



THE EUROPEAN CONVENTION
THE SECRETARIAT

Brussels, 3 September 2002 (05.09)
(OR. fr)

CONV 229/02

CONTRIB 78

COVER NOTE

from :	Secretariat
to :	Convention
Subject :	Communication from the Commission, forwarded by Mr Barnier and Mr Vitorino, members of the Convention: "Communication from the Commission to the Convention, 22 May 2002: A project for the European Union"

The Secretary-General of the Convention has received from Mr Barnier and Mr Vitorino, members of the Convention, the attached Communication from the Commission, which Mr Barnier and Mr Vitorino wish to bring to the attention of the members of the Convention.



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.5.2002
COM(2002) 247 final

COMMUNICATION FROM THE COMMISSION

A PROJECT FOR THE EUROPEAN UNION

TABLE OF CONTENTS

1.	One Project, three fundamental tasks	5
1.1.	The Union must consolidate its model of economic and social development	5
1.2.	The Union must build up an EU-wide area of freedom, security and justice	8
1.3.	The Union must exercise the responsibilities of a world power	11
2.	A constitutional treaty	17
2.1.	Establishing a constitutional treaty	17
2.2.	Clarifying the way in which the Union exercises and implements its powers	19
2.3.	Ensuring that the principles of subsidiarity and proportionality are adhered to	23

A PROJECT FOR THE EUROPEAN UNION

European integration has brought 50 years of peace and prosperity. It is a Union of States and of peoples founded on democracy, respect for human rights and fundamental freedoms. A Union based on this set of democratic values is an undeniable beacon – as the forthcoming wave of enlargement proves.

In December 2000 in Nice, the Member States took the decisions needed to allow new countries to join the Union. But there was no discussion of European integration as such or of what we want to achieve together. In the near future, the number of Member States may almost double. The goal of this process is to ensure that our neighbours can enjoy the peace, solidarity and economic development that we enjoy today, welcoming them into an institutional system that works – the key to success for the European project.

So the question we now face is to know **how** the enlarged Union can achieve the fundamental tasks it faces and how it can maintain its ability to take decisions and its cohesiveness in such a way that a deepening of European integration remains possible.

While in general they are “for Europe”, our citizens want to understand European integration better. The people of Europe have specific expectations of the Union: safeguarding peace and security, cutting unemployment, countering crime in general and organised crime in particular, heading off poverty, guaranteeing equal treatment for women, protecting the environment, the quality and safety of products. They want a Union which brings more security and stability within and more commitment on the international scene. They want greater clarity, more democratic control, and a Union which respects national identities, a Union which encourages and protects, a new form of organisation far removed from the "superstate" myth.

The introduction of the euro saw the great majority of Europeans take an irreversible step towards European integration with maturity and conviction. The Union must heed their expectations and show that it has the wherewithal and the resolve to rise to fresh challenges.

Because strong common policies and better European coordination will be needed if Member States' economies are to grow stronger, if jobs are to be created and social equilibrium preserved, **we need to work together to prepare the economic and social future of the young generation.** Because action by one country alone cannot make our borders fully secure or offer an effective response to international crime, **a common response is needed to migration.** Because belonging to the Union means freedom, democracy and the respect of fundamental values, there is a need to build up a **European area of freedom and justice.** And **at last to give European citizenship,** which enhances national citizenship but does not replace it, **its full meaning.**

Because a national go-it-alone approach can no longer be the answer for any country, it is time for the **Union to shoulder its responsibilities as a world power;** it must propound its own values, stand up and be counted as a **player in globalisation,** the bearer of a shared and sustainable model of development; and pursue an **external policy open to dialogue** between civilisations, cultures and religions, and based on cooperation with the countries at its borders and on the resolve to bring North and South together.

These tasks are our new frontiers. If we are to pursue them effectively, due account has to be taken of what has already been achieved **and the Community method,** which has enabled us to carry forward integration democratically and gradually, **has to be adapted** to the new requirements. Europe is now part and parcel of our citizens' daily lives and they also want to better understand who does what in Europe, where responsibility lies and who can be called to account. They consider themselves to be Europeans but want their identities to be respected and their margins of choice safeguarded where necessary.

We have to preserve the unique character enjoyed by the Union, implementing the most concrete common policies and at the same time fulfilling certain of the essential tasks of a State – without becoming a State. There is no existing pattern for European integration to follow. These specific features explain and condition its success.

Guided by the successful work which led to the *Charter of Fundamental Rights*, the European Council entrusted a *Convention* with the task of defining the major guidelines for the future of the Union. At the end of a year of work between government representatives, members of the national and European parliaments and members of the Commission, from 28 European States, after a year of exchanges with all those who in Europe want to take part in the debates, **the Commission hopes that the Convention will submit a truly constitutional text with which the people of Europe can identify and where they can also identify their common project.**

This text will serve as the basis for subsequent renovation of the institutional system. The Commission therefore wishes to contribute to the work of the Convention, as a first step, by

reflecting on the Union's core tasks and on the constitutional framework needed to take it forward.

1. ONE PROJECT, THREE FUNDAMENTAL TASKS

What project for Europe? The expectations of the people of Europe point to a focus on three fundamental questions: how to consolidate a model of development based on solidarity and sustainability and to build up an organised and credible economic and social structure anchored by the single currency; how to build up a genuine European area of freedom, security and justice; how to ensure the effectiveness of Europe's external policy, through its commercial, diplomatic and military elements, through financial assistance and development aid.

1.1. The Union must consolidate its model of economic and social development: securing prosperity while ensuring solidarity

The introduction of the euro, consolidation of the internal market, coordination of economic policies, approximation of fiscal and social policies, solidarity between the countries and regions of Europe, the introduction of far-reaching environmental policies and the reiteration of a European model of society, are all developments which most Europeans want. They are essential if the European project is to be balanced. The Union must deepen this process, offering citizens a project with which they are comfortable and which will bring them prosperity, solidarity, and respect for a certain quality of life based on the preservation of the environment, the existence of high quality services of general interest accessible to all, and a high level of social protection.

In order to safeguard this balance and the backing of the people for the European project, **the Union must therefore consolidate and develop its integration.**

Developing and overhauling the common policies

The common policies form the cornerstone of European integration. They pave the way for the Europe of tomorrow for future generations. They are vital for carrying forward the programme of economic and social modernisation the European Union established in the spring of 2000 at the Lisbon European Council, and underpin the coherence of the economic and human area essential to the euro.

The **single market** takes pride of place as a European success and must be safeguarded. It brings European citizens prosperity, growth, job creation and new freedoms. It helps European companies become more competitive. And as we move forward to enlargement, management of the single market must remain at the heart of the Union's tasks, guided by the Commission which is responsible for drafting the rules needed to protect the common interest and see that the rules of competition are respected. The Court of Justice ensures ultimate control of the integrated legal system.

The common policies need to be further developed. This should be a two-pronged process: **building up a prosperous economy driven by strong and sustainable growth and achieving the solidarity needed for a society and an area unblighted by social exclusion.**

Here are a few examples. The **environment policy**, which helps Member States to manage together the common assets of future generations, mindful, to Europe's east and west, of the concern for sustainable development. The policies which encourage the competitiveness of our economies and businesses, **education, research and innovation**, in order to strengthen a knowledge-based Europe. The **agricultural policy**, which must remain an economic force, but must also contribute to balanced development across Europe. **Economic and social cohesion**, which brings Member States and regions the resources needed to adapt to the competitive pressure of the single market and ensure their growth and genuine convergence. The **energy** and **transport** policies, the vector of economic integration. **Fiscal and social policies**, for in an integrated market the players must enjoy equal conditions. The fiscal dimension can no longer be neglected. Nor must the need to build up in Europe a corpus of social standards which reflect how our democracies operate in general in Europe — a corpus based on solidarity, dialogue and economic and social progress. Otherwise change will undermine the European model of society and the values cherished by European democracies.

Overhauling our methods and procedures

The European Community has built up solidarity around common policies. The **enlarged Union**, with its new members, **will need strong common policies** — for the political and economic links they create between the States and for the big advantages which will follow for the Union as a whole in terms of economic and social cohesion.

These policies must be overhauled in order to adapt them to the new context of the enlarged Union. They need to be refocused on the notion of the added value of Community action. **Qualified majority voting must become the single procedural rule for decision-making** in the Council. It no longer makes sense, for instance, for unanimity to apply to the fiscal and social dimension of the internal market, particularly as we look ahead to enlargement and the risk of blockages stemming from the increase in the number of Member States.

Implementation of the common policies must be as **decentralised** as possible. The Commission has already taken the initiative and made some ambitious proposals in this connection, like establishing a network comprising the national authorities responsible for competition and the Commission in order to monitor agreements and abuses of dominant positions. It is currently looking at ways of considerably simplifying the management of the Structural Funds. The

Convention should accordingly examine the feasibility of sharing responsibility for budget implementation when the Member States are responsible for most of the management of funds. In addition, the White Paper on European governance offers guidelines for **taking greater account of the diversity of local situations** - e.g. the attention paid by the Commission to regional and local experience when preparing policies, or the tripartite contracts which can be envisaged between the Commission, the Member States and the regional or local authorities to implement some Community legislation, while fully respecting the constitutional systems of the Member States.

Strengthening economic policy coordination

The euro, hailed as **a major success**, has made it possible to control inflation, bring down long-term interest rates and improve national budget situations, and establish economic policies conducive to growth and employment. **The Union must be able to build on this achievement taking full account of the social dimension and the sustainability of economic development.** Monetary policy management is the exclusive responsibility of the European Central Bank. Economic and budgetary policies are a national matter. However, in an integrated monetary and economic zone, overspending and the absence of control over national inflation rates inflict a collective cost borne by all the States sharing the same currency. **More stringent coordination is therefore essential if the European economy is to be properly steered** in order to secure the twin objective of macroeconomic stability and a high rate of growth and employment.

Policy co-ordination should make it possible to attain a common assessment of the economic situation, agree on the orientation of the policy response and monitor its implementation. It should be regular, not limited to exceptional circumstances. It should also make possible structural policies to support the objectives of growth and job creation.

National economic and budgetary policies must respect a Community framework defined by the Treaty and by specific legislation. As things stand today, two instruments ensure coordination of economic policies, the *major economic policy guidelines* and the *stability and growth pact*, which have fulfilled their mission satisfactorily during the first years of economic and monetary union. Experience nevertheless shows that **coordination needs to be strengthened.**

The **next wave of enlargement** will bring a radical change to the parameters of how to coordinate economic policy. In view of the number of members and the diversity of their economies, **the enlarged Union will have to have more tools at its disposal to meet this new challenge**. While some adjustments are simply a matter of changing working practices and methods, others presuppose amendments to the Treaty.

Under the Treaty, coordination of economic policies is part of the common policies. As for other common policies, it is essential to have at the heart of the system a body responsible for stating the general interest, to ensure consistency in the provisions adopted by the Member States, with the means to impose an overall vision and to bolster the credibility and the cohesiveness of the system in the face of threats to the whole euro zone. This role falls naturally to the Commission, whose **role must be strengthened**.

The instruments of economic policy coordination, particularly the major economic policy guidelines and the opinions on the stability and convergence programmes **should be drafted on the basis of proposals from the Commission** rather than mere recommendations from which the Council may depart by qualified majority. The means available to the Commission should not be limited to a recommendation to be submitted to the Council when the economic policies pursued by a specific Member State deviate from the major guidelines approved or jeopardise the smooth running of economic and monetary union. When this happens, **the Commission must be in a position to act effectively within the framework set out by the Treaty**: through warnings, which it would address directly to the Member State concerned, and by means of proposals from which the Council could depart only by unanimity.

The **operation of the eurogroup should also be altered**. There is no need to emphasise the importance of a body of this kind, which is reserved exclusively for the Member States belonging to the euro zone. But it would be useful to also have a formal decision-making body for the euro zone reserved for the Member States belonging to the euro zone, as an “Ecofin-eurozone” Council. This would enable the institutions to play their full part, from proposal examination right through to decision-making.

The democratic balance of the system should be examined. It is naturally up to individual governments to establish the appropriate relations with their **national parliaments**. At the European level, the Parliament for the time being has no formal role in coordinating economic policies. The strengthening of the economic coordination instruments must go hand in hand with a **greater degree of involvement by the European Parliament**, with the exact role depending on the instruments being considered, and remaining mindful that the management of economic policy is not a matter for the legislative arena. Similarly, **cooperation between the European Parliament and the national parliaments needs to be stepped up**.

Lastly, **external representation of the euro zone** in the international economic and financial organisations should be a matter for a single body. If the European Union is to address international monetary and financial matters consistently and speak with strength and in particular consistency, the euro zone has everything to gain from being eventually represented by the Commission, in close conjunction with all the bodies concerned.

The Commission therefore proposes that:

- the development of the common policies be pursued;
- the common policies be overhauled, their implementation decentralised and the use of qualified majority decisions generalised;
- coordination of economic policies be strengthened and external representation of the euro zone unified.

1.2. The Union must build up an EU-wide area of freedom, security and justice

Since the Amsterdam Treaty, the establishment of a coherent and balanced area of freedom, security and justice has formed part of the objectives of the Union and is one of the European Union's essential missions now and looking ahead to enlargement. This objective, a corollary to the establishment of an integrated, frontier-free economic area, helps to give the idea of **European citizenship** its full meaning. This idea, today perceived as being primarily political, will need to be underpinned legally by linking it directly with a set of clearly-defined and enforceable rights and obligations.

The tasks of the European Union

Freedom, security and justice are essential and complementary achievements for European integration.

Freedom is the unifying principle, the linchpin of the European project. But without security, without a system of law and justice recognised by the people, the exercise of freedom and respect for democratic values could not be guaranteed. The European area of freedom, security and justice thus provides **a guarantee for the principles of democracy and respect for human rights**. As an essential element of European citizenship, the common recognition of these principles, which are now embodied in the *Charter of Fundamental Rights*, is the cornerstone of integration for everyone living in the Union.

Collective action in this context is a response to **strong pressure from public opinion** and a **manifest need**, given that criminal activities spread far beyond national borders and that their

handling is, within an area of freedom of movement, a matter of common interest. The removal of economic borders and freedom of movement go hand in hand with rights and guarantees and are difficult to reconcile with the maintenance of police or judicial borders which protect the perpetrators of illicit activities.

The external dimension of these actions is particularly important, for it will add to the close and privileged relations the Union intends to cultivate with its neighbours.

The Union has a significant contribution to make in four areas:

- Collective action must permit the introduction of **common measures of control and surveillance of our external borders**, based on common management rules, arrangements for financial solidarity, common standards of control and cooperation mechanisms, exchanges of information, training and evaluation. The move in the long term should be towards a common European body responsible for our external borders which, in close conjunction with the national departments concerned, would guarantee that the common external frontier is controlled in the same way everywhere.
- Implementing genuine **common policies on immigration and asylum** is also part of the fundamental objectives of the Union. The common management of migratory flows is essential. The point is therefore to ensure effective coordination of integration policies and maintain the high level of protection of refugees which makes the European Union such a leading light in the international system of refugee protection. Some form of legislative harmonisation will be needed if common goals are to be reached, in particular to define the European asylum regime and the status to give to immigrants inside the European area.
- Effective action against **organised crime and terrorism** can only be organised at the European level, particularly by developing a common framework for inter-country judicial and police cooperation in investigations and prosecutions.

For these three areas - border control, asylum and immigration, countering organised crime and terrorism - the aim should therefore be to cultivate a **European public order system which enhances the effectiveness of the national systems and respects the Union's fundamental values in full**. This is also implicit in the notion of European citizenship.

- The Union also needs to take steps to build up a genuine European area of justice, based on **civil and criminal judicial cooperation** which would in the future be within a **single institutional and legal framework**. We also clearly need to supplement the current Treaty provisions on the

protection of the Community's financial interests by a legal basis providing for a European prosecutor and facilitating the adoption of rules on criminal proceedings in cases of cross-border fraud.

Ways of achieving more effective and better coordinated collective action

In instances where Member States are no longer able to fulfil their responsibilities individually, collective action must take over. And if this action is to be credible **the range of instruments at the Union's disposal and the current decision-making arrangements have to be improved**, moving gradually, as envisaged in the Amsterdam Treaty, towards 'communitarisation'.

Action by the Member States and action by the European Union will be needed at the same time in order to attain these common objectives, for every level must shoulder its share of the responsibilities involved. A range of instruments will have to be put in place: harmonisation and approximation of legislation, mutual recognition, coordination of national policies, mechanisms for exchanging information or cooperation bodies, and financial support, particularly for training and exchanges and for developing pilot projects.

The **Community method** must be applied fully when **legal norms** are being adopted, with a single source for the **right of initiative**, use of the **co-decision** procedure, **qualified majority**, and **checks by the Court of Justice**. Experience has shown that dispersion of initiatives and the rule of unanimity are detrimental to coherence, effectiveness and the quality of decision-making.

But it will not always be necessary to legislate. The concerted but non-binding action which is possible through the open method of coordination may prove useful. The trust each national system can have in the jurisdictional bodies of another Member State is a *conditio sine qua non* for the establishment of a judicial area without frontiers. While it is not possible to rule out harmonisation altogether, for it may sometimes be necessary in the interests of efficiency, *mutual recognition* should nevertheless be the norm when it comes to judicial cooperation in civil and criminal matters.

The extent of **harmonisation of civil law** hinges on the cross-border dimension of certain operations and on the need to ensure that the internal market runs smoothly. **Harmonisation of substantive criminal law** should on the other hand be **reserved for certain particularly serious** or cross-border offences. It should be backed up by a common definition of procedural guarantees, particularly the essential elements of a fair trial.

On **police cooperation**, most objectives can be attained through cooperation between the police authorities of the Member States. The Union's potential action should be limited, within the Treaty,

to defining the conditions for introducing mechanisms whereby the national authorities can exchange information and cooperate effectively. EUROPOL should gear up to the same level as EUROJUST in operational terms in order to guarantee the effective and coordinated running of police and judicial investigations at the European level. The matter of democratic and judicial control over EUROPOL also needs to be addressed.

Summing up, starting from the complex list of actions and procedures currently possible, **the Treaty will need to define and spell out the Union's priority objectives**; it will need to **identify those for which mutual recognition can apply, those for which some sort of harmonisation of national legislation is necessary and the procedures to be applied to guarantee the effectiveness and promptness of the decision-making process**. This approach will at the same time make it possible to set limits on the Union's normative action.

The Commission therefore proposes that:

- tangible expression be given to the legal content of European citizenship;
- collective action be stepped up, particularly in the following areas: control and surveillance of external borders; definition of the general conditions governing the right of asylum and the status of immigrants; countering organised crime and terrorism through effective coordination of the work of EUROJUST and EUROPOL; civil and criminal judicial cooperation when warranted by cross-border activities;
- to finish off the Treaty provisions on the protection of the Community's financial interests by creating an independent European prosecutor;– the Union's priority objectives be better defined in the Treaty, focussing on the development of the idea of European citizenship and ensuring respect of the fundamental rights and freedoms recognised by the Union's *Charter of Fundamental Rights*;
- the instruments for implementing these common objectives specifying be pinpointed, specifying how much harmonisation of legislation will be needed and defining effective and swift decision-making procedures.

1.3. The Union must exercise the responsibilities of a world power

The European Union has created an increasingly integrated market which gives it genuine economic

power. The Union has, through economic and monetary union and the single European currency, built up real capacity to bring influence to bear on international monetary and financial relations. No one can deny Europe's power. The question remains as to how to give it a direction and how to turn this potential into strength. This will take strong political resolve and open debate on the structures, instruments and procedures for taking decisions.

The tasks of the European Union

European integration, based on the historic reconciliation between the European nations and peoples, has consolidated **peace and stability** in western Europe. It is now exporting this stability. Enlargement is undoubtedly the biggest political step the Union will take in the coming years, and the most decisive for the security of the continent. Indeed, the Union's immediate neighbourhood, to the south and to the east, is the first port of call for a common external policy, apart from the place long given by the Union to transatlantic relations and partnership with the African, Caribbean and Pacific countries.

If it is to grow stronger, the Union's foreign policy must have a **decision-making capacity with regard to security and defence** - this at a time when, after the cold war, the deployment of forces in outside theatres in the service of peace is becoming as important as the notion of common defence itself. Of course, these developments do not change the specific position of some Member States when it comes to actions with defence implications.

The European Union has a special role to play as regards **globalisation**. While many European operators are taking full advantage of globalisation, concerns are being voiced over what is seen as a situation in which what certain countries and certain economic entities do has an impact which no one seems able to control. This perception inevitably affects the operation of democracies and the legitimacy of public authorities. What is at stake for our citizens is the preservation or the restoration of their influence and the power of democratic control. There are also many instances in which rules are needed to safeguard what the globalised market fails to manage satisfactorily — social objectives, the environment, diversity of culture and lifestyle.

With the next wave of enlargement the Union will become the world's biggest economy. Its ability to influence global economic governance will accordingly be greater. This means that it will have to take even greater account than it does today of the interests of the rest of the world when deciding on its economic policy options.

The Union will be in a position to act more resolutely and more effectively in favour of sustainable development and ward off certain new risks, stemming more often than not from the persistent or

worsening economic and social imbalances in the world: structural trade deficits and excessive debt in major industrial countries and in developing countries, financial instability, civil strife and regional conflicts which trigger outflows of refugees and have their impact on the spread of terrorism, trafficking and clandestine immigration, the destruction of the global and local environment. The Union must address the causes, near and far, of these new threats to security and prosperity. It must accordingly defend a strategy for sustainable development based on a multilateral and multipolar organisation of the world's economy and reject hegemony or unilateralism.

In many respects, **it is through the European Union**, through concerted approaches and the pooling of political resolve **that the people of Europe can defend their model of society and exercise their democratic rights better and more comprehensively**. Europe is a leading international player and is better placed than others to help in the governance and stabilisation of the international system.

With regard to foreign policy, the need is to become as effective as we have been in running the common commercial policy. Very considerable progress have been achieved over the past few years, based on the often decisive action of the High Representative for the Common Foreign and Security Policy (CFSP). Examples are the collective action in the Balkans and the development of the European security and defence policy. But this is an area of untapped potential, which if used would push the Union to the forefront of the international scene. External policy must become more coherent, which means more incisive foreign policy guidelines; and it must deploy the whole range of instruments available to the Union and its Member States.

A more effective foreign policy, a more coherent external policy

The Union's external policy is not easy to define. It goes beyond the traditional diplomatic and military aspects and stretches to areas such as justice and police matters, the environment, trade and customs affairs, development and external representation of the euro zone. Our aim must be to integrate these different areas and make all the resources available work together well. It is not a question of the 'communitarisation' of foreign policy, applying the traditional Community procedures, as this would not be compatible with the emergence of a European military dimension, but nor should we make external policy more 'intergovernmental' by extending the powers of the Member States or of the High Representative to the detriment of the Commission.

Wholesale 'communitarisation' would not today make it possible to embrace the full political

dimension of external policy, which is not a mere set of powers, instruments and areas of action; nor would it be able to cater fully for the military aspects.

On the other hand, to maintain or increase the current balance would be to perpetuate the fragmentation of initiative, decision and action.

A realistic response is needed to the twin requirement of coherence and effectiveness:

- coherence: by having a centre of gravity which is in control of policy initiative and which identifies and articulates the common interest;
- effectiveness: by adapting procedures to suit the particular nature of foreign policy, particularly its military component.

. a single source of initiative and action which is coherent

One of the features of the Community method is the exclusive capacity to initiate legislation conferred upon the European Commission. This ensures that proposals submitted in complete independence by the Commission to the European Parliament and to the Council represent the general European interest and not national or partisan interests.

It is also equally important that the **initiative stems from a single source** and that action is coherent when it comes to foreign policy. Today we have two centres of gravity side by side. One is based on the intergovernmental approach and via the High Representative offers the first expression of the common ambitions of the Member States; it has made it possible to build up a common culture and to encourage mutual trust. The other, based on the Community method, has the characteristics needed to define the Union's general interest for the longer term, from analysis and initiative right through to assembling the resources and common instruments.

This division is a source of ineffectiveness and must sooner or later make way for a single centre of gravity to take account of the general interest in a structural and durable manner. An impartial, permanent body having the necessary technical expertise is needed to evaluate the situation, examine whether the objectives are consistent with the means available, and submit proposals for action. All the Member States and the European Commission today have the power to propose — the result being confusion and the risk that the common interest is not fully taken into account when the initiatives are prepared.

The centre of gravity for policy initiative and for ensuring coherent action should therefore lie within the Commission.

- Representation and means of action

Securing a single source of initiative and coherence without neglecting the specific features of the

common foreign and security policy implies opening up an intermediate route between the status quo and 'communitarisation'. This rests on two points.

First and foremost, the capacity for political initiative must be made consistent with the initiative the European Commission already has to devise and use the instruments of external action. If external policy is to be credible and coherent, it is not possible for the High Representative to submit proposals without describing how they will be implemented. Nor is it conceivable for a body outside the Commission to deploy as it wishes resources and instruments which the Commission manages and for which it is accountable in political and budgetary terms.

Secondly, to be effective and operational, this solution presupposes the step-by-step **merging of the function of High Representative and that of Commissioner for External Relations**. As a member of the Commission, the High Representative would have twin legitimacy stemming from the agreement of the Member States and from the European Parliament's endorsement of the Commission. Vested with responsibility for negotiating agreements with countries outside the EU, with the power to assemble a range of instruments, to propose guidelines on external aid, to devise trade or financial sanctions, he would be able, in designing and implementing the Union's political initiatives, to help provide more political consistency with other common policies having a strong external component.

The High Representative/Commissioner for External Relations should also be given **a leading role in terms of day-to-day crisis management**. In this context, it has to be said that the formula in the Treaty of Nice whereby it is up to the Political and Security Committee, which will soon have some 30 members, to ensure political control and strategic direction of crisis management operations under the responsibility of the Council, remains unsatisfactory.

The conditions of this merger would need to be defined:

- special status: the High Representative/the Commissioner for External Relations should be chosen by joint agreement by the President designate of the Commission and by the Council at Heads of State and Government level, specifically to perform this task under the authority of the President of the Commission;
- a change in procedures: merging the functions of High Representative and that of Commissioner for External Relations does not mean that all the aspects of external policy, security and defence are dealt with by identical procedures. For security, a distinction will need to be drawn between the strategic or diplomatic functions, the economic function, particularly with reference to armaments policy, and the strictly military function involving the preparation and running of operations;
- a change in the way the Commission takes its decisions: different internal procedures would have to be introduced depending on whether the initiative was a foreign policy issue or in

another area, like external aid and trade policy, or then again a security and defence matter, requiring a specific, confidential and swift approach;

- timetable for implementation: these changes will have to be phased in, in the same way as economic and monetary union.

The Union's common foreign and security policy must have **adequate resources within the Community budget**. This is not the case today. In addition, all **resources needed for its implementation must be able to be assembled swiftly**, much more so than today, and this presupposes a specific dialogue with the budgetary authority, with steps being taken to adapt Community rules to the specific nature of this sector. The High Representative/ Commissioner for External Relations, must be able to rely on a strengthened **network of external delegations**. **Single representation of collective interests** is essential. Inconsistency in times of international crises weakens the Union's credibility. The High Representative/Commissioner for External Relations must have control of this spokesman function, which does not rule out his asking a specific Member State to defend collective positions or act as mediator if this is justified by objective reasons.

- Decision-making procedures

As the merging of these functions must take due account at the same time of the essential need for coherence and certain particular characteristics of foreign policy, stemming in particular from the military dimension, decision-making procedures will have to be adjusted to the desirable degree of integration and take care to give the European Council a single talking partner for coherent and swift implementation of its guidelines.

For a political initiative on the part of the High Representative/Commissioner for external relations to be validated as a Union initiative, the agreement of a certain number of States will be necessary. Due account will have to be taken of the fact that in this particular area geography, history and military capability put the different Member States in an occasionally rather odd position in relation to non-member countries and to conflicts arising on Europe's borders. The High Representative/Commissioner for external relations will therefore, when preparing the political initiative, have to take very careful account of these peculiar features and these objective differences between the Member States.

If this dimension is correctly taken into account when the initiatives are being prepared, when the Union's general interest is being defined, **qualified majority voting would then meet the requisite conditions of effectiveness and legitimacy**. **Unanimity must be ruled out**, without prejudice to procedures which might apply for security and defence. Methods which work more or

less satisfactorily today will not survive the doubling of the number of Member States.

The common interest has to be defined in a dynamic manner when it comes to foreign, security and defence policy. This means not scaling down to accommodate the reticence of some, but seeking credibility and effectiveness through a policy which sets out to safeguard, outside the Union's own borders, certain values which are essential to our democracies. Unanimity in foreign policy for the enlarged Union is no more relevant than it is in trade.

When making these changes to the power of initiative in the Common Foreign and Security Policy, representation and means of action, and decision-making procedures, the Convention should take account of experience since the Maastricht and Amsterdam treaties, and of the importance of strengthening the institutional triangle. The changes proposed would make it possible to secure the coherence of the system by incorporating the High Representative within the Commission; to maintain strong consensus and legitimacy around the Council's action; and to strengthen transparency and democratic control in relation to the Parliament. Any other approach at a time when the Union is about to double the number of its members would weaken collective action and generate a risk of the Union's constitutional organisation being fragmented.

Preparing the future

After years of declaratory political cooperation, the switch to the current methods of common foreign and security policy has not been easy. More Community-based but still far removed from the degree of effectiveness required, **working habits will not change unless the structures, instruments and decision-making procedures evolve in a coherent way.**

Without waiting for the revision of the Treaty, the Commission feels it is essential to improve working methods:

- closer cooperation between the High Representative and the Commission by putting in place certain common departments;
- building up the political role of the external delegations;
- closer coordination between the High Representative and the Commission in the use of budgetary resources for the Union's external actions;
- joint participation in some of the Commission's and the Council's work;
- coordinated participation in the debates of the European Parliament;
- presentation of joint initiatives and documents.

Consequently; using arrangements and a timetable yet to be defined, the Commission proposes that:

- capacity for ensuring overall consistency of political initiative and a leading role in crisis management be conferred upon the High Representative for CFSP;
- the functions of High Representative and Commissioner for External Relations be merged and the conditions for incorporating the High Representative within the Commission be defined;
- foreign policy be given the necessary resources: budget, new procedures, network of external delegations;
- the use of unanimity be ruled out and that majority decisions be made possible, without prejudice to procedures which might apply for security and defence;
- coherent single representation of collective interests be ensured by the High Representative/Commissioner for external relations.

* *

*

2. A CONSTITUTIONAL TREATY

Looking ahead to a Union of some 30 Member States, the institutional arrangements, the instruments and the decision-making patterns under the current treaties are sometimes inadequate and ill-adapted for carrying forward the European project. The Convention must help to build up a more democratic and more effective Union.

A rethink of the institutional architecture is needed and the way in which the European Union exercises its powers needs to be clarified.

2.1. Establishing a constitutional treaty

The European Union as it stands today is based on four basic treaties and pursues its policies through procedures which differ according to the areas of activity. It does not have a single legal personality. Certain Member States are still covered by derogations and do not take part in all the common policies.

This situation is the result of 50 years of European integration. It is today the source of confusion and inconsistency and no longer allows the Union to act with the required degree of effectiveness. On the eve of a wave of enlargement on an unprecedented scale, it is essential to make some rationalisation of the process.

Merging the treaties

If the institutional architecture is to be simplified and rationalised it will be necessary to **merge the Treaty on European Union with the Community treaties** and drop the distinction, which is important in law with very much obsolete in political terms, between the Community area and the provisions of the treaties concerning the common foreign and security policy (second pillar) and police and judicial cooperation in criminal matters (third pillar). The European Union should have a **single legal personality**.

But this does not mean that Community procedures would necessarily need to be applied in an identical way to areas currently falling within the second and third pillars. The role of the institutions and the decision-making procedures applicable should be defined, within a single institutional arrangement, as a function of the type of action envisaged.

Reviewing the justification for derogations

The exceptions granted to certain Member States by specific protocols are the result of national

options and are still largely compatible with the current legal framework of the Union, that of treaties concluded between sovereign Member States. If the Convention were to come out in favour of a constitutional treaty likely to lead eventually to the approval of a genuine constitution by all the people of Europe, it would be difficult to keep most of these derogations on board. They detract from equality between the citizens of Europe. The ability of the institutions to prepare, decide and implement certain policies could quickly be called into question — unless the composition of the institutions were to be geared to the subjects addressed: not a problem where the Council is concerned, but implying obvious difficulties for the Commission and the European Parliament.

Managing a wide range of objectives and capacities without weakening the institutions will in this connection be one of the major challenges for the enlarged Union. The provisions of the treaties concerning reinforced cooperation offer answers which are largely theoretical, no doubt valid for one-off actions not linked with the Union's main policy thrusts and which might justify adjustments to the common institutional framework, but inappropriate for keeping in step with an increasing amount of differentiation between Member States.

In operational terms, **certain derogations are sources of real complexity for the action taken by most of the Member States**, because of the interdependence between the countries of the Union.

Examples are the exceptions which affect policies linked to the freedom of movement of people and which make cooperation with certain non-Community countries easier than with some of the Member States.

These considerations make a compelling case for a **critical reappraisal of these derogations. The Convention should confirm that an *à la carte* Europe is not the right option for the future development of the Union.** When the time comes to prepare a constitutional treaty, political attention should focus on the implications of joining the Union, by comparison with other formulas, such as those used within the European Economic Area (EEA).

Simplifying the treaties

Once the fundamental political options contingent on these two points have been spelt out — a single institutional arrangement, reappraisal of certain derogations — then work can start in earnest on simplifying the treaties in line with what the people of Europe expect and preparing a text of reference which incorporates the Charter of Fundamental Rights.

The treaties contain hundreds of provisions of various importance and scale. Already back in 2000¹ on the basis of a preparatory study conducted at its request by the European Institute in Florence and without taking a stand on the ideas it contains, the Commission had proposed that the treaties be reorganised into two parts. A ranking of the various treaty provisions would make it possible to draw a distinction between the fundamental provisions (fundamental rights, organisation of powers, principles of the common policies) and the application provisions which can be modified by less stringent procedures than the current treaties.

The European Union will then have a **text of a constitutional nature** - a text which will coexist with the national constitutions, which clarifies the unique organisation of European public authorities and which will enable the people of Europe to understand that it has for the Union the same value as a constitution for any Member State.

This is the context in which the question of the ratification of this future legal instrument has to be raised, along with **the consequences of any failure to ratify** by one or more Member States of the Union.

The Commission therefore proposes that:

- the European Union be merged with the Communities and the European Union be given a legal personality;
- the role of the institutions and the decision-making procedures applicable be geared to the type of action envisaged;
- a critical reappraisal be made of the derogations granted to certain Member States;
- the foregoing be used as a basis for an in-depth simplification of the treaties;
- a constitutional treaty be drawn up based on the Charter of Fundamental Rights and taking up the essential provisions of the treaties; and provision be made for separate review procedures for the other provisions;
- an examination be made of how this constitutional treaty can be adopted and enter into force.

2.2. Clarifying the way in which the Union exercises and implements its powers

European rules are often held to be excessively detailed and in some cases appear to neglect national practices and the specific way in which each Member State carries out certain policies. As such, they run counter to traditions and identities — i.e. the way in which the peoples of Europe

¹ *A basic treaty for the European Union*, Commission Communication of 12 July 2000 (COM (2000) 434).

have built up their nations over the centuries. Moreover, they do not take account *per se* of the distribution of powers which certain Member States have introduced between the national level and the regions, particularly the regions which have legislative powers.

The matter of powers emphasises certain shortcomings in the way the Union operates:

- lack of clarity, stemming from the complexity of the procedures and the number of instruments;
- lack of accountability: when the decision-making process is obscured by complexity, when those whom the citizens can sanction are not always those who take the decisions or are reluctant to shoulder their share of responsibility before the people who voted them in, democracy is ill-served;
- lack of proximity, stemming from the fact that the principle of subsidiarity is not always respected;
- lack of effectiveness: protracted decision making, what Europe does being not in line with the main expectations of its citizens.

Clarity, accountability, proximity, effectiveness: there is no questioning the objectives, but how to attain them needs to be examined carefully.

Reasserting the bases of the present system

The principles of collective action remain as relevant as ever. The Union only exercises powers because the treaties, ratified by each Member State in accordance with its national procedures, have assigned tasks to it and the means to act. Where it does not have exclusive power, the Union must comply with the principles of subsidiarity and proportionality, i.e. acting judiciously and to the extent strictly necessary for achieving the aims set.

It would be useful for the future basic treaty of the European Union to clearly set out the principles which serve as a framework for action by the Union:

- the Union can act only in so far as a power has been assigned to it (principle of attribution of powers);
- the Union can only act in full respect of the principles of subsidiarity and proportionality as defined by the treaties;
- the law of the Union takes precedence over national law.

Should there be a classification of powers?

The European Union is not a state but brings together states and peoples via a unique form of political integration. Accordingly, nearly all policies have a European dimension and a national dimension. A look at the treaties shows that very few areas come under exclusive European power.

In the case of most policies, it is generally considered that the powers assigned to the Union are shared or supplementary.

An examination of each of these areas, considering the provisions of the Treaty and of the legislation adopted since the start of the process of European integration, would perhaps make it possible to **list of the powers today exercised by the Union**. However, codifying in the Treaty a catalogue of this kind would have the disadvantage of **artificially straitjacketing the Union's capacity for action**, which would be particularly inappropriate in a rapidly changing global context. The main point is that an approach of this kind would only bring **limited clarification** with regard to the actual distribution of shared or supplementary powers:

- it is not possible to assign areas of action to a single decision-making level be it national or European. Consequently, transport policy, asylum and immigration policy or social policy, are simultaneously European and national; it all depends on what measures are being considered. The European level cannot make laws on culture-related matters, but competition policy can have an impact on decisions taken nationally; again it all depends on what is being considered;
- if we look at the measures, only general principles can be established (the advantages of acting together) when deciding whether a specific action is a national matter or a European matter.

In many instances, **the requisite clarification will not therefore emerge from a classification of powers**.

Rationalising the modus operandi

If the concepts of subsidiarity and proportionality are to be given operational leverage, then the Treaty has to **spell out how the European Union acts, on what scale and with what result in view**.

Some provisions in the Treaty apply directly and obligatorily on the Member States, while others need legislative action or the adoption of implementing measures. Sometimes, the end in view calls for a high degree of involvement at European level and this leaves little room for national initiative. This is the case of laws or decisions which must apply uniformly in all Member States. In other instances, the scale of European action leaves a wide margin of manoeuvre to the national authorities, for example when the Treaty provides for non-binding coordination of national policies. Recent years have also seen the emergence of new forms of concerted action, with the *open method of coordination* giving a common direction to certain actions which are sometimes excluded from the field of the Union's legislative powers.

Regulations to be uniformly applied, comprehensive or minimal harmonisation, mutual recognition,

more or less binding coordination, etc.- a **rationalisation of the use of these various forms of action is definitely needed**. Some provisions in the Treaty, it should be noted, rule out any form of harmonisation, such as for health, culture or education, while collective action has achieved significant results in these areas. An example is the Erasmus programme. This approach can no doubt be extended and on the basis of a list of the forms of action established by the Treaty, **the desirable scale of European action in certain areas can be specified in order to safeguard the exercise of national powers**.

Maintaining a margin of flexibility

Article 308 of the Treaty establishing the European Community enables the Council, by unanimity and after consulting the European Parliament, to introduce the provisions needed to attain a common objective. This article has on occasion come in for criticism.

It will be noted in this connection that **Article 308 does not make it possible to create new powers**. Should the scope for resorting to Article 308 be widened, either to extend or to restrict the powers exercised by the Union? Probably not, inasmuch as **the normal and democratic way of adapting the Union's powers is to amend the Treaty**.

So should Article 308 be made more binding? The discussions within the Convention show that **many acknowledge the usefulness of leaving some flexibility in the system**. In order to better circumscribe what should remain very limited use of this provision, it would therefore be preferable to begin by **reviewing the common objectives** as set out more especially in Article 3 of the Treaty establishing the European Community and, if necessary, to make the powers to act needed to attain these objectives explicit.

Simplifying the adoption and implementation of the Union's decisions

The Commission has repeatedly expressed its eagerness to build up the legislative and budgetary role of the European Parliament. Indeed, **co-decision must become the general rule for enacting European legislation** – meaning laws whose scope should, in the future constitutional treaty, be clarified so that the European legislator can concentrate on defining general rules without codifying in detail the arrangements for their implementation.

The prerogatives of the national legislator will be better respected if **European laws focus on the general objectives** and allow him as much freedom as possible as regards the means of implementation. The legislative route can be used in combination with other non-binding solutions, such as recommendations, guidelines or, indeed, self-regulation within a jointly-agreed framework.

To ensure the proper working of common policies, **the value of maintaining some legislation in force could be re-examined**, with a view to their possible repeal if it appears that Member States could undertake the actions better.

These guidelines are nothing new but are sometimes limited by the degree of trust shown by the respective Member States as regards certain particularly important rules concerning the freedom of movement of products, e.g. with regard to health or safety. Be that as it may, European institutions have for a very long time been giving much thought to the working techniques and habits which would make it possible to achieve **better lawmaking** — including principles of subsidiarity and proportionality and how to allow room for the national parliaments. These efforts must be based, in the Treaty, on a **distinction between the law and what is more properly a matter for implementation rules**.

Under the Treaty (Article 202), the Council, with certain specific exceptions, confers upon the Commission the powers for implementing the rules it establishes. The *White Paper on Governance* proposes certain guidelines to **restore within the institutional system a genuine policy and legislation implementation function** which takes account of the expertise required, particularly that of the national administrations in implementing the Union's policies.

Distinguishing in the future constitutional treaty what comes under law or implementation rules; applying the co-decision procedure to the adoption of all legislative texts and concentrating on better lawmaking; entrusting the adoption of implementation measures to the Commission subject to the conditions and limits defined by the legislation; establishing a simple legal mechanism whereby the European Parliament and the Council, as the legislative power, can keep track of and monitor Commission action in relation to the political principles and guidelines adopted in the legislation: these are the guidelines which should be actively pursued to make the system more comprehensible and more transparent.

The Commission therefore proposes that:

- the fundamental principles for Union action be incorporated in the future constitutional treaty;
- the use of the various instruments of action available to the Union, from harmonisation to coordination, be rationalised as a function of the intensity required;
- a distinction be drawn between what comes under law and what comes under implementation rules and that the co-decision procedure be applied to the adoption of all legislative texts;
- the adoption of implementing measures be entrusted to the Commission subject to the conditions laid down by the legislation and under the control of the legislator.

2.3. Ensuring that the principles of subsidiarity and proportionality are adhered to

at the national level

The implementation of European rules sometimes generates **national rules which are excessive** and which are seen as incomprehensible and rejected by the public at large.

There are many examples of this, in regional policy or in implementation of the internal market rules. These practices can detract from the effectiveness of European rules in practice and although they are difficult to trace systematically, some **thought should be given to how they can be countered** so that people stop accusing Europe of excesses for which it is not responsible.

at the European level

When an action can be better performed at the national level or exceeds what is necessary to attain the common objectives, it must be abandoned or amended. As a distribution of powers between European level and the national level is a non-starter, **specific control procedures must be introduced to ensure compliance with the principles of subsidiarity and proportionality.**

When preparing these control procedures due account must be taken of the existence of the scrutiny of the Court of Justice which may annul or invalidate any binding Community measure, particularly in the event of violation of the principles of subsidiarity and proportionality. The arrangements for this *ex-post* control could be reviewed and broadened.

Moreover, it is primarily up to the European institutions — the Commission when it proposes an

instrument, the European Parliament and the Council when they adopt it — to respect the principles of subsidiarity and proportionality.

However, in order to inform the decision-making process without weakening it, an **external** control on subsidiarity and proportionality could be made at the end of the legislative process, but before the instrument comes into force, so that the legislator can discard or amend any action envisaged if he considers it contrary to the principles of subsidiarity and proportionality.

Some favour a political control, others a juridical control. Both approaches need to be examined.

The Commission nevertheless feels that the examination of compliance with the principles of subsidiarity and proportionality should be constitutional and simultaneously **take account of the general interest** and evaluate **respect of the law**.

This control should not be systematic and intervene only in the event of serious doubt regarding compliance with the principles of subsidiarity and proportionality. **The procedure should be swift** and be over and done with in 2-4 weeks in order **not to slow up the decision-making process**.

If the Convention were to opt for this external control to be implemented before an instrument enters into force, then **the *ex-post* procedure would have to be adapted accordingly**.

The Commission therefore proposes that:

- ways be examined to prevent transposal and implementation of European rules by national administrations generating an excess of national regulations;
- external control of a constitutional nature be introduced to check on compliance with the principles of subsidiarity and proportionality.

* *

*

In the coming months the Union will be faced with a fundamental choice. Will the new tasks it has to perform be undertaken within the institutional system? Should the Community method be cut back to its historic success - the common market - or should its strengths be preserved and applied

to other policies?

People have frequently stressed the innovative nature and the special balance of the Community edifice, which organises not the separation but the sharing of powers. Accordingly, legislative power lies with the European Parliament, but also with the Council; and it in turn shares the executive power with the European Commission, which has the monopoly of legislative initiative, whereas the implementation of policies is largely a matter for national and regional administrations.

This union of strengths and powers must be preserved around the European general interest, keeping the Commission, just as Europe's founding fathers wanted, as an independent institution ensuring equal treatment for all the Member States and as a focal point for consistency, synthesis and consideration of the general interest.

This vision remains the right one. For comparatively new areas such as matters relating to foreign and defence policy, security, justice or policing, or economic cooperation, the need will be to introduce systems of compromise and action which can deliver results and provide legitimacy for the Community method.

This method, based on a balance between the institutions throughout the decision-making process, from preparation to implementation, with the Commission playing a special role as guarantor of the general interest, is what ensures the transparency, the coherence and the effectiveness of action taken. The Commission will have the opportunity to go into the institutional aspects of future reform in greater depth, in time to contribute to the Convention's deliberations.

Changes there will have to be. All the institutions will all have to re-focus on their core tasks and agree to undergo root-and-branch reform. The Commission is prepared for this and has already made a start through the preliminary guidelines it has presented for better European governance.

The link between the people of Europe and the Community budget will have to be made in a **more direct and more transparent manner so that the European Parliament,** elected by direct universal suffrage, **can exercise prerogatives which are consistent with its democratic legitimacy** in distributing expenditure and determining resources. The Union must therefore have adequate genuine resources of its own to carry forward the project entrusted to it and for which it is responsible.

The European Commission must consolidate its democratic legitimacy without losing its independence from national and partisan interests. This very independence is a cornerstone of its

legitimacy.

As the Convention sets about its work, concentration must focus on the limitations of other approaches. Intergovernmental cooperation, for instance, will lead to paralysis, while having policy leadership of the Union in the hands of a few Member States will be the source of tension and deadlock.

The Convention's task is to try and shape the Union of tomorrow. A Union in which the Member States, united by common policies and bonded by strong institutions, retain their ability to transcend their own divergences and to deliver what their people expect.
