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**Subject : Contribution from Mr Peter Hain, member of the Convention**

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The Secretary-General of the Convention has received the attached contribution from Mr Peter Hain, member of the Convention.

## THE EU CARRYING OUT ITS MISSIONS: EFFICIENCY AND LEGITIMACY

Contribution from Mr. Peter Hain, British Minister for Europe  
Member of the Convention

### Introduction

1. The European Union carries out its missions using a baffling array of instruments and procedures. It is difficult for experienced practitioners, let alone the public, to understand the distinctions.
2. And yet, how we co-operate – as well as what areas we co-operate in – is at the heart of people's concerns over the democratic deficit at European level and a too intrusive Europe.
3. People do not need to know the difference between comitology and conciliation, but they do need to know:
  - what the EU's strategic objectives are
  - who sets the policy framework under which EU measures are agreed
  - that there are different ways of co-operating at EU level to reflect the very different objectives of say the single market, the Common Foreign and Security Policy and Justice and Home Affairs
  - that the measures agreed respond to the needs and concerns of the end users

### Setting the Policy Framework

4. It is important for transparency and legitimacy that people can trace EU measures back to priorities agreed by politicians they elect. This requires a much clearer picture of the institutional

framework of the EU: in particular a process by which Heads of State and Government set a broad agenda in the European Council to which all institutions subscribe (including the aims, principles and constraints governing a particular policy area). The various sectoral Councils, European Parliament and Commission will then all need clearly defined respective roles in proposing, agreeing and implementing measures to drive through this agenda.

5. This is not reinventing the wheel: it is what the Treaty says (Articles 4 and 5 TEU). But the processes we currently have do not deliver this as clearly and systematically as they should. The discussion at the European Council in Seville on Council reform will start this process. We will need then to look at how the roles of the institutions fit together, and set it out clearly in our basic constitutional order.

### **Different ways of Co-operating**

6. It is also important that people understand there are different ways of co-operating at EU level; and a process for choosing between them which ensures that measures agreed impinge on different national practices only to the extent necessary to achieve a clearly stated and agreed objective.

7. We need to build into our processes a prior discussion of principle on whether we need to legislate at all to deliver a policy objective and, if so, how. This should take place before a legal text is tabled.

8. There are areas when detailed common standards are required across the Union. It will generally make sense to set these by the speed and precision of a regulation, which requires no further implementing legislation at national level. Equally, there are other areas where we need to set a broad objective leaving Member States to decide how to deliver it in the light of national circumstances. Generally we will rely for this on framework-setting directives. Thirdly, elected representatives may decide that their objective is better achieved through non-binding means based, for example, on target setting and peer pressure.

9. It is temptingly neat to try to link these different methods of co-operating to different decision-making processes (QMV, unanimity) and different levels of competence (exclusive, shared/complementary, national). But, while there may be room for some rationalisation, we must not lose the flexibility that the current range of options give us which reflects the uniquely

interlocking nature of the relationship between the Union and the Member States. There are countless examples of different types of instruments being used in the same policy area because different types of cooperation are needed for different degrees of co-operation on different aspects of policy.

10. We need also to look carefully at how such legislation, agreed by elected representatives, is implemented. The current comitology process involving the Commission and Member State experts is opaque and cumbersome. The implementing rules are agreed case-by-case. We should consider whether we can set out more clearly how the implementing process is to work; how to improve scrutiny by elected representatives; and look at alternatives, such as self-regulation by users, in certain areas. The Lamfalussy recommendations on the financial services area may well provide valuable pointers for other areas of policy.

### **Responsiveness to Citizens**

11. A key element in deciding between different kinds of co-operation (as above) is the view of the citizens whether they be businesses, unions, farmers, trading partners etc. We need a proper dialogue between the legislators and the citizens. The Convention, with its remit to reconnect people with the European Institutions, is particularly well placed to consider this.

12. The Commission has done some excellent work on this issue in its Governance white paper and ongoing work elsewhere on better regulation and consultation. We await with interest the Commission Action Plan on Better Regulation and Communications on minimum standards for consultation and impact assessment which are due to be presented to the European Council at Seville. The key priorities include: better consultation of citizens before proposals on legislation are brought forward; regulatory and sustainability impact assessments into all proposals, and also for major amendments sought by the European Parliament or Council; rolling programme of simplification of existing regulation; repeal of redundant legislation. Collectively they will improve the overall “economic governance” the EU provides to the single market.

13. The key principles of better regulation should be set out in our basic Constitutional order, and might be developed in a protocol. The Convention might consider setting up a working group involving a better regulation experts and selection of end-users to provide advice on this.