

**NOTE**

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Subject : **Summary report on the plenary session <sup>1</sup>**  
**– Brussels, 17 and 18 March 2003**

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**I. OPENING OF THE SESSION**

- 1. Presentation of the drafts of**
- **Articles 38 to 40 on Union finances, and**
  - **Article 31 of Part One and the articles in Part Two on the area of freedom, security and justice**

On behalf of the Praesidium, the Chairman presented two new sets of articles, those relating to Title VII of the preliminary draft text on Union finances (CONV 602/03) and those relating to the area of freedom, security and justice (CONV 614/03), which are the subject of Article 31 in Part One and of a chapter in Part Two. He announced the setting up of a discussion circle on budgetary procedure questions.

The Chairman outlined the content of the two sets of articles and emphasised that, in the shape of the articles on the area of freedom, security and justice, the Convention was now entering upon Part Two.

The Chairman said that proposed amendments by Convention members that reached the Secretariat before Wednesday 26 March would be included in the analytical note to be drawn up by the Secretariat in time for the plenary debate.

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<sup>1</sup> The verbatim record of the plenary session is available on the website:  
<http://european-convention.eu.int>

The plenary session on 3 and 4 April would debate the two sets of articles.

## **2. Discussion of the draft of Articles 24 et seq. (CONV 571/03 and 609/03) on the instruments of the Union**

In his introduction, Vice-Chairman Amato reviewed the proposed amendments to the draft articles, stressing that, whilst they involved partial modifications, they confirmed the general approach adopted by the Praesidium.

There was broad agreement on the type of simplification proposed by these draft articles. The hierarchy of legislation, including the new category of delegated acts, the implementing acts, and the distinction between legislative and non-legislative acts were all welcomed.

A number of Convention members proposed adding a further act to the proposed catalogue: the organic law. This instrument would be reserved in particular for constitutional questions and for own resources, and would be subject to a procedure whereby the Council and the Parliament would adopt decisions on the basis of enhanced majorities. Some Convention members requested that the open method of coordination be added, while others opposed such a step. Several speakers wanted social agreements to be able to have the status of framework laws.

The first paragraph of the draft Article 25, which makes the legislative procedure (previously codecision) the general rule for the adoption of legislative acts, was also the subject of broad consensus. However, Article 25(2), which provides for exceptions to this rule, was questioned by a number of speakers, who considered that the Council should not be able to adopt laws and framework laws by itself. Others, while accepting the existence of exceptions, wished to have them expressly set down in the Constitution. Some could accept exceptions provided they were transitional. Several Convention members suggested that the acts should be given a different name in that event.

The second subparagraph of Article 25(1) on the specific features of the legislative procedure in the area which currently comes under the third pillar, and Articles 29, 30 and 31 (for which the Praesidium has proposed only the headings and which are intended to cover the specific features of procedures in the areas of CFSP, defence and the current third pillar) were addressed by a large number of speakers. Some Convention members felt that such specific provisions were not appropriate. Others considered that the decision to eliminate the pillars was subject to the maintenance of certain specific procedural features in these areas.

There was broad consensus on the principle of the transparency of procedures for the adoption of legislative acts. After a number of speakers had stressed that the Council should sit in public throughout the legislative procedure, Vice-Chairman Amato noted that this was indeed how the Praesidium had envisaged this principle being implemented. The introduction of a principle of good drafting for Union acts was proposed by one Convention member.

Several speakers voiced their perplexity at what they viewed as a new development: the possibility of adopting non-legislative acts. Vice-Chairman Amata stressed that this was not a new development and that such (directly applicable) non-legislative acts already existed in the European Union.

The creation of a new category of delegated acts met with broad agreement, and its usefulness was highlighted by a large number of Convention members. As regards the form of such acts, some Convention members considered that they should be non-legislative while others argued that they should be legislative in character. The question of whether a delegated act can modify and/or develop a legislative act is linked to these different perceptions.

In relation to the conditions of application of delegated acts, some Convention members stressed that the Council and the Parliament should be able to exercise the power of revocation independently of each other.

With respect to implementing acts, some Convention members underlined the principle, enshrined in Article 28, whereby the Union's legally binding acts were, as a general rule, implemented by

Member States and only exceptionally by the Commission and, where appropriate, by the Council. A number of speakers opposed the application of the legislative procedure to the adoption of control mechanisms for implementing acts. Other wished to simplify, or even eliminate, the current committee system.

### **Chairman's conclusions**

In his conclusions, the Chairman noted that the contributions by Convention members had, on the whole, supported the general approach adopted by the Praesidium, while making very pertinent points in frequent instances. He highlighted the following:

- The planned simplification, and in particular the proposal to distinguish between legislative acts and non-legislative acts, had been well received. The Praesidium would take account of proposals that could supplement or improve its draft.
- The catalogue of instruments seemed to have been well received, although some members had proposed adding a new instrument (the organic law), which would address constitutional questions.
- There was broad consensus on the general rule of adopting legislative acts in accordance with the legislative procedure. However, concerns had been voiced about the fact that exceptions to this rule had been provided for. The Chairman pointed out that the Praesidium's intention had always been to specify these exceptional cases during work on Part Two of the Constitution, when the legal bases for Union policies would be examined.
- One of the most innovative features of the Praesidium's draft was the delegated act, which had been very well received.
- The control mechanisms for implementing acts and the procedure laid down for adopting them had been addressed by large number of contributors, although the views expressed had been somewhat contradictory. Some Convention members wished to retain the current procedure (unanimous Council decision after consultation of the Parliament), while others wished to simplify, or even eliminate, the current committee system. The Chairman noted that, in reality, committee procedures came under the scope of secondary legislation and not of the Constitution.

- A number of members spoke on Articles 29, 30 and 31, which concern the specific features of the areas of CFSP, defence policy and the current third pillar. Here too, there were contradictions: some members did not want specific rules laid down for these policies, particularly as regards police and criminal justice policy; others did not want to have these policies mentioned in Title V, for fear that they would lose their specific features. The decision on whether to retain Articles 29-31 and on their content would have to be taken on the basis of work on the content of Part Two.

The Chairman concluded by noting that the Praesidium would re-examine this subject very carefully in the light of the amendments proposed and comments made.

### **3. Debate on the Protocol on the application of the principles of subsidiarity and proportionality (CONV 579/02)**

The Chairman noted that the proposal by the Praesidium and the summary note drawn up by the Secretariat (CONV 610/1/03) had been generally welcomed. A large number of Convention members had not, in any event, made observations or comments. The debate focused on the following points:

#### **Period of time to be given to national parliaments**

Many Convention members argued that the procedure for examining, including at a technical level, the Commission's legislative proposal should not be initiated, except in urgent cases, by either the Council or the Parliament during the six weeks after the Commission proposal had been forwarded to national parliaments. Others claimed that the legislative procedure, which was already deemed excessively long by many, would be slowed down considerably as a result. That would run counter to the Working Group's conclusions, which specified that the mechanism envisaged should neither slow down nor block the legislative procedure.

### **The concept of "national parliament"**

Many Convention members proposed that each of the two chambers in States which had a bicameral system should be able to trigger the "early-warning system" directly. They pointed out that in States with a bicameral system the second chamber represented and often expressed interests which were different from those of the first.

A number of Convention members put forward a compromise solution with the aim of making progress and not penalising Member States with unicameral parliaments. Under that proposal, when the one-third threshold was calculated, reasoned opinions expressed by unicameral parliaments would be given two votes as opposed to one for opinions issued by each chamber of a bicameral parliament. This proposal was well received on the whole.

### **Early-warning system**

The one-third threshold was generally well received. However, several Convention members wanted the threshold raised to two thirds. Others suggested lowering it to one quarter with the aim of strengthening the power of national parliaments.

Another group suggested that, in addition to the one-third threshold, a second, two-thirds threshold, be introduced which, if exceeded, would result in the proposal being withdrawn by the Commission or legislative scrutiny by the Council and Parliament being discontinued. This suggestion was opposed. Many Convention members were against this proposal, on the grounds that a "veto" mechanism would not be acceptable and would infringe the decision-making autonomy of European bodies. They also pointed out that at political level opposition by two thirds of national parliaments would of necessity result in rejection of the Commission proposal in the Council and/or the Parliament.

### **The Conciliation Committee**

A large number of Convention members voiced doubts as to the wisdom of allowing a second opportunity to apply the early-warning system when the Conciliation Committee was convened. They wondered how this arrangement would work in practice, pointing out that the interval

between the convening of the Committee and the holding of its meeting was sometimes very short. They suggested that this item be withdrawn.

### **The arrangement for actions before the Court of Justice**

Two separate points were addressed:

- direct referral by national parliaments: many Convention members suggested that parliaments should be able to bring actions directly before the Court of Justice, without having to go through their Member State. Others were opposed to this solution, claiming that representation before the Court should be reserved for Member States;
- how to treat regions with legislative powers: many Convention members were strongly in favour of regions with legislative powers also being able, directly or indirectly, to refer any infringement of the principle of subsidiarity to the Court of Justice.

### **Provisions concerning the Committee of the Regions**

Some Convention members, in particular the observers from the Committee of the Regions, wanted to see the Committee's subsidiarity watchdog powers extended and aligned on those of national parliaments. Others query the case for its involvement.

### **Chairman's conclusions**

The Chairman:

- noted that there was considerable demand, particularly in the written contributions, for national Parliaments, like the European Parliament and the Council, to receive the Commission's annual report on subsidiarity. This point did not seem to raise any difficulties and should meet with a positive response,
- remarked that, although differing opinions had been expressed, setting the threshold for national parliaments at one third was a compromise for which there seemed likely to be a consensus.

- stated that the proposal to introduce, in addition to the early-warning system, a "red card" or veto system in the event of the two-thirds threshold for national parliaments being exceeded, had given rise to strong opposition. It did not seem likely to lead to consensus.
- noted, as regards the treatment of bicameral parliaments, that the proposal by several Convention members for two votes to be assigned to unicameral parliaments and one to each of the chambers of bicameral parliaments in calculating the threshold, had been greeted positively. The proposal seemed capable of satisfying the vigorous demand for second chambers to be allowed to participate in the early-warning system, but without undermining the internal organisation of each State and without disadvantaging those Member States whose parliaments had only one chamber. He therefore felt that this ingenious suggestion warranted further investigation by the Praesidium.
- said the Praesidium would also have to think about how to take into account the role of regions with legislative powers.
- finally, noted that the proposal to allow national parliaments a further opportunity when the Conciliation Committee was convened had often been contested, mainly because it had been misunderstood. The Praesidium would have to come back to this point, in order, very probably, to reconsider the suggestion or to clarify it further.

### **3 (2) Debate on the Protocol on the role of national parliaments in the European Union (CONV 579/03)**

The Chairman introduced the discussion, stating that four main themes emerged when the 41 proposals for amendment of the draft Protocol on the role of national parliaments (CONV 579/03) were analysed. These themes were: the manner in which the role of national



parliaments is reflected in the Protocol, the scope of the information transmitted to national parliaments, the timeframes set, particularly for the transmission of documents to parliaments, and interparliamentary cooperation.

The debate on the Protocol concentrated mainly on these themes. The Protocol's overall approach was not questioned. Some members suggested that the Protocol on national parliaments could be merged with the one on the application of the principles of subsidiarity and proportionality given the close links between the matters.

### **The manner in which the role of national parliaments is reflected in the Protocol**

Some members underlined the importance of giving greater prominence to the role of national parliaments and the fact that their involvement would bring the Union closer to its citizens. One member proposed an amendment relating to insertion into the text of the Protocol of a reference to the "Copenhagen guidelines" (adopted by COSAC). Some pointed out that parliaments made their influence felt mainly through the political control which they exercised on the actions of their own governments and that better and more rapid access to information should make it easier to exercise such control. One member remarked that national parliaments should fully exploit existing possibilities under the provisions of their national constitutions.

Some were in favour of holding an annual debate centred on the Commission's work programme or the main features of the European Union in each of the national parliaments of the Member States. Some members felt that national parliaments should be able to submit opinions on the substance of proposals, including application of the proportionality principle. One member proposed that national parliaments be invited to give an opinion on draft Union acts relating to the broad outlines of economic and social policies.

### **The scope of the information transmitted to national parliaments**

Several members proposed adding an explicit reference, for example in the first paragraph, to the sending of the Commission's annual programme (legislative and work programme) to national

parliaments. One member proposed that the programme should be submitted to national parliaments at the same time as to the European Parliament. One member felt that it should be the Council's responsibility to forward legislative proposals (paragraph 4 of the Protocol) and not the Commission's. One member wanted the Council also to send records of debates to national parliaments (paragraph 5 of the Protocol).

### **The timeframe, particularly for sending documents to the parliaments**

Several members wanted to tighten up the text of paragraph 4 of the Protocol, which mentions the six-week period which must elapse between a legislative proposal being made available by the Commission and the date when it is placed on a Council agenda for adoption or for adoption of a position under the legislative procedure. They proposed inserting an additional provision as proposed by Working Group IV to the effect that no agreement, even a preliminary one, could take place within Council bodies (Working Parties and Coreper) during that period. Some proposed laying down a set period of ten days between Coreper's deliberations and the Council meeting at which the proposal would be discussed. Others rejected these proposals and underlined the importance of not weighing the system down by adding such constraints.

### **Interparliamentary cooperation**

Some members wanted paragraph 8 of the Protocol to be worded more dynamically to say that the European Parliament and national parliaments should encourage or promote interparliamentary cooperation (rather than "examine" how it might be promoted). Some stressed the importance of regular meetings between European and national parliamentarians, without creating new institutions. One Convention member proposed that the Convention return to this issue when discussing Title VI, "the democratic life of the Union." One member referred to an amendment to the effect that the European Parliament should consult COSAC with regard to promoting interparliamentary cooperation.

Several members wanted to see COSAC's role enhanced, with the clear recognition that this body should not become a new institution, and the text of the Protocol made more explicit in

COSAC's regard. COSAC's role as a focus for coordination and a forum for debate between national parliaments was stressed. A few members felt that, despite the ongoing discussion of reform, COSAC was still not playing its full role, which should be more than the exchange of information and best practice. One member wanted the Protocol to make provision for the Council to refer specific texts to COSAC.

It was suggested that the Protocol should include the organisation each year of a European week, running simultaneously in all national parliaments and involving Members of the European Parliament. One member of the Convention thought that the importance of bilateral interparliamentary cooperation should also be underlined.

**In conclusion, the Chairman:**

- noted that, on the whole, the Protocol's approach to the role of national parliaments in the European Union had not been called into question. He also noted that there were no calls for greater institutional involvement of national parliaments. Several members did, however, propose adding other tasks or activities to the Protocol, including the right to give an opinion on the substance of legislative proposals as well as on compliance with subsidiarity, the organisation of annual debates on the Commission's work programme, the main features of the Union, or the broad economic and social policy guidelines;
- noted various proposals regarding further categories of additional information which parliaments should receive directly from the Union's institutions. He noted agreement on including a clearer reference to the Commission's annual work programme. He pointed out, however, that a proper balance had to be struck to ensure that national parliaments received important information but were not inundated with information indiscriminately;
- pointed out that the real problem lay in defining time frames, an issue that would have to be examined more closely in order to see whether further restrictions should not be placed on the institutions' activities in the period before the time limits expired, giving national parliaments more time to react;

- said that the question of interparliamentary cooperation should be discussed once more when proposals on the Union's institutional system and its democratic life were scrutinised. The question was whether an interparliamentary forum, modelled on the European Convention, should be set up.

#### **4. Other business – communication from the Praesidium**

##### **Presentation of the report by the Working Party of Experts from the Legal Services of the Institutions (Part Two of the Constitution)**

The Chairman reminded the meeting that on 29 January 2003 the Praesidium had agreed to ask the Legal Services of the European Parliament, the Council and the Commission for their help in making the technical adjustments to Part Two of the Treaty.

He presented the outcome of their work (CONV 618/03), pointing out that the text drawn up by the legal experts was only a reference document designed to assist the Convention in preparing Part Two.

**Plenary session, Monday 17 and Wednesday 18 March 2003**

**LIST OF SPEAKERS**

**in order of speaking**

*Monday 17 March*

**2. Debate on draft Articles 24 et seq. (CONV 571/03 and CONV 609/03)**

Mr Giuliano AMATO - Vice-Chairman  
Mr Ernâni LOPES - Portugal (Government)  
Mr Alain LAMASSOURE - European Parliament  
Mr Dimitrij RUPEL - Slovenia (Government)  
Mr Jürgen MEYER - Germany (Parliament)  
Ms Eduarda AZEVEDO - Portugal (Parliament)  
Ms Lena HJELM-WALLÉN - Sweden (Government)  
Mr Jozef OLEKSY - Poland (Parliament)  
Mr Henning CHRISTOPHERSEN - Denmark (Government)  
Mr Klaus HÄNSCH - European Parliament  
Ms Marietta GIANNAKOU - Greece (Parliament)  
Mr António VITORINO - Commission  
Mr Johannes VOGGENHUBER - European Parliament  
Mr Tunne KELAM - Estonia (Parliament)  
Mr Andrew DUFF - European Parliament  
*(Blue cards: Baroness Scotland of Asthal, Rack, Berès, Bonde, Duff)*  
Ms Lenka ROVNA - Czech Republic (Government)  
Mr Göran LENNMARKER - Sweden (Parliament)  
Mr Kimmo KILJUNEN - Finland (Parliament)  
Mr Hannes FARNLEITNER - Austria (Government)  
Mr David HEATHCOAT-AMORY - United Kingdom (Parliament)  
Mr Péter BALÁZS - Hungary (Government)  
Mr Lamberto DINI - Italy (Parliament)  
Mr Caspar EINEM - Austria (Parliament)  
Ms Pascale ANDREANI - France (Government)  
Ms Hanja MAIJ-WEGGEN - European Parliament  
Ms Teija TIILIKAINEN - Finland (Government)  
Mr Antonio TAJANI - European Parliament  
Mr Pierre CHEVALIER - Belgium (Government)  
Mr Alfonso DASTIS - Spain (Government)  
*(Blue cards: Paciotti, Lennmarker, Duff, Fayot, Barnier, Tomlinson, Du Grandrut, Van Lancker)*  
Mr Jelko KACIN - Slovenia (Parliament)  
Mr Vytenis ANDRIUKAITIS - Lithuania (Parliament)  
Baroness Scotland of Asthal - United Kingdom (Government)  
Mr Wolfgang GERHARDS - Germany (Parliament)  
Mr Carlos CARNERO - European Parliament  
Mr Bobby McDONAGH - Ireland (Government)

Mr Rihards PIKS - Latvia (Parliament)  
 Mr Elmar BROK - European Parliament  
 Mr Alberto COSTA - Portugal (Parliament)  
 Mr Jens-Peter BONDE - European Parliament  
 Mr George JACOBS - Social partners  
 Mr Soren LEKBERG - Sweden (Parliament)  
 Mr Hans-Martin BURY - Germany (Government)  
*(Blue cards: Duff, Muscardini, d'Oliveira Martins, MacCormick)*  
 Ms Riitta KORHONEN - Finland (Parliament)  
 Mr Adrian SEVERIN - Romania (Parliament)  
 Mr Emilio GABAGLIO - Social Partners  
 Mr Roberts ZILE - Latvia (Government)  
 Mr Valdo SPINI - Italy (Parliament)  
 Ms Maria BERGER - European Parliament  
 Mr Edmund WITTBRODT - Poland (Parliament)  
 Ms Cristiana MUSCARDINI - European Parliament  
 Ms Sylvia-Yvonne KAUFMANN - European Parliament  
 Mr Henrik HOLOLEI - Estonia (Government)  
 Ms Elena PACIOTTI - European Parliament  
*(Blue cards: MacIennan of Rogart, Van Eekelen, Heathcoat-Amory)*

*Tuesday 18 March*

### **3. Debate on:**

- **draft Protocol on the application of the principles of subsidiarity and proportionality  
(CONV 579/03, CONV 610/03)**

Mr Valéry GISCARD d'ESTAING - Chairman  
 Mr René VAN DER LINDEN – Netherlands (Parliament)  
 Mr Louis MICHEL - Belgium (Government)  
 Ms Gisela STUART - United Kingdom (Parliament)  
 Mr Hannes FARNLEITNER - Austria (Government)  
 Mr Peter SERRACINO-INGLOTT - Malta (Government)  
 Mr Edmund WITTBRODT - Poland (Parliament)  
 Baroness Scotland of Asthal - United Kingdom (Government)  
 Mr Hubert HAENEL - France (Parliament)  
 Mr Juraj MIGAS - Slovak Republic (Government)  
*(Blue cards: Di Rupo, Tusek, Dini, Dybkjaer, Andriukaitis, Dastis)*  
 Ms Cristiana MUSCARDINI - European Parliament  
 Mr Frans TIMMERMANS - Netherlands (Parliament)  
 Mr Michel BARNIER - Commission  
*(Blue cards: Haenel, Duff, Bonde)*  
 Mr Dick ROCHE - Ireland (Government)  
 Mr Pierre LEQUILLER - France (Parliament)  
 Mr Göran LENNMARKER - Sweden (Parliament)  
 Mr Andrew DUFF - European Parliament  
 Mr Alberto COSTA - Portugal (Parliament)  
 Ms Linda McAVAN - European Parliament

Mr Jan FIGEL - Slovak Republic (Parliament)  
 Mr Gijs DE VRIES - Netherlands (Government)  
 Mr Jürgen MEYER - Germany (Parliament)  
 Mr Jan ZAHRADIL - Czech Republic (Parliament)  
 Mr Jozef OLEKSY - Poland (Parliament)  
 Mr Poul SCHLÜTER - Denmark (Government)  
 Mr Alain LAMASSOURE - European Parliament  
 Mr Hans Martin BURY - Germany (Government)  
 Mr Timothy KIRKHOPE - European Parliament  
 Mr Ernâni LOPES - Portugal (Government)  
 Ms Riitta KORHONEN - Finland (Parliament)  
 Mr Wolfgang GERHARDS - Germany (Parliament)  
 Mr Josep BORRELL - Spain (Parliament)  
 Mr Adrian SEVERIN - Romania (Parliament)  
 Mr Sören LEKBERG - Sweden (Parliament)  
 Mr Guntars KRASTS - Latvia (Parliament)  
 Ms Pervenche BERÈS - European Parliament  
 Sir Neil MacCORMICK - European Parliament  
 Ms Eduarda AZEVEDO - Portugal (Parliament)  
 Mr Mihael BREJC - Slovenia (Parliament)  
 Mr Caspar EINEM - Austria (Parliament)  
*(Blue card: Stuart)*  
 Mr Kimmo KILJUNEN - Finland (Parliament)  
 Mr Pat CAREY - Ireland (Parliament)  
 Mr Reinhard BÖSCH - Austria (Parliament)  
 Mr Danny PIETERS - Belgium (Parliament)

**Debate on:**

- **draft Protocol on the role of national parliaments  
(CONV 579/03, CONV 611/03)**

Mr Proinsias DE ROSSA - Ireland (Parliament)  
 Mr Vytenis ANDRIUKAITIS - Lithuania (Parliament)  
 Mr Alexandre ATHANASIU - Romania (Parliament)  
 Mr Alberto COSTA - Portugal (Parliament)  
 Mr Hubert HAENEL - France (Parliament)  
 Ms Pervenche BERÈS - European Parliament  
 Mr Costantin ENE - Romania (Government)  
 Mr Elmar BROK - European Parliament  
*(Blue cards: Lennmarker, Andreani)*  
 Mr Jos CHABERT - Committee of the Regions  
 Ms Claude DU GRANDRUT - Committee of the Regions  
 Mr Iñigo MENDEZ DE VIGO - European Parliament  
 Mr George PAPANDREOU - Greece (Government)