

CONV 740/03

FÖLJENOT

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till:	Konventet
Ärende:	Rapport från brittiska överhusets särskilda EU-utskott, framlagd av Lord Tomlinson och Lord MacLennan: "Europas framtid: konstitutionellt fördrag - utkast till artiklar om institutionerna"

Konventets generalsekreterare har från Lord Tomlinson och Lord MacLennan, suppleanter i konventet, mottagit bifogade rapport från det brittiska överhusets särskilda EU-utskott, som de lägger fram för konventet å egna vägnar.

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**SELECT COMMITTEE ON
THE EUROPEAN UNION**

**THE FUTURE OF EUROPE:
CONSTITUTIONAL TREATY - DRAFT
ARTICLES ON THE INSTITUTIONS**

WITH EVIDENCE

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THE FUTURE OF EUROPE: CONSTITUTIONAL TREATY – DRAFT ARTICLES ON THE INSTITUTIONS

INTRODUCTION

The Praesidium of the Convention on the Future of Europe has published Draft Articles of the proposed Constitutional Treaty concerned with the Institutions. Our Committee¹ has been commenting on the Draft Articles as they have emerged from the Praesidium, with a view to making short reports to the House for information in advance of the Plenary debate in the Convention on the relevant Articles. This report falls into that sequence. The Committee will continue to keep the work of the Convention under review, and will in particular scrutinise the final output of the Convention in advance of the forthcoming IGC. Printed with this report is evidence we took from Peter Hain, the Government's representative on the Convention².

The Laeken declaration³ set the direction on the debate on the future of Europe, clearly describing aspirations and posing questions to be answered through a Convention made up of the main parties involved in the debate. Laeken set high ideals, stating that the EU derives its legitimacy not only from its democratic values but also from "democratic, transparent and efficient institutions". The draft articles for Title IV of Part I of the Constitution should accordingly be expected to increase the democratic legitimacy and transparency of the current institutions, improve the efficiency of decision making, and also address the role of national parliaments.

Title IV of Part I of the Constitutional Treaty will redefine the competences of the main European institutions in an attempt to clarify the Union's inter-institutional balance. This has led to a number of proposals on the institutions, focusing on the balance of power between the Council, the Commission and the Parliament in particular. France and Germany issued a joint contribution to the Convention on the Union's institutional structure before the Convention plenary debate on the institutions on 20 and 21 January 2003⁴. At the end of February 2003, Peter Hain made a joint contribution with his Spanish counterpart Ana Palacio to the Convention entitled 'The Union institutions'⁵.

The key elements of the Franco-German proposal are:

Election of Commission President by qualified majority vote by European Parliament, approved by the European Council by QMV;

The Commission President would construct the College of Commissioners which would be appointed by the Council by QMV;

Election of one person as President of the European Council for 5 year term or 2.5 year renewable term by QMV in the European Parliament, approved by the European Council by QMV;

This Council President would be responsible for preparing, presiding over and giving impetus to the European Council's work on the overall strategy of the EU (together with the Commission) and defining the Common Foreign and Security Policy (CFSP);

¹ See Appendix.

² References in the form (Q00) are to that evidence.

³ 14 December 2001 <http://ue.eu.int/Newsroom/related.asp?max=1&bid=76&grp=4061&lang=1>

⁴ CONV 489/03.

⁵ CONV 591/03.

The Council President would represent the Union on the international scene at meetings with Heads of State and Government;

There would be a 'double-hatted' Foreign Policy representative attached to the Council, but with a presence in the Commission: this Foreign Policy Representative would have a formal right of initiative in the CFSP;

The possibility of a European Congress bringing together representatives from the EP and national parliaments once a year to adopt resolutions or recommendations only.

The key elements of the UK-Spanish proposal are:

Commission President appointed by QMV in the European Council, approved by the European Parliament;

Full-time 'chair' of the European Council appointed for four years;

'Chair' responsible for presiding over European Council meetings, ensuring follow-up of decisions taken there by chairing General Affairs Council, adding profile to the external representation of the EU and informing EP of work;

Collective Council Presidency consisting of a team of Member States. The share of 'portfolios' within the team could be fixed in advance. Each member of a four member team chairs two Ministerial Councils for six months, so that over two years they chair the different Councils;

Extension of European Parliament power through broader application of co-decision procedure and QMV in the Council;

Minister of Foreign Affairs who chairs External Relations meetings, participates in the Commission meetings and has a formal right of initiative in the CFSP;

Possibility of European Congress bringing together representatives from the EP and national parliaments once a year to adopt resolutions or recommendations only;

More effective division of labour between the Court of Justice, the Court of First Instance and the judicial panels foreseen in the Treaty of Nice. The ECJ should only handle the most important cases.

While there are differences between these proposals, the broad thrust is the same: the Council should be granted greater continuity through a reform of the six-monthly presidencies. Both proposals would strengthen the role of the Council.

Seven of the smaller Member States developed a 'common voice' on these issues in preparation for the spring European Council on 21 March 2003. By the Athens Council on 16 April 2003, 16 of the smaller current and future Member States had signed up to a paper entitled *Reforming the institutions: Principles and Premises*¹. This calls for maintaining and reinforcing the Community method and takes a firm stand against "any arrangements which sought to establish a hierarchy of Member States", and against the establishing of a permanent Council President which the smaller States see as likely to be a former leader of large Member State who would only take large Member State interests into account. To prevent this, the small countries want to maintain the current six-month rotating Presidency.

The paper also calls for a merging of the foreign policy posts held by the External Relations Commissioner and the EU foreign policy High Representative. This (the paper argues) would be "seen as highly significant and strengthening the coherence and visibility of the Union's external projection and coherence." The small countries also propose that the Commission President be elected by "a joint electoral college" made up of European and national parliaments. The signatories also call for one commissioner per country to be maintained "provided there is full equality."

Sweden, Denmark and Poland have not made a clear commitment to any particular proposals although the Government counts on their support for the strengthening of the Council².

¹ CONV 646/03.

² Q4.

Articles 14 to 23 on the institutions and a new Article X were published by the Convention Praesidium on 23 April 2003. In the sections that follow we consider the implications of the proposed articles for the three key institutions, indicating, where we can, the position of the United Kingdom Government and giving our own comments on the proposed Articles.

We make this report to the House for information. We stress, however, that it is clear that the balance of power in the European Union is going to shift from the Commission in favour of the Member States if the proposals here are adopted. This makes it all the more important that the Treaty makes adequate provision for the role of national parliaments and that all national parliaments effectively hold their own national ministers to account¹. In addition, steps need to be taken to ensure both accountability and transparency in the work of the Council.

¹ We draw attention to our recent reports on the Role of National Parliaments and Subsidiarity (11th Report Session 2002-03, 11 March 2003, HL Paper 70) in which we propose strengthening the role of national parliaments; and on European Scrutiny (1st Report Session 2002-03, 3 December 2002, HL Paper 15) in which we make proposals for enhanced scrutiny by national parliaments.

THE PROPOSED INSTITUTIONAL ARTICLES

Article 14: The Union's Institutions

1. The Union shall be served by a single institutional framework which shall aim to:
 - advance the objectives of the Union,
 - promote the values of the Union,
 - serve the interests of the Union, its citizens and its Member States,and ensure the consistency, effectiveness and continuity of the policies and actions which it undertakes in pursuit of its objectives.
2. This institutional framework comprises:
 - The European Parliament,
 - The European Council,
 - The Council of Ministers,
 - The European Commission,
 - The Court of Justice of the European Union,
 - The European Central Bank,
 - The Court of Auditors.
3. Each institution shall act within the limits of the powers conferred on it in the Constitution, and in conformity with the procedures and conditions set out in it. The institutions shall practice full mutual cooperation.

Article 14 provides for the Union to be “served by a single institutional framework” (as does Article 3TEU). This may mean in effect that the three pillar structure adopted at Maastricht is abolished, although it is clearly intended by our Government¹ that inter-governmentalism will remain the norm for matters currently under the Defence and Security Pillar. Changing the procedures even for JHA matters alone, however, could have consequences for national parliamentary scrutiny, by increasing the number of proposals that could be subject to scrutiny (for example, an enhanced role for the European Parliament would mean more texts emerging from that body that need consideration).

Article 15: The European Parliament

1. The European Parliament shall, jointly with the Council, enact legislation, as well as exercise functions of political control and consultation as laid down in the Constitution. It shall elect the President of the European Commission.
2. The European Parliament shall be directly elected by universal suffrage of European citizens in free and secret ballot for a term of five years. Its members shall not exceed seven hundred in number. Representation of European citizens shall be degressively proportional, with a minimum threshold of four members per Member State.
3. The European Parliament shall elect its President and its officers from among its members, for a term of five years.

Article 15(1) presents in simple language the function of the Parliament (largely unchanged from the existing Treaties) as follows:

“The European Parliament shall, jointly with the Council, enact legislation, as well as exercise functions of political control and consultation as laid down in the Constitution. It shall elect the President of the European Commission.”

¹ See evidence from Dr Denis MacShane in our 15th Report on the Convention's Working Groups on Defence and External Action (HL Paper 80, 31 March 2003, Q 24).

What is significant, however, is the presumption that co-decision will become the normal method of agreeing EU laws. While this is welcome from the point of view of accountability (in that the European Parliament is to be more involved) it will mean that there is a greater responsibility on national governments and national parliaments to ensure that they perform effective scrutiny of proposals subject to such procedures. We have already made recommendations to this end¹.

We have ourselves made a small number of recommendations for changing the functions of the Parliament (for example by providing a greater role for the Parliament to scrutinise some subordinate legislation (Comitology))². **We wish to see further consideration given to enhancing the Parliament's scrutiny role in such matters and hope to see suggestions in subsequent texts when they emerge.**

Article 15 (2) provides for elections to the Parliament. The Parliament's members shall not exceed 700. The Draft articles propose making the number of members of the European Parliament more proportional to the size of the countries' populations and states that representation shall be "degressively proportional". **We would welcome an explanation of this term.**

Article 16: The European Council

1. The European Council shall provide the Union with the necessary impetus for its development, and shall define its general political directions and priorities.
2. The European Council shall consist of the Heads of State or Government of the Member States, together with its President and the President of the Commission. The Foreign Minister shall take part in its work.
3. The European Council shall meet quarterly, convened by its President. When the agenda so requires, its members may decide to be assisted by a minister, and, in the case of the President of the Commission, a Commissioner. When the situation so requires, the President shall convene an additional meeting of the European Council.
4. Except where the Constitution provides otherwise, decisions of the European Council shall be taken by consensus.

Article 16a : The European Council Chair

1. The European Council shall elect its President, by qualified majority, for a term of two and a half years, renewable once. The person elected must be, or have been for at least two years, a member of the European Council. In cases of serious malpractice, the European Council can end his mandate according to the same procedure.
On issues concerning its common foreign and security policy he shall ensure that the Union at his level is effectively represented in the wider world.
2. The President of the European Council shall chair it and drive forward its work, ensuring proper preparation and continuity. He shall endeavour to facilitate cohesion and consensus within the European Council. He shall present a report to the European Parliament after each of its meetings.
3. The European Council may decide by consensus to create a board consisting of three of its members chosen according to a system of equitable rotation.
4. The President of the European Council may not be a member of another European institution or hold a national mandate.

¹ See our Report "Review of Scrutiny of European Legislation" (1st Report, HL Paper 15, 3 December 2002) paragraphs 32-35.

² Review of scrutiny (see n 10 above) para 91: "**We also propose that the Convention considers whether the European Parliament's procedures in this area could be strengthened** by setting up an equivalent of our committees which scrutinise Statutory Instruments, including both the Joint Committee on Statutory Instruments and the proposed new committee on the merits of Statutory Instruments; by strengthening the work of their existing committees in scrutinising comitology legislation; and by giving consideration to a procedure analogous to our negative and affirmative resolution procedure. This would supplement the Parliament's existing power to express a view on comitology legislation arising out of legislative instruments adopted under the co-decision procedure."

Under Article 14, the European Council is, for the first time, clearly identified in the Treaty as an institution of the Union¹.

Article 16(1) gives the function of the European Council:

“The European Council shall provide the Union with the necessary impetus for its development, and shall define its general political directions and priorities.”

While mainly re-stating a provision of the existing Treaty² this provision is subtly different and clearly represents a determination to ensure that the European Council has a key – and openly stated - role in driving the future of the European Union. In the existing Treaty, the European Council is to “define the general political guidelines [of the Union]”. **The new reference to “general political directions and priorities” is a highly significant change, which needs to be fleshed out and complemented with proposals for greater transparency and accountability. In addition, the relationship between the European Council and the other Council formations is not sufficiently clearly defined.**

While we accordingly welcome the restatement of the existing provision for the President to report to the European Parliament after each meeting we note that this appears to water down existing Article 4TEU which also provides for a yearly written report on the progress of the Union. **We accordingly stress the need for further accountability of the individual members of the European Council, including the President, to national parliaments. Such accountability should include accountability of an individual Head of Government to their national parliament.**

Article 16(4) states that, except where provided otherwise, decisions of the European Council shall be taken by consensus. **We would welcome an explanation of this term.**

Article 16a(1) proposes a new post of a president of the European Council serving a renewable term of two and a half years. The person shall be elected by qualified majority by the European Council. The person elected must be, or have been for at least two years, a member of the European Council but (under Article 16(4)) “may not be a member of another European institution or hold a national mandate”.

We assume that the reference to a national mandate is intended only to mean that the President will not at the same time serve as the representative of their Member State (in which case, who will?) If this is so, the proposal is that the President must be a serving or former Head of State or Government of a Member State or a former President of the Commission. We would welcome clarification that the Foreign Minister of the Union does not count as a member of the European Council for this purpose³. In any event, it is not clear that any serving holder of these offices - particularly a serving Prime Minister – would have the time also to be President of the European Council, given the nature of the role as envisaged here, or at least they would not necessarily have the time to do both jobs well. There is also no provision for substitution if a member is absent.

Article 16a(1) also provides that “On issues concerning its common foreign and security policy [the President] shall ensure that the Union at his level is effectively represented in the wider world.” It is not clear how this role would overlap – or clash - with that of the Foreign Minister (see paragraph 39 below).

Under Article 16a(3) the European Council can create a board consisting of three of its members chosen according to a system of equitable rotation. No indication is given of the function of this body but there must be an assumption that it would be a bureau to support the President and drive the Council. The purpose of this body should be explained (as should the selection procedure) and the board must be publicly accountable.

The Government is ‘particularly keen’ to see the creation of a full-time President of the Council⁴. Having a full-time President would allow for greater strategic direction and continuity than the present six-monthly presidencies. To counter-act the danger of such a President only serving the interests of the larger countries, the

¹ Although the European Council is referred to in Article 4TEU this is not an Article in the institutional section of that treaty.

² Article 4TEU.

³ Article 16 (2) states: “The European Council shall consist of the Heads of State or Government of the Member States, together with its President and the President of the Commission. The Foreign Minister shall take part in its work”. The Foreign Minister also has a role in the Commission - see paragraph 39 below – so even if the Foreign Minister does count as a member of the European Council, the post’s role in the Commission would exclude the Foreign Minister from the post of President if still serving.

⁴ Q 4.

Government supports the proposed team presidencies, called ‘boards’ in the draft articles¹. The Commission, however, opposes the proposal and will seek to amend it in the Convention².

The proposal for a President of the European Council is clearly intended to alter the institutional balance in the European Union. Further clarification – and further provisions on accountability – are required before we can give the proposal our full support.

Article 17: The Council of Ministers

1. The Council of Ministers shall, jointly with the European Parliament, enact legislation, and shall carry out policy-making and co-ordinating functions, as laid down in the Constitution.
2. The Council of Ministers shall consist of a representative of each Member State at ministerial level for each of its formations. Only this representative may commit the Member State in question, and cast its vote.
3. Except where the Constitution provides otherwise, decisions of the Council shall be taken by qualified majority.

Article 17a : Council formations

1. The General Affairs Council shall ensure consistency in the work of the Council of Ministers. With the participation of the Commission, it shall prepare meetings of the European Council.
2. The Legislative Council shall consider and, jointly with the European Parliament, enact European laws and European framework laws, in accordance with the provisions of the Constitution. Each Member State's ministerial representative may be assisted by one or, if necessary, two specialist ministers, reflecting the business on the Council agenda.
3. The Foreign Affairs Council shall, on the basis of strategic guidelines laid down by the European Council, flesh out the Union's external policies, and ensure that its actions are consistent. It shall be chaired by the Union's Foreign Minister.
4. The Council shall also meet in the configuration of an Economic and Financial Affairs Council, and a Council on Justice and Security.
5. The Council, in its General Affairs formation, may decide on further formations.
6. The European Council may decide by consensus that the Presidency of a Council formation, other than that of Foreign Affairs, should be undertaken by a Member State for a period of at least a year, taking into account European political and geographical balance and the diversity of all Member States.

Article 17b : Qualified majority

1. When the European Council or the Council take decisions by qualified majority, such a majority shall consist of the majority of Member States, representing at least three fifths of the population of the Union.
2. Within the European Council, its President and the President of the Commission do not vote.

¹ Q 5.

² “At this stage, the Commission remains unconvinced about the idea of establishing a full-time President of the European Council, assisted by a 'Bureau', and in charge of high-level external representation as well as of the organisation and preparation of the European Council's work. It is not clear how such a President would improve the effectiveness and accountability of the Union. Moreover, given that the current text transforms the European Council into a separate institution, it would inevitably lead to a duplication of the administrative machinery and create rivalry and conflicts between institutions. In addition, it is not clear who will take over the tasks currently performed by the national administrations in charge of the Presidency. The Praesidium proposals on this topic do not meet the requirements in the Declaration of Laeken of clarity, simplicity, efficiency and democratic accountability. Effective and accountable action requires that the European Council is prepared by Council and Commission.” Commission Press Release:
http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/03/611|0|RAPID&lg=EN&display.

Articles 17 specifies the powers of the Council as follows:

“The Council of Ministers shall, jointly with the European Parliament, enact legislation, and shall carry out policy-making and co-ordinating functions, as laid down in the Constitution.”

Under Article 17(3) all decisions will be by qualified majority unless provided otherwise. This provision alters that in existing Article 205 TEC under which decisions are by majority unless otherwise provided.

Article 17a makes provisions for the formations of the Council which are stated for the first time in the Treaty. There are three significant developments. First, only some of the existing Council formations are identified, although the General Affairs Council has the power to create other formations of the Council. We would welcome clarification on what is intended to happen in this regard.

Secondly, Article 17b appears to change the voting system in the European Council so that decisions could be taken by a simple majority of Member States representing more than 60 percent of EU citizens. This is a departure from the existing Treaty provisions¹ which set out a detailed system of qualified majority. **This provision requires clarification.**

Thirdly, for the first time, a specific legislative Council is identified (Article 17a(2)) as follows:

“The Legislative Council shall consider and, jointly with the European Parliament, enact European laws and European framework laws, in accordance with the provisions of the Constitution. Each Member State's ministerial representative may be assisted by one or, if necessary, two specialist ministers, reflecting the business on the Council agenda.”

We would welcome clarification on this point too. Is it intended that there be a single legislative Council (and if so how will this relate to the other policy-based formations)? Or is it intended that each policy-based formation can mutate at will into the legislative council and, if so, is there provision for more than one such legislative council to meet at any one time?

We have repeatedly called² for the Council, when legislating, to meet in public and we are pleased to see this written into the Treaty³. We eagerly await further details on how this new Council formation is to operate. **The Treaty should also provide for a verbatim record of legislative proceedings to be made quickly and readily available.**

¹ Article 205 TEC.

² See our report on the proposed Protocols on National Parliaments and Subsidiarity (11th Report, HL Paper 70, 13 March 2003, Paragraph 5).

³ Article 36(2) states “The European Parliament shall meet in public as shall the Council when it is discussing a legislative proposal”.

Article 18: The European Commission

1. The European Commission shall safeguard the general European interest. It shall ensure the application of the Constitution, and steps taken by the institutions under the Constitution. It shall also exercise coordinating, executive and management functions as laid down in the Constitution.
2. Except where the Constitution provides otherwise, Union acts can be adopted only on the basis of a Commission proposal.
3. The Commission shall consist of a President and up to fourteen other members. It may call on the help of Associate Commissioners.
4. In carrying out its responsibilities, the Commission shall be completely independent. In the discharge of their duties members of the Commission shall neither seek nor take instructions from any government or other body.

Article 18a : The President of the European Commission

1. Taking into account the elections to the European Parliament, the European Council, deciding by qualified majority, shall put forward to the European Parliament its proposed candidate for the Presidency of the Commission. This candidate shall be elected by the European Parliament by a majority of its members. If this candidate does not receive the required majority support, the European Council shall within one month put forward a new candidate, following the same procedure as before.
2. Each Member State shall submit a list of three persons, of which at least one must be a woman, whom it considers qualified to be a European Commissioner. The President-elect, taking account of European political and geographical balance, shall, from among the names submitted, select as members of the Commission up to thirteen persons chosen for their competence, European commitment, and guaranteed independence. The President and the persons so nominated for membership of the Commission shall be submitted as a body to a vote of approval by the European Parliament.
3. The Commission, as a body, shall be responsible to the European Parliament. Under the procedures set out at Art. X of the Constitution, it may pass a censure motion on the Commission. If such a motion is passed, the members of the Commission must all resign. They shall continue to handle everyday business until their successors are nominated.
4. The Commission shall work to guidelines laid down by its President. He shall decide its internal organisation, ensuring that it acts consistently, efficiently and on a collegiate basis. He shall appoint vice-presidents from among the members of the Commission.
5. The President may appoint Associate Commissioners, chosen according to the same criteria as apply for members of the Commission. Their number must not exceed the number of members of the Commission.

The Draft articles propose keeping the current system of appointment of the Commission President by the European Council (acting by QMV) and endorsement by the European Parliament (Article 18a(1)) but reducing the size of the Commission from 25 to a maximum of 15 commissioners and a number of associate commissioners (Article 18(3)). As a consequence not every Member State will appoint a Commissioner; and some existing Member States will need to give up a post.

The Government is in favour of strengthening the Commission. This means that the President of the Commission will need to continue to be ‘independent, strong and accountable but not changing according to the whims of the majority party’, as could be the case if this person were to be elected by the European Parliament¹. Hence, the Government is ‘not enthusiastic about changing the system of ratification’².

In an EU of 27 members, the Government does not favour retaining the practice of one commissioner per country. According to Peter Hain, a system of principal and delegate commissioners would retain the principle that “each country should have right of admission” while ensuring a strong, functioning Commission³.

¹ Q 4.

² Q 4.

³ Q 24.

It is reported that Commission President Romano Prodi is pushing for a reform of the Commission which would ensure that the number of Commissioners would remain such that each Member State would still appoint one Commissioner. The Commission would, however, be divided between a core of Commissioners with policy portfolios supported by a range of posts equivalent to junior ministers in the United Kingdom¹.

We are aware of arguments that having a directly elected Commission President would provide a clear link between citizens and the EU but we note that no such provision is made in the draft articles. We also note that the Government is against any enhancement of the role of the European Parliament in appointing the Commission President.

Article 19: The Foreign Minister

1. The European Council, deciding by qualified majority, with the agreement of the President of the Commission, shall appoint the Union's Foreign Minister. He shall conduct the Union's common foreign and security policy.
2. The Foreign Minister shall contribute by his proposals to the development of the common foreign policy, which he shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.
3. The Foreign Minister shall be one of the Vice-Presidents of the Commission. He shall be responsible there for handling external relations and for co-ordinating other aspects of the Union's external action. In exercising these responsibilities within the Commission, and only for these responsibilities, he shall be bound by Commission procedures.

Article 19(1) proposes creating a new post of a foreign minister to conduct the Union's common foreign and security policy. This person shall be appointed by the European Council, deciding by qualified majority, with the agreement of the President of the Commission. The Foreign Minister will be one of the Vice-Presidents of the Commission. In handling Community external relations, but only those, this person shall be bound by Commission procedures (Article 19(3)). We have considered this proposal in a separate report on the articles on external Action².

Article X: The Union's Democratic Life

1. The Congress of the Peoples of Europe shall provide a forum for contact and consultation in European political life. It shall meet at least once a year. Its meetings shall be public. The President of the European Parliament shall convene and chair them.
2. The Congress shall not intervene in the Council's legislative procedure.
3. The President of the European Council shall report on the State of the Union. The President of the Commission shall present the annual legislative programme.
4. One third of the Congress shall be members of the European Parliament: two thirds shall be representatives of national Parliaments. The total shall not exceed seven hundred.

The Draft article proposes a Congress of the Peoples of Europe, to meet at least once a year for "contact and consultation in European Political Life". One third of the Congress shall be members of the European Parliament: two thirds shall be national parliamentarians.

¹ FT 1st May 2003. In addition, the Commission has issued a press notice. See note 18 above: "The Commission's independence from national interests and its collegial nature are key to expressing the general European interest. As to the size of the Commission, the college expressed its preference to have one Commissioner per Member State. The Members of the European Commission are important in terms of embodying the European Union in each Member State. The composition of the Commission is not simply a technocratic question. The Commission must be credible through its connection with the people and by representing all sensitivities." Commission Press Release:

² 23rd Report, 13 May 2003 HL Paper 107.

The Government did not propose the Congress of Peoples of Europe but did not think it would necessarily upset the institutional balance. As such we accept that it may have some value as a symbolic focal point of the European legislative year¹.

We have, however, consistently argued against the creation of a second chamber for the European Parliament². We are satisfied that this Congress will not be a new institution (not least because it is not listed in Article 14). However, we cannot see what purpose a Congress as proposed here will serve. It has no clear function, and no mandate. It has been widely opposed in the Convention. There is a danger that such a body will repeat the failings of the 1990 Assizes³. There are as yet no details on key questions such as how the seats of national parliaments are to be allocated and we await further provisions.

We see merit in national parliaments scrutinising the annual programmes of the Council and the Commission. The body proposed, however, is too large and diffuse to provide meaningful scrutiny of these initiatives and will accordingly be purely symbolic. Presentations to a much smaller group of national parliamentarians with expertise in EU affairs would allow more time for genuine discussion and questioning and therefore be of more value in ensuring accountability.

Article 20: The Court of Justice of the European Union

1. The Court of Justice, including the High Court, shall ensure respect for the Constitution and Union law.

The Member States shall provide rights of appeal sufficient to ensure effective legal protection in the field of Union law.

2. The Court of Justice shall consist of one judge from each Member State, and shall be assisted by Advocates-General. The High Court shall include at least one judge per Member State: the number shall be fixed by the Statute of the Court of Justice. The judges of the Court of Justice and the High Court, and the Advocates-General of the Court of Justice, chosen from persons whose independence is beyond doubt and who satisfy the conditions set out at Article [XX] of Part II, shall be appointed by common accord of the governments of the Member States for a term of six years, renewable.

3. The Court of Justice shall be competent for :

- ruling on actions brought by the Commission, a Member State, an institution or a natural or legal person in the cases and according to the modalities foreseen in article [YY] of Part II;
- preliminary rulings, at the request of Member State courts, on the interpretation of Union law or the validity of acts adopted by the institutions;
- ruling on appeals on decisions given by the High Court or exceptionally reviewing these decisions under conditions laid down in the Statute of the Court.

Article 20 requires the “Court of Justice, including the High Court” (the new name proposed for the Court of First Instance) to “ensure respect for the Constitution and Union law”. Article 220 TEC currently requires the “Court of Justice and the Court of First Instance, each within its jurisdiction,” to “ensure that in the interpretation and application of this treaty the law is observed”. Two main points arise. First, it may be significant that the Court would in future be concerned with “the Constitution and the Union law” and not with “the law” more generally. Article 220 TEC has enabled the Court to develop a system of Community law including the general principles, which have, for example, required the Community and its institutions to respect fundamental rights. Second, it is unclear what is intended by the use of the word “including” to describe the relationship between the Court of Justice and the High Court. Is the High Court part of the Court of Justice or are they separate bodies/institutions? There is some internal inconsistency in the drafting of Article 20. Paragraphs 2 and 3, dealing with the composition of the two courts and jurisdiction of the Court of Justice, suggest that the two courts are distinct (as is presently the case). The Article might usefully say that the Court of Justice and the High Court together comprise one institution of the Union, if that is what is intended. And what is to be the status of judicial panels which may be created under Article 225a, inserted by the Treaty of Nice?

¹ Q 24.

² See our report “*An unreal solution to some real problems*” (HL Paper 48, session 2001-02, 27 November 2001).

³ The Assizes was the subject of our 5th Report, Session 1990-91 (HL paper 20).

The second sentence of Article 20 (1) is new and introduces a further element of confusion. We assume that it is not intended to create any new procedures between national courts and the ECJ. While it is common parlance to refer to “appeals” from a national court to the Court of Justice, there is no general right of appeal and the circumstances in which a matter can be referred from a national court and the purpose and nature of those proceedings is not strictly speaking an appeal. National courts can only make references to the Court of Justice to give preliminary rulings on the interpretation of the Treaty and the validity and interpretation of acts of the institutions (Article 23 TEC). The second sentence of Article 20 therefore seems to be misplaced. It does not define or describe the role of the Court of Justice or the relationship between national courts and the Union’s courts. What it appears to be doing is to codify a corollary to the principle of the supremacy of Community law, namely that national courts must provide effective remedies to support rights accorded to the citizen by or under the Treaties.

Article 20 (2) includes provisions similar to those currently found in Articles 221-4 TEC (numbers and qualification of judges). It is significant that while Article 20 defines the number of judges in the Court of Justice (one for each Member State) it does not define the number of Advocates General and only lays down a minimum number of judges for the High Court (CFI). The Article says how the number of judges of the High Court will be fixed but not the number of Advocates General.

Finally it is to be noted that Article 20(3) purports to summarise the jurisdiction of the Court of Justice. The objective is praiseworthy but the formulation is not particularly helpful. It is muddled and incomplete. There are, for example, no references to the Court of Justice’s jurisdiction under Articles 225, 238 and 239¹. The reference to appeals on decisions given by the High Court is meaningless without knowledge of what the jurisdiction of the High Court will be and adds to the confusion, mentioned above, as to the status of that Court. Indeed, why is the jurisdiction of the High Court not set out here? More generally, we question whether it is appropriate and always helpful to include in Part I (Constitutional Structure) of the Treaty provisions which cannot be understood without reference to Part II. **Article 20(3) needs substantial revision.**

Article 21: The European Central Bank (ECB)

1. The European Central Bank shall direct the European System of Central Banks, of which it, alongside the national central banks, forms part.
2. The primary objective of the Bank shall be to maintain price stability. Without prejudice to the objective of price stability, it shall support general economic policies in the Union with a view to contributing to the achievement of the Union's objectives.
3. The Bank shall define and implement the monetary policy of the Union. It alone may authorise the issue of the Union currency, the Euro. It shall conduct other Central Bank tasks according to the provisions of Part II of the Constitution.
4. The Bank shall have legal personality. In the exercise of its powers and for its finances, it shall be independent. Union institutions and bodies, and the governments of the Member States, shall undertake to respect this principle.
5. The Bank shall adopt such measures as are necessary to carry out its tasks in accordance with the provisions of Articles [A-B] of Part II of the Constitution, and with the conditions laid down in the Statutes of the Bank and of the European System of Central Banks. In accordance with these same provisions, those Member States which have not adopted the Euro, and their central banks, shall retain their powers in monetary matters.
6. Within its areas of competence, the Bank shall be consulted on all proposed Union acts, and all proposals for regulation at national level; and may given an opinion.
7. The organs of the Bank, their composition and operating methods are set out in articles X to Y of Part II, as well as in the Statute of the Bank.

¹ Dealing with first instance actions and proceedings, arbitration clauses and disputes between Member States respectively.

The ECB is listed for the first time as an institution, although the relevant Articles may in the end appear elsewhere in the Treaty. Sub-Committee A has just launched an inquiry into the European Central Bank. The inquiry is reviewing the workings of the Bank since it was established in 1998 and asking whether any changes should be implemented ahead of the enlargement of the EU in 2004. The dual focus of the inquiry will be to review:

- the two-pillar monetary policy strategy of the ECB; and
- the structure and workings of the Bank.

The emphasis of the inquiry will be on the institutional questions raised in relation to the second of these two issues. In particular, the Sub-Committee is seeking answers to the following questions relating to the structure of the ECB and accountability:

What would be the effect of the recent decision of the European Council to amend the voting modalities of the Governing Council?

What would be the optimal solution to the problems posed to the workings of the Governing Council by enlargement? Is there a conflict between national interests and European interests? If so, how might these be reduced? What should be the relative size of the Executive Board in relation to the Governing Council? Should there be an independent monetary policy committee, along the lines of the MPC of the Bank of England?

What should be the roles of the European Council, the European Parliament and national parliaments in appointing the President and the other Members of the Executive Board?

Should the ECB continue to set its own inflation target? What alternatives are there?

What is the experience of the testimonies of the ECB before the European Parliament? Does the European Parliament sufficiently call the ECB publicly to account? To what extent has the ECB been ready to listen, to explain and, if necessary, to learn?

How regularly have members of staff of the ECB appeared before national parliaments?

Article 22: The Court of Auditors

1. The Court of Auditors shall carry out the audit.
2. It shall examine the accounts of all Union revenue and expenditure, and shall ensure good financial management.
3. It shall consist of one national of each Member State. In the performance of their duties, its members shall be completely independent.

The provisions of draft Article 22 mainly replicate existing Treaty provisions relating to the Court of Auditors. Two years ago, we conducted an inquiry into the European Court of Auditors (ECA)¹. Our report highlighted a number of problems relating to the structure and functions of the ECA. In particular, the report warned that any enlargement of the European Union would accentuate these problems. The Committee concluded that urgent action was needed to ensure that the Court was properly structured and equipped to face this considerable challenge. **The Committee remains concerned that, with the enlargement of the EU now imminent, it is still the case that very little has been done to reform the ECA. The opportunity afforded by the Convention to reform the Court appears to be passing by. We look forward to further proposals from, and discussions with, the Government on this question.**

Amongst the number of suggestions for action which we put forward in our report, none seems to us more crucial to meeting the challenge of enlargement than the proposal to endow the Court with a highly-qualified chief executive, supported by a strong auditing staff, and reporting to a part-time, non-executive board of representatives from each of the Member States:

¹ *The European Court of Auditors: The Case for Reform* (Session 2000-01, 12th Report, HL 36).

“The ECA's present structure of 15 members of equal status, one from each Member State, who act as a college, is in need of change and, come enlargement, will have to change. A Court with over 20 full-time executive members would be unwieldy, sluggish and ineffective. The proposal for a system of "chambers", a concept now incorporated by the Nice Treaty, appears to be merely a mechanism to absorb members without improving efficiency and is not radical enough to solve this problem. We accept the need for national representation to ensure the confidence of Member States in the ECA. However, this would best be served by the impartial appointment of a highly-qualified chief executive, supported by a large team of audit staff, reporting to a part-time, non-executive board of representatives from each of the Member States. Such radical surgery would maintain the representation of the Member States and would considerably increase confidence in the ECA by strengthening the independent and professional nature of the audit function. Such an internal arrangement would in no way affect the ECA's external reporting requirements.”

This remains the position of the Committee. **We are therefore deeply disappointed that the new Article 22(3) simply retains the provisions introduced by the Nice Treaty and states that the Court “shall consist of one national of each Member State.”**

Peter Hain recognised¹ that the ECA “could prove very difficult to manage with 25 full-time members.” He said that this problem was something that the Government were “prepared to look at with an open mind.” This is encouraging, but the Committee considers that **the Government must be more pro-active in promoting reform of the ECA, both within the Convention and ahead of the forthcoming Inter-Governmental Conference. The IGC will present the Member States with a unique opportunity to equip the Court to meet the challenge of enlargement; it is an opportunity which we urge the Government to exploit.**

Article 23 : The Union's Advisory Bodies

1. The European Parliament, the Council of Ministers and the Commission shall be assisted by a Committee of the Regions and an Economic and Social Committee, exercising advisory functions.
2. The Committee of the Regions shall consist of representatives of regional and local bodies who have either been elected to a regional or local authority or are politically accountable to an elected assembly.
3. The Economic and Social Committee shall consist of representatives of organisations of employers, of the employed, and of others in representative civil society, notably in socio-economic, civic, professional and cultural areas.
4. The members of the Committee of the Regions and the Economic and Social Committee must not be bound by any mandatory instructions. They shall be completely independent, in the performance of their duties, in the Union's general interest.
5. Rules governing the composition of these Committees, the designation of their members, their powers and their operations, are set out in Articles XY of Part II of the Constitution. The rules governing their composition shall be reviewed at regular intervals by the Council, on the basis of a Commission proposal, in the light of economic, social and demographic developments within the Union.

Article 23 makes provision for the Committee of the Regions and the Economic and Social Committee. The membership of the Economic and Social Committee is being changed and it appears that it will in future be more derived from the professions than from representatives of manual labour (see Article 257 TEC). The membership of the Committee of the Regions appears unchanged, although the wording is simplified.

¹ Q 21

APPENDIX
European Union Select Committee

The members of the Committee are:

Baroness Billingham
Lord Brennan
Lord Cavendish of Furness
Lord Dubs
Lord Grenfell (Chairman)
Lord Hannay of Chiswick
Baroness Harris of Richmond
Lord Jopling
Lord Lamont of Lerwick
Baroness Maddock
Lord Neill of Bladen
Baroness Park of Monmouth
Lord Radice
Lord Scott of Foscote
The Earl of Selborne
Lord Shutt of Greetland
Baroness Stern
Lord Williamson of Horton
Lord Woolmer of Leeds
