

Notes of the Meeting of The European Convention, 3 and 4 April 2003.

Ben Crum (CEPS), 22 April 2003 – available from <http://www.epin.org/convention/reports.html>.¹

Summary

This session was mostly dedicated to the discussion of the draft articles on freedom, security and justice. Besides that also the draft articles on the Union's finances were discussed and new draft articles were unveiled concerning the democratic life of the Union, the Union and its immediate environment, Union membership (all Part I) and the general and final provisions of Part III of the Constitutional Treaty.

The draft articles on freedom, security and justice were generally well received. Many conventioners recognised that in this sphere the Convention could really make a big step forward. Still the debate revealed a number of views on how policy-making in this sphere would best be organised. While some fringe members advocated an approach where competences would remain as much as possible to the Member States, the mainstream debate focused on the question whether this sphere could simply be subsumed under the general, community framework or whether it did require some special provisions. This debate focused in particular on the need for the special article 31 in Part I that the Praesidium had proposed, but it also concerned provisions in Part II on the role ascribed to the European Council, national parliaments, the ECJ and, probably most disputed, the right of initiative. A related issue concerned the use of qmv in the Council in this sphere. There was general agreement that the use of qmv could be extended. However, against the warnings of some that wherever unanimity would be maintained no policy progress would be possible anymore, others were keen to maintain unanimity in specific areas like Europol, criminal law cooperation, and civil law cooperation.

Conventioners generally agreed on the need to intensify operational cooperation and to strengthen Europol and Eurojust. Less agreement emerged on the insistence of a considerable group on the establishment of a European border guard. Another issue that remained particularly divisive was the question whether the Constitutional Treaty should provide for the possibility to establish a European Public Prosecutor.

The debate on the Union's finances remained rather inconclusive on the most important issues, as these are to be filled in by two discussion circles. There was little debate on the proposed budgetary and financial principles. Another issue on which there emerged a wide consensus was on the need to constitutionalise the financial perspectives. However, there emerged a wide range of views on how the Union's finances were best decided upon and in particular what balance would need to be struck between the Member States and the Union's institutions. While many conventioners would insist that the Member States should decide 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.

Union's resources, other would claim that the present system was unsustainable and that the Union should really get resources of its own, i.e. a European tax. Similarly, as concerns the budget there was no agreement on whether each Member State should retain a veto, or whether, given a clear multiannual financial framework, the budget could be decided by way of qmv and (some form of) codecision.

Introduction

Vice-chairman Amato opened the session, explaining that Convention President Giscard would not attend this session. Amato was to chair the Thursday session, while Dehaene would chair the Friday session. Amato welcomed the new ombudsman, Mr. Nikiforos Diamandouros, who joins the Convention as an observer.

Amato announced some modifications with regard to the Mid-May plenary session that will have to deal with the draft articles on external action as well as on the Union's institutions. Obviously both these topics will require quite some attention. Hence, the plenary proposed to start the Thursday 15 May session already at 10, to continue whole day on Friday 16 May and to reserve Saturday 17 if needed. In general he announced that with the Convention's June deadline in sight, more frequent and longer meetings will be required in the final weeks.

Draft articles on the Area of freedom, security and justice (CONV 614/03, CONV 644/03)

In introducing the debate, Amato indicated that the draft articles had sought to follow the conclusions of the Working Group led by John Bruton. Notably some particularities need to be taken into account in this area, like the right of initiative of Member States and the particular role of the national parliaments. Further some provisions proposed in this part might still be transferred to a place elsewhere in the Constitutional Treaty. The article on the European Council may eventually for instance be merged with the other provisions on this institution in Part I. Also the provisions on subsidiarity and evaluation mechanisms might eventually end up elsewhere. So far the Praesidium had received more than 700 amendments on these articles. The Secretariat will analyse all amendments and CONV 644/03 provides a first preliminary overview that will be expanded and updated later on.

One major issue for debate concerned requests to re-instate unanimity in the Council in certain areas where the Praesidium proposes to adopt qualified majority voting. One should note however that the Praesidium has consistently sought to provide distinctly strict definitions of the relevant areas in which more effective decision-making is thought desirable.

Another important issue for debate was the provision on a future European Public Prosecutor (article 20). Amato underlined that the draft article provides that such an office 'may', rather than 'shall', be created. In his perception this formulation seemed to enjoy majority support. Then there was also the additional question whether the Public Prosecutor would be joined to Eurojust or would better stand on its own.

Amato proposed to split the debate in two parts. The first part would concentrate on the general article 31 that would become part of Part I and on the first 13 articles that formulate the

general principles and border, migration and asylum issues. After the break the debate could then turn to the various policies as outlined in articles 14-23. Speaking time was set at 2 minutes per speaker.

The proposal to split the debate was strongly opposed by Green MEP Voggenhuber who argued that both parts were inherently interrelated and contained several cross-references. To discuss them separately would be nonsense and unhelpful. The split of the debate had also not been prefigured in the session's agenda. Moreover, referring to the apparent reliance of Amato on Secretary-general Sir John Kerr on this point, Voggenhuber added that it was up to the Convention itself, not to the secretariat, to determine its working arrangements. Amato responded that with 77 speakers listed there was no space to play around with time and that, if the session were to be found to remain inconclusive, Voggenhuber's objections might be met by an additional meeting on the subject. To this Belgian MEP van Lancker objected that there was no need for an additional meeting to repeat the earlier debates of the Working Group.

General reception

Generally the draft articles were well received (Teufel, Fini, Dastis, Hololei). Many conventioners (Katiforis, Fini, Christophersen, Voggenhuber) underlined the importance these articles have for the work of the Convention and constitute a genuine step forward in the process of European cooperation. Commissioner Vitorino praised the text as well-balanced (cf. Azevedo), though he also recognised various parts in need for improvement (cf. Duff). Meyer noted that they well reflected the conclusions of the Working Group. On a more critical tone, MEP Alain Lamassoure submitted that the draft articles were not good enough yet and also raise quite a bit of confusion.

Underlying the debate was the fundamental question whether this sphere of freedom, security and justice can simply be accommodated to the general, communitarian framework of the Union or whether there are certain traits that require it to be dealt with in a fundamentally different way.

UK parliamentarian David Heathcoat-Amory submitted that the articles should have aimed for clear decision-making and bringing power as close as possible to the citizens. In fact he found the proposed texts to do the contrary. They may well foster public disillusionment by raising expectations that can not be met. He warned that the big bureaucratic approach typical of continental systems is not always effective. He further noted that the draft articles went beyond the working group conclusions, for instance by proposing a European Public Prosecutor that contradicts the endorsed principle of mutual recognition and by going beyond the mere approximation of laws with regard to specified European crimes. A similar line was adopted by his colleague from the European Parliament, Timothy Kirkhope, who opposed article 31 as 'too integrationist' and advocated maintaining the present pillar structure.

MEP Jens-Peter Bonde observed that with the proposed European powers, national parliaments lose many of their controls. In his view the proposed texts represent a major move towards a federal and insufficiently democratic Europe. Eventually he saw police officers and

administrators acquiring powers at the expense of democratically elected politicians. Rather than an adequate justice and home affairs policy, the citizens will get “injustice from far away”. However, Swedish parliamentarian Lennmarker challenged this view submitting that clearly the present system is not satisfactory and that it is an illusion to believe that national parliaments now do exercise effective democratic control over the policies being made. In this light the proposed texts constitute a great improvement for European democracy.

Article 31 Part I and articles 1-4 on the European Council, National parliaments and Evaluation mechanisms

Seeking a compromise between those that considered that this whole sphere should be accommodated to the general Union framework and those that would insist on its inherent particularities, the Praesidium had proposed to abolish the pillars but to retain a separate article (31) in Part I of the Constitutional Treaty. Further a number of special provisions were proposed: on the role of the European Council (art. 2), national parliaments (art. 3), evaluation mechanisms (art. 4), Judicial control (art. 9) and on the right of initiative that would also be held by a group of a quarter of the Member States (art. 8).

Amato defended these special provisions as needed to compensate for the abolition of a separate pillar. Still he conceded that it would be up to the Convention to consider to what extent substantial changes could be made. He was supported by a number of conventioners (Roche, Haenel) who argued that one cannot simply communitarise this whole sphere and that hence, once the pillars have been abolished, some procedural particularities need to be preserved. British parliamentarian Stuart welcomed article 4 especially as it provides for the involvement of national parliaments.

Various conventioners (MacCormick, Gricius, Muscardini) underlined the pervasiveness of differences between legal systems and traditions that are difficult to reconcile. MEP MacCormick pointed in particular at the differences between adversary and inquisitorial systems of criminal law. A balanced approach would require all European policies to respect these differences and to accommodate them wherever possible (Gricius). These differences, some argued (Roche), also justified some of the particular provisions in this chapter.

Some remained in doubt about the need for special provision (Lennmarker). MEP Elmar Brok submitted that already at Amsterdam it had been decided that this whole area should be integrated in the Community framework. Still he was willing to concede some, limited exceptions, like the Member States’ right of initiative, but he doubted whether article 31 was really necessary. He opposed article 2 as he observed that granting the European Council the right to define guidelines might well undermine the whole legislative system. MEP Paciotti suggested that Council and European Parliaments should jointly adopt the multi-annual legislative programme.

However, there formed a strong movement within the Convention opposing any elements reminding of the former pillar structure, including many MEPs but also an important number of national representatives (Cushanan, Maij-Weggen, Duff, Voggenhuber, Kaufmann, Tiilikainen,

Dastis, Katiforis, Avgerinos, Giannakou, van der Linden, Wittbrodt, Martikonis, Hasotti). As proposed paragraph 31.1 was considered redundant (Tiilikainen). The remaining provisions might be reserved for Part II only (as they correspond to articles 3 and 8 respectively), if they were found acceptable (Tiilikainen). MEP Voggenhuber counted that amendments to this effect were supported by at least 90 members of the Convention. MEP Maij-Weggen argued that the draft articles retained too many intergovernmental traits. While it was conceded that some distinctive procedures might be required in this field, the suggestion that distinctive legal instruments – the topic of the title article 31 is meant for – would be needed was rejected (Duff, Hasotti).

In addition to rejecting article 31 in Part I, also the specific, institutional provisions in Part II were considered to be better scrapped by some:

- the European Council (art. 2) (Tiilikainen, Meyer, Cushanan, van Lancker, Hasotti),
- the national parliaments (art. 3) (Tiilikainen, Katiforis, Fayot, van Lancker, Hasotti, Martikonis, Kutzkova), and
- evaluation mechanisms (art. 4) (Gerhards, Meyer, Kaufmann, Martikonis, Hasotti).

With regard to the evaluation mechanisms proposed in article 4, German parliamentarian Gerhards submitted that there was no need for peer review any more. Instead the provisions in article 31 (Part I) and article 3 should suffice. Several conventioners (Avgerinos, Hübner) also challenged the reinforced formulation of the early warning mechanism in article 3.2. In general conventioners (Avgerinos, Hübner) tended to favour bundling all provisions concerning the role of particular institutions (like national parliaments and the European Council) in the relevant title in Part I.

For many, one of the principle guarantees of legitimacy in this field would lie in ensuring that subsidiarity would apply (Einem, Figel) and that competences would not be exercised at a higher level than strictly needed. Teufel (D, NMP) underlined the fact that many of the competences in this sphere remain with the regions/ *Länder*. Kutzkova (Bul, Agov) suggested that a special reference to the application of the principle of subsidiarity may be added to this chapter. Hjelm-Wallén (Sw, gov) underlined the importance of national prerogatives in this area. Similarly, Costa (P, NMP) challenged the suggestion that a high level of European legislation is necessary in this area. He advocated strong powers of both national parliaments and the European Parliament. At the same time he also preferred to maintain consensus in crucial spheres. Finnish parliamentarian Helle observed that in certain spheres powers were assigned to the Council without adequate parliamentary control. He argued that article 3 should ensure that national parliaments would have a say in all fields (cf. Haenel, Kirkhope).

French parliamentarian Badinter commented on art.1.2 that it would be impossible for the Union to “ensure” a high level of safety and that hence it would be better to formulate this as that the Union “will work towards” a high level of security. He also suggested that the last sentence on access to justice should be split, so that each element would stand on its own. Badinter further argued that art. 6 should be skipped because it states the obvious; any competence not assigned to the Union is to remain with the Member States.

MEP Kaufmann underlined the vital importance the Charter of fundamental rights would have for this chapter (cf. Lennmarker). It was also pointed out how policies regarding border control and migration will need to be balanced with the fundamental values of humanitarian protection (Hübner), human dignity (Kaufmann), and human rights (López Garrido). Dutch parliamentarian Van der Linden insisted on the importance of the EU to cooperate with the Council of Europe on these matters.

Overall many conventioners endorsed the application of the Community Method (Commission initiative, qmv, codecision and ECJ oversight) to this whole area (Christophersen, Voggenhuber, Hololei). Typically Athanasiu (Rom, NMP) argued that all European institutions needed to be strengthened in this field. Timmermans (NL, NMP) argued that transparency and parliamentary control were best to be secured through the general framework set out by the Constitutional Treaty (cf Fayot, Kohout).

Article 8 Right of initiative

Those who opposed any special provisions also challenged draft article 8.b that provides for a special right of initiative for “a quarter of the Member States” besides the ‘normal’ right of initiative of the Commission (Avgerinos, Giannakou, Lennmarker, Farnleitner, van Lancker, Wittbrodt, Kaufmann, Hasotti). Dutch parliamentarian Van der Linden asserted that any Member States’ right of initiative was bound to undermine the corresponding right of the Commission. MEP Voggenhuber rejected this proposal as an infringement of the Union’s democracy. His colleague Maij-Weggen counted that at least 70 conventioners supported amendments that seek to preserve the Commission’s monopoly of initiatives.

However, there were also conventioners who endorsed the Member States’ right of initiative (indefinitely), mostly by $\frac{1}{4}$ of the Member States (Gricius, Rupel). Some (Figel and Azevedo) even proposed to reduce the number of Member States required to $\frac{1}{5}$.

Commissioner Vitorino wondered how the Member States’ right of initiative would be reconciled with the standard legislative procedure (cf. Meyer). Amato recognised this as being a big challenge. MEP Duff submitted that the best way to ensure coherence with the legislative procedure would be to redraft the Member States’ right of initiative as a right to request the Commission to take an initiative (cf. Paciotti). Indeed Maij-Weggen indicated that this possibility would logically exist and that there was no reason to suspect that the Commission would be reluctant in following up to such requests. German parliamentarian Meyer proposed to reformulate this provision as allowing a minimum of 3 Member States to start an initiative by submitting it to the Commission that would then take it from there. Luxembourg parliamentarian Fayot related the Member States’ right of initiative to the European Council’s task of providing guidelines and argued that the later made the former redundant. He emphasised that experience shows that the Commission does not exercise its right of initiative in a random way.

Sharing doubts about the Member States’ right of initiative, Polish minister for foreign affairs Hübner suggested that it might be subject to a sunset clause. Dutch parliamentarian Timmermans argued that it would be most appropriate in this area to grant the Commission the

exclusive right of initiative, subject, naturally, to the early warning mechanism (Cf. Lenmarker). To this UK parliamentarian Stuart responded that she doubted whether the early warning mechanism in its present form would suffice.

Article 9 Judicial control

Proponents of a full integration of this chapter in the general (community) framework also generally opposed the ‘curious’ (van Lancker) and ‘dangerous and superfluous’ provisions on the limitation of the ECJ’s powers in this sphere (Avgerinos, Giannakou, Gerhards, Meyer, van Lancker, Paciotti, Wittbrodt, Kaufmann, Fischer). French minister for foreign affairs De Villepin underlined the important role that ECJ control in this area would have for increasing the democratic legitimacy of the policies. Dutch government representative De Vries argued for an extension of the remit of the ECJ in this sphere (cf. Hololei), exempting only matters of public order and police matters. His Portuguese colleague Antunes argued that the ECJ should not have any powers with regard to the organisation of the national judicial systems. UK parliamentarian Lord MacLennan argued that this article was miscast at this particular place and that it would be better to collect all provisions on the ECJ in one article in Part I. In any case he submitted that the suggestion should be avoided that the ECJ would enjoy powers in areas covered by national law alone.

Operational cooperation and administrative cooperation (articles 5 and 6)

Commissioner Vitorino and MEP Duff underlined the importance of maintaining a strict distinction between legislative and executive tasks. Duff suggested that a separate article on the executive organisation in this domain might be added. Vitorino was not fully convinced yet of the role ascribed to the executive committee (article 5). Clearly this committee should not develop into a stronghold of new powers.

Portuguese government representative Lobo Antunes welcomed the idea of a standing committee. His Greek colleague Katiforis argued that the powers of the committee required further clarification, in particular the special powers it might come to enjoy in border protection (cf. Antunes) and migration policy (cf. Fayot). Kutzkova (Bul., Agov) argued for a stronger wording of article 5 on operational cooperation, turning the possibility of establishing a standing committee (“may”) into a firm commitment (“shall”).

A number of government representatives also insisted on reinforcing the role of the Commission throughout this area (Hololei). Rupel (SLN, gov) insisted on the fully involving the Commission in the standing committee. De Vries (NL, gov) insisted on the Commission acquiring full authority in the sphere of migration and asylum.

Towards more effective decision-making: qmv, mutual recognition and legal harmonisation

There was wide concern about how to secure effective decision-making in this area. Timmermans (NL, NMP) submitted that some of the amendments proposed actually requested a step backward relative to pertinent European Council conclusions (Tampere above all). MEP Lamassoure argued

that for each policy area the Convention now faced the choice either to make it fully operational by adopting qmv and by providing adequate administrative means or to give up on it completely without even pretending to look after it. The key in this policy domain overall he considered to be the willingness of Member States to cooperate, implement, evaluate and expose themselves to external scrutiny. To this aim he suggested the adoption of clear work plans, matching concrete objectives to a determinate time frame.

Several conventioners concurred that competences on which unanimity would be maintained might as well be scrapped (van der Linden, Brok). Hence there was much support for the proposed extensions of qmv (Fini). Several conventioners argued for the generalisation of the use of qmv across the whole area of freedom, security and justice (Timmermans, van der Linden, Maij-Weggen, López Garrido, Hololei), as well as involvement of the EP through codecision (López Garrido, Hololei). Einem (ÖS, NMP) added that there should be no legislation by the Council alone. Meyer (D, NMP) suggested that in five years time unanimity should be replaced throughout the treaty for a double 75% majority (endorsed by van der Linden, Andriukaitis). Others endorsed qmv and codecision on principle, but indicated that a limited number of well-defined exceptions might be justified (Hübner, Christophersen, Dastis).

However, various conventioners sought to preserve unanimity on specific issues. Bösch (Ös, NMP) submitted that unanimity should be retained for vital issues (cf. Paks), especially to secure that the diversity of legal traditions would be respected. Similarly Fini (IT, gov) underlined the importance of respecting national particularities (cf. Gričius) and, while he generally welcomed the proposed extensions of qmv, he insisted on maintaining unanimity in certain areas, most particularly in family law and in substantive criminal law. Also Teufel (D, NMP) insisted on maintaining unanimity in criminal law and with regard to Europol. De Vries (NL, gov) insisted on maintaining unanimity for family law, Europol, Eurojust, criminal law and criminal procedural law. MEP Tajani argued that unanimity should be retained on issues that touch upon human rights.

Athanasiu (Rom, NMP) argued both for strengthening legal harmonisation in this area as well as for an extension of mutual recognition. Hain (UK, gov) argued that effective policy-making in this sphere required an appropriate balance between rule-making and mutual recognition. In his view the proposed articles could still be improved to better bring out this balance (cf. Dastis). MEP Würmeling cautioned that harmonisation should not be taken too easily, as he considered there to be serious difficulties when it would come to issues of family law (homosexuality, divorce law) and to 'serious crimes'. He suggested that a discussion circle might be established to explore what exactly would be needed on which issues. Kirkhope (UK, MEP) underlined the importance of cooperation rather than harmonisation for its own sake. In turn however his Irish colleague John Cushanan submitted that sometimes it is really necessary to do things jointly.

Policies on border checks, asylum and immigration (Chapter 1, arts. 10-13)

Wide support for easing decision-making could in particular be found in the sphere of border checks, asylum and migration. Here the extension of the legislative procedure was warmly welcomed (Roche, Antunes) as well as the adoption of qmv in the Council (Tiilikainen, Hain, Antunes). Commissioner Vitorino added that eventually it is in the interests of the Member States to abandon unanimity in asylum and migration issues.

On the substance of asylum, Vitorino, de Vries, Azevedo and Fayot underlined the importance of moving beyond the mere setting of minimum European standards towards the development of a proper European system. German representatives Edwin Teufel (NMP) and Joschka Fischer (gov) challenged this view, submitting that in asylum and migration policy minimum provisions can suffice. Teufel argued moreover that Member States should remain autonomous in organising their own labour market policy (cf. Einem) and that unanimity should be retained on border policy. In turn De Vries (NL, gov) welcomed Teufel's constructive disposition but expressed the wish that he would eventually also be willing to accept qmv on the whole domain. In particular de Vries found it hard to see how genuine content could be given to the principle of freedom of movement if unanimity on the issue of labour migration would be maintained. Also Vitorino opposed any suggestion to exempt labour migration policy from the general framework, as it would undermine the badly needed system of common rules. However, MEP Würmeling added that a general adoption of qmv on these matters would only be possible, if the Union's competences would be delineated in a more precise way.

Piks (LTV, NMP) submitted that to the extent that migration policies also has consequences for social security, unanimity would need to be maintained. European migration policies should be prevented from prejudging national social security policies. MEP Abitbol cautioned that adopting qmv on migration issue would involve many risks, Member States might be bound to violate WTO-obligations vis-à-vis multinational firms. Moreover, a common migration policy would be a mistake as there are great differences in the needs for migration Member States have.

Hain (UK, gov) argued that a common asylum policy should prevent 'asylum shopping' and moreover also aim to relate to countries of origin. In that light he also wanted the objectives of the EU's asylum policy to be integrated in the EU's external policy in general (cf. de Vries). Commissioner Vitorino assured Hain that there is no contradiction between the internal and the external dimension of European migration policies. MEP Duff saw some reason for concern in Hain's suggestion of constructing external transit camps. He wondered whether such initiatives would be consistent with the Charter, the Union's general commitment to international solidarity, the principle of fair burden sharing and the Geneva Convention. MEP Paciotti welcomed the provisions in article 12 about negotiating readmission agreements with countries of origin. Antunes (P, Agov) advocated the insertion of the Schengen 'safeguard clause' (cf. current art. 64.2 TEU) into article 10.

Austrian parliamentarian Einem insisted that the Union's asylum policy should be developed in line with the Geneva Convention. With regard to article 12.2.2 López Garrido

argued that any form of discrimination against third country national would need to be prevented. MEP Kaufmann argued for providing for proper recognition of 'new' refugee reasons, such as conscientious objections. She also advocated provisions for the regularisation of illegal immigrants and asked for the present provisions on deportation of illegal immigrants to be scrapped. French representatives De Villepin (gov) and Lequiller (NMP) argued for separate legal bases for integration policies of legal immigrants and for non-discrimination initiatives.

A European Border Guard on the basis of solidarity? (articles 10.1.3 and 13)

Many conventioners underlined that border control is of vital importance for the Union and that after enlargement this importance will only increase (Kutzkova, Gricius, Christophersen, Puwak). Paks (Ltv, NMP) called border control 'the key to the Union's internal security'. Balázs (HG, gov) suggested that the importance of borders might even be underlined by reference in the first article of the Constitutional Treaty. Balázs and Martikonis (Lit, gov) argued for including the provisions on border management in a separate article (13A). Gricius (Lit, NMP) underlined that it would be necessary to adopt qmv (or alternatively at least some form of enhanced qmv) on this issue.

A great number of conventioners (Costa, Azevedo, Einem, Serracino-Inglott, Balázs, Fischer, López Garrido, Puwak) advocated the establishment of a European border guard. Fischer (D, gov) argued that the establishment of such a border guard should be a clear objective for present and future Member States (cf. Einem). Costa (P, NMP) insisted that this was an issue to be embarked upon here and now. Kutzkova (Bul, Agov) argued that the Constitutional Treaty should at least include an enabling clause to prepare for such establishment. Puwak (Rom, gov) suggested that the commitment towards the establishment of a common border guard might already be inserted in article 10. Einem (Ös, NMP) suggested that the establishment of a European border control unit might be added to article 22 on Europol.

However, there were also opponents of the idea of a European border guard. Lennmarker (Sw, NMP) submitted that while common rules on border policing were certainly needed, Europe should stick to the principle of leaving the local administrative responsibilities to the Member States. It is also a question of trusting each other's administrative capacities. Furthermore a genuine European border guard would cause a much too extensive payroll for the Union. To this Amato responded that a European border guard would be a joint organisation but that its personnel would remain on national payrolls. Lennmarker insisted in turn that it should be clear that there would be no genuine common border guard.

Amato indicated that the Praesidium preferred to refer to an integrated system of border management rather than to one particular body. One could for instance imagine joint training programmes. Hololei (Est, agov) argued that the implementation of border controls should remain the primary responsibility of the Member States. Complementary initiatives could then be taken at the European levels, involving the establishment of common rules, financial burden-sharing and joint training programs etc. Bösch (ÖS, NMP) insisted that a European border guard would take the form of a joint organisation of national border guards rather than one big new European

agency. Also Muscardini (MEP, IT) insisted that a future European border guard would have to cooperate with national border guards. However, Katiforis (Gr, Agov) insisted that there could be no question about the fact that effective border management would require the creation of a special body.

Many (Fini, Hübner, Horvat, Figel, Serracino-Inglott, Rupel, Puwak) underlined the importance of article 13 on the principles of solidarity and burden sharing. By way of illustration Horvat (Sln, ANMP) pointed out that with 1% of the population of the enlarged Union, Slovenia will be responsible for about 10% of the Schengen border (cf. Rupel). Hence the costs of border policing need to be fairly shared and states with a disproportionate share should receive financial support (Einem, Martikonis, Azevedo). Puwak (Rom, gov) added that solidarity would not only require the sharing of financial burdens but also of human resources (Figel) and technology. She argued that a reference to the common border policy based on the principle of solidarity should already be inserted in article 1 of this chapter. De Villepin (Fr, gov) argued that financial solidarity is inherently connected to mutual trust and that both aspects need to be assessed in turn. Einem (ÖS, NMP) suggested that the development of mutual confidence might be fostered by exchanging knowledge.

Judicial cooperation in civil and in criminal matters (articles 14-18)

With regard to article 14 on civil law cooperation, Gijs de Vries (NL, gov) submitted that civil law cooperation should focus on issues with particular cross border relevance. Lord MacLennan (UK, NMP) argued that paragraph 14.2 should also provide for the common elaboration of minimum civil law standards developing provisions of the Charter. Serracino-Inglott (MTA, gov) and Athanasiu (Rom, NMP) submitted that, rather than to cover it by special provision (14.3), family law should be added to the list of matters for European civil law in article 14.2. Tiilikainen (Fin, gov) advocated adding an additional article on 'civil protection'.

The provisions on criminal cooperation drew particular attention of government representatives. Christophersen (DK, gov) underlined the importance of cooperation on the fight against cross border crimes. Hain (UK, gov) welcomed the provisions on mutual recognition and basic criminal law. Stuart (UK, NMP) expressed some reluctance towards actual approximation in criminal law matters. De Villepin (F, gov) insisted on drawing up a substantive list of European crimes. De Vries (NL, gov) suggested that the Council might adopt a framework law by unanimity defining European crimes. He could also see some matters of criminal procedure being subjected to a common approach, for instance agreeing to a maximum of 3 months detention prior to the beginning of proper legal procedures. Giannakou (Gr, NMP) argued for facilitating of the effective fight of crime and for securing equal and full protection of citizens throughout Europe. Hjelm-Wallén (Sw, gov) argued for particular attention for international environmental crimes.

With regard to the provisions on criminal law cooperation, Hjelm-Wallén (endorsed by her Swedish compatriot Lekberg and Danish MEP Dybkjaer) underlined that these should really focus on genuine instances of cross border crimes and that for the rest they should respect national prerogatives. In particular Hjelm-Wallén wanted articles 15, 16 and 21.2 to be clarified

further and made more precise, also to leave no doubt about what national powers are actually transferred. To leave these articles as indeterminate and open-ended as they stood would be dangerous. On the particular issue of criminal procedure, Lekberg argued that the first indent of art. 16 on the admissibility of evidence should be scrapped. Hain (UK, gov) considered that article 16 would need to ensure that third country defenders would not be put at a disadvantage relative to EU citizens.

Lekberg (Sw, NMP) added that the list of Eurocrimes (art. 17) needed to be particularly clear and that if crimes would be added later on, this should be subject to ratification by national parliaments. In particular the second indent of article 17 referring to crimes “affecting a common interest which is the subject of a Union policy” was found to be particularly dissatisfying and requested the relevant crimes to be listed instead (Hjelm-Wallén, Lekberg, Peltomäki, Dybkjaer, Hololei). Replying to these requests for more precision, Commissioner Vitorino argued that rigidity is all very fine and very reassuring but that reality is more complex than that; how would it for instance have been possible to anticipate a Prestige-case in law?

Dastis (SP, gov) suggested that a provision could be added that would allow the confiscation of property of people guilty of terrorism. Helle (Fin, ANMP) noted that the definition of terrorism in the articles remains extremely vague and that as drafted it conflicted with the definition generally employed in Finland. MEP Mendéz de Vigo responded that the draft articles actually relied upon the common definition of terrorism adopted by the Council. Athanasiu (Rom, NMP) also argued for provisions on victim compensation. Serracino-Inglott (MTA, gov) suggested that provisions should be added on ‘cyber-security’. Amato responded that this proposal was likely to find favour with Giscard d’Estaing given his earlier fascination with space technology.

Police cooperation, Europol and Eurojust (arts. 19, 21, 22 and 23)

French representatives de Villepin (gov) and Haenel (NMP) indicated that ensuring effective police and judicial cooperation would be of paramount importance. Azevedo (P, NMP) insisted on the importance of reinforcing police cooperation to fight cross border crime. Hain (UK, gov) also supported the need to further strengthen police and judicial cooperation, though he resisted any suggestions of merging national forces. Such cooperation should moreover be focussed on issues with genuine cross border dimensions. Kirkhope (MEP, UK) agreed that further police cooperation was needed but insisted that this did not necessarily require a strengthening of Europol. Hololei (Est, Agov) argued that the scope of article 21 on cooperation with regard to internal security needed to be clearly delineated.

Many conventioners (Hain, Hjelm-Wallén, Bösch, Andriukaitis) endorsed the further development of Europol and Eurojust. De Villepin (F, gov) underlined the importance of strengthening Europol. His German colleague Fischer emphasised the need to develop Europol’s operational powers. MEP Tajani underlined the importance of Europol enjoying political independence.

Andriukaitis (Lit, NMP) underlined the importance of ensuring proper controls of the Member States over both Europol and Eurojust. Stuart (NMP, UK) welcomed the involvement of national parliaments in the control of Europol and Eurojust. Amato raised the question whether the provisions in article 22.2 would suffice to ensure adequate democratic control of Europol. Lekberg (Sw, NMP) insisted that the scrutiny of Europol should be left to the EP alone. Lequiller (F, NMP) advocated the creation of a joint committee to overlook Europol. For Fischer (D, gov) a future European Public Prosecutor could play a major role in controlling Europol.

Kutzkova (Bul, Agov) welcomed in particular the proposal to organise Europol in the future by way of a law. MEP Majj-Weggen argued that decision-making on Eurojust would have to proceed by qmv. Teufel insisted however that unanimity would be maintained on this issue (cf. de Vries).

Article 20 European Public Prosecutor

Views on the desirability of a European Public Prosecutor remained split. A substantial group of conventioners (Costa, de Villepin, Lequiller, Haenel, Fischer, Einem) spoke in favour of the establishment of such an office. Commissioner Vitorino presented the case most forcefully arguing that so far national prosecutors only take up 25% of the cases prepared by OLAF (cf. Einem, Meyer). Meyer (D, NMP) added that national government officials may be implicated by fraud investigations. Haenel (F, NMP) submitted that a EPP was absolutely necessary if Europe is going to tackle cross border crime and fraud.

Vitorino underlined that the proposal is not about constructing a ‘super penal system’. Rather the EPP would focus on a very limited number of crimes, less indeed than the ones to which the European arrest warrant is meant to apply. Einem (ÖS, NMP) argued that the EPP would only be a subsidiary criminal law institution and would in no respect encroach upon the powers of national authorities.

De Villepin (F, gov) insisted that this office should be established from the confines of Eurojust (cf. Fischer). MEP Van Lancker argued that article 20 should be maintained as it stood allowing the future possibility of an EPP, recognising that it might play a vital role in protecting certain European (financial) interests. She objected against subjecting the EPP to Eurojust and favoured it being conceived as an independent institution. She also recognised that unanimity on its establishment was unlikely to be attained. Instead she proposed to allow an EPP to be established by an organic law or by a super-qualified majority.

MEP Duff indicated that he was not against a European Public Prosecutor but that he did perceive a number of serious problems to be resolved. His German colleague Brok favoured the establishment of a European Public Prosecutor to deal with financial crimes but not to take up other cross border issues. Van Eekelen (NL, ANMP) submitted that crucial for a European Public Prosecutor would be to come to an appropriate delineation of its powers. In practice it should concentrate on preparing cases, handing them eventually over to national prosecutors to administer.

Various proposals were made to ease the development of a European Public Prosecutor. Haenel (F, NMP) suggested that as unanimous support for an EPP was unlikely to be forthcoming, the initiative might be taken by a coalition of the willing allowing the other to join later on. While in principle objecting to any Member States being excluded from the EPP regime, Einem (ÖS, NMP) was willing to support this proposal. However, MEP MacCormick firmly opposed any suggestion of ‘a two-speed EPP’.

Einem (ÖS, NMP) suggested that a super-qualified majority might suffice to start the creation of a EPP. Meyer (D, NMP) and Andriukaitis (Lit, NMP) proposed that after 5 years the requirement of unanimity might be replaced by a qualified majority or supermajority of double 75% (Meyer) to establish a EPP. Lequiller (F, NMP) advocated the adoption of a binding timetable for the establishment of a EPP that would secure it to be established within 5 years after the entry into force of the new Constitutional Treaty (Einem). The timetable should also allow for the introduction of qmv on the matter.

There was however also a distinct opposition to the idea of a European Public Prosecutor (Bösch, Roche). Most categorical was Dick Roche (Irl, gov) as he asserted that the case for it had not been made, it’s added value remained disputed, it was not necessary for the fights against fraud and cross border crime and it would certainly raise complications. De Vries (NL, gov) simply considered an EPP unnecessary. Others (Hololei, Peltomäki) doubted the need for a EPP. MEP Dybkjaer objected to any new institutions on principle.

MacCormick (MEP, UK) doubted whether it would be possible to construct a European Public Prosecutor’s office in such a way that it would enjoy legitimacy among the whole range of (adversary and inquisitorial) legal systems. Stuart (UK, NMP) referred to a similar opinion of the House of Lords that it would be hard to match with the variety of national criminal law systems. Instead both MacCormick and Stuart preferred first to strengthen of Eurojust and Europol. MacCormick further argued that also first the possibilities provided at national levels should be fully exploited. He further insisted that a general EU-wide solution would be needed.

Similarly Italian MEPs Muscardini and Tajani submitted that it was better to build up Eurojust than to undermine its role by the establishment of a European Public Prosecutor. Moreover Tajani argued that establishment of a European Public Prosecutor would run counter to the principles of mutual recognition and judicial cooperation.

Amato conceded that it would probably be best first to make Europol and Eurojust work and that the need for a European Public Prosecutor could be properly assessed only after that. At the same time he emphasised that the draft article does not insist on the creation a European Public Prosecutor but only provides for its possibility (‘may’ rather than ‘shall’). Christophersen (DK, gov) indicated that he did not see the need for a EPP but he conceded that it would not do any harm to provide for its possibility if this treaty was to remain valid for decades to come. MEP MacCormick was however not persuaded by this open approach.

Concluding remarks by John Bruton

Summing up, John Bruton (former chair of the Working Group on freedom, security and justice) indicated that the specific provisions of articles 2 and 3 had really been integral part of the compromise hammered out in the working group. Essential was the introduction of a guiding legislative programme drawn up by the European Council. Also it was essential that national parliaments would be involved in evaluation and review exercises. Similarly the Member States' right of initiative was meant as a safeguard of their sovereign interests. A quarter of the Member States appeared to be an appropriate threshold in this respect.

With regard to the integrated management system for the common borders, Bruton indicated that the formulation might be strengthened and that what was meant came probably closest to the set-up drawn by Henrik Hololei (Est, Agov).

There was no intention to move towards a European civil law code. The main mechanism in this field would remain mutual recognition. Special provisions had been introduced with regard to parental responsibility. Bruton underlined that article 16 on criminal procedures only aims to lay out minimum rules, something that had indeed also been requested by UK officials. He conceded that if such provisions would take effect, they might also clear the ground for a EPP. Bruton was further happy to see the support for article 17 on European crimes. He had registered with fascination the insistence on a listing of the crimes implied by the second indent (concerning 'a common Union interest'). He recognised the concern about vagueness but was not convinced yet whether listing was the most appropriate solution here.

The provisions on Eurojust were also meant to work already towards the possible establishment of a European Public Prosecutor. Still Bruton considered that the Union was not quite ready yet to abandon unanimity on this issue in 5 years time, as Meyer had suggested. He insisted however on the value of creating a legal base for the possible future establishment of a European Public Prosecutor.

Bruton concluded by expressing his gratitude to the member governments for the engagement they have shown on these issues as well as for their willingness to search for constructive compromises.

Draft articles on Finances (CONV 602/03, CONV 643/03)

Introducing the debate on the Union's finances, Vice-Chair Dehaene recognised that the articles left many issues open still. For that reason the Praesidium had also installed a discussion circle on the budgetary procedure (article 40). The amendments submitted raised also particular issues concerning the Union's own resources (article 38) and the adoption of the financial perspectives. Eventually these questions also led to the fundamental question whether if unanimity is maintained, it will indeed be possible to provide the Union with sufficient financial means after enlargement. On the basis of the amendments the Praesidium had been led to install another discussion circle on the issue of the Union's own resources that would be led by Mendéz de Vigo.

The Praesidium had received 69 amendments of great variety on these articles. From these amendments there emerged a general consensus on the need to formalise the financial

perspectives and on the need to define ceilings per category. Also the principles contained in article 39 were generally well received. There emerged moreover a tendency to leave the option of a European tax open.

Henning Christophersen elucidated the work his discussion circle had done so far. As asked it had focused its work on article 40. The discussion circle was close to concluding its work as it had planned a long session for this afternoon and hoped to be able to present its conclusions by next week. A first conclusion that had been reached was that there should be a separate article (39a) on the multi-annual financial framework. Its main principles would need to be defined, in particular the principle that that it would provide a binding framework for the annual budget. Moreover a legal basis for the adoption of the multi-annual framework would need to be provided replacing the current interinstitutional agreement. The framework would be proposed by the Commission. It would then be discussed in the Council and/or the European Council, which would amend it or approve it in its original form. Finally, the assent of the EP would be required. The discussion circle envisaged that in Part II of the Constitutional Treaty more precise provisions should be inserted defining the ceilings per heading, the structure of the headings, overall progression, a flexibility mechanism, rules about minimal duration, a 'tie-break rule' to remedy adoption failure, legal obligations (cf. the present compulsory expenditures) and amendment rules.

With regard to the annual budget procedure (article 40) the discussion circle considered that the Commission should hold the right of initiative proper rather than its current drafting power. The Commission should moreover be able to update its own proposal throughout the process. At the same time the Council should have the power to amend the proposal by qmv. The distinction between compulsory and non-compulsory expenditures would be removed on the condition that the Commission would guarantee that the Union would be able to meet its legal obligations. The discussion circle proposed to have only one reading of the budget in both the Council and the Parliament. If no agreement would be reached, a conciliation procedure would follow. One open question was in what order the readings would take place, first in the Council or first in the Parliament.

General

Conventioneers noted that 'significant progress' (Lequiller) had been achieved. At the same time though it was obvious that some difficult questions needed to be settled still. Several conventioneers (Dastis) also indicated that they would first await the conclusions of the discussion circles.

With regard to the various procedures, the crucial issue was how the best balance could be struck between the Member States and the European Parliament, making it also sure that the necessary decisions would be taken (in time). Various conventioneers (Tiilikainen, Zile) underlined the importance of maintaining the institutional balance throughout the financial procedures. A general issue was also whether unanimity in the Council should be maintained on certain issues or whether it would need to be replaced by qmv or some form of super-qmv. In

general Commissioner Barnier observed that the abolition of unanimity on the various accounts needs to be seriously considered. MEP Carnero argued that in principle all financial decisions should be subject to the legislative procedure. His colleague Seppänen argued for a fundamental simplification of the financial procedures and against codifying the complex financial system that has come into existence.

Own resources (article 38)

Many conventioners considered that the current ‘own resources’ framework needs some fundamental rethinking. MEP Brok argued that unanimity was bound to lead to total deadlock and that hence this decision should be taken by some form of super-qmv (also Borrell, Basile, Andriukaitis, Fogler, Barnier, Maij-Weggen, suggesting a 75% double majority). Several conventioners (Borrell, Carnero, Chevalier) argued that the own resources decision should no longer require national ratification as it contradicts the very notion of ‘own resources’.

Many conventioners also tended to argue that the decision on own resources should be subject to democratic consent and that hence the EP should play a role in it (Lequiller, Basile, Nazaré Pereira, Andriukaitis, Horvat). Concretely it was suggested that the EP should have the right to assent (Brok, Maij-Weggen, Borrell, Fogler). Chevalier (B, Agov) suggested that a special ‘organic law’ should be used to adopt the own resources decision.

There were however also a number of conventioners who did see merits in (aspects of) the current own resources framework. Lekberg (Sw, NMP) and Tiilikainen (Fin, Gov) argued in favour of retaining the present procedures: it should be a decision by the Member States and subject to national ratification. MEP Seppänen argued for retaining the present system that guarantees that ultimate control over the Union’s finances remains with the Member States. Polish minister for foreign affairs Hübner submitted that there may be reasons to maintain unanimity in the Council for the own resources decision. Andriukaitis (Lit, NMP) advocated retaining the national ratification procedure (while he also argued for adopting qmv). British government representative Hain insisted that the Member States through the Council should retain full control over the Union’s revenues. Italian MEP Muscardini submitted that eventually the Council should have the final word on the own resources. French government representative Andreani suggested that if unanimity and national ratifications would be retained on ‘own resources’, then all remaining financial decisions could simply be taken by qmv and codecision.

Tiilikainen (Fin, gov) argued that the own resources procedure needed to be simplified and streamlined. Dutch MEP Maij-Weggen argued that the own resources system needed considerable improvements in terms of objectivity and transparency (Demetriou). Various conventioners observed that the term ‘own resources’ is confusing. Zile (Ltv, Agov) suggested replacing it with ‘Union’s resources’. Hjelm-Wallén (Sw, gov) submitted that it would be better renamed ‘revenues’.

Many conventioners expressed their concern whether the current procedures would allow the Union to command adequate resources in the future (Barnier, Carnero). German MEP Brok also argued that it would be inevitable to increase the general budget of the Union to cover

for the necessary expenditures. German parliamentarian Meyer argued that initiatives should be taken to motivate small GDP-countries to increase their contribution. His Portuguese colleague Nazaré Pereira submitted that, irrespective of the future procedural arrangements, it would eventually be a matter of political will whether an adequate financial arrangement could be agreed. MEP Seppänen indicated that the UK was likely to block any new own resources decision to retain its current rebate (and to save the money to wage war).

Various conventioners (Carnero, Brok) argued that a fundamental overhaul of the own resources system would be inevitable. MEP Alain Lamassoure argued that the nature of the current resources decision is outdated and is unlikely to survive 2006 when it needs to be renewed. He observed that Member States lack a basic willingness to contribute. Hence, he argued, the Union should really get resources of its own (also Borrell). However, Swedish parliamentarian Lennmarker responded that in fact the willingness of Member States was not the problem in principle, but that it was conditional upon the willingness of the other (rich) states to contribute in equal proportion.

Various conventioners adopted a line of reasoning similar to that of Lamassoure. Lequiller (F, NMP) argued that in principle each political level should be financially autonomous. This applied to Europe as well. On this line of reasoning many concluded that the 'own resources' should become really 'own resources' (Chevalier). Commissioner Barnier argued that the range of present sources should be widened. With several other conventioners (Spini, Carnero, Farnleitner) he submitted that a European direct levy tax should be seriously considered. Demetriou submitted that there are actually no good arguments against a European tax as the Union should not conceal to its citizens that they are actually paying for it. While recognising that this issue was widely disputed, MEP Brok considered a European tax inevitable. Such a tax should be subject to the control of the EP. His colleague Maij-Weggen argued that at present there was no need for an EU tax but that it would be preferable if the Constitutional Treaty would open the possibility (cf. Bury, Muscardini).

Most conventioners were however only inclined to consider direct European taxation as a perspective in the longer term (Horvat, Hübner, Meyer). Fayot (Lux, NMP) warned however that a directly levied European tax might well be misunderstood by the European citizens, especially as it would somehow be submerged within the VAT-systems. One principle that was widely subscribed to was that a European tax should be introduced in a way that would keep the tax burden at the same level (Chevalier). However, German parliamentarian Teufel warned that this would probably be the inevitable consequence of introducing a European tax. Chevalier (B, Agov) suggested moreover that as a distributive principle the GDP-norm might be maintained. MEP Muscardini argued that transparency would be much improved that the article should refer both to the GDP-norm as well as to the use of VAT.

The suggestion of a European tax also met with resistance of some (Lennmarker, Lekberg, Bury, Krasts, Teufel) who would insist that the Union should stick to the Member States' GDP as they key to its own resources. Krasts (LTV, NMP) argued that a European tax would undermine the nature of the Union as a Union of Member States. Finnish MEP Seppänen

warned that the introduction of an EU tax would financially unleash the Commission. To this Commissioner Barnier responded that the move to a direct tax was really not about asserting Europe's independence vis-à-vis the Member States, but that it was an absolute necessity to ensure that sufficient resources would be available for the Union and, indeed there was no doubt that Europe's share in the overall European tax burden would need to be increased substantially.

Iberian representatives (Dastis, Borrell, Antunes, cf. Fogler) suggested that article 38 should mention the principle of sufficient resources/ necessary means.

The budgetary and financial principles (article 39)

Swedish parliamentarian Lennmarker underlined the importance of strict financial discipline, as the Union should set an example to the Member States (cf. Antunes). He argued that the Union should be prohibited to run a deficit (also Maij-Weggen). Austrian government representative Farnleitner had his support registered for the amendments of his Swedish and Dutch colleague (Hjelm-Wallén and De Vries) to have the role of the financial perspectives as a reference framework for budgetary discipline enshrined. Similarly, Spanish parliamentarian Borrell suggested that paragraph 39.5 could refer to the role the financial perspectives play in securing budgetary discipline. Italian parliamentarian Spini suggested that a European Public Prosecutor might play an important role in protecting the European budget.

Dutch MEP Maij-Weggen underlined the importance of preserving the unity of the budget. As a consequence she argued that current exceptions such as the European development fund should be fully integrated in the budget. Similarly, her British colleague Duff argued for defining the budget in as comprehensive a way as possible; it should come to include the European development fund as well as common aspects of the CFSP and the common defence policy.

Lithuanian parliamentarian Andriukaitis suggested that a principle of financial solidarity could be added to this article. His Polish colleague Fogler advocated the inclusion of the principle that all expenditures should be based on a legal act.

Financial perspectives/ multiannual financial framework

There seemed to be a general consensus that the financial perspectives needed to be enshrined in the Constitutional Treaty (Bury, Hain, Chevalier, Hjelm-Wallén, Antunes, Hübner, Zile, Spini, Basile, Teufel, Nazaré Pereira, Andriukaitis, Horvat). Brok (D, MEP) and Andriukaitis (LIT, NMP) underlined the importance of medium term financial planning for the Union. Antunes (P, Agov) underlined that the financial perspectives should actually get a place in Part I of the Constitutional Treaty. MEP Seppänen adopted the contrary view; while he welcomed financial ceilings, he did not think they should be constitutionalised. Lekberg (SW, NMP) argued that the financial perspectives should be renamed 'multiannual budget ceilings'.

British government representative Hain underlined the importance that the perspectives would define exact ceilings per heading and would be controlled by the European Council (cf.

Hjelm-Wallén). Chevalier (B, Agov) and Basile (It, ANMP) warned however against defining too many and too specific headings.

Many conventioners agreed that unanimity could no longer be sustained, as it was likely to block the whole system. Hence the financial perspectives should be adopted by qmv (Bury, Andreani, Chevalier, Spini, Maij-Weggen) or some form of super-qmv (Duff, Barnier, Hübner, Fogler).

Still some conventioners (Hjelm-Wallén, Lekberg, Antunes, Nazaré Pereira, Krasts) defended maintaining unanimity on the financial perspectives. Antunes (P, Agov) and Zile (LTV, Agov) insisted that the financial perspectives should be adopted by the Council in its formation of Heads of State. If no agreement would be reached, Hjelm-Wallén (Sw, gov) suggested that the present ceilings should remain in force.

There was also wide agreement that the EP should have some formal role in the agreement of the financial perspectives (Meyer, Horvat). Swedish representatives Hjelm-Wallén (gov) and Lekberg (NMP) suggested that the EP should be consulted. Others went further in suggesting that it should be involved through assent (Barnier, Bury, Nazaré Pereira) or through some (possibly simplified) form of codecision (Hübner, Maij-Weggen, Borrell, Spini, Fogler, Tiilikainen). MEP Brok noted that under the present interinstitutional agreement the EP enjoys some negotiation space and that in that respect mere assent would represent a step backwards. Chevalier (B, Agov) suggested that the EP should adopt the financial perspectives by a 3/5 majority representing an absolute majority of its members (cf. Fogler). MEP Muscardini argued that eventually the Council should have the final word over the financial perspectives (cf. Tiilikainen), if in return the Parliament would have the final word on the annual budget. Barnier (Com, F) and Bury (D, Agov) considered that also the national parliaments should play a role. Concretely, Bury suggested that national parliaments should ratify the financial perspectives.

Basile (It, ANMP) and Chevalier (B, Agov) argued that the current term of the financial perspectives of 7 years should be reduced to 5. Hübner (Pol, Gov) argued that 5 years was the absolute minimum. MEP Muscardini and Andriukaitis (Lit, NMP) argued that the term of the financial perspectives should coincide with the terms of the EP and the Commission.

Commissioner Barnier submitted that there should be maximum expenditure ceilings on an annual basis, but that some flexibility might be maintained by allowing the EP budget committee to approve re-appropriations. Hübner (Pol, gov) submitted that the budget rules should allow for some flexibility to the future. Lord Tomlinson (UK, ANMP) underlined the importance for maintaining some reserves to allow for some budgetary flexibility.

Budget (article 40)

French parliamentarian Lequiller warned for expanding the EU budget too much. He also insisted on the principle that each citizen should be taxed equally for Europe. Eventually he maintained the Council should have the final say on the budget, especially when it comes to agricultural policy. Hain (UK, gov) argued that the Union should be committed to ensuring that all

expenditures would be matched to clear and concrete objectives. Krasts (LTV, ANMP) argued that as a rule for every legislative proposal the financial implications would need to be justified.

Various conventioners (Hübner, Maij-Weggen, Andriukaitis, Fogler) agreed that Commission should properly enjoy the right of initiative with regard to the budget. However, Lord Tomlinson (UK, ANMP) opposed this as he objected to any shift of the institutional balance maintained in the current budgetary procedure that, he feared, might undermine the budgetary discipline.

Various conventioners (Lenmarker, Maij-Weggen, Bury, Horvat, Teufel, Fogler) submitted that the Council and the EP should become enjoy equal powers in the setting of the budget. Maij-Weggen (NL, MEP) and Fogler (Pol, ANMP) suggested that logically this would entail that the budget would be adopted by the Council acting by qmv and the codecision procedure. Basile (It, ANMP) advocated the adoption of a simplified codecision procedure. Horvat (SLN, ANMP) and Hjelm-Wallén (Sw, gov) advocated the use of normal codecision. Hjelm-Wallén suggested that also the normal conciliation procedures might apply. Hübner (Pol, gov) argued that the budget should be read first in the Council and then in the Parliament.

Meyer (D, NMP) argued that the EP should have a full say over the budget including the expenditures for agriculture. Italian MEP Muscardini argued that eventually the Parliament should have the final word over the annual budget, if the Council would have the final word on the financial perspectives. Similarly, her French colleague Lamassoure argued that Member States interests would be protected by the budgetary ceilings set in the financial perspectives. Hence he argued that it would eventually be up to the EP to decide upon a proposal of the Commission on the Union's policies and their associated budgets.

Lamassoure also conceded that if there would be a separate budget for CFSP it would logically remain under the control of the Council – a suggestion Commissioner Barnier was happy to welcome as 'interesting'. Andreani (F, Agov) underlined the importance of ensuring adequate and appropriately flexible resources for the CFSP.

Hain (UK, gov) underlined the importance of a reliable and appropriate tie-break mechanism in the Council and EP would fail to reach agreement on the budget. MEP Maij-Weggen proposed that in this case the Council would decide over the Union's revenues and the EP over its expenditures. Teufel (D, NMP) and Zile (LTV, Agov) advocated that the existing agreements would be extended as long as a new agreement would not be reached. Hjelm-Wallén (Sw, gov) suggested that, if conciliation would fail, budget ceilings should be set at the lowest level of proposed by either institution (also de Vries, Farnleitner).

Many conventioners (Bury, Andreani, Tiilikainen, Hübner, Brok, Basile, Andriukaitis) agreed with the abolition of compulsory expenditures. Andreani (F, Agov) argued however that special provisions would be needed for financial obligations following from international agreements and for the Common Agriculture Policy. A number of conventioners made their consent with the abolition of compulsory expenditures conditional upon the way the financial perspectives would be arranged (Hain), on sufficient guarantees for budgetary discipline

(Lekberg) or on the presence of sufficient safeguards in the financial procedures overall (Tomlinson, Krasts).

Conclusion

Concluding the session Vice-Chair Jean-Luc Dehaene noted that there seemed to have emerged a clear consensus on the constitutionalisation of the financial perspectives. Further procedural issues concerning the financial perspectives, including their term, will be addressed by the Christophersen discussion circle. The discussion circle will also need to consider whether the Council can adopt the financial perspectives by unanimity or by some form of (super-)qmv. Dehaene also noted a general agreement on the abolition of the category of ‘compulsory expenditures’. Further special financial provisions would be required to provide for the necessary reserves for rapid response actions in the CFSP. Dehaene also noted divergent views on the system of own resources and whether it should be retained more or less as it stands or should be turned more into a genuine system of own resources including a European tax.

Presentation of new draft articles (Part I, Titles VI, IX and X and Part III)

On the Friday morning vice-chair Dehaene presented a number of new draft articles. First he presented the articles on title VI on the democratic life of the Union (CONV 650/03). Given the articles included, Dehaene conceded that the title might be more appropriately renamed something like ‘participatory democracy in the Union’. Among the articles, strong emphasis was put on the issue of transparency and on bringing the citizens closer to the Union. Article 33 deals with democratic equality. Article 34 defines the principle of participatory democracy. The implications of this article will need to be developed further in Part II of the Constitutional Treaty, especially with regard to opinion-forming institutions in the Union. Then there were separate articles on the Ombudsman and on political parties. An article on uniform election rules initially foreseen for this title has been moved to the provisions on the EP. Article 36 sets out transparency rules, including the requirement that the Council will have to sit in public when acting as a legislature. Article 36bis regards the protection of personal data. Article 37 deals with the protection of churches and religious organisation which, the Praesidium considered, require separate treatment apart from civil society in general.

Title IX deals with the Union and its immediate environment. Article 42 provides for a general framework for the relations of the Union with its neighbouring states. It presents a novelty by introducing a whole new kind of bilateral relationships. It also is meant to convey a strong political message to neighbours who are not members of the Union. At the same time the article retains the flexibility to allow for each relationship to be suited to the particular circumstances.

Title X concerns the membership of the Union. For the first time it introduces the substantive criteria that member states have to meet in a constitutional text. The title further includes provisions on the suspension of membership and, another novelty, on voluntary withdrawal. As a whole this title should be read in conjunction with the provisions in Part III.

Part III, the general and final provisions, start with two articles on the abrogation of the present Treaties and the preservation of legal continuity. Then the amendment procedure proposed simply follows the present procedure. Dehaene expected amendments as he recognised that various views are possible on this point. Also the draft article on entry into force follows the current situation but with the addition that of after a given period a Member State fails to ratify the Constitutional Treaty, the European Council will consider the political implications.

Dehaene noted that the roadmap had also promised an article on the Open Method of Coordination to be presented. However, the Praesidium has concluded that it is preferable not to have such an article. The primary consideration for the Praesidium's conclusion was that it wanted to preserve the achievements of the Lisbon agenda so far and the use of soft law instruments to which it has led. Secondly, it wanted to prevent the Open Method of Coordination from replacing the Community Method. Indeed the proposed article on supporting measures already envisages for the use of coordination instruments. It is difficult to see what value a separate article would have except of causing confusion. In particular it might well raise questions about the delineation of powers between the Union and the Member States. In any case this question will be on the agenda of the next session and can then be debated. Critics of the Praesidium approach are invited to propose a text if they feel like it.

The deadline for amendments was set at April 11. Ben Fayot (Lux, NMP) requested that the Praesidium would provide for a clear and unambiguous agenda at good time before the next session as to prevent any sudden procedural proposals like the proposed split of the debate on Freedom, security and justice. Dehaene promised that this would be taken care of.

As a first reaction to the new draft articles, UK government representative Peter Hain indicated that he found them 'excellent'. In particular he welcomed the provisions on entry into force as sending an encouraging signal on the importance of full ratification. He also indicated that initially he had had doubts about the withdrawal clause. However, now it had been proposed he considered that it should be kept. Withdrawing it again would only cause confusion and suspicion.

Question time

Luxembourg parliamentarian Ben Fayot opened the question time. He noted that he had understood that the Convention's President would meet with the European Council on 16 April. He also had got the impression that Giscard intended to pose a number of questions to the European Council. This had given him some reason for concern. Fayot wondered why Giscard would consult the Member States on topics that the Convention itself had not had proper time to discuss yet. Dehaene responded that the meeting of 16 April was to replace the debate that had been planned for the Brussels summit in March but that had been cancelled. Indeed Dehaene had also heard rumours that Giscard had prepared some questions. However, in no way would what would be discussed affect the mandate of the Convention.

MEP Andrew Duff raised the possibility that if the Convention would hold on to the deadline of June, the consensus reached might not be satisfactory. He suggested that the

Convention should keep the option of continuing its work open. Dehaene responded by referring to the Philadelphia Convention that only concluded because it had a deadline. In other words, any opening left to extend the work is bound to be exploited.

Dutch parliamentarian van Eekelen said that he had heard Praesidium member Gisela Stuart announce that Convention member would better reserve the first two weeks of June. He wondered whether the Chair could confirm this need and specify the days that should be reserved. Dehaene responded by pointing out that so far meetings were scheduled for 5 and 6 June and 12 and 13 June. In his view it was not impossible that supplementary meetings would need to take place in the rest of the month. Indeed it might be best to lock the Convention in a convent until it would have reached agreement.

Austrian parliamentarian Casper Einem noted that for full participation in the Convention's work it was essential to spend time in Brussels meeting in small groups outside the formal meetings. However, especially for parliamentarians also engaged in the work in their national parliaments, both time and budgets were short. Hence he wondered whether any special provisions could be made. Dehaene responded that as the Convention was moving towards its conclusions working forms would probably need to be reviewed, in particular to allow for greater possibilities for informal contacts. However, seeking to increase the Convention's budget is probably not a good idea, given the problems the budget already raised at the beginning.

MEP Klaus Hänsch suggested that the chair might introduce longer breaks (of up to 3 hours) during sessions to allow political party-groups to meet. Dehaene responded that indeed such solutions would need to be explored from the middle of May onwards as sessions would also be longer. Finally British parliamentarian Gisela Stuart underlined the particular importance for national parliamentarians to have clear schedules and invitations in due time to allow them to organise their involvement and their travelling.