

## **Notes of the Meeting of The European Convention, 5 and 6 December 2002.**

Ben Crum (CEPS), 9 December 2002.<sup>1</sup>

### **Introduction and summary**

The main items on the agenda of the first December plenary of the Convention were the final reports of the Working Groups on Simplification and Freedom, Security and Justice. Both reports were rather well received. Notably the Presentation of the Commission Communication on the Institutional Architecture received a much colder welcome. The session featured furthermore the establishment of the Working Group on Social Europe and progress reports of the Working Groups on External Action and Defence.

The proposals of the *Working Group on Simplification* received wide support, in particular those regarding a severe reduction of instruments, for renaming the instruments, and for introducing some hierarchy of instruments. However, the report also provoked some criticisms as some found it moving beyond simplification and affecting the institutional balance within the Union. Further, various conventioners made some reservations as they found it hard to fully digest the implications of many proposals at this time.

The most fundamental issue of contention that emerged involved the future use of unanimity in the Council in certain policy fields, and the related use of codecision. Few contested the principle that qmv + codecision should become the standard legislative procedure in the Union. However, a considerable number of representatives gave much attention to emphasising the importance of exceptions to this rule. Thus several government representatives (UK, Irl, Sw, Est) raised serious objections against applying qmv and codecision in the fields of tax, social policy and CFSP and in certain issues pertaining to CAP, state aid and competition policy. On the other hand Joschka Fischer and others submitted that wherever unanimity would be maintained in European policy-making, it would practically render these policy fields meaningless.

Many conventioners emphasised the need for EU legislation to be less concerned with details and to focus on the general outlines instead. This would also serve the subsidiarity principle. On these grounds there appeared a majority support for strengthening the Commission and entrusting it with more executive powers. However, the concrete proposal to introduce a new kind of 'delegated acts' raised a number of questions and concerns. Several conventioners wondered whether the category of delegated acts would not only complicate things more and/or undermine parliamentary control. In response to this, the chair promised to prepare a more detailed proposal for delegated acts spelling out the conditions under which the instrument might be used and the controls to which it would be subject.

Also on the budgetary procedure the debate remained inconclusive as the Working Group proposals got a critical reception. A clear split emerged between, on the one hand, government representatives (Sw, DK, Est) insisting on the importance to keep the Council fully involved in all financial decisions and, on the other, a group (with many MEPs) aiming to subject all financial decisions to the codecision procedure.

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<sup>1</sup> 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.

The Final Report on *Freedom, Security and Justice* appeared to have come close to striking a successful balance between a considerable group that would favour significant steps towards greater approximation in law and in enforcement operations, and a smaller, but substantial minority that insisted on the importance of keeping this domain subject to stringent national controls. Some MEPs criticised the report for having given precedence to security over freedom and for failing to provide strong guarantees for the protection of fundamental rights.

The proposal to adopt qmv and codecision on migration, asylum and refugees received wide support. However, a number of reservations was expressed regarding similar proposals for certain issues in the field of criminal law and police cooperation. Another issue on which the Convention split was whether the Commission should get the monopoly of legislative initiative in this domain or whether it should be complemented by a conditional right of initiative by (a group of) member states.

There was wide agreement on the need for stronger cooperation in operational matters, in particular as regards Europol. However, the suggestion of an European Public Prosecutor split the convention. A small number of people opposing the very idea on principle confronted a significantly bigger group arguing strongly in favour of such an office. Only a couple of speakers put themselves behind the Working Group compromise that Eurojust might over time develop the power to bring European offences before national courts.

### **Simplification of instruments and procedures**

Chairman Giuliano Amato introduced the report on the Working Group on Simplification (CONV 424/02). He emphasised that simplification was much more than a mere technical exercise and inevitably involved political questions as well as views on what democracy requires. The Working Group had aimed for order and clarity but had also insisted on retaining the necessary flexibility. Eventually the Working Group had concluded on one general system of acts that would apply throughout the Union and, hence, also to Title V and VI of the TEU even though on specific issues exceptions or slight aberrations might of course be needed.

There was wide and extensive praise for the Working Group's report. In particular the proposals for a severe reduction of instruments, for renaming the instruments, and for introducing some hierarchy of instruments found wide support. Only Lequiller (F, NMP) expressed some hesitation to adopt the scheme of instruments proposed as he considered that certain policy fields may still require distinct instruments. A number of conventionneers (Ponzano, Lequiller, Lopez-Garrido, Duff) suggested to add one more instrument still: organic laws to deal with organisational issues of a constitutional nature without having to enter into a Treaty revision process. Jürgen Meyer (D, NMP) suggested that the Union's non-binding instruments (recommendations and opinions) could be reduced to one: 'sternnahmen'/'positions'. Frendo (MTA, NMP) insisted that non-binding acts and delegated acts should not come to guide the interpretation of binding and legislative acts. Maria Berger (AMEP, ÖS) lamented that the Working Group has failed to involve the Euratom Treaty in its work. Jens-Peter Bonde (MEP, DK) insisted that within legislative procedures the prerogatives of national parliaments required much more attention.

The report also provoked some critical remarks. A number of conventionneers (Attalides, Vanhanen, Lopes) were concerned that some of its proposals (extending codecision and qmv, introducing 'delegated acts') went beyond simplification and affected the institutional balance within the Union. For these reasons Heathcoat-Amory (UK, NMP) considered a Convention plenary on

institutional questions long overdue. Further, various conventioners (Hain, Frenco) noted that at this point they found it hard to fully digest the implications of many proposals and that they would need some time to come to a fully balanced appraisal.

#### *Extending qualified majority voting and codecision*

The most fundamental issue of contention that emerged involved the future use of unanimity in the Council in certain policy fields, and the related use of codecision. Few contested the principle that qmv + codecision should become the standard legislative procedure in the Union. Some took the occasion to emphasise the importance of the principle (de Vries, Dini). Maij-Weggen (MEP, NL) argued that there were definite fields in CFSP (like human rights) where qmv and codecision should be adopted. Joschka Fischer (D, gov) submitted that, apart from military deployment, qmv and codecision should be the rule everywhere.

However, a considerable number of representatives rather focused on the importance of exceptions (de Villepin, Dastis). Hjelm-Wallen (Sw. Gov) underlined the difficulties involved in extending qmv and codecision. In her view the Union needed to allow for flexibility in the choice of political procedures in various fields and in that context intergovernmental cooperation would be indispensable for certain policies. Several government representatives (Hololei (Est), Roche (Irl), Hain, Hjelm-Wallen) also argued that unanimity would have to be retained for tax issues and social policy. De Villepin submitted that qmv and codecision could not be applied to the CAP. Hain added that also in fields such as state aid and competition policy exemptions to qmv would probably be needed. He moreover submitted that any communitarisation of the CFSP was out of the question. Carnero (AMEP, SP) warned that once one would undertake to list all exceptions to qmv and codecision, this list was bound to become very long and complex.

Quite a number of conventioners noted that wherever unanimity would be maintained in European policy-making, it would practically render these policy fields meaningless (Fischer). Fischer noted that to the extent that substantive fields of intergovernmental decision-making would persist, the danger appeared that the Union would remain structurally split with the intergovernmental side retaining the upper hand. He therefore underlined the need for overarching mechanisms. Alain Lamassoure (MEP, F) drew the most radical proposal as he suggested that issues on which it would be impossible to move to qmv should simply be moved out of the Union framework again and left to normal international cooperation. Short of this radical approach, Duff (MEP, UK) suggested that rather than exempting whole policy fields from qmv and codecision, procedural solutions should be explored to deal with the sensitive issues. The suggestion was taken up from the Commission to replace the unanimity requirement with special supermajorities in Council (and EP) for the particular issues involved (Meyer, d'Oliveira Martins). Jürgen Meyer (D, NMP) suggested these supermajorities could be set between 65-75% of both states and populations.

In conclusion Amato promised that the Praesidium would seek to draw up a list of all issues that were to remain subject to unanimity in the Council.

#### *Organisation of the legislative process*

Many MEPs (Hänsch, Berger) and Commission representative (Ponzano) welcomed the view that Council and EP should act on an equal standing as legislators. They also insisted on this being fully reflected in a revision of article 202/ 251 TEC. Duff (MEP, UK) underlined the axiom that no Union

legislation could be adopted without Council and EP. Michel (B, gov) noted the need to recognise the role of social partners in the legislative process. He further suggested that the executive councils on general affairs and external relations might be chaired by the Commissioners responsible for these fields. De Villepin (F, gov) proposed to make the Commission formally accountable to the European Council. This reform would need to be complemented by granting the European Council the power to dissolve the EP. Brok (MEP, D) proposed having one Council body acting as the legislative Council.

Einem (ÖS, NMP) and Maij-Weggen (MEP, NL) insisted that in Conciliation committees ministers should not be represented by officials but would need to be personally present. Hololei argued for the need to reduce the conciliation committees. Brok proposed that the Council should, just like the EP, appoint certain members as permanent members for the conciliation procedure.

Farnleitner (ÖS, gov) challenged the need for the Commission to retain the monopoly of legislative initiative, calling instead for an open competition among initiatives. Others insisted, however, on the importance of the Commission controlling the coherence and quality of EU legislation. Speroni (It, Agov) argued for the need to attenuate the Commission's power of initiative. Ponzano (Alt. Commission) pointed to the instrument of multi-annual legislative planning through which Council and EP can direct the legislative process. Others (Frendo) expressed their support for the proposal to require the Commission to substantiate any refusal not to follow up on a request for legislation by Council or EP.

Michel welcomed the suggestion to enshrine the Open Method of Coordination in the Constitutional Treaty. Korcok (SLK, gov) affirmed on the other hand that constitutionalising OMC would not help the objective of simplification. Duff and Würmeling insisted that OMC and other non-standard acts should only be applied in fields where the Union would not enjoy competence to act by legislative acts. Voggenhuber (MEP, ÖS) went even further in warning that the OMC might well serve as a Trojan horse that would open all possibilities to circumvent the provisions now brought in place for the legislative process. Amato recognised the need for this concern and promised that further, more detailed consideration on OMC would be required.

Some attention was given to the importance of democratic control of international agreements entered into by the Union. Carnero insisted on the importance of the EP needing to assent all international agreements. Würmeling pointed to the particular complexities of democratic control of international agreements involving both the Commission and the Council.

Fischer underlined the importance of legislation being adopted in public. Speroni underlined the importance that legislative decisions in the Council should only involve politicians not officials. Jürgen Meyer suggested that qualified majority should be redefined as double simple majority (by states and by population). He also suggested that every Union act could be subject to a sunset clause requiring its reconsideration in due course. Berger (AMEP) challenged the suggestion that co- and self-regulation were naturally superior to legal regulation.

### *Legislation and implementation*

Many conventioners emphasised the need for EU legislation to be less concerned with details and to focus on the general outlines instead (Fischer). However, Vanhanen (Fi, NMP) also pointed out that the tendency to legislate on details above all caused by the urge of the Member States to meddle too much with the details of legislation. Still the case for less detailed legislation was taken up widely, with some (de Vries, Hain) emphasising that it would allow Member States more room for discretion

in implementation. Christophersen insisted that EU framework laws should by definition not replace national laws. Frendo pointed out that more effective legislative procedures need not to be pursued at all cost as at times prudence and quality require lengthy proceedings before an act can be adopted.

Several conventioners (De Villepin, Dastis) emphasised that legislation across general lines also required more delegation of executive powers and a strengthening of the Commission. In turn a stronger Commission in handling implementation would need to be complemented by concrete call-back rights of the legislator (de Vries, Fischer). These call-back rights still needed further specification than that provided in the Report. Brok insisted that both Council and EP should enjoy (the same) call-back right. Brok and Carnero insisted that there was no need to grant the Council powers to implement acts at the Union level. This provision would only complicate things. Ponzano (Alt. Commission) argued that any executive powers could to the Council would need to be specified in the Treaties and could not be delegated by a legislative act that the Council itself would adopt.

The proposal to introduce a new kind of 'delegated acts' raised a number of questions and concerns. Amato clarified that the main aim of introducing this level was to ensure that the Union legislator would not get bogged down in details but could delegate these conditionally to the executive (Commission and in particular specified cases the Council). He elucidated that eventually it would be the prerogative of the legislator (Council and EP together) to decide if, when, and under what condition this instrument might be used. Hübner (Pol, gov) regarded 'delegated acts' as acceptable provided they were subject to appropriate controls by the legislator. Similarly Hänsch (MEP, D) accepted the proposal on the condition that they could only be adopted after the EP had expressly allowed for it.

Others were less convinced. Vanhanen (FI, NMP) and Tiilikainen (Fi, gov.) argued that the category of delegated acts was bound to bifurcate again in legislative acts and implementing acts. Others wondered whether the category of delegated acts would not only complicate things more and/or undermine parliamentary control (Lequiller, Hänni, Frendo). Spini (It, ANMP) and Hänni (Est, ANMP) suggested that national parliaments should be involved in the adoption of delegated acts. Maij-Weggen insisted that all delegated acts would have to be communicated to the EP. Dastis demanded that the use of delegated acts would get a more precise specification of the conditions for its use and the policy fields to which they might apply. In response, Amato promised that the Praesidium would prepare a more detailed proposal for delegated acts in due course including the conditions under which the instrument might be used and the controls to which it would be subject. Giscard even made the broader point that the three-tier system proposed need further consideration.

Christophersen and Tiilikainen lamented that the Working Group has not made any recommendations on how to organise comitology procedures in a Union of 25 or more members and insisted on the importance of this question or the Convention.

### *Budgetary procedure*

On the budgetary procedures, Amato emphasised the importance of one integrated procedure with a clear division of roles, while also acknowledging that in the end these procedures could only work if the Council would involve the EP in the decisions on revenue and the EP involve the member states in the decisions on expenditures.

The Working Group proposals to revise the budgetary procedures got a critical reception. Most conceded that the need to update and possibly improve the current procedures. Still the proposals

put forward raised various objections, A number of conventioners were not convinced by the need to reform beyond the formalisation of current practice in the (Constitutional) Treaty. Hjelm-Wallen emphasised that in the end it are the Member States that pay and that hence they should retain the final word on both revenue and expenditure. Christophersen also insisted on the importance to keep the Council fully involved in expenditure decisions (also Hololei). He suggested to establish one budgetary authority made up of Member State representatives and MEPs that would be responsible for adopting the budget each year. For him it was also clear that the Council should not be responsible for drafting the budget but that ideally this would be the full responsibility of the Commission. Hain suggested that the Council would need to impose much more ceilings on specific headings. Stuart warned that allocating the final word on revenue and expenditure to different institutions (Council and EP) the risk of an immobilising financial deadlock, as familiar from the US, would come to exist. She emphasised the need for a conciliatory mechanism.

Many considered that the proposals went in the good direction but argued for an even greater involvement of the EP across all financial decisions. Brok insisted that, if indeed the Council would keep the final word on Union revenues, then the EP must have the final say on expenditures. Many conventioners (most notably MEPs Hänsch, Earl of Stockton, Carnero, Duff, but also Korcok, Würmeling, Senff) went even further as they insisted that the aim should be to subject all financial decisions – including the Union’s revenues and the financial perspectives - to the codecision procedure.

A majority of conventioners (Brok, Earl of Stockton) was in favour of abolishing the distinction between compulsory and non-compulsory expenditures. Maij-Weggen insisted in particular of the inclusion of the European Development Fund in the non-compulsory expenditures. Dastis was willing to consider this proposal under the conditions that the Council would retain strict controls over the structure (headings) of the budget and could specify expenditure ceilings. Similarly, de Vries added as a condition that the position of financial perspectives and their adoption by an unanimous Council would be enshrined in the Constitutional Treaty. Hain was not yet sure and stated that he would need more time to consider the full implications. Other national representatives (de Villepin, Spini, Roche) argued, however, for the need to retain the separate category of compulsory expenditures. Roche added that if the category of compulsory expenditures were abolished, rather the budgetary procedure would probably be burdened by complex alternative mechanisms.

Overall there was wide agreement that the budgetary proposals still needed further thought. Dini suggested that a broader debate would be needed on the finances of the Union. The chair recognised the need for further debate on these issues. At the same time Amato stood by the basic outlines of the Working Group’s proposals of allocating the different roles to Council and EP. Essential in his view was that, while both institutions would enjoy different prerogatives, they actual processes would not be able to proceed without them closely consulting with each other.

### **Freedom, Security and Justice**

John Bruton introduced the Final Report of the Working Group on Freedom, Security and Justice (CONV 426/02). The Working Group proposes to abolish the third pillar and to resort to the use of Community instruments, like laws and framework laws, in the field. Further in a considerable number of fields the Working Group proposes to move to qualified majority voting in the Council and adopt

the codecision procedure. Other notable proposals are to provide an explicit legal basis in the treaty on civil law, to use interparliamentary meetings in these fields and to extend the role of the ECJ.

The proposals of the Working Group were generally well received. A number of conventioners (Andreani, Vittorino, Baronesse of Scotland, Paciotti) applauded in particular the choice the Working Group had made for making mutual recognition the corner stone of further developments in this field. Several conventioners (Vittorino, Baronesse of Scotland) also underlined the importance of approximation in criminal procedural law, including for instance extradition (Giannakou).

However, there was also a significant number of speakers (Dastis, A. Costa) who spoke more strongly than the report in favour of greater approximation in law and in enforcement operations. Fischer added that harmonisation legal provisions will sometimes be necessary to reach the set objectives. Giannakou underlined the need for European cooperation on crime prevention and against the drugs trafficking. Fischer and Lopes argued for greater cooperation in civil law matters and in particular for adopting qmv in matters of family law (contra Lekberg). Berès suggested the introduction of European marriage contracts. She also advocated a concept of European citizenship independent from that of national citizenship and to disassociate the policies of free movement from the internal market perspective. The latter suggestion was seconded by Farnleitner who pointed in particular to joint interests in common security and public health.

Several conventioners (Duff, Paciotti) noted that the Working Group had given scarce attention to freedom in comparison with security. In particular some Italian conventioners (Tajani, Speroni, Paciotti) emphasised the importance of having European action in legal matter preceded by strong guarantees for the protection of fundamental rights of the defendant. This was a further argument to incorporate the Charter (Fischer). Some (Tajani) insisted, however, that adequate protection of defendants would require separate provisions beyond the Charter (in its current state). Tajani added that the Union activities in the field of criminal law required the organisation of an European system of legal defence. Fayot (Lux, NMP) observed that the Union would need to extend the protection of refugees beyond the provisions of the Geneva convention that have become outdated in some respects. In response Bruton submitted that it would be imperative to ensure an European habeas corpus and that this may be adopted in the framework of criminal procedures for which he advocated the use of qmv.

There were also a couple of voices having serious reservations on the report. David Heathcoat-Amory (UK, NMP) emphasised that on various issues he had adopted a minority opinion within the working Group which he, however, found insufficiently reflected in the report. In particular he noted a shortage of provisions infusing the procedures proposed with the necessary democratic accountability. In his view further moves to European approximation (involving the use of qmv and codecision) ran the risk of alienating citizens. Similarly Sören Lekberg (Sw, NMP) insisted that police and judicial cooperation allowed only to a limited extent for supranationalisation.

These remarks were met by a considerable number of parliamentarian representatives (Haenel, Floch, MacCormick, Stuart) who underlined the importance of involving national (and regional) parliaments in this domain. Floch suggested that they might in particular be involved through subsidiarity consultations also argued for keeping national parliaments fully involved in this domain.

### *Towards communitarisation?*

The proposal to adopt qmv and codecision on migration, asylum and refugees received wide support. The Baroness of Scotland envisaged in particular acts concerning policies aiming at the regions of origin and on the requirement to apply in the first country of entrance. On the other hand Grabowska (Pol, ANMP) warned that some accession countries may need transitional period before they could join a qmv-regime on these matters. Abitbol (AMEP, F) argued for the desirability of retaining the member state veto in the field of migration. Teufel (D, NMP) insisted that the EU can have no competence when it comes to labour migration policies. Fayot spoke against the idea of adopting European migration quota.

Andreani (F, Agov) affirmed that, with the exception of certain criminal law matters, qmv and codecision should be the rule in this field. Lopez-Garido (SP, ANMP) and Meyer (D, NMP) advocated the abolition of any decisions by unanimity and to have them replaced by supermajorities. However, Roche (Irl, gov) insisted on maintaining unanimity in criminal law and police matters, as these matters are particular dear to the member states and populations. Also other conventioners (de Vries, Teufel, Lekberg) took a rather cautious stance towards the various issues in police and criminal law for which the Working Group suggested the adoption of qmv and codecision. In any case de Vries considered strengthening the communitarised powers in this respect useless if they would not be complemented by appropriate powers of implementation. The Baroness for Scotland (UK, Agov) and Peltomäki (Fi, Agov) supported the proposal for a precise list of crimes. On the other hand Van Lancker (MEP, B) insisted that such an exhaustive list of European crimes should not be incorporated in the Treaty. Van Lancker argued further for extending qmv to a whole range of crimes involving crossborder crimes as well as crimes that by their nature offended human dignity. In conclusion Giscard announced that the Praesidium would draw up a list of European crimes to be debated in the Convention.

To facilitate the development of the required confidence among member states, Dastis and Lopes envisaged stronger roles of the Commission and the ECJ. Similarly several conventioners (Vittorino, Giannakou, van Lancker) insisted on the need to grant the Commission the monopoly to initiate legislation. Hannes Farnleitner insisted on the importance (for the Austrian government) to retain a right of initiative for member states in this domain. He argued that there could be no harm in this and that it might bring about 'a competition of initiatives' in which the best would be adopted.

On the other hand, Duff opposed the proposal to grant  $\frac{1}{4}$  of the Member States the right to initiative. Instead he argued that the member states could well ensure their wishes being taken into account through the multi-annual legislative programme. Berès suggested that the right of initiative of member states might be restricted to initiatives with the backing of a double majority (in states and population). Bruton responded that the threshold of  $\frac{1}{4}$  of the member states constituted a compromise indeed but he maintained that it would be adequate to guarantee that it would only be used for serious cases.

Haenel argued that political coordination in this domain should not be left to a committee. Instead he advocated the appointment of a political coordinator (HR) by the Council. Andreani and Haenel advocated facilitating the use of enhanced cooperation in this domain. On the other hand Giannakou added that in her view the objective of common security did not allow for opt-outs of any member state.

Vittorino and Fayot also emphasised the importance of extending the powers of the ECJ in this domain. De Vries observed that the ECJ might well become quickly overburdened if its powers were

extended in this domain. He suggested considering the possibility of establishing several regional courts in the Union for this purpose. The Baronesse of Scotland and Dick Roche argued for a more cautious stance on extending the ECJ powers.

### *Operational issues*

A considerable number of Conventioneers (De Vries, Haenel, Heathcoat-Amory) underlined the need for stronger cooperation in operational matters. De Vries suggested granting the Commission the power to start infringement procedures against member states in this domain.

Many conventioneers agreed on the need to strengthen Europol and Eurojust. Europol, some suggested (Andreani, A. Costa), should develop into a proper European police force with the power to research cases. At the same time Vittorino pointed at the importance of clearly defining Europol's role vis-à-vis the national police forces. De Vries, Fischer and Stuart emphasised the importance of keeping Europol under democratic control.

One point on which there was clear disagreement was whether an European Public Prosecutor is needed. Roche opposed the idea on principle and Brejc (Sln, ANMP) considered it too early to consider it. Various members (Dastis, Baronesse of Scotland) supported the suggestion of the Working Group that Eurojust might over time develop the power to bring European offences before national courts. Vittorino advocated to leave the establishment of a European Public Prosecutor open as an option. A considerable number of conventioneers (Parliamentarians: Tajani, A. Costa, Lopez-Garrido, Haenel, Speroni, Follini, van Lancker, Meyer, Floch, Vassiliou, Paciotti) insisted, however, on the need to establish a separate European Public Prosecutor if only to prosecute financial offences involving Union money (Tajani, Meyer).

Basile (It, ANMP) advocated institutional arrangements for civil protection through which European solidarity with the victims of natural catastrophes (earthquakes, flooding) could find expression. Vassiliou (Cyp, ANMP) and Brejc (Sln, ANMP) underlined the importance of financial solidarity and fair burden-sharing in these fields. Various representatives of especially Mediterranean countries and accession countries (Dastis, A. Costa, Lopez-Garrido) advocated the development of common border services. Grabowska pointed out that cooperation among national border services takes already place but that it needs further intensification still. De Vries lend his support to a European coast guard on the condition that there would be an appropriate deal on the sharing of the financial burden. Teufel was more reluctant as he indicated that a European coast guard was only likely in the long term.

### **Working Groups on External Action and on Defence – Progress Reports**

Jean-Luc Dehaene gave a progress report of the Working Group on External Action. The central issue in this Working Group had been how, and not if, Europe should play its role in the world. The Working Group had sought to outline the basic principles and objectives of EU internal action (see annex II of draft report (WG VII – WD 21). Fundamental to these principles had also been the recognition of the importance to divide tasks between member states and the European level.

The Working Group has given much attention to the interinstitutional coordination of external action and the need to prevent the development of two parallel foreign policies. A majority of the Group has come out in favour of the establishment of a so-called 'double-hat' position: one person exercising two functions according to two procedural set-ups. The future High Representative/ 'double

hat' should chair the external action council (that thus would have to be separated from the general affairs council). S/he should also get the right to take initiatives and should be answerable to written questions of the EP.

Common foreign action was bound to be organised in an intergovernmental way and thus subject to unanimity in the Council. However, easier decision-making by qmv might be facilitated in other fields of external action and by making more use of common strategies as a framework for decision-making and, possibly, in case of joint initiatives by High Representative and Relex Commissioner. Finally the Union should get one integrated diplomatic service and should make provisions to make resources speedily available in case crises would require them.

Michel Barnier presented the progress report for the Working Group on Defence. He noted the dilemma between on the one hand the need to improve European security and on the other the naturally national prerogative on military involvement. His working group set out to provide better coordination and more coherence to European defence policy. Notably the Group would propose an European solidarity clause that, while less demanding than a common defence clause, would summon all Union military resources to be made available in case one of the member states would face a terrorist attack.

Nine comments were raised from the plenary. Peter Hain (UK, gov) reiterated his opposition against any communitarisation of the CFSP. He was further sceptical about the proposal of a 'double hat' (who would be its boss? eventually this person would have to work either under one authority or another) and about the solidarity clause (what are its exact implications?). Also Alfonso Dastis (SP, Agov) had his doubts about the double hat. He added that if the HR were to chair the external affairs council, it was unthinkable that s/he would be a member of the Commission. Dominique de Villepin (F, gov) pointed at the recent Franco-German proposals on defence and advocated the possibility to resort to enhanced cooperation in defence. Gisela Stuart (UK, NMP) noted the importance to clarify the relation between European defence and the Nato as, whenever Europe would really have to engage in military action, it would, in her view, naturally have to rely on Nato. Sylvia Kaufmann (MEP, D) noted that in the work on defence there appeared a permanent confusion between security and defence. She asked for a commitment to peace in the Treaty and more attention to be given to civil conflict management. Proinsias de Rossa (Irl., NMP) expressed his disagreement about treating defence in isolation from external action. He noted moreover that it would be difficult to have anything like a mutual defence accepted in Ireland as the Irish people had recently rejected the adoption of a mutual defence clause in a referendum.

### **Additional observations**

- The President of the European Commission, Romano Prodi, gave an oral presentation of the Commission Presentation on the institutional architecture "For the European Union. Peace, Freedom, Solidarity" (COM (2002) 728). In the debates there was notable little reference made to this contribution. The references that were made were mostly critical. Peter Hain qualified the communication as "very disappointing".
- Considerable more reference was made to the Benelux-memorandum on the institutional architecture that had just been published on 4 December. Louis Michel (B, gov) used his intervention during the debate on simplification to set out its main conclusions. A wide range of government representatives (P, SLV, FI, CZ) commented positively on these proposals.

- The Working Group on Social Europe to be chaired by Georges Katiforis was established (CONV 421/02). The Working Group is rather big with around 60 members. The Convention hopes to be able to discuss its final report in the Convention session of 6/7 February.
- The last Convention Plenary will take place on Friday 20 December. The Plenary of Saturday 21 December is cancelled. Instead the Convention will start its work already at 9:30 on Friday and work the whole day through. Convention members have moreover been invited to a Christmas dinner on Thursday night 18 December.