

**NOTE**

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Subject : **Summary report on the plenary session**  
– **Brussels, 3 and 4 October 2002**<sup>1</sup>

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**I. OPENING OF THE SESSION**

The Chairman opened the session, pointing out that the Convention was now entering a crucial phase, since the conclusions of the plenary debate on the Working Groups' recommendations would be the building blocks used to achieve the end product.

The recommendations approved at the plenary session would be recorded. Those on which views diverged would be considered subsequently within the Praesidium, which would then make proposals to reconcile those views.

- 1. The legal personality of the Union**  
– **debate on the report of Working Group III, chaired by Mr G. Amato**  
(CONV 305/02)

The Working Group chaired by Vice-Chairman AMATO had been asked to examine:

- the consequences of explicit recognition of the Union's legal personality;
- the consequences of a merger of the Union's single legal personality with that of the Community;
- the impact on the simplification of the Treaties.

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<sup>1</sup> The verbatim record of the plenary session may be found on the following website:  
<http://european-convention.eu.int>

The main features of the final report (CONV 305/02), which achieved very broad consensus within the Group (only one member being opposed), were presented to the Convention by its Chairman and by the Chairman of the Working Group. Thirty-seven members of the Convention took part in the debate following the presentation (see list in the Annex).

In the general debate, broad consensus emerged on the idea of enshrining the legal personality of the Union in an explicit fashion in the new constitutional treaty. Furthermore, such legal personality would be "single", in that it would supplant the legal personalities of the existing bodies. Thus it would not be a question of a legal personality flanking the existing legal personalities. Some members of the Convention highlighted that with a single legal personality, the Union's actions would be more visible and effective on the international stage. This would also contribute to encouraging citizens to identify more closely with the Union.

There was also wide recognition of the fact that merger of legal personalities would pave the way for merger of the treaties into a single text, which would contribute to their future simplification. This single text could consist of two parts: the first, fundamental part, containing provisions of a constitutional nature, and the second mainly containing policies. Some members of the Convention stressed that the merger of the treaties should also include the Euratom Treaty. Others felt that a system which provided for different ratification procedures would give rise to problems, and should be looked into further.

With the same desire to simplify the treaties and the constitutional architecture of the Union, a majority of members of the Convention accepted that, even if the merger of legal personalities or that of the treaties did not per se imply merger of the "pillars", it would be anachronistic to retain the current "pillar" structure. Abolishing that structure would make it possible to reorganise the treaties more systematically. The merger did not in itself mean that decision-making procedures would be uniform. The specific characteristics of the two current "intergovernmental" pillars (CFSP and cooperation in criminal matters) could be maintained if the Convention so wished.

During the debate it was also stressed that explicit recognition of the legal personality of the Union did not as such mean any amendment to the distribution of competences between the Union and the Member States. Some members of the Convention pointed out that the practice of mixed agreements should continue, whenever an agreement came under both the competence of the Union and that of the Member States.

Some members of the Convention also agreed to the abolition of national ratification procedures or referenda concerning agreements of the Union which had already been concluded by the Council. They were in favour of amending Article 24 TEU as proposed in the Working Group's report. However, one member of the Convention pointed out in this context that reference could be made to "constructive abstention" as provided for by Article 23(1) TEU.

The members of the Convention examined other recommendations of a technical nature made by the Working Group, particularly on certain aspects related to the negotiation and conclusion of international agreements and more generally to the external representation of the Union.

It was stressed that the fact that the Union would have a single legal personality should lead to greater effectiveness in its external actions. However, some members of the Convention insisted that CFSP matters should remain fully intergovernmental.

Others were in favour of the merger in one person of the posts of High Representative and of Commissioner for external relations. The question of the reorganisation of the staff responsible, and the risks of duplication, was also addressed.

The representation of the Union within international organisations was also discussed. Many members of the Convention emphasised the need for a single representation. However, one member stressed that the Union should endeavour to reach common positions without always having to speak "with a single voice".

The role of the European Parliament was also raised; its consultation was considered to be essential by those members of the Convention who spoke on the subject. Several members of the Convention put forward the idea that the European Parliament should give its opinion on international agreements under the assent procedure.

*Ex ante* judicial review on the basis of Article 300(6) TEC was accepted by some members of the Convention, but it was suggested that the principle of and possible arrangements for *a posteriori* judicial review should be looked into further.

Finally, the procedures set forth in the Working Group's report for the negotiation of international agreements were generally well received, although some felt that these ideas should be looked into more thoroughly by the Working Group on External Action.

At the end of the debate, the Chairman drew the following conclusions:

- there was very broad consensus within the Convention in favour of accepting that the Union should have a legal personality, explicitly enshrined in the new constitutional treaty;
- that legal personality would be "single", in that it would supplant the legal personalities of the existing organisations;
- it was also accepted by a broad consensus that merger of legal personalities paved the way for merger of the treaties into a single text, which would probably contribute to their future simplification. This single text could consist of two parts, the first fundamental part containing provisions of a constitutional nature;
- with such simplification in mind, a large majority of members of the Convention accepted that, while neither merger of legal personalities nor that of the treaties in itself entailed fusion of the current "pillars", to maintain the current "pillar" structure would be anachronistic. A reorganisation of the current treaties into a single treaty would thus be possible, but specific procedures (particularly in the CFSP area) could be retained, if that was the approach chosen by the Convention;

- finally, other recommendations of a more technical nature contained in the Working Group's report had been examined, and would be looked into more thoroughly by the Working Group on External Action.

2.
  - **Progress report by Mr Vitorino on the proceedings of Working Group II on the Charter of Fundamental Rights**
  - **Progress report by Ms Stuart on the proceedings of Working Group IV on the Role of National Parliaments**

The Convention heard an oral presentation on the proceedings of these two Groups, which will present their reports at the next meeting.

### **3. Motions put forward to the Praesidium by Ms Van Lancker, Mr Voggenhuber, Ms Kaufmann and other members of the Convention**

The Chairman drew the attention of the Convention to motions put forward by three of its members, and supported by a number of others. These motions called for a debate in plenary on the issue of a "social Europe", and the creation of a Working Group on the same subject.

The proposers of the motions, and a number of their supporters, underlined the importance of including social objectives in the constitutional treaty. Although the subject had been picked up in part by both the "Economic Governance" and "Charter" Working Groups, there was a need for a substantive discussion both in plenary and in a dedicated Working Group.

One member of the Convention cautioned against accepting the motions, arguing that the Convention's mandate essentially covered constitutional and structural issues; it should avoid discussions on the content of specific policy areas. Another recalled that there were outstanding requests for other Working Groups, notably on regional issues.

The Chairman underlined that the high expectations in the area of social policy should not be disappointed. The constitutional treaty would need to set out the Union's objectives in this area, but it was not the task of the Convention to debate detailed policy choices. The Chairman said that the Praesidium had considered the motion, and proposed that the discussion at the November plenary session on the report from the Economic Governance Working Group be extended to cover social issues, and that a decision be taken, in the light of that discussion, as to whether to establish a Working Group. The proposers of the motions, agreeing with this approach, withdrew them.

#### **4. Subsidiarity**

- **debate on the report by Working Group I chaired by Mr Mendez de Vigo (CONV 286/02)**

Introducing the debate the Chairman of the Convention, Mr Valéry Giscard d'Estaing, recalled that the conclusions of the Nice and Laeken summits expressly instructed the Convention to consider mechanisms to monitor the principle of subsidiarity. Those mechanisms or procedures should not slow down decision-making procedures nor allow them to be blocked. Striking the requisite balance was a "delicate" business.

The Chairman of the Working Group, Mr Inigo Mendez de Vigo, presented the conclusions reached by the Group which are set out in CONV 286/02. He stressed that the report was the subject of consensus within the Group. He presented the thinking of some members of the Group who had examined some proposals before eventually dismissing them. He stressed the principles or "golden rules" which the Group had established, and which had guided its deliberations: not to create any new institution, not to lengthen the legislative process or block it. Mr Mendez de Vigo also stressed the innovative nature of the Group's proposals, which would for the first time enable national parliaments to be directly involved during the legislative procedure.

Given these considerations, the Group proposed that:

- the Commission should back its arguments for its legislative proposals by including a detailed "subsidiarity sheet" setting out their financial implications and impact, if any, on the legislation of the Member States;
- within six weeks, every national parliament (each chamber, in the case of a bicameral parliament) would be able to activate an early warning mechanism, i.e. send a reasoned opinion to the European institutions setting out its fears about a violation of the principle of subsidiarity. If a third of national parliaments forwarded such an opinion, the Commission would be obliged to re-examine its proposal. Following re-examination, it could decide to maintain it, amend it or withdraw it;

- at the end of the legislative procedure, those national parliaments which had made use of this early warning mechanism could bring a case to the Court of Justice for failure to comply with the principle of subsidiarity.

Fifty-two members of the Convention took part in the debate following this presentation (see list in the Annex). Their contributions concerned the following subjects and points:

- (a) reinforcing application of the principle of subsidiarity during the preparatory stage of the legislative act:
  - The Group's proposals in this area elicited few comments, other than those approving them, particularly as regards the strengthening of the obligation to give reasons. The question of the body in which the Commission's annual programme should be debated also gave rise to some comments, with several members of the Convention considering that, if a congress of the peoples were created, this debate should take place there.
- (b) setting up an early warning system and arrangements for its operation:

This proposal was the subject of the bulk of members' interventions. The following points in particular informed the discussion:

- direct transmission of legislative proposals to national parliaments, and the principle of a political mechanism: most members of the Convention agreed to these proposals. They commended the innovative nature of this proposal which, for the first time in the history of European construction, would involve national parliaments in the European legislative process. They also shared the opinion of the Working Group and of its Chairman that national parliaments should not become co-legislators and should therefore not have the power to block or delay the legislative process.

However, some members of the Convention called the usefulness of the proposed mechanism into question and expressed fears that in practice it might jeopardise the Commission's right of initiative

or engender suspicion about it. Other alternative proposals were put forward, such as the creation of an arbitration body, independent of any other power, whose opinions would not be binding. It was also suggested that parliaments should collectively monitor subsidiarity, for example by a congress or by COSAC, possibly in some revamped form.

- Proportionality: some members of the Convention regretted that the principle of proportionality was not also subject to monitoring and tracking of the same type and intensity as subsidiarity.
- Two chambers: members of the Convention were divided on the situation of Member States which had a parliament consisting of two chambers. Some believed that each chamber should then have the right to implement the early warning mechanism, and subsequently to refer the matter to the Court of Justice, on the grounds that in those Member States which had two chambers, by the nature of its composition the second chamber stood for a different expression of national interest (regions, local bodies), which should also be taken into account. Other members of the Convention argued that the notion of parliament should be construed as embracing both chambers in bicameral countries. Others proposed that it was for each Member State to grant each chamber or both together the right to implement the early warning mechanism.
- One-third threshold: some members of the Convention doubted the relevance of the one-third threshold for national parliaments, leading to a re-examination of its proposal by the Commission, as contained in the Group's report.
- Links between the early warning system and referral to the Court: several members of the Convention questioned the relevance of this link. They believed that it might well induce national parliaments to use the early warning system improperly with the sole purpose of preserving the right to refer a matter to the Court of Justice subsequently. Others also pointed out that a text which respected the principle of subsidiarity when it was presented might no longer do so at the end of the legislative procedure. The parliaments would then have no means of referring the matter to the Court.



Other members of the Convention believed that one should have confidence in the sense of responsibility of national parliaments, and also pointed out that the obligation on national parliaments to provide reasoned opinions would guarantee that they were serious. Also the political mechanism should be favoured, avoiding any risk of overburdening the Court.

(c) Judicial review of the principle of subsidiarity

The need for judicial review of the principle of subsidiarity received the support of a majority of speakers; however, views were more divided on the question of who should have access to the Court of Justice if the principle of subsidiarity were violated.

- Some members of the Convention were in favour of granting such a right of appeal to national parliaments, given that if the institutions failed to comply with the principle of subsidiarity, it was primarily the parliaments' competences which were infringed. Others referred to the risk of breaking the principle of the unanimity of the State if such appeals were admitted.
- Regarding the granting of a right of appeal to the Court of Justice to other constitutional bodies of a legislative nature (most often, regions), a large number of members of the Convention were against this possibility, holding that the Convention should not interfere in the constitutional system of each Member State, and that it was for each State to establish the internal machinery for participation by bodies of a legislative nature. It was also noted that the possibility of access to the Court of Justice by the Committee of the Regions and, where appropriate, by the chambers of national parliaments with a territorial component should allow the concerns of those bodies to be voiced before the Court of Justice. However, other members of the Convention were in favour of this possibility.

Finally, some members of the Convention wanted the judicial review of the principle of subsidiarity to be carried out by a body of a political/judicial nature, within a short time-frame, between adoption of the act and its entry into force, along the lines of the review of the constitutionality of laws in certain Member States.

The Chairman closed by commending the intensity and quality of the debate, and offered the following conclusions:

- there was consensus for the principle of subsidiarity to be better taken into account;
- there was well-nigh general agreement on the need to introduce improvements, both in application of the principle of subsidiarity by the European institutions (Commission, Council and Parliament) and in monitoring it, and on the fact that such improvements should not lengthen, delay or block the legislative procedure;
- there was a general welcome for the Working Group's proposals to strengthen application of the principle of subsidiarity by the institutions participating in the legislative process, particularly those relating to improvements in the reasoning behind any new legislative proposal by the Commission through the inclusion of a detailed "subsidiarity sheet", containing its financial implications and its impact, if any, on the legislation of the Member States;
- regarding the monitoring of the application of the principle of subsidiarity, there was very broad agreement within the Convention that such monitoring should above all be of a political nature, without in any way excluding the possibility of judicial review at the end of the procedure;
- a considerable number of members of the Convention felt that such monitoring should firstly involve national parliaments, since they were at the frontier of competences. The Chairman drew attention to the fact that the proposed mechanism was a major innovation in institutional organisation, insofar as it established a link between national parliaments and the Union, but that it should not be considered as weakening the institutions since it did not confer a role as co-legislator on national parliaments, nor impose any obligation on the Commission, except that of re-examining its proposals in certain circumstances.

- the Chairman also noted that this mechanism would be a complement to the "main" or "priority" route, namely the control which national parliaments should exercise over their governments and which had not always been satisfactory. Here, the proposals of the Group chaired by Ms Stuart would be examined by the plenary;
- regarded the technical arrangements for the mechanism proposed by the Group, the Chairman noted that opinions were more divided and set out the main points on which discussion had to continue:
  - (i) was the right to issue an early warning conferred on the parliament as such, or on each of the two chambers, in the case of bicameral States. This question should be examined in relation to the question of appeal to the Court of Justice for violation of the principle of subsidiarity by bodies having legislative capacities (regions);
  - (ii) the setting of a threshold of national parliaments required to trigger re-examination of its proposal by the Commission;
  - (iii) whether a link should be established between activation of the early warning mechanism and the right to refer to the Court. The Chairman commented that there would be advantages and disadvantages in establishing such a link, and that this question should be looked into more thoroughly at a later date.

## **5. Question time**

There were no questions.

## **II. NEXT MEETING OF THE CONVENTION**

The Chairman announced that the next meeting of the Convention would take place on Monday 28 October from 15.00 and on Tuesday 29 October from 9.30. It would be devoted to examining the reports by the Working Groups on the Charter of Fundamental Rights and on the Role of National Parliaments.

The Chairman also announced that at that session there would also be a presentation by their Chairmen of the proceedings of the Working Groups on Complementary Competences and Economic Governance respectively.

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List of speakers in the order in which they spoke

Thursday 3 October

1. The legal personality of the Union – debate on the report by Group III (Mr G. Amato)

Mr Valéry GISCARD d'ESTAING, Chairman

Mr Giuliano AMATO, Vice-Chairman

Mr Peter HAIN

Ms Marietta GIANNAKOU

Mr Timothy KIRKHOPE

Mr Gianfranco FINI

Mr Gunter PLEUGER

Ms Marie NAGY

Mr Mesut YILMAZ

Mr Michel BARNIER

Mr Carlos CARNERO

*(Blue cards: Kiljunen, Rack, Tiilikainen, Bonde)*

Ms Lena HJELM-WALLÉN

Mr Andrew DUFF

Mr Ali TEKIN

Mr Alojz PETERLE

Mr Valdo SPINI

Mr Jozsef SZAJER

Mr Antonio TAJANI

Mr Alfonso DASTIS

Mr Johannes VOGGENHUBER

Mr Ion JINGA

Mr Caspar EINEM

Mr Elmar BROK

Mr Panayiotis DEMETRIOU

Ms Cristiana MUSCARDINI

Lord MACLENNAN

Mr William ABITBOL

Mr Vytenis ANDRIUKAITIS

Ms Liia HÄNNI

Mr Michel ATTALIDES

*(Blue cards: Barnier, Abitbol, Bonde)*

## **Friday 4 October**

### **Subsidiarity – debate on the report by Group I (Mr Mendez de Vigo)**

Mr Valéry GISCARD D'ESTAING, Chairman  
Mr Iñigo MENDEZ de Vigo  
Mr Andrew DUFF  
Mr Louis MICHEL  
Mr Pierre MOSCOVICI  
Mr Jürgen MEYER  
(*Blue card: Jacobs*)  
Mr Peter HAIN  
Mr Paraskevas AVGERINOS  
Mr Peter GLOTZ  
Mr Elio DI RUPO  
(*Blue cards: Tomlinson, Duhamel*)  
Mr Hubert HAENEL  
(*Blue cards: Stuart, Einem*)  
Mr Erwin TEUFEL  
Ms Ayfer YILMAZ  
Ms Lena HJELM-WALLÉN  
Mr Antonio VITORINO  
Mr Giorgos KATIFORIS  
Mr Jens-Peter BONDE  
Mr Alfonso DASTIS  
Mr Bobby McDONAGH  
Mr Kimmo KILJUNEN  
Mr Marco FOLLINI  
The Earl of STOCKTON  
Mr Pierre LEQUILLER  
(*Blue cards: Andriukaitis, Borrell Fontelles, Berès, de Vries*)  
Mr Luis MARINHO  
Mr Henning CHRISTOPHERSEN  
Mr Alain LAMASSOURE  
Ms Anne VAN LANCKER  
Ms Eleni MAVROU  
Mr Gianfranco FINI  
Mr Slavko GABER  
Ms Teija TIILIKAINEN  
Mr Reinhard Eugen BÖSCH  
Ms Inese BIRZNIECE  
Mr Istvan SZENT-IVANYI  
Ms Hanja MAIJ-WEGGEN  
Ms Danuta HÜBNER  
Mr Henrik DAM KRISTENSEN  
Mr Puiu HASOTTI  
Mr John BRUTON

Mr Neil MacCORMICK  
Mr Hannes FARNLEITNER  
Mr Peter SERRACINO-INGLOTT  
Mr Josef CHABERT

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