

NOTE

Subject : **Summary Report on the plenary session**
 – Brussels, 12 and 13 September 2002¹

I. Opening of the session

The Chairman of the Convention, Mr Valéry Giscard d'Estaing, opened the session. In his introduction, he gave indications concerning the work programme for the coming months.

The Chairman began by underlining the importance of simplifying the system in order to make it clearer, more readable and thus also more acceptable. It ought to be possible for the European Convention to be presented to Europe's secondary school pupils in a comprehensible fashion in their civic studies classes. The Chairman pointed out that this simplification is in itself a very complex exercise which not only involves political choices, but also requires that many legal issues be resolved. Two simplification exercises are to be conducted in tandem:

- the simplification of instruments and procedures, i.e. the operational and institutional architecture;
- the simplification of the texts and treaties themselves, i.e. the constitutional architecture.

¹ The verbatim record of the plenary session is available on the website:
<http://european-convention.eu.int>

Four new working groups which are to report to the Convention between November and December will start work in the next few days. Three subjects have already been the subject of plenary debates (external action, defence and the area of the security and justice). The fourth (simplification of procedures and instruments) will be debated during this plenary session. They could therefore go into these subjects in detail in the light of the views expressed by the members of the Convention.

In the meantime, the Convention will receive the reports of the *"first wave"* working groups, starting with subsidiarity and the question of legal personality which will be the main items on the agenda for the first session in October. At the end of December the Convention should have received and discussed the report of all ten working groups and will therefore have the ten core building blocks for the final stage of the work. The Chairman insisted on the absolute need for simplicity to inform the proceedings of the working groups.

In tandem with the activities of the working groups, the Convention will reflect further on the form of the end product, i.e. the draft Constitutional Treaty for Europe. The Praesidium intends to present the Convention with a draft "structure" of the new treaty at its second session in October. With this in mind, the Praesidium has begun ongoing consideration of the architecture of the treaty to be recommended to the Convention. The Chairman mentioned a Secretariat "discussion paper" on the simplification of the treaties which was circulated in order to explain the problems posed by an extremely complex issue: should the existing Treaties be consolidated, codified or merged? There are links between this question and that of legal personality. If the Working Group chaired by Vice-Chairman Amato recommends conferral of a single legal personality and if the Convention accepts this recommendation, a merger of the two current Treaties, the EC Treaty and the Treaty on European Union, could be envisaged (a question which will be discussed at the first plenary session in October). In its document on the "structure" of the new treaty, the Praesidium will adopt a position on whether, following merger, to opt for a single merged Treaty or to adopt a new vertical division into a constitutional part and a part dealing with the content of policies (a question to be dealt with at the second session in October).

Early next year, the Praesidium will start to fashion a more substantial proposal based on the structure discussed in autumn and the various building blocks put together between October and December thanks to the debate on working groups' reports, and it will submit this proposal to the

Convention. In this regard the Chairman stressed the importance and relevance of the contributions presented by the members, mentioning in particular the draft presented by Mr Duff.

II. Simplification of instruments and procedures

The Vice-Chairman, Mr Guiliano Amato, who chairs the Working Group on the simplification of legislative procedures and instruments, opened the debate. In his contribution he emphasised the excessive proliferation of instruments and the complexity of the decision-making procedure.

If there was a very broad consensus on the urgent need to simplify instruments and procedures (in particular in view of enlargement, as some pointed out), many speakers emphasised that simplification was not an end in itself, but an instrument for democracy and effectiveness.

The debate centred around four questions:

- (i) *How can the number of instruments available to the Union for the exercise of its competences be reduced and how can their legal effects be clarified?*

There is consensus on the need to reduce the number of instruments. A very large number of speakers also favoured changing the names of the Community legal instruments to bring them more closely into line with the traditions of the Member States. "Familiar things should be called by familiar names". Thus Community legal instruments which are binding and of general application could be called "European laws" instead of regulations and "European framework laws" instead of directives. The term "regulation" should be reserved for implementing rules (third level).

Standardisation of the instruments of the three pillars, in particular between the first pillar (Community) and the third (cooperation in criminal matters), was mentioned by some members of the Convention.

Some speakers emphasised reducing the number of non-binding instruments, a source of considerable confusion for the public. Others defended the flexibility of the range of instruments, and some maintained that it was impossible to establish a correlation between the types of legal

instrument and the categories of competence. The incorporation into the treaties of the open method of coordination was called for by some members of the Convention.

- (ii) *Is it necessary to establish a clear classification of legal instruments based on their hierarchical position (hierarchy of legislation)?*

The question of giving Community acts names that are more comprehensible and more suited to their legal effects was linked to the establishment of a clearer hierarchy of norms requested by many members of the Convention. For a significant number of Convention members, such a hierarchy should first and foremost help to make it easier to distinguish between (second level) norms which fall within the remit of the legislative function exercised by the Council and the European Parliament and those (third level) which are the responsibility of the executive. According to some, this function should be conferred exclusively on the Commission under the scrutiny of the Council and the Parliament. There would therefore be three levels of norms: constitutional, laws and regulations. One member of the Convention advocated a more far-reaching simplification: there should be only laws and recommendations. Some considered that the independence and responsibility of the Commission in adopting implementing norms should be strengthened. Others thought that the classic principle of the separation of powers could not be extended to the Union.

Second-level norms could take the form of laws or framework laws. A third category was proposed by many speakers: "organic laws", reserved for constitutional matters. Some members of the Convention thought that a link should be established between the categories of instrument or act and the respective procedures for their adoption. Some even suggested that unanimous voting in the Council should be limited to organic laws.

Some members considered that a clearer hierarchy of norms could contribute to a better definition of responsibilities to the public, both within the Union, among the institutions and between the Union and the Member States. Conversely, there were members who insisted on the duality of the executive function or even on the dangers of a hierarchy that was too simple. Others stressed that the most important aspect was the quality of the laws that had to meet citizens' needs, and not their classification *per se*: for the public, the names and the number of laws was not very important, it was their quality that counted.

The question of comitology was raised by a number of members. They would all like to improve the transparency and reduce the complexity of the procedures involved. Some would like the committees' tasks reduced to a purely consultative level. Others defended their role at the Commission as a very useful source of expertise for the application of Community norms. One member wanted the committees abolished, while several wanted to cut their number.

(iii) How can the existing legislative procedures best be streamlined? How can their number be reduced?

Many members of the Convention wanted to generalise the codecision procedure with a qualified majority vote in the Council. It would become the general rule for decision-making at legislative level. There was widespread support for abolition of the cooperation procedure. A considerable number of speakers felt that the assent procedure should be reserved for the ratification of international agreements.

The subject of legislative initiative was debated at length. Despite the majority view that the Commission's right of initiative should remain virtually exclusive, some members wanted a right of legislative initiative for the Council and/or the European Parliament. In this context, it was pointed out that the Commission acts on its own initiative in only about 10% of cases and for the rest of the time responds to requests from the Council or Parliament or even from social and economic players.

(iv) Can certain procedures be simplified? Codecision? The budgetary procedure?

Some members of the Convention felt that simplification of procedures was not an end in itself. What was important was to ensure democratic control. But in the codecision context and with a view to speeding up the procedure, some members proposed formalising the interinstitutional-dialogue mechanisms (informal trialogues) which had become necessary in practice.

In the case of the procedure for adopting the budget, there seemed to be a broad consensus on abolishing the classification of expenditure as compulsory or non-compulsory. Many of the members wanted to replace the budgetary procedure by codecision. Some wanted inclusion in the Treaties of the mechanism of interinstitutional agreements on the financial perspective. Certain speakers broached questions relating to the financing of the Union.

III. Progress report on the proceedings of Working Group I "Subsidiarity" by its Chairman, Mr Mendez de Vigo

According to Mr Mendez de Vigo, the subsidiarity principle was operational and monitored by the institutions. On that basis, the Group concentrated in its discussion on improving the system. Two ideas formed the starting point:

- no new institutions or bodies must be created;
- legislative procedures must not be blocked, interfered with or rendered even more complex.

The Group agreed on the following approach:

- during the pre-legislative phase, the Commission should make even clearer than at present the financial and legislated implications of its proposal;
- during the legislative procedure, the Group was in the process of examining an early warning mechanism which would chiefly involve the national parliaments. If that mechanism were initiated by a significant number of parliaments, the legislator would have to give more detailed justification for the act concerned with regard to subsidiarity. If a significant number (to be determined) of parliaments intervened, the Commission would have to re-examine its proposal. It is also proposed that there should be similar control by the national parliaments of texts submitted to the Conciliation Committee. This would not be a veto mechanism, but rather a political monitoring exercise;
- once the legislative procedure was completed, national parliaments could bring proceedings before the Court if they had first made use of the early warning mechanism.

Following Mr Mendez de Vigo's report, which had been awaited with great interest, some speakers expressed fears about the right of appeal to the Court that was to be given to national parliaments: a number of members felt that the link with the warning mechanism would prompt parliaments to

arrogate the right of appeal by making systematic use of the early warning mechanism, while other members thought there was a danger of destroying the institutional unity of the Member States vis-à-vis the Union. The participation of regions with legislative powers in the monitoring of subsidiarity was also raised. Several members welcomed the success of coordination with the Working Group on National Parliaments.

IV. Progress report on the proceedings of Working Group III "Legal Personality" by its Chairman, Mr Amato

Vice-Chairman Giuliano Amato then reported on the progress made by the Working Group on Legal Personality, which he chairs (WG III).

There was unanimous acceptance that the legal personality of the Union should be explicitly recognised, thus putting an end to the uncertainty surrounding this question. This was an essential aspect of affirming the Union's international identity. There was also a wide consensus, endorsed by hearings given to the institutions' Legal Services, that the Union's legal personality should be merged with those of the Communities. This was a major simplification of the present system vis-à-vis the outside world.

The merging of legal personalities in turn prompted question of whether the duality of the main treaties (TEU and TEC) should be maintained. Merging the treaties would strengthen the idea of a genuine single institutional framework, without however prejudicing the specific characteristics of the various pillars of the Union, in particular regarding decision-making procedures and instruments for action.

V. Composition of Working Groups ("second wave")

The composition of the "second-wave" Working Groups was communicated to the Convention.

VI. Question time

There were no questions.

VII. Timetable of meetings for 2003

The timetable of meetings for 2003 was communicated to the Convention.

VIII. Next meeting of the Convention

The Chairman of the meeting, Mr Amato, announced that the Convention's next session on 3 and 4 October would be devoted to examining the reports from the Working Groups on Legal Personality and Subsidiarity. The Convention would also hear Mr Vitorino and Mrs Stewart, who would be reporting on the progress of the proceedings of their respective Working Groups on the Charter of Fundamental Rights and the Role of National Parliaments.

**List of speakers following order of intervention
Plenary Session on 12 and 13 September 2002**

Thursday 12 September

General debate (simplification of instruments) – Questions (i) and (ii)

Chairman Mr Valéry GISCARD d'ESTAING

Vice-Chairman Mr Guiliano AMATO

Mr Peter GLOTZ

Mr Josef OLEKSY

Mr Timothy KIRKHOPE

Mr Mesut YILMAZ

Mr Michael FRENDÓ

Mr Pierre LEQUILLER

Mr Lamberto DINI

Mr Peter HAIN

Mr Michel BARNIER

(Blue cards: Rack, Voggenhuber)

Mr Klaus HÄNSCH

Ms Ayfer YILMAZ

Mr Peter SERRACINO-INGLOTT

Mr Peter SKAARUP

Mr Andrew DUFF

Ms Maria BERGER

Mr Josep BORRELL FONTELLES

Mr Ernani LOPES

Ms Anne VAN LANCKER

Mr Ali TEKIN

Mr Antonio TAJANI

(Blue cards: McCormick)

Mr Matjaz NAHTIGAL

Mr Reinhard Eugen BÖSCH

Mr Alfonso DASTIS

Mr Elio DI RUPO

Mr David HEATHCOAT-AMORY

Mr Hannes FARNLEITNER

Mr Matti VANHANEN

Mr Gianfranco FINI

Mr William ABITBOL

Mr Jürgen MEYER

Mr Pierre MOSCOVICI

(Blue cards: Duff, Barnier, Heathcoat-Amory, Abitbol)

Ms Cristiana MUSCARDINI

Ms Pervenche BERES

Mr Albert COSTA

2. Progress report on the proceedings of Working Group I "Subsidiarity"

Chairman Mr Valéry GISCARD d'ESTAING

Mr Iñigo MENDEZ de VIGO, Chairman of the Working Group

(Blue cards: Stuart, Lamassoure, Barnier, Katiforis, McAvan, Van der Linden, Lennmarker, Haenel, Farnleitner, McCormick, Duff, Christophersen, Dastis)

3. Progress report on the proceedings of Working Group III "Legal Personality"

Chairman Mr Valéry GISCARD d'ESTAING

Mr Guiliano AMATO, Chairman of the Working Group

(Blue cards: Carnero Gonzalez, Barnier)

Friday 13 September

5. General debate (simplification of procedures) - Questions (iii) and (iv)

Chairman Mr Guiliano AMATO

Mr Edmund WITTBRODT

Mr Gundars KRASTS

Mme Marietta GIANNAKOU

Mr Henning CHRISTOPHERSEN

Mr Carlos CARNERO

Ms Meglena KUNEVA

Elmar BROK

Ms Maria Eduarea AZEVEDO

(Blue cards: Hanni, Paciotti, Tomlinson, Lennmarker)

Mr William ABITBOL

Mr Paolo PONZANO

Mr Hans van MEIRLO

Mr Diego LOPEZ GARRIDO

Bobby McDONAGH

Ms Gisela STUART

Mr Adrian SEVERIN

Mr Jan KOHOUT

Ms Sylvia-Yvonne KAUFMAN

(Blue cards: Duff, Würmeling, De Rossa, Barnier, Speroni, Haenel, Maij-Weggen, Bruton,, Barnier)

Mr Péter ECKSTEIN-KOVACS

Mr Juraj MIGAS

Ms Hanja MAIJ-WEGGEN

Mr Neil MacCORMICK

Mr Vytenis ANDRIUKAITIS

Mr Henrik HOLOLEI

Mr Alfonso DASTIS

Mr Joachim WUERMEILING

(Blue card: MacLennan of Rogart)

Ms Teija TIILIKAINEN

(Blue cards: Barnier, De Rossa, Lopez Garrido)