

Notes of the Meeting of The European Convention, 7 and 8 November 2002

Ben Crum (CEPS), 10 November 2002.¹

The final plenary debate on the reports of the first round of (six) Working Groups brought to the fore some fundamental disagreements in the Convention. Debated were the Working Group reports on Economic Governance and on Complementary Competencies. Further the preliminary debate on the draft Constitutional Treaty was concluded and there were brief progress reports of the Working Groups on Simplification and on Freedom, security and justice.

Economic Governance

In introducing his Working Group's report (CONV 357/02) Klaus Hänsch indicated that its work had revealed some important lines of conflict in the Convention. The one point on which the group agreed was that the current division of competencies between Union and Member States did not need to be revised.

In many respects the plenary debate reflected the different views the Working Group had hit upon. However, some (NMPs McAvan (UK), Korhonen (FI)) pointed out that the Working Group's experience well served to mark out the limits of how far Europe could go on economic cooperation for the moment. Others (Dini, (NMP, IT)) insisted that this simply was not enough in the face of the lagging growth, the high unemployment and the still too high inflation levels Europe faces. Pervenche Berès (aMEP, F) pointed out that the whole project of the European internal market has not been completed yet. Others added that the Working Group had failed to address how to preclude European regulations from hindering economic growth by being unnecessarily complex, detailed and costly.

One point on which the Working Group's report was widely supported was that "tasks, mandate and statute" of the ECB should not be changed at this point in time. It was widely held that underlined that at this point, while the Euro was still establishing itself, any revisions would send the wrong signal to the financial markets (Brok, Hübner, Duff, de Vries, Puwak, Dini). Teufel (D, NMP) even expressed concern about the independence of the ECB, and Hjelm-Wallen (Sw, gov) cautioned that the current economic recession should not be taken as an excuse to tamper with the S&G-pact. On the other hand, however, William Abitbol (MEP) argued for the need to liberate the ECB out of its "splendid isolation" and insisted on the inclusion of economic growth in the Bank's objectives. Similarly Roger Briesch (observer from the ESC) argued for the insertion of full employment in the ECB's objectives. In a more cautious way Katiforis conceded the need to revisit the ECB's mandate. Muscardini (MEP, It) argued for a more effective relationship between the ECB and the EP. There was general agreement that there should be some reference to economic governance and the BEPG in the Treaty, but no one suggested the incorporation of the Stability and Growth Pact in the Constitutional Treaty.

No one contested the need to improve coordination in European economic policies. However, there was much disagreement on the suggestion that this required a strengthening of the role of the Commission, specifically in overseeing the BEPG and the Stability and Growth Pact. Hain and Roche

¹ These notes are based on the observation of the Convention's session. They are not corroborated by the minutes. Their main aim is to complement the official notes of the Convention's secretary with a view of the political dynamics in the Convention. The notes are not meant for quotation. Though utmost care has been taken to give a correct rendering of the various contributions, the author cannot guarantee the absence of mistakes.

(gov, UK and IRL) clearly expressed themselves in favour of the existing political balance. On the other hand a number of conventioners (including Michel, Katiforis, and a number of predominantly PES MEPs) argued for a more supranational economic policy. Borrell Fontelles (Sp, NMP) argued that only through a stronger the Commission could European economic governance develop beyond the mere policing of national deficits. Muscardini (It, MEP) argued that economic policy-making should be able to move beyond the Treaty and the Stability&Growth-pact and that Union framework laws might be used to further harmonisation in economic policy-making.

There was some support (Hänsch identified “a small majority”, including most notably Barnier, Dini and Santer) for transforming the right to recommend that the Commission currently exercises with regard to the BEPG and the S&G-pact, into the much stronger right to propose which can only be turned down by an unanimous Council. Some (Lequiller, Berès, Nagy) added to this that more Commission powers in economic governance would need to be complemented by a formal role (right of approval) for the EP. However, while there was wide agreement on the desirability of strengthening the Commission, eventually many conventioners (Moscovici, Bury, Spini, McAvan) considered the proposal to grant it the right of proposal in the BEPG-process as going too far.

There was wider support (Hübner, Hjelm-Wallen, de Vries, Michel; but contra Lopes) for granting the Commission the right to issue first warnings on excessive deficits directly to Member States without any intervention of the Council. There also appeared wide support (Barnier, Spini, Michel) for the proposal to exclude the Member State concerned from voting on any moves under the excessive deficit procedure.

On the Eurozone, Hänsch submitted that it was clear that its members should be able to make decisions among themselves. The main issue then became whether this should be done, as hereto, on an informal basis. Bury (D, aGov) cautioned that formalising the Eurogroup might undermine Ecofin and the equal involvement of the new Member States in economic governance. Also other government’s representatives (Michel, Santer, Lopes) favoured retaining the Eurogroup within the institutional framework of the Ecofin-council. However, a considerable number of conventioners (Lequiller, Dastis, Farnleitner, Haenel, Dini) argued for a formalisation of the Eurogroup, especially now the Union was about to be enlarged with a great number of states that would not adopt the Euro yet (Fayot). Moscovici argued that the Eurogroup was too important not to enshrine it in the Constitutional Treaty or any text directly deriving from it. Fini (seconded by de Vries) suggested that the Eurogroup might indeed be formalised as a form of ‘enhanced cooperation’ within the Treaty – an option that was, however, strongly opposed by Santer.

Many (Moscovici, Barnier, Lequiller, Borrell Fontelles, Berès, Dastis, Puwak, Santer) also emphasised the need for a clearer and stronger external representation of the Eurogroup. From that perspective a number of conventioners (Moscovici, Lequiller, Santer) actually advocated having a more permanent president of the group. However, others (Brok), while equally supportive of a formalisation of the Eurogroup, rejected this proposal insisting that continuity in the governance of the Euro would be best secured through the Commission. In concluding Hänsch and Giscard suggested that the question of the Euro-presidency would need to be regarded in the light of the wider issue of the Council presidency later on in the Convention.

More generally a strengthening of the international (economic) representation of the Union (following art. 111.4 TEC as amended by the Treaty of Nice) found wide support (Duff, Bury, Fini, Berès). Duff pointed in particular at the impact Europe could make if it were to speak with one voice

in the IMF. Spini (seconded by Briesch) suggested that it should actually be the Commission that would represent the Union in international economic and financial organisations.

Another question left open by the working group concerned the Open Method of Coordination and the question whether and, if so, how this method needed to be incorporated in the Constitutional Treaty. A major concern here was that the Method should retain its inherent flexibility. Bury adduced this consideration to argue against the constitutionalisation of OMC. Some added that the OMC was inherently an informal procedure and that formalisation would only raise the mistaken suggestion that it added something to the competencies of the Union (Teufel). However, there appeared to be a majority (including Fini, de Vries, Michel, Hjelm-Wallen, Kristensen, Puwak, Stuart) in favour of constitutionalisation of the OMC. Notably some conventioners argued that the effectiveness of OMC would indeed benefit if it were more formalised and maintained in a somewhat stricter fashion, possibly through strengthening the role of the Commission. Roger Briesch suggested that the OMC might be used to stimulate a Europe-wide debate on economic policies. Giscard concluded that the possible constitutionalisation of OMC would be taken up again after the conclusions of the Working Group on simplification.

Hänsch also indicated that the Working Group had not come to an agreement on the future of tax policy in the Union. He conceded though that it did indicate the likely direction in which a solution might be found. Some British conventioners (Kirkhope, Stuart) expressed themselves against any form of European tax policy. They were joined by some representatives of prospective member states (Hübner) in arguing that variations in tax policies allow states to shape their own competitive profile.

Pursuing this line of thought, a notable coalition (Hain, Roche, Lopes, Hjelm-Wallen, Lennmarker) insisted on sticking to unanimity on any tax issues. As Hain argued: no state is going to win a referendum on Europe, if a Union tax policy is going to be developed. Similarly Roche submitted that adopting Union powers to tax at this moment would violate the adage “no taxation without representation”. Others, however, (Moscovici, Bury, de Vries, Michel, Santer, Dini, Carnero, van Lancker, Berès, Haenel, Kristensen, Severin) submitted that a more ambitious European tax policy required the move to qualified majority voting in certain fields (indirect and company taxation, fight against tax fraud, ecotax, double fiscality) so that in these fields similar tax bases and minimum rates could be established. Nagy and Michel added that any decisions on tax taken by qmv in the Council would need to involve the EP as well through codecision.

In his concluding remarks Giscard conceded that though only limited consensus had emerged in this debate, still substantial advancement had been made. While some majorities had emerged, any decisions of the Convention would eventually require consensus.

Social Europe

Many Conventioners confirmed that a renewed Europe needed to recognise the value of social standards, the European social model, the European social market economy. There was wide agreement that the references to social Union objectives currently in Articles 2 and 4 TEC also needed to be incorporated into the new constitutional Treaty. Hain recognised the need for the Union to be committed to social objectives as employment and social justice. Many insisted on the need for a proper balance between economic and social objectives.

Led by Anne van Lancker (MEP, B) a coalition (featuring PES and Green MEPs and NMPs as well as a strong French and Belgian presence, including Moscovici and Michel) emerged arguing that

the new Europe would need to move beyond the copying of the present social commitments of the Union. Van Lancker proposed the insertion of a general clause in the Constitutional Treaty to declare the Union's commitment to social policy. Moreover, she advocated including Union objectives regarding social cohesion, high levels of social protection, the fight against poverty, social dialogue and gender equality. Indeed enshrining a Union commitment to upholding certain levels of social welfare was advocated by a considerable number of conventioners. Others suggested adding social objectives like the preservation of minimum social standards, social inclusion (Gabaglio), social protection of the most vulnerable (elderly, handicapped) (Tajani), children's interests (Thorning-Schmidt), the protection of services of a general interest (Kaufmann) and consumer protection. Katiforis (seconded by Gabaglio, Briesch and Avgerinos) pleaded that the Union should adopt the objective of full employment rather than the weaker formulation of a "high level of employment".

Van Lancker added that – more than thus far - these social objectives would need to be substantiated by stronger Union competencies and instruments (cf. Pieters). Rather than reducing employment policies to mere 'supporting measures', the Union should acquire proper legislative powers in this field (cf. Muscardini). Even though Member States would hold primacy in determining social policy, the Union should be able to define minimum norms as regards social security and services of the general interest (cf. Einem). In these fields the Council would also have to decide by qmv (cf. Avgerinos, de Vries, de Rossa, Andriukaitis). To this Severin (Rom, aNMP) added that the principles of subsidiarity and diversity should not serve to justify substantial disparities in the Union.

However, there were also some more sceptical stances taken on the issue of a social Europe. A number of conventioners (Dastis, Zieleniec) emphasised that the Convention's primary task regards constitutional issues not issues of policy substance. Scandinavians Korhonen and Lennmarker spoke out against any new Union competencies in social policies as they insisted on the protection of the various national systems. Also some conventioners insisted that the best way to secure certain levels of social welfare is to have an effective economic policy with high levels of growth so that income is generated and social provisions can be afforded (Kirkhope). Heathcoat-Amory added that the various social policies proposed were luxuries the European economy in its current state simply cannot afford.

A number of Conventioners (Kaufmann, Gabaglio, de Rossa, Einem, Puwak, Meyer, Fini, Briesch, Andriukaitis) expressed the view that the social dialogue forms an integral part of the European social model. Hence they advocated incorporating the social dialogue in the Constitutional Treaty. There were, however, also some more sceptical voices heard on the role of the Social Dialogue suggesting that it would first need to be structurally reviewed before it would be granted any constitutional status. Some (Nagy, Hjelm-Wallen, Gabaglio) argued for the recognition of social agreements at the European level. Gabaglio advocated the protection of worker's action rights at the European level. Meyer argued even more broadly for a the constitutional recognition of an European commitment towards the prevention and easing of social conflict.

Eventually it was widely felt among the Convention (most MEPs, most PES and Green NMPs, Moscovici, Hübner, Bury, Lopes, Gabaglio, Briesch) that social issues required the establishment of a separate Convention Working Group. More cautiously some conventioners (de Vries, Dastis) recognised the need to continue this debate, but left it to the Praesidium to determine the most appropriate form for that.

In concluding this debate Giscard underlined that the Convention's primary mandate lies in the simplifying and improving the treaties. He recognised that the Union involved more than a market and

that social objectives should have a prominent place in the Constitutional Treaty. He wondered, however, whether the Convention should extend the Union competencies in social policy. Recognising the differences among the Member States' social systems, it would be difficult to adopt any uniform regulations. Overall he observed that the establishment of a separate Working Group on social policies involved advantages and drawbacks. Noting the broad demand within the Convention, the Praesidium would submit a proposal on how to further handle this topic.

Complementary Competencies

Already in presenting the Working Group's report (CONV 375/02), its chair, Henning Christophersen, anticipated a number of objections. Christophersen insisted that the Working Group had not sought to roll back Union powers nor to extend them. Its sole aim had been to clarify the system of competencies, while working on the basis of the existing Union competencies and the existing institutional balance. Moreover, he underlined that the conclusions of the Working Group would need to be fine-tuned in the light of the future conclusions of the Working Group on Simplification.

In Christophersen's view the key conclusion of the report was that in 'complementary competencies' (to be renamed 'supporting measures') the Union should not be able to adopt legal acts that would overrule, harmonise or amend national legislation. The WG on Simplification might still come to define some new form of legal acts that may be applied in these fields, but they should not involve directives and regulations. Christophersen stressed that the category of 'supporting measures' did not imply anything about the importance of the fields concerned, but only about the way the Union could act in them. Clarification would be served by including within the Constitutional part of the future Treaty a separate chapter outlining the general picture of the Union's competencies while a second part would then include an exact definition of the competencies including all exceptions to the general rule. One member of the Working Group had added to this conclusion the note that (s)he did not see a need for such a delineation of competencies but was willing to agree to it on political grounds. Another (presumably Heathcoat-Amory, seconded in the plenary by Teufel) had insisted that the specific provisions in the other part should not be amendable in any other way than by ratification by all member states.

A number of members of the Working Group (Thorning-Schmidt, Attalides, Farnleitner, Hjelm-Wallen, Hänni, Lord Tomlinson, Speroni, Würmeling) underlined its findings. They argued that the proposals submitted provided the Union powers with the much needed clarity and security, and that indeed it would be a good thing if the Union would be precluded from adopting binding measures in the fields designated as 'supporting measures'. At the same time they maintained that the proposals would allow the Union sufficient flexibility to take up the tasks expected from it.

It emerged, however, that the Working Group had drifted far away from the mainstream of the Convention. A great number of conventioners raised fundamental objections to its conclusions. In itself there was considerable support for a separate constitutional title on the delineation of competencies (Lequiller, Fischer, Teufel). The suggestion that there were various classes of Union competencies was not contested. Quite a number of conventioners made it clear that they could not accept the Working Group's conclusions. Alain Lamassoure (MEP, F) submitted that, while the Working Group had aimed for simplification, its solutions were bound only to complicate things (cf. Hänsch). In his view the work of the Working Group would need to be reconsidered in full. Bonde

criticised the report for being too federalist, even more federal than the USA, and shying away from a re-allocation of competencies that would restore the political primacy of the Member States.

There emerged a forceful coalition (Gov. reps: Dastis, Lopes, Moscovici, Fischer, de Vries, Chevalier; Vitorino; many MEPs) arguing against any direct relationship between classes of competencies and the instruments to be used in these fields. For many such a relationship would smuggle the idea of a competence catalogue back into the Constitutional Treaty through a backdoor, while the Convention had been quite clear about its rejection of this idea from the start (Dastis, Lopes, de Vries, van der Linden). Chevalier objected to the suggestion of the report that there is a constant threat of the Union appropriating Member States' powers. Moscovici (cf. Lopez-Garrido) warned that the Convention should not replace the logical, dynamic approach followed so far in defining competencies, by a much less flexible, material one. Indeed the delineation of competencies proposed might well turn into a straightjacket, disabling Union action where and when it would be needed.

Also the renaming of 'complementary competencies' as 'supporting measures' was strongly contested as involving a category mistake: measures do not suffice to define competencies (Lequiller, Dastis, Lopez-Garrido, Chevalier, Nagy). Moreover, there was broad opposition to the suggestion that the Union would be disabled from adopting legal acts in the fields of supporting measures. Vitorino (Commission) argued that the Union could not aim for harmonisation in complementary competencies but that other legal measures might still be needed and that what mattered than was to control their 'intensity' (cf. Serracino-Inglott). Hänsch (MEP, D) observed that with the disappearance of the Union's legislative powers in these fields, the EP would also lose its involvement through the codecision procedure. Berès (MEP, F) argued that in those fields where coordination methods were used they may well need to be complemented by binding decisions. In reply Christophersen assured that, though it had not been to the Working Group to address the competencies of the EP, it seemed logical to him that the EP would be involved in all Community policies.

There were also many remarks on the competencies included in the category of 'supporting measures'. Notably MEPs showed themselves particularly active in securing that fields in which they now enjoyed legislative powers would not be removed from their remit. Duff welcomed the decision to consider developmental cooperation, customs cooperation, consumer protection and energy supply as shared competencies. However, he found that the Working Group had fallen short in justifying the selection of policy fields to remain supporting measures. Many conventioners (Duff, Lamassoure, Lopez-Garrido, Hänsch, Berès, Chevalier, MacCormick) questioned the categorisation R&D and training as complementary competencies. Similarly it was suggested (Dini, Duff, Hänsch, Gaber) that Trans-European networks should be regarded as a shared competence rather than as a complementary competence. Berès further protested against the categorisation of industrial policy as a complementary competence. Hänsch and Chevalier argued that Union actions in the sphere of culture did not impinge upon Member States' actions. French MEPs Lamassoure and Berès insisted that it would not be acceptable to have employment relegated to the status of complementary competence. Various conventioners (Moscovici, Lopez-Garrido, Nagy) underlined the need for Union action in the fields of promoting public health and cultural diversity. Duff was moreover concerned what had happened to the Union competencies in the fields of tourism and civil protection. Also Moscovici pleaded for retaining tourism as a Union competence. Lequiller and Moscovici suggested adding sport as a complementary competence.

There was also debate on the principles the Working Group proposed for the exercise of Union competence. Moscovici underlined that the Union should be a Union of values and that these values should include solidarity (also Lequiller), equality and cultural diversity. Frendo reaffirmed the principle of allocated (conferred) powers. Lord Tomlinson emphasised the need to affirm that all powers not assigned to the Union would remain the prerogative of the Member States. Hjelm-Wallen argued that the Union should attach great value to the principles of good administration and of transparency.

Fischer (D, gov) affirmed the principle of national identities and the need to secure member states' prerogative in determining the way Union decisions are implemented. He added moreover that the role of the ECJ in overseeing the principle of subsidiarity should be strengthened and that regions should have the right to file complaints to it for any presumed violations of this principle. Teufel (D, NMP) emphasised the importance of respecting Member States' traditions as well as their distinct constitutional traditions, regional autonomy and autonomy of church communities (Würmeling). Frendo (MTA, NMP) requested also to respect national differences in ethical traditions in particular when it comes to issues like euthanasia and abortion, though also recognising that these traditions should be premised on the recognition of fundamental rights. On the other hand, Spanish representatives Dastis (gov) and Lopez-Garrido (aNMP) warned that a strengthening of the principle of respecting the national identities might well have perverse consequences for European cooperation as it might justify all kinds of exceptions to Union decisions meant to be uniformly applied ('asymmetrical Union'). In concluding Christophersen noted that the list of core national responsibilities was intended for illustrative rather than prescriptive purposes.

There was some support for the proposals of the Working Group on Article 308 TEC. In his introduction Christophersen elucidated that the majority in the Working Group advocated extending the remit of article 308 to all Union competencies (pillars). He commended, moreover, to subject the use of Article 308 to parliamentary control by the EP as well as by national parliaments acting through the early warning system proposed by the Convention Working Group on subsidiarity (seconded by Dini). Most conventioners affirmed the continuing need of the Union for the flexibility provided by such an article, especially as in the enlarged Union - as de Vries pointed out - it will be even more difficult to amend the Constitutional Treaty. There was also broad agreement that if article 308 was used to move whole spheres of action into the Union's remit, these should rather be codified by appropriate Treaty amendments. Vitorino noted that the use of article 308 had sharply decreased as the internal market neared completion and that by now it mainly served 'reorganisational purposes. Berès added that in fact the use of article 308 had hardly been challenged.

Overall, however, many conventioners supported a tightening of article 308 so that that it should only serve as an ultimate fallback and might only be invoked by unanimity. Most outspoken on this point were the British (Heathcoat-Amory, Lord Tomlinson) who advocated a particular stringent tightening of article 308 so that it could no longer serve as the 'rubberstamping' role it now had acquired. Moscovici advocated, moreover, empowering the ECJ to review the use of article 308 on its compliance with the principle of subsidiarity. Others (Hänsch, van der Linden, Speroni) insisted however on the political prerogative to use article 308 and objected to subjecting it to review by ECJ and/ or national parliaments. Several conventioners (Dini, Lopez-Garrido) rejected the more specific proposal that acts adopted by unanimity under article 308 might again be undone by qmv as confusing.

The Convention was clearly split on the suggestion to review the phrase ‘ever closer union’. Members of the Working Group (Thorning-Schmidt, Lord Tomlinson) submitted that at the stage the Union had reached by now, the appeal for “an ever closer Union” did not befit it any more. Others recognised no need to revise the phrase (Dastis) or argued that the phrase still applied (Lopez-Garrido, van der Linden, Berès). Most outspoken was Olivier Duhamel who defended “an ever closer Union” as an key statement reminding of the historical background against which European cooperation took off and of the vision of the founding fathers. Christophersen replied that historical or literary considerations did not suffice to stick to certain constitutional phrases. De Vries submitted that much more important than the phrase “ever closer Union would be to assert that the Union would be a Union of citizens as well as of states. Hänsch conceded that “ever closer Union” might be scrapped if it were replaced by the phrase “federal Union”. Duhamel suggested that the phrase may be replaced by something like a “stronger and more intense Union”.

Resumed debate on the Preliminary Draft Constitutional Treaty

The second part of the preliminary debate on the draft constitutional treaty reflected in many respects the first part that took place two weeks earlier. Various conventioners (Christophersen, Lequiller) underlined that the Constitutional Treaty should above all simplify the Treaty-structure and improve its legibility. Meyer (D, NMP) called upon the Convention to reject the ambiguous term ‘Constitutional Treaty’ for the straightforward ‘Constitution’. Joschka Fischer praised the proposal of the Praesidium and in particular its bold choice for a single Constitutional text and the adoption of legal personality for the Union. He added that the Convention should insist on presenting the European Council a complete Constitutional Treaty including a fully elaborated part II. Hence he agreed with Meyer that the Praesidium should initiate work on that part as soon as possible. MEPs Duhamel and Voggenhuber adopted a more critical tone by noting the risk of two Unions emerging: one intergovernmental and one supranational. Various conventioners (Duhamel, Kiljunen, Chevalier) objected to the appearance of certain proposals in the draft that had not been discussed by the Convention yet or had met with widespread scepticism.

Article 1 second indent attracted some serious attention with Fischer and Voggenhuber noting that it only referred to a Union of European States but failed to recognise the EU as a Union of citizens (cf. Duhamel, Tajani). Chabert added that the Union should also be recognised as a Union of regions. On the other hand Kiljunen and Hänni objected to the use of the adjective ‘federal’ in this article as it is bound to raise confusion.

Conventioners emphasised the importance of the fundamental values underlying the Union (article 2). As several conventioners (Kaufmann, Costa, Kiljunen) noted that the value of solidarity was missing, Giscard responded that this value will be inserted in the next draft. Other additional values proposed were equality of opportunity (Kaufmann, Kiljunen), sustainable development (Kiljunen) and transparency and openness (Lekberg). Looking at the objectives Tajani argued for the insertion of strengthening and substantiating the European sphere of freedom and security. Voggenhuber objected to too direct a relationship between Union competencies and instruments

Fischer and Tajani underlined the importance of full incorporation of the Charter of Fundamental rights. Duhamel conceded that the readability of the Constitutional Treaty would not be served by integral incorporation of the Charter in Part I. As a solution he suggested incorporating the

Charter in the preamble. Farnleitner proposed including constitutional provision ensuring the autonomy of independent local authorities and on the autonomy of church communities.

Various Conventioneers underlined that a more effective Union would require the strengthening of all three political institutions (Council, EP and Commission). Lequiller argued for the importance of preserving the present *acquis* and the Commission powers. For Fischer the EP and the Commission should constitute the spine of the Union. Together with Jürgen Meyer he insisted that the EP should elect the Commission President. He also conceded the possibility of a more permanent president of the Council, though in his view such a president would then also need to be in some way accountable to the EP. Lequiller recommended considering the option of a single integrated presidency. Tajani emphasised the need for securing a single, integrated external representation of the Union. Opposition to the idea of a permanent Council president was in particular expressed by three Austrians (Farnleitner, Voggenhuber, Rack). Costa argued against any presidential approach that would only serve to strengthen the least democratically legitimated Union institutions and for turning the Council into a proper legislative chamber. Some Conventioneers (Kiljunen, Meyer) suggested that, though a more permanent presidency of the Council might be established just as the EP-president, this person should not function as the president of the Union.

Several remarks were made to clarify the involvement of national parliaments in the Union, in particular their role in monitoring the principle of subsidiarity (Kiljunen, Tajani). Again considerable scepticism was expressed about the idea of a Congress (Lekberg, Duhamel, Farnleitner, Voggenhuber, Rack, Hänni). However, Lequiller conceded that the Congress may possibly contribute to the democratic quality of the Union, but it should not be part of the legislative process and should hence be moved from Title IV to Title VI.

The European Ombudsman Jacob Södermann together with others (Lekberg, Christophersen) advocated the insertion of the citizen's right to complain to the Ombudsman in the Constitutional Treaty. Farnleitner advocated the constitutionalisation of the European Social Dialogue that should ensure the involvement not only of trade unions and big European companies but also of SME's. Chabert advocated the incorporation in the Constitutional Treaty of the Committee of the Regions

Lekberg and Kiljunen questioned the need for a separate article on defence. Chevalier objected to the suggestion in article 14 that certain Union competencies could be exclusively exercised by the Member States and advocated the communitarisation of CFSP. He also sought to widen the possibilities for enhanced cooperation. Lequiller emphasised the importance of the Union being able to avail of its own financial resources.

Tajani noted with pleasure the proposed article 42 on relations with neighbouring states as possibly providing a welcome stimulus to the further development of Euromediterranean relations. He further advocated the constitutional enshrinement of a Union language regime protecting all official languages of the Member States. Farnleitner asked what the status of the Euratom Treaty would be under this Constitutional Treaty. Kiljunen raised the question what would happen with states that would fail to ratify the Constitutional Treaty.

In concluding the acting chair, Jean-Luc Dehaene, indicated that the Praesidium would start tabling specific text proposals for articles from early 2003 onwards.

Simplification of Union Instruments – Progress Report

Giuliano Amato chair of the Working group on Simplification of the Union's instruments started out his progress report with the remark that nothing is more complicated than simplification. He stated that the Working Group had departed from the principle that acts of similar legislative weight (in terms of their 'nature' and effects) should have the same status. He considered this principle a cornerstone of the democratic legitimacy of the legislative process. Besides this the Working Group also had come to insist on the need to improve the separation of powers within the Union.

However, having agreed on principles it was much less clear what concrete proposals the Working Group would come to. The Working Group felt little need to fundamentally reorganise the codecision procedures, though it should address some more marginal practical problems relating to it and Amato would favour renaming it as the "legislative procedure". One practical concern was that after enlargement, conciliation committees would simply become too big for all practical purposes. Another issue to be addressed was the definition of the (qualified) majority in the Council. Further, the Working Group found that the budget needs a distinct procedure ensuring that the required deadlines can be reached every year.

Overall the Working Group aimed for reducing the circa 15 instruments currently in use to about five. Framework decisions in the third pillar could, for instance, be treated as directives/framework laws. All binding/legislative acts would be passed following the codecision procedure. For a start the Working Group was working on a distinction between legislative acts, political acts and executive acts (of a general and of a specific nature) (cf. WD 11). The Working Group was also convinced that some kind of legislative act would still be required in the fields of complementary competencies. Another question that had been raised was whether executive acts could be authorised directly by the Treaty or whether they would always need the mediation of a Union law. A fundamental question the Working Group was considering was whether the executive power in the Union always necessarily lies with the Commission or whether there can be exceptions/alternatives?

Freedom, Security and Justice – Progress Report

John Bruton, chair of the Working Group on Freedom, security and justice, started out his progress report by noting that this was a field in which the Union can demonstrate its added value to the citizens. The Working Group had approached its subject from various angles. Attention had been called to various crossborder crimes that so far had not been recognised in the Union: tobacco smuggling, crossborder burglary and cybercrime. Much attention had been devoted to the importance of operational collaboration. In this context the issue of financial solidarity has been touched upon, for instance as concerns the sharing of the costs of border control. Also the importance of approximation in criminal procedural law had been noted as essential for many forms of European cooperation, like the European arrest warrant.

It had been noted that progress in these fields had been inhibited by the requirement of unanimity in the Council. In particular with regard to asylum and migration policies, the move to qmv would be considered. Also the use of Conventions raised a number of practical problems, like the dependence on ratification procedures and limited accountability. In this regard national parliaments might have to play a key role in monitoring fundamental rights and adequate judicial control. The Working Group had further taken note of the positive experiences with peer review systems and considered extending this instrument to facilitate the exchange of knowledge in certain domains and

across the whole of the Union. Also the idea of an European public prosecutor had been discussed, though some members had suggested that priority should be given to improving the existing institutions and their accountability.

Finally, Bruton noted that the Working Group was really pressed for time. While there was no problem in listing the options, reaching well-considered conclusion certainly still required a lot of work. He asked the government representatives in the Convention to call upon the active involvement of the national Justice ministers.

There were two reactions from the floor. Gisela Stuart (UK, NMP) underlined the importance of focussing above all on the use of mutual recognition and on practical improvements in effectiveness in these fields. Hubert Haenel (F, NMP) observed that the Working Group had to address a number of issues that came close to the heart of national identities but for which no doubt European approaches were required.

General observations

- Some conventioners expressed their general discontent with the way the Convention proceeds. Voggenhuber submitted that it is in fact impossible to deal satisfactorily with the issues tabled through plenary debates. In his view the Praesidium is acting as an omnipotent Working Group.
- Duff suggested that any Working Groups reporting should from now on seek to translate their conclusions in concrete draft articles for the Constitutional Treaty.
- Most of the debate on Friday was chaired by vice-chairman Jean-Luc Dehaene. Rumours have it that Giscard was occupied in clarifying comments on the relationship between Turkey and the EU he had made in *Le Monde* of that morning.
- At its next plenary session of 5 and 6 December the Convention will discuss the final reports of the Working Groups on Simplification and Freedom, security and justice.