

Notes of the Meeting of The European Convention, 27 and 28 February 2003

Ben Crum (CEPS), 7 April 2003 – available from <http://www.epin.org/convention/reports.html>¹

Summary

This Convention plenary session was dedicated to draft texts for the first 16 articles of the Constitutional Treaty. Possibly most remarkable was the fact the proposed structure succeeded in guiding and focussing the debate. Still the debate also revealed a large number of issues still to be settled, including some deeper disagreements of a more principled kind.

Notably some of these principled disagreements involved the very first paragraph of the Constitution (on ‘Establishment of the Union’), concerning in particular the need to acknowledge the distinctive role of Member States as High Contracting Partners to the Constitutional Treaty, the use of the phrase “certain competences on a *federal* basis” (emphasis added), and the absence of the phrase “an ever closer Union”.

Turning to the *values* of the Union (article 2) a number of additional values were suggested, seeking in particular to address the commitment of the Union to social values and cultural diversity. In this context a very principled debate arose about whether or not to include a reference to religious values. Concerning the Union’s *objectives* there were even more requests to add items; objectives in the sphere of social issues as well as cultural diversity, but also a strengthening of the environmental objectives, the preservation of the single market, and objectives in the sphere of external action and defence.

Articles 4-7 concerning legal personality, fundamental rights and citizenship raised relatively few bones of contention. No one challenged the proposed text for article 4 on legal personality and articles 6 and 7 (non-discrimination and citizenship) provoked mainly minor remarks and comments of a more editorial kind. The main issue still to be settled here is which place the Charter of Fundamental Rights is to get in the Constitutional Treaty. A majority of conventioners agreed that the Charter needs a prominent place in the Constitutional Treaty. One of the two options suggested by the Praesidium, to incorporate the Charter as a protocol to the Constitutional Treaty, gained the support only of a very small minority. Instead the two main alternatives featured in the debate were the incorporation of the Charter as the second part of the Constitutional Treaty or to have it even start the Constitutional Treaty, an alternative not foreseen by the Praesidium.

The morning of Friday 28th saw the complex debate concerning Articles 8-16 on the Union’s competences. The debate on article 8 and 9 concerning the fundamental principles on competences and their application was still rather focused on whether or not to include certain principles (primacy of EU law, principle of loyal cooperation) and how to define these. Real complications arose concerning the approach chosen by the Praesidium to categorise competences, the categories distinguished and the way competences were allocated to these categories. While a number of conventioners was rather satisfied with the approach proposed, many of them failed to be fully convinced. Various conventioners indicated that they would have preferred a more open, flexible approach and feared that the approach proposed would turn out to be too rigid. The debate centred in particular on the

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.

category of shared competences (article 12) for which the Praesidium had thought it preferable to include at least an indicative list of the competences concerned. Some suggested that this list should be much more detailed and that it might be dangerous to leave this to Part II of the Treaty. Others were however concerned that any attempt of listing, even if explicitly serving an indicative role only, might easily be mistaken for a comprehensive list.

There was quite some debate on the proposal to have separate articles on the competences concerning the coordination of economic policies (article 13) and on the common foreign and security policy (article 14). Clearly the wordings of these articles were not satisfactory as they stood. The insertion of a flexibility clause (article 16) allowing the Union to enter new fields of competence if needed seemed to be supported by a consensus. However, some practical issues concerning the *modus operandi* of this clause (permanency, Council voting procedure, EP involvement) need to be settled still. At the beginning of the Friday session Giscard d'Estaing also revealed draft texts for the articles from article 24 onwards and for two protocols on the principles of subsidiarity and proportionality and on the role of national parliaments.

Introductory remarks

In introducing the session Convention President Valéry Giscard d'Estaing referred to the shadow the Iraq-crisis was casting over the Convention's work. He noted the difficulties European states encountered in seeking to express themselves with one voice on matters of foreign policy. At the same time he observed that it was up to the Convention to represent the citizens of Europe who urge for a more cohesive and stronger common foreign policy. Giscard then reflected that Europe might have been able to play a more decisive role on the world stage if, at their very establishment in the Treaty of Maastricht, the provisions on CFSP had been subject of more fundamental debate and reflection. Eventually institutions cannot be called upon if there is a lack of political will to live up to their intentions. In any case, the Iraq-crisis should not distract from what the Convention has already achieved and it should not allow itself to become demoralised.

Notably several conventioners (de Villepin, Fischer, Lequiller, Barnier, Palacio) started their contributions to the debate by referring to the pressure the Iraq-crisis put on the work of the Convention and the need for the Convention to persevere in its task. Joschka Fischer insisted on the urgency to have the CFSP expanded and strengthened. He recognised that time is needed to let a common political will emerge, however institutions to foster such a political will would need to be brought into place as soon as possible. In that light any delay of the work of the Convention would send the wrong message. Before the summer, a draft Constitutional Treaty must be available, so that the new Treaty can still be signed this year.

Convention's Work Programme and Procedures

Giscard told that the Praesidium's drafts of the first 16 articles had so far provoked 1087 amendments, 486 of which concerned the first three articles. He added that, given the nature of the exercise, the Praesidium had not been surprised by the quantity of this response. All amendments are published on the Convention's website. Moreover, the secretariat had worked hard to provide a synthesis of the amendments filed (CONV 574/03).

To discuss the amendments, procedures in the plenary were slightly revised. Conventioners were asked to make comments on the amendments, rather than to present speeches. Speaking time

would be reduced from 3 to 2 minutes per speaker. More rounds of blue cards would be held to foster a more lively exchange of arguments. Indeed, rather than having a debate between the plenary and the Praesidium, the debate should become a debate among the Convention members themselves.

The debate was organised in three rounds. In the first round the Convention would discuss draft articles 1-4 after having them introduced by Giscard. Then in the second half of the Thursday meeting the Convention, would turn to articles 5-7 that would be introduced by Vice-Chair Dehaene. On Friday – after a presentation of the draft texts on the ‘exercise of the Union competences’ (title V, article 24-33) and the protocols on subsidiarity and national parliaments – Vice-Chair Amato would introduce the debate on the articles on competences (8-16).

Further the Praesidium proposed to have some additional meetings in which debates on the articles can continue in a somewhat more informal setting. To begin with, two meetings were set. On 5 March Vice-Chairman Amato chairs an additional meeting on the draft articles on competences (articles 8-16). On 26 March Vice-Chair Dehaene chairs an additional meeting on articles 1-7 involving fundamental rights and citizenship, in particular. To structure these debates the Convention secretariat will prepare a list of questions raised by the present plenary debate.

With a view on the time left for the Convention and the work still to be done, Giscard referred the conventioners to an indicative programme of work that had been drafted by the secretariat (CONV 586/02). Eventually the Praesidium intends to present a complete overview of the articles drafted in the first two weeks of May. That will allow the Conventioners to have a complete view of the Constitutional Treaty. In view of the June European Council, the Convention would then still have a full month to finalise this draft.

In response to the remarks of Giscard, MEP Jens-Peter Bonde argued that the deadlines for amendments are too short and that also the 2 minutes speaking time allowed in the debate would not be enough. He proposed to postpone the Convention’s deadline to Christmas and to establish Working Groups to discuss the various parts of the Constitutional Treaty in detail. Finally, Bonde re-iterated his earlier request of ensuring access to all Praesidium-documents also for those whose party-groups are not represented therein. Giscard replied that the Convention deadline has been decided by the governments and that requests to have this deadline reviewed should hence be addressed to them. He assured that the Praesidium does everything to use the time given as good as possible.

In the debate German parliamentarian Jürgen Meyer noted that for the German parliaments the two weeks allowed for amendments are really too short (cf. Skaarup). They need at least one week more. Giscard responded that in principle amendments could be submitted as long as the Convention would not have finished its work. The deadlines only served to mark off the point at which amendments could be made available and analysed for the Convention debates planned on them.

Debate on draft articles 1-16

The debate on the first 16 articles raised a wide range of points still to be resolved, some considerably more substantial than others. At the same time there appeared a notable consensus on the structure of the text (cf. Teufel), though possibly less so on the structure of articles 10-15. There were some cautionary remarks though. Lithuanian parliamentarian Andriukaitis argued that the Convention should have had a separate debate on the structure of the Constitutional Treaty. In particular he found the structure proposed by MEP Jo Leinen preferable to the one now followed in the Convention. He also insisted on the importance of underlining the Treaty character of the Convention’s product and

that it serves above all to consolidate and simplify the *acquis* that has been built up (cf. Kalniete, Hololei, Hjelm-Wallén, Vanhanen, Seppänen). On a somewhat stronger tone MEPs Bonde and Seppänen insisted that it would be preferable to talk about a Treaty throughout and to leave any suggestions of a Constitutional nature aside.

German NMP Edwin Teufel argued that the Convention should stick to the request of the Laeken declaration to simplify the Treaties without changing the substance of the *acquis*. Czech politicians Zieleniec and Rovna called upon the Convention to keep the Constitutional Treaty clear and concise, to focus on general principles and to avoid entering into too much details and adding unnecessary references. By way of example, Zieleniec wondered how essential references to the discovery of space or to children's rights are for the Constitutional Treaty.

On the other hand of the political spectrum a number of conventioners including many representatives of the Brussels institutions (Vitorino, Barnier, Duff, Dybkjaer, Thorning-Schmidt, Käuppi, Voggenhuber, Fischer, Carey, Lekberg, Dini, di Rupo, Grabowska, Kutzkova) expressed their concern that in rewriting the Treaty – and in particular in the selection of overarching principles, objectives and competences in Part I – the Convention should not backtrack on the achievements of European cooperation so far. Duff also invoked the commitment to the preservation of the *acquis* currently expressed in article 2 TEU. Giscard assured that there would be no such backtracking but that the Convention had to come up with practical solutions in seeking for clear formulations on things like the Union's values and objectives. Vice-Chair Dehaene added that in the end the preservation of the full *acquis* is to be reflected in particular by Part II of the Constitutional Treaty. By the time that the full text is presented it should become clear that there is no reason for concern on this point.

Meyer (D, NMP) and Carey (IRL, ANMP) urged the Praesidium to make full use of the work of the Working Groups in drafting the articles. Meyer noted in particular that some of the conclusions of the Working Group on Social Europe did not seem to be fully incorporated in the draft articles. Various conventioners (Roche, Scotland) underlined the importance of precision in formulations. On the other hand di Rupo (B, NMP) submitted that the need for legal precision should not become an obsession for the Convention.

Articles 1-3: Nature of the Union, its values and objectives

In response to the amendments received, Giscard made some introductory comments on draft articles 1 to 3. He underlined that these three articles are strongly related. On the issue of the nature of the document, he elucidated that the text should be regarded as a Treaty establishing a Constitution or, looked at it from the other side, it establishes a Constitution by way of a Treaty.

Article 1 Establishment of the Union

Conventioners generally welcomed the way the first phrase of article 1 now reflected the double legitimacy of the Union as deriving from the peoples as well as from the Member States (Vitorino, Fini, Hjelm-Wallén, McAvan, Rovna). Still from various sides further clarifications of important points were still asked for (e.g. Duhamel, Hololei). Finnish members Vanhanen (NMP) and Seppänen (MEP) objected to the suggestion that the Union was only founded or re-founded with this Treaty. Tiilikainen (FI, gov) suggested that it would be more appropriate to say that the Union enters a new stage with the new Constitutional Treaty.

Several conventioners (Hjelm-Wallén, Lekberg, Lenmarker, Heathcoat-Amory, Kalniete) argued that there was a need to underline the distinct role of the Member States who as sovereign states would serve as the ‘High Contracting Parties’ to the Constitutional Treaty. In particular clarification was asked for on the issue that the Union derives its powers from the Member States (Scotland). Such an assertion was however opposed by Commissioner Barnier. Giscard granted that the Union competences do arise from the Member States and recognised that this point might be clarified further in the text. In turn Duff insisted that the EU does not just derive its powers from the Member States but is more than the mere sum of its parts. Indeed the very replacement of the Treaties by a proper Constitution this should also be read as indicating this. Giscard noted that the Praesidium had consciously deleted any reference to the “High Contracting Parties”. Such a reference would have its place in the Preamble. In turn Rovna (CZ, Agov) suggested that maybe the whole of article 1 was better placed in the Preamble.

Several conventioners (Fischer, Einem, Voggenhuber, Brok, Spini, van der Linden, Severin) suggested that it would be more appropriate to refer to the ‘citizens’ of Europe rather than to the ‘peoples’. Giscard defended the choice for ‘peoples’ as the most-embracing concept. From a strict legalistic interpretation, the concept of citizens would, for instance, exclude children. Ben Fayot (Lux, NMP) argued further that, if the reference to the will of the peoples would be taken seriously then the ratification of the Constitutional Treaty should be subject to a referendum. British MEP Kirkhope proposed to add a further paragraph (1.4) that would express a commitment to have the new Treaty ratified by way of referenda in all Member States where this is legally possible.

Competences on a federal basis ?

The use of the word federal brought out a deep split within the Convention. Giscard defended the use of the word federal as factually appropriate with regard to those competences in which Member States have actually fully transferred powers to the Union, like in the case of the management of the Euro. Various conventioners (Duff, de Rossa, MacLennan, Spini, Avgerinos, van der Linden, Severin) welcomed the use of the word federal. Some (Di Rupo, Michel, Berès) even submitted that leaving it out would cause disappointment and bewilderment among many. Commissioner Barnier argued against any identification of the federal idea with centralisation. Indeed he submitted that decentralisation and the principle of subsidiarity are deeply inherent to the federal idea (cf. Brok). Similarly, Borrell (SP, NMP) defended the concept of federal as to be understood as ‘united in freedom’. Commissioner Vitorino suggested that it might even be more appropriate to put the affirmation of the federal nature of certain Union competences first and then have it followed by a commitment of the Member States to coordinate certain policies (cf. Dastis). De Villepin, Dini, Demiralp and Severin suggested that the most appropriate formulation would be to define the Union as a ‘federation of nation-states’. Demiralp (TRK, Agov) defended this concept as adequately expressing that sovereignty is actually exercised at two levels. However, British parliamentarian Heathcoat-Amory rejected the concept as a contradiction in terms.

A considerable number of Conventioners (Scotland, Hjelm-Wallén, Kiljunen, Vanhanen, Fayot, Costa, Skaarup, Hololei, Kalniete, Wittbrodt, Hasotti) argued that the word federal is liable to misunderstandings among different peoples. Wittbrodt (POL, NMP) submitted that, even if certain Union competences can factually be labelled as federal, most of their actual administration remains under the control of the Member States. Particularly problematic to the word ‘federal’ are its

prescriptive overtones and the comparison with nation-states on which it relies (Kiljunen, Roche, Carey). As an alternative it was suggested that it might be replaced by a more concrete reference to the Community Method (Fayot, Fini, Farnleitner, Würmeling) or by a phrase like “exercising certain competences on a ‘common’ or ‘supranational’ basis” (Figel, Kiljunen). Andriukaitis (Lit, NMP) suggested that if the Constitution was to have a reference to the federal idea, it was better inserted in article 8 on fundamental principles. French MEP Abitbol considered pleas for the federal concept as rather naive and surrealistic in the present situation and proposed to replace them by ‘positive thinking’.

Follini (IT, NMP) argued that the text might further clarify the dual federal-confederal nature of the Union. MEP Linda McAvan argued that in distinguishing federal competences from the coordination of policies, article 1 should be clearer about what competences belonged to each category and the reasons behind that. Similarly, Costa (PL, NMP) argued that the competences that are administered on a federal basis might be explicitly identified.

Ever closer Union?

Giscard noted that a further point of debate in the Praesidium had been the question of whether the Constitution was to portray the Union as a stable structure or rather to emphasise its dynamic, ‘process’-character. Eventually, the Praesidium had come out in favour of deleting the phrase ‘ever closer Union’. Some conventioners (Meyer, MacLennan, Kalniete) explicitly supported this decision, recognising the phrase as ambiguous, lacking precision and raising anxiety among some. MacLennan (UK, ANMP) added that the commitment expressed by the phrase was no longer appropriate at the moment when the Constitution of the Union would be established. He was however willing to consider its inclusion in a Preamble.

However, there were also conventioners including several government representatives (de Villepin, Fischer, Fini, Michel, Rovna, Lequiller, Voggenhuber, Kutzkova, Attalides) who wanted to retain the ‘emblematic’ reference to ‘an ever closer Union’, arguing that it would be hard to explain why this phrase would be deleted at this point in time. Green MEP Voggenhuber observed that the Praesidium had actually scrapped the phrase without anyone demanding it to do so. In his view it was clear that the Union had not reached its final shape yet, in particular current intergovernmental solutions can only be seen as transitory. Avgerinos (GR, NMP) underlined the value of a continued commitment to progress (cf. Severin). Commissioner Barnier suggested that the phrase might just be appropriate to prevent any suggestion of the Union backsliding again. Lamassoure suggested that the key idea here was that Member States should be committed to ever closer solidarity among each other as well as with the rest of the world.

Commissioner Vitorino argued that article 1 should affirm the primacy of European law which might be complemented by an explicit recognition of the national sovereignty of the member states (cf. Dini, Antunes). Irish representative Roche warned however that the primacy of EU law should not be overstated. Dini (IT, NMP) added the desirability to assert the integrity of the Union as a whole.

National parliamentarians Ben Fayot and Lambert Dini argued that article 1 establishing the Union should also refer to the UN Charter to indicate that the Union should be seen within the wider perspective of global governance (cf. Art. 11 TEU). Portuguese representatives Antunes, Costa and Azevedo suggested that article 1 should underline the equality of Member States. Lequiller (FR, NMP)

suggested to include a reference to the solidarity between Member States. Krasts (LTV, ANMP) underlined the importance of loyalty between Member States.

MEP Lamassoure argued that article 1 should above all provide a clear definition of the mutual rights and obligations Member States and the Union enjoy vis-à-vis each other. In this context he also regarded it of great importance to express the openness of the Union to all kinds of states that can meet its basic accession criteria, as well as the right of each Member State to leave the Union (cf. di Rupo). With regard to Member States' right to leave, Giscard submitted that this would best be dealt with in the final part of the Constitutional Treaty.

Giscard indicated that he did not intend to open the debate on the future name of the Union at this occasion. This debate was better left to the end of the Convention's proceedings and after public opinion had also been heard on it. Still several conventionneers (Roche, Carey, Lennmarker, Andriukaitis, Kalniete, Rovna, Figel, Attalides) expressed themselves in favour of retaining the name 'European Union'.

Lamassoure argued for referring in the first article to the main symbols of the Union: flag, anthem (Beethoven's 'Ode to Joy'), capitals (Brussels, Strasbourg and Luxembourg), currency etc. (cf. Duhamel). With regard to the European anthem, Giscard noted that certain issues concerning the 'Ode to Joy' are still disputed, like its exact start and finish in Beethoven's 9th and its lyrics.

With regard to paragraph 1.2, Giscard noted that the Praesidium had sought to preserve clarity by restricting it to a short general reference to the respect for national identities. More specific provisions would be better at place in later articles (like article 9.6). Kutzkova (BUL, Agov) argued however that it would be preferable to add the provisions of paragraph 9.6 at this place. Haenel (FR, NMP) suggested to incorporate the full clause on national interests as prepared by the Working Group on complementary competences. Several conventionneers (Balázs, Wittbrodt, Carey, Kirkhope, Bonde, Abitbol) suggested that the respect of national identities might be complemented by the respect for national sovereignty. Avgerinos (GR, NMP) submitted that, rather than to 'respect' national identities, the Union should 'guarantee' them. It was further suggested to add the respect for national constitutions (Bonde) or national constitutional traditions (Wittbrodt), linguistic diversity (MacCormick), respect for cultural diversity and the principle of non-discrimination (Severin). Balázs (HG, Gov) underlined the multicultural identity of Europe. He moreover emphasised the need to distinguish consistently between states and nations and not to subsume the latter under the former. Teufel (D, NMP) noted that in elaborating the 'respect for national identities' it would need to be ensured that this respect would also extend to the various ways in which church organisations have been protected. Dammeyer (CoR) suggested that a separate article (article 2) might be inserted to recognise the role of regions as equal partners of the Union and their autonomous competences. Demiralp (TK, Agov) suggested that it might be further clarified that the values referred to in article 1.3 are actually the ones included in article 2. Balázs lamented that the forthcoming enlargement did not resonate anywhere in the proposed texts. He and Attalides suggested that the Copenhagen criteria might be inserted in paragraph 1.3. Attalides (Cyp, gov) added that the text should refer to the sharing of both the Union's values as well as its objectives.

Article 2 The Union's Values

Introducing this article Giscard argued that the longer the list of the Union's values would be, the more diffuse the article would become. He moreover underlined that the values in article 2 would provide

the legal reference point for the provisions on the possible suspension of Member States' voting rights; including emotive utterings in this article would in effect weaken the possible exercise of the future article 45 (formerly article 7 TEU).

MEP Jens-Peter Bonde wondered whether this article was needed at all. Baroness Patricia of Scotland (UK, Agov) insisted on the need to delineate the class of Union's values as carefully as possible. The distinction with the Union's objectives also needs to be fully clear. Paciotti (MEP, IT) and Kutzkova (Bul, Agov) suggested that it might be better to talk about fundamental principles than about values. Kutzkova suggested also that the present article 6.1 TEU might be inserted here. Swedish parliamentarian Lennmarker submitted that it could be made clearer that the Union regarded these values to be universal in nature.

A number of conventioners argued for adding values to this article; like equality (Dybkjaer, van Lancker, Brok, Maij-Weggen, Borrell, Michel, Vanhanen, Kiljunen), equality between all human beings (di Rupo) equality between women and men (Fayot, Dybkjaer, McAvan, Berès, Brok, Borrell, Hjelm-Wallén, Lekberg, Kiljunen, Azevedo, Einem, Avgerinos), equality for the disabled (Dybkjaer), social justice (Fayot), solidarity (Antunes), tolerance (Michel), openness (Vanhanen), democratic transparency (Bonde), minority rights (Vanhanen, Kiljunen), equality of respect of national identities (Andriukaitis). Belgian MEP Anne van Lancker argued that in particular the incorporation of the value of non-discrimination would enable the Union to start actions (under the present article 7 TEU) against any Member State that would fail to respect this principle. Wittborcht (POL, NMP) argued in favour of the value of solidarity also in the light of the objective to ensure social cohesion in the Union. Ombudsman Söderman argued that the principles of openness and closeness to the citizen as inserted by the Treaty of Amsterdam should have a place.

Lord MacLennan suggested adding the value of cultural diversity (cf. Scotland, Costa). Also Duff (MEP, UK) and Figel (SLK, NMP) considered that culture should have its place in this article. MEP MacCormick noted that the draft articles had failed to take the outcomes of the 7 February debate on regions into account. This would need to be corrected. In particular paragraph 2.2 should assert the respect for regional and local autonomy.

MEP McAvan submitted that the Treaty should underline the inclusive character of the Union. Social-democrats Fayot (Lux, NMP) and Berès (MEP, FR) submitted that article 2 should already contain a reference to the EU Charter on Fundamental Rights as this document does in an important way embody the Union's values. To this Giscard responded that things said in the Charter would not need to be repeated throughout the Constitutional Treaty. Such a need is particularly absent if the Charter is included in a sufficiently prominent place, like in the second part of the Treaty.

A religious reference?

Giscard noted further that the Convention would have to discuss the desirability of including a reference to Europe's Christian heritage. Initially the Praesidium had decided against including such a reference in this article. However, it did consider that a reference to the place of religious communities and denominational organisations based on the provisions of Declaration 11 to the Treaty of Amsterdam might be inserted in the Preamble to the Constitutional Treaty. On this issue also the legal implications of the various approaches would need to be considered.

However, a wide range of conventioners (Teufel, Fini, Follini, Muscardini, Tajani, Skaarup, Szájer, Figel, Wittbrodt, Brok, Palacio, Maij-Weggen) reiterated the plea for a reference to Europe's

religious heritage, to the roots of European identity in the Judeo-Christian heritage (Fini), to its various spiritual origins in the Acropolis, the Capitol and Golgatha (Teufel, Muscardini). Skaarup argued that a reference to Europe's Christian heritage would serve to exclude Turkey from the Union. By way of example, various conventioners (Teufel, Szájer, Figel, Wittbrodt) referred to the similar clause in the Polish constitution. They emphasised that a general formulation could be adopted that would not prejudice in favour or against any particular conviction. Szájer (HG, NMP) underlined that the religious reference was of particular importance to the East-European countries as religion had constituted for them a beacon of freedom throughout the communist era. Follini (It, NMP) argued for a recognition of the way Europe had been able to balance its civic institutions with the variety of spiritual persuasions. MEP Brok argued for a religious reference as well as the recognition of the distinct place of churches in society, independent from state and economy (cf. Tajani). Government representatives Palacio (SP) and Farnleitner (ÖS) focused on the importance of enshrining the separation between church and state. Some of the supporters of a religious reference (Maij-Weggen, Wittbrodt) indicated that they would be willing to consider the option to include such a reference only in the Preamble.

On the other hand there was also outspoken opposition against inserting a religious reference (Meyer, Hjelm-Wallén, de Rossa, di Rupo, Michel, van Lancker, Duff, Kaufmann). Demiralp (TK, Agov) advocated a clear choice to found the Union on a non-religious basis. MEP McAvan submitted that a religious reference was bound to be divisive and offensive to some. Haenel (FR, NMP) argued that the European identity had to be rooted in universalist values that had emerged out of a common heritage in which religious elements admittedly also played a role. He granted that humanist and religious elements might be recognised in the Preamble but these reference should serve a symbolic rather than a legal function. Special religious needs might be covered by provisions on the freedom of religion and the rights of churches and religious communities (Einem, Haenel), that indeed are already implied in the Charter (Berès).

Fini (It, gov) suggested that the second sentence of article 2 be better moved to article 3.

Article 3 The Union's Objectives

Giscard explained that the draft article 3 was above all to provide the citizens with a clear indication of the objectives of the Union. For that reason the Praesidium proposed general formulations that would have horizontal application to the Union's actions. In practice these formulation will need to be considered in direct relation with the policy basis that will be adopted in Part II. He was happy that the Praesidium's choice not to go into specific descriptions of individual policies appeared to be widely supported.

Indeed there was a lot of support for the basis the draft text provided. Fayot (Lux, NMP) praised the draft text of article 3 as a well-balanced formulation, even though he thought some editorial as well as substantial improvements could still be made. Contrary to some amendments, MEP Paciotti spoke in favour of retaining paragraph 3.1. Joschka Fischer argued that the Union's objectives should reflect the modern character of the Constitutional Treaty. Patricia of Scotland (UK, Agov) insisted that the objectives should reflect actual Union's competences and not general aspirations (cf. Roche, Vanhanen). In that respect she welcomed the fact that the current formulation followed the present pillar structure.

A number of conventionneers argued for more emphasis on the Union's social objectives (Fayot, Einem, Farnleitner, de Villepin, McAvan, di Rupo, Borrell, Lequiller, Kutzkova, Severin, de Rossa, Grabowska). While the objective of full employment was widely welcomed (Fayot, Einem, Farnleitner, McAvan, de Rossa), several references might be strengthened, like those to combating poverty (Fayot), social inclusion (Fayot, de Rossa), social cohesion (Giannakou). Also additional social objectives were suggested, like the social market economy (Fayot, Farnleitner, Brok, Palacio, Severin), justice (Costa), the protection of services of the general interest (Vitorino, de Villepin, Michel, de Rossa), the protection of children's rights within the Union (Fayot, Hjelm-Wallén, Lekberg, Thorning-Schmidt), the protection of the weakest members of society (Tajani), the fight against discrimination (di Rupo, Michel, Duff, Barnier, Rupel), access to education and work (di Rupo), the right to work (Hjelm-Wallén), a healthy work environment (Lekberg), food safety (Azevedo), a high level of consumer protection (Thorning-Schmidt), territorial cohesion (Fayot, Costa, Azevedo, Severin), solidarity among Member States (Kutzkova), solidarity between regions (Hasotti). Social-democratic MEPs Berès and van Lancker advocated a horizontal clause that would require all Union policies to comply with the Union's social objectives.

Also it was argued that the reference to sustainable development failed to do justice to the Union's environmental objectives (de Villepin, Fischer, Michel, Hjelm-Wallén, Lekberg, Maij-Weggen, Lequiller, Grabowska). Additional references were proposed to environmental improvement (Fayot), sustainable development and environmental protection (de Villepin), the preservation of natural resources (Lequiller), a social and ecological market economy (Maij-Weggen), environmental safety (Azevedo), animal protection (Fischer referring to the Treaty of Amsterdam).

Some conventionneers (de Villepin, Brok) suggested that the objectives could give more attention to the things the Union has achieved so far, in particular in the sphere of the single market.

Several conventionneers argued for a strengthening of the objective of cultural diversity (Fayot, MacLennan, Duff). Lequiller, Rupel and Krasts wanted linguistic diversity added in paragraph 3.3, also because of its crucial role in maintaining national autonomy. Teufel (D, NMP) argued in favour of adding respect for the family as an objective. Giannakou (GR, NMP) suggested that more could be said about the solidarity between Member States in crisis circumstances like a terrorist attack.

A number of conventionneers (e.g. Giannakou) considered the proposed text on external objectives (paragraph 3.4) too weak. Attalides (Cyp, gov) suggested that formulations might be adopted from the report of the Working Group on external relations. Swedish representatives Lenmarker and Hjelm-Wallén suggested to adopt the principle of the Union's openness to the outside world (cf. Figel). Van der Linden (NMP, NL) argued that strengthening the international legal order should be adopted as an objective. Portuguese members Vitorino (Comm) and Antunes (Agov) wanted a more concrete reference to cooperation in the sphere of defence. MEP Paciotti objected to any reference to war in the Union's objectives. In line with this Avgerinos (GR, NMP) considered that, rather than to refer to a common defence policy, it would be better to aim for a common commitment to preserve Europe's independence. However, Dick Roche (IRL, gov) did not see a point in this.

Costa (PL, NMP) advocated that the principle of the equal application of the rule of law should have a place in this article, adding that note should also be made of the distinct multilevel way in which policies are to be administered in the Union. MEP Duff wanted to have the objectives of transparency and good governance added to paragraph 3.5. His colleague Berès argued that the

imperative in this paragraph to apply appropriate means to further the Union's objectives should apply unconditionally to all EU institutions.

Articles 4-7: Legal personality, fundamental rights and citizenship

Article 4 Legal personality

No specific comments in the debate.

Article 5 Fundamental rights

Vice-Chair Jean-Luc Dehaene indicated that the drafting of article 5 had sought to reflect the conclusions of the Working Group on the Charter. The main remaining question concerned the place at which the Charter is to be inserted in the Constitutional Treaty. The Praesidium had suggested two options: as the second part of the Treaty or as a separate protocol.

Only few conventioners (Kutzkova, Roche) spoke in favour of the option to incorporate the Charter as a separate protocol. The protocol option was explicitly opposed by Fischer, Azevedo, de Rossa, Severin and Arabadjiev. Arabadjiev (Bul, ANMP) added that this option would indeed go contrary the Working Group's insistence on the visibility of the Charter. Several conventioners (Duhamel, van Lancker, Antunes, Lequiller, Haenel, Giannakou, Dammeyer) underlined the need to incorporate the Charter in the Constitutional Treaty and to make it legally binding. More specifically others argued that the full text needs to find its place in the first part of the Treaty (Farnleitner, Einem, Maij-Weggen, van der Linden, Paciotti, Costa, Severin, Krasts). Several Conventioners (Duff, Barnier, Michel, Tiilikainen) suggested that the Charter might be inserted between Part I and Part II of the Constitutional Treaty.

From the debate a third option emerged in which the Charter would actually open the Constitutional Treaty (Andriukaitis, Meyer, Brok). Meyer (D, NMP) argued that the Charter should be put at the beginning of the Constitutional Treaty to avoid any confusion. It would also make it easier to avoid repetition of provisions in later parts of the Constitutional Treaty (cf. Einem, Michel). Giscard commented that he saw various considerations pushing in different directions on the place of the Charter. On the one hand overall readability of the Treaty suggested to put the Charter only after certain other parts. On the other hand its character did warrant it to be inserted as much to the front as possible.

There remained still some uncertainties about the inclusion of the Charter. On the one hand Anne van Lancker wanted its full inclusion fully ensured and clarified. On the other hand, Dick Roche (IRL, gov) underlined the importance of the horizontal amendments to the Charter as proposed by the Working Group. Patricia of Scotland (UK, Agov) argued that the full compromise of the Working Group still had to be fully worked out in exact provisions and she suggested that Vitorino be charged with this task. Dehaene responded to that as far as he was concerned one could assume that the amended Charter articles would be incorporated.

Several conventioners (Tiilikainen, Kiljunen, Van der Linden, Arabadjiev,) argued that the Union-commitment to accede to the ECHR might be formulated in a stronger way. Concretely it was proposed that the words "may accede" should be replaced by "shall accede" (Arabadjiev) or "shall take the necessary steps to accede" (Kiljunen). Michel and Söderman argued for a provision that would allow the Union to accede to other international human rights conventions beyond the ECHR.

MEP Bonde objected against any suggestion that the European Court of Justice might become engaged in the judicial review of rights.

Article 6 Non-discrimination on grounds of nationality

And Article 7 Citizenship of the Union

Dehaene acknowledged that these articles had considerable overlap with the Charter. Indeed depending on the way the Charter was to be included, these articles might be shortened or deleted altogether. With regard to article 6 he noted the particular issue whether the application of this article would be limited to EU-citizens alone or extended to all people under Union law. Moreover, the Convention might want to specify certain forms of discrimination (legal, work, pay) in this article.

MEP Duff agreed that if the Charter would be properly incorporated, article 7 might be shortened with a reference to the citizenship provisions in the Charter. Pieters (B, ANMP) argued for inserting the right to cultural and linguistic diversity in paragraph 7.2, as these rights are also underdeveloped or even absent in the Charter. Kiljunen (FI, NMP) argued for incorporating the general principle of equal status before the law and to extend this beyond citizens to include third country nationals as well. On the other hand Speroni (It, Agov) insisted that the right to residence should be restricted to EU citizens alone. MEP Bonde insisted that European citizenship should not come to prevail over national citizenship.

Articles 8-16: The Union's competences

While no one presented a comprehensive alternative approach, the Convention floor raised many doubts about the way these articles (10-15 in particular) have been structured. MEP MacCormick suggested that the Union's competences would be delineated better if the approach chosen would rely on the Charter of Fundamental Rights. Finnish representatives Tiilikainen (gov) and Kiljunen (NMP) underlined the need to ensure that there would be a clear and consistent linkage between the Union's objectives in article 3, the Union's competences and the exact policy provisions in Part II of the Constitutional Treaty.

Spanish parliamentarian Borrell observed that there was a need to update the Union's competences because at present the Union fails to act in fields where it is badly needed. Endorsed by Gabaglio (ETUC), he argued for the reinforcement of the social competences, especially in relation with the coordination of economic policies. Gabaglio added that the articles proposed risk to fall behind the present Title VIII TEC. UK representative Patricia of Scotland underlined the need to recognise the particularities of the CFSP and certain fields in JHA. On the other hand Italian NMP Dini argued that the Convention could be more ambitious in dispensing with the pillar structure altogether, though he recognised that some policy fields would still require certain distinctive procedures.

Article 8 Fundamental principles

And Article 9 Application of Fundamental Principles

In introducing these two articles, Vice-Chair Amato assumed that they would rely on wide support as they affirm the primacy of the Member States in granting competences to the Union. MEP Klaus Hänsch indicated his overall satisfaction with the principles enshrined in article 8. Polish parliamentarian Grabowska argued (with Oleksy) that the provisions of article 9 would be better

merged into article 8. She moreover argued that the current article 6 and 178 TEC might be inserted in these articles as horizontal provisions.

Commissioner Barnier took issue with amendments that sought to emphasise the primacy of Member States over competences. MEP Duff added that the relationship between the Union and the Member States should not be seen as an opposition, because in the end the Member States are part of the Union. Avgerinos (NMP, GR) argued that it was unnecessary to assert that competences not conferred to the Union would remain with the Member States (paragraph 8.2). Amato elucidated that the Praesidium had refrained from defining the remaining competences of the Member States as basically this is a matter for their own sovereignty (cf. Meyer).

Dastis (SP, Agov) argued for adding the *primacy of EU law* to article 8. On the other hand, government representatives Scotland (UK) and Roche (IRL) argued that the assertion of the primacy of EU law in article 9.1 oversimplifies the legal situation and needs further clarification. Indeed Scotland submitted that the proposed formulation conflicted with the principles contained in article 8.1. In turn Austrian MEP Marie Berger responded that the text was correct as it stood and that indeed it might merit a more prominent place (article 1) as suggested by Commissioner Vitorino (see above).

Dutch parliamentarian Van Eekelen asked for further clarification of the *principle of loyal cooperation*. It was not clear to him from the proposed text whether the principle also extended to the implementation of Union legislation by the Member States and how this principle was to be enforced. Moreover, he failed to see what it meant for the Union to be loyal to the Member States. Similarly, German MEP Würmeling wondered about the value of enshrining this principle in the Constitutional Treaty. On the other hand Austrian parliamentarian Einem defended the symmetry expressed by the proposed formulation of this principle.

Various conventioners (Borrell, Brok, MacCormick) argued that the formulation of the *principle of subsidiarity* in paragraph 9.2 could be further strengthened and clarified to underline the principle that action be taken at the level where it is most appropriate and most effective. MEP Neil MacCormick added that the principle should make reference to the role of regions. Several conventioners (Speroni, MacCormick, Duff, Lamassoure) argued against the exemption of ‘exclusive competences’ from the principle of subsidiarity in paragraph 9.2. While they recognised that Member States would not have legislative powers in these fields, they considered that the principle of subsidiarity might be applied to the administration of these competences.

The provisions of paragraph 9.6 on *national identities* were welcomed by Swedish parliamentarian Lekberg. Various suggestions were made to add references to this paragraph on national constitutional diversity (Costa), regional diversity (Bösch) and respect for minorities (Würmeling).

Also some additional principles were suggested. MEP MacCormick argued in favour of adding the principle of integration, as also proposed by Joschka Fischer. Further principles should prevent any backsliding of the *acquis* and should ensure the horizontal application of the objectives of a social, environmental friendly and cohesive Europe (cf. Käuppi). Roche (IRL, gov) suggested that at some point the principle of good governance would have to be incorporated in the Treaty.

Article 10 Categories of Competence

The main debate on the Union’s competences concerned the need to list competences and the degree of precision and completeness which should be aspired to. A number of conventioners was rather

satisfied with the approach proposed (cf. Hänsch). For most of them (Teufel, Hjelm-Wallén, Lekberg, Bösch) the main remaining concern was that Part II of the Constitutional Treaty would appropriately fill in the details of the policies involved. In line with this, German MEP Teufel insisted that Part I and Part II should be subject to the same revision procedures.

However, many conventioners were not fully convinced by the categorisation proposed. Heathcoat-Amory argued that the descriptions of the general policy fields were much too vague and as such created legal ambiguities. On the other hand, various conventioners (Lamassoure, Barnier, Borrell, Duff, Schmitt, MacCormick) indicated that they would have preferred a more open, flexible approach and feared that the approach proposed would turn out to be too rigid. Several conventioners (Kiljunen, Meyer, Hololei, Käuppi) re-iterated their objections to any suggestion of a catalogue of competences. MEP Würmeling suggested that this point might be underlined by stating explicitly that these categories did not amount to a catalogue of competences and that the exact policy basis were only provided in Part II of the Constitutional Treaty. Others however were concerned that any attempt of listing, even if explicitly serving an indicative role, might easily be mistaken for a comprehensive list (Dastis, Lobo Antunes, Costa). Serracino-Inglott (MTA, gov) submitted that any list might conflict with the dynamic nature of the Union. In his view it would be easier to leave the whole delineation of competences to part II which would moreover also be easier to amend. Eventually this debate came to focus in particular on the list of principal areas of shared competences shared out in article 12.4 (see below).

Article 11 Exclusive competences

Several conventioners (Lamassoure, Barnier, Borrell, Carnero, Serracino-Inglott) suggested that these competences were better renamed '(the Union's) own competences'. MEP Brok objected however that such a renaming would fit badly with the concept of shared competences.

The debate on exclusive competences focused on the question whether indeed the Union would enjoy full and unconditional competence with regard to the four freedoms (persons, goods, services and capital). Patricia of Scotland (UK, Agov) submitted that the Union's competences with regard to the four freedoms in the single market were not exclusive as they are subject to limits delineated by the ECJ (cf. Hololei). Her position was heavily attacked by representatives of the Brussels institutions. MEP Méndez de Vigo challenged the invocation of the ECJ jurisprudence by insisting that it was up to the Convention to adopt its own definitions. Similarly his colleague Duff underlined the importance of extending the Union's ability to act and its power to go beyond the constraints adopted by the ECJ. In turn Scotland noted that she was quite content with the approach taken by the ECJ. MEP Brok argued that the four freedoms are of the essence of the single market and should therefore not be undermined (cf. Barnier). MEP Lamassoure submitted that the internal market is an exclusive rather than a shared competence, which was however contested by Swedish government representative Hjelm-Wallén. Dini (IT, NMP) argued that the competence of free competition should be added as an exclusive competence. Spini (IT, ANMP) argued for an unconditional approach to the freedom of movement and insisted that there could be no receding from the present Union achievements in this sphere.

Several additional competences were suggested to be added to this category: exchange rates (Maij-Weggen), structural funds (Maij-Weggen, Carnero), the Common Agriculture Policy (Costa),

cohesion policy (Borrell, Carnero), CFSP (Carnero), the Union budget (Carnero), the European areas of freedom security and justice (Carnero), fisheries (Costa), competition policy (Brok).

UK parliamentarian Heathcoat-Amory strongly objected against the exclusive competences the Union might come to enjoy in the conclusion of international agreements (paragraph 11.2). In his view this proposal conflicted with the idea of a Europe of democracies. Similarly, MEP Bonde insisted that all European engagement in international negotiations should be subject to a clear mandate of the Member States. UK representative Patricia of Scotland argued that this text lacked the nuances of the position the ECJ had adopted on this point and that therefore it might be better left out of the Constitutional Treaty. Commissioner Barnier replied that he failed to understand her point as he regarded 11.2 quite clear on reflecting ECJ-jurisprudence. MEP Duff added that it would be contrary to the Convention's very task if it would shy away from codification of established positions (cf. Tiilikainen). MEP MacCormick granted that the paragraph might include a reference to established ECJ-jurisprudence. Scotland responded by insisting that these were no simple matters and that nuances need to be taken into account.

French representatives Andreani and Lequiller insisted that for specified domains (public services) the Union's role in external trade policy should be subject to special provisions. French Commissioner Barnier responded that these concerns could be met by a proper definition of the Commission's remit. French MEP Abitbol reacted that the WTO-negotiations were bound to reveal deep divisions within the Union, not unlike the current Iraq-crisis does.

Article 12 Shared competences

Vice-Chair Amato indicated that while shared competences served as a residual category (article 12.1), the Praesidium had thought it preferable to include at least an indicative list of shared competences (paragraph 12.4). Various conventioners indicated that, despite doubts, they were willing to follow the approach proposed.

Speaking for the EPP party-group, Brok suggested that the list of shared competences should be much more detailed, including also a distinction between those competences that would be subject to unanimity and those that would be subject to qmv. His social-democrat colleague Van Lancker objected to this proposal, insisting that any list in this article should remain indicative and avoid any semblance of a catalogue of competences (cf. Paciotti, Hänsch). The exact policy bases were best left to Part II of the Constitutional Treaty. Brok responded that as long as Part II of the Constitutional Treaty had not been drafted yet, he preferred to leave his amendment in store in case he would not be re-assured. In particular he insisted that a clear delineation of competences would be crucial to define the fields in which qmv would be adopted in the Council.

However, a number of Conventioners (Dastis, Andreani, Carnero, Berès; Fayot had "serious doubts") argued that even the suggestion of a list, threatened the credibility of this category as an open one and might well turn out to be straight-jacket (Avgerinos). MEP Berès added that she found the list proposed somewhat clumsy. Coming from the other side of the political spectrum, also Scotland (UK, Agov) and Hololei (Est, Agov) opposed an indicative listing of shared competence and favoured a consistent treatment of this category as a residual category. However, Scotland was willing to concede the possibility of inserting a separate article to provide an indicative list of shared competences. Heathcoat-Amory (UK, NMP) considered that the draft text of article 12 listed far too many competences (in particular health and transport) and remained much too vague in its formulations.

Moreover, in the debate on shared competences there was a distinct split between a more extensive and a more restrictive approach. Typically on the extensive side MEP Van Lancker argued for a comprehensive definition of shared competences that would not only cover legislative activity but also coordination within the framework of the Union (cf. Barnier). Similarly Duff argued that the coordination of policies within the Union should be considered a shared competences and that the specific provisions on economic policy and CFSP could therefore be scrapped (10.3, 10.4, 13 and 14). Severin (Rom, ANMP) argued that the categories of competences should not reflect distinctions between the institutions. Also powers in which only the Council is involved might be regarded as shared competences.

On the more restrictive side MEP Würmeling indicated the importance that also in shared competences the Union would as much as possible stick to non-harmonising policies (cf. Teufel). Teufel (D, NMP) spoke out in favour of a general preference for framework legislation. Swedish parliamentarian Lekberg (Sw, NMP) raised the question whether the expression that these competences are 'shared' does not downplay the fact that the Member States eventually remain the sources of these competences. He added that it should be provided, that whenever unanimity in the Council was maintained on shared competences, Union laws should be prevented from harmonising national policies (cf. paragraph 15.4).

Certain competences attracted particular debate. Various social-democrat parliamentarians (Borrell, Carnero, van Lancker, Berès, Hänsch, Gabaglio) were keen to have the Union's social competences strengthened, recognising that the details would of course need to be arranged in Part II of the Constitutional Treaty. Particular pleas for additional competences were expressed for services of the general interest (Borrell, Berès), taxation (Berès), protection against natural disasters (Borrell, Carnero), employment (Carnero, van Lancker), non-discrimination (Carnero, van Lancker), gender equality (Carnero, van Lancker), social cohesion (Berès). Van Lancker welcomed the inclusion of public health as a shared competence.

Notably however they were met by Fischer (D, gov) who warned that by adopting certain shared competences (like public health, social policy and economic and social cohesion) the Union might raise expectations it will not be able to meet. Similarly Lennmarker (Sw, NMP) warned against the inclusion of employment as a shared responsibility as it would imply that the Union would also need to take the blame for rising unemployment. Hjelm-Wallén (Sw, gov) insisted that public health should remain a competence of the Member States. Roche (Irl, gov) and Fogler (Pol, ANMP) argued that it would be better moved to the category of supporting actions (article 15). Also social policy and energy were in Fogler's view better considered as areas for supporting measures.

In particular Austrian conventioners (Berger, Farnleitner, Bösch, Einem; cf. Fayot) were keen to argue that the shared competence of energy should also include the Euratom-provisions on nuclear energy. Green MEP MacCormick insisted on the importance that nuclear energy be dealt with on the same footing as all other sources of energy. Einem (ÖS, NMP) added the argument that nuclear energy should in principle be subject to the same democratic checks as all other policies ('democratic level playing field'). In response Giscard indicated that the Praesidium was already examining various options on this point – including the possibility of incorporating the relevant Euratom-provisions in the Constitutional Treaty or attaching them as a protocol – but had not reached a conclusion yet.

Other competences that were suggested to be added to this category were the Union budget (Borrell), Union security (Borrell), integration policy (Maij-Weggen) animal protection (Maij-

Weggen), tourism (Costa), and intellectual property rights (Farnleitner). Borrell (SP, NMP) welcomed the recognition of the area of freedom, security and justice as a shared competence. Commissioner Barnier claimed that the CFSP should be treated as a shared competence, especially in those areas where it had proven effective (development policy etc.) (cf. Costa). He further spoke out in favour of including the conclusion of international agreements as a shared competence as proposed in the amendment by the EPP.

French MEP Berès objected against the specific provisions on research policy and on development. Amato noted that as regards research (paragraph 12.5) the Union's actions may well go beyond the mere provision of finance. MEP Hänsch argued that it would be preferable to have a separate article on research. Meyer (D, NMP) argued that aerospace policy should be added to research policy.

Swedish government representative Hjelm-Wallén suggested that a paragraph might be added to this article with specific provisions on the fight against crime as a shared competences. She further indicated that certain competences (like police cooperation) were best marked as intergovernmental competences.

Article 13 The coordination of economic policies

Amato sought to clarify that economic policy (article 13) and CFSP (article 14) had been exempted from the main categories of competences because in these fields executive decisions, rather than legislation, are pre-eminent. Amato recognised that the formulation of both articles was still rather general and would require further debate.

MEP Van Lancker wondered whether this article was necessary and whether its provisions would not be more appropriately placed under the shared competences. Her colleague Berès argued that this article actually involved a step back compared to the present article 99 TEC that allows for binding Union measures. MEP Käuppi argued that the proposed formulation fell short in the light of the macro-economic stability the Euro needs. On the other hand Heathcoat-Amory (UK, NMP) objected to the proposed text on economic policy as in his view it would create competences the Union had not enjoyed so far.

Government representatives Dick Roche (IRL) and Henrik Hololei (Est) underlined the importance of asserting the primacy of the Member States in economic policy. Their Swedish colleague Hjelm-Wallén suggested to rephrase the first sentence as "Member States coordinate their economic policies in the framework of the Union". On the other hand, MEP van Lancker defended the text proposed as making it clear that the coordination takes place with the Member States acting within the framework the Union institution of the Council. Amato suggested that much of this dispute came down to the question whether the Convention eventually tended to regard the Council of Ministers as a Union institution or as no more than an intergovernmental conference. Lennmarker (Sw, NMP) argued that the Council as a Union institution is clearly a different framework than meetings of Member States in intergovernmental conference where they are not subject to the rules of the Union. Tomlinson (UK, ANMP) argued that if coordination was to take place in the Council then the most appropriate approach would be to refer to the Council specifically rather than to the Union as a whole.

Several Social-Democrat conventioners (Borrell, Meyer, Spini, van Lancker, Berès, Einem, Gabaglio) argued that the coordination of economic policies should be complemented with the coordination of social and employment (also Fayot, Schmitt) policies, even though coordination in

these latter fields would probably take a slightly different form. Spini (IT, ANMP) suggested moreover to add coordination in currency policies.

Article 14 The common foreign and security policy

Irish governments representative Dick Roche preferred an approach to the CFSP that would stick as closely as possible to the present formulation of article 17 TEU. His UK colleague Patricia of Scotland underlined the need to recognise the distinct nature of cooperation in this competence. To the contrary Marinho insisted that CFSP should be a regular Union competence.

Avgerinos (GR, NMP) suggested that in the light of current circumstances an article on CFSP seemed inappropriate and the Convention would do better to delete this article. He was opposed by his colleague Giannakou who urged the Convention not to give up on the CFSP.

Various conventioners (e.g. Farnleitner) submitted that the proposed article text needs substantial redrafting. Fogler (Pol, ANMP) argued that the article had to be further specified, taking particular account of the implementation of the CFSP and of defence. Italian parliamentarians Dini and Spini considered the draft article too restrictive on the CFSP and ESDP and argued in favour of a more ambitious and more integrated approach (cf. Maij-Weggen). Dutch MEP Maij-Weggen insisted that the veto power of each individual Member State would need to be abolished if the CFSP was to be developed further.

Gricius (Lit, NMP) wondered how this article was going to guarantee the loyal cooperation of the Member States to the CFSP and he suggested that the Union would better provide for some flexibility on this point. Lequiller (FR, NMP) underlined the importance of enshrining mechanisms that would facilitate further convergence of Member States' position in the CFSP, such as a Minister for Foreign Affairs and a Council President. He suggested that this objective might be enshrined in a special convergence pact. He further argued that the Treaty should explicitly allow for enhanced cooperation in the field of security. To the contrary Marinho (PL, MEP) submitted that the article should prevent block formation within the Union.

Various national parliamentarians (e.g. Dini) underlined the importance of reinforcing the provision on defence in paragraph 10.4. Lequiller (FR) insisted that the Union's defence policy should not be restricted to common policy formulation but also include joint implementation. Fayot (Lux) advocated a stronger formulation that would draw upon the conclusions of the Helsinki European Council. MEP Brok underlined that Europe is currently forced to rethink the concept of security in the context of the Union. He advocated the adoption of qmv in the CFSP. He also proposed to insert the suggested solidarity clause at this place of the Constitutional Treaty. Moreover, Brok suggested to attach the WEU common security clause (article 5) to the Constitutional Treaty as an option for Member States to sign up to. Lopéz Garrido (SP, ANMP) argued that article 14 should express itself against the use of war and reserve the use of this instrument only to those cases that were justified by the UN and international law.

Article 15 Areas for supporting actions

Finnish government representative Tiilikainen expressed a preference for having the supporting measures renamed 'assisting measures'. Social-democrat MEPs Carnero and van Lancker preferred to have them named 'complementary competences'. Tiilikainen moreover advocated a more flexible approach to these measures that would allow them to bind Member States and even harmonise their

legislation as long as the implications involved would be clearly indicated and delineated. Similarly Lennmarker (Sw, NMP) submitted that harmonising rule-making may be needed in areas such as social security and health, for instance when it comes to cross-border access rights. Andreani (FR, Agov) argued that in some of these areas (e.g. sport) harmonisation might indeed be desirable and permissible.

German MEP Brok underlined what kinds of measures could still be taken in these areas, most importantly those assisting Member States towards certain policies. Similarly, Fogler (Pol, ANMP) conceded that in these areas the Union might adopt non-prescriptive guidelines. However, German MEP Würmeling insisted on the importance of the unconditional exclusion of harmonisation in these fields. He also argued that employment should be included as a supporting measure rather than a shared competence. He further suggested that sport should be deleted altogether from the Union's competences. Swedish parliamentarian Lekberg argued that there was no need to involve the European Parliament in areas for supporting action.

Article 16 Flexibility clause

On this article Amato noted that there seemed to be a clear consensus on the need for it to be included (Lamassoure, Costa). Still there remained a number of procedural points to be resolved. In particular Tiilikainen (FI, gov) noted the need to distinguish its use clearly from the kind of flexibility generally associated with enhanced cooperation.

German MEP Hänsch argued that no policies should be excluded a priori from this article but that it might only be activated by an unanimous Council. However, his national compatriot Edwin Teufel argued that the scope of this article should be limited to the sphere of the single market and that eventually its use should be phased out. Also German MEP Würmeling argued that the use of this article should be limited in time and that it should only be used to create competences temporarily after which the decision would need to be made to insert them formally into the Treaty.

Spini (IT, ANMP) argued that sticking to the requirement of unanimity in a Union of 25 Member States, would reduce this article to impotence. In line with this, Lobo Antunes (PL, Agov) proposed that the Council should decide under this article by qualified majority rather than by unanimity. MEP Maij-Weggen argued that the EP should be involved in this procedure by way of the cooperation or the codecision procedure. More concretely her colleague Carnero advocated the strict use of the legislative procedure in this matter. Borrell (SP, NMP) argued that, depending on the kind of competences involved, the exact role of the EP in this article might be determined.

Farnleitner (Ös, gov) argued that this article should grant the regions the right to express themselves on any move to adopt new Union competences. His compatriot Casper Einem (NMP) suggested that the Committee of Regions might play a role here.

German parliamentarian Meyer suggested that this article should also outline a procedure by which the Union would be able to return competences to the Member States.

Presentation of the draft articles 24 et seq on instruments

At the beginning of the Friday session Giscard d'Estaing introduced draft texts for the articles from article 24 onwards (CONV 571/03). He underlined the importance of article 24 defining the new legal instruments of the Union that will apply across all Union competences, therewith abolishing the pillar structure. Moreover the article proposes clearer names for these acts and seeks to put them in a clear

hierarchy. With regard to article 25 on legislative acts, Giscard announced that the Praesidium would provide the Convention with a list of all fields in which the legislative procedure will apply as well as a list of the exceptions to that (paragraph 25.2).

Giscard also presented the draft texts for two protocols on the principles of subsidiarity and proportionality and on the role of national parliaments (CONV 579/03). He elucidated that these two protocols are complementary to each other as they both address the role of national parliaments. The text of the protocol on subsidiarity is based on the report of the Working Group on subsidiarity and the plenary debate that was held on it. The protocol now proposes answers to three questions that were left unsolved: what national parliaments qualify for the early warning mechanism? What is the threshold that forces the Commission to revise its proposals? What is the relation between early warning action and access to the ECJ on the principle of subsidiarity? The draft protocol on national parliaments also sought to reflect the Working Group report on this topic as well as the debate. In particular it aimed to set out a system of informing national parliaments.

Additional observations

- Various speakers succeeded in extending their speaking time by acquiring the time of others. Thus Ben Fayot (NMP, Lux) spoke 6 minutes for several members of the PES party group. Similarly MEP Elmar Brok (for the EPP) and Borrell (SP, NMP) spoke 6 minutes. Green MEP Johannes Voggenhuber objected that this practice was in breach of the principle that no factions would operate within the Convention and advantaged of the larger party-groups.
- Hungarian government representative Péter Balázs argued that if candidate countries would have signed the accession treaties by April 16, they should then be recognised as full members on the Convention.
- In particular on Friday morning the debate became rather lively, especially on the role of ECJ-jurisprudence in article 11 as raised by the Baroness of Scotland.