

NOTE

Subject : **Note on the plenary meeting**
 - Brussels, 23 and 24 May 2002 ¹

I. Opening of the plenary meeting

1. The Convention Chairman, Mr Valéry Giscard d'Estaing, opened the meeting, assisted by the two Vice-Chairmen, Mr Giuliano Amato and Mr Jean-Luc Dehaene.

The Chairman emphasised that the first discussions of the Convention had revealed a perception of disorder with regard to the description of the Union's tasks and the way in which those tasks were conducted. That was largely due to the considerable number of texts in which those tasks were described (Treaties, Annexes, other texts, etc.), resulting in a complex collection of texts which was difficult to understand.

2. The Chairman then welcomed the Commission's contribution of 22 May as an important and positive act which the Convention would examine meticulously alongside the other contributions. The Chairman stated later (when the meeting resumed in the morning on 23 May) that the Commission President, Mr Prodi, had informed him of the Commission's intention subsequently to submit a document on the institutions, towards the end of August or in September, and that he was prepared to attend a plenary meeting in order to exchange views with members of the Convention.
3. The Chairman also welcomed the adoption by the European Parliament of its Resolution on the Lamassoure report on Union competence.

¹ A verbatim record of the plenary meeting is given on the website
www.european-convention.eu.int.

4. In response to requests that the matter of the institutions be addressed earlier, the Chairman said that the matter would be examined upon completion of the listening phase and the examination of the Union's tasks, as it was the tasks which should define the institutions and not vice versa.
5. With regard to the organisation of work, the Chairman announced that the pace of Convention proceedings would be stepped up. He highlighted three new elements:
 - the establishment of the first Working Groups (see point III below);
 - the use of blue cards (interventions of one minute in response to main interventions) would be supplemented by the introduction of a one-minute long right of reply (to be indicated by a green card) for those questioned;
 - the introduction of a short pause mid-afternoon to enable members of the Convention to speak to each other personally.

II. Achieving the tasks of the Union: efficiency and legitimacy

6. The Chairman introduced the discussion by highlighting that it followed on from the previous meeting. At that meeting, the Convention had identified a number of principles as well as some priorities and guidelines with a view to defining the tasks which the Union was assuming or should assume. At the present meeting, it was a matter of exploring those principles and guidelines further, examining whether the current delimitation of competence corresponded to the Union's tasks as identified by the Convention, and of ascertaining how to guarantee implementation of that competence as legitimately and efficiently as possible.

The Chairman highlighted the fact that the Convention had received several documents as background for the discussion: a discussion paper (CONV 47/02) on the matter of the delimitation of competence between the European Union and the Member States; a second discussion paper (CONV 50/02) on the instruments and decision-making procedures available to the Union for the exercise of its competence; and, lastly, a note (CONV 54/02) containing a questionnaire intended to structure the discussion.

The discussion of this point focused on three main areas:

(a) *Delimitation of competence*

7. It was a matter of ascertaining whether the current system for delimitation of competence between the European Union and the Member States corresponded to the tasks of the Union as identified by the Convention, whether it should be clarified further, and how to ensure compliance with that delimitation and, in particular, with the principle of subsidiarity.

A large majority of speakers felt that Union competence corresponded in principle to its tasks, but that there was a need to clarify further the system for delimitation of competence and to strengthen competence in certain areas.

8. With regard to the areas in which Union competence should be strengthened, a large proportion of Convention members mentioned the common foreign policy, in particular the need for Europe to speak with a single voice, as well as the policy relating to an area of freedom, security and justice, in particular for those aspects requiring cross-border action. Members also raised the need to give operational powers to Europol by inserting provisions to that effect into the Treaty, as well as the importance of parliamentary and judicial monitoring of Europol.

Several referred to the need for greater coordination of economic policies as a corollary of monetary union. Other maintained that social and employment policy should not be disassociated from it.

9. With regard to the need for clarification of the system for delimitation of competence, the large majority of speakers stressed the need for citizens to know "who was responsible for what" within the European Union, and supported a clearer and more operational description of competence. They emphasised, however, that such a clarification should not lead to a modification of the system or to the establishment of a positive or negative list of competences.

Several possibilities were mentioned for achieving such a clarification:

- inserting into the Treaty a provision specifying that competence was with the Member States except in those cases where it was attributed to the Union;
- establishing a clearer distinction in the Treaty between the various types of competence;
- re-writing the Treaty Articles on the Union's objectives in order to clarify them;
- clarifying the Union's legislative and executive powers;
- in Articles 94, 95 and 308 of the EC Treaty, stating the limits on their use laid down by the Court of Justice.

10. Members emphasised the need to strengthen political monitoring of compliance with the principles of delimitation of competence and subsidiarity. Several members felt that such monitoring should essentially be of a parliamentary nature. A number of ideas were put forward in that respect:

- the need to strengthen monitoring by national parliaments of their governments when the latter were establishing their position on Community matters;
- the establishment of a mechanism to strengthen monitoring by national parliaments of compliance with the principles of delimitation of competence and subsidiarity during the Community decision-making process. A discussion was held on whether such a mechanism should include national parliaments alone or whether it should be broader in composition. Some referred to the role which could be played by the COSAC in that respect. The question of the powers which would be required for such a mechanism was also raised;

- the need for "self-discipline" by the institutions throughout the legislative procedure. Emphasis was placed on the important role which the Commission could play in that respect in the context of its power of initiative;
- with regard to judicial monitoring, some Convention members argued in favour of strengthening monitoring by the Court of Justice. Some mentioned the need to create within the Court of Justice a Chamber specifically responsible for matters relating to compliance with the principles of delimitation of competence and subsidiarity. The question of whether or not there was a need to extend the right of appeal to the Court of Justice for infringement of the principles of delimitation of competence and subsidiarity was also raised. Some members were in favour of attributing that right to national parliaments. Some referred to the regions with legislative competence or to the Committee of the Regions.

11. Lastly, in response to speakers who advocated the introduction of "ex ante" judicial monitoring, other speakers emphasised that prior monitoring of the principles of delimitation of competence and subsidiarity should be essentially political in nature and that, in the event of conflict, the judicial avenue should be the last resort.
12. Some speakers felt that since the principle of subsidiarity was both political and legal in nature, there was a need to establish a joint arbitration mechanism (politico-judicial) to which matters relating to delimitation of competence or subsidiarity could be referred prior to the adoption of a legislative act.

(b) Instruments for the exercise of competence:

13. The large majority of speakers criticised the confusion and proliferation of instruments available to the Union for the exercise of its competence. Consequently, they insisted on the need to streamline those instruments by re-defining them, simplifying them and reducing their number. Some were in favour of a clear hierarchy of rules.

14. Some also criticised the excessive detail which was sometimes a feature of current legislation, advocating more frequent use of framework legislation. Some felt it should be more widely recognised that the Union's means of action could vary according to their intensity (legislation of uniform application, complete or minimum harmonisation, mutual recognition, binding or "open" coordination).
15. With regard to the suggestion to establish a correlation between types of competence and types of legal instrument (Regulation, Directive, Decision, etc.), some members suggested that it was not possible. On the other hand, some speakers proposed changing the classification of instruments in order better to express their nature (the classifications "law " and "framework law" were mentioned by way of example).

Furthermore, a number of speakers criticised the pillar structure of the current Treaties while acknowledging the need to align the instruments under the three pillars or, in any case, between the first pillar (Community) and the third (cooperation in criminal matters).

16. Lastly, the following matters were also raised:
 - the need to preserve the unique features of Community law and its instruments, in particular primacy and direct effect;
 - the idea of recognising "organic laws" as a new instrument in the hierarchy of legislation, reserved for provisions of a quasi-constitutional nature.

(c) **Efficiency and legitimacy in the decision-making process:**

17. Many speakers highlighted the close link between legitimacy and efficiency and therefore at the same time answered the fourth and fifth questions. They acknowledged the desirability of improvements in the efficiency and legitimacy of decision-making procedures within the Union. In that respect, several emphasised the need to simplify those procedures, particularly in view of the current length of the legislative procedure, and to reduce their number.

Others, however, noted that the objective of simplification would inevitably be limited within a Union characterised by diversity and that the originality of its decision-making process should be preserved, with the main aim being rather to render procedures more transparent and comprehensible to citizens.

18. Several Convention members argued in favour of extending qualified-majority voting and removing the current right of veto, which some felt could also lead to the use of a super-qualified majority. A number of speakers were in favour of making Council meetings public when it was acting in the capacity of legislator.
19. A large majority of members argued in favour of strengthening the parliamentary element of decision-making within the Union. In that respect, many mentioned the need for an increased role in the procedure for national parliaments as well as the need to enhance the powers of the European Parliament, placing emphasis on the former in some instances, and on the latter in other instances. With regard to national parliaments, while some speakers were interested in the idea of establishing a new structure or body enabling them to participate directly in the process at Union level, a number of others gave priority to fine-tuning monitoring by the parliaments of their governments' action within the Council, while preserving the current institutional triangle within the Union. With regard to the European Parliament, many called for the extension, and even the generalisation, of its role as a co-legislator. Some also suggested stepping up the links between the European Parliament and national parliaments and their European committees, for example by developing the COSAC model.
20. A number of speakers addressed the matter of preserving the Commission's monopoly of the legislative initiative. Although some were in favour of giving the power of initiative to the European Parliament as well, some also mentioned either national parliaments or the Council. Many others rejected those proposals, defending the Commission's exclusive right of initiative.
21. Several sought improvements in the procedure for adopting implementing rules at Community level, criticising the complexity and opaqueness of the current "comitology" system.

In that respect, some were in favour of a considerable reduction in the number of existing committees as well as greater transparency in their work; a request was also made to set up a system whereby implementing rules were adopted by the Commission subject to monitoring by the legislator.

22. Several members emphasised the importance of the objective of better quality legislation. In that context, the following points were raised in particular:

- intensified consultation of the spheres concerned throughout the legislative process, i.e. from the preparation of the proposal by the Commission to its adoption by the legislator;
- the importance of the role of associations and non-governmental organisations as "interfaces" between citizens and political players;
- the idea that the Council and European Parliament should follow the example of the Commission, which had launched a system intended to improve the quality of legislation;
- the advantage of greater use of the definition of standards by the sectors concerned ("self-regulation") or by a process of cooperation between those sectors and public authorities ("co-regulation") in order to ease the decision-making process in certain areas.

24. Other matters mentioned during the discussion on efficiency and legitimacy included the following:

- the request to introduce the genuine separation of powers which was lacking in the current system; in that respect, emphasis was placed on the need to draw a greater distinction between legislation and other implementing acts;
- the need to ensure better political coordination between the different sectors of Union action;
- the request to ensure equality between Member States in the decision-making process;
- the request to establish that legislative decisions in the Council were taken by a double-majority (a majority of States and of population), with certain members criticising the complexity of the system laid down by the Nice Treaty;
- the request to enshrine the open method of coordination in the Treaties;
- the importance of representativeness in the composition of the European Parliament, while retaining a minimum representative base for the least populated States.

24. Finally, some members of the Convention stressed that the Union also derived its legitimacy from recognition and protection of its common values. Reference was made in this connexion to:
- the importance of giving individuals greater access to the Court of Justice,
 - the major role of the Council of Europe and the importance of the Union's cooperation with that body,
 - the need for explicit recognition of a guarantee of local self-government in the Treaties.
25. At the close of the discussion, the Chairman summarised it briefly. He highlighted the areas in which there was consensus or a prevailing view but said that certain differing or even contradictory approaches still had to be ironed out and that there were a number of topics which needed to be examined in greater detail. That could chiefly be done by the Working Groups.

The Chairman noted the following:

- a prevailing view that on the whole the present system of allocation of competence was right, although there was a need to clarify and strengthen competence in the case of policy on security and justice and foreign policy;
- an element of contradiction between the desire to retain a flexible system and the wish for more precision;
- the idea of amending the list of objectives for action by the Union as currently defined in the Treaties;
- the importance of monitoring subsidiarity and the delimitation of competence and the need to examine the various approaches suggested;
- a general request for clearer and fewer instruments and avoidance of unnecessary excursions into bureaucratic detail, as well as re-examination of the current classification of instruments;
- the question of the pillar structure, which many wanted to do away with and which required detailed examination;
- democratic legitimacy: while there was no suggestion of any lack of legitimacy in the Union's actions in strictly legal terms (something which would in any case be picked up by the Court of Justice), the real issue was whether the Union's actions satisfied and were adequately explained to citizens and therefore met with a sufficient degree of public acceptance.

III. Working Groups

26. The Chairman informed the Convention that, in response to the outcome of discussions at previous meetings, the Praesidium had agreed to set up an initial series of Working Groups (CONV 52/02) in which the whole Convention, whether members, alternates or observers, would be able to participate. Each member of the Convention would have to indicate by 30 May those Working Groups in which he or she would like to participate in order of preference.
27. One of the national parliament members spoke on behalf of all of them when he welcomed the fact that Working Groups were now to be deployed but wanted the Praesidium to submit a list of all the Working Groups which would be operating throughout the Convention's discussions, together with their respective mandates, so that the list could be debated and if necessary supplemented, and the mandates for each Working Group approved.

Other speakers suggested topics for Working Groups which could be set up in the future: democracy, institutions, majority voting, the social dimension of the Union, regions, security, etc.

28. The Chairman drew attention to the fact that the substantive work had to be done by the Convention, which should not become fragmented as a result of the creation of Working Groups. The Convention had to remain unified and draw up proposals as discussions progressed. He added that to this extent the Convention departed from the parliamentary method of committee specialisation. The Chairman added that the Working Groups' task was to examine specific questions already identified in the course of Convention discussions, with a view to proposing solutions to the Convention, and that cross-cutting issues such as foreign policy should be examined by the Convention itself. As for the request by the national parliament members, the Chairman thought it premature at present to draw up an exhaustive list of Groups since the specific topics to be examined by the Groups would be decided in the light of the Convention's discussion of cross-cutting issues.

The Chairman did, however, give an assurance that the Praesidium would consider the points raised, including the wish to map out the Working Groups in greater detail. The Chairman also indicated that the composition of the Working Groups would depend on the requests and expertise of the members of the Convention, although an effort would be made to maintain a balance between components, the various political tendencies and men and women. The Chairmen of the Groups would decide whether to make them accessible to the public and the deadline for submitting their conclusions would vary from Group to Group.

IV. The Forum and preparations for the Convention meeting on civil society

29. Vice-Chairman Dehaene submitted the Praesidium note on "the Convention and Civil Society" (CONV 48/02), and highlighted the following:

- the plenary meeting on 24 and 25 June would be devoted almost entirely to civil society. The Convention's discussion would be introduced by an address from Vice-Chairman Dehaene. Observers from the Economic and Social Committee, the Committee of the Regions and the Social Partners would then be invited to report on their contacts. In addition, one member of the Convention from each country would be invited to report either orally at the meeting or in writing on the progress of their respective national debates or fora;
- before the meeting on 24 and 25 June, public meetings would be conducted by members of the Praesidium under the aegis of sectoral contact groups made up of organisations representing civil society. The contact groups would each have to designate one or two spokespersons to address the plenary meeting;
- the Convention Secretariat would prepare a digest informing members of the Convention of the various written contributions received on the Forum Internet site. It would also summarise the outcome of national discussions to be submitted to the meeting on 24 and 25 June;
- the meeting on 24 and 25 June is part of an ongoing process of exchanges with civil society at both European and national level in which all members of the Convention are required to participate.

30. The following points were raised during the discussion:
- several members of the Convention stressed the importance of the meeting on 24 and 25 June involving both non-governmental organisations at national level and those responsible for running national fora;
 - one member of the Convention highlighted the importance of including the various Churches in any hearings and wondered how they would be accommodated in the seven contact groups envisaged. Another member of the Convention made a similar comment about organisations representing small undertakings;
 - the Chairman of the Economic and Social Committee, a Convention observer, drew attention to a meeting convened for 27 May at the Committee which would, in the presence of Mr Dehaene and Mr Barnier, be attended by more than 125 organisations representing civil society at both European and national level, including religious communities; he extended this invitation to all members of the Convention.
31. Concluding this point, Vice-Chairman Dehaene stressed that, although there were practical organisational constraints on including national NGOs in the hearing on 24 and 25 June (a matter which the Praesidium still had to consider), such organisations would have a number of opportunities to participate in the discussion, in particular through:
- written contributions to the Forum,
 - national discussions and fora, the importance of which was stressed by Mr Dehaene,
 - their participation in the meetings held regularly at the Economic and Social Committee,
 - the possibility of attending the contact group meetings to be held in public before the meeting on 24 and 25 June.

V. The Convention's next meeting

32. Vice-Chairman Amato concluded the meeting by indicating that the Convention's next meeting on 5 and 6 June would be chiefly devoted to the subject of justice and home affairs policy, while the rest of the meeting would be taken up by discussion of the role of national parliaments in the architecture of the Union. On each of these two subjects a discussion paper and a brief questionnaire would be submitted to the Convention in order to facilitate the discussion.