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**COVER NOTE**

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from	Secretariat
to	The Convention

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**Subject :**      **Communication from the Commission, forwarded by Mr Barnier and Mr Vitorino, members of the Convention:**  
                      **"For the European Union Peace, Freedom, Solidarity - Communication from the Commission on the institutional architecture"**

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

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COMMISSION OF THE EUROPEAN COMMUNITIES

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**For the European Union**

**Peace, Freedom, Solidarity**

**COMMUNICATION OF THE COMMISSION ON THE INSTITUTIONAL  
ARCHITECTURE**

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**For the European Union**  
**Peace, Freedom, Solidarity**

Communication of the Commission on the Institutional Architecture

The number of Member States will virtually double on 1 May 2004. The point of this process is to extend to our neighbours in Europe the benefits of peace, solidarity and economic development which we enjoy today, by welcoming them into an appropriate institutional framework, which is the key to the success of the European project.

The purpose of the Commission's Communication of 22 May last<sup>1</sup> was to focus thought on the European Union's objectives and tasks, prior to any discussion on institutions. The Convention is currently examining the preliminary findings of its working groups and is discussing the structure of the future constitutional treaty. The Commission now wishes to contribute to the discussions by setting out the changes to the institutional framework it considers necessary to carry forward the European project.

*What project for Europe?*

The introduction of the euro, improvements to the internal market, coordination of economic policies, convergence of tax and social policies, solidarity between the countries and regions of Europe, making a reality of ambitious environmental policies and the affirmation of a European model of society are all developments which are broadly supported by the people of Europe, and which are necessary to ensure the balance of the European project. The Union must give added depth to a project with which its people can identify and which brings them prosperity and solidarity, and a quality of life based on preserving the environment, ensuring the viability of universally accessible high-quality services of general interest, and a high level of social protection.

The people of Europe want us to come up with answers to clearly formulated questions. Whether it be a matter of preserving peace and security, tackling unemployment, dealing with organised crime and trafficking, rolling back poverty, ensuring equal opportunities for women, protecting the environment or ensuring the quality and safety of products, our people expect from the Union more security and stability within and more commitment on an international level, always having regard to the diversity of national, regional and local identities.

If it is to preserve this balance and the commitment of its people to the European project, **the Union must consolidate and develop the integration of Europe.**

To meet these expectations, the Commission has pinpointed three fundamental tasks for tomorrow's Union: consolidating the European model of economic and social development with a view to guaranteeing its people prosperity and solidarity; developing a European area of freedom, security and justice, to give full meaning to the concept of European citizenship; and enabling the Union to exercise the responsibilities of a world power.

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<sup>1</sup> *A project for the European Union*, Commission Communication of 22 May 2002 [COM (2002) 247].

### *How should we organise ourselves?*

The question we are facing is how can an enlarged Union carry out its fundamental tasks, and how can it maintain the decision-making ability and the cohesion required to press ahead with European integration.

The innovative nature and the special balance of how the Community works is a familiar theme, the point being not to separate powers, but to share them. Thus, legislative power belongs to the European Parliament, but also to the Council; and the Council shares executive power with the European Commission, which in turn has a monopoly on legislative initiative, while responsibility for implementing policies rests very largely with the national or regional administrations.

It is essential to **preserve this union of all the powers and interests and focus them on the general European interest**. And we must maintain the European Commission in the form intended by the founding fathers of Europe, as an independent institution working for equal treatment between the Member States and embodying the principles of coherence, synthesis and concern for the general interest.

This vision remains true today. In certain relatively new policy fields, such as foreign and defence policy, security, justice and policing, as well as economic cooperation, we need to create systems to agree and implement policy which reflect the effectiveness and legitimacy of the Community method.

This method, which rests on the balance between the institutions at the various stages of the decision-making process, from policy formulation to implementation, with a special role for the Commission as guardian of the general interest, makes for transparency, consistency and effectiveness of action. At the same time, we can clearly see the limitations of other forms of organisation: such as intergovernmental cooperation, which is a source of inefficiency; or allowing the Union's political direction to be dictated by just a few Member States, which is a potential source of tension and dispute.

**Changes will be necessary. All the institutions must refocus** on their fundamental tasks and accept the need for in-depth reform.

### *What institutional changes?*

In order to consolidate the Union's model of economic and social development, to continue the establishment of a European area of freedom, security and justice, and to enable the Union to exercise the responsibilities of a world power, the Commission proposes that **the Union's *modus operandi* be simplified and its institutions reformed**, but without changing the current institutional balance.

This endeavour to simplify and rationalise the Union's *modus operandi* and the running of its institutions should enable the people of Europe to identify who does what within the Union's decision-making process in a way which they will then find more transparent, simpler and less remote.

Clarifying the roles and responsibilities of the institutions is above all necessary for the three institutions, the European Parliament, the Council and the Commission, which today carry out the Union's legislative and executive tasks. The future constitutional treaty will nevertheless have to take due account of the full range of important tasks carried out by the Union's other institutions

and bodies, especially the Committee of the Regions, the Economic and Social Committee and the Ombudsman.

The proposed changes should not upset the **institutional balance** as it exists at present. They take account of the specific nature of the Union, based on the dual legitimacy of states and peoples, and do not call into question the basic principles of European integration, such as the equality between **Member States**.

The objective of simplification and getting closer to the people should also guide the task, **based on what has been achieved to date in terms of European integration**, of reworking the current treaties into a **constitutional treaty** which could lay out the Union's new institutional architecture.

The Convention's discussions and thinking must be based on the preliminary draft constitutional treaty presented by the Convention Praesidium. In the light of the ideas set out in this Communication, the Commission will take an active part in the Convention's work on drawing up the constitutional treaty. It considers that the Convention method, by associating all the sources of legitimacy which exist in Europe, deserves to be used for future amendments to the constitutional texts.

Finally, the European project should be clearly identifiable in a name. The Commission considers that the term “European Union”, with which the citizens of Member States and candidate countries have grown familiar, encapsulates well the objectives of the European project. The Convention should give its opinion on a common device for the Union, which could be “Peace, Freedom, Solidarity”.

It is the Convention's job to visualise the European Union of tomorrow — a Union in which the Member States, united by common policies and brought together under strong institutions, will remain capable of overcoming their differences to meet the expectations of their peoples.

## 1. Simplifying the way the Union works

The complexity of the current system stems from the specific nature of European integration. The Commission nevertheless feels that it is possible to simplify the way in which the European Union performs its core tasks.

### 1.1. Planning and preparing

The Commission recommends that efforts to plan and prepare be coordinated in order to achieve **interinstitutional planning of the Union's work** while respecting the decision-making autonomy and the responsibilities of each individual institution.

On the basis of a Commission proposal submitted every year, an interinstitutional dialogue should lead to an agreement between the European Parliament, the Council and the Commission on a rolling multiannual programme, the main components of which would be validated by the European Council.

The exercise of the Commission's right of initiative would thus be set within a coherent overall Union programme. This would enhance the transparency of the Union's legislative work.

As regards the preparation of legislative initiatives and the formulation of policies, the future constitutional treaty could in a way which continues to respect Member States' constitutional systems make provision for **general principles of consultation of interested parties**, the national administrations and the local and regional authorities. **Better account will have to be taken, when necessary, of the diversity of local situations**, at the time when policies are formulated or put into effect, for instance, in the form of tripartite contracts, which might be concluded by the Commission, the Member States and the regions or local authorities with a view to implementing certain items of Community legislation, in a way which continues to respect Member States' constitutional systems.

### 1.2. Lawmaking

Exercise of the **legislative function** must be simplified around the three principles which are the foundations of the Community method: the Commission's exclusive right of initiative; codecision by the European Parliament and the Council; and qualified majority voting within the Council.

The **Commission's exclusive right of initiative**, implemented within the framework of interinstitutional planning, should extend to the whole of the legislative field. In order to enhance the democratic legitimacy of the Union's decisions, the **codecision procedure** should be applied without exception to the adoption of all European laws. Lastly, to enable the enlarged Union to remain capable of taking decisions, the Commission recommends that the use of **qualified majority voting within the Council should be made the general rule**.

In a Union of 25 or more Member States, the whole system would rapidly seize up if just one of the Member States could hold out against EU action. In an integrated market, the economic players must have a level playing field. Without this, any changes would damage precisely our European model of society and the values which are prized by the European democracies. Abandoning the principle of unanimity must therefore also apply to fiscal and social issues which have an impact on the smooth operation of the internal market.

In certain sensitive cases, the legislator should be able to make use of a system of **enhanced majorities**, which would facilitate the abandonment of unanimity.

Furthermore, classification of the instruments will make it possible to distinguish the provisions which stem from the law from those which stem from implementation of the law. The Commission proposes a classification of legislative norms on these lines<sup>1</sup>:

- institutional laws, which should in future include the decision on the Union's own resources. These laws should be adopted on the basis of a codecision by the European Parliament and by the Council, acting on the basis of enhanced majorities;
- laws adopted under the codecision procedure by the European Parliament and the Council. These include the framework laws which must be implemented by national legislation, laws whereby financial programmes are adopted and other laws which are more specific and directly applicable in the Member States, and which would correspond to the current regulations;
- and lastly regulations, adopted by the Commission, for the purposes of implementing laws.

The laws might make provision for the **power of legislation to be delegated** to the Commission for the purposes of amending legal instruments adopted by the legislator, for instance, with a view to adapting them in the light of technical progress. The Commission should exercise this power only within the limits and subject to the conditions of its legislative delegation. The legislative act thus delegated would not enter into force if the European Parliament or the Council, taking the matter up, say, a month before its entry into force, were to come out against the measure, either by a majority of MEPs or by a qualified majority in Council. In such cases, the Commission would either withdraw its draft, or amend it, or present a proposal to the legislator.

The constitutional treaty should provide an appropriate legal basis for every Union activity. However, as the Convention has acknowledged, the **maintenance of a flexibility clause**, along the lines of what is provided for under the present Article 308 of the EC Treaty, remains essential to the dynamism of European integration. In view of the specific nature of a provision of this kind, the Commission proposes that these measures be adopted by the Council on the basis of an enhanced majority after receiving the assent of the European Parliament.

### 1.3. Directing Union action

The exercise of the Union's governmental functions is something special. These functions, which at the national level are exercised by the government, are today, at EU level, a matter for the Council and the Commission. Furthermore, the application of the Union's decisions is more often than not entrusted to the administrations of the Member States, where necessary in conjunction with the Commission.

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<sup>1</sup> This is not an exhaustive classification of the norms adopted in the Union and whose scope may be very extensive, as in the case of certain autonomous decisions adopted by the Commission directly under the terms of the Treaty. These non-legislative norms should also be rationalised.



Nationally, "governmental" tasks cover two types of tasks: **implementation of laws** (more detailed regulatory measures, individual application) and **autonomous government action**, generally based on a constitution, for example international representation or the signing of agreements.

At Union level, neither the Treaties nor Community practice make a clear distinction between these tasks. This makes it impossible for people to see clearly what is going on. Clarification of the system and refocusing each institution on its core tasks will simplify the institutional structure of Europe.

- For the proper implementation of legislation, it may be necessary to adopt enabling texts at Union level. The powers **to implement European legislation** are today entrusted to the Commission (Article 202 EC), with the exception of those specific cases in which the Council decides to exercise these powers directly. Clarification of the respective roles of the institutions implies that the **powers to implement European legislation be entrusted exclusively to the Commission**, which takes responsibility for its action and reports to the two branches of the Union's legislative authority, the European Parliament and the Council.
- The Union also exercises **non-legislative** powers. These include measures to coordinate national **economic** and **employment policies**, the organisation of **administrative cooperation**, e.g. on police matters and **foreign and security policy**.

With the exception of action involving military capability, the founding principles of the Community method should also apply to these functions, **the roles being shared between the Commission**, which makes proposals in the general European interest, **and the Council**, which decides (where appropriate, after consulting the European Parliament).

In the interests of effectiveness and in order to ensure that the interests of the different Member States are taken into account when proposals are formulated, the **Commission's right of initiative must be made a general rule**.

In this context, the power of decision should remain with the Council, within which the governments which exercise these powers nationally are represented, the European Parliament being involved as appropriate. As with legislation, the effectiveness of the decision-making process implies generalised use of **qualified majority voting** or at least types of decision-making which do not require the unanimity of the Member States, such as enhanced qualified majority or constructive abstention.

In addition, the Union must have at its disposal a range of instruments to implement its policies. The non-binding options include in particular the **open method of coordination** whereby common guidelines can be given for certain areas which lie outside the Union's legislative powers. The constitutional treaty should mention this method and guarantee that the way it is applied is consistent with the Community method.

### 1.3.1. *Economic policy coordination*

Economic policies are, and will remain, a national prerogative. However, coordination of them is a joint obligation. This obligation must be complied with more fully, given that Economic and Monetary Union needs common forms of discipline and coordination if it is to function properly. To enable the Union to carry out this function correctly, **the Commission's role needs strengthening, along with the decision-making capacity of the Council**, and we also need an **effective form of external representation for the euro zone vis-à-vis international economic and financial organisations**.

#### *The role of the Commission*

Strengthening the Commission's right of initiative is particularly important when it comes to coordinating economic policies. Currently, the Commission makes a simple recommendation to the Council concerning the *broad economic policy guidelines* and the *warnings* provided for under the stability pact. It is an easy matter for the Council to amend the content of these recommendations or ignore the important points. This situation gives rise to compromises which adversely affect the credibility of our economic policy coordination mechanisms.

The Commission therefore recommends converting recommendations into *proposals for these broad economic policy guidelines and for the warnings* to ensure that the stability pact and the guidelines are complied with. In other words, the Commission's agreement would be needed to amend these proposals unless the Council unanimously decided to amend them. This is the normal *modus operandi* provided for in the Treaty.

This change would give the Commission the wherewithal to ensure that the rules are complied with by all the Member States, preserve the Community nature of the exercise, and make for policy consistency.

As it is generally held to be useful for the Commission to be able to send an initial warning autonomously to any Member State significantly departing from the recommendations drawn up under the broad economic policy guidelines and at risk of running an excessive deficit, this should be enshrined in the treaty.

#### *The Council's decision-making capacity*

The frontiers of the euro zone are destined to coincide with those of the European Union. However, because a number of Member States do not yet belong to the euro zone, and because this number will increase with enlargement, this natural objective is not likely to be attained for many years.

It follows that the decision-making mechanisms now provided for in the Treaty are simply not geared to the needs of the euro zone in a Union with close on thirty Member States. Authorising the Member States of the euro zone to decide among themselves on issues concerning their currency is a matter of straightforward common sense.

By 2004, the Union will have more Member States which are not members of the euro zone than are. The Eurogroup, which was set up by the European Council in 1997, is an informal forum for discussion between euro zone countries. It is undoubtedly useful and can continue to exist as an informal basis for discussion. However, under the current Treaty, only the Council (Ecofin) is able to take decisions. When it comes to matters like excessive deficits run by euro zone countries,

exchange rate policy issues, decisions concerning Member States which may want to adopt the euro, or the section of the *broad economic policy guidelines* concerning the euro zone, the Commission recommends setting up an "Ecofin Council for the euro zone", which will bring together Finance Ministers from only the euro zone countries, who will have decision-making powers in areas of common interest to the Member States with the same currency.

A further important adjustment: in the interests of efficient decision-making, the Member State concerned should be excluded from any vote on issuing warnings. The Treaty already makes provision for such exclusion where the Council has to issue a formal notice to a Member State about correcting an excessive deficit — but this detail has been omitted from the voting arrangements on issuing warnings. By definition, the Member State concerned will generally be opposed to any such warning. Excluding it from the vote would therefore prevent a situation in which it was both judge and defendant.

### *Representation for the euro zone in international organisations*

The euro is now the second most important world currency, and the euro zone is collectively the second world economic and trading power. However, the European Union is not reaping all possible benefits at international level. The question of international representation for the euro zone remains *de facto* unsettled.

The position of the Presidency in international discussions is of course nowadays prepared in a concerted manner, but it is often the outcome of a compromise which does not enable the Union to demonstrate collective evidence of sufficient authority or the capacity to take the initiative.

The Convention should look into means of dealing with this question in a pragmatic fashion, as is provided for under Article 111 of the Treaty concerning the international representation for the euro or the Community's position. If the European Union is to address international monetary and financial discussions in a coherent way, and if it is to come up with a strong and, above all, stable position, the euro zone would gain from being represented by the Commission, acting in close conjunction with all the bodies concerned.

### *1.3.2. Administrative cooperation on police matters*

Police cooperation is at the present time covered by the provisions of the Treaty on European Union which concern police and judicial cooperation in criminal matters. As the pillar-based structure is to be abandoned, the Commission feels that this area should be subject to the general rules applicable to the Union's other policies. For instance, any legislation in this field, particularly for the development of Europol, should be adopted using the codecision procedure, with the Council deciding by qualified majority.

For **administrative cooperation between police departments**, the nature of these activities means that they are nevertheless under the **responsibility of the national authorities**. Where there is a case for European level initiatives in this field, it should be possible to draw on the experience of the national authorities. The Commission will exercise its right of initiative primarily to propose cooperation measures.

Lastly, Council decisions defining the planning, arrangements and field of coordination of national action in police matters, could be **covered by the enhanced qualified majority rule after a five-year transitional period** during which the Union should adopt the essential principles governing these matters.

### 1.3.3. *Common foreign and security policy*

#### *Defining the common objectives and coherence of outside action*

Based on the historic reconciliation of the nations and peoples of Europe, European integration has succeeded in consolidating **peace and stability** in Western Europe. It is now set to export this stability. Enlargement undoubtedly constitutes the most tangible political action which the Union will be taking over the coming years, and the most important in terms of the continent's security. The areas immediately to the south and east of the Union are *de facto* the ideal area for a common foreign policy, over and above long-standing relationships like the transatlantic links and the partnership with the countries of Africa, the Caribbean and the Pacific.

If it is to acquire a higher profile, the Union's foreign policy must have decision-making capacity on **security and defence** issues. This change is also necessary in the interests of protecting civilian populations, for instance in the event of terrorist aggression on the part of non-State entities. Following the Cold War and with the appearance of new forms of terrorism, such things as collective solidarity on the territory of the Union and the commitment of forces to external theatres in the service of peace, are becoming just as important as defence of the European homeland. We shall also have to encourage the development of the **European arms industry**, underpinning a common view of the specific threats facing the countries of Europe and the kind of action they are having to take outside the territory of Europe. Of course, such changes must not affect the specific positions of certain Member States with regard to action which might have defence implications, and the Convention will have to bear in mind these specific situations.

The European Union has a special role to play in terms of **globalisation**. Post-enlargement, the Union will be the world's leading economy. It will then have greater clout as regards global economic governance, but with an obligation, even more than today, to take account of the rest of the world's interests in its economic policy options.

In many respects, **it is through the European Union**, and by bringing together concerted political effort, **that Europeans will be able to defend their model of society and exercise their democratic rights more effectively and more completely**. It is Europe, as a leading player on the world stage, which can contribute to the improved governance and stability of the international system.

The Union must be in a position to take more resolute and more effective action in the interests of sustainable development and to deal with certain new risks, associated in most cases with the persistent and growing economic and social imbalances in the world. It must therefore stick up for a strategy of sustainable development, based on a multilateral and multipolar organisation of the world economy, to offset any hegemonic or unilateral approach. To do so, it might be necessary to increase the Union's powers on certain points. In any event, the Union must be in a position to defend and exploit to the full the international dimension of its internal policies, and should have access to the requisite range of instruments and resources. The Union would thus implement on the outside the powers it has on the inside.

With a view to underpinning the coherence of the Union's external action and making sure that its stated positions have an underlying unity, the Commission recommended, in its Communication of 22 May 2002, **merging the functions of High Representative and Commissioner responsible for external relations**, subject to particular practical arrangements and an as yet undefined timetable. This step by step institutional development must, taking the current state of affairs as a starting point, be accompanied by progressively more integration and more consistency between the various dimensions of external action. What already applies very largely to trade must apply equally to the external aspects of common policies, in particular sustainable development and economic and financial issues, whether a matter of negotiation, decision-making procedures, or the arrangements for representation. This would not apply, however, to matters to do with defence and action requiring military capacity, which are areas in which the Convention will have to lay down the mechanisms and practical arrangements in due course.

#### *Stepwise institutional change*

The Commission proposes creating the post of *Secretary of the European Union*, as a Vice President of the Commission with a special status. The EU Secretary would be **appointed by common accord by the European Council and by the President designate of the Commission**. He would report personally both to the European Council and to the President of the Commission, both of whom would be able to terminate his job. As a member of the Commission, he would also report to the European Parliament as part of the College of Commissioners' collective responsibility.

This dual responsibility would open the way for **major institutional change**, taking account of the specific nature of common foreign and security policy.

During an as yet unspecified transitional period, it is proposed that the Secretary of the European Union exercises the Commission's **right of initiative** as regards common foreign and security policy **in with the framework of the guidelines and mandates given to him by the Council, or of a group of Member States with a particular interest in a specific question** and whose common interests might require action on the part of the Union.

**At the end of the transitional period**, the Council, acting on a proposal from the Commission and applying an enhanced qualified majority, would rule on the arrangements by which the Secretary of the Union would **autonomously exercise the Commission's right of initiative in terms of common foreign and security policy**. Consequently, the Council would also have to rule on the extent of the **Member States' right of initiative at the end of the transitional period**. In the spirit of the current terms of the EC Treaty (more specifically, Article 208), it would be desirable for the Commission, or a group of Member States, to be able, after the transitional period, to ask the Secretary of the Union to submit to the Council any proposal concerning the implementation of common objectives.

Once the office of Secretary of the Union had been set up, the Commission's proposals on common foreign and security policy, and the decisions needed to put them into effect, would be adopted by the Secretary of the Union in agreement with the President of the Commission, where appropriate following a debate within the Commission.

Other proposals for decisions on external relations (e.g. international trade and development) and internal policies (e.g. agriculture and the environment) will continue to form part of the Commission's autonomous initiative and will remain governed by the normal rules of collective responsibility. It will be up to the President of the Commission and the Secretary of the Union to

ensure consistency between these proposals and decisions and foreign policy action.

The Secretary of the Union **would represent the Union** vis-à-vis third parties with regard to foreign policy action and **would be responsible for implementing common decisions**. For this purpose, he would have access to a single administration resourced from the General Secretariat of the Council, the Commission and the Member States, placed under his authority, and benefiting from the administrative infrastructure of the Commission. The Commission's external delegations and the Council's liaison offices would become Union delegations managed administratively by the Commission and under the authority of the Secretary of the Union. This unity of administration is essential if common action is to be effective.

The Commission feels that the method of appointment of the Secretary of the Union, his personal accountability to the European Council, and the specific arrangements for exercising the Commission's right of initiative will help to generate the trust needed between the institutions and the Member States to pursue a more coherent and more effective external policy. The Commission feels that this objective of coherence and effectiveness fully justifies changing the Commission's working methods and the specific watchdog function exercised by the Council over the initiatives taken by the Secretary of the Union, doubling as Vice President of the Commission.

#### *1.3.4. Getting the common rules implemented*

As regards **the implementation of European legislation**, even as it stands today the Treaty stipulates that this is **in principle a matter for the Commission**, in so far as action is necessary at EU level and it is therefore not left up to the Member States. The Treaty nevertheless empowers the Council to reserve the right in specific and exceptional cases to exercise its powers of implementation directly. This exception engenders confusion as to the role of the Council as legislator vis-à-vis the Commission's executive function, and is not compatible with the fact that the legislative function is exercised by two institutions, the Council and the European Parliament. It should therefore be done away with. The **Commission's responsibility** for European-level implementation of decisions taken by the legislator would thus become clear and unambiguous for the people of Europe.

In exercising its **executive function** provided for by law, the Commission receives the opinion and expertise of the national administrations (which are often called upon to implement European legislation in the field) within committees. These committees should continue to exist but only as **advisory committees**. In order to allow the legislator to exercise democratic control over its action, the Commission must inform the European Parliament and the Council at the same time of the steps it is contemplating; the two institutions can give their opinion or, where appropriate, express their objections. **The Commission remains the body responsible for the decision** on implementation measures in the strict sense, in contrast to the procedure set aside for legislative delegation.

Furthermore, there may be a case for using **European regulatory agencies** to provide technical assistance to the institutions, to prepare opinions and recommendations, and to adopt individual decisions in the context of specific legislation. Clearly, these agencies cannot be given either the responsibilities which the Treaty assigns directly to the Commission, nor decision-making powers in areas in which they would be required to arbitrate in conflicts between public interests, nor can they exercise political appraisal powers or make complex economic assessments. The current treaties do not provide a specific **legal basis** for the creation of such agencies. The constitutional treaty should therefore include a provision on the criteria for the establishment, running and monitoring — in political, legal and budgetary terms — of these agencies.

### 1.3.5. *Ensuring compliance with the common rules*

The Treaty has conferred upon the Commission the general task of **ensuring the proper application of the Union's law**. With enlargement, and in order to safeguard the smooth running of the internal market, the mechanisms provided to this end by the Treaty will have to be strengthened.

As was the case under the ECSC Treaty, the Commission should be given the power to take decisions on breaches of Union law. If a Member State were to contest the Commission's findings, the Treaty should give the Member State leave to appeal to the Court of Justice. This innovation, which strengthens the Commission's ability to fulfil its task as guardian of the treaties, would provide a basis for more effective checks to be carried out on whether the Member States are complying with their obligations. At any rate, the opportunity to take a case to the Court of Justice gives the Member States and economic operators all the guarantees they need to be sure that Commission decisions are well founded<sup>1</sup>.

In certain areas, particularly competition, in which the application of the common principles relating to state aid and compliance by the business sector with the rules of competition remain essential, the **Treaty** gives the Commission direct autonomous power to adopt **measures to apply basic rules** which are not to be found in any legislation, but **in the Treaty itself**. The Commission's watchdog powers in this field may take the form of individual decisions and, in certain cases, general executive measures. The constitutional treaty will have to clearly identify these functions.

## 1.4. Funding the common policies

The Commission feels that the Convention should **examine the arrangements whereby the common policies are funded**, the point being to give better practical expression to the provisions in the Treaty (Article 269 of the EC Treaty) which provide for **the Union's budget to be funded from own resources, fed in turn by the Member States and the people of Europe**. In this context, an appropriate balance will also have to be found between these different contributions.

This question is linked to many questions addressed by the Convention: **democracy** (absence of power of the European Parliament with regard to resources); **transparency** (people cannot see what individual contributions they are making to help fund the Union); and **solidarity** (the transfer by the Member States of contributions as a function of their GDP, while it does have the merit of being equitable, perpetuates tricky discussions on the theme of "fair return"). From this point of view, examination of the funding of the Union is also part of the debate on the legitimacy of the Union's action.

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<sup>1</sup> This would not affect the Court's power to establish the amounts of any penalty payments or fines to be paid by Member States guilty of infringements.

The matter of the funding of the Union will have to be re-examined, while safeguarding the achievements of the current system: **fairness, balance between expenditure and revenue, simplicity**. The Treaty will have to **extend the Union's capacity to define its funding arrangements**.

The constitutional treaty would have to make provision for the **multiannual financial perspectives**, which are currently a matter for interinstitutional agreement, to be adopted by the European Parliament and the Council on a proposal from the Commission.

As a result, the procedures for adopting the decision on **own resources** and for adopting the **annual budget** can also be rationalised. The Commission recommends that the decision on **own resources** be **adopted** by an **organic law**, which requires enhanced majorities on the part of the European Parliament and the Council. The Convention will have to look into the question of associating the **national parliaments** in this decision.

The **budget** would be adopted by the **European Parliament and the Council** in a procedure deriving from the **codecision procedure**, based on a Commission draft. The distinction between compulsory and non-compulsory expenditure would therefore be dropped.

The Commission may choose to go into these issues in greater depth at a later stage in a specific communication.

Finally, the Commission would point out that it has proposed<sup>1</sup> setting up an independent **European public prosecutor** to **protect the Union's financial interests**. The Commission believes that the constitutional treaty should make provision for such an office; its status and key operating arrangements will have to be regulated at a later date by way of an organic law.

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<sup>1</sup> COM (2000) 608 final; also, Green Paper COM (2001) 715.



## 2. Reforming the institutions

The Commission reiterates its attachment to the institutional balance and the sharing of powers, both characteristic of European integration. Thanks to intergovernmental cooperation and federal structures, the Community method has steered a course which combines effectiveness with respect of national identities. Any reform of the institutions envisaged must respect this balance and avoid the creation of new bodies which would make the decision-making process less comprehensible and less efficient. The point is to safeguard the originality of the system while increasing the accountability of each institution and allowing it to meet the challenges of enlargement.

### 2.1. The European Parliament

The legislative role of the European Parliament must be confirmed by **general use of the codecision procedure**.

The principle of a **uniform electoral procedure** for all Member States for the election of Members of the European Parliament must be upheld in the constitutional treaty. The Council Decision<sup>1</sup> amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage now makes it possible to move towards a more homogeneous electoral system. It is therefore desirable for the Member States to adopt it as quickly as possible, in accordance with their respective constitutional rules, so that the 2004 elections can be based on this new electoral procedure.

Looking ahead, the Commission confirms that the Union would greatly benefit if a number of Members of the European Parliament were elected from **European lists** submitted to the whole of the European electorate, throughout the Union. The electorate would then cast two votes: one in a national capacity and the other for members to be elected from these transnational lists. Organising European elections in this way will help to enhance democracy at European level.

### 2.2. The Council

Enlargement means the Council will have to adapt its method of working and pursue the reforms initiated by the Seville European Council (June 2002).

#### 2.2.1. *Determining what is meant by a qualified majority*

For the purposes of legislating and directing the Union's action, decision-making patterns which require unanimity will have to be dispensed with.

Qualified majority voting must meet the tests of simplicity and democratic legitimacy. The Commission accordingly recommends that the Convention review the complex decision-making system stemming from the Treaty of Nice and replace it by the **simple dual majority** scheme previously proposed by the Commission. The Council's decisions would be deemed to have been adopted if they had the support of a simple majority of the Member States representing a majority of the total Union population. This decision-making rule has the advantage of being clearer and more in line with the specific nature of the Union.

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<sup>1</sup> Council Decision of 25 June 2002 and of 23 September 2002 (2002/772/EC, Euratom), OJ L 283 of 21.10.2002.

The Commission proposes eliminating the unanimity requirement. This should apply not just to European Union legislation, but to any decision taken by the Council. Thus, the appointment of members to the European Central Bank's executive board should be decided by qualified majority, mirroring the procedure for appointing the Commission under the Nice Treaty.

In certain special cases, though, provision will have to be made for the Council to take decisions by a majority which is higher than the qualified majority. In these special cases, the Treaty should provide for a Council decision on the basis of an **enhanced majority**. In these cases, the decision should receive the support of three-quarters of governments, representing two-thirds of the Union's total population.

#### 2.2.2. *Organising the Council's work*

The Seville European Council brought down the number of Council formations to nine. Considering the high number of States which in an enlarged Europe will not immediately be part of the euro zone, the future constitutional treaty should create a formal decision-making body for the Member States concerned and which would function as the **"Ecofin-eurozone" Council**.

We should also broaden the current thinking on the distinction between the Council's legislative and executive functions, with a view to making the Council's work more transparent.

Two types of measures, which lie outside considerations to do with the Presidency, can play an important role as regards the continuity and consistency of the Council's work: **interinstitutional planning** of the Union's work<sup>1</sup>, which provides the framework for the exercise of the Presidency, and **external representation by the Secretary of the Union**.

With regard to the **Presidency of the Council**, the Commission proposes that account be taken, firstly, of the need to strengthen the continuity of the Council's work and, secondly, of the advantages which exercising the Presidency has in terms of mobilising national administrations and enhancing the European commitment of each Member State.

The Commission therefore recommends retaining the **six-monthly rotation for the Presidency of the European Council and the General Affairs Council**, and even for the Presidency of the Committee of Permanent Representatives, having regard to the general coordination role played by these bodies.

For the other Council formations, the Presidency could be exercised by a **member of the Council elected by his peers** for a period of one year. This would have the advantage of giving the work of the Council more continuity and entrusting the Presidency to an experienced minister who enjoys his/her peers' confidence, while ensuring that each national administration will be able to gain regular experience in running the Presidency of the Council.

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<sup>1</sup> See above, point 1.1.

This way of organising the Presidency should also apply to the Council for external relations, given that in view of the institutional balance, it is not desirable to confuse the function of a President of the Council, with his task of seeking compromise, with the function of making proposals, putting them into effect, and providing the external representation of the Union.

## **2.3. The Commission**

### *2.3.1. Appointment and political accountability of the Commission*

The **Commission**, which is responsible for **setting out the general interests of the Union**, must continue to derive its political legitimacy both from the European Council and the European Parliament. The Commission therefore recommends **conferring on the European Council and the European Parliament equivalent rights** both for the appointment and for monitoring the action of the Commission. The Commission will in future have both to continue to exercise its functions independently and also assert its political accountability.

The **Commission might be set up** as follows, after the election of the European Parliament:

- **election of the President of the Commission** by the **European Parliament**, this appointment to be approved by the European Council;
- appointment of the Secretary of the Union by the European Council in agreement with the President of the Commission;
- designation of the **other members** of the Commission by the Council, acting by a qualified majority and in agreement with the Commission President;
- approval of the full Commission College by the European Parliament.

To allow the Commission to retain the independence it needs in relation to national and partisan interests, the treaty must specify the procedure whereby the European Parliament could put any candidacy for the Commission Presidency to the vote and also specify that the vote will take place under a secret ballot with a two thirds majority of MEPs required.

On the basis of this enhanced dual legitimacy, **the Commission would be accountable to both the European Parliament and the European Council**, each having the right to censure the Commission's action. Obviously, the President of the Commission would not take part in any deliberations within the European Council on censuring the European Commission.

### *2.3.2. Composition and work of the European Commission*

Under the Nice Treaty, the Commission will comprise one Commissioner per Member State up to the appointment of the first Commission following the accession of the twenty-seventh Member State. The Commission will then comprise a number of Commissioners which is less than the number of Member States, chosen on the basis of an equal rotation system between the Member States.

**The next Commission will therefore be composed of one national from each Member State.** The Commission feels that a College of this kind will be in a position to take full account of the diversity of national concerns and perceptions at a time when a substantial number of new Member

States will be joining the Union.

If the Commission is to perform its executive functions efficiently, **it will however need to be restructured** as soon as the new Member States enter, around the Union's core tasks. The powers conferred upon the **Commission President** put him in a position to decide as to which structure will best maintain the Commission's effectiveness. The idea is therefore that under the authority of the President, vice presidents or members of the Commission can coordinate the work of their colleagues, consistent with the principle of collegiality.

Other institutional changes would likewise be needed to this end in the future constitutional treaty. As the Commission has already proposed<sup>1</sup>, the President should have wider political steering powers, more especially the power to oppose any initiatives he judges inopportune.

**New internal rules** will also be needed to enable the members of the Commission to take a greater number of decisions individually, on the Commission's behalf.

It follows that, in a context in which the Union's institutions would exercise new responsibilities, in which the Presidency of the Council would be more stable and more effective, and in which the Commission would assert its governmental role, the composition of the Commission should be restricted in accordance with the arrangements provided for in the Nice Treaty.

#### **2.4. Relations between the institutions and the national parliaments**

Under the system of parliamentary democracy peculiar to the Member States of the Union, the watchful eye the national parliaments keep on governments is the best way of asserting their influence on what the Union does. In order to make it easier for them to do this, certain adjustments are needed to the Amsterdam Protocol. As envisaged by the Convention Working Group on the role of national parliaments, the Commission could **transmit directly to the national parliaments its legislative proposals, its consultation documents** (green papers, white papers and communications) and its **strategic planning documents** (annual policy strategy, annual legislative and work programme).

The Commission will respond to the calls from the national parliaments to strengthen dialogue between the European institutions and the national parliaments.

The Commission also feels that the **transparency of the Council's work** on legislative issues will enable the national parliaments to better follow the progress of discussions within the Council. Monitoring of action by governments would be strengthened by the establishment of more direct links between the national parliaments and the national delegations which sit on the Council.

As proposed by the Convention's working groups, the Commission considers national parliaments should play a role in monitoring compliance with the principle of **subsidiarity**, without giving an opinion on the basic merit of a proposal. There should be *ex ante* political monitoring throughout the legislative procedure and not only upstream of the proposals put forward by the Commission. The Convention is also examining the feasibility of access to the Court by the national parliaments and by the Committee of the Regions. If the *ex post* judicial control were to be opened up to the national parliaments, the Commission feels that it should then be open to all the national

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<sup>1</sup> *Adapting the institutions to make a success of enlargement*, Commission Communication of 26 January 2000: [COM (2000) 34 final].

parliaments without their being obliged to issue an opinion under the early-warning mechanism.

The Commission feels that the Convention should continue to examine how to better involve the **national parliaments** in the running of European affairs. In addition to the proposals currently being examined by the working groups and mentioned above, the Convention should examine in depth two other themes of specific interest to the national parliaments:

- an improvement of the instruments to coordinate economic policy at the European level should go hand in hand with **stronger cooperation between the European Parliament and the national parliaments**;
- the national parliaments should give their view on the **arrangements for the funding of the European Union**.

### 3. Restructuring the treaties

The Commission has noted with interest the proposal put forward by the President of the Convention on 28 October last with regard to the structure of the future constitutional treaty. The Commission feels it would be desirable to draw up a simple, readable constitutional treaty which gives the Union a single legal personality. In particular, as envisaged in this draft, the Commission agrees that it is necessary to set out in a constitutional text the **values and fundamental rights** on which the Union bases its action.

#### *Preserving the flexibility of Union action*

During its debates in the spring of 2002, the Convention had stressed the risk of any delimitation of powers which would straitjacket the Union's activities. It is important for the future constitutional treaty, when it sets out categories of powers, to go only as far as is necessary to allow the people of Europe to understand the Union's core activities.

The Commission feels that the approach proposed in the preliminary draft treaty submitted by the Praesidium of the Convention does not fully meet this requirement. In particular, the establishment of a category "*actions conducted jointly by the Member States within the Union framework*" detracts from the clarity of the treaty and does not take account of the fact that **the Union** today pursues a common foreign and security policy and joint actions on police and criminal law cooperation.

The Commission accordingly recommends a presentation of powers which highlights the **different levels of intensity** of Union action and the scope of its responsibilities, without in so doing introducing the inflexibility inherent in any catalogue of powers. The treaty could thus draw a distinction between the Union's main policies, supporting policies and complementary action. A presentation of this kind would make it possible to stress that in many areas the Union has only limited powers of action.

#### *Safeguarding the acquis*

The preliminary draft treaty proposes the replacement of the existing treaties. There is, however, a need to **safeguard the achievements** of 50 years of integration. There can therefore be no calling into question the substance of the Union's policies.

Caution is also needed with regard to how the common policies are presented in the future constitutional treaty.

Apart from one general provision on objectives, the preliminary draft constitutional treaty submitted to the Convention describes the common policies, not in the part on the constitutional architecture, but only in a second part. This presentation should on no account affect the fact that all parts of the future constitutional treaty concern European Union primary law. In addition, as the future treaty does not equate to the constitution of a State, it is **essential to specify the Union's** purpose before describing powers and institutions.

#### *Entry into force of the future treaty*

There are many ways to approach the question of the link between the Constitutional Treaty and the current Treaties.

The Convention could choose the classic route of a treaty amending the existing Treaties, like the Amsterdam and Nice Treaties. This would have the advantage that provisions unconnected to the creation of a Constitution would not have to be changed. But it would mean adding one text onto another in a way that would be difficult to understand.

The Convention could also choose to replace the existing Treaties with a new Constitutional Treaty. This second approach would have the advantage of simplicity and allow the issues at stake in establishing a Constitution to be presented clearly. But rewriting the Treaties in their entirety creates an added risk to the continuity of the *acquis communautaire*.

Under the terms of Article 48 of the TEU, amendment of the current treaties requires a unanimous decision of the Member States and ratification by each Member State. Whether the Union chooses an amending Treaty or an entirely new Treaty, the risk therefore exists that certain Member States might not be in a position to ratify the text and that just one State blocks the whole process.

This issue and the possibility that the future constitutional treaty might enter into force before being ratified by every Member State should be studied in depth by the Convention.

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