

**THE EUROPEAN CONVENTION**

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| from :    | Secretariat   |
| to :      | Convention  |
| Subject : | <b>Contribution submitted by Mr Alain Lamassoure, member of the<br/>Convention:<br/>"New institutions for a new Europe"</b> |

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

## CONTRIBUTION TO THE WORK OF THE CONVENTION

## NEW INSTITUTIONS FOR A NEW EUROPE

In essence, the European Union today is still depending upon the institutions designed for the original Common Market of a mere six Member States. Modified, extended and, above all, made more complex since then, those institutions have shown their limitations. Of course, we must preserve the irreplaceable lessons learned from their experience: the need for a body responsible for defining the common interest; the need to organize a balanced interplay of powers between national governments and Community institutions; the value of having different decision procedures to take due account of the differing European content of the issues to be addressed. There is an 'acquis' of institutional history that must be taken into account. But the structure as a whole is in need of radical reform if it is to become simpler, more effective and more democratic.

The most logical approach is to start by considering the functions to be performed.

## I – THE FUNCTIONS TO BE PERFORMED

They are similar to those of a federal State, but with important differences.

– First, there is the function of providing the necessary *driving force* behind the European adventure. Each State is the natural framework of political activity: at each election, an elected political majority is given a mandate to implement its agenda. The European Union is a framework for living together, but a framework within which we also intend to act together. Upon what plans, other than European integration itself, is that action to focus? The very concept of a *common political plan* still has to be invented.

– Next, there is the more traditional function of the *general conduct* of the Union's policy, comparable to the task confronting a national government.

– But the *implementation* of that policy – the application of the Community's decisions and the administration of its programmes and appropriations – is handled not by a common authority but by the national authorities at State or sub-State level, and/or by specialized agencies.

– Similarly, a major difference from existing federations is that, while some powers are vested wholly or partly in the Union, the Union also has a *duty to coordinate* some policies that remain entirely within the jurisdiction of individual Member States.

– The *legislative function* is that which most closely resembles its counterpart in a federal type of structure.

– The *judicial function* is confined to cases arising under Community law.

How should the present institutions be adapted to enable them to perform these functions, whether conventional or original, to best effect?

## II – THE MAIN INSTITUTIONS

### *THE FUTURE OF THE EUROPEAN COUNCIL*

For fifty years, Europe has resembled a ship that has put to sea before completion. The political initiative is shared between two collective bodies, the *European Council*, the seat of the High Admirals (who also have aspirations as shipbuilders), and the *Commission*, the officer of the watch. They share command: there is no one at the helm.

When it was first conceived, in the 1970s, the *European Council* had only nine members (ten including the President of the Commission): it was an executive board. The great initiatives that led to the single market, monetary union and the successive stages of enlargement, and the broad guidelines (the Lisbon and Tampere processes, etc.) naturally originated with the Council. But **with 25 or 30 members, it becomes something different: it is the size of a supervisory board, certainly not an executive one.**

On the other hand, it will be playing two new and very prominent parts.

First, **it is being called upon to be the Union's 'collective Head of State'**. We do not want the Union to be a superstate: no one individual, then, can personify it. But we are turning it into a legal and political entity, with its own budget, imposing laws on every citizen within its jurisdiction and acting as such on the international stage. Thus, the concept of a collective authority, as adopted by the Swiss Confederation, seems better. It would mean, for example, that ambassadors of third countries would present their credentials to the European Council at its regular meetings.

However, the European Council will also be called upon to play a new part – an essential part created by the 'big bang' of the near-doubling of the number of Member States: it will become the central melting pot of the Union, the major body for consultation and maintenance of the *affectio societatis* between the leaders of all those many, disparate States. The fact is that we tend to underestimate the centrifugal force that will be generated by the 'big bang'. **The European Council will have to be not the focus of national rivalries – something that must be left to ministerial level – but the forge in which the new common identity will be created.**

Finally, the European Council would benefit from a change of name. Ever since the beginning, the confusion between the Council of Ministers and the Council of Europe has greatly obstructed public understanding of the overall architecture of the Community. I therefore propose that the European Council be renamed the ***Council of Premiers*** – which is both a good description of its composition (the number ones) and suggestive of the part it has to play (as a council).

### *FROM THE COMMISSION TO THE EUROPEAN AUTHORITY*

The necessary function of initiative can only lie in the hands of an 'executive', a common conductor or ship's master: the body that will replace the Commission.

Since the Maastricht Treaty and the previous wave of enlargement, the Commission has been 'the sick man of the Union'. The reason is simple: **its political legitimacy was weakened at the very moment when it should have been strengthened.** The more numerous its members, the stronger the body representing the common interest should be. But the consolidation of the rule of egalitarian distribution of Commissioners among the Member States (in the Treaties of Amsterdam and Nice), within a structure where demographic disparity between countries is increasing spectacularly, undermines the representative nature of the Commission; and that weakness is exacerbated by the refusal of the European Council to take due account of the European Parliament's preferences with regard to the choice of President of the Commission (1994) or the

political balance of the Commission (1999). And there were only fifteen of us then: **when there are twenty-five of us, the Commission will have had its day. *A fortiori*, it would be in no position to play the part of prime mover that will escape the European Council.**

In defining the new body representing the common European interest, the starting point must be the necessary legitimacy. To talk on equal terms with the heads of government whose partner it will be, it must have a democratic legitimacy comparable to theirs. The most democratic solution will be for the European Parliament to elect a 'Mr Europe' or 'Mrs Europe', adopting the model of the parliamentary system: when they vote for a list, electors will know that they are also voting for a candidate to serve as 'Mr/Mrs Europe'. Another possible formula would be election by a congress of the national parliaments, but indirect suffrage is more appropriate to the appointment of a Head of State than that of a person responsible for the day-to-day running of affairs; more appropriate to the office of chairman than that of chief executive officer. And, in practice, this approach would prevent any engagement of the political responsibility of the person concerned during his or her mandate.

The effect of this democratic legitimacy is that 'Mr Europe' will be the elected choice of a political majority. That majority will have a duty to support him against an opposition representing his possible replacement. Inevitably, that vestal aura of superiority and indifference to political parties which the Commission formerly wore with such distinction will be abandoned. We may, perhaps, feel nostalgia at this change, but we need feel no regret: **it is the price we have to pay for introducing democracy at European level.**

Having thus appointed the pilot, how will we select the crew? That will be a matter for the pilot, and for him alone. Among the Member States of the Union, there is no constitution to specify how many members the executive should have or what their geographical origins should be – and that is just as well. In the new and larger Europe, there is no solution to the problem of how many members the body representing the common interest should have – and that is not a serious matter, because it is no longer a problem: it will be for the democratically appointed leader to select his team as he sees fit, as a function of the majority that supports him. He will of course need to keep a close watch over both geographical and political balance. His team will no doubt be more numerous than the present Commission. And so much the better: inspiring, coordinating, steering and imparting a spirit of solidarity to a structure comprising some thirty different States and 450 million more or less indifferent citizens will be no sinecure.

**Will this body be a European 'executive' or 'government'? No. It will have the same high profile, but not the same role.** In countries with a parliamentary system, government has become a multifunctional body which cannot and must not have any equivalent in today's European Union.

– It will provide the political *thrust*, the leadership, in line with the programme on the basis of which it was elected. It will thus, for the first time, enable the citizen to endorse the broad guidelines of Union policy.

– As a natural consequence, it will be the central body responsible for the *legal initiative*. Should it be given a monopoly on that initiative, which has played such an important part for the Commission? The Commission's own assessments on the occasion of the Convention show that, in practice, the real political initiative behind the texts prepared by the Commission is shared more or less equally between the Council, the European Parliament and the Commission itself. After all, even a Member State or a parliamentary majority may have good ideas. ... The essential thing is that any formal proposal should form part of an overall policy that engages the responsibility of the body representing the common interest.

– Responsibility for the *implementation* of the common policies will continue to be shared between the Member States and Brussels.

The Convention has not hitherto devoted much time to this issue. Yet **incorrect application of existing Community law is a major problem**. It takes too long for directives to be transposed into national law: two years had passed since the *Erika* disaster, but it took another oil tanker wreck to make people aware that the measures adopted at that time had still not become applicable – even where there was no deliberate recalcitrance on the part of a Member State. And there frequently is: on two occasions, and under two different governments, the French Parliament has adopted legislation contrary to European law, knowing full well that the courts would annul it – which they duly did: the point was to gain time. These, again, are high-profile ‘official’ examples. Less well known, but much more numerous and more pernicious, are cases where Community law is misunderstood or even, quite simply, violated, at lower levels of national or local government or even by professional bodies among which the corporate interest easily gains the upper hand. For example, mutual recognition of degrees and freedom of establishment are principles that have given rise to European legislation that is as long-standing as it is generous, yet those principles are constantly being flouted. In France, the provincial bar associations are opposing the registration of lawyers from other Member States. In Spain, it takes two years to validate a degree awarded in the United Kingdom, even for Erasmus scholars of Spanish nationality!

These effects are underestimated by everyone: by the national authorities, which draw a modest veil over their own malpractices, and by the Commission, fearful for the credibility of the Community approach. Yet they demand energetic remedies: shorter transposition periods, automatic penalties for failure to transpose Community legislation or doing so unsatisfactorily, a procedure for the automatic monitoring of the acts of the authorities or agencies responsible for the application of European law, with publication of the results and the possibility of penalizing those responsible.

On this matter of implementing the Union’s decisions, the body representing the common interest will coordinate, encourage and supervise, but it must not itself be responsible for administration. It may be made responsible for regulating the application of European laws, or that function may be entrusted to a specialized European agency or delegated to the Member States: the choice must continue to be decided on a case-by-case basis. The administration of Community programmes, policies and appropriations is normally a matter for the Member States, or for European agencies in special cases; direct administration by Brussels must continue to be the exception.

What name should we give this ‘body representing the common interest’? As it will enjoy democratic legitimacy, the name ‘Commission’ cannot be retained. I suggest that it should be called the ***European Authority***. The term would express a new concept, different from national governments but vested with genuine power and with a mandate to represent the common European interest.

#### *THE LEGISLATIVE FUNCTION: PARLIAMENT AND THE COUNCIL*

For the adoption of European legislation, everyone agrees on the need to combine the vote of an assembly representing the citizen, such as the present European Parliament, and that of a body representing the States, such as the present Council of Ministers. But this dual authority must be simplified and modernized: each of the institutions must be able to perform its legislative role to the full, and more must be done to ensure that their relationship is a balanced one.

#### *From the Forum to the Parliament*

The European Parliament was initially conceived not as a legislative assembly but more as a forum in which the major national political parties could express their views on European issues.

Three reforms are needed if it is to be given more generalized legislative powers.

1 – Its composition must reflect as faithfully as possible the demographic reality of the Member States, and **the electoral system must be a uniform one**. On this latter point, now that all States have opted for proportional representation, the principle must be established that **where administrative regions exist, the constituencies must match those regions**. Furthermore, the distribution of seats among the Member States must be updated from time to time, under the auspices of a high European authority (for example, Congress if one is created), to take account of demographic changes.

2 – **The number of members of the European Parliament must, without fail, be limited to a ceiling compatible with the legislative function**. The figure of 700 decided upon at Amsterdam is already far too high: no national assembly has as many members, and the House of Representatives and the Senate in the United States have far fewer between them! A reasonable number would be around 650, which happens to be the same as the world's oldest democratic parliament, the House of Commons at Westminster.

3 – Parliament's rules of procedure must **prohibit it from intervening in matters that do not fall within the jurisdiction of the Union**. Originally, having no effective power, the Parliamentary Assembly of the EEC had acquired the habit of debating and adopting resolutions of a purely political character on all matters of topical European or global interest: the defence of human rights here, a civil war there, the democratic process elsewhere, the death penalty in the United States, etc. Despite the ascendancy of Parliament's actual powers, it has retained its taste for commenting on everything under the sun. In so doing, it is behaving as if it believed that there were two types of issue: those which fall within the jurisdiction of the Union, on which it must naturally participate in Community legislation; and the remainder, where it reserves the right to adopt recommendations affecting the Member States, not to mention third countries! **It must complete the transition from a moralizing forum to a Parliament that is fully but exclusively legislative.**

#### *From the Council of Ministers to the Council of States*

Similarly, the European Council of Ministers was conceived not to legislate but to react to the Commission's proposals, coordinate the application of the decisions adopted and endeavour, in every field, to find fruitful convergences in national policies. Many of its own members are surprised when it is pointed out to them that their main function is a legislative one: the ministerial function has so much more prestige than the parliamentary function that they are generally disappointed. ...

If the main issue is to exchange good practices and achieve coordination, the numerous different configurations of the Council are not an obstruction – quite the reverse! But the drafting and adoption of legislation calls for different methods, different procedures, a different organization – even a different composition.

Does that mean that there should be two different institutions to exercise these two different types of function? Absolutely not. In each of our countries, governments play such a decisive role in the legislative process that it is realistic to incorporate them as such within a legislative Chamber of States.

I propose that the *Council of Ministers* should become the ***Council of European States***. The Council could meet in two different configurations:

– ***The legislative configuration of the Council***: This version would comprise ministers and, possibly, elected members empowered to represent the States, and nominated by each State: members of the national or regional governments and/or elected by the parliamentary majorities,

excluding any unelected officials. Each State would have a single vote. The debates and the vote would be completely public. The Council's delegation to the joint Council/Parliament Conciliation Committee would, similarly, comprise politicians only, no longer including any senior civil servants. The simplest thing would be to have a single legislative configuration, conceived on the basis of the present General Affairs Council.

– *The coordinating configuration(s) of the Council:* In this case, as many different configurations could be retained as there are fields to cover. Debates could continue to take place in camera: political control would be exercised at national parliament level. Civil servants could continue to assist the government members. Here again, it could be useful to involve the national parliaments, especially in areas where coordination is obligatory: on budgetary and fiscal affairs, the presence of the Chairmen of the Finance Committees and the budget rapporteurs would be at least as valuable as that of treasury civil servants. The minister would continue to act as head of the delegation and he alone would be authorized to commit his country.

#### *Relations between Council and Parliament: codecision*

It should be possible to reach a consensus based on the following principles:

1 – As soon as the European Union acquires the power to legislate, in other words to impose mandatory rules upon the citizen, there ceases to be any reason why those rules should not be drafted and adopted subject to the same democratic guarantees as in national law. Codecision must be the rule, on condition that the representative nature of Parliament becomes irreproachable, as proposed above.

In the event of a definite conflict between the two legislative bodies, should one of them be given the last word? Not necessarily: present practice shows, in any case, that with a single exception (the Directive on takeover bids), Council and Parliament have always eventually reached a compromise. If it were felt desirable to avoid any lasting deadlock at any price, it would be logical to give Parliament, which represents the citizen, the last word on any internal legislation and the Council, which represents the governments, the last word on external relations.

2 – The weighting of votes on the Council, which caused so many headaches for the negotiators of the Treaty of Nice, no longer arises at all in the same terms within a generalized system of codecision. The reason being that, in this case, the larger States have a guarantee that their weight will be very precisely taken into account by the parliamentary vote: suddenly, the Council becomes the main forum for the smaller States to express their opinions. A fair balance between the two can be achieved by ensuring demographic proportionality of the composition of Parliament (one citizen = one vote) and equality of voting rights on the Council (one state = one vote). At the same time, the requirement that each country be represented by one of its citizens on the Commission (or Authority) could cease to exist.

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