

**NOTE**

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Subject :        **Note on the plenary meeting**  
                  –        **Brussels, 6 and 7 June 2002** <sup>1</sup>

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**I.    Opening of the plenary meeting**

1.    The Convention Chairman, Mr Valéry Giscard d'Estaing, opened the meeting, he was assisted by the two Vice-Chairmen, Mr Giuliano Amato and Mr Jean-Luc Dehaene.
2.    The Chairman reminded the meeting that the Praesidium had set time limits for each agenda item in order to create a more structured agenda; this meant that only a limited number of speakers could take the floor. He emphasised in this connection the need for speakers to adhere strictly to the three-minute limit to offer a real "equal opportunity" to all the members of the Convention who had asked to speak.

**II.   Area of freedom, security and justice: the role of the Union and of Member States**  
**(docs. CONV 69/02 and CONV 70/02)**

3.    Introducing the debate, the Chairman pointed out that freedom, security and justice were areas in which Europe voices urgent demands either through opinion polls or the contributions of

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<sup>1</sup>    A verbatim record of the plenary meeting is to be found on the website  
www.european-convention.eu.int.

the members of the Convention themselves. He referred to the complexity of the procedures and mechanisms in place, which justified an early beginning to the debate. Finally he presented the content of CONV 69/02 which gave a mixed verdict on achievements in the field of security and justice and identified a number of questions or avenues which deserved to be explored by the Convention.

4. Over fifty members of the Convention had taken part in the debate <sup>1</sup>. There were fruitful and lively exchanges on a topic which, for all those who spoke, lay at the heart of citizens' concerns. Moreover a number of Convention members pointed out that it would also receive special attention at the European Council meeting in Seville.

(i) General problems

5. The very large majority of Convention members wanted to see a greater European dimension in matters of security and justice pointing out that Member States alone did not have the resources to combat cross-border crime. The trade in human beings, drug trafficking and organised crime field legal and administrative borders to ridicule.
6. Several pointed to the balance to be maintained between the security requirement and respect for fundamental values. In this connection a number of speakers referred to the Charter of Fundamental Rights, requesting its integration into the Treaty. Community or Union membership of the European Convention on Human Rights was also frequently proposed. Some speakers also referred to membership of the Turin Social Charter or the Geneva Convention relating to the Status of Refugees.

(ii) Review of policies

7. Numerous speakers wanted a more precise definition of what was meant by cross-border crime requiring a European response. In this connection, a series of speakers proposed more far-reaching harmonisation of national criminal law, with particular reference to definitions of offences and minimum and maximum penalties while others stressed the principle of mutual

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<sup>1</sup> The list of speakers will form the subject of an Addendum to this note.

recognition. Several suggested the need for a combination of both approaches, pointing out that while mutual recognition was an option in most cases, harmonisation was a necessity in some. Many pressed for a policy of greater harmonisation in the field of asylum and immigration, whereas some wanted Member States to be allowed to retain national policies, particularly as regards immigration and access to the employment market. A number of Convention members emphasised the importance of distinguishing between asylum policy on the one hand and immigration policy on the other. Regarding asylum, humanitarian commitments, and in particular the Geneva Convention, should be respected and burdens should be shared in Europe. Immigration policy met other considerations such as employment market requirements and the capacity to integrate into society.

8. Some proposed going further than the rules of the current Treaties and beyond the minimum standards approach to achieve a genuine common asylum system, by reviewing the list of current legal bases of Article 63 of the EC Treaty to arrive at a more consistent system reflecting the political programme approved at Tampere and by going further than the provisions of the Treaty of Nice regarding the move to QMV. The current situation and the treatment in Europe of asylum seekers and illegal immigrants have often been regarded as a source of concern.
9. Several speakers stressed the external dimension of the Union's justice and home affairs policy, calling for increased cooperation notably with neighbouring countries on these matters, for more consideration to be given to aspects of this policy in the Union's external relations and to their coordination with other elements of external relations such as commercial or development policy.
10. Little was said, on the whole, about civil law matters.

(iii) *Institutional structures, legitimacy and efficiency*

11. The question of the division into pillars was raised by a number of speakers. A large majority questioned whether that division was justified and argued in favour of full "communitarisation" (i.e. application of the usual Community procedures) of current third pillar issues (police and judicial cooperation in criminal matters) or in any event more extensive application of community structures and mechanisms to these issues. They referred in particular to the advantages of legal instruments, judicial control mechanisms and transparency rules in Community law. Some on the other hand pointed out that the blanket application of Community decision-taking procedures as such to all security and justice issues was not feasible.
12. Several wondered whether those arguing for "communitarisation" always covered the same detailed elements and emphasised the need for a pragmatic approach involving a step-by-step examination of the improvements that need to be made to instruments and procedures. In this connection, it was suggested that it was possible to envisage the co-existence within the same framework of different decision-taking procedures geared to the specific nature of certain subjects. Finally, some speakers felt that total or partial communitarisation of third pillar issues would entail a loss of powers for national governments and parliaments which could be exploited by extremist or populist parties.
13. The question of democratic legitimacy and control came up several times. Many Convention members wanted the European Parliament to become co-legislator both in matters already communitarised and in the Union's legislative action in criminal matters, at least for the part relating to judicial cooperation in criminal matters. Others pressed for a stronger role for the national parliaments, although this was not an alternative to the preceding proposal. A number of speakers criticised the lack or inadequacy of controls over these Union bodies in 3rd pillar issues, such as for example Europol (some also mentioned Eurojust), demanding controls at European level. One Convention member considered the current controls exercised by national parliaments adequate.

14. Various models were put forward for the stricter control of these joint bodies: control by the European Parliament, more specifically by a special parliamentary committee, integration into a Community arrangement, for example under the supervision of the Commission, or creation of a new High Representative of the Union acting as an interlocutor for national parliaments for 3rd pillar issues and responsible for the proper functioning of those bodies.
15. A number of speakers criticised the fact that the Commission and the Member States shared the right of initiative, mostly arguing that this right should henceforth reside exclusively with the Commission. The possibility was also raised in this context of subjecting Member States' initiatives to prior legal scrutiny.
16. The majority wanted to drop the unanimity rule for asylum and immigration (1st pillar) and cooperation on criminal matters (3rd pillar).
17. As for current 3rd pillar issues, many spoke of the need for improved and simplified legal instruments. These Convention members noted in particular that recourse was no longer had to the Convention given the excessively slow ratification procedures. Several emphasised the need for the same instruments as those available in Community legislation, notably instruments producing direct effects, i.e. directly applicable as in the case of regulations in the context of community policies. The difficulties encountered in delimiting applying "framework decisions" and "decisions" as provided for in the current EU Treaty were mentioned several times.
18. A large number of Convention members wanted to see the Court of Justice's powers extended and it to be given full powers in current 3rd pillar areas. Some specifically mentioned the introduction of the possibility of appeal for private individuals in these areas. Several also emphasised that the Commission should be able to bring infringement proceedings against Member States before the Court.

19. Some wanted the special opt-in arrangements currently enjoyed by certain Member States to be re-examined. Some suggested replacing them by the possibility of constructive abstention.

(iv) Cooperation instruments

20. A majority deplored the fact that Europol did not have the legal or material means to carry out its tasks and wanted to see it become truly operational without delay. It should therefore receive increased funding and operational powers, the latter, as some speakers have said, should include on the one hand the power to request national police forces to launch enquiries and on the other, the possibility of carrying out actual investigations jointly with national authorities. Strengthening Europol in this way should go hand in hand with increased parliamentary (see above) and judicial control. With regard to this last point, some wanted a level of judicial control equivalent to that exercised over national police forces and questioned the immunity granted to Europol staff. The need to strengthen OLAF (European Anti-Fraud Office) and to promote synergy between it, Europol and Eurojust was also raised. Finally, other Convention members wanted to see the potential for effective cooperation between national police forces fully exploited first. This could be stepped up still further.
21. For many, Eurojust should also be developed and for some, could prefigure a European public prosecutor. Some said that a public prosecutor of this type should be able to refer to a European court a specific number of crimes (some would begin with fraud against the Communities' financial interests), while others felt that proceedings should be brought solely before national courts.

22. The Union's external borders were frequently mentioned. Almost all of the speakers wanted more stringent joint controls. A number of speakers said that this would mean putting in place a common border guard unit. Others preferred closer cooperation between Member States' services and concerted training projects. Various intermediate proposals were put forward to improve the existing situation, such as, for example, gradual transition to a joint arrangement, with, as a first step, a support cell at the disposal of national authorities. Some emphasised the need for financial solidarity and wanted burden-sharing in favour of those Member States responsible – for various reasons, particularly geographical – for a larger section of common external borders.
23. The Chairman wound up by emphasising the quality of the debate. It had made it possible to examine an important topic in depth. He referred to the nuances in the proposals put forward by Convention members. He asked for more thought to be given to the concept of cross-border crime. Referring to the question of the division into pillars, he suggested a pragmatic approach, examining without any preconceptions which actions could be best dealt with by which procedures.
24. He said that the Praesidium would shortly propose setting up a working party on these issues for a more in-depth examination of certain questions.

### **III. The role of national parliaments in the European architecture**

25. The Chairman drew Convention members' attention to the three questions concerning the role of national parliaments set out in the Laeken declaration. He said that, to assist discussions, the Secretariat had presented two documents to Convention members, one was a descriptive discussion paper (CONV 67/02), defining the broad lines of national parliaments' current powers under the Treaties and listing a series of proposals on their future role. The other document (CONV 68/02) contains questions to which Convention members could refer during the discussions.

26. Given that a large number of speakers had in fact referred to the questions mentioned in this document, they will also serve as a basis for this note.
- i. How could one assist the national Parliaments to play their crucial role in ensuring the democratic legitimacy of Union action?
27. Most speakers felt that national parliaments should be more involved in the Union's activities. This would be notably through more effective control by national governments (the Scandinavian countries' control mechanism was highlighted). National parliaments should be involved earlier in the legislative procedure. Some suggested therefore that the Commission should forward all legislative proposals directly to the national parliaments at the same time as they are sent to the Parliament and to the Council, and that the national parliaments could also take part in the annual discussion on the Commission's work programme.
- ii. Arrangements for control by National Parliaments of the positions adopted by their governments in Council vary between Member States. Though such arrangements are of course entirely a matter for national competence, would there be value in assessing which work best, and exchanging "best practice"?
28. Convention members insisted that it was of course for each parliament to establish its own rules for the political control of their respective governments. However, it was generally agreed that an exchange of information on the most efficient mechanisms would be useful. In this connection, to be effective, political control would have to be *ex ante*, i.e. before the Council takes any decisions. The practice of establishing a negotiating mandate was mentioned and reference made in this connection to the contributions of the Finnish (CONV 82/02) and Swedish (CONV 61/02) representatives. For some, however, the parliamentary practice of giving government representatives a negotiating mandate should not be too inflexible; governments should have some room to manoeuvre, otherwise there would be bottlenecks at Council level. A number of speakers said that where the Council acts as legislator, its



work should be made public to help the respective national parliaments to exercise effective control over their governments; some added that improved organisation of the work of the Council would also help to achieve this objective. Several members also suggested that Member States' delegations in the Council could include a representative of the national parliaments; others were sceptical about this idea.

iii. Would it be appropriate to strengthen existing machinery for cooperation between national Parliaments? And with the European Parliament?

29. It was felt that improved horizontal cooperation between national parliaments on the Union's activities was perceived as a positive development. In this connection, a number of Convention members were in favour of strengthening COSAC (more meetings, permanent Secretariat and majority voting rather than unanimity). Others, however, were critical of the operation of COSAC and were sceptical about its role. Increased cooperation between national parliaments' specialised committees and the corresponding committees of the European Parliament was proposed. Some also proposed that national parliaments might put questions to the Commission, coming to the European Parliament for that purpose, and set up offices in Brussels to follow the latter's proceedings.

iv. Should the possibility be considered of national Parliaments being represented collectively in a new institution? If so, how should this be composed and what should be its competences?

30. A large majority of Convention members doubted the usefulness of creating a new institution that would represent national parliaments only. It was suggested that the creation of a new institution might make the institutional architecture of the Union more complex and less visible for citizens. Some also emphasised that such an institution, be it a second chamber in the European Parliament or an independent chamber, would weaken the European Parliament politically, just when in general terms it should be taking on the role of co-legislator. The same reservations were expressed at the suggestion that MEPs should at the same time be members of their respective national parliaments.

31. Some Convention members, however, suggested that a Congress, composed of representatives of the national parliaments and of the European Parliament, could meet for example to elect the President of the Commission.
32. On the subject of control of the principle of subsidiarity, some felt that control should be political insofar as the subsidiarity principle and the delimitation of competence between the Union and the Member States would raise political problems and emphasised that the national parliaments should be associated with it (some spoke of the need to take a closer look at the idea of an ad hoc committee). For others, on the basis of the concept that the Union is a Community of law, this control should be judicial and in this connection, the question asked was whether it should be exercised *ex ante* or *ex post* and whether national parliaments could be given the right to bring the matter before the Court of Justice accordingly.
- v. *Should provision be made for the compulsory consultation of national Parliaments in the event of an enlargement of competences being considered? If so, in what form?*
33. Some of the statements made favoured providing for consultation of national parliaments in particular in areas where the degree of participation of the European Parliament was not very significant (e.g. foreign and security policy, justice and home affairs policy). Moreover, some suggested that in the context of an Article 308 TEC type clause enabling the Union to take exceptional measures where it has no explicit competence to do so, national parliaments could be consulted. Some suggested that in the event of a review of the Treaties or a modification of Union competences, the matter should be referred to a body such as the Convention.
34. Winding up this item, the Chairman found that statements by members of the Convention were aimed rather at making improvements to the current system. The question, however, as far as he was concerned, was whether citizens were perhaps not expecting more from the Convention's work; he therefore asked the Chairman of the Working Group on National Parliaments not to rule out an innovative initiative.

#### IV. Composition of the working groups

35. The Chairman referred to CONV 77/02 containing the composition of the working groups as established by the Praesidium, stating that this composition in most cases respected the Convention members' first choice. Only in a few cases did the second choice have to be adopted because of the excessive number of requests for certain Groups. No member of the Convention has been placed in a Group which came third on his list of preferences
36. As to the question of future working groups raised at the last plenary meeting and since put forward in writing, the Chairman reminded the meeting of the approach, confirmed at the previous debate on justice and home affairs issues, according to which the substantive work should be done by the Convention and care should be taken to avoid its being split up as a result of the creation of working groups. The purpose of the working groups was to carry out an in-depth examination of specific questions, identified following the plenary debates and as a function of them, in order to report to the Convention on the possible options for these specific questions. The general political questions would continue to be discussed in the plenary.
37. Regarding the request that the first six working groups should deliver their reports to the Convention more quickly than initially planned, the Chairman encouraged the working group chairmen to try to do this so that all the groups might as far as possible finish their work in September or October.

The Chairman then noted that it had become clear during the preceding debate on the area of freedom, security and justice that a working group, whose brief the Praesidium would shortly be defining, needed to be set up to analyse a series of specific questions; as an example of the questions to be studied, the Chairman chose better definition of the existing tasks of the Member States and of the Union and the arrangements enabling the Union to take action in these areas, including the question whether they could be transferred to the Community system.

38. He added that the next debate of the plenary on the Union's external activities would undoubtedly make it possible to identify certain technical questions for examination by a working group and that the need for the creation of groups would probably emerge in future discussions.
39. Following a request from one Convention member, the Chairmen of the first six working groups gave the dates for these groups' first meetings.

**V. Other business**

– *Meeting on 24 and 25 June on civil society*

40. The Chairman outlined the purpose and particular format of the forthcoming meeting which will be held in the Parliament's large hemicycle, to accommodate in addition to the Convention members representatives of civil society organisations and to hold a dialogue with them, thanks in particular to the system of blue cards. There are also plans to have one Convention member per country report on the debates with civil society organised at national level. The Chairman also referred to CONV 79/02 on the meetings of eight contact groups with civil society organisations and asked as many Convention members as possible to participate in these eight meetings.

– *Youth Convention*

41. The Chairman mentioned the preparations for the Youth convention to be held in Brussels from 9 to 12 July, thanking Convention members for their efforts in choosing young people who were representative and motivated. He said that more information on this important meeting would be available at the Convention's next meeting.
42. The Chairman closed the meeting with the reminder that the main object of the next meeting on 24 June from 14.30 and Tuesday 25 June starting at 9.30, would be the dialogue with civil society; the Chairman would also be reporting to the Convention at this sitting on the European Council meeting in Seville when, in accordance with the Laeken Declaration, he would give an oral report on the progress of the Convention's proceedings.