



**European Movement
Mouvement Européen**

The status of the work of the European Convention

***An International European Movement report in
collaboration with the Academic Agora for the Future of
Europe under the Presidency of Professor Jean-Victor
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I. The debate within the Convention

The starting point for the discussions which took place during ten months (from 28/02 to 20/12/02) within the European Convention among the European political groupings, within national and European institutions and also in the academic world and the world of civil society was the declaration adopted by the Laeken European Council (December 2001).

The members of the Convention concentrated first of all on ideas regarding the concerns and demands of the citizens of the European Union. Discussions with regard to institutional choices (*how to do*), will begin during the session of the Convention on the 20th and 21st January 2003. These discussions should be based on reflections up until this point on *what to do*. The members of the Convention had first of all to analyse the following:

- The objectives and competencies of the EU,
- Economic and monetary governance,
- The protection of fundamental rights,
- The reinforcement of the democratic legitimacy of the EU system,
- The representation of the EU in the world, security and defence,
- The development of the European social model,
- An area of freedom, security and justice,
- The transparency and clarity of the decision-making process.

Each of these was the subject of preliminary debates in the plenary session and in the eleven working groups. The conclusions of the groups were then discussed in plenary session.

The Praesidium of the Convention proposed a draft structure (CONV 369/02) to the members of the Convention which should form the basis of the *final product* of the Convention's work, to be presented at the European Council at the end of June 2003.

The Praesidium's draft incorporates the consensus which has formed surrounding the idea of a single text, including provisions of a constitutional nature¹ on the one hand and the policies and implementation of EU activities² on the other.

A third part of this text would be devoted to the general and final provisions such as the procedure for the revision of the Constitution ; its adoption ; its ratification and its entry into force, its duration and the languages of the EU.

On the whole we are looking at a step forward in the direction of a greater legibility and visibility, which would thereby permit a real move closer to its citizens on the part of the EU.

¹ The definition of the EU and its objectives, citizenship and fundamental rights, the competences and actions of the EU, the institutions, the implementation of the competencies and activities of the EU, democracy, finances, the action of the EU in the world, the EU and its neighbouring environment, membership of the EU.

² Internal market; economic and monetary policy; policies in other specific areas such as competition, social policy, cohesion, the CAP, the environment, the protection of consumers, transport and trans-European networks, research; internal security; complementary competences such as employment, health, industry, culture, education and professional training; external action and defence; the functioning of the institutions.

II. The schedule of the Convention during 2003

Following the end of the preparation stage which was devoted to the ten working groups (the eleventh - on the theme of a Social Europe - will present its report to the Convention on the 6th and 7th February 2003) and after a preliminary discussion - during the session on the 20th and 21st January 2003 - on the functioning of the institutions and the efficiency of the enlarged EU, the Praesidium will adopt the proposed articles referring to the titles in the Draft of 28th October.

The first section (Titles I: the definition of the EU and its objectives; II: EU citizenship and fundamental rights; III: the competencies and activities of the EU) will be discussed by the Convention in February (the 6th and 7th and the 27th and 28th).

The second section (Titles V : the implementation of EU activities; VII: the finances of the EU; and IX: the EU and its neighbouring environment) will be discussed in February (the 27th and 28th) and March (the 17th and 18th).

The third section (Titles IV: the EU institutions; VI: the democracy of the EU; VIII: EU action in the world; and X: EU membership) will be discussed in March (the 17th and 18th) and April (the 3rd and 4th).

Part III of the Draft (the final provisions) will be discussed during the second session in April (the 24th and 25th).

At the same time, the Convention will begin its work on the second part of the Constitutional Treaty (EU policies and the implementation of EU activities). The Praesidium plans to present an analysis of the current Treaty articles to the Convention, before the end of January. This analysis would distinguish between:

- Articles which would be removed, because they would be replaced by new articles in the Part I of the Treaty (the Constitution) ;
- Articles which would be replaced by new articles in Part II (particular new provisions relating to the old pillars of CFSP and police and judicial cooperation in criminal matters, as well as convergence of criminal law) ;
- Articles which would be amended to reflect the new provisions of the Constitution.

If this schedule is adhered to, the Convention should be ready to discuss – in late April (the 24th and 25th) or in May (the 15th and 16th or the 29th and 30th) - the whole text of the three parts of the Constitutional Treaty. According to President Giscard, the existence of points of controversy would lead to the creation of "circles of discussion" which would be expected to bring the ideas to maturity and to report to the next session of the Convention.

The programme of the Convention provides for two more plenary sessions in June, the first on the 5th and 6th and the second on the 12th and 13th, one week before the European Council.

The Convention should thus respect the deadline confirmed in Copenhagen, that is to say the conclusion of its work before the meeting of the Heads of State and Government of the EU of 25, which will take place in Thessaloniki on the 20th and 21st of June.

III. The agenda of the EU beyond the Convention

On the other hand, no decision has been taken with regard to the date of the beginning - and even less the conclusion - of the work of the Intergovernmental Conference (IGC) which should follow the end of the Convention.

The presence of a large number of the representatives of national Governments in the Convention however, underlines the fact that the statement of the German Minister for Foreign Affairs, Joschka Fischer, was justified : « *What won't be solved by the Convention will hardly be done so elsewhere* ».

Although the Convention will not have finished its work, the enlargement of the EU should continue according to the calendar which was laid down following decisions taken by the Members States and the Heads of State and Government of the ten candidate countries:

- At the end of January 2003, the European Parliament will give its opinion on the new provisions decided upon by the Copenhagen European Council (the establishment of the new Commission, the voting procedures in the Council);
- On the 19th of March 2003, the Foreign Affairs Committee of the European Parliament will vote on the ten recommendations regarding the procedure of approval of the accession candidates;
- During the April session in Strasbourg (7-10), the same vote will take place in plenary session;
- Between the April session of the European Parliament and the 16th of April 2003, the Council, following the votes of the European Parliament regarding the procedure of approval, will have to take a formal decision concerning the accessions;
- The Accession Treaties will be signed in Athens on the 16th of April 2003;
- On the 1st of May 2003 the observers from the candidate countries will enter the European Parliament ;
- In April 2004, on the basis of a procedure yet to be determined, the European Parliament will audition the ten commissioners appointed by the Governments of the candidate countries;
- On the 1st of May 2004, the accession of those of the ten candidate countries who have completed their ratification processes will take place and the observers will become full members of the European Parliament.

The ratification of the Accession Treaties in each of the candidate countries will be done by referendum, beginning with Hungary on the 12th of April 2003 and ending with Latvia on the 20th of September 2003.

The sixth European elections, which could have taken place in May 2004, will actually take place during the week of the 10th-14th June 2004. Following those elections, the process for the election and the establishment of the new Commission will take place - according to the rules laid out in the Nice Treaty (which will enter into force on the 1st of February 2003) - to permit the EU executive of 25 to begin its work from the 1st of November 2004.

During the Greek Presidency, the European Council will meet on the 21st and 22nd of March in Brussels and, as indicated above, on the 20th and 21st of June in Thessaloniki. Both meetings of the European Council under the Italian presidency will take place in Brussels, the first on the 16th and 17th of October and the second on the 11th and 12th of December, but the Italian Government has proposed that the IGC should start in Rome in July, in the hope that it could

succeed in the objective of finalising a political agreement on the new Constitutional Treaty once again in Rome before the end of its Presidency.

This agenda is added and juxtaposed to a political calendar which provides for national elections during 2003 in the Netherlands (on the 22nd of January), in Finland (on the 16th of April) and in Belgium (on the 15th of June at the latest); and during 2004 in Spain (March), Greece (April), Luxemburg (June) and in the United Kingdom (on a date yet to be determined); and the referendum on the euro in Sweden (14th September 2003), which could be followed by a referendum in the United Kingdom and a second referendum on the euro in Denmark.

In February, the Government of Croatia will present its application for accession to the EU, in the hope that Croatia could join Bulgaria and Romania in 2007. The success of enlargement has also strengthened the position of the pro-Europeans in Norway and the will of the Swiss Government to reopen the issue of its accession to the EU in 2006.

With regard to the consultation of citizens, the Accession Treaties will not have to be ratified by referendum in the fifteen Member States¹. Ratification of the new Constitution however will occur in the form of a direct appeal to the people, particularly in States where the citizens have been involved in the Community decision-making process : in France (1972 and 1992), in Ireland (1972, 1987, 1992, 1998, 2001, 2002), in Denmark (1972, 1986, 1992, 1993, 2000), in the United Kingdom (1975), in Austria (1994), in Finland (1994), in Sweden (1994) and in Italy (1989).

In certain cases ratification by referendum is compulsory (in Ireland, Denmark and Austria), in others its results are legally binding (in France) and in yet others the Government and the Parliament are politically involved (in the United Kingdom, Finland, Denmark, Sweden and Italy).

It is useful to remember that in certain countries – which have not yet consulted their citizens to appeal for their endorsement of the various stages of the process of European integration – a growing consensus has been observed among the political parties surrounding the idea of a referendum : this is the case in Germany and in a lesser way in Spain².

Agora will set up a table - country by country – regarding the status of constitutional law in each of the members of the EU and the political perspectives on consulting the citizens concerning a future European Constitution.

With regard to information concerning the EU agenda, the decision taken on the 18th of November 2002 should be borne in mind. The Ministers for Foreign Affairs of the Fifteen decided that the ten candidate countries should participate « fully » in the IGC which will follow the Convention. The suggestion of the Italian Government that the signature of the Constitutional Treaty should take place in Rome in May 2004, in order to permit each of the 25 countries to participate in this solemn event, should also be taken into consideration.

This suggestion implies that ratification of the Constitution could begin in the EU of 25 members following the European elections and the election of the new Executive.

The risks of a constitutional "imbroglio" - very difficult to explain to public opinions already badly informed on the future of Europe - between the deepening of the EU and the unification of Europe are obvious but no European or national institution has attempted to outline a strategy to deal with the dangers of this situation.

¹ Although the dates of the votes in the candidate countries are almost certain: after the Hungarians (who are expressing a massive support of 74% in favour as opposed to 6% against accession), the Lithuanians will be called to the ballot box (on the 11th of May), the Slovaks (on the 16th and 17th of May), the Poles (on the 8th of June), The Czechs (on 15 and 16 of June), the Slovenians (in June), the Estonians (on the 14th of September, the same day as the Swedish referendum on the euro), the Latvians (on the 20th of September). Malta and Cyprus have yet to determine their methods of ratification but it is almost certain that they will proceed by referendum. The Maltese Government will probably announce the date of the referendum following the parliamentary debate on the 13th of January. The date envisaged falls between the 22nd of February and the 9th of March.

² For further information on this topic, it is useful to consult the website www.iri-europe.org.

These risks have not yet been taken into consideration by the European Convention.

IV. The European consitutional debate

While waiting for the text of the Praesidium, a series of general contributions, both individual (Robert Badinter ; Elmar Brok ; Andrew Duff ; Peter Hain, based on a document by British lawyers ; Sylvia-Yvonne Kaufmann ; Elena Paciotti ; Johannes Voggenhuber) and collective (EPP, based on the Brok document; PSE ; PSOE) have been submitted to the Convention as working papers – some are written in the form of constitutional articles while others take the form of political texts - and are published on the website of the Convention (<http://www.european-convention.eu.int>).

Other projects emerged even before the beginning of the work of the Convention (François Bayrou ; Alain Juppé et Jacques Toubon ; The Economist) or as contributions to its work (Lührmann-Seifert-Nouripour, members of the German Green Party ; the Swedish Liberal Party ; the Royal Belgian Institute of International Relations, in collaboration with the European Policy Centre ; the MEP, Jo Leinen).

These projects were followed, on the 4th of December 2002, by the working document (referred to as Penelope) which was put together by a group of civil servants in the Commission at the request of President Prodi and with the agreement of Commissioners Barnier and Vitorino. This document is available on the « Futurum » website (http://www.europa.eu.int/futurum/documents/offtext/const051202_fr.pdf).

On the same day, the Commision adopted a Communication (COM 728/2002) "for the EU : peace, freedom, solidarity", which was presented to the Convention as a new contribution following that of the 22nd of May 2002 (COM 247/2002).

In a letter addressed to the actors of the academic world and particularly to the academic Agora on the Future of Europe, Commissioners Barnier and Vitorino pointed to the conviction of the Commission with regard to the need to "*preserve the balance of the institutional system and respect the double legitimacy of the EU, both a Union of States and a Union of European peoples*".

While emphasising the necessity of simplifying the institutional architerture of an EU which will nearly double in the number of its Member States and of clarifying the functions of each institution, Commissioners Barnier and Vitorino remind us of the principles which should inspire the drafting of a future Treaty, "*a genuine Constitution of the enlarged EU: simplicity, responsibility, legitimacy*".

Thus, the Commission acts in accordance with the decisions taken by the Laeken European Council, which instructed the Convention to work on the basis of a constant dialogue with civil society, of which the academic world is an essential element.

The responsibility of the academic world is called upon by the Commission within the framework of the major debate on the Future of Europe. It is essential that the academic community asserts itself during this decisive period for the future development of the European construction.

V. The status of the Convention : the eleven working groups

Below are the main ideas which have emerged from the eleven working groups of the Convention. Ten of the working groups groups adopted their conclusions and submitted these to the plenary session, while working group on a Social Europe, which was created on the 5th and 6th of December, will present its conclusions at the plenary session in early February.

1. Subsidiarity (CONV 286/02), President : Mendez de Vigo

According to the group, the developments relating to the respect of the principle of subsidiarity should not lead to a complication, extension, or deadlock of the decision-making process. For this reason, the idea of creating of an ad hoc body, responsible for the control of the application of subsidiarity (an inter-parliamentary Chamber, a Congress of the Peoples, a body within COSAC....) was rejected.

The group considered that the control of respect for the principle of subsidiarity should be of a political nature. Interventions should be made before the legislative acts enter into force and national parliaments should be consulted at the beginning of the process.

The group also considered that the *ex post* control of subsidiarity should be of a legal nature and that the conditions under which a case could be submitted to the Court of Justice should be extended.

Departing from these principles (neither complication, nor deadlock, nor an ad hoc body - *ex ante* political control and *ex post* legal control), the proposals of the group revolve around three axes. The consequences of these proposals on the decision-making of the EU must be assessed. These proposals gave rise to reservations among the members of the Convention (particularly those from the Benelux countries and the MEP Alain Lamassoure), but also within the Constitutional Affairs Committee of the European Parliament :

- Strengthening the application of the principle of subsidiarity during the elaboration and proposal phases (consultation of all actors concerned, certificate of subsidiarity by the Commission, debates in the European Parliament and in national parliaments..).
- The implementation of an early-warning system which would allow for the direct participation of national parliaments, giving them the opportunity to react within a period of six weeks with a reasoned opinion. Different consequences should follow the opinions depending on the number and the substance of the opinions received. If a small amount of opinions considered that the text violated the principle of subsidiarity, the Commission would have to make a greater effort to justify its project with regard to the principle of subsidiarity. If a significant amount (at least a third of the national Parliaments) expressed doubts, the Commission would be asked to review its proposal. This mechanism should also apply to the conciliation process.
- Opening the right of submission to the Court of Justice to national parliaments and the Committee of the Regions when they have formulated a reasoned opinion.

2. Charter of fundamental rights (CONV 354/02), President: Vitorino

The group declared itself to be clearly in favour of the recognition of the binding nature of the Charter for EU institutions and for the Member States when implementing EU laws, as a basis and an essential element of all constitutional texts. There is no question of returning to the origins of the articles on the various rights as this would reopen the debate concluded during the previous Convention.

For this reason, the group supports, almost by unanimity, the insertion of the entire text of the Charter into the European Constitution.

The report expressed unanimous support for the insertion of a constitutional clause allowing the EU to adhere to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

Within this framework, the group recalled the problems raised by the fact that the EU does not participate in the Strasbourg legal system, in cases where the European Court of Human Rights is asked to take a decision indirectly on EU law without an opportunity for the EU to defend itself before the court or to have a judge who would ensure that the necessary expertise in EU law

was observed. According to the opinion of the group – confirmed by the convergent declarations of experts - the Court of justice would remain, after the accession of the EU to the ECHR, the unique supreme arbiter in issues relating to EU law and the validity of EU laws; the European Court of Human Rights could under no circumstances be considered as a supreme jurisdiction but rather as a specialised jurisdiction exercising external control on the EU's respect of the obligations of international law obligations emerging from its accession to the ECHR.

The majority of the members of the group agreed that amendments to the so-called "horizontal" clauses (concerning the field of application of the rights) would be necessary, as these amendments would facilitate the integration of the Charter into the European Constitution.

A minority of the members of the group considered that these amendments could involve the risk of weakening the impact of the rights provided for in the Charter and endanger the objective which aims to guarantee for it a binding legal character.

The Convention will have to decide the practical details of its insertion (at the beginning of the Constitution, in an ad hoc part or in a protocol annexed to the Treaty) and the procedures for amendments, whether they should comply with those of the future Constitution or be specific to the Charter.

3. Legal Personality of the EU (CONV 305/02). President: Amato

The group proposes - by unanimity minus one vote - the recognition of a single legal personality of the EU as a successor to the legal personalities of the Communities (including, if appropriate, EURATOM).

This personality would have the advantage of visibility and transparency. It would allow the Union to play a role in the international arena.

The report emphasises that the plurality of treaties should disappear and also suggests the elimination of the pillars, while maintaining the possibility of different procedures existing with the same legal framework.

In relation to the structure of the treaties, the report favours a two-part constitutional treaty, with one constitutional part accompanied by a part consolidating the existing treaties, which will be amended according to the constitutional part.

With regard to the procedure for the conclusion of international agreements, the report suggests that the choice of a procedure should be made based on the criteria of the principal objective of the international agreement, while allowing the Commission to retain the power to carry out the negotiations.

The report also acknowledges however that exceptions to the rule of a single representation should be possible.

At the same time, the external representation of the EU should be consolidated and the High Representative should be merged with the Commissioner responsible for external relations.

4. The role of National Parliaments (CONV 353/02). President: Mrs Stuart

The work of the group underlined the consensus according to which an increased role for national parliaments should figure among the conclusions of the Convention.

The group looked at ways in which this role could be strengthened while affirming its conviction that it was vital that neither the legislative process at the European level nor the parliamentary calendar at the national level should be further complicated.

The draft report concentrated on three themes :

- Parliamentary control of the formulation of a national position in the Council (the possibilities of amending the current procedures to allow for control over the positions of each Government in the Council)
- Subsidiarity - while supporting the conclusions of the «subsidiarity group», the members of the “national parliaments” group suggest the withdrawal of the link between sending a justifiable position and the right of submission to the Court of justice. The members call for an extension of the early-warning mechanism in order for it to apply during the entire legislative process and in the case where the Commission would have substantially modified its initial proposal. The members also propose linking the control of proportionality to the control of subsidiarity,
- The creation or strengthening of inter-parliamentary networks (the Convention, COSAC, the Congress of the Peoples, ad hoc parliamentary conferences..).

A few of the group's proposals and particularly the ones on the Congress of the Peoples, were widely criticised during the debate in the plenary session and in documents submitted to the Convention, such as the contribution from the Belgian members of the Convention and the memorandum from the Benelux countries which was adopted on the 4th of December 2002.

5. Complementary competencies (CONV 375/02). President: M. Christophersen

The draft report contains the following recommendations:

- The insertion into the first part of the Constitutional Treaty of a title establishing the essential delimitation of the competencies of the Union along with the general principles. The specific conditions for each area - including the legal basis - should appear in the second part of the Treaty ;
- The group envisages the amendment of the expression "an ever closer union" in article 1 of the EU Treaty to avoid - according to the group president, Mr Christophersen - giving the impression that an increasing transfer of competencies towards the EU is itself a goal and an objective of the EU. The group did not consider it useful to recall that this expression was put forward by the British Prime Minister, John Major, as an alternative to the affirmation of the federal purpose/objective of the EU, at the time of the adoption of the Maastricht Treaty.
- The rewriting of articles 3 and 4 of the Treaty of the European Community with a view to outlining the gradation of the different responsibilities of the Union and establishing a classification of the competencies according to three categories (exclusive, shared and complementary) ;
- Competencies in this last category should be referred to as *assisting measures* ;
- The insertion into this category of the areas in which the States have not transferred legislative powers to the EU (which would consequently exclude the adoption of legislative acts in this area);
- The establishment of the principle that the EU exercises competencies in relation to the respect of national identities ;
- The insertion into the Constitutional Treaty of the principle of the choice of legal basis according to the criteria regarding the centre of gravity of the action. This principle was outlined by the Court of Justice, with a view to coordinating the exercise of functional competencies and complementary sectoral competencies;
- Foreseeing the possibility for the Council to decide by unanimity to depart from the application of the principles of freedom of movement which have direct effect, if other important objectives of the EU would be damaged as a result of such an application ;

- More control over the recourse to article 308 of the Treaty of the European Community, maintaining in particular the unanimity of the Council and a greater involvement of the European Parliament (by conforming opinion or by another more substantial participation). This article should not constitute a basis to enlarge the area of competencies of the EU beyond the general framework resulting from the treaty, neither should it serve as a basis for the adoption of provisions which would lead to the amendment of the treaty or constitute a basis for harmonisation measures in areas where the EU does not have harmonisation. A process of ex ante control by the Court of Justice - similar to the current article 300, paragraph 6 of the Treaty of the European Community with reference to the conclusion of international agreements or article 95 of the ECSC Treaty - could be useful according to the majority of the members of the group.

During the debate before the Convention on the 8th of November 2002, the report was widely criticised. A significant number of the members of the Convention denounced the effort to reintroduce the principle of a competency catalogue, not according to the objectives followed but according to the instruments used.

6. Economic governance (CONV 357/02). President: M. Hänsch

The group was incapable of reaching a majority consensus. The following majority (M) or minority (m) positions were expressed in relation to the questions discussed. No majority opinion was expressed on the general orientations of economic policy (GOEP) :

- The tasks, mandate and statute of the European Central Bank should remain unchanged (M) or the mandate should be extended to include growth and employment (m) ;
- The Commission should have the right of proposal in relation to the general orientations of economic policy - GOEP (m) and the right to issue a warning to the States (m) or to propose this warning to the Council (m) with the consultation of the European Parliament (m) ;
- The right of the Commission to issue a warning (and not a recommendation as it does at the moment) in relation to the Stability Pact (M) with the power of decision remaining with the Council (m) ;
- The insertion (M) or non-insertion (m) of the open method of coordination in the Constitutional Treaty ;
- Majority (m) or unanimity (m) in fiscal matters ;
- The Eurogroup and the Ecofin Council should be capable of taking decisions for the members of the eurozone (m);
- The international representation of the eurozone should be granted to the Commission (m) or to the Presidency of the Eurogroup (m).

The debate which took place during the plenary session on the 7th of November 2002 allowed the following ideas (definitely more ambitious) to emerge from the group's conclusions. This situation – which is similar to the one observed for the working group on complementary competencies (or to the negative reaction of the large majority of the members of the Convention to the idea of a Congress of the Peoples, which was nevertheless suggested by the working group on "national parliaments" and President Giscard) - confirms the preparatory nature of the groups (whose composition was largely arbitrary) and the sovereign "power" of the Convention.

- In relation to the respect of the commitments undertaken in the framework of the coordination of economic policies, a consensus has emerged surrounding the fact that the Commission could issue a first warning to the Member State concerned without

going via the Council and – at the time of the vote on subsequent recommendations - that the Member State concerned would be excluded ;

- The provisions of the Stability Pact should not figure in the Constitutional Treaty ;
- With regard to excessive deficits, a consensus has emerged surrounding the fact that the Commission could send a recommendation directly to the Member State concerned and there is nearly a consensus on the fact that the Council could decide by a qualified majority on the basis of a proposal from the Commission (excluding the Member State concerned from the debate) ;
- In fiscal matters, a majority of the members of the Convention wanted to include in the Constitution a list of measures which could be decided upon by a qualified majority in the Council ;
- A wide consensus has finally emerged on the question of a single representation for the eurozone on the international arena.

In a joint Franco-German paper on Economic Governance (CONV 470/02) Mr de Villepin and Mr Fischer propose : 1. The acknowledgment of the existence of the Eurogroup (ensuring, at the same time, that it remains an informal arena for dialogue with the ECB); 2. The election of its President for a mandate of two years (in order to reinforce the Presidency of the Eurogroup and improve its visibility); 3. The creation of a Euro-Ecofin Council (in order to permit the Member States of the eurozone to decide between them all of the questions linked to the existence of their common currency); 4. The reinforcement of the GOEP, and the encouragement at the same time of a greater involvement on the part of national parliaments 5. The reinforcement of the procedures of budgetary surveillance with a clear distinction between the objective powers of surveillance (which should be given to the Commission) and the role of recommendation (which should remain with the Council); 6. A more extensive recourse to voting by qualified majority for fiscal issues directly linked to the internal market; 7. Envisaging the possibility of a single seat for the EU in international financial institutions such as the IMF.

7. External actions (CONV 459/02). President : M. Dehaene

The mandate of the group was based on the improvement of the efficiency and coherence of the external action of the EU, particularly based on the recommendations adopted by the working group on legal personality. The following ideas emerged during within the group:

- The acknowledgment of an explicit exclusive competence for the EU, where it possesses internal competence ; a process for the conclusion of these agreements ; voting by qualified majority; maintaining the procedure in article 24 for international agreements for the future ex 2nd and 3rd pillars and the possibility either of mixed inter-pillar agreements or separated agreements ;
- The elements from the first pillar (as in, the Treaty of the European Community) will still fall under the Community Method ;
- A strong tendency to favour qualified majority voting in the realm of the CFSP - except for defence - and the need to reinforce parliamentary control
- Significant tendency in favour of the exercise of the two functions of the High Representative for the CFSP and the Commissioner responsible for external relations by a « European representative for external affairs » (one single person wearing two hats). This individual would be vice-president of the European Commission, and would be nominated by the European Council by a qualified majority following the approval of the President of the Commission and of the European Parliament. He would have two mandates : one given by the European Council or by the Council of Ministers for Foreign Affairs for intergovernmental matters ; the other by the European Commission,

where it enjoys the right of initiative, for the communautary matters. It is important to recall that three other minority options were expressed in the group and during the plenary session : the first aims at maintaining two separate functions (UK) ; the second aims at merging both functions, according to a community logic, within the Commission (many MEPs, such as Klaus Hänsch, Alain Lamassoure, Andrew Duff, Hanja Maij-Weggen, Neil McCormick, but also national parliamentarians such as René Van Der Linden or representatives of national Governments such as Teija Tiilikainen) ; the third aims to create a European Minister for Foreign Affairs, taking on board the competencies of the Commissioner and working within the exclusive domain of the Council (the French Gouvernement) ;

- Splitting the current General Affairs Council (which groups together the Ministers for Foreign Affairs) into two distinct formations : one General Affairs Council, properly speaking, which would return to its original function of coordinating and preparing the meetings of the European Council ; and one Foreign Affairs Council responsible for questions of international policy (possibly presided over by the European Representative for external affairs) ;
- The integration of the European Development Fund - EDF - into the EU budget and more flexible budgetary procedures which would allow rapid reactions.

8. Defence (CONV 461/02). President! M. Barnier

The mandate of the group was the following:

- Should the EU possess a proper operational capacity, including a military capacity?
- Should criteria for admission be established and a pact which would subsequently have to be adhered to?
- How to guarantee a process of decision-making which would be rapid during the control of an operation of crisis management?
- How to ensure coherence in terms of the planning of crisis management operations under the control of the EU?
- Which instruments could ensure a greater efficiency and an economy of scale of the policies of research, development and the acquisition of armaments?

The group proposed :

- Raising the capacity for the management of crises by reinforcing the role of the High Representative and ensuring a unity of command in the field (special Representatives) and by making the budgetary procedures more flexible;
- Maintaining and reinforcing the existing institutional structures in the area of the ESDP
- Providing the Council with a political personality, acting under the authority of the Council, which would control the action of the EU and coordinate the efforts of the Member States ;
- Providing for parliamentary control ;
- Inserting a new solidarity clause which would allow for the mobilisation of all of the instruments - military, police, lawyers and civil protection – which the EU has at its disposal in order to prevent the terrorist threat
- In this spirit, providing a collectivised defence clause such as the one in the article 5 of the WEU Treaty ;

- Creating a pool of civil protection ;
- Modernising the Petersberg tasks¹ which could be completed by preventative missions and stabilisation of conflicts;
- Introducing the principle of consent when taking decisions, rather than consensus and constructive abstention and the creation of a sort of defence Eurozone ;
- The creation of an European Agency for Armaments and a Common Capabilities Agency ;

9. Simplification (CONV 424/02). President: M. Amato

The group discussed two main topics:

- How to reduce or simplify the number of legislative procedures?
- How to reduce the number of legal instruments aimed at in the treaties?

The report contains a series of recommendations which obtained a broad consensus not only in the group but also within the plenary session.

The members of the Convention were reluctant however with regard to giving a constitutional standing to the open method of coordination and to the delegated laws and were divided with regard to the budgetary procedure. The plenary also seems to admit the possibility of limited exceptions to the codecision procedure.

On these points, President Giscard came to the conclusion that the Praesidium will have to review the question of delegated laws.

Below are the main recommendations formulated by the group in their report :

- The simplification of the number of legislative instruments. There would be three obligatory types of laws : the "EU law" (replacing the current regulations as well as the current framework decisions and the conventions in judicial and criminal matters for which direct effect could not be recognised ; the "framework laws of the EU" (replacing the current directive as well as the decision and of the cooperation in judicial and criminal matters for which direct effect could not be recognised) ; the "decision" , which would be an obligatory non-legislative law, whose reach would be wider than that of the current article 249 of the Treaty of the European Community;
- Taking into account the need to maintain the specificity of the CFSP instruments, a new term, « CFSP decision » could incorporate the three instruments ("common strategies", "common actions" and "common positions"). The elements which would fall under the new term would be detailed, while the current adoption procedures would be maintained ;
- The constitutional standing of the open method of coordination. It concerns the concerted action of the Member States outside the boundaries of the competencies attributed to the EU by the Constitutional Treaty ;
- The clear distinction between legislative and executive acts, as well as the recognition of a delegated legislation. In this framework, the legislator would decide, on a case by case basis, if it is necessary to have recourse to delegated acts and/or executive acts and what their impact would be. Pursuing this new distinction and thus the hierarchy of

¹ According to the Petersberg Declaration (19/6/1992), they consist of humanitarian missions or missions for evacuation of nationals ; peace-keeping mission and missions of combat forces for crisis management, including operations of peace-enforcement.

norms, there would be three types of laws : legislative (adopted on the basis of the Constitutional Treaty, which would provide for the delegation to the Commission of the power to adopt delegated acts) ; delegated (developing or amending a legislative act in the framework of an enabling clause defined by the legislator) ; and executive (acts devoted to the implementation of the legislative acts, delegated acts or provided for in the Constitutional Treaty itself) ;

- The generalisation of the use of voting by qualified majority within the Council occurring in parallel with the codecision procedure, and the use of codecision as a general rule for the adoption of legislative acts.
- The conformed opinion of the European Parliament for the ratification of all international agreements ;
- The modernization of the budgetary procedure, using the simplified codecision procedure, with repeal of the distinction between compulsory expenditures - CE and non-compulsory expenditures - NCE, and the European Parliament having the last word on the expenditures and the Council having the last word on the own-resources and the multiannual financial perspectives .

10. Freedom, security and justice (CONV 426/02). President: M. Bruton

The group had as its mandate the study of the improvements which could suitably be made to the treaties, particularly with regard to the institutional changes necessary in matters of immigration, asylum, visas and external frontiers as well as judicial cooperation in civil matters in order to encourage the veritable establishment of an area of freedom, security and justice.

The group also had as its objective the identification of the questions, which, in the criminal area, call for action at the level of the EU.

The working document examined proposals on the legislative procedures, the reinforcement of cooperation and related issues.

The group suggested :

- Gathering all the provisions relating to this area in a single title of the Constitutional Treaty ;
- Extending the field of application of qualified majority voting (linked to the codecision procedure) to a number of areas (asylum, immigration, visas, the crossing of external borders, judicial cooperation in civil matters including certain aspects of family law) initially included in the third pillar ¹ and now incorporated in the TEC, although still falling under the procedure of unanimity voting;
- Bringing legal instruments (in a general framework) into line particularly with the withdrawal of the conventions
- Extending the jurisdiction of the Court of Justice to all areas of JHA ;
- Clarifying the field of application of EU law and the intensity of its actions ;
- Establishing criteria for the convergence of the laws relative to the constitutive elements of offences and punishments;
- Formalising the principle of mutual recognition ;

¹ Judicial cooperation in criminal matters and police cooperation as well as along with the convergence of criminal law still remain in the third pillar.

- Framing EU action within a binding multiannual strategic programme ;
- Including the solidarity principle in the Constitutional Treaty.
- Examining the possibility of creating a European prosecution body.

11. Social Europe. President: M. Katiforis

The Praesidium decided on the mandate for the "Social europe" working group. This mandate was examined and extended by the group during its first three meetings in December 2002. The consists mainly of the following :

- The essential values in the social field which should appear in article 2 of the Constitutional Treaty, particularly solidarity (particularly between generations), democracy, the dignity of the individual and equality (in the sense of equality of treatment and equality of opportunities) ;
- The inclusion among the general objectives of the EU - and thus in article 3 of the Constitutional Treaty - of full employment, the fight against the social exclusion, the social economy of the market, economic and social cohesion, the promotion of equality between men and women, a high level of social welfare, sustainable development and services of a general interest ;
- The possible amendment of the competencies of the EU, the attribution of new competencies (such as pay, the right of association, the right of strike) and their category (shared or complementary) ;
- The role of the open method of coordination,
- The relation between the coordination of economic and policies ;
- The extension of the codecision procedure and qualified majority voting to areas in which unanimity is currently required (particularly in the matter of the transferral of rights in the systems of social security linked to transnational activities) ;
- The role of the social partners.

<p>The progress made up until this point shows the validity of the position taken by the European Movement on the new « conventional » method.</p>
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