

The Functioning of the Institutions

Notes of the Meeting of The European Convention, 20 & 21 January 2003.

Ben Crum (CEPS), 27 January 2003.¹

Summary

Rather than the document prepared by the Convention Secretariat (CONV 477/03), it was the Franco-German contribution (CONV 489/03) published the preceding week that set the agenda for the first, general Convention debate on the Union's institutional architecture. The debate focused in particular on the proposal of a dual presidency, combining a long-term president of the European Council with an EP-elected Commission President. Besides the representatives of the German and French government, this proposal drew notable support from the British and Spanish government as well as, on a more cautious tone, the Italian government representative. However, for the rest a broad and outspoken opposition mobilised against the proposal, uniting almost all representatives of the remaining 10 member states as well as the candidate countries and a majority of the MEPs. In particular the proposal a full-time European Council President was rejected for threatening to undermine the Commission's executive powers.

Some suggested that the dual presidency plan might be saved by clear job descriptions delineating the two roles. On the other hand, there was a prominent group arguing that the rotating presidency might be maintained after some practical adjustments. A further alternative suggested was a team presidency in which the presidency would be shared by three member states, thus allowing for more continuity as well as some idea of rotation to be preserved. Finally, some suggested that the two presidencies should actually be merged into one role. While several conventioners regarded this as the obvious perspective in the long run, few actually advocated it as an appropriate solution at the present moment.

Elaborating on the other half of the Franco-German proposal, there emerged broad support for having the Commission President democratically elected by the EP. This proposal raises, however, the risk that an EP-majority can take political control over the Commission. For this reason a considerable group of conventioners are only willing to accept EP-election if it takes place by a supermajority in the Parliament and if the candidate chosen is subject to the approval of the European Council. In turn these conditions meet with vehement opposition among MEPs who fear that they will again remove the election's democratising effect, as a supermajority will necessitate political deal-making. As ways out of this debate, it has been suggested to have the Commission President chosen by an Electoral College (mixing national and European parliamentarians), or by national parliaments alone, or even directly by the people.

The institution most discussed in the rest of the debate was the Council. There emerged wide support for the establishment of a separate Legislative Council. Also it was recognised that the various Executive Councils might benefit from more permanent chairs, possibly held by the Commission. Furthermore it was recognised that the future Constitutional Treaty would need to provide a clear definition of the tasks of the European Council. However, disagreement emerged on the scope of these

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.

tasks and the extent to which they might overlap with tasks that are primarily allocated to other institutions.

Many conventioners re-iterated earlier pleas for extending qmv in the Council and the codecision procedure, having them in effect define the normal legislative procedure in the Union. Still no one contested that exceptions to these rules will be required, the main questions being how many and which these will be. Further, there were many pleas for strengthening the EP's power, in particular as regards non-legislative procedures, the Union's budget and executive oversight.

With regard to the Commission there appeared strong support for retaining one Commissioner per Member State, while granting the Commission President a freer hand in the internal organisation and possibly allowing for two tiers of Commissioners. However, there were also conventioners who insisted that the Commission - unlike the Council - does not serve to represent the Member States and that. Hence, there is no need in principle to have them all represented. Many conventioners noted the need to strengthen the Commission in terms of its competencies and that it should acquire more powers to implement Union's policies and to control their implementation by others. Further, a number of conventioners advocated a fundamental overhaul of comitology.

There were remarkably few, and rather diverse, comments made on democratic representation in the Union. Various conventioners insisted that the future Constitutional Treaty should be ratified by referenda in as many member states as possible to secure support and engagement of the citizens. A number of conventioners re-invoked the need to strengthen the role of national parliaments in the Union's architecture and expressed their support for the proposed early warning system. While a considerable number of conventioners rejected any suggestion for new institutions in the EU political process, some still suggested keeping the idea of a Congress for consideration. Finally, a number of conventioners noted the need to strengthen the ECJ, in particular to equip it with extra resources to manage its workload. Responding to this, Giscard suggested that the case of the ECJ might well lend itself to being dealt with by a reflection group of about 10 Convention members.

Introduction by Giscard d'Estaing

At the start of the session, Convention President Valéry Giscard d'Estaing indicated that over the last two weeks the Praesidium had been focussing on two tasks: the drafting of articles for the Constitutional Treaty and the Institutional debate. In total, the three parts of the Constitutional Treaty are expected to amount to up to 300/400 articles. The Praesidium intends to put as soon as possible a certain number of draft articles to the Convention. At present about three articles have been drafted and within 15 days the Praesidium hopes to submit about 15 articles to the Convention.

All articles fall into one of four categories. Some articles can simply be copied from the present Treaties. Others can be completely deleted. A third category will require some technical amendments in the light of the new Constitutional set-up. The Praesidium wants to delegate the drafting of these articles to a group of legal experts for whom it is now defining instructions and who should be able to start their work by the end of February. Finally, certain articles need to be thoroughly thought through. For these the Praesidium will submit draft texts, that can then be discussed in the plenary. In the absence of a clearly emerging consensus, small drafting committees of about 10 members representing the various strands within the Convention will be set up to advise the Convention.

The President then moved on to inaugurate the institutional debate, emphasising that this debate only marked the start of a process of reflection. The Praesidium had drafted a reflection paper (CONV 477/03) in which it had emphatically avoided any hint of a preferred direction. In Giscard's view, the European Council has put a double request on the Convention in this regard. First, it needs to render the Treaties more precise and clear. Second, it has to reflect upon the institutional changes that are required to handle enlargement and to meet new political objectives. That these are no easy tasks, is demonstrated by the failure of the governments to tackle them adequately in both Amsterdam and Nice.

The particular complexity of designing an appropriate institutional structure for the Union arises, on the one hand, from its objective characteristics and, on the other hand, from the unresolved existential question of the nature of the Union. First, objective facts show the Union to be of an unprecedented diversity. This creates the dilemma of how to reconcile the equality of the people with the equality among the member states. Secondly, while the question of the nature of the Union has been around for long, recent years have seen markedly little progress towards its answer. At present the question poses itself as one between, on the one hand, the option of the Union drifting to a federal structure and, on the other hand, its persistence as an unprecedented, political hybrid. In Giscard's view, the Union is federal in many of its competencies but confederal in much of its organisation. The Union falls short of the federal model as the allocation of powers is controlled at the level of member states. Over time this characteristic has come to inhibit new powers from becoming federalised.

Giscard expected that over the forthcoming decades new federalist competencies would emerge in monetary policy, in foreign affairs, in justice and, probably, in defence. Some of these would need to be founded on state sovereignty, others might be build on a distinct European interest. In the long run (50 years time) he envisaged that "the Council president elected by universal suffrage will bring together the president of the European Commission elected by the European parliament and the whole set of ministers and commissioners with federal competences". Thus it will be clear how Europe is governed, both to the European people as well as to the outside world.

Principles

Many conventioners started their contribution by setting out the principles that should guide institutional reforms. For a start, much reference was made to the triad from the Laeken declaration: more *democracy*, more *transparency* and more *efficiency*. Another fundamental principle regularly invoked was the Union's *double legitimacy* as deriving from the people as well as from the member states (Oleksy, Duhamel, Palacio, de Villepin, Kohout).

The principle most mentioned was the principle of maintaining the *institutional balance* among the Union's institutions. Typically, Commissioner António Vitorino submitted that each institution had its own distinct tasks that need to be clearly distinguished (cf. Rupel, Christophersen) and optimised simultaneously. Indeed the need to preserve the institutional balance through a simultaneous strengthening of all Union's institutions, rather than a one-sided strengthening of one of them at the expense of the others, was recognised by members of all kind of backgrounds (most notably: de Vries, Michel, Hain, Hjelm-Wallén, Palacio, de Villepin). However, Heathcoat-Amory (UK, NMP) attacked this line of reasoning for circumventing the need to make clear choices between institutions.

A considerable number of speakers (de Vries, van der Linden, Michel, Katiforis, Roche, De Rossa, Vitorino, Hänsch, Kohout, Hololei) adhered to a more specific interpretation of the institutional balance; identifying it with the strengthening of the Community method and the four elements defining it: the Commission's right of initiative; qmv in the Council; involvement of the EP through codecision and oversight by the ECJ. Related to this was the viewpoint that the Union does not need any new offices or institutions, such as a permanent Presidency of the European Council or a Congress (Michel, Hjelm-Wallén, Tiilikainen, Kiljunen, Vanhanen, Azevedo, Maij-Weggen, Rack, Kohout, Rupel, Andriukaitis). The one new institution that did gain some support among those insisting on the Community Method was the institutionalisation of the Convention as a method for Constitutional revision (Michel, Maij-Weggen, Frenedo, Cisneros).

Another principle that was widely invoked was the principle of maintaining the *equality among the member states*, with particular regard to the balance between the small and the big ones (Katiforis, De Rossa, Roche, Vanhanen, Costa, Azevedo, Rupel, Kalniete, Balázs). This principle found particular support among representatives of the candidate countries. To ensure a full and equal share in the EU's political institutions, they argued for preserving the rotating presidency and for retaining one Commissioner for each member state.

A number of other principles were mentioned, such as: the rule of law, legibility (Kalniete), diversity, openness and good administration (Lekberg). Voggenhuber submitted that a truly democratic Union would have to adopt a 'republican constitution'. Notably, Convention vice-chair Giuliano Amato called upon the Convention not to be too ambitious in subjecting the institutional architecture to a strict logic as this might strain the Union too much and cause it to implode.

The Franco-German proposal on the EU Presidency

Much of the debate focussed on the recent Franco-German contribution on the institutional architecture of the Union (CONV 489/03) and, in particular, on its proposal of a dual presidency. Joschka Fischer (D, gov) elucidated that this proposal seeks to integrate two perspectives. On the one hand, having the Commission President elected by the EP would be to the advantage of the Commission, the EP and, above all, the European citizens. On the other hand, he argued that, as the rotating presidency can no longer be sustained, a permanent European Council President can guarantee continuity and preserve the institutional balance. He further noted that the two presidencies would have to be prevented from overlapping by having their competencies clearly delineated.

In addition, Dominique de Villepin (Fr, gov) underlined that the proposal sought to overcome the gap between the various institutions and that rivalry can be precluded because the two presidents serve essentially different functions. The European Council President would focus on chairing the European Council and representing the Union in the world. This President would thus improve the comprehensibility of the Union by presenting it with a distinct face. The Commission President would be responsible for directing the administration of community policies internally.

The Franco-German proposal drew limited, but notable support. For a start, a number of French and German parliamentarians embraced the proposal, such as Hubert Haenel (NMP, F) and Jürgen Meyer (D, NMP). German MEP Klaus Hänsch (cf. his French colleagues Lamassoure and Duhamel) considered that the dual presidency might work if complemented by a refocusing of the activities of the European Council and a clear delineation of competencies of the two presidencies, and if it would not lead to the emergence of a separate European Council administration.

Possibly even more important was the support for the dual presidency by representatives of the other big member states. Most notably, Peter Hain (UK, gov; backed by NMP Stuart) and Ana Palacio (SP, gov) supported the Franco-German proposal emphasising the need for continuity in the running of the European Council. Anticipating objections by others, Hain suggested that it would be more appropriate to talk about a permanent Chair rather than a President (cf. Einem). Equality among the member states might in his view be preserved by using a rotation scheme to compose team presidencies that can share the chairs of the various Council formations under the overall co-ordination of the European Council chair. He and Stuart suggested further that member states might still take turns in hosting council meetings; a suggestion that was rejected by Tiilikainen (Fi, gov) as a sham that would not appeal to the public either.

Slightly more cautious was the position taken by Italian government representative Gianfranco Fini. He was willing to concede a longer term President coming either from in- or outside the European Council, on the condition, however, that this person's competencies would be clearly delineated and that the EP would be required to approve the candidate. Furthermore, Fini suggested that some idea of rotation might be retained in the composition of a board of vice-presidents/ staff/ bureau that would support the President (cf. Speroni, Muscardini). Notably, also the Convention's vice-chair (and leader of the PES delegation) Amato emphasised the need for more continuity in the running of the European Council. In his view a permanent European Council chair should not be a monocratic head replacing the member states, but rather play a useful role in reconciling them.

Finally, there remained a group of conventioners who, while recognising that the rotating presidency cannot be sustained, also found that the Franco-German proposal left much to be clarified (Christophersen, Demetriou, Oleksy). Most importantly, it was recognised that having two presidents might cause problems in terms of coherency, also with the Union's external representative (Eckstein-Kovacs, Hasotti, Tajani). Those positively inclined to the Franco-German proposal considered that clear job descriptions might succeed in precluding such problems (Teufel, Borell, Hain, Carey, Muscardini). On the other hand, Frendo (MTA, NMP) maintained that no formal guarantees could prevent the permanent European Council President from undermining the position of the Commission.

The opposition against a long-term European Council Presidency

However, the overwhelming majority of the Convention commented extremely critical on the proposal for a dual presidency, and in particular on the part in favour of a long term President for the European Council - even while several did recognise the merits of the Franco-German contribution in other respects (Dini, van der Linden, Peterle, Maij-Weggen; but for Bonde who disqualified the whole proposal as 'elitist'). This opposition included:

- representatives of all medium-sized and small member states: NL (de Vries, van der Linden), B (Michel, de Gucht), Lux (Santer), ÖS (Farnleitner, Bösch), GR (Katiforis), P (Lopes, Costa), FI (Tiilikainen, Kiljunen), Sw (Hjelm-Wallén, Lennmarker), DK (Skaarup, Kristensen), Irl (Roche, Bruton, Carey, Gormley, De Rossa), and also NMPs Heathcoat-Amory (UK), Dini (It);
- New member states: Pol (Hübner, Wittbrodt), HG (Balázs), CZ (Kohout), SLK (Korčok), SLN (Rupel, Peterle), Lith (Martikonis), Est (Hololei), CYP (Attalides), MTA (Serracino-Inglott, Frendo), TRK (Demiralp);
- MEPs Brok, Abitbol, Duff, Carnero, Paciotti, Maij-Weggen, van Lancker, Berger, Voggenhuber, Rack, Seppänen, Bonde.

Typically, Andrew Duff (MEP, UK) characterised the proposal as a “cut and paste exercise; juxtaposition without synthesis” rather than a proper compromise. Several conventioners mocked the proposal for a dual presidency by drawing parallels with the Napoleonic Empire, the Germany of *Kürfürsten* (Voggenhuber), the Roman Empire ruled by emperor and pope, and even the holy trinity (Balázs).

The main objection against a long term European Council President was that this function would inevitably come to undermine the Commission’s powers (De Vries, Duff, Brok, De Rossa, Tiilikainen, Maij-Weggen, Carey). Katiforis (Gr, gov) asserted that a full-time European Council President was bound to bring uncertainty and rivalry to the Union. And several conventioners (Gormley, de Vries, Lennmarker) estimated that eventually the European Council President would hold the upper hand in any such rivalries. De Vries (NL, gov) and de Gucht (B, NMP) added that a full-time European Council President would, moreover, also tend to undermine the position of the EU’s external representative (HR).

Dini (It, NMP) and Bruton (Irl, NMP) submitted that if the Council President were to supervise the execution of decisions of the European Council, this would distort the Union’s institutional balance. Michel (B, gov) and Kristensen (DK, NMP) added that in particular it would be unacceptable if the Council President would come to control a separate administrative apparatus. Lennmarker (Sw, NMP) argued that while the Convention is about to abolish the pillar structure, the Franco-German proposal does introduce a new divide in the Union’s executive powers. Brok (D, MEP) added that the dualist approach proposed might well lead to two separate Unions. MEPs Brok and Lamassoure wondered whether any Council President would really be able to affirm his or her authority over the national heads of state or just add one more voice to their cacophony.

Voggenhuber (MEP, ÖS), Kiljunen (Fi, NMP), Giannakou (Gr, NMP) contested any advantages of a permanent Council President in terms of effectiveness, democracy and simplification. Indeed Voggenhuber observed that the European Council President would quite likely be a former head of state who had just lost electoral confidence in his or her home country. Paciotti and de Vries wondered about the accountability of the European Council President, also in the light of the regular changes in the composition of the Council.

Alternative solutions for the Presidency

Many of those opposing the dualist presidency praised the merits of the rotating presidency (equality, ownership, proximity), while characterising its problems as being mostly of a practical nature and, thus, solvable (Peterle). Many also underlined the importance of the principle of equality in the holding of the presidency, indicating that any reform of the presidency would need to continue to respect this principle (de Vries, Kelemen, Tiilikainen, Serracino-Inglott, Lennmarker, Christophersen, Korčok, Vanhanen).

A substantial number even submitted that the rotating presidency should be retained in the main Council institutions - the European Council, the Council and Coreper - to ensure the involvement of all member states (Santer, Farnleitner, Bösch, Katiforis, Lopes, Costa, Tiilikainen, Roche, Carey, Hübner, Rupel, Peterle, Martikonis, Hololei, Attalides, Demiralp, Berger, Voggenhuber, Bonde). Of course, they generally recognised the need for some practical adjustments to lighten the presidency’s burden, in particular a re-focussing on procedural responsibilities and the delegation of certain executive tasks (cf. Brok).

One alternative that was submitted as a possible compromise was the idea of team presidencies. Departing from the Franco-German side, Jürgen Meyer (supported by Palacio, also Andriukaitis) suggested that some of the merits of the rotating presidency could be retained by having the President collaborate with a troika praesidium that could in turn be composed of one big and two smaller member states. Rotation might also apply to the chairs of the various council formations. Coming from the other side of the debate, Lena Hjelm-Wallén (Sw, Gov) and Edmund Wittbrodt (Pol, NMP) suggested that the equality principle might be respected by electing a team presidency of three nationalities each representing a different group of member states, presumably serving 18 months (cf. Krasts, Martikonis, Kohout, Cisneros, Carey).

A final option that emerged in the debate was to replace the rotating presidency by a single EU president combining the function of Council President with that of Commission President. Such a President might serve the Union's institutional balance by taking on a co-ordinating role among the various institutions. Those advocating this option (Dini, Follini, Lequiller) clearly recognised its radical implications. Hjelm-Wallén opposed this perspective on principle, arguing that it would distort the Union's institutional balance by allowing the European Council to run the Commission. For several others a single, unified presidency accountable to both the EP and the Council figured only as a long-term perspective (Santer, Barnier, Tajani). For the moment, however, except for the three Latin NMPs, most who considered this option seemed intend on retaining the rotating presidency.

Electing the Commission President

Elaborating on the other half of the Franco-German proposal, there emerged broad support in the Convention for having the Commission President democratically elected (Haenel, Katiforis, Michel, Bösch, Rupel, Oleksy, Martikonis, Andriukaitis, Lamassoure). As French MEP Alain Lamassoure put it, this step would be essential in making the future Constitutional Treaty acceptable to the European people who, in up to 20 of the member states, would be called upon to ratify the Treaty through a national referendum. It would allow the European people a clear way of selecting their leaders. Heathcoat-Amory (UK, NMP) contested these democratic merits, given the absence of a proper European demos and shared political understandings. Muscardini (MEP, It) reminded the Convention that the EP already has the power to approve the Commission President. Indeed, for one, Hololei (Est, Agov) defended the present selection procedure of the Commission President.

The democratic procedure most often advocated was to have the Commission President elected by the EP (Fischer, de Villepin, Meyer, Teufel, Fini, Farnleitner, Borrell, Azevedo, Teufel, Kristensen, Peterle, Hassotti, Kohout, Demiralp, Hänsch, Voggenhuber). However, those advocating EP-election split on the consequences this election would have of politicising the Commission. While Dervis (TRK, NMP), accepted some politicisation of the Commission as inevitable, this was a point of major concern for a considerable number of conventioners (Hain, Haenel, Michel, Santer, De Rossa, Tiilikainen, Eckstein-Kovacs, Hübner, Attalides, Krasts). Hence, they advocated subjecting this election to the requirements of a supermajority in the EP (Michel and Santer recommended setting this supermajority at 60%), and of the confirmation by the European Council. Hübner suggested that extra checks to prevent politicisation of the Commission might be inserted in the organisation of the nomination procedure, for instance by having the European Council control this part of the procedure (Santer, Kohout, Costa).

The requirement of a supermajority met, however, on vehement protests of a number of MEPs, because they expected that much of the election's democratising effect would be lost as a supermajority would require political deal-making. Brok even went as far as stating that he would rather preserve the present situation than to accept a qualified majority vote in the EP. Van Lancker insisted that the Commission President should be nominated by the European party groups. She rejected fears of the Commission being captured by a stable EP-majority as decision-making would still require part groups to form coalitions, at times even of supermajorities, and as this effect might be countered by a balanced composition of the Commission. Lamassoure added that eventually the appropriate checks on the Commission President's powers would be exerted through elections. Additionally the Commission as a whole might be subject to an investiture vote in the European Council.

Turning away from EP-election, Lennmarker insisted on the importance of granting the Commission President a democratic base independent of the EP (cf. Hjelm-Wallén). He added that this would also ensure the EP's independence vis-à-vis the Union's executive power. A number of conventioners suggested that one might explore options that would involve national parliaments in the Commission President's election (Haenel, Oleksy, Krasts). More concretely, it was suggested to have the Commission President elected by an Electoral College, presumably half composed by national parliamentarians and half composed by MEPs (Roche, Carey, Gormley, Lopes, Christophersen, Serracino-Inglott, Frendo, Martikonis). As an extra check, the European Council might retain the power to nominate the candidates (Serracino-Inglott). Alternatively, Bonde (MEP, DK) and Lekberg (NMP, Sw) suggested that national parliaments (weighed by EP-share) might elect the Commission President, possibly on the basis of nominations by the European Council and with EP-approval (Lekberg). As a final alternative, several NMPs (Giannakou, Bruton, Gormley) suggested the option of direct election of the Commission President by the people.

Council

Many conventioners noted that the Council is the Union's institution in greatest need for reform (Palacio, Borrell Fontelles, Brok). Several added immediately that improving the Council should not proceed at the cost of the EP and the Commission. Wittbrodt (NMP, Pol) noted that many reforms were primarily the Council's own responsibility as was also recognised by the European Council's Seville declaration. Several conventioners (Hjelm-Wallén, Lequiller, Azevedo, Krasts, Andriukaitis, Muscardini) submitted that the Council should adopt legislation in public.

Many conventioners (Duff, Brok, Rack, Berger, Van Lancker, Michel, Teufel, Meyer, Kiljunen, Dini, Costa) agreed with Giuliano Amato - who worked on this in the Working Group on Simplification - on the desirability of a stricter delineation of legislative and executive activities in the Council. Broad support emerged for a separate Legislative Affairs Council (Amato, Dini, Brok, Berger, Barnier, Palacio, Fayot, Borrell, Costa, Tiilikainen). Amato suggested that each state would be represented by a permanent member accompanied by sectoral ministers depending on the agenda. Finnish representatives Tiilikainen (gov) and Kiljunen (NMP) supported this proposal on the assumptions that the work of the Legislative Council would take place in public and that permanent Council members would be subject to greater accountability by their national parliaments (cf. Santer, Borrell). Voggenhuber, Bösch and van Lancker went even further by submitting that the Council should evolve towards a normal second legislative chamber.

Many conventioners argued for greater consolidation and more continuity in the executive council formations. Several conventioners (Serracino-Inglott, Andriukaitis, van Lancker) advocated the full separation of the General Affairs Council from the External Relations Council. It was also suggested (Serracino-Inglott, Hasotti, Andriukaitis, Fayot, Borrell, Barnier) that each executive council should be able to elect its own President. In the view of Louis Michel (B, gov) the chairs of executive councils should be held by the Commission. More specifically, it was suggested that the Commission President should chair the General Affairs Council (Borrell, van Lancker). Also it was suggested that the External Relations Council should be chaired by the 'double hatted' external representative (Michel, Santer, van Lancker, Lequiller, Attalides).

Various conventioners (Dini, Rupel, Hübner, Barnier, Fini, Fischer, Tajani) expressed their support for a 'double-hatted' EU minister for foreign affairs as also suggested by the Franco-German contribution. Fischer, Teufel and Barnier advocated the creation of a European ministry of foreign affairs, also to prevent the emergence of two parallel foreign affairs administrations.

Various conventioners noted that so far the Treaties fell short in adequately delineating the tasks of the European Council. Ben Fayot (Lux, NMP) noted the lack of democratic legitimacy of the European Council and submitted that a formal definition of its tasks would have to focus on its responsibilities for setting out the Union's strategic guidelines, adopting the multi-annual legislative programme and outlining the direction of the CFSP. Van Lancker (MEP, B) added that it would be inappropriate for the European Council to enjoy any powers in the execution of EU policies, including CFSP, and that it should be prevented from turning into a Court of Appeal for the other institutions (cf. Voggenhuber).

Decision-making procedures

A number of conventioners (Fini, Lequiller, Vanhanen, Muscardini) re-iterated their support for extending qualified majority voting (qmv) in the Council, with some (Dini, Rack, Hänsch, Demiralp) arguing that it should become the rule, as also advocated in the Franco-German contribution. While sympathetic to this principle, Jacobs (observer for Unice) argued for maintaining unanimity in social policy and taxation. Fischer strongly advocated the adoption of qmv in CFSP so that no single member state could block further developments in this field (cf. van der Linden). With Hänsch, he exempted military affairs from qmv.

On the other hand, Skaarup opposed any further extension of qmv, as it would undermine national sovereignty. On a more nuanced tone, Sandra Kalniete (new LTV Gov) cautioned that moving too quickly to qmv in the Council on certain issues might well undermine the legitimacy of certain decisions among the people whose governments would find themselves in the minority. In more general terms, Danuta Hübner (Pol, gov) warned that qmv should not be regarded as the panacea to the challenge of managing the Council after enlargement.

Several conventioners (Oleksy) argued that the qmv-rules as established under Nice required simplification. In particular, some (Michel, Kiljunen, Teufel, Bonde, Berger, Borrell, Duhamel, Demiralp, Vanhanen) advocated replacing the current qualified majority rules by a simple double majority rule of member states and population. On the other hand, Lekberg defended the Nice compromise on qualified majority voting and warned against re-opening the negotiations on this point.

More generally, some (van der Linden, Tiilikainen, Lopes, Azevedo, Rack, Rupel) suggested that all legislation should as a rule follow the Community Method. A number of conventioners

suggested linking codecision automatically to the adoption of qmv in the Council (Oleksy, Andriukaitis, Bösch). Hjelm-Wallén countered, however, that in her view there were many exceptions that would not allow this principle to apply.

Teufel underlined the importance of the principle that the EP should be the full equal of the Council in legislation (Christophersen, Palacio, Borrell, Lopes, Voggenhuber, Hänsch). A number of conventioners reiterated the plea for further extension of the codecision procedure (Fischer, de Villepin, Lequiller, Fini, Cisneros, Michel, Tiilikainen, Kiljunen, Peterle, Attalides, Andriukaitis, Kelemen, Demiralp, Brok, Rack). Codecision should thus become the rule subject to certain well-reasoned and well-defined exceptions (Kiljunen). Borrell underlined the importance of also applying the codecision procedure to the adoption of strategic policy guidelines.

Moreover, there were pleas for extending the EP's budgetary powers, among other things by abolishing the distinction between compulsory and non-compulsory expenditures (Michel, Christophersen, Fini, Borrell, Azevedo, Attalides, Voggenhuber, Hänsch). However, with regard to this point, Lord Tomlinson emphasised the need to strictly observe the conditions attached to this abolition by the Working Group on Simplification (CONV 424/02). Several conventioners (Bonde, Hänsch, Tajani, Borrell) argued for strengthening the EP's powers of executive oversight. Costa (P, NMP) emphasised in particular the need to subject the Commission to full EP-scrutiny. Fischer (D, gov) also suggested that the EP should have the power to censure Commissioners individually. Tajani (MEP, IT) advocated granting the Parliament the right to take legislative initiatives. Finally, Voggenhuber (MEP, ÖS) insisted that as a genuine parliament the EP's role in constitutional revision procedures needed to be secured.

Rack (AMEP, ÖS) argued for the importance of securing the involvement of advisory, representative bodies as the Committee of the Regions and the Social and Economic Committee in the Union's legislative process. Manfred Dammeyer, representing the Committee of the Regions, asked for his institution to be granted a formal role in the Union's decision-making process beyond its present advisory powers. He also suggested that the Committee should be organised to half the size of the EP.

Commission

It was widely accepted among the Convention that the Commission's efficacy does not benefit from adding new member to it with every new Member State. Still many conventioners also insisted that the composition of the College should reflect the equality among the member states, big and small. Several conventioners, most notably of small and candidate countries (Farnleitner, Bösch, Hjelm-Wallén, Lennmarker, Christophersen, Carey, Gormley, Costa, Korčok, Rupel, Peterle, Hololei, Eckstein-Kovacs, Muscardini, Rack, Hänsch) insisted on the principle that each member state should have a member in the Commission. Lennmarker (Sw, NMP) added that this should, however, not lead to the artificial creation of vacuous portfolios. Others (de Vries, Michel) recognised the need to explore the possibilities of reducing the Commission's size but insisted that any acceptable solution would need to respect the principle of equality, for instance through a rotation scheme.

However, there were also conventioners (Amato, van Lancker, Fini, Palacio) who insisted that the Commission - unlike the Council - does not serve to represent the Member States and that, hence, there is no need in principle to have them all represented. Palacio (SP, gov) submitted that the

Commission composition should reflect the Union's common interest rather than the interests of the member states.

Michel, Barnier and Kohout advocated making the Commission accountable to both Council and EP. Kohout added that the European Council should also have the right to dissolve the EP. On the other hand, a number of conventioners (Hain, Attalides) underlined the importance of preserving the Commission's independent character. In particular the Commission should be prevented from coming under partisan political control. For this reason, its President should not be elected by the EP, or at least not by a simple parliamentary majority. Commissioner Barnier (also de Rossa) underlined the importance of a balanced composition of the Commission for preserving its independent role within the Union. Together with Tiilikainen (Fi, gov) and Lopes (P, gov), Barnier also argued for the importance of maintaining the principle of collegiality in the Commission.

Santer emphasised the need to strengthen the Commission President (also Brok, Hänsch); she or he should set out the internal guidelines and control the allocation of portfolios in the College. Santer expected, moreover, that the President should be able to direct a College of over 25 if supported by a number (3 or 4) vice-presidents.

Santer underlined the Commission's role as the driving force of the integration process. Brok (MEP, D) emphasised that the Commission's powers should not be undermined by exposing it to the competition of other executive bodies. De Gucht (B, NMP) added that the popular calls for more Commission powers would need to be formally substantiated by actually freeing its implementation powers. Indeed, many conventioners noted the need to strengthen the Commission in terms of its competences (Hain, de Villepin, Lopes, Azevedo, van der Linden, Rupel, Frendo).

As several conventioners (Hain, de Villepin, Tiilikainen, Teufel, Hänsch) underlined the importance of the Commission's right of initiative, Commissioner Vitorino suggested to enshrine this right in the Constitutional Treaty. He further drew upon this role of the Commission to argue for it to play a prominent role in the drawing up of the Union's legislative program.

In considering the Union's executive tasks, Vitorino conceded that European decisions mainly require execution at the national or sub-national level. At the same time, he suggested that the executive functions that have to be handled on the European level are best left to the Commission acting under the control of EP and Council. Peter Hain (UK, gov) suggested that the Commission might acquire new powers that have so far fallen under the third pillar (JHA). Bösch argued for extending the Commission President's powers in certain specific political fields. Tiilikainen (Fi, gov) argued that the Commission should be given a greater role in the external representation of the Union. Van der Linden (NL, NMP) argued for an integrated European foreign office under the authority of the Commission. To the extent that certain European executive tasks still need to be exempted from the normal Commission responsibility, Vitorino asked for genuine innovative solutions.

Hain argued that the Commission should acquire more powers to implement Union's policies and to control their implementation by others (cf. Tiilikainen). A number of conventioners advocated a fundamental overhaul of comitology (cf. Vitorino, de Gucht, Hübner, Berger). Pat Carey (Irl, NMP) made this point most bluntly as he asked the Commission to be relieved of the comitology system. In any case, Vitorino maintained, two parallel executives (Commission and Council) would not contribute to the Union's legitimacy and effectiveness (cf. de Gucht). He concluded by asserting that the Commission is not and will not become a government. At the same time, he also warned against coming to regard the Council as a government.

Democracy

Besides extending the competencies of the EP, various measures were suggested to improve its democratic legitimacy. Tiilikainen (Fi, gov) suggested that the EP would already win a lot of credibility if people were made more aware of the powers it actually already enjoys. NMPs Wittbrodt (Pol) and Demiralp (TRK) argued for adopting a uniform EP-election procedure across all member states. Bruton (Irl, NMP) argued that the link between citizens and MEPs might be improved by having the latter elected in small, regional constituencies on the basis of an open list system. Hübner (Pol, gov) asserted that Europe-wide party lists were in her view unlikely to strengthen the EP's legitimacy. Muscardini (MEP, It) asked for a ban on combining the position of MEP with certain other positions like that of national MP.

Hassotti (Rom, NMP) advocated setting the size of the EP at a maximum of 600 seats. In Brok's (MEP, D) view the legitimacy of EP-elections might be increased by adapting the shares of the various member states towards greater parity per capita. On the other hand, Hain (UK, gov) underlined the acceptability of the Nice decision on the composition of the EP and that reopening this debate would only complicate things.

Various conventioners argued that the future Constitutional Treaty should be ratified by referenda in as many member states as possible to secure support and engagement of the citizens (Bonde, Abitbol, Heathcoat-Amory, Gormley). Bonde added that once the Treaty would be rejected in any member state, its federalist supporters would at last be forced to consult the Eurosceptics. Heathcoat-Amory called for having as many referenda as possible and for organising them, if possible, on the same day, suggesting that this might be the day of the 2004 EP-elections.

National Parliaments

A number of conventioners (Haenel, Meyer, Stuart, Heathcoat-Amory, Carey, Skaarup, Lekberg, Cisneros, Kalniete, Rack, Bonde, Abitbol) re-invoked the need to strengthen the role of national parliaments in the Union's architecture. MEP Bonde (also Krasts) advocated entrusting the national parliaments with the power to guard the subsidiarity principle. NMPs Teufel (D) and Gormley (IRL) re-affirmed their support for granting national parliaments access to an early warning mechanism and for allowing them to file complaints on the basis of subsidiarity to the ECJ. Stuart (UK, NMP) proposed some extra details to this plan, including the possibility for a group of national parliaments of issuing a red card on proposed legislation and of granting each member states two votes to share among the various chambers of their parliament. French MEP Duhamel countered that the early warning mechanism might still be rejected for it being likely to undermine rather than to strengthen simplicity and efficacy. His Italian colleague Muscardini added that national parliaments could not be expected to take over tasks that the EP was best facilitated to look after. MEP Berger suggested on the other hand that national parliaments might be represented in a third legislative chamber besides the EP and a separate legislative council

UK MEP Kirkhope underlined the importance of increasing the co-operation between the EP and national parliaments (also Wittbrodt, Carey). In particular, Kirkhope pointed towards the value of bringing MEPs expertise into the national transposition processes. He suggested that the Constitutional Treaty should include an article on the setting up of joint committees to this purpose in all national

parliaments. Spanish representatives Palacio (gov) and Cisneros (NMP) asked the Convention to keep the idea of a Congress for consideration.

European Court of Justice

A number of conventioners (Hain, Lord MacLennan, Hübner, Palacio) noted the need to strengthen the ECJ, in particular to equip it with extra resources to manage its workload (Jacobs). Tiilikainen advocated extending the ECJ's remit into the Union's competencies that have so far fallen under the second and third pillar. Farnleitner (ÖS, gov) advocated the extension of citizens' access to justice. Van Lancker (MEP, B) suggested that the nomination procedures for the ECJ needed revision and might be communitarised. Skaarup (DK, NMP) argued for a clear need to subject the ECJ to proper controls to prevent it from moving too much towards a federalist conception of the Union.

Giscard's conclusions

Having heard the debate, Giscard was led to note that the Convention should not ignore the unresolved challenges the EU faces. In particular, he mentioned enlargement and the new policies (CSP, ESDP, JHA) for which the institutional architecture of the Treaty of Rome obviously was not prepared and on which the Union fails to deliver. If the Convention would cling to the current institutional architecture and thus underestimate these challenges, it would also disappoint public expectations.

Giscard spoke in favour of the institutional triangle (EP, Council and Commission) keeping each other in check without dominating each other, that characterises the Union as a unique, mixed political system, quite distinct from the classical federal model. He went on to identify a number of issues on which there appeared an emerging consensus but which still left important questions on details to be answered:

- Extension of the codecision procedure to all legislation but for some important exceptions that still need to be defined.
- Extension of qmv in the Council, but pending on a reconsideration of the appropriate composition of the required majority; a double simple majority; specific supermajorities?
- The establishment of a separate Council for legislative affairs, but with many specific issues to be settled regarding its composition, procedures and chair: should this Council also be distinguished from the General Affairs Council? Would it need a different composition than the GAC? Should it evolve towards a 'normal' second legislative chamber besides the EP?
- A tendency towards EP-election of the Commission President. But do we need to - and do we want to - accept the consequential politicisation of the Commission? Should this Commission retain the monopoly of initiative and would not this exclude an opposing minority from the opportunity to initiate legislation? And what if the requirement of supermajority support in the EP prevents any candidate from being elected?
- Obviously many member states, and especially the new ones, are keen to retain the right on a Commissioner. However, portfolios cannot be split indefinitely. On balance there are probably no more than 10-12 substantive portfolios to share. Could there be two kinds of Commissioners, one with portfolio and another without? In any case from 2004-2009 we will first be able to see how a Commission of 25 member can operate. Future solutions will only enter into force from 2009 onwards.

- The European Council has been crucial at various stages for getting the Union going again. Now there is clearly a need to seek for an appropriate definition of the European Council's role and for a strict delineation of it from the Council.
- One might note there is, in itself, nothing new to the post of an European Council President and that, so far, there have never been any fundamental problems between the Presidency and the Commission President.
- The general Affairs Council suffers from various problems: its composition is liable to turn-over, its members vote for themselves rather than for their government as a whole, the follow-up on decisions taken falls short. Should the General Affairs Council be retained as the central Council? Who should be its members? Should one consider appointing permanent members to it? Is there not also a need for a more permanent presidency of the Council?
- In line with the Franco-German proposal there appears an emerging consensus on a European Minister for Foreign Affairs. How should this person be appointed? With what kind of mandate? How much margin for manoeuvring will this Minister enjoy and how can this be controlled?
- Various conventioners have expressed their concern about the ECJ. This concern is justified, also if one takes particular issues into account, such as enlargement, subsidiarity, the ECJ's remit, the role of the Court of the First Instance etc. This might be an appropriate subject on which to organise a reflection group of about 10 Convention members chaired by a member of the Praesidium.

Obviously this first debate could not be regarded as conclusive. Much still needs to be done to work out appropriate compromises. The next Convention meeting will have a discussion on the report of the Working Group on Social Europe and on the place of the Regions, and probably also address some first draft articles. After that, the institutional debate will be resumed in parallel with the debates on draft articles. Probably there will be two meetings (late February and early March) dedicated to audits of the various Union institutions, following their order in the Treaty of Rome: Parliament, Council, and Commission. A final debate should again take account of the overall institutional structure. Giscard called upon the Convention member to contribute as many ideas to this debate, preferably in the form of written contributions.

Additional observations

- Overall this meeting was a rather lively one. Many interventions were received with applause by supporters, notwithstanding Giscard's plea at earlier meetings not to do so as it might distort a balanced assessment of the actual support.
- A number of conventioners (Kiljunen, Lekberg, Abitbol, Andriukaitis) insisted to the Chair that the Convention should be allowed appropriate time to discuss the institutional issues and that this debate should really be taken as no more than a starting-point.
- Péter Balázs (HG, Gov) made a strong plea that, with the agreement of the Copenhagen summit, the 10 new member states should be recognised as full and equal players in the Convention from 16 April onwards. This should also be confirmed by the next European Council. Seppänen (Fi, AMEP) added that the new member states should be fully involved in the next IGC leading up to the signing of the new (Constitutional) Treaty.
- While much of the debate concerned the French-German proposal, the representatives of both governments (foreign ministers de Villepin and Fischer) only turned up on the second day, Fischer

only by 10:30 or so. Moreover, after they had delivered their contributions, they were also out of the room again by 11:30. This provoked some critical comments from the floor. Voggenhuber stated that the foreign ministers should not use the Convention as a letterbox for yesterday's newspaper (cf. Maij-Weggen). In turn, Spanish foreign minister Palacio stood up for her colleagues underlining the value of having foreign ministers fully involved in the Convention's work.