

THE EUROPEAN CONVENTION

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COVER NOTE

from	Secretariat
to	The Convention
Subject :	Contribution submitted by Mr Andrew Duff on behalf of a number of members and alternate members of the Convention: "Key elements of Institutional Reform"

The Secretary-General of the Convention has received from Mr Andrew Duff, member of the Convention, the attached contribution, on behalf of the members and alternate members listed in the Annex.

Contribution by Mr Elmar Brok, Mr Karel De Gucht, Mr Lamberto Dini, Mr Elio Di Rupo, Mr Andrew Duff, Mr Olivier Duhamel, Mr Caspar Einem, Mr Ben Fayot, Mr Paul Helminger, Mrs Sylvia-Yvonne Kaufmann, Mr Peeter Kreitzberg, Mr Alain Lamassoure, Mrs Johanna Maij-Weggen, Mr Luis Marinho, Dr Jurgen Meyer, Mr Louis Michel, Mr Jozef Oleksy, Mrs Anne Van Lancker, Mr Johannes Voggenhuber, and Mr Josef Zieleniec, Members of the Convention; and by Mrs Pervenche Beres, Mrs Maria Berger, Mr Carlos Carnero Gonzalez, Mr John Cushnahan, Mr Neil MacCormick, Lord MacLennan, Mrs Eleana Paciotti, Mr Nicolas Schmit, Mr Adrian Severin, Mr Istvan Szent-Ivanyi, and Mr Wim Van Eekelen, Alternate Members of the Convention.

KEY ELEMENTS OF INSTITUTIONAL REFORM

Heartened by the work of the Convention so far, the signatories to this contribution have reached broad and firm agreement on the following proposals for institutional reform.

The list is not exhaustive and is in summary form, yet it comprises an indispensable reform package if the enlarged Union is to be more simple, efficient, effective, transparent and, above all, democratic.

The Council

1. Qualified majority voting (QMV) must be the norm. All legislative matters decided by qualified majority voting in the Council must be co-decided by the European Parliament according to a procedure based on the existing Article 251 TEC.
2. When acting in its legislative capacity the Council must be open to the press and public. It will publish its proceedings.
3. QMV should be determined as a majority of member states representing a majority of the population of the Union.
4. In certain cases specified in the constitution the Council should act by an enhanced or 'super QMV' — for example, to be determined by three-quarters of member states representing two-thirds of the population. These specific cases would include (i) any institutional or 'organic' law; (ii) the use of Article 308 TEC (or its equivalent); and maybe (iii) 'own resources' decisions; and (iv) certain measures on tax harmonisation.
5. The Council acts in an executive capacity in order (i) to coordinate national macro-economic policies; (ii) to conduct the Union's security and defence policy; and (iii) to concert national policies in the field of justice and interior affairs.

The Commission

6. While member states are responsible for the execution of EU policy at national level, it is the European Commission that has this responsibility at the level of the Union and for ensuring the overall faithful application of EU law.

7. The Commission will also be delegated with powers to enact secondary legislation subject to the proper scrutiny and potential call-back of either chamber of the legislature (that is, Council or Parliament).

8. The Commission must have the sole right of legislative or budgetary initiative except in the fields of (i) external security policy, where it should act on the motivation of the Council; (ii) judicial cooperation and internal security, where it shall share the initiative with the Council; and (iii) electoral procedure and parliamentary immunity, where it should be motivated by the Parliament.

The Parliament

9. In addition to its present powers, the European Parliament must have the right of assent (i) over all international treaties of the Union, including commercial agreements;¹ (ii) for measures decided under a revised Article 308; (iii) for approving differentiated integration ('closer cooperation') among certain member states only; and (iv) for all revisions of the constitution.

10. The Parliament's electoral procedure should be revised to allow for the election of a proportion of its members from an EU-wide list.²

Integrity of the legal order

11. The 'three pillars' of Maastricht must be merged effectively into a single system, albeit with a variety of decision-making procedures. The Union must enjoy a single personality in terms of international law.³

12. Accordingly, the purview of the European Court of Justice must be extended to cover the whole spectrum of EU activity. It should develop its role as a constitutional court in respect of competences and fundamental rights.

13. The Charter of Fundamental Rights must be installed prominently in the constitution with mandatory effect upon Union institutions and agencies, including member states when and in so far as they implement EU law and policy.

14. An approach to the Court of Justice should be permissible by any natural or legal person if he or she is either individually or directly concerned, in particular in the field of fundamental rights.⁴

15. There should be an explicit hierarchy of legal norms.

¹ That is, Article 24 TEU and Articles 133, 300 and 310 TEC.

² Fayot, MacCormick and Schmit notify a reservation on this point.

³ We are also assuming that the European Community and EURATOM will cease to exist separately from the EU.

⁴ In other words, a change from the current provision of Article 230 where both individual and direct concern are required.

The budget

16. The financial perspectives of the Union must be mandatory. Accordingly, the distinction between compulsory and non-compulsory sector of the budget should be suppressed. The budgetary procedure could be in the form of simplified codecision.

Strategic planning

17. The multi-annual policy strategy of the Union should be decided by the European Council on a proposal of the Commission and after having consulted the Parliament.

18. Within this context, the annual legislative programme of the Union should be decided by the Commission after having consulted the Council and Parliament.

Miscellaneous

19. All institutions of the Union should be responsible for their own practical working arrangements.¹

20. Derogations from the Treaties should be discontinued.

21. The cooperation procedure (Article 252 TEC) should be suppressed.

22. A specific new competence for energy policy should be introduced.²

Constitutional settlement

23. The constitutional order of the refounded Union must be based on the dual legitimacy of the member states and the peoples or citizens of Europe.

24. Future revisions of the constitution should be devised by a Convention comparable to the present one.

25. Amendment of Part Two of the constitution (policies and their implementation) must be capable of being effected by a lighter procedure than that pertaining to Part One (constitutional structure, competences and institutional powers), possibly by super-QMV.

¹ Beres, Duhamel and Schmit notify reservations on this point.

² Incorporating *inter alia* appropriate provisions of the EURATOM Treaty.