  - having regard to the report of the Committee on Constitutional Affairs and the opinions of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy and the Committee on Legal Affairs and the Internal Market (A5-0023/2002),
- A. whereas the Declaration on the future of the Union annexed to the Treaty of Nice cites the role of the national parliaments as one of four issues to be addressed and stresses its importance and topicality,
- B. whereas the democratic deficit is likely to become more acute in the Union because of lack of progress on democratic scrutiny of the integration process and recent developments in a number of areas,
- C. concerned at the serious imbalance that has arisen between the powers conferred on executive institutions and technical bodies and the scope afforded to parliaments as a whole to participate in and scrutinise the legislative decisions and political choices of the Union,
- D. whereas it is necessary to strengthen the parliamentary component of the European institutional system in order to remedy the democratic deficit and ensure greater democracy in the Union,
- E. whereas the Member States' power of ratification (either by their national parliaments or by referendum) is not affected by the Convention established by the Laeken European Council,

Thursday 7 February 2002

1. Is convinced that the concerns of the national parliaments with regard to the European Union make it necessary to define better and more clearly their power *vis-à-vis* their respective governments and the European Union, in particular regarding:

- strengthening their power *vis-à-vis* their respective governments,
- giving parliaments a new role enabling them to exercise responsibilities in constitutional matters,
- establishing closer, more effective cooperation between the national parliaments and the European Parliament,

and, with particular reference to their power *vis-à-vis* their respective governments:

- guidance of national ministers and governments in their work in the Council,
- monitoring by the national parliaments of the positions of national ministers and governments in the Council,
- guidance by national parliaments of the implementation of European policy in the Member States, particularly with regard to European programmes and European funds,
- monitoring by national parliaments of the implementation of European policy in the Member States, particularly regarding the effects of such policy and the financial management of funds allocated by the EU,
- national parliaments' guidance and monitoring of the correct implementation of European directives and regulations;

2. Points out that the European Parliament does not see itself as the exclusive representative of the citizens and guarantor of democracy and that the role of the national parliaments is very important;

3. Points out that the peoples of the Union are represented to the full by the European Parliament and the national parliaments, each in its own realm; consequently the necessary parliamentarisation of the Union must rely on two fundamental approaches involving the broadening of the European Parliament's powers *vis-à-vis* all the Union's decisions and the strengthening of the powers of the national parliaments *vis-à-vis* their respective governments;

4. Points out that the Treaty of Maastricht and the Treaty of Amsterdam have paved the way for this parliamentarisation;

5. Stresses once more that in order for the necessary democratisation and parliamentarisation to take place, codecision by the European Parliament is essential in all legislative areas;

6. Considers it particularly important for national parliaments to use fully their power of scrutiny in all cases where there is no codecision;

7. Notes with concern that the parliaments elected by the people at national and European elections must jointly ensure that the governments do not create new intergovernmental rights and instruments from which the parliaments are excluded, e.g. 'open coordination' or 'co-regulation';

8. Calls for membership of the European Parliament to be incompatible with the holding of a seat simultaneously in a national or regional parliament;

### ***Strengthening the powers of the national parliaments vis-à-vis their governments***

9. Hopes that the protocol on the role of the national parliaments annexed to the Treaty of Amsterdam will be amended, as requested by the COSAC meeting in Versailles, as far as advance information for the national parliaments and the possibility of their intervening during the preparation of European legislation via their national governments in the Council are concerned;

10. Proposes that information on best practices used in the national parliaments should be adequately disseminated and optimal conditions established for information-exchanging, for mutual understanding of each others competences and activities and recourse to new technologies;

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11. Affirms its willingness to contribute to an in-depth dialogue with the national parliaments at the time of the adoption of the Commission's programme with a view to ensuring that the principle of subsidiarity is adhered to in the Community legislative process;

***Securing closer cooperation between the national parliaments and the European Parliament***

12. Points out that COSAC is an important vehicle for exchanges and convergence between the national parliaments and the European Parliament, the full potential of which has not yet been exploited; is convinced, however, of the need to guarantee representation on the European Parliament's delegation to COSAC which takes greater account of political pluralism;

13. Proposes that cooperation between the parliamentary committees of the national parliaments and the European Parliament in all European integration-related sectors should be developed and placed on systematic footing, not least in the areas of the common foreign and security policy, economic and monetary Union, the area of freedom, security and justice and constitutional affairs;

14. Emphasises that it would be desirable to step up and improve the exchange of information between the European Parliament and the national parliaments in relation to questions concerning the CFSP or the European Security and Defence Policy, in order to make more extensive dialogue between them possible;

15. Proposes that an interparliamentary agreement be drawn up between the national parliaments and the European Parliament as a means of introducing formal cooperation arrangements, which might include:

- outline reciprocal commitments with regard to programmes of multilateral or bilateral meetings on European issues of common interest or of a general or sectoral nature,
- the exchange of information and documents;

16. Notes that within the framework of meetings of European political groups and political parties more frequent and more regular contacts are being established within European groupings of all political persuasions and welcomes the fact that these meetings are being placed on a more systematic footing and can thus strengthen and enrich democratic life at both national and European level; stresses the importance of a statute for European political parties, since these have a central role to play in the European Union's movement towards greater democracy;

***The decision-making process must not become more cumbersome***

17. Considers that the creation of a chamber composed of representatives of the national parliaments would not solve the problems experienced by some parliaments in scrutinising the European policy of their governments in particular, but would only serve to prolong the Community legislative procedure, to the detriment of democracy and transparency;

18. Points out, furthermore, that dual legitimacy — a Union of States and peoples — already finds expression at European level in the legislative sphere through the participation of the Council and the European Parliament, that is not advisable to make the decision-making process more cumbersome or more complicated and that is necessary to avoid a confusing superposition in the respective roles of European and national institutions;

19. Highlights the importance of the agreed participation of representatives of the European Parliament and national parliaments in the future Convention on a constitution for the European Union; hopes that vigorous debate will lead to their agreeing on a common approach at the Convention, so as to speak as far as possible with one voice in conveying the views of the peoples of Europe with regard to Europe's political future

***Preparation of the future of the European Union by the Convention***

20. Welcomes the institutionalised participation of the national parliaments, the European Parliament, the Commission and representatives of the heads of state and government in the Convention, a development which makes it possible to be optimistic about effective preparations for reform of the treaties;

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21. Is in favour of the emergence — even at this stage through the Convention established by the Laeken European Council — of a constituent power exercised jointly by the national parliaments, the Commission, the European Parliament and the governments of the Member States, which would not only allow effective preparation of reform of the treaties but would also give European integration efforts greater legitimacy and would thus mark a new chapter in the role of parliaments in European integration by introducing a major institutional innovation;

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22. Instructs its President to forward this resolution and to the Council and Commission, the Heads of State or Government, and the parliaments of the Member States and the candidate countries.

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**A5**

**European Parliament resolution  
of 16.5.2002  
on the division of competences between  
the European Union and the Member States**





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P5\_TA(2002)0247

## **Division of competences between the EU and the Member States**

### **European Parliament resolution on the division of competences between the European Union and the Member States (2001/2024(INI))**

*The European Parliament,*

- having regard to the treaty signed in Nice on 26 February 2001, and in particular Declaration 23 on the future of the Union,
- having regard to the Laeken European Council's declaration of 15 December 2001 on the future of the European Union<sup>(1)</sup>,
- having regard to the territorial organisation of the Member States set out in their respective constitutions,
- having regard to its resolution of 12 July 1990 on the principle of subsidiarity<sup>(2)</sup>,

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<sup>(1)</sup> Conclusions of the Presidency – Annex I.

<sup>(2)</sup> OJ C 231.17.9.1990, p. 163.

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- having regard to its resolution of 13 April 2000 containing its proposals for the Intergovernmental Conference <sup>(1)</sup>,
  - having regard to its resolution of 31 May 2001 on the Treaty of Nice and future of the European Union <sup>(2)</sup>,
  - having regard to its resolution of 29 November 2001 on the constitutional process and future of the Union <sup>(3)</sup>,
  - having regard to the opinion of the Committee of the Regions of 13 March 2002 on the draft European Parliament report on the division of competences between the European Union and the Member States <sup>(4)</sup>,
  - having regard to Rule 163 of its Rules of Procedure,
  - having regard to the report of the Committee on Constitutional Affairs and the opinions of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, the Committee on Economic and Monetary Affairs, the Committee on Legal Affairs and the Internal Market and the Committee on Regional Policy, Transport and Tourism (A5-0133/2002),
- A. whereas the current system of division of competences in the Treaties is characterised by a complex interweaving ('Politikverflechtung') of objectives, substantive competences and functional competences, arising from the existence of four treaties and two different entities, the Union and the Community, from the proliferation of legislative instruments with differing and sometimes questionable legal scope, and from the absence of a real hierarchy of acts,
- B. whereas this situation is the outcome of half a century of existence during which the institutions created for a small Community with essentially economic objectives have had to adapt to successive enlargements and to the increasingly political functions assigned to the Union,
- C. whereas the principles of subsidiarity and proportionality introduced by the Treaty of Maastricht and specified by the Treaty of Amsterdam have not yet managed to clarify, in each specific case, the respective roles of the Union and the Member States,
- D. whereas public opinion polls and the debates held since the Treaty of Nice both reveal a gulf between citizens' expectations of Europe and the issues actually dealt with by the latter,
- E. whereas the Member States must have competence under the ordinary law, and whereas the Union must enjoy only the competences allocated to it, as defined by the Constitution pursuant to the principles of subsidiarity and proportionality, taking into account the wish for solidarity amongst the Member States and an analysis of costs in relation to the benefits enjoyed by the general public,
- F. whereas in most Member States or federal bodies the range of competences exercised solely at either Community or Member State level is tending to diminish and to be replaced by a growing range of shared competences exercised in a manner consistent with the principles of subsidiarity and proportionality,
- G. whereas Community intervention is legitimate only if it meets at least one of the three following criteria:
- the relevant scope of the proposed measure goes beyond the limits of a Member State and the measure might give rise to perverse effects (distortion or imbalances) for one or more Member State should it not be implemented at Community level (criterion of relevant scope),
  - the measure planned at Community level would generate, by comparison with similar measures implemented separately by individual Member States, substantial synergies in terms of effectiveness and economies of scale (criterion of synergy),
  - the proposed measure meets a requirement for solidarity or cohesion which, in the light of disparities in development, cannot be met satisfactorily by the Member States acting alone (criterion of solidarity),

<sup>(1)</sup> OJ C 40.7.2.2001, p. 409.

<sup>(2)</sup> OJ C 47 E, 21.2.2002, p. 108.

<sup>(3)</sup> 'Texts Adopted', Item 19.

<sup>(4)</sup> CR 466/2001.

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- H. whereas at the moment the nature of the procedures, whether intergovernmental or Community, and the decision-making arrangements, whether requiring unanimity or a qualified majority, determine in de facto terms the division of competences between the Union and the Member States, and whereas the paralysis caused by intergovernmental procedures and unanimous decision-making has resulted in competences theoretically conferred on the Union by the Treaties being retained, for no good reason, by the Member States,
- I. whereas the provisions laid down in the Treaties concerning role-sharing between the Union and the States, which have been in force for 30 years, have hardly allowed the Union, in the foreign policy sphere, to act as an independent player on the international stage, as is demonstrated by the poignant example of the crisis in the Middle East,
- J. whereas, in all cases of shared competences, the intensity of EU action is determined not only by the Treaty provisions but by the Member States themselves through their involvement, via the Council, in the Union's decision-making procedures,
- K. whereas it has only been possible to remedy the rigid framework for functional competences established by the existing treaties by using Article 308 of the EC Treaty, to such an extent that it has served as the legal basis for more than 700 Community legislative measures, even though they have considerably decreased in number in recent years,
- L. whereas the institutional guarantees of compliance with the division of competences are inadequate,
- M. whereas the system of competences must be capable of evolving and adapting to social, economic and political changes that might take place in the future,
- N. whereas, in any event, the Union constitutes a unique, innovative institutional area,
- O. having regard to the way in which the internal organisation of the Member States differs in terms of territorial division and the conferral of competences,
- P. whereas in recent decades a number of Member states have successfully carried out decentralising reforms to increase grassroots involvement in policy-making and enable the regions to engage in productive competition,
- Q. whereas territorial units with legislative competences now exist in almost half the Member States, where the transposition of Community legislation into domestic law is in some cases a matter for decentralised authorities; whereas the management of Community programmes is, at all events, just as much a matter for the regions and municipalities as for central government, and consequently the basic Union texts can no longer disregard the role of these particular partners, which must help both to make Community policies more effective and bring citizens closer to the process of European integration,
- R. whereas, at all events, it is for the Member States to promote, within the framework of their constitutional system, suitable participation for the regions in decision-making processes and representation in the field of European affairs in each country, without forgetting the necessary role to be played by municipalities in this connection,
- S. whereas the Laeken Declaration has instructed the Convention to deal with the questions of competence and subsidiarity as a matter of major importance,

### ***Competences of the Union in a constitutional framework***

1. Considers the time has come to update the division of competences between the Union and its Member States on the basis of the principles of subsidiarity and proportionality, in order to take account of the lessons of the Community's history, the views of the candidate countries and the expectations of citizens;
2. Hopes that a better division of competences will result in a clear assignment of political responsibility and thereby a strengthening of democracy in Europe;

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3. Reiterates its call for a constitution for the Union addressed to all its citizens, which recasts the various treaties and merges them into a single text concerning a single entity, the Union, endowed with single, full legal personality;
4. Considers that this constitutional approach must be accompanied by a new presentation of the competences of the Union and that this presentation must be sufficiently clear to be understandable to all citizens;
5. Considers that there is a continuing democratic deficit in the European Union and that the current process of reform, focussing on the competences of the EU institutions, must achieve substantial democratisation of the institutions;
6. Reiterates its call in this context for the second and third pillars to be brought within the Community sphere in order to consolidate democratic legitimacy and ensure parliamentary and judicial scrutiny;
7. Considers that the purpose of this exercise should be to achieve a balance between the economic integration of the Union already in place and its social and political integration;
8. Considers that the Preamble to the Treaty must be supplemented by references to the European Social Model and to Europe's role in a world of peace, stability and international justice;
9. Considers that a clear distinction must be made between the general objectives of the Union and its competences, defined by subject area; wishes to see a simple and precise distribution of competences, in which each heading merely states the subjects in question, the specific objectives pursued by means of Union action in the subject area concerned and the means employed by the Union to that end;
10. Considers that, among the provisions in the current Treaties relating to arrangements for the exercise of certain competences that were attributed to the Union, details which are not fundamental should be moved to a second section and should be amendable by a simplified procedure;

***Exercise of competences***

11. Considers it essential
  - pursuant to the principles of separation, equilibrium and cooperation between the powers, that the future European constitution should better define independent legislative, executive and judicial functions;
  - that compliance with the principle of subsidiarity should be laid down as a constitutional requirement;
  - that an effective hierarchy of acts should be implemented;
12. Considers that legislation — Community 'law' — must be adopted on the sole initiative of the Commission by the two branches of the legislative authority, the Council and Parliament, which are responsible for political choices, whereas implementing measures, established by the law, come under the executive power which, depending on the circumstances, may be the responsibility of the Commission, a specialist European Agency, the Member States or, in line with the constitutional system of the various states, their territorial authorities; the exercise of executive power at European level must be subject to control by the European Parliament;
13. Considers that the terminology of the Treaty should be altered to make a clearer distinction between acts of the executive and those of the legislative authority;
14. Considers it essential to enshrine the list of legal acts and other forms of action open to the Union in a new version of Article 249 EC and in an exclusive list in a separate article of the Treaty;
15. Is aware, however, that the introduction of a clearer hierarchy of norms will not eliminate possible conflicts in future legislative proposals when identifying which regulatory elements are to belong to the legislative level and which elements are to belong to the executive level; it must therefore be unequivocally clear that the distinction between these two regulatory layers will continue to be defined by the Council and the European Parliament, acting on a proposal from the Commission under the co-decision procedure;

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16. Reiterates its earlier statements that, in this context, the revision of Article 202 of the Treaty is essential and calls on the Convention to recommend the introduction of the co-decision procedure for this Article for the purpose of defining which new procedures for the use of implementing powers at executive level will apply;

17. Notes that with respect to the delegation of executive powers for implementing rules to European agencies, effective and direct parliamentary monitoring and control must be guaranteed; believes that a general and harmonised framework for such monitoring and control will need to be defined in agreement with Parliament at the latest with the entry into force of the new Treaty;

18. Points out that the political model of the Union is currently based on two fundamental features: the Union has only small management departments, at least for internal policies, for which it relies on the Member States (subject to the Commission monitoring the obligation of Member States to apply the policies adopted); considers that the bulk of fiscal and tax power must also remain at national level;

### *General framework of competences*

19. Proposes that a distinction should be drawn between three types of competence: the competences exercised as a matter of principle by the States, the Union's own competences and shared competences; is aware that certain actions may purely and simply be banned ('negative competences');

20. Considers, that, within its field of competence, the Union must have flexibility in the ways in which it acts, according to the degree of need for Community intervention; law, recommendation, financial aid, etc.;

#### *Competences exercised as a matter of principle by the State*

21. Does not consider it necessary to draw up a list of the exclusive competences of the Member States, but rather to apply the principle of presumption that the States have jurisdiction where the constitutional text does not stipulate otherwise;

#### *The Union's own competences*

22. Considers that, in the areas covered by the Union's own competences, the Member States may intervene only in accordance with the conditions and within the limits established by the Union;

23. Considers that the Union's own competences must continue to be few in number and relate, as is now the case, to customs policy, external economic relations, the internal market (including the 'four freedoms' and financial services), competition policy, structural and cohesion policies, association agreements and, where the euro area is concerned, monetary policy;

24. Wishes, however, to add to the above lists the drawing up and the running of the common foreign and defence policy, the legal basis of the common area of freedom and security and the funding of the Union budget;

#### *Shared competences*

25. Considers that shared competences cover three types of area: those in which the Union lays down general rules, those in which it intervenes only in a complementary or a supplementary fashion, and those in which it coordinates national policies;

26. Considers that where competences are shared the Union must lay down general rules on subjects falling into two categories:

- those which constitute policies complementing or flanking the single area: consumer protection, agriculture, fisheries, transport, trans-European networks, the environment, research and technological development, energy, social and employment policy, immigration policy and other policies linked to

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the free movement of persons, the promotion of equality between men and women, the association of overseas countries and territories, development cooperation and taxation relating to the single market;

- those relating to the implementation of foreign policy and of internal and external defence and security policy, as regards the transnational dimension thereof;

27. Considers that, in this area of competences, Community legislation is justified where European interests are at stake; in such cases, Community legislation must establish the guidelines, general principles and objectives including, where necessary, common rules and minimum standards; considers that Community legislation should aim to create uniformity only where there is a clear threat to equal rights or competition;

28. Considers also that, in the above areas, the Member States must retain the capacity to legislate where the Union has not yet exercised its prerogatives;

29. Considers that, in other areas, it must be made clear that action by the Union may only complement that of the Member States, which retain the competence to enact ordinary law; this already applies to education, training, youth, civil defence, culture, the media, sport, health, industry and tourism, to which civil and commercial contracts should be added;

30. Considers that the Union also has powers (and sometimes legal obligations) to coordinate policies which are essentially the responsibility of the Member States; these include the obligatory coordination of budget and fiscal policies in connection with economic and monetary union and of employment policies with a view to facilitating the achievement of the Union's objectives;

31. Recommends that, in order to make such coordination more effective, new procedures distinct from the Union's common-law procedures and involving all the Community institutions should be implemented;

32. Considers that the principles of subsidiarity and proportionality must be strengthened; to that end proposes that a Commissioner be given responsibility for monitoring the application of the subsidiarity principle in respect of all texts proposed by the Commission; confirms the recommendations that were made in its resolution of 7 February 2002<sup>(1)</sup> on the relation between the European Parliament and national parliaments;

33. Points out that 'open coordination' of national policies leads to further blurring of political responsibilities; insists that such a procedure be accompanied by proper parliamentary supervision;

34. Takes the view that the exercise by the Union of its competences, whether exclusive, shared, additional or coordinating competences, must no longer be thwarted by paralysing (no power of initiative, unanimous decision-making, ratification by the Member States) or non-democratic (lack of genuine parliamentary participation or judicial review) procedures, although it acknowledges that certain categories of competences, in particular coordinating competences and competences in the sphere of own resources, must be exercised on the basis of specific procedures closely involving the national parliaments or their representatives;

#### ***Future development of the system***

35. Considers it essential to include a review clause in order to avoid establishing a rigid system for the division of competences; in this connection, considers that it would be useful to maintain a mechanism similar to the current Article 308 of the EC Treaty which could be applied only in exceptional circumstances and which works in both directions by enabling competences to be returned to the Member States when the need for Community intervention had ceased; hopes that the European Parliament will be involved in decision-making;

36. Proposes assuring the people of the EU that transfers of competences will take place with total budget transparency under the watchful eye of the Court of Auditors, so as to ensure that, on such occasions, there is no duplication of bureaucratic effort at EU level and at Member State level;

37. Suggests that the framework of competences should be comprehensively reviewed ten years after its adoption;

<sup>(1)</sup> P5\_TA (2002) 0058.

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***The role of territorial authorities***

38. Considers internal territorial organisation and the division of competences within each Member State to be matters to be decided upon by the Member States alone; at the same time, notes the increasing role which the regions (and sometimes other territorial authorities) are now playing in the implementation of Union policies, particularly where regions with legislative competences exist;

39. Hopes, therefore, that the Union will be open to proposals from the Member States which are designed to ensure that their respective territorial authorities are more closely involved in drawing up and, where appropriate, transposing EU rules, provided that the individual Member States' constitutions are not infringed; instructs its committee responsible for constitutional affairs to draw up a special report on this matter, taking into account the opinion expressed by the Committee of the Regions;

40. Will include in its Rules of Procedure the necessary provisions to enable representatives of regional parliaments with legislative capacity to take part regularly in the work of the committee responsible for regional affairs, in line with the practice already tried out with good results;

***Judicial guarantees***

41. Considers that the Court of Justice is, in many respects, the Union's Constitutional Court;

42. Proposes that a chamber should therefore be set up within the Court of Justice to hear cases concerning the Constitution, competence and fundamental rights;

43. Proposes the creation of an additional referral procedure prior to the entry into force of a legislative measure and capable of suspending the application thereof; that referral procedure would work as follows:

- it could be initiated by the Commission or by a significant minority in the Council or Parliament;
- the procedure would have to be initiated within a period of one month from adoption of the legislative measure, the Court also having to give a decision within one month;
- the sole grounds admissible in this urgency procedure would be a conflict of competences relating to non-compliance with the principles of subsidiarity and proportionality;

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44. Instructs its President to forward this resolution to the Council, the Commission and the Committee of the Regions, and the Convention on the Future of Europe.

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## **A6**

**European Parliament resolution  
of 24.9.2003  
on the draft Treaty establishing a Constitution for Europe  
and the European Parliament's opinion  
on the convening of the Intergovernmental Conference**



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**P5\_TA(2003)0407**

## **European Constitution and IGC \***

**European Parliament resolution on the draft Treaty establishing a Constitution for Europe and the European Parliament's opinion on the convening of the Intergovernmental Conference (IGC) (11047/2003 – C5-0340/2003 – 2003/0902(CNS))**

(Consultation procedure)

*The European Parliament,*

- having been consulted by the Council, pursuant to the second paragraph of Article 48 of the Treaty on European Union, on the convening of an intergovernmental conference (IGC) to consider the changes to be made to the treaties on which the Union is founded (11047/2003 – C5-0340/2003),
- having regard to the draft Treaty establishing a Constitution for Europe <sup>(1)</sup> prepared by the Convention on the Future of Europe,
- having regard to its resolution of 31 May 2001 on the Treaty of Nice and the future of the European Union <sup>(2)</sup>,
- having regard to its resolution of 29 November 2001 on the constitutional process and the future of the Union <sup>(3)</sup>,

<sup>(1)</sup> CONV 850/03, OJ C 169, 18.7.2003, p. 1.

<sup>(2)</sup> OJ C 47 E, 21.2.2002, p. 108.

<sup>(3)</sup> OJ C 153 E, 27.6.2002, p. 310.

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- having regard to its resolutions of 16 May 2002 on the distribution of competences <sup>(1)</sup>, of 14 March 2002 on the Union's legal personality <sup>(2)</sup>, of 7 February 2002 on the role of the national parliaments <sup>(3)</sup> and of 14 January 2003 on the role of the regions in European integration <sup>(4)</sup>,
- having regard to the Charter of Fundamental Rights of the European Union,
- having regard to the Commission's communication entitled 'A Constitution for the Union' (COM(2003) 548),
- having regard to the report of the Committee on Constitutional Affairs and the opinions of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy; Committee on Budgets; Committee on Budgetary Control; Committee on Citizens' Freedoms and Rights, Justice and Home Affairs; Committee on Economic and Monetary Affairs; Committee on Legal Affairs and the Internal Market; Committee on Industry, External Trade, Research and Energy; Committee on the Environment, Public Health and Consumer Policy; Committee on Agriculture and Rural Development; Committee on Fisheries; Committee on Regional Policy, Transport and Tourism; Committee on Development and Cooperation; Committee on Women's Rights and Equal Opportunities and the Committee on Petitions (A5-0299/2003),

Whereas:

- A. the citizens, parliaments, governments and political parties — in both the Member States and at the European level — as well as the institutions of the Union are entitled to take part in the democratic process of drawing up a Constitution for Europe; therefore, this Resolution constitutes Parliament's evaluation of the draft Constitutional Treaty produced by the Convention on the Future of Europe,
- B. the preparation, the conduct and above all the outcome of the Nice Conference definitively demonstrated that the intergovernmental method for the revision of the Union's treaties has reached its limits and that purely diplomatic negotiations are not capable of providing solutions to the needs of a European Union with twenty-five Member States,
- C. the quality of the Convention's work on the preparation of the draft Constitution and the reform of the Treaties fully vindicates the decision of the Laeken European Council to move away from the intergovernmental method by adopting Parliament's proposal for the setting up of a constitutional Convention; the result of the Convention, in which the representatives of the European Parliament and of national parliaments played a central role, shows that open discussions within the Convention are far more successful than the method followed up to now of intergovernmental conferences held in camera,
- D. Parliament demands to be actively and continually involved not only in the Intergovernmental Conference but also in the future phases of the constitutional process,
- E. important progress has been made by the Convention's proposals, but the new provisions will have to be tested with respect to the challenges presented by the enlarged Union; the method of the Convention should apply for all future revisions,
- F. the Convention, like its predecessor on the Charter of Fundamental Rights, has initiated a new phase in European integration, during which the European Union will consolidate its legal order into a constitutional order binding on its Member States and citizens, even if the Constitution is ultimately approved in the form of an international treaty,

<sup>(1)</sup> OJ C 180 E, 31.7.2003, p. 493.

<sup>(2)</sup> OJ C 47 E, 27.2.2003, p. 594.

<sup>(3)</sup> OJ C 284 E, 21.11.2002, p. 322.

<sup>(4)</sup> P5\_TA (2003)0009.

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- G. despite the many differences of opinion initially existing between the members of the Convention, a large majority of all four component parts of the Convention, including Parliament, supported the Convention's final proposal, which is therefore based on a fresh and broad consensus, even if not all of Parliament's demands concerning democracy, transparency and efficiency in the European Union were met; to reopen the important compromises reached within the Convention would not only jeopardise the progress made by the Convention in re-founding the Union on a more efficient and democratic constitutional basis but would also subvert the whole Convention method,
- H. the draft Treaty establishing a Constitution for Europe should be evaluated on the basis of the following criteria:
- (a) respect for the preservation of peace, democracy, freedom, equality, linguistic and cultural diversity, the rule of law, social justice, solidarity, the rights of minorities and cohesion, all of which can never be deemed to have been definitely achieved but must be kept under constant review as to their meaning and must be fought for anew through historical developments and over generations;
  - (b) respect for the European Union as an entity united in its diversity;
  - (c) confirmation of the unique nature and of the dual legitimacy of the Union drawn from its Member States and citizens;
  - (d) commitment to the preservation of the principle of equivalence between the Member States and the interinstitutional balance, which guarantees the Union's dual legitimacy;
  - (e) efficiency in a Union composed of twenty five or more Member States while enhancing the democratic functioning of its Institutions;
  - (f) development of a system of values with cultural, religious and humanist roots which, going beyond a common market and within the framework of a social market economy, aims at a better quality of life for Europe's citizens and society at large and seeks economic growth, stability and full employment, greater promotion of sustainable development and better implementation of citizenship of the Union;
  - (g) strong political legitimacy in the eyes of the Union's citizens and through the European political parties;
  - (h) an overall constitutional settlement which should enhance the Union's credibility and its role at home and abroad,
1. Welcomes the progress towards European integration and democratic development represented by the Convention's proposed 'Constitution for Europe', to be established through a Treaty establishing a Constitution for Europe enshrined in a text expressing the political will of the European citizens and the Member States in a solemn and comprehensive way;
  2. Notes with satisfaction that the draft Constitution entrenches to a significant extent the values, objectives, principles, structures and institutions of Europe's constitutional heritage, so that, to a great extent, the draft not only assumes the character of a constitutional text but also provides for its continuous evolution;
  3. Welcomes the inclusion of the symbols of the Union in the draft Constitution;

***Important steps towards a more democratic, transparent and efficient European Union***

*Democracy*

4. Greatly welcomes the inclusion of the Charter of Fundamental Rights as an integral, legally binding part of the Constitution (Part II) and stresses the importance of human dignity and the fundamental rights of the individual as crucial elements of a civic, social and democratic Union;

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5. Welcomes the new 'legislative procedure', which will become the general rule, as an essential step towards increasing the democratic legitimacy of the Union's activities, acknowledges this notable extension of codecision and stresses that this must be pursued further;
6. Regards as positive the election of the President of the European Commission by Parliament and stresses that this is in any case an important step towards an improved system of parliamentary democracy at European level;
7. Acknowledges the possibilities for increased participation by European citizens and the social partners and, especially, the introduction of the citizens' legislative initiative;
8. Regards as important the increased role of the national parliaments and of the regional and local authorities in the Union's activities;
9. Supports national parliaments in their efforts to carry out more effectively their task of guiding and monitoring their respective governments as members of the Council of the Union, which is the effective way of ensuring the participation of national parliaments in the legislative work of the Union and in the shaping of common policies;
10. Instructs its competent Committee to organise joint meetings with representatives of national parliaments, if possible including former members of the Convention, to ensure the follow-up and evaluation of the proceedings of the Intergovernmental Conference;

*Transparency*

11. Regards as fundamentally important the fact that the Union will acquire a single legal personality and that the pillar structure will formally disappear, even if the Community method does not fully apply to all Common Foreign and Security Policy, Justice and Home Affairs and coordination of economic policy decisions;
12. Welcomes the introduction of a hierarchy and the simplification of the legal acts of the Union, and the explicit recognition of the primacy of the Constitution and of Union law over the law of the Member States;
13. Recognises the steps made towards greater transparency and clarification of the respective competences of the Member States and of the Union, with the retention of a certain level of flexibility to allow for future adaptations in an evolving Union comprising twenty five or more Member States;
14. Welcomes the separation of the Euratom Treaty from the legal structure of the future Constitution; urges the Intergovernmental Conference to convene a Treaty revision conference in order to repeal the obsolete and outdated provisions of that Treaty, especially those relating to the promotion of nuclear energy and the lack of democratic decision-making procedures;
15. Welcomes the commitment given by the President of the Convention that the entire text of the Constitution will be written in gender-neutral language and calls on the Intergovernmental Conference to arrange for the necessary editorial changes to be made to the draft Constitution in this respect;

*Efficiency*

16. Attaches great importance to the extension of qualified majority voting in the Council, as far as legislation is concerned; welcomes the improvement of the system, while underlining the need for further extensions of qualified majority voting or for the use of special qualified majority voting in the future, without prejudice to the possibilities provided for in Article I-24(4) of the draft Constitution;
17. Stresses that Parliament must be the responsible parliamentary body with respect to the Common Foreign and Security Policy and the European Security and Defence Policy in so far as EU competences are concerned;

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18. Welcomes the fact that the draft Constitution makes other important improvements in the sphere of decision-making and policy-making, and in particular:
- the fact that the Union has now acquired a clear commitment to a social market economy as expressed in its values and objectives, with emphasis being placed inter alia on the importance of growth, employment, competitiveness, gender equality and non-discrimination and on socially and environmentally sustainable development,
  - the fact that the Legislative and General Affairs Council, although not acting as a wholly separate Legislative Council, will in the future always meet in public when performing its legislative duties,
  - the extension of qualified majority voting and co-decision to, in particular, the area of freedom, security and justice and the extension of the general system of jurisdiction of the Court of Justice of the European Communities to justice and home affairs,
  - the fact that, for international agreements and the common commercial policy, the assent of Parliament will now be required as a general rule,
  - the provisions on transparency and access to documents, the simplification of the legislative and non-legislative procedures and the use of language commonly understood by citizens,
  - the abolition of the distinction between obligatory and non-obligatory expenditure in the budget and the extension of co-decision to the common agricultural policy and the common fisheries policy,
  - the introduction of a multiannual strategic programme of the Union,
  - the recognition of the growing importance of the regional dimension to European integration,
  - the modification of the rules concerning access to the Court of Justice,
  - the provisions on the adoption of delegated regulations by the Commission with ‘call-back’ rights for Parliament and the Council,
  - the provision under which those countries which have undertaken to participate in enhanced cooperation may introduce, among themselves, qualified majority voting where unanimity is otherwise prescribed by the draft Constitution, and adopt the legislative procedure where other procedures would normally apply;
19. Endorses the solidarity clause regarding the fight against terrorism and the possibility of structural cooperation in security and defence policy while respecting NATO commitments;

***Aspects requiring further monitoring during their implementation***

20. Believes that the election of the President of the European Council cannot in itself solve all the current problems affecting the functioning of that institution and could entail unforeseeable consequences for the institutional balance of the Union; the role of the President must be strictly limited to that of a chairperson in order to avoid possible conflicts with the President of the Commission or the Union Minister for Foreign Affairs and not to endanger their status or encroach in any way on the Commission’s role in external representation, legislative initiative, executive implementation or administration;
21. Emphasises that the provisions concerning the presidencies of Council of Ministers formations other than the Foreign Affairs Council leave the details to a subsequent decision, which should be carefully assessed, bearing in mind the requirement of coherence, efficiency and accountability and the need to address the problem of the presidency of the Council’s preparatory bodies;
22. Welcomes the disappearance of the link between the weighting of votes in the Council and the distribution of seats in Parliament, as established in the Protocol on the enlargement of the European Union annexed to the Treaty of Nice; supports the system set out in the draft Constitution as regards the future composition of Parliament and suggests that this be implemented without delay, because it is a core element of the global balance between the Member States within the different institutions;
23. Understands that the creation of the office of Union Minister for Foreign Affairs will enhance the Union’s visibility and capacity for action on the international stage but stresses that it is vital that the Union Minister for Foreign Affairs be supported by a joint administration within the Commission;

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24. Suggests that the European Ombudsman, who is elected by Parliament, and the national ombudsmen might propose a more comprehensive system of non-judicial remedies in close cooperation with Parliament's Committee on Petitions;

25. Considers that the Intergovernmental Conference should adopt a decision on the repeal, upon entry into force of the Members' Statute adopted by Parliament on 4 June 2003, of Articles 8, 9 and 10 of the Protocol on Privileges and Immunities and of Article 4(1) and (2) of the Act on direct elections;

26. Regrets the insufficient congruence of Part III with Part I of the draft Constitution, particularly in relation to Article I-3;

27. Welcomes the introduction of the 'passerelle' clause which allows the European Council to decide to have recourse to the ordinary legislative procedure in cases where special procedures apply, after consulting Parliament and informing national parliaments;

28. Believes that Parliament must, within the budgetary procedure, retain the rights it currently has and that its powers must not be weakened; considers that the satisfactory exercise of Parliament's power to approve the multiannual financial framework presupposes the rapid opening of interinstitutional negotiations, in addition to the Intergovernmental Conference, on the structure of this framework and the nature of the constraints on the budgetary procedure; believes that the multiannual financial framework should leave the budgetary authority significant room for manoeuvre during the annual procedure;

29. Expresses its concern regarding the unsatisfactory answers given to certain fundamental questions, which were clearly pointed out in Parliament's previous resolutions, concerning in particular:

- further consolidation of economic and social cohesion policy, closer coordination of Member States' economic policies with a view to effective economic governance, and a more explicit integration of employment, environmental and animal welfare aspects in all EU policies,
- full recognition of the role played by public services, based on the principles of competition, continuity, solidarity and equal access and treatment for all users,
- the suppression of the requirement of unanimity in the Council in certain vital areas, including in particular the Common Foreign and Security Policy (at least as regards the proposals made by the Union Minister for Foreign Affairs with the Commission's support), and certain areas of social policy;

30. Understands that the solution proposed for the Commission by the draft Constitution is an important part of the global institutional compromise; hopes that the reform of the Commission will not weaken its collegiality or give rise to a lack of continuity; regrets that the system envisaged makes it difficult to keep a good European Commissioner for a second term;

**General assessment**

31. Notes that the draft Constitution prepared by the Convention represents the result of a broad democratic consensus involving Parliament and the national parliaments and governments of the Union, thus expressing the will of the citizens;

32. Welcomes the provision whereby Parliament now also has the right to propose constitutional amendments and, moreover, must approve any attempt to amend the Constitution without convening a convention, which will enable it to exert a de facto control over the use of this new instrument of constitutional revision; regrets, however, that the unanimity of the Member States and ratification by national parliaments or in accordance with other constitutional requirements will both still be necessary to allow the entry into force of constitutional amendments of even minor importance; strongly deplores the fact that Parliament's approval is not systematically required for the entry into force of newly adopted constitutional texts;



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33. Resolves that notwithstanding certain limits and contradictions, the result of the work of the Convention should be endorsed, representing as it does an historic step towards a European Union which is more democratic, efficient and transparent;

34. Believes that in the light of the experience of two Conventions this method ensures democratic legitimacy and, through its working methods, guarantees openness and participation; considers nevertheless that for future revisions it could be sensible for the Convention itself to elect its Praesidium;

#### ***Convening of the Intergovernmental Conference and ratification process***

35. Approves the convening of the Intergovernmental Conference (IGC) on 4 October 2003;

36. Urges the IGC to respect the consensus reached by the Convention, to avoid negotiations on the fundamental decisions reached by the Convention and to approve the draft Treaty establishing a Constitution for Europe without altering its basic balance while aiming at reinforcing its coherence;

37. Calls on the political parties, both in the Member States and at European level, the representative associations and civil society to reflect comprehensively not only on the outcome of the Convention but also on Parliament's views as expressed in this Resolution;

38. Strongly welcomes the Italian Presidency's assurance that Parliament will be closely and continuously involved in the IGC at both levels, namely that of the Heads of State or Government and that of the Foreign Affairs Ministers, and supports its intention to close the conference by December 2003;

39. Considers that the Treaty establishing a Constitution for Europe must be signed by all the twenty five Member States on 9 May 2004, Europe Day, immediately after the accession of the new members to the Union;

40. Considers that Member States that hold referenda on the draft Constitution should if possible hold such referenda or ratify the draft Constitution in accordance with their constitutional provisions on the same day;

41. Welcomes the fact that the deliberations of the IGC are to be publicised on the Internet, but calls on the Commission, the governments of the Member States and the political parties to envisage using all possible information media to acquaint the general public with the content of the IGC's work and the draft Constitution, including the organisation of national fora;

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42. Instructs its President to forward this resolution, constituting Parliament's opinion on the convening of the Intergovernmental Conference, to the Council, the Commission, the European Central Bank, the Heads of State or Government and the parliaments of the Member States and of the acceding and candidate States.

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**A7**

**European Parliament resolution  
of 12.1.2005  
on the Treaty establishing a Constitution for Europe**



Wednesday 12 January 2005

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**P6\_TA(2005)0004**

## **Constitution for Europe**

### **European Parliament resolution on the Treaty establishing a Constitution for Europe (2004/2129 (INI))**

*The European Parliament,*

- having regard to the Treaty establishing a Constitution for Europe (hereinafter ‘the Constitution’),
- having regard to the Treaty on European Union and the Treaty establishing the European Community as amended by the Single European Act and the Treaties of Maastricht, Amsterdam and Nice,
- having regard to the Charter of Fundamental Rights of the European Union <sup>(1)</sup>,
- having regard to the European Council’s Laeken Declaration <sup>(2)</sup>,

<sup>(1)</sup> OJ C 364, 18.12.2000, p. 1.

<sup>(2)</sup> Laeken European Council, Laeken declaration on the future of the Union, SN 273/01, 15.12.2001.

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- having regard to its resolutions <sup>(1)</sup> paving the way towards a Constitution for Europe,
- having regard to its resolutions <sup>(2)</sup> preparing past intergovernmental conferences and its resolutions <sup>(3)</sup> assessing their outcome,
- having regard to the draft Treaty establishing a Constitution for Europe adopted by consensus by the European Convention on 13 June and 10 July 2003, as well as its resolutions <sup>(4)</sup> preparing and subsequently assessing the work of the Convention,
- having regard to the opinions on the Constitution delivered by the Committee of the Regions on 17 November 2004 <sup>(5)</sup> and the European Economic and Social Committee on 28 October 2004 <sup>(6)</sup> at the request of the European Parliament <sup>(7)</sup>,
- having regard to the views expressed by the representatives of regional associations, social partners and platforms of civil society at a public hearing convened on 25 November 2004,
- having regard to Rule 45 of its Rules of Procedure,
- having regard to the report of the Committee on Constitutional Affairs and the opinions of the Committee on Foreign Affairs, the Committee on Development, the Committee on International Trade, the Committee on Budgets, the Committee on Budgetary Control, the Committee on Employment and Social Affairs, the Committee on the Environment, Public Health and Food Safety, the Committee on Industry, Research and Energy, the Committee on Regional Development, the Committee on Agriculture, the Committee on Fisheries, the Committee on Legal Affairs, the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Petitions (A6-0070/2004),

<sup>(1)</sup> Resolution of 14.2.1984 on the draft Treaty establishing the European Union (OJ C 77, 19.3.1984, p. 53, rapporteur: Altiero Spinelli, 1-1200/1983). Resolution of 11.7.1990 on the European Parliament's guidelines for a draft constitution for the European Union (OJ C 231, 17.9.1990, p. 91, rapporteur: Emilio Colombo, A3-0165/1990). Resolution of 12.12.1990 on the constitutional basis of European Union (OJ C 19, 28.1.1991, p. 65, rapporteur: Emilio Colombo, A3-0301/1990). Resolution of 10.2.1994 on the Constitution of the European Union (OJ C 61, 28.2.1994, p. 155, rapporteur: Fernand Herman, A3-0064/1994). Resolution of 25.10.2000 on the constitutionalisation of the Treaties (OJ C 197, 12.7.2001, p. 186, rapporteur: Olivier Duhamel, A5-0289/2000).

<sup>(2)</sup> Resolution of 14.3.1990 on the Intergovernmental Conference in the context of Parliament's strategy for European Union (OJ C 96, 17.4.1990, p. 114, rapporteur: David Martin, A3-0047/1990). Resolution of 11.7.1990 on the Intergovernmental Conference in the context of Parliament's strategy for European Union (OJ C 231, 17.9.1990, p. 97, rapporteur: David Martin, A3-0166/1990). Resolution of 22.11.1990 on the Intergovernmental Conferences in the context of Parliament's strategy for European Union (OJ C 324, 24.12.1990, p. 219, rapporteur: David Martin, A3-0270/1990). Resolution of 22.11.1990 embodying Parliament's opinion on the convening of the Intergovernmental Conferences on Economic and Monetary Union and on Political Union (OJ C 324, 24.12.1990, p. 238, rapporteur: David Martin, A3-0281/1990). Resolution of 17.5.1995 on the functioning of the Treaty on European Union with a view to the 1996 Intergovernmental Conference — Implementation and development of the Union (OJ C 151, 19.6.1995, p. 56, rapporteurs: Jean-Louis Bourlanges and David Martin, A4-0102/1995). Resolution of 13.3.1996 embodying (i) Parliament's opinion on the convening of the Intergovernmental Conference, and (ii) an evaluation of the work of the Reflection Group and a definition of the political priorities of the European Parliament with a view to the Intergovernmental Conference (OJ C 96, 1.4.1996, p. 77, rapporteurs: Raymonde Dury and Hanja Maji-Weggen, A4-0068/1996). Resolution of 18.11.1999 on the preparation of the reform of the Treaties and the next Intergovernmental Conference (OJ C 189, 7.7.2000, p. 222, rapporteurs: Giorgos Dimitrakopoulos and Jo Leinen, A5-0058/1999). Resolution of 3.2.2000 on the convening of the Intergovernmental Conference (OJ C 309, 27.10.2000, p. 85, rapporteurs: Giorgos Dimitrakopoulos and Jo Leinen, A5-0018/2000). Resolution of 16.3.2000 on the drafting of a European Union Charter of Fundamental Rights (OJ C 377, 29.12.2000, p. 329, rapporteurs: Andrew Duff and Johannes Voggenhuber, A5-0064/2000). Resolution of 13.4.2000 containing the European Parliament's proposals for the Intergovernmental Conference (OJ C 40, 7.2.2001, p. 409, rapporteurs: Giorgos Dimitrakopoulos and Jo Leinen, A5-0086/2000).

<sup>(3)</sup> Resolution of 16.1.1986 on the position of the European Parliament on the Single Act approved by the Intergovernmental Conference on 16 and 17 December 1985 (OJ C 36, 17.2.1986, p. 144, rapporteur: Altiero Spinelli, A2-0199/1985). Resolution of 11.12.1986 on the Single European Act (OJ C 7, 12.1.1987, p. 105, rapporteur: Luis Planas Puchades, A2-0169/1986). Resolution of 7.4.1992 on the results of the Intergovernmental Conferences (OJ C 125, 18.5.1992, p. 81, rapporteurs: David Martin and Fernand Herman, A3-0123/1992). Resolution of 19.11.1997 on the Amsterdam Treaty (OJ C 371, 8.12.1997, p. 99, rapporteurs: Iñigo Méndez de Vigo and Dimitris Tsatsos, A4-0347/1997). Resolution of 31.5.2001 on the Treaty of Nice and the future of the European Union (OJ C 47 E, 21.2.2002, p. 108, rapporteurs: Iñigo Méndez de Vigo and António José Seguro, A5-0168/2001).

<sup>(4)</sup> Resolution of 29.11.2001 on the constitutional process and the future of the Union (OJ C 153 E, 27.6.2002, p. 310, rapporteurs: Jo Leinen and Iñigo Méndez de Vigo, A5-0368/2001). Resolution of 24.9.2003 on the draft Treaty establishing a Constitution for Europe and the European Parliament's opinion on the convening of the Intergovernmental Conference (OJ C 77 E, 26.3.2004, p. 255, rapporteurs: José María Gil-Robles Gil-Delgado and Dimitris Tsatsos, A5-0299/2003).

<sup>(5)</sup> CdR 354/2003 fin, not yet published in the Official Journal.

<sup>(6)</sup> CESE 1416/2004, not yet published in the Official Journal.

<sup>(7)</sup> Items 8.2 and 8.3, P6\_PV(2004)09-14.

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Whereas:

- A. the European Union has, in the course of its history, played a substantial role in creating a continuously expanding area of peace and prosperity, democracy and freedom, justice and security,
  - B. the Constitution consolidates these achievements and brings about innovations which are essential to maintaining and enhancing the capacity of the Union of twenty-five and potentially more Member States to act effectively internally and externally,
  - C. the efforts to achieve a Constitution deployed by the European Parliament since its first direct election, have been crowned by the success of the Convention, which prepared the draft using a democratic, representative and transparent method that has fully proved its effectiveness, and which took account of the contributions of the citizens of Europe, resulting in a consensus which was left essentially unchanged by the Intergovernmental Conference,
  - D. the Constitution, as a compromise that had to be acceptable to all Member States, inevitably left out some proposals, notably of the European Parliament and of the Convention, that would have, in the view of their authors, brought further improvements to the Union, many of which remain possible in the future,
  - E. the agreement to the Constitution of every single national government in the European Union demonstrates that the elected governments of Member States all consider that this compromise is the basis on which they wish to work together in the future, and will require each of them to demonstrate maximum political commitment to ensuring ratification by 1 November 2006,
  - F. the Constitution has been the object of some criticism voiced in public debate that does not reflect the real content and legal consequences of its provisions, insofar as the Constitution will not lead to the creation of a centralised superstate, will strengthen rather than weaken the Union's social dimension and does not ignore the historical and spiritual roots of Europe since it refers to its cultural, religious and humanist inheritance,
1. Concludes that, taken as a whole, the Constitution is a good compromise and a vast improvement on the existing treaties, which will, once implemented, bring about visible benefits for citizens (and the European Parliament and the national parliaments as their democratic representation), the Member States (including their regions and local authorities) and the effective functioning of the European Union institutions, and thus for the Union as a whole;

***Greater clarity as to the Union's nature and objectives***

2. Welcomes the fact that the Constitution provides citizens with more clarity as to the Union's nature and objectives and as to the relations between the Union and the Member States, notably because:
  - (a) the complex set of European treaties is replaced by a single more readable document spelling out the objectives of the Union, its powers and their limits, its policy instruments and its institutions;
  - (b) the Union's dual legitimacy is reaffirmed, and it is clarified that it is a Union of States and citizens;
  - (c) the canon of values common to all the Member States, on which the Union is founded and which creates a strong bond between the Union's citizens, is made explicit and widened;
  - (d) the objectives of the Union as well as the principles governing its action and its relations with Member States are clarified and better defined;
  - (e) economic, social and territorial cohesion is reaffirmed as an objective of the Union;

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- (f) there are new provisions of general application concerning a high level of employment, the promotion of equality between women and men, the elimination of all kinds of discriminations, the fight against social exclusion and the promotion of social justice, social protection, a high level of education, training and health, the protection of the consumer, the promotion of sustainable development and the respect of services of general interest;
- (g) the confusion between the 'European Community' and 'European Union' will end as the European Union becomes one single legal entity and structure;
- (h) European legal acts are simplified and their terminology is clarified, using more understandable vocabulary: 'European laws' and 'European framework laws' replace the existing multiple types of act (regulations, directives, decisions, framework decisions, etc.);
- (i) it provides guarantees that the Union will never be a centralised all-powerful 'superstate':
  - the strong emphasis on decentralisation inherent in 'united in diversity',
  - the obligation to 'respect the national identities of Member States, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government',
  - the principles of conferred powers (whereby the Union's only competences are those conferred on it by the Member States), subsidiarity and proportionality,
  - the participation of the Member States themselves in the Union's decision-making system and in agreeing any changes to it;
- (j) the inclusion of the symbols of the Union in the Constitution will improve awareness of the Union's institutions and their action;
- (k) a solidarity clause between Member States provides citizens with an expectation of receiving support from all parts of the Union in case of a terrorist attack or a natural or man-made disaster;

### ***Greater effectiveness and a strengthened role in the world***

3. Welcomes the fact that, with the entry into force of the Constitution, the Union's institutions will be able to carry out their tasks more effectively, notably because:

- (a) there is a significant increase in the areas in which the governments meeting in Council will decide by qualified majority voting rather than by unanimity, a vital factor if the Union of twenty-five Member States is to be able to function without being blocked by vetoes;
- (b) the European Council will have a two-and-a-half-year chair instead of a six-month rotating one;
- (c) there will, as of 2014, be a reduction in the number of members of the Commission based on an equal rotation between Member States;
- (d) there will be a significant enhancement of the Union's visibility and capacity as a global actor:
  - the European Union's Foreign policy High Representative and the Commissioner for External Relations — two posts causing duplication and confusion — will be merged into a single European Union Minister for Foreign Affairs, who will be a Vice President of the Commission and will chair the Foreign Affairs Council and be able to speak for the Union on those subjects where the latter has a common position,
  - there will be a single external action service which must be connected as closely as possible with the Commission and result in the strengthening of Europe as a community,
  - the conferral of legal personality, previously enjoyed by the European Community, on the Union will enhance its capacity to act in international relations and to be a party to international agreements,
  - the Union's capacity to develop common structures in the field of security and defence policy will be reinforced, while ensuring the necessary flexibility to cater for differing approaches of Member States to such matters;



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- (e) the number of the Union's legislative instruments and the procedures for their adoption will be reduced; the distinction between legislative and executive instruments will be clarified;
- (f) action in the area of justice and home affairs will be subject to more effective procedures, promising tangible progress with regard to justice, security and immigration issues;
- (g) for a number of other matters, it will become easier to apply the successful Community method as soon as there is the political will to do so;
- (h) there is more room for flexible arrangements when not all Member States are willing or able to go ahead with certain policies at the same time;

***More democratic accountability***

4. Welcomes the fact that citizens will have greater control over the European Union's action by increased democratic accountability, notably due to the following improvements:

- (a) the adoption of all European Union legislation will be subject to the prior scrutiny of national parliaments and, with a few exceptions, the dual approval of both national governments (in the Council) and the directly elected European Parliament — a level of parliamentary scrutiny that exists in no other supranational or international structure;
- (b) national parliaments will receive all European Union proposals in good time to discuss them with their ministers before the Council adopts a position and will also gain the right to object to draft legislation if they feel it goes beyond the European Union's remit;
- (c) the European Parliament will as a rule decide on an equal footing with the Council on the Union's legislation;
- (d) the President of the Commission will be elected by the European Parliament, thereby establishing a link to the results of European elections;
- (e) the Union Minister for Foreign Affairs, appointed by the European Council in agreement with the Commission's President, will be accountable both to the European Parliament and to the European Council;
- (f) a new budgetary procedure will require the approval of both the Council and the European Parliament for all European Union expenditure, without exception, thus bringing all expenditure under full democratic control;
- (g) the exercise of delegated legislative powers by the Commission will be brought under a new system of supervision by the European Parliament and the Council, enabling each of them to call back Commission decisions to which they object;
- (h) agencies, notably Europol, will be subject to greater parliamentary scrutiny;
- (i) the Council will meet in public when debating and adopting Union legislation;
- (j) the role of the Committee of the Regions is reinforced;
- (k) with regard to future revisions of the Constitution, the European Parliament, too, will have the power to submit proposals, and the scrutiny of any proposed revision must be carried out by a Convention unless Parliament agrees that this is not necessary;

***More rights for citizens***

5. Welcomes the fact that the rights of citizens will be strengthened as a result of the following improvements:

- (a) the incorporation of the EU Charter of Fundamental Rights in Part II of the Constitution, which means that all provisions of European Union law and all action taken by the EU institutions or based on EU law will have to comply with those standards;
- (b) the Union is to accede to the European Convention on Human Rights, thereby making the Union subject to the same external review as its Member States;

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- (c) new provisions will facilitate participation by citizens, the social partners, representative associations and civil society in the deliberations of the Union;
- (d) the introduction of a European citizens' initiative, which will enable citizens to submit proposals on matters where they consider that a legal act of the Union is required in order to implement the Constitution;
- (e) individuals will have greater access to justice in connection with European Union law;

### **Conclusions**

- 6. Endorses the Constitutional Treaty and wholeheartedly supports its ratification;
- 7. Believes that this Constitution will provide a stable and lasting framework for the future development of the European Union that will allow for further enlargement while providing mechanisms for its revision when needed;
- 8. Announces its intention of using the new right of initiative conferred upon it by the Constitution to propose improvements to the Constitution;
- 9. Hopes that all Member States of the European Union will be in a position to achieve ratification by mid-2006;
- 10. Reiterates its request that all possible efforts be deployed in order to inform European citizens clearly and objectively about the content of the Constitution; therefore invites the European institutions and the Member States, when distributing the text of the constitutional Treaty to citizens (in unabridged or summary versions), to make a clear distinction between the elements already in force in the existing treaties and new provisions introduced by the Constitution, with a view to educating the public and informing the debate; invites them also to recognise the role of civil society organisations within the ratification debates and to make available sufficient support to enable such organisations to engage their constituencies in these debates across the EU in order to promote the active involvement of citizens in the discussions on ratification;

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- 11. Instructs its President to forward this resolution and the report of the Committee on Constitutional Affairs to the national parliaments of the Member States, the Council, the Commission and the former Members of the European Convention, and to ensure that Parliament's services, including its Information Offices, provide ample information about the Constitution and Parliament's position on it.
-