

CONV 423/02

CONTRIB 151

COVER NOTE

from	Secretariat
to	The Convention
Subject :	Contribution by Mr Andrew Duff, member of the Convention: "The Legislative and Executive Powers of the European Union: a New Scheme"

The Secretary-General of the Convention has received the contribution annexed hereto from Mr Andrew Duff, member of the Convention.

THE LEGISLATIVE AND EXECUTIVE POWERS OF THE EUROPEAN UNION: A NEW SCHEME

This contribution seeks to determine how power could be exercised more simply and rationally in the re-founded Union. It aims for a clearer separation of legislative and executive powers.

The proposal supplements my *Model Constitution for a Federal Union* (CONV 234/02). It presupposes the merger of the three pillars. It streamlines the comitology procedure. It seeks to reconcile the apparent paradox in the present Treaty establishing the European Community whereby Article 202 confers executive functions on the Commission by authority of the Council and Article 211 confers them directly (in the field of the common market).¹ In particular, therefore, this proposal amends these articles and incorporates an important element of Article 10 TEC, as well as the relevant provisions of Titles V and VI of the Treaty on European Union.

With respect to the **hierarchy of norms**, I would now propose as follows:²

A. Primary legislation, involving essential political elements, establishing the scope of the measure and, where necessary, laying down the type of implementing measure. To be adopted by co-decision of the legislature (Council and Parliament).

Organic Law, for quasi-constitutional matters;

Law, (ex-regulation), binding in entirety and directly applicable;

Framework Law, (ex-directive) binding as to the results to be achieved but leaving to member states the choice of method.

B. Secondary legislation, delegated measures subordinate to the primary law or to the Treaty itself.³ To be adopted by the Commission, subject to call-back by the legislature.

Delegated Law, for the purposes of expanding on the higher law in terms of greater specificity, modifying the fields of application of existing law or adapting existing law to meet new conditions, for example by revising regulatory norms.

C. Executive acts, implementing or procedural measures. To be adopted by the Commission. In certain specified fields, the Council can adopt executive measures.

Commission Decisions, binding, either general or specific in scope;

Council Acts, binding, either general or specific in scope;

Opinions, non-binding, of a reactive type;

Recommendations, non-binding, of a proactive type.

¹ One also recalls that, under the provisions of Article 251 TEC, the Council and Parliament, as co-legislators, confer executive functions on the Commission.

² This scheme is slightly modified from the one in CONV 234/02.

³ For example, Article 86.3 TEC.

With respect to the **implementing powers** of the Council and Commission, I propose as follows:

<p>Article 10</p> <p>Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks. They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty.¹</p>	<p>Article V</p> <p>Member States are responsible for implementing the law and for executing the policy of the European Union at national level.</p>
<p>Article 202</p> <p>To ensure that the objectives set out in this Treaty are attained the Council shall, in accordance with the provisions of this Treaty:</p> <ul style="list-style-type: none"> — ensure coordination of the general economic policies of the Member States; — have power to take decisions; — confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down. The Council may impose certain requirements in respect of the exercise of these powers. The Council may also reserve the right, in specific cases, to exercise directly implementing powers itself. The procedures referred to above must be consonant with principles and rules to be laid down in advance by the Council, acting unanimously on a proposal from the Commission and after obtaining the Opinion of the European Parliament. 	<p>Article W</p> <p>The Council shall ensure:</p> <ul style="list-style-type: none"> — coordination of the general economic policies of the Member States; — definition of the common foreign, security and defence policy; — close collaboration of Member States' police, security services and judicial authorities. <p>The Council may adopt Acts, issue Opinions and make Recommendations in these fields.</p> <p>Unless this Constitution otherwise provides, or in cases of urgency, the Council shall adopt Acts on a proposal of the Commission and after having consulted the European Parliament.²</p> <p>In all cases, the Parliament shall be kept duly informed.</p>

¹ The final sentence of Article 10 appears in Article 4.4 of CONV 234/02.

² Exceptions, for example, would include military decisions.

<p>Article 211</p> <p>In order to ensure the proper functioning and development of the common market, the Commission shall:</p> <ul style="list-style-type: none"> - ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied; - formulate recommendations or deliver opinions on matters dealt with in this Treaty, if it expressly so provides or if the Commission considers it necessary; - have its own power of decision and participate in the shaping of measures taken by the Council and by the European Parliament in the manner provided for in this Treaty; - exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter. 	<p>Article X</p> <p>The Commission is responsible for implementing the law at the level of the European Union. It shall ensure the proper functioning of the Union, and that measures taken by the institutions in accordance with this Constitution are applied fully.</p> <p>The Commission may take Decisions, issue Opinions and make Recommendations.</p>
	<p>Article Y</p> <p>The Commission may enact Delegated Law. It shall transmit to the legislature its draft measure.¹</p> <p>If neither the Council, acting by a qualified majority, nor the Parliament, acting by a majority of its Members, raises an objection within a period of three months the Delegated Law shall be adopted.</p> <p>If either Council or Parliament raises an objection within this period, the draft Delegated Law shall be submitted to the codecision procedure.</p> <p>In urgent circumstances, the Commission may enact a Delegated Law and then submit it to the legislature. If either the Council, acting by a qualified majority, or the Parliament, acting by a majority of its Members, raises an objection within a period</p>

¹ Article 7 of CONV 234/02 designates the legislature as the Council and the Parliament.

	of three months, the measure shall be suspended. The Commission shall then decide to withdraw, amend or submit the suspended measure to the legislature.
	<p>Article Z</p> <p>In the exercise of its delegated and executive powers, the Commission may establish advisory committees composed of representatives of Member States. Parliament may observe the meetings.</p> <p>The Commission may also establish supervisory committees at a technical level.</p> <p>The Commission may delegate certain administrative functions to specialised agencies.</p>

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