Notes of the Meeting of The European Convention, 17 and 18 March 2003.
Ben Crum (CEPS), 8 April 2003 – available from http://www.epin.org/convention/reports.html.[1]

Summary

This session was dedicated to the debate of the draft texts of Title V of the Constitutional Treaty on the exercise of Union Competence (arts. 24-33) and the draft protocols on the principle of subsidiarity and the role of national parliaments in the Union. There emerged a wide support for the approach adopted in Title V: the reduction of the number of acts, their renaming, and the convergence on one legislative procedure.

Still a number of sensitive issues remained. Even though it was not yet clear to what extend exceptions would be made to the legislative procedure, various views emerged on the question whether these exceptions could properly be considered laws and the extent to which they might be justified. In particular a large group of conventioneers was sceptical on the need to reserve special articles on action in the domains of CFSP, defence and police and criminal justice policy.

Another cause for debate was the proposal to introduce the instrument of delegated acts. Conventioneers remained unsure about its contours. What is more, they were unsure whether these provisions might not be abused to adopt binding measures without proper controls by the legislature.

The debate on the protocol on the principle of subsidiarity focussed mostly on the details of the proposed early warning mechanism that would allow national parliaments to register presumed infringements of the principle. The Praesidium's proposal emerged as a rather well balanced compromise that could be accepted by a majority of the Convention. One amendment that seemed to carry majority support was to allow two votes per Member States to allow parliaments in a bicameral legislature one vote each. The attempt to reinforce the mechanism by adding a red card procedure by which national parliaments would effectively be able to block legislative met with a strong opposition.

Still in particular with regard to the protocol on national parliaments there remained a pervasive sentiment that the provisions proposed might be extended and reinforced further. A whole number of suggestions were made concerning scrutiny powers of national parliaments, transparency, interparliamentary coordination and COSAC. Few of these seemed however to command broad enthusiasm.

The session also saw the presentation of new draft articles on the Union's finances (Title VII of Part I) and on freedom, security and justice (article 31 and related articles in Part II).

Introductory remarks

At the beginning of this session Convention President Giscard d'Estaing alluded briefly to the proximity of war and the fact that Europe had been unable to adopt a common strategy in the Iraq-crisis. Nonetheless it was the task of the Convention to persevere in shaping a future, more united Europe. Indeed for sure Europe constitutes potentially a superpower on the world stage, as is also underpinned by the fact that at present Europe controls five votes in the UN Security Council.

[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.

Few conventioneers alluded to the forthcoming war. As an exception Green MEP Johannes Voggenhuber did use his speaking time to emphasise the illegal nature of the war as well as the responsibility Europe would carry towards the rest of the world for having failed to prevent this war by speaking by one voice.

Presentation of new draft articles

Giscard presented two new sets of draft articles: on the Union's finances (Title VII of Part I) and on freedom, security and justice (article 31 and related articles in Part II).

Of the articles on the Union's finances, Giscard expected article 39 to be least contested as it sets out the basic principles that appeared to command a broad consensus in the Working Group on Legal Simplification. On the Union's resources, the topic of article 38, the Praesidium had chosen to remain as close as possible to the current provisions. Still judging by the debate in the Simplification Working Group some amendments were expected. Finally in article 40 the Praesidium had so far only indicated that the Union's budgetary procedure would, besides the adoption of the budget, also incorporate the financial perspectives. The exact procedures remained to be filled in. To this purpose a discussion circle would be set up under the direction of Henning Christophersen (DK, gov). The Praesidium aimed for a small group bringing together genuine experts on the topic who should approach the issue as one of optimising procedures rather than turn it into a political issue.

The articles on freedom, security and justice for the first time included also articles of Part II of the Constitutional Treaty. Most striking of these proposals is that they dispense with the distinct third pillar instruments. In return Article 31 of Part I secures some specific provisions for this sphere, concerning among other things the involvement of national parliaments and the right of initiative of Member States in matters of police and criminal law. Further the draft articles incorporate the Tampere European Council conclusions on a European Asylum system and integrated management of external border checks. The draft articles also affirm the principle of mutual recognition as the cornerstone of cooperation in criminal matters and, moreover, contain a provision on common crime definitions. Also provision is made for the gradual emergence of a European Public prosecutor. Giscard noted that the texts proposed had already found a rather advanced shape. He invited the conventioneers to submit amendments. The deadline for amendments to be included in the preparatory document for the next session was set at 26 March.

Debate on draft Articles 24 et seq (CONV 571/03 and 609/03)

Vice-Chair Amato chaired the debate on draft articles 24 to 33. Introducing the debate he emphasised that the analysis of the amendments provided by the Convention secretariat (CONV 609/03) is only a preliminary one and will be followed up by more comprehensive analyses. Overall Amato noted that the system of acts proposed by the Praesidium had been well received. Speakers received 2 minutes speaking time each to clarify amendments. 'Blue card' rounds were held regularly.

Indeed there was lavish praise for the texts proposed by the Praesidium (Dini, Scotland). However, a number of conventioneers suspended their definitive assessment in the absence of a full overview, in particular of Part II (Lopes, Kacin).

Article 24 The legal acts of the Union

Several conventioneers (Hjelm-Wallén, Hänsch) explicitly welcomed the reduction of the number of instruments as it will greatly serve the Union's clarity towards the citizens. However, some conventioneers (Farnleitner, Balázs) expressed their concern that a too radical overhaul of the system of acts and their names might create a legal break with the established acquis and open the door for a stream of litigation and legal uncertainty.

Several conventioneers (Oleksy, Tomlinson) objected to the use of the concept of laws for (certain) Union acts. Lord Tomlinson expressed the opinion of the British House of Lords that indeed the concept of 'law' should not be used in this context. Others (Rovna, Andriukaitis, Lekberg) spoke in favour of the term "European *Union* (framework) laws" rather than "European (framework) laws". Italian MEP Muscardini submitted that the definition of the various acts could be simplified even further. Polish parliamentarian Wittbrodt suggested that the whole first paragraph might be reorganised around the distinction between binding and non-binding acts. His Estonian colleague Kelam argued that the name "Union acts" should be reserved for binding acts alone.

Andriukaitis (Lit, NMP) and Zile (LTV, Agov) expressed their concern about the concept of framework laws and the discretion they leave to the way they are implemented. Andriukaitis in particular objected to the phrase "entirely free" (to choose forms and means of implementation). Amato responded that this phrase was chosen to prevent the legislature from going too much into detail. In turn Gabaglio (ETUC) queried whether this phrase would not incapacitate the ECJ in reviewing Member States' implementation efforts. German parliamentarian Gerhards argued that measures should be taken to prevent framework laws from entering into too much detail.

British parliamentarian David Heathcoat-Amory opposed the proposal of a European regulation on principle as it provides for non-legislative acts that are binding nevertheless. MEP MacCormick conceded that the concept of a non-legislative act is ambiguous. Amato countered that the concept of legislation should not be understood in a normative way in this context but in a formal sense as referring to a specific level within a hierarchy of acts. Severin (Rom, ANMP) suggested to name these acts 'European executive acts' rather than 'European regulations'. Amato responded that this name would be too restrictive as it may not fit well with those regulations that are mandated directly by way of the Constitutional Treaty. Latvians Zile (Agov) and Piks (NMP) argued that the definition of regulation could be further specified and, with Kiljunen (Fin, NMP), they suggested to introduce already in this article the distinction between delegated and implementing regulations. On the other hand Einem (ÖS, NMP) submitted that basically all regulations are implementing acts and that the distinction with delegated acts is of little relevance.

German parliamentarian Gerhards suggested that the separate reference to the instrument of a recommendation could be deleted.

Amato elucidated that the Praesidium had chosen to avoid introducing new instruments, like organic laws. In particular he noted that some had suggested including the Open Method of Coordination under this title. While the Praesidium recognised that the OMC was to be incorporated in the Constitutional Treaty, it considered that it would be more appropriate at another place (cf. d'Oliviera). French government representative Andreani insisted that the OMC should get a place in the Constitutional Treaty (du Granrut, Gabaglio), though she conceded that there might be other places than this particular title. MEP Brok conceded that if the OMC was to be incorporated in the Constitutional Treaty then it should not acquire the status of a legislative act. Lennmarker (Sw, NMP) responded that properly considered the OMC was applied outside the Union remit in the strict sense

and therefore did not merit a place in the Constitution (cf. van Eekelen). In turn Fayot (NMP, Lux) and van Lancker (B, MEP) took sides with Andreani insisting that indeed these kind of non-legal instruments used by Member States needed clear and well-defined places within the Constitutional Treaty. Chevalier (B, Agov), van Lancker (B, MEP) and Gabaglio (ETUC) added that also the agreements of the European Social Dialogue should get a place in this article, as acting by way of decisions.

Duff (MEP, UK) and Chevalier (B, Agov) took up the defence of organic laws as an additional instrument, suggesting that this instrument might be used to settle such issues like the Union's own resources and certain (inter-)institutional matters (cf. D'Oliviera, Severin). However, MEP Maria Berger was far from convinced of the need for such an instrument.

Hololei (Est, Agov) argued that Union institutions should enjoy maximal flexibility in their choice of instruments for a given objective. Du Granrut (CoR) argued in favour of adding a paragraph to this article that would explicitly allow Member States and regions maximum freedom in deciding the forms in which acts would be implemented.

Lopes (P, gov) argued that paragraph 24.2 should be deleted as it addressed something that eventually was up to the institutions themselves. Andriukaitis (Lit, NMP) argued that this paragraph be better moved to article 32. MEPs Lamassoure and Brok insisted that it should be clear that all acts including the European regulations should be subject to the requirements of openness and transparency.

Article 25 Legislative acts

Slovenian government representative Dimitrij Rupel suggested that it would be most appropriate to rename this article 'legislative procedure'. Lord Tomlinson (UK, ANMP) argued on the other hand that the term 'codecision procedure' be better retained for this article. His German colleague Meyer suggested that the second sentence of 25.1 might be replaced by a more positive formulation, like "an act is adopted if it has commanded the required majority support in both houses".

Dutch parliamentarian Van Eekelen suggested that this article might spell out the legislative procedure in full, rather than concentrating on its most essential elements. Amato responded that it was import for this part to contain only the essential constitutional elements. In turn Dini (It, NMP) welcomed the rather minimalist description but insisted with many others (Giannakou, Spini, Einem, Costa, Chevalier, Brok, Berger) that one further element needed to be added, namely the use of qualified majority voting in the Council (if necessary subject to well-defined exceptions). MEP Maij-Weggen added that all remaining exception to qmv in the Council should be removed in five years time. Going even further, Meyer (D, NMP) requested this qualified majority to be defined as a 'double simple majority'.

Austrian representatives Einem (NMP) and Berger (MEP) suggested that the article should also mention the voting by simple majority in the EP. MEP Paciotti added the requirement of an absolute EP-majority should be limited as much as possible. Rovna (CZ, Agov) argued that the formulation of the right of initiative could still be improved by drawing upon the Working Group report on legal simplification. Costa (NMP, P) suggested that also the general principle of allowing national parliaments to react to legislative proposals should have a place in this article. Gabaglio (ETUC) argued for transposing the current provisions that grant social partners the power to supervise

EU legislation. Severin (Rom, ANMP) submitted that also the procedure for the Union adopting international treaties should be included in this paragraph.

25.2 Exceptions to the legislative procedure

Amato underlined the importance of the list of exceptions to the legislative procedures. He promised that the Praesidium would soon table comprehensive lists. Some government representative (Hjelm-Wallén, McDonagh) emphasised the importance of this list and of it including certain topics. Dastis (SP, gov) defended article 25.2 as allowing for the preservation of procedural particularities needed in certain fields.

However, many conventioneers (Meyer, Dini, Rack, Severin) attacked the very presence of article 25.2 allowing the Council to adopt European (framework) laws by itself. A considerable number (Rupel, Voggenhuber, Carnero, Paciotti, Lennmarker, Spini, Costa, Chevalier; cf. Tajani) insisted on the principle that there could be no legislation without the proper involvement of both legislative chambers, including also the European Parliament. Amato responded that the Praesidium had consciously chosen to have this paragraph added and that in principle the Council would act in these cases as a one-chamber legislature. In turn MEP Paciotti argued that these would be prime examples of the democratic deficit where laws would be adopted without any reliance on the popular will and that for that reason this provision should be deleted.

MEP Brok indicated that before opposing any exceptions on principle he would first await the list proposed by the Praesidium. His colleague Duff argued that he still needed to hear a convincible justification for the need for any exceptions. Just relying on "exceptional strong interests of Member States" would not suffice, thus the single case of the agricultural policy would for instance not hold ground. Similarly Costa (NMP, P) argued that the exceptions should be identified by way of general, objective rules. In response Amato referred to article 269 on own resources as a typical case to be exempted from the legislative procedure. In turn Duff argued that this case was for him a perfect example of something that would be best adopted by organic law; imposing special requirements on its adoption (supermajorities) while retaining the integrity of the legislature as a whole.

Others, while re-iterating that codecision should become the rule (Bury), were willing to concede that the legislative procedure could not be fully generalised yet and that exceptions might be identified in Part II of the Constitutional Treaty. MEP Hänsch insisted that exceptions would only be acceptable if they would remain limited in number and small in size. Additionally some (Lamassoure, Vitorino, cf. Azevedo) suggested that exceptions to the legislative procedure should only be allowed for a limited amount of time. Kelam (Est, NMP) and Bury (D, Agov) argued that on those issues the EP should at least be consulted. Similarly Kiljunen (NMP, Fin) argued that the EP needs to be involved in all legislation but that this involvement need not always include the power to amend.

As an additional point, Green MEP Voggenhuber argued that ministers should be prohibited from having officials acting on their behalf in the Council. Amato expressed his sympathy for this point and suggested that it might get a place in Part II of the Constitutional Treaty.

25.3 Legislation in public

MEP Klaus Hänsch argued that transparency of procedures is the key to a democratic Union. Many conventioneers (Azevedo, Costa, Hjelm-Wallén, Lekberg, Christophersen) welcomed the publicity required by paragraph 25.3. MEP Sylvia Kaufmann insisted that the requirement of publicity should

not be restricted to the actual vote on legislation but should be secured for the whole legislative process. Amato agreed that this needed to be clarified further. MEP Jens-Peter Bonde added that the requirement of publicity would amount to little as long as many decisions are actually struck in Coreper and Council working groups. Hence it is imperative that the agenda's of these bodies be publicly available as well. Similarly, much of delegated acts will be taken within the Commission administration and out of sight of the College of Commissioners. Amato responded that the obvious implication of article 25.3 is that so-called 'A-points' will be scrapped in the Council. Kaufmann added the suggestion that this paragraph should contain a provision on the publication of legislation (cf. article 33). She further argued that the Commission should be held to the current inter-institutional agreement that it regularly informs Council and EP on the legislation in preparation.

Article 26 Non-legislative acts

Several conventioneers (Rupel, Kelam, Rovna; cf. Tomlinson) argued that the phrase 'non-legislative acts' was better replaced by 'executive acts'. On a more principled note Heathcoat-Amory (UK, NMP) insisted that insisted that laws should be made by lawmakers and that therefore the concept of non-legislative acts was objectionable per se.

However, Amato pointed out that non-legislative acts do exist and serve a useful function within the Union to provide for general bindings rules in specific circumstances, in particular in circumstances with a high degree of urgency or dynamic, for instance to stabilise capital markets. These powers are neither executive acts nor laws. Thus adopting the phrase 'executive acts' might well come to exclude this specific kind of acts.

MEP Carnero argued that this article should also refer to the adoption of international treaties, the Broad Economic Policy Guidelines. In both procedures the involvement of the EP would also need to be secured.

Article 27 Delegated regulations

Amato explained that delegated acts are less than laws but still more than mere administrative regulations (cf. Paciotti). MEP Duff argued that they amount in fact to secondary legislation and that hence they should also be recognised as such in article 24. Many conventioneers (Meyer, Oleksy, Hänsch, Vitorino, Lekberg) welcomed the proposal of delegated acts. Christophersen submitted that this article, together with the next one, foreshadows the much-improved future of European rule-making under well-calibrated democratic controls.

However, Heathcoat-Amory (UK, NMP) re-iterated his objections against any delegation of substantive law-making powers. He added that whatever the problems of the present comitology procedures, delegation to non-democratic institutions cannot be their solution. Speaking on behalf of the majority of the Estonian parliament, Tunne Kelam objected to the category of delegated acts for them simply not being understandable. Instead he suggested that they might just as well be subsumed under a broadened category of implementing acts.

Others (Rovna, Dini, Einem) indicated as well that they were not convinced by the distinction between the two kinds of acts. Rovna (Cz, Agov) wondered whether delegated acts are intended as an instrument to intervene when Member States fall short in their implementation efforts. McDonagh (IRL, Agov) on the other hand found the distinction between the two kinds of acts justified, but

conceded that it merited further clarification. Also MEP Maria Berger underlined the need to be extremely clear about what kind of acts can be used under what kind of conditions.

Andriukaitis (Lit, NMP) and Zile (LTV, Agov) wondered whether this article should refer both to laws and framework laws. Piks (LTV, NMP) responded that indeed delegated acts might be binding both in form as well as in substance. Andriukaitis argued further that this article should also make reference to the principles of subsidiarity and proportionality.

Various conventioneers (Tiilikainen, Rupel, Oleksy) expressed their concern that in practice it will be impossible to distinguish between “essential” and non-essential elements of an area. Finnish government representative Tiilikainen argued that the article should define a number of policy areas in which the rule-making could not be delegated (cf. Hololei). For a start, she suggested that the exempted areas should include basic rights and any powers to amend the substance of laws. Amato warmly welcomed this suggestion. Baroness Patricia of Scotland suggested that the conditions under which delegated acts can be applied might be further specified in Part II of the Constitutional Treaty and that a discussion circle might be established to look after this. Also Severin (Rom, ANMP) was much concerned to bind the use of delegated acts to strict conditions, urgency being one of them. In his view these conditions might be further spelled out by way of organic laws.

Several conventioneers (Kiljunen, Korhonen, Hololei, Zile) insisted on the principle that delegated legislation should not be able to amend the substance of the law, not even its ‘non-essential elements’ (cf. Gerhards, Piks). However, Amato responded that delegated legislation may indeed affect the content of the law especially if it is revised over time. Still the law would define the boundaries of what might be settled by way of delegated acts. His Dutch colleague Van Eekelen suggested to restrict the function of delegated acts to supplementing law and to delete the verb ‘amend’ in the text as it was bound to lead to confusion. Amato recognised these problems but insisted that the word was needed here.

MEP Hänsch insisted that the Commission would be the only institution that could be entrusted with the task of delegated legislation. Similarly, French government representative Andreani argued that the instrument of delegated acts should serve to simplify legislation and not as an instrument to constrain the Commission’s executive powers (also Barnier, Brok, Bury). Finnish representatives Kiljunen and Korhonen on the other hand argued that some flexibility might be retained in allowing the Council to adopt delegated legislation in certain cases. McDonagh (IRL, Agov) added that if the Commission would become too strong in using delegated acts, this might well backfire on the use of this instrument.

One big issue for debate was the question whether the call-back procedure could only be activated by Council and Parliament jointly or whether they should both be able to activate it individually. Amato submitted that as on the one hand the two bodies acted together as co-legislator they would also have to act together in activating the call-back. On the other hand practically it was easier to envisage each legislature to be able to activate the call-back individually. Indeed the overwhelming majority (Lamassoure, Rack, Maij-Weggen, Berger, Brok, Kaufmann, Vitorino, Barnier, Hjelm-Wallén, McDonagh, Lekberg) of the Convention came down on the second option. Also Severin (Rom, ANMP) insisted that the EP should always be able to revoke delegated acts by itself, though precise provisions to this end might be inserted in Part II of the Constitutional Treaty. As Amato eventually observed, the argument prevailed that as legislation needed a consensus between

Council and EP, delegated legislation would be revoked once one of the parties would break away (Lennmarker).

MEP Brok cautioned not to embrace the instrument of delegated acts too swiftly as a way to get rid of comitology. For him it remains to be demonstrated that the use of delegated acts will in effect not be effectively moved outside of the remit of the EP, as the procedures will be dominated by opaque expert committees, just like the EP is now already experiencing with the Lamfalussy procedures. Amato responded that it will in all cases be up to the EP itself to determine the nature of the control mechanisms.

On the other hand Dastis (SP, gov) argued that the EP should not treat into executive affairs and that therefore the monitoring of delegated and implementing acts should be left to the Member States alone. MEP Paciotti responded by insisting that delegated acts would by their nature still constitute laws, if of a secondary nature, and that therefore the involvement of the EP was fully warranted. Her colleague Andrew Duff added that the distinction between legislation and implementation was exactly what distinguished delegated acts from implementing acts; and that indeed that explains why the EP has no control role in article 28.

Commissioner Vitorino objected in principle to the alternative control mechanism of a sunset clause whereby delegated acts would be bound to expire after some time. Chabert (CoR) argued that it needs to be ensured that the Committee of Regions will be consulted on delegated acts that are pertinent to the regions' interests.

Article 28 Implementing acts

Oleksy (Pol, NMP) wondered whether it was really necessary to regulate implementing acts in the Constitution. Amato responded that this was important as to secure that they would be subject to proper mechanisms of control. Gerhards (D, NMP) argued that it should be clear that as a rule implementation is the responsibility of the Member States and that implementation by the Commission will only be the exception. Similarly Bury (D, Agov) argued that, as these acts would only be of an implementing nature, it followed logically that it would be the exclusive prerogative of the Council (without the EP) to decide upon the appropriate control mechanisms. MEP Kaufmann disagreed, insisting that Council and EP should enjoy powers of control over implementing acts. However, MEP Duff went even further as he suggested that by its administrative nature call-back mechanisms would be inappropriate here and that controls would need to be restricted to the normal scrutiny mechanisms of the Commission (cf. d'Oliviera). Here Amato agreed.

Many conventioneers (Lamassoure, Azevedo, Lekberg, Bury) were keen to see the current comitology practice revised and restricted. Commissioner Vitorino suggested that comitology could be restricted to the use of advisory committees only (also Bury). Lord Maclennan (UK, ANMP) objected to article 28.3 as it seems to provide a legal basis for comitology. Instead he endorsed the amendment by Duff that would leave it to the discretion of the Commission to establish committees if it would find this desirable.

MEP Maria Berger argued that implementing acts should be restricted to the Commission and to agencies only and that it would be inappropriate to entrust the Council (who also acts as legislator) with their administration. Lamassoure argued that the provisions of declaration 43 attached to the Treaty of Amsterdam (on subsidiarity and proportionality) should have a place in this article. Maij-

Weggen added that this article should also refer to the role regions play in implementing European acts.

Article 29 [Common foreign and security policy]
Article 30 [Common defence policy]
Article 31 [Police and criminal justice policy]

Kacin (SLN, NMP) insisted on these articles to be drafted as soon as possible, so that the conventioneers would know what kind of procedures and act would apply in which areas. The incorporation of these articles was strongly defended by Baroness Patricia of Scotland (UK, Agov) who argued for the need to preserve certain distinct instruments in the CFSP as well as certain features specific to the third pillar (cf. McDonagh). She conceded that eventually the need for these articles should be reviewed in the light of the specific policy provisions in Part II of the Constitutional Treaty.

However, many conventioneers doubted whether these articles were really needed. They looked at these articles as backtracking on the Convention's decision to abolish the pillars (Spini, Wittbrodt). Wittbrodt (Pol, NMP) underlined the importance of sticking to the commitment to simplification. Parliamentarians Dini (It) and Severin (Rom) saw no justification for these articles whatsoever. MEP Rack insisted on the full extension of the Community Method across all competences.

MEP Berès argued that the Convention was bound to revise the CFSP and bring it into line with the Union framework as a whole. Finnish parliamentarian Kiljunen also insisted on the abolition of the pillars but granted that one special article might be reserved to provide for certain exceptions, concerning in particular the CFSP (cf. Carnero). Several conventioneers (McDonagh, Tiilikainen, Korhonen, Hololei) submitted that article 29 and 30 might be fused. MEP Lamassoure indicated that the EPP party-group had not yet made its mind up on the need for separate article on CFSP and defence in this Title. Andreani (F, Agov) submitted that the need for a separate article on CFSP and its nature would have to depend on the outcome of further debate. At this point she saw no point in pre-empting this debate, though at the same time she underlined that also the possibility of using the normal legislative procedure in CFSP should not be excluded beforehand. Green MEP Voggenhuber suggested that article 29 might include the principles and objectives of EU external action as drafted by the working group on external action. McDonagh (Irl, Agov) argued that there might be good reasons for the Union not to legislate in CFSP. Piks (Ltv, NMP) responded that there was no reason in principle why the Union would not legislate in CFSP but that the use of delegated acts might well be excluded from this field. Here Amato agreed.

Many conventioneers (Lamassoure, Berès, Carnero, Voggenhuber, Chevalier, Costa, Giannakou) objected to a separate article on instruments for police and criminal justice policy. Indeed Voggenhuber counted that 69 conventioneers had supported one or another amendment to that effect. For them this article suggested the resurrection of the pillar structure. Instead these competences should be simply subsumed under article 25 setting out the general legislative procedures, if needed by indicating the particularities (Voggenhuber, Tiilikainen, Korhonen). Others (Rack) were a bit more half-hearted in conceding that the article should be clearly limited in scope. MEP Duff conceded that there are certain particularities to the fields of Justice and Home Affairs but that what is essential is that only general Union instruments are used in this field.

MEP Carnero underlined the importance of keeping the right of initiative with the Commission. Chevalier submitted that only in CFSP exceptions may be justified to the Commission's exclusive right of initiative.

Article 32 Principles common to acts of the Union

Andriukaitis (Lit, NMP) argued that the principle of publicity should be added to this article as well as the proposed paragraph 24.2. Various Swedish representatives (Hjelm-Wallén) suggested that a provision should be made to ensure that clear, simple and precise wordings will be used in drafting acts. Jacobs (Unice) regretted that so far the draft articles failed to refer to the value of societal self-regulation and he suggested that this might be mended in this article. Amato responded that such a reference might well still get a place in Title 6 on the democratic life of the Union.

Article 33 Publication and entry into force

Hololei (Est, Agov) argued that it should be stipulated that laws will be made available in all languages of the Union.

Debate on draft protocols on subsidiarity and on the role of national parliaments (CONV 579/03, 610/03, 611/03)

In introducing the debate Giscard d'Estaing noted that there appeared wide agreement on the main elements of these protocols and called upon the Conventioneers to focus on the finishing touches. Speaking time was restricted to two minutes.

Indeed the plenary debate confirmed that both protocols raised few principled objections and that many conventioneers were quite willing to endorse the drafted provisions (Serracino-Inglott, Costa, Andreani, van der Linden speaking for the EPP). In particular the way the early warning mechanism has been designed seemed to strike a balance that would be able to command a wide consensus, even though from various sides people would have preferred to have it defined slightly differently. On the one hand some would have wanted national parliaments to command stronger controls as they regarded the conclusions of the working groups on subsidiarity and national parliaments as an absolute minimum (Zahradil), felt that they had been watered down (Haenel, Oleksy, Krasts), or needed to be reinforced further (Stuart, Lekberg, Korhonen). On the other hand there were concerns that national parliaments would come to play a permanent role in the European legislative procedures, complicating the already windy legislative procedures (Muscardini, Duff, Einem). Outside of the consensus was MEP Jens-Peter Bonde who regarded the early warning mechanism as a joke because already a similar share of ministers should be able to block legislative proposals. A further original contribution came from MEP Pervenche Berès who suggested that the two protocols might be merged.

MEP Duff observed that in terms of substance, the protocol offered nothing new compared with the Amsterdam declaration on the same topic. Giscard responded that this declaration had so far found little concrete application. Duff countered that if the principle of subsidiarity and the ability of oversight by national parliaments were to be really strengthened, Member States should be required to indicate how they would transpose European framework laws.

Various conventioneers (Van der Linden, Dybkjaer, Lennmarker) underlined the responsibility national parliaments themselves would have in making a success of the protocol on subsidiarity. Stuart

(NMP, UK) concurred that facilitating the flow of information was at the heart of the provisions proposed. MEP Brok added that the protocol should also serve to build trust between the different political levels.

Several conventioneers argued for a more ‘dynamic’ conception of the subsidiarity principle. Belgian government representative Louis Michel argued that the definition of the principle needed further clarification. In particular it should be made clear that the principle applies to legislation and does not affect the Union’s competences (granted by Méndez de Vigo). Similarly Lopes (P, gov) argued that a dynamic interpretation of the principle of subsidiarity was needed to prevent the principle from being abused to undermine the Union’s competences or to undermine other fundamental principles of the Union, including the institutional balance (also granted by Méndez de Vigo). Serracino-Inglott (MTA, gov) agreed, underlining that there is more to the concept than the mere suppression of competences (‘vertically’) flowing to the centre. Borrell (SP, NMP) added that the lowest level is not necessarily the most appropriate level (cf. Einem). In line with that MEP Berès submitted that under the principle of subsidiarity it also needs to be made very clear what tasks the Union does have to take on.

Jacobs (Unice) argued that the protocol on subsidiarity should also refer to ‘horizontal subsidiarity’, leaving it to societal organisations to organise things that they are in a better position to organise themselves. Wittbrodt (Pol, NMP) argued that the protocol might also include a reference to the role churches and civil society can play in the light of subsidiarity. Migaš (SLK, Agov) argued that there is also a need for a mechanism to return competences again from the Union to the Member States.

Slovak parliamentarian Jan Figel insisted that exceptions on grounds of confidentiality that is provided for the obligation on the Commission to consult widely before submitting legislative proposals would require further justification (granted by Méndez de Vigo).

Various conventioneers (Serracino-Inglott) argued for a strengthening of the role of the Committee of Regions in this protocol. Austrian government representative Farnleitner suggested that the Commission should not only communicate legislative proposals to national parliaments but also to regions (point 3). More generally, regions should be kept at the highest level of information possible (cf. Maij-Weggen, Pieters). Developing this point further Scottish MEP MacCormick argued that the protocol should respect as much as possible the prerogatives of regions with legislative powers (cf. Carey). Pieters (B, NMP) submitted that the full involvement of regional parliaments with legislative powers in the early warning mechanism is necessitated by the constitutional order of some Member States. Chabert (CoR) argued that the Committee of Regions should be fully involved in the early warning mechanism and that the mechanism should be prevented from undermining the prerogatives of the Committee. His colleague Du Granrut added that the Economic and Social Committee should enjoy similar rights under the protocol.

Commissioner Barnier welcomed the obligation put upon the Commission to justify its proposals with regard to the principle of subsidiarity. However, MEP Berès warned that it should not be underestimated how much work these requirements would put on the Commission. Several conventioneers (Farnleitner, Scotland, Gerhards, Oleksy, Migaš) argued that this justification should not only take account of subsidiarity but also of the principle proportionality. Haenel (NMP, F) added that in practice the two principles are often hard to distinguish from each other. Giscard responded that it is important to note that the basic structure of the two principles differs and that they are not

completely symmetrical (cf. Barnier). MEP MacCormick argued for having paragraph 7 of the Amsterdam protocol on subsidiarity fully incorporated in paragraph 4. Just to make sure, Kiljunen emphasised that there was no need for a Congress to review the Commission's performance on subsidiarity.

Many parliamentarians (van der Linden, Haenel, Einem, Lekberg, Korhonen, Kiljunen, Carey, de Rossa, Krasts, Andriukaitis, Zahradil, Muscardini) underlined the importance that the six week period during which the Council will not act upon a legislative proposal be strictly adhered to. Meyer (D, NMP) underlined the importance of limiting the burden on the legislative process and hence of sticking to the six week period. Parliamentarians Oleksy (Pol), de Rossa (Irl) and Krasts (Ltv) underlined the importance of also preventing any informal or preliminary agreements from being reached already during this 6 week period. Kiljunen (NMP, Fin) added that it would also be vital that national parliaments would be informed at least 10 days in advance of the agenda of Coreper-meetings.

The Baroness of Scotland (UK, Agov) submitted that the way the opinions of national parliaments are taken into account still needs to be clarified further. Lennmarker (Sw, NMP) and Lopes (Gov, P) underlined the importance of the opinions being submitted being *reasoned* opinions. Duff (MEP, UK) and Severin (Rom, ANMP) added that one should not simply throw all submitted opinions on one pile, but that only opinions of a similar kind of objections should be added up. Costa (P, NMP) submitted that the right of national parliaments to submit opinions on legislative proposals should not be restricted to the consideration of subsidiarity alone. MEP Lamassoure argued that the remit of the early warning mechanism should be extended to apply also beyond legislative proposals to any issues concerning the delineation of powers, for instance also to the activation of the flexibility clause (article 16 in the proposed draft treaty) or the drafting of the Broad Economic Policy Guidelines (Berès).

Eligible parliaments

Much debated was the claim of a substantial number of conventioneers (Meyer, Gerhards, Haenel, Lequiller, Tusek, Bösch, Costa, Brok) to ensure that in bicameral national systems, both chambers would have independent access to the Early warning mechanism. Di Rupo (B, NMP) argued that one cannot expect two chambers to act jointly like some kind of Congress, especially not if they are founded on distinct democratic principles. Belgian foreign minister Michel even proposed that national governments should indicate the relevant national and regional parliaments in a list and have the voting power in the Early warning mechanism shared between them (cf. Gerhards). Pieters (B, NMP) added that a proper control of subsidiarity required that regions with legislative powers should be able to activate the early warning mechanism, either by having a vote themselves or by being able to commit a national parliament. To this Dastis (SP, gov) objected that if this logic were followed through consistently, some Member States would require up to 15 votes. Hence he and others (Roche, Severin, Andriukaitis) held on the view proposed by the Praesidium to have only a single right to object per Member State and to leave it to the parliaments themselves to make internal arrangements for involving multiple chambers. Eventually, however, there appeared to be majority support for the proposal to grant each member state two votes that it would then be free to share between two parliaments or to concentrate in one (Bury, Stuart, Haenel, Dini, Borrell, Timmermans).

There also remained some disagreement on the threshold that would oblige the Commission to reconsider its proposal. Some suggested to set the threshold at one fourth rather than the proposed threshold of one third of all national parliaments. On the other hand MEP Brok argued that the threshold be better raised to 2/3 as otherwise it would be too easy to manipulate the system through orchestration between the parliaments. However, the majority of conventioneers (Barnier, Roche, Dybkjaer, Timmermans, Krasts) seemed to be happy to set the threshold at one third. Typically, Gijs de Vries (NL, gov) indicated that he would welcome the threshold to be lowered to one fourth, but also considered one third acceptable.

A red card procedure?

Gisela Stuart (UK, NMP) defended a proposal to add a second threshold at two thirds of all national parliaments that would force the Commission to withdraw or amend its proposal. She argued that this reform would serve to strengthen the mechanism as a whole, as it increases the potential impact the invocation of the mechanism by national parliaments can have. Danish (alternate) government representative Poul Schluter went even further as he suggested that at a turn out of objections of 50% of the national parliaments, the Commission should already be bound to review or retract its proposal.

While Stuart's proposal gained some support (Andriukaitis, Zahradil, Krasts, Lekberg, Korhonen), the majority of the Convention (Duff, Meyer, Lequiller, de Vries, van der Linden, Timmermans, Di Rupo, de Rossa, Lennmarker, Einem, Azevedo, Severin) opposed the suggestion of a 'red card' procedure. Italian parliamentarian Lamberto Dini probably best expressed the feeling of the opposition as he reconsidered it "outrageous" to presume that the Commission would or even could persist on a proposal for legislation that would be opposed by two-thirds of the parliaments (cf. Barnier). MEP Andrew Duff was let to wonder: "what is the Council for?" Giscard concurred, observing that any proposal meeting with the objections of two-thirds of the national parliaments would be most unlikely to succeed anyway in the Council (cf. Lennmarker, Einem, de Rossa). Meyer (D, NMP) underlined that national parliaments could also make themselves heard through their governments. Even MEP Bonde concurred on this point, arguing that logically any red card procedure is unlikely to stop any legislation that is passed by a qualified majority in the Council unless the critical threshold is set at less than a third. Parliamentarians Timmermans (NL) and Lennmarker (Sw) added that the early warning mechanism should not allow for conflicts between national governments and parliaments to be been transposed to the European level.

As a further argument it was submitted that giving national parliaments the power to force the Commission to withdraw its proposals would seriously undermine its right of initiative (Michel, Borrell). Stuart responded that the Commission's position would not be undermined as it would always be free to resubmit its proposals. Kirkhope (UK, MEP) objected that in any case the right of initiative should be located with an elected institution like the EP rather than with the Commission, to start the two institutions might share the right of initiative. All other political actors (national governments, civil society etc.) should then have the right to petition the EP for a legislative initiative.

Stuart responded to her critics by asserting that the red card procedure was not inspired by paranoia but that it would serve its function in preventing excesses. It would also serve a useful signalling function for the debate in the Council. Zahradil (Cz, NMP) rejected these objections as misplaced fears and objections. Haenel (F, NMP) argued that the protocol does indeed provide for a

‘red card procedure’, i.c. the possibility to have legislation quashed by the ECJ on the grounds of subsidiarity. In that sense he submitted the idea of a ‘red card’ does not meet as much opposition.

ECJ access
However, also the access of national parliaments to the ECJ raised quite a debate. The Praesidium had proposed to reserve this right to the national governments that may act on behalf of their parliaments. Some conventioneers (Dastis, Michel, de Vries, Timmermans, Einem) expressed their support for this approach. Others (Gerhards, Brok, van der Linden, Lennmarker, Azevedo, Oleksy, Brejc) insisted however that the parliaments should eventually enjoy this right themselves so that they would not have to rely on the government. Moreover, several conventioneers (Bury, Tusek, Bösch, Meyer Lequiller) insisted that in bicameral systems each parliament should enjoy ECJ access separately. MEP Brok added that also the EP should have the right to access the ECJ on issues of subsidiarity. While Giscard conceded that in principle there was no problem in two chambers giving their opinion, he insisted that they could not also both get a right to access the ECJ on the issue of subsidiarity.

Some conventioneers (Bury, Farnleitner, Tusek, Bösch, MacCormick, Borrell, van der Linden, Brejc) argued further that, subject to national constitutions permitting, also regions with legislative powers should have the right to access the ECJ on the issue of subsidiarity. Others (Wittbrodt) argued however that regions should make their voices heard through the Committee of Regions and their national governments. Committee representatives Chabert and du Granrut defended the right of the Committee of Regions to bring cases to the ECJ. On the other hand De Vries (NL, gov) and Einem (ÖS, NMP) opposed ECJ access for both individual regions as well as for the Committee of Regions. Giscard observed that if the Convention were to grant the regions direct access to the ECJ, it would also be bound to grant the same right to national parliaments (cf. Berès).

Another issue for debate was whether after the convening of a Conciliation Committee the Early warning mechanism should be allowed to be re-activated. Commissioner Barnier submitted that the early warning mechanism does have its proper place at the beginning of the legislative procedure (cf. Carey). Several conventioneers (Michel, de Vries, Timmermans, Berès, Duff, Lamassoure, Borrell; a bit more cautiously Lennmarker, McAvan) argued for this point (7) to be scrapped as it would be impractical and will only lead to undue delays of the legislative process. Stuart (UK, NMP) countered that no delays would need to occur as long as every one would be bound to the time limits set. Krasts (Ltv, ANMP) insisted on the importance of the warning system still being actionable at a later stage in the legislative process. Kiljunen (Fin, NMP) attacked the restriction for the re-activation for the warning mechanism to the conciliation procedure as arbitrary and submitted that national parliaments should be able to submit opinions at any stage when substantive amendments are entered cf. Dybkjaer).

Various conventioneers (van der Linden, Figel) argued for communicating the Commission’s annual report on the application of the subsidiarity and proportionality principles to the national parliaments.

Protocol on the role of national parliaments
The protocol on national parliaments gave considerably less cause for debate. It was generally welcomed by some (Balázs, Andreani). However, various representatives (most notably of national parliaments) regarded it as rather dissatisfying (Kiljunen) falling short of expectations (Azevedo) and

falling behind the Working Group report. Costa (P, NMP) underlined that there should also be a substantive reference to the role of national parliaments in the main body of the Constitutional Treaty. His Finnish colleague Kiljunen argued that eventually the key aspect here is the capacity of national parliaments to scrutinise their governments (cf. de Rossa) and that unfortunately this aspect had been ignored by the Praesidium's draft texts. He indicated that he had tabled amendments on this point. MEP Brok concurred that powers of the national parliaments in these respects needed to be reinforced.

MEP Bonde characterised the protocol on national parliaments as 'an emperor without clothes'. In his view national parliaments should define and control the Union's competences, appoint the Commissioners and adopt Union laws according to their own national procedures. Under those conditions qualified majority voting could be further extended, if however particular provisions were brought into place to protect 'vital national interests'. More generally Bonde considered the draft constitutional treaty to work as a one-way street, moving powers from the Member States to Brussels without having a proper reverse mechanism. Amato replied that the flexibility clause of the proposed article 16 may well come to include a reversing mechanism.

MEP Muscardini objected to paragraph 5, arguing that in principle it is up to the national governments to inform their parliaments about the agendas and the outcomes of Council meetings. If this responsibility is not sufficiently adhered to, then one would expect the parliaments to be able to press their governments to do so. On principle she opposed any suggestion that national parliaments would develop into European institutions in their own right.

On the other hand, national parliamentarians de Rossa (Irl) and Andriukaitis (Lit) emphasised the importance of national parliaments being fully and timely informed. Together they underlined in particular the importance of national parliaments being fully informed about the Council Proceedings and receiving their records. Giscard added that indeed transparency would need to be extended across all Council formations and sub-formations.

One amendment Giscard was happy to accept was that national parliaments should receive the annual legislative programme and the annual policy strategy (cf. van der Linden, Korhonen, de Rossa, Einem, Brejc). Several national parliamentarians (Van der Linden, Timmermans, Einem, de Rossa) added that it would be desirable if all national parliaments would hold debates on the annual legislative programme during the same ('European') week, considering the issue of subsidiarity in particular.

Swedish parliamentarian Lekberg emphasised the importance of fostering exchange between national parliaments on European affairs. His Portuguese colleague Azevedo underlined the need to improve cooperation between national parliaments (cf. Kiljunen) and for the Union institutions to maintain a permanent dialogue with them. Balázs (HG, gov) suggested that the contacts between national parliaments might also serve to exchange lessons about how European policy is best developed and administered in different policy areas. Thus, he submitted, a kind of 'inverse subsidiarity' may be fostered. Serracino-Inglott (MTA, gov) suggested that the interaction between national parliaments may be stimulated by the development of an electronic network between them. Lennmarker (Sw, NMP) underlined the value of bilateral relationships between national parliaments and suggested that this might be encouraged by the protocol.

Ene (Rom, Agov) submitted that more substantial and dynamic provisions might be adopted on the cooperation between national parliaments and the European parliament. National parliamentarians Lekberg (SW), Carey (Irl) and Azevedo (P) argued in favour of a further

development of COSAC. However, Costa (P, NMP) asserted that at present COSAC functions very unsatisfactory, adding that also a similar institution like the WEU-assembly might just as well be abolished. Haenel (F, NMP) added that indeed the proposals fell behind the earlier agreements on COSAC in the Amsterdam Treaty. Together Costa and Haenel called for the establishment of a new forum, true European interparliamentary conference (cf. Kiljunen). Andreani (F, Agov) argued against institutionalising interparliamentary dialogue, favouring instead regularly ad hoc exchanges between national parliaments and the EP (cf. Van der Linden).

Carey (Irl, ANMP) suggested that the involvement of national parliaments with the Union might be increased by having the Commission President elected by an Electoral College as proposed by his government representative Dick Roche.

Former chair of the Working Group on subsidiarity, MEP Iñigo Méndez de Vigo rounded up the debate on the two protocols by granting that the Praesidium might have lost certain essential considerations on the way the principle is to be applied in its desire to present the Working Group's conclusions in their simplest and clearest form. He recognised that the diversity of parliamentary systems needs to be recognised. Having two votes per Member State might well be the best solution to this, also because it respects the equality between Member States.

Méndez de Vigo further expressed his unease with the 'yellow card' metaphor, suggesting that the more appropriate metaphor is that of an 'emergency break'. In his view the main objectives of the early warning mechanism are to secure that national parliaments are properly informed and to stimulate them in scrutinising their national governments. In that respect the debate should not so much focus on the number of opinions but rather on their content. Already one well-argued opinion may make substantial impact upon the legislative debates in the European institutions. Still Méndez de Vigo held on to setting the threshold at 1/3 and rejected any suggestion of a definitive threshold or veto power to the national parliaments. Pointing out that under the legislative procedure the Council can only amend the Commission's proposals by unanimity, he indicated that at a threshold of 1/3 the national parliaments would enjoy considerable power. With regard to the possibility of re-activating the warning system in the conciliation procedure, Méndez de Vigo noted that naturally by that stage it would not be up to the Commission any more to revise the proposals but rather for the Council and the EP to ensure that they would not infringe upon the principle of subsidiarity.

Méndez de Vigo further elucidated that the right to access the ECJ must really be regarded as an appeal procedure over the inadequate settlement of an earlier opinion. He added that it was problematical to include the regions in the early warning mechanism. Here the key was the right of access provided for the Committee of Regions. Regions would have to find a way to activate that right. The question of standing before the ECJ would be further looked at in the discussion circle on the ECJ chaired by Commissioner Vitorino. In any case a flooding of the ECJ needs to be prevented.

Conclusions

Concluding the session, Giscard urged the Convention not to be complacent about the current state of the Union. He reminded that the Convention had been convened because there are some deeps-seated problems.

With regard to the debate on articles 24-33 Giscard noted wide support for the approach adopted, in particular the distinction made between legislative and non-legislative acts. He observed

that the renaming of acts would need to be considered carefully also to ensure appropriate translations in all languages. A further proposal that needed to be considered still was the idea of organic laws.

In Part II of the Constitutional Treaty the exceptions to the legislative procedure will be spelled out. In response to earlier remarks of Elena Paciotti, Giscard granted that it would need to be made clear under what conditions acts would qualify as laws and under which they would not. In particular one may have to reconsider the question whether acts that are adopted by the Council alone can be regarded laws. Giscard also noted a growing willingness to accept the proposal of delegated acts.

Giscard further indicated that there are a number of problems with retaining unanimity in the Council, especially in an enlargement Union. For a start one might well allow the Council to amend Commission proposals by qmv. With regard to the special articles 29-31 Giscard noted that they had been inserted exactly to demonstrate that the pillar-structure had been abolished. What content these articles would need to have would need to be determined on the basis of the Articles in Part II of the Constitutional Treaty.

Turning to the debate on the protocols, Giscard affirmed that there had been no intention to retreat on the conclusions of the relevant Working Groups. He was happy to grant that the Commission's annual legislative programme should be circulated to national parliaments. He further considered that the 1/3 threshold was appropriate for the early warning mechanism. Raising it would probably turn the mechanism ineffective. For the red card proposal there appeared little support. Giscard qualified this proposal also as rather academic, as normally any proposal encountering that much opposition would not pass the legislative process. He further noted that representatives of federal systems had insisted on granting different parliaments an independent role in the early warning mechanism and he conceded that the two vote proposal might be the appropriate solution to this issue. Regions should in his view participate in the early warning mechanism by referring to the Committee of Regions or to their national parliaments. Giscard further observed that naturally by the time the conciliation procedure would be reached the warning mechanism could not bind the Commission any more. In any case, he underlined that the key of the proposal is to engage and activate national parliaments.

Giscard also commented on further requests to engage national parliaments, for instance through the organisation of annual debates and through involving them in the drafting of the Broad Economic Policy Guidelines. He remarked that such proposals should not lead to granting national parliaments a constitutive role in European procedures. Giscard also observed that the six weeks period may need to be shortened to ensure that indeed no (preliminary) initiatives are already taken within the Council. He also recognised that more thought was still needed on the organisation of interparliamentary cooperation and the future of COSAC. He agreed with Pascale Andreani that the solution would probably not be found by establishing new institutions in the constitutional treaty and that organising regular meetings may be more appropriate (for which the Convention experience might possible serve as an example). In any case such provisions should not be inserted in the protocol but would be better placed in the title on the democratic life of the Union.

The next Convention meeting would be April 3 and 4. This session would concern the draft articles on freedom, security and justice and on the Union finances. Giscard called upon the conventioneers to seek to coordinate their amendments. Further he reminded them that vice-chair Dehaene would chair

an additional session on March 26 (2-8 PM) dealing with the values and objectives of the Union (articles 1-7).

Austrian parliamentarian Casper Einem asked how the Praesidium expected the Convention to meet its deadline. Giscard observed that the instrument of additional meetings is only of limited use as the first additional meeting only brought in half of the Conventioneers. He indicated that extra sessions would be planned for May.

French MEP William Abitbol noted that the Convention session of May 15 and 16 coincides with the sessions of the EP in Strasbourg. Hence he suggested that the Convention might meet in Strasbourg on these dates. An additional advantage would be that the EP-sessions would also be attended by observers from the candidate countries. Giscard responded that the Laeken declaration stipulates that the Convention should meet in Brussels. Moving the session to Strasbourg would also be difficult for logistical reasons. He promised that the Praesidium would look whether there were alternative options. One possibility would be that a (small) Convention delegation would visit the EP-sessions.

Additional observations

- Giscard announced that the report of the legal experts was available (in French for a start) (CONV 618/03). It consists of two volumes. The first answers to their mandate by laying out the various articles needed for the Constitutional Treaty. The second presents the same (redrafted) articles but in the order of the current treaties so that readers can compare them.
- The Monday session was particularly badly attended by the government representatives of the member states who were represented by their alternates (Andreani, Bury, Scotland, Chevalier). On Tuesday the situation was slightly better.
- At the very end of the Tuesday session new Convention member Georges Papandreou, Minister for Foreign Affairs of Greece, turned up for the first time. He received a special welcome from Giscard and was allowed to take the floor for some minutes. Papandreou referred to the Iraq-crisis but insisted that Europe was nevertheless bound to move forward. He underlined the importance of further democratisation of the Union, and improving involvement of and information to the national parliaments.