

THE EUROPEAN CONVENTION

THE SECRETARIAT

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COVER NOTE

from	Secretariat
to	The Convention
Subject :	Contribution from the Earl of Stockton, alternate member of the Convention "The Future of the EU: A Positive Conservative Approach"

The Secretary-General of the Convention has received the contribution annexed hereto from the Earl of Stockton, alternate member of the Convention

Contribution of the Earl of Stockton - Alternate member of the Convention

The Convention in which we sit cannot hope to fulfil its mandate to "consider the key issues arising for the Union's future development"¹ unless its members are given the widest possible range of views from the broadest spectrum of political opinion.

The signatories of the attached paper reflect a significant strand in the development of the European Union and many have played an important part in shaping the Europe of today and their views, and the questions raised, provide a valuable insight into one vision of the Europe of tomorrow.

In particular, the Convention must consider how to protect and reinforce the principle of subsidiarity in an enlarged Union.

Similarly, the future structure and function of the institutions must be addressed in relation to the need to develop people's trust in Europe's legitimacy and competence.

It would, of course, be foolish to imagine that the future of Europe is simply concerned with internal structures and decision-making processes. The needs and expectations of its people and its businesses are central to the debate. That is why the accumulation of experience in world, European and domestic public and commercial life which is represented in this paper, means that the proposals contained should be taken seriously by all of those considering the future direction and identity of the European Union.

¹ *Annex I.III to the Presidency conclusions*, European Council Meeting in Laeken, 14-15 December 2001

THE FUTURE OF THE EU:

A POSITIVE CONSERVATIVE APPROACH

Memorandum to the public debate on the Future of Europe

This Memorandum is submitted by a group of British Conservatives, predominantly past or present Members of the House of Commons, the House of Lords and the European Parliament. Although most of us have held office in Conservative Governments and some of us still hold office in Conservative political organisations, we are writing in a purely personal capacity. What we have in common is a deeply held belief in the importance of Britain being fully committed to the European Union and playing a positive and constructive role in the development of the EU as it faces the challenges of the twenty-first century. We do not want Britain to be at the sidelines or peripheral to the evolution of the EU and believe that the British Conservative political tradition can make a valuable contribution to the further development of Europe. We believe an effective and strong EU can be even more crucial for Britain's welfare in the future than it has already been in the past. We believe that is now urgently necessary for British Conservatives to provide a constructive input, if we are to influence the future character and structure of the Union. We know that our approach has the support of vast numbers of Conservatives, even though their voice may not have been heard loudly in the recent past.

We are very conscious of the enormous number of complex issues that the Convention on the Future of Europe has been considering in depth, and we do not attempt to present a comprehensive view covering anything approaching the totality of these issues. What we seek to do, rather, is to put forward selective proposals, in outline, on what we regard as a number of the more important

issues. If implemented these would reflect and build on a view of Europe which is distinctive, but would, we believe, command a wide degree of support across the EU. These proposals would of course have to be fleshed out much more fully if they were broadly acceptable, and we would be happy to do so if the Convention felt this would be useful.

We start off from the viewpoint that the Member States are and should continue to be the fundamental and dominant components of the European Union, although of course nation states themselves vary enormously in the degree of autonomy that they give to their constituent parts. We recognise that in important respects the EU already has and indeed always has had, some characteristics of a federation: the powers of the constituent parts and the centre are determined by law, and the balance between them cannot be changed except by the special and difficult procedure of an Intergovernmental Conference. We believe it would be a mistake to change the EU into a fully federal state, with more powers accruing to the centre as we attach great importance to the principle of subsidiarity set out in the Maastricht Treaty. Nonetheless, where it can be clearly shown that we can achieve together what we cannot so effectively achieve separately we have no hesitation in stating that the EU and its institutions must have the competence and the effectiveness to act for and on behalf of the citizens of the Member States. Those citizens will only have the confidence to permit that to happen if both the essential purposes and limitations of the EU are clearer to them.

Based on this fundamental approach towards the EU, our specific proposals are designed:

- (a) to make clear to the citizens of Europe what the EU stands for, what it seeks to do for its citizens, and what it does not seek to do;

- (b) to enlist greater public support for and knowledge of the EU and to involve national Parliaments more closely in EU-decision making;
 - (c) to modernise the institutions of the EU so that they can operate effectively in an EU enlarged to include many more Member States;
 - (d) to give the Council greater continuity and a clearer and more open face to the outside world;
 - (e) to strengthen the Commission's power to act effectively in those areas within its competence while holding it more openly to account;
 - (f) to provide an institutional mechanism for giving the European Parliament greater coherence, alongside its enhanced power;
 - (g) to enhance the rule of Law within the EU by ensuring that the decisions of the European Court of Justice are promptly and fully complied with.
- (1) **A Declaration of Principles** should be produced which would set out in a short, simple and understandable document the fundamental principles upon which the EU is based and the objectives which it is designed to achieve. This document would in itself be neither a Bill of Rights nor a constitution whatever the strength of the arguments for such instruments might be. It would, rather, be a point of reference for use, for example, in schools, which would set out the EU's commitment to such values as democracy, the rule of law, open trade,

personal freedom and equality of opportunity, and make it clear that the fundamental purpose of the EU was to support those principles and also, more broadly, to advance the prosperity and security of the European citizen, when common action at the European level is needed to do so. The document should also, but in general terms, set out the principles (such as subsidiarity) determining when the EU should act, and when it should be left to the Member States. The Declaration of Principles should be enshrined in the Treaty as the document embodying the philosophy informing all the EU institutions.

- (2) **Division of competences:** We doubt whether it is practicable, or even desirable, to attempt to set out in list form the competences which belong to the EU, the ones which belong to the Member States and those which are shared between the two. Instead we would favour simply making clear in the Treaty what may already be regarded as implicit: i.e. that the EU only has competence or shared competences where the Treaty specifically gives it such competence. In our experience this crucial limitation on the powers of the EU institutions is not nearly widely enough understood, which is why it needs to be spelled out with the greatest degree of clarity. The purpose of such a clarification would be to allay the fears of those who are concerned about what is seen as a ‘ratchet’ effect, whereby the EU, by one means or another in practice acquires more and more power, and sometimes intrudes unnecessarily and in excessive detail into issues which are better left to the Member States. Such a clarification would buttress the commitment to the principle of subsidiarity which is already enshrined in the Treaty.

(3) **The EU Treaties:** The Treaties governing the EU are the legal instruments setting out the inevitably complex interrelating functions and powers of the different EU institutions and amount to the supreme law governing the EU. They are, therefore, already to all intents and purposes a constitution. The only difference between them and most national constitutions is that they are not clear, compact and succinct documents, accessible to the ordinary citizen, and they go into much greater detail than is normal in a constitution. We do therefore put forward the proposal that they should be simplified, and divided into two parts. The most important provisions should be separated out and described as the Treaty Commitments of the EU . The less important and more detailed provisions should be contained in a separate document, with a different title, such as Treaty Rules governing the EU. We do not underestimate the difficulty of deciding which provisions should appear in which document, but we consider that the importance of clarity and accessibility is great enough for it to be worth undertaking this task.

There has been much discussion of the procedure that should be necessary to amend the second document. Although it would not contain the most fundamental provisions relating to the governance of the EU it would determine policy formation in some highly controversial areas, and in our view it should continue to require a consensus of the governments of the Member States for its provisions to be amended. On the other hand we do not consider that such amendments should be required to go through the procedure of formal ratification by the Member States. That would establish a clear distinction between the two documents, make agreed changes in the second document more rapidly attainable, while at the same time continuing to preserve the necessity for changes of this importance to be agreed by the governments of all the Member States.

- (4) **The Council**: This should remain the pre-eminent body within the EU. But the various forms that the Council takes should all do more to demonstrate openness and transparency, especially when it is acting in a legislative capacity. If more of the Council proceedings took place in public and how Ministers voted was published, there would undoubtedly be an increase in accountability, and, over time, probably in the degree of public interest in the Council's proceedings.
- (5) **National Parliaments**: Whether because of the comparatively short history of the European Parliament or the particular nature of its competences, for the most part and in most Member States the main political figures upon whom the public focus continue to be members of the National Parliaments. They are the main political conduit through which public opinion operates and by which public opinion is affected. They also of course have a particular and legitimate interest in the proper application of the subsidiarity principle. We consider, therefore, that it is important to involve them in the operation of the EU in a more substantial and formal way than is currently the case.

We do not favour the creation of a second chamber of the European Parliament. This would only add to the existing complication of the European legislative process and not be the most effective way of meeting the perceived need. Instead we would suggest the creation of a **Council of National Parliaments** whose interlocutor would essentially be the Council of Ministers, and not the European Parliament. The Committee would not include members of Governments, and each Parliament would choose its own members in its own way. The Committee would consider any legislation that it wished to, and give its views on it, before final decision by the Council. Most particularly, however, it would have the specific role of considering whether proposed legislation is in accordance with the subsidiarity principle. If it considered that it was not, it could not only pronounce accordingly, but also request an

Advisory Opinion on the issue from the European Court of Justice. (There is a relevant precedent in the provision enabling an Advisory Opinion to be sought as to whether international agreements are compatible with EU Law.) Provision would need to be made for the Court to hear such applications within, say, three months, so that the legislative process could not be held up excessively. The Committee should not be too large, and should not meet so often that its members become divorced from their colleagues and less sensitive to their concerns. It would have to be selective in its focus, concentrating on subsidiarity issues, and also on legislation of special importance or of a character which involved a substantially new area of EU activity.

- (6) **Parliamentary oversight of National Governments:** Each Member State has its own system for Parliamentary oversight of European policy, and in particular the line taken by its Government in legislative deliberations within the EU. The approach ranges from the very tight control maintained by the Danish Parliament over its Government to arrangements where the national Parliament is only minimally involved. It is, of course, absolutely right that each Member State should be entirely free to take its own route and we certainly do not consider that the Convention should suggest any common system. There is, however, a common interest in members of national Parliaments being aware of what European legislation is going forward and having the opportunity to take a view on it before governments take up a final position. There is nothing more damaging to support for Europe than members of national Parliaments being told of European legislation after it has been enacted and being told by their Governments that they can then do no more than to rubber-stamp the transposition of the European legislation into national law. The extent to which national Parliaments seek to bind their Governments will be a matter for the national political process to determine. On the other hand it is a matter of legitimate concern for the EU as a whole that when Governments take a position in the Council they should be fully

clothed with the democratic authority that only the considered support of their national Parliaments can provide. We therefore suggest that the Convention should issue a strong but non-binding **Recommendation** that Member States should follow a procedure whereby their national Parliaments have an effective opportunity to express a clear view on European legislation before their governments take up a final position on it. National Parliaments would also be assisted in their oversight of European affairs if the Commission was required to submit its annual work programme to national Parliaments with a request that it should be debated and commented on within a specified period.

- (7) The **Presidency of the Council**: The extent to which the Presidency of the Council has already been institutionalised has often not been fully appreciated, supported as it is by officials overwhelmingly emanating from national administrations. Nonetheless, the points that have so often been made about the lack of continuity, short term, and absence of a public face, are in our view well founded. We do, therefore, support the proposal that a President should be appointed by the European Council for a period of years and that there should also be a degree of involvement of the European Parliament in the process of appointment. We believe this can be done in a way that would not undermine either the position of the smaller Member States or that of the Commission. If the appointment has to be made by consensus of the European Council there is no reason why it should always be somebody from one of the larger countries, any more than the President of the Commission has been. We see no reason, moreover, why the President should always have to be a former Prime Minister, so long as he or she has sufficient experience and stature, and is of course politically acceptable to the Member States. The Presidency should not just consist of the President, but should be a team consisting of the President and a troika rotating from the Member States, lasting for one year, with a provision that the troika should always consist of one person from a larger state and two from smaller ones. Such an arrangement

would provide a balanced and effective Presidency, with a clear face to the outside world. Its role would be to represent the Council of Ministers, which has a function distinct from the Commission. The fact that so stout a defender of the Commission as Jacques Delors sees no objection to a long-term Council President should indicate that such an arrangement need not in any way diminish the role or image of the Commission.

- (8) **Powers of the Commission:** In an enlarged EU, playing an increasing role in the wider world, we consider it more important than ever that the Commission should retain its crucial role as the motor of the European Union, with the Member States and the Parliament able to apply the brakes, in accordance with the existing provisions of the Treaty. Its role as the initiator of legislation, as the executive tasked with implementing programmes, and as the guardian of the Treaty remains indispensable, and we do not want to see it weakened. Indeed, following enlargement, which will include the accession of a considerable number of smaller states, a strong Commission will be of greater rather than lesser importance. We do not, however, favour extending the competences of the Commission. It has more than enough to do but it must also have the means to do it more efficiently. Consequently within its areas of competence we believe its power and role should in fact be strengthened. For example, the Commission proposed for the Nice Treaty changes in its competences in the area of trade to reflect the increased importance of trade in services in today's world. These changes were only partially reflected in the Nice Treaty. We recommend their reinstatement in full. Secondly the Commission's role in the control of state aid should be enhanced by giving it the power not just to decide individual state aid cases, but also to propose for individual countries and sectors quantitative limits on the amount of aid that can be provided. Thirdly, and more generally, we think the comitology rules should be reviewed, while at the same time giving greater transparency to the process, and a more significant role for the European Parliament.

- (9) **Composition of the Commission:** The Nice Treaty did not provide a viable or permanent resolution of this issue in the context of enlargement. There is a clear consensus in favour of limiting the size of the Commission as the membership of the EU increases, but no consensus as to how this should be done. There is also a widely held view, which we support, that the number of separate Departments in the Commission should be significantly reduced. We would accordingly suggest that each Member State should continue to have one Commissioner, but some would be Full Commissioners and some Junior Commissioners. The Full Commissioners would each head a Department, with the existing number of Departments considerably slimmed down, and the Junior Commissioner assisting and reinforcing the Full Commissioner. This would replicate the situation obtaining in the Governments of most Member States. The larger Member States would in practice always have a Full Commissioner, while the smaller ones would rotate between Full and Junior Commissioners. This could be done either by rotating half way through the Commission's mandate or by doing so between one mandate and the next. All Commissioners would be entitled to attend Commission meetings, but in order to prevent debate becoming unwieldy Junior Commissioners would not be entitled to speak on issues relating to the Department when the Full Commissioner is going to speak on the issue, nor would they be entitled to speak on other issues unless their Full Commissioner was absent. They would, however, be entitled to vote, with Full Commissioners having two votes and Junior Commissioners one vote. A Junior Commissioner would not be allowed to vote in a different way from the Full Commissioner on issues relating to his Department. This particular scheme is only illustrative, as there are of course many ways in which it would could be refined or varied. But the purpose is clear. It is to keep the Commission reasonably slim and effective while preserving the right of smaller Member States always to have a Commissioner. One issue that would need to be considered is whether the larger Member States should always have a

Full Commissioner. No doubt this would be determined according to the balance between Member States in the package as a whole, including that obtaining in the Council and in the European Parliament.

- (10) **European Parliament:** The powers of the European Parliament have in recent years been substantially increased, and rightly so. We do not consider that there is any need for substantial further enhancement of its powers, but we would have no objection to some further increase in the number of cases where co-decision applies, if a sufficiently strong argument for doing so can be made out. But what is in our view much more important, is that the European Parliament should gain in authority and perceived legitimacy in the Member States. The fact that this should be so clearly necessary may largely be because it is still a comparatively young institution, certainly in comparison with most national Parliaments. But is it also because it is difficult to relate to an institution where the political parties are so diverse in their origins, and character, especially when, as in the case of the Centre Right Groups and the Liberals, a number of very different parties have come together and contain representatives of very different traditions, often holding radically varying views. For the most part this problem can only be resolved by a combination of the passage of time and the dynamics of the political process within the European Parliament. But there is a further problem which may also be a product of history. The European Parliament does not have responsibility for providing or sustaining a Government Because it does not have a majority Party or Parties supporting a Government of the same political complexion, there is no reason why its votes should have any coherence or consistency in them. (Comparisons with the US Congress are inappropriate as the US Congress does have a Party majority, even if it is fragile or very small, and in any event gains coherence because, unlike the European Parliament, it has the dominant position in the legislative process.) The result is not disastrous, but it is less than optimal. Greater coherence would be encouraged if there was

some ultimate discipline encouraging the Parliament to act in a coherent and responsible way. That could only be the possibility of a dissolution of the Parliament before its term was over, something which is provided for in the constitutions of the vast majority of the Member States. A dissolution would only arise in extreme circumstances, but we do consider that this is a possibility that should be provided for. The precise circumstances in which it would arise, and the mechanism for triggering it, requires further consideration. But some combination of the Commission and the Council of Ministers, acting in something close to, but short of, a consensus, might be required for such a major step to be taken.

- (11) **Enforcement of the Rule of Law:** The European Union is not a nation state, nor is it going to become one. It therefore does not itself have any powers of coercion to ensure that its rules are always obeyed. It does have an effective means of determining what the proper interpretation of those rules is in the case of any dispute: recourse to the European Court of Justice. But there is currently no truly effective way of ensuring that the Court's rulings are implemented. The number of cases where such rulings have not been implemented, often over a very long period, is a scandal and a reproach. It undermines the whole legitimacy of the European Union, and is something which has been allowed to continue for far too long. The European Union is above all else founded on the rule of law, and it is meaningless to argue at length about what further laws it should adopt, if it is possible to flout existing ones with impunity.

At the moment if a ruling of the Court is not implemented the aggrieved party has to return to the Court and can in the last analysis obtain an order of the Court fining the offending party. This inevitably takes a long time and in any event it has become clear over the years that the deterrent or actual affect has not been strong enough to prevent persistent and long-standing breaches. We believe that is of paramount importance to take drastic action now to

rectify this major defect in the operation of the European Union. We accordingly recommend that any aggrieved Member State that considers that another Member State has not taken appropriate steps to implement a court ruling within three months of it being made should have the right to make an application to the Court for immediate redress, and that there should be a special procedure whereby such applications are heard as a matter of urgency. In addition to its existing powers the Court should have the power to order, as appropriate, a deprivation of access to European Union programmes and/or some suspension of voting rights, with the right of the party that is penalised in this way to reapply to the Court whenever it considers it can show that it has taken sufficient steps to comply with the original court ruling. The threat of a comparable sanction played an important part in bringing a solution to the long-running problem of the failure of some countries to pay the contributions that were due from them to the United Nations.

As we have explained in setting out our intentions at the outset, these recommendations are not designed to remedy all the EU's institutional problems, still less to deal with all the causes of the worrying degree of alienation from the EU that currently exists. But we do hope that they will show that pro-European Conservatives in the United Kingdom have been able to make a constructive contribution to the current debate, by putting forward proposals which deal in a realistic way with some of the central issues facing the EU today: the lack of perceived clarity as to its purposes and values, the inadequate involvement in the EU of national Parliaments, the risk of institutional paralysis on enlargement, the need for a clearer voice for the EU at governmental level, the requirement of the EU institutions to become tauter more effective and more transparent in the face of the growing challenges, and the importance of making the rule of law in the EU paramount in practice as well as in theory.

Important as the reform of the EU's Institutions undoubtedly is, that reform must be put in the context of a political determination to provide a vision of the Union whose whole purpose is better to enable its Member States, and above all their citizens, to deal with the complex, economic, political, social and security problems which increasingly affect all our lives.

Signed:

Lord Brittan of Spennithorne

Lord Howe of Aberavon

Lord Heseltine

Lord Hurd of Westwell

The Rt Hon Kenneth Clarke MP

The Rt Hon John Gummer MP

The Rt Hon David Curry MP

Lord Hayhoe

Lord Garel-Jones

Ian Taylor MP

Robert Jackson MP

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Sir Christopher Gent

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