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The Convention on the Future of Europe: institutional reform

The Convention on the Future of Europe, launched in February 2002, left the detailed consideration of institutional reform until early 2003, although some institutional reforms not requiring Treaty changes were put into place in 2002. Proposals for reform of the structure, powers and composition of the EU institutions were submitted to the Convention throughout 2002 and the Convention Praesidium, headed by Valéry Giscard d'Estaing, presented draft institutional articles on 23 April 2003. Two sets of revised institutional articles were submitted in June 2003.

This paper outlines the institutional reforms put into place during 2002 and looks at the various contributions to the Convention on the Future of Europe, with particular emphasis on the Praesidium's proposals.

Vaughne Miller

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Summary of main points

- Following the European Council decisions taken in Seville in June 2002 and Copenhagen in December 2002, reforms were introduced to streamline the operation of the Council of Ministers. These were in place by the end of 2002.
- In early 2003 the Praesidium of the Convention on the Future of Europe began to consider institutional issues, although proposals for institutional reform had been discussed in the margins of the Convention during 2002.
- A first set of Praesidium draft articles was published in April 2003. The Praesidium's complete constitutional draft published in May 2003 contained the same set of drafts on the institutions, owing to a failure to agree on amendments to the April drafts.
- At the beginning of June 2003 the Praesidium published a revised set of institutional articles and, after renewed meetings between the Praesidium and the Convention components, a final revision came out a few days later.
- The final draft is a compromise solution to some of the most divisive institutional issues and leaves a reduction in the size of the Commission until after 2009.
- The final text of the draft constitution will be presented to the European Council in Thessaloniki on 20-21 June 2003.
- An Intergovernmental Conference (IGC) will be launched to finalise the final draft text. The IGC is expected to open in the autumn and continue until early 2004.

CONTENTS

I	Introduction	9
II	Reform of the Working Methods of the European Council and Council of Ministers	9
III	The Large versus Small Split	11
IV	UK Views on Institutional Reform	14
	A. Government	14
	B. UK Parliament	19
V	The Franco-German Proposal	20
VI	Praesidium Reflection Paper and Plenary Debate	25
VII	Praesidium Draft Articles on the Institutions	28
VIII	Views on the Praesidium's Proposals	30
	A. Convention plenary debate, 15-16 May 2003	30
	B. UK Committees	35
	C. The Commission	37
	D. The European Parliament	39
	E. The European Courts	40
IX	Accession States: institutional provisions and status at IGC	41
X	Conclusion	42
	Appendix 1 Selected Contributions on the Institutions	44
	Appendix 2 Commission 'Blueprint'	45
	Appendix 3 Franco-German Proposal	48
	Appendix 4 UK Contributions to the Convention	51

A.	Hain/Palacio Contribution	51
B.	Peter Hain: proposed amendments to Title IV articles	51
C.	David Heathcoat-Amory: proposed amendments to Title IV articles	57
D.	Lord Maclennan and others: proposed Amendments to Title IV articles	62
	Appendix 5 Comparative Table of Institutional Articles	71

I Introduction

The Convention on the Future of Europe began to consider institutional issues in early 2003, having concentrated on a range of other matters covered by Working Groups and discussed in plenaries during 2002.¹ During 2002 a great number of institutional proposals were put forward by Convention members, the EU institutions, participating governments and European organisations. Many of these were discussed on the margins of the Convention but the Convention Praesidium, aware of the failure of successive Intergovernmental Conferences (IGCs) to agree on institutional reform, decided to tackle these issues later in the process.

One of the key constitutional issues that the Convention has sought to tackle is where political power lies. Its examination of the balance of power between the EU institutions, between the institutions and the Member States, between the large and small Member States and between the EU and its citizens, has produced some complex and often conflicting results. The failure to achieve a consensus on some institutional issues could be explained by the fact that there are still very different visions of the purpose of the EU and the Member States' role in it.

Some institutional reforms not requiring Treaty amendment and not strictly speaking related to the Convention's mandate have already been adopted. The European Councils in Seville on 21-22 June 2002 and Copenhagen on 12-13 December 2002 looked at ways of making the European Council and the Council of Ministers more effective in an enlarged Union.

II Reform of the Working Methods of the European Council and Council of Ministers

The Seville European Council Conclusions set out in Annexes I and II proposals for reforming the working methods of the European Council and the Council of Ministers. These included streamlining the Council agenda in order to shorten Council meetings and make sure that issues decided at specialist Councils only rarely had to be put to the European Council. Seville opened up Council legislative meetings to the public during the initial stage of the codecision procedure (the Commission presentation of its proposal and the ensuing debate) and during the final stage of the procedure (the vote and explanations of voting). It renamed the General Affairs Council the General Affairs and External Relations Council (GAERC), which could meet separately with different agendas and different participating ministers. This Council's two main areas of responsibility would be divided as follows:

¹ See Library Research Paper 03/16, *The Convention on the Future of Europe: the deliberating phase*, 14 February 2003, for information on the Working Group conclusions.

- preparation for and follow-up to the European Council (including the necessary coordinating activities), institutional and administrative questions, horizontal dossiers (affecting several Union policies) and any dossier entrusted to it by the European Council, having regard to the operating rules of Economic and Monetary Union;
- the whole of the Union's external action (Common Foreign and Security Policy, European Security and Defence Policy, foreign trade, development cooperation and humanitarian aid).

Seville also decided that the number of Council configurations would be reduced from 16 to nine by the start of the Danish Presidency in July 2002.² The European Council would set a multi-annual strategic programme for the whole EU for the following three years,³ and the General Affairs Council would set the annual work programme.⁴ Changes to the Presidency system included allowing the forthcoming Presidency to take charge of a particular dossier in the six months prior to its term in office, if it was clear that that dossier would be essentially dealt with by the next Presidency.

The Seville summit also agreed on a number of operational measures (none requiring Treaty change), which aimed to improve the effectiveness of the European Council. The summit agenda would be prepared in greater detail by the GAERC. The agenda would be formally adopted and items on it separated into those which required a substantive discussion and those which did not. Practical arrangements for meetings were also streamlined, with tighter programming over a shorter period, and smaller delegations. The changes agreed at Seville were implemented by a Council decision of 22 July 2002 adopting the Council's Rules of Procedure.⁵

The European Council reforms were to some extent already operational by the time of the October 2002 European Council in Brussels. Although the agenda was still drafted on a proposal by the Presidency, this summit was the first to operate on a formal agenda and to take place at the permanent seat for the European Council (Brussels). The Danish Presidency drew up a position paper on institutional reform, which was discussed in the Committee of Permanent Representatives (COREPER) and by the GAERC on 18 November 2002, and which formed the basis for discussion at the Copenhagen summit in December 2002. The second part of the Presidency report described possible approaches to Presidency reform, in particular in the form of three models:

² General Affairs and External Relations; Economic and Financial Affairs; Justice and Home Affairs; Employment, Social Policy, Health and Consumer Affairs; Competitiveness (Internal Market, Industry and Research); Transport, Telecommunications and Energy; Agriculture and Fisheries; Environment; Education, Youth and Culture

³ The first was adopted by the European Council in December 2002.

⁴ The Prime Minister, Tony Blair, commented that "This is a significant evolution in the role of member Governments in setting the EU's agenda", HC Deb 24 June 2002 c 611.

⁵ OJ L 230 28 August 2002

1. Maintaining the main features of the present rotating Presidency, while extending the cooperation between successive presidencies, even beyond what was decided in Seville. There would be a systematic obligation to share and delegate power.
2. A combination of an ‘institutional’ Presidency for the Council’s coordinating chain (GAERC and COREPER), which could be chaired by the Council Secretary General/High Representative or his representatives, with a system of either rotating Presidencies or elected presidents for most of the other Council configurations and preparatory bodies.
3. The idea of the ‘team presidency’. The team could be composed of three to five members, selected according to criteria such as geography and size, for a given period of time (e.g. 1 ½ or 2 ½ years) to be renewed either at fixed intervals or through a ‘rolling system’. The presidency of Council configurations would be shared between the members of the team. As a variation, it would be possible to maintain in addition the six-monthly component for the purposes of the co-ordinating chain (GAERC + COREPER).⁶

The Danish Presidency also proposed strengthening the role of the Common Foreign and Security Policy (CFSP) High Representative (HR) to respond to problems posed by the Presidency role in the area of external relations. Proposals included the HR chairing certain Council meetings, representing the Union in international organisations or in meetings with third countries, negotiating international agreements in the area of CFSP/ESDP, submitting proposals, informing the EP and supervising EU special envoys.

III The Large versus Small Split

As the Convention has progressed, the governments of the Member States have aligned themselves into two broad camps on institutional issues. Smaller countries, such as Belgium, Luxembourg and the Netherlands, have lobbied for a strong Commission as the supranational executive, while the larger states, the UK, France, Spain and Italy, prefer that power should remain with national governments in an efficient and representative Council of Ministers. Member States tend to attach great symbolic significance to having ‘their’ Commissioner and the Commission has a perceived link with the Member States, even though it is a body of independent members who are required by the Treaty to “neither seek nor take instructions from any government or from any other body”.⁷ The smaller EU states have insisted on having their own Commissioner, even though this will require a proliferation of portfolios and raises questions about efficiency. The accession

⁶ General Affairs Council, 18 November 2002, press release at: <http://ue.eu.int/newsroom/newmain.asp?lang=1>.

⁷ Article 213 TEC

states,⁸ most of which are small, have generally supported the line taken by the small Member States. Their position was initially strengthened by Germany, which supported giving more power and independence to the Commission.

The proposal put forward by the British Government for an EU President (see below) attracted support from France. For some time Germany was not committed to the British idea, but did not rule it out, as long as the result was not a weakened Commission. In the Franco-German proposal of January 2003, however, Germany gave its backing to a President of the European Council, in addition to a Commission President elected by the European Parliament. The small Member States have also, for the most part, been against an EU president (although Sweden and Denmark were prepared to consider the idea), believing that a long-term president or chairman chosen from among former EU leaders for up to five years would be dominated by larger states and would also weaken the Commission.

A group of small EU States, spear-headed by the Netherlands, has campaigned to ensure that the Convention does not favour the large Member States in drawing up institutional reforms. Their fear is that a more ‘intergovernmental’ approach with a weak Commission would lead to domination by larger states. A Netherlands contribution to the Convention, published on 22 November 2002, concluded:

In the view of the Netherlands, each of the European Union’s main institutions – Council, Commission, Parliament and Court – needs to be strengthened. The role of the European Council and of its presidency is to help provide political leadership, but not to provide day-to-day management.

Together with Belgium, Luxembourg, and other like-minded countries the Netherlands will seek to present proposals aimed at preserving the institutional balance. It has been heartening to note that our views are shared by many at the Convention.

Thanks to its unique set of institutions, the European Union has been remarkably successful in solving cross-border problems and in managing and containing intra-European tensions. The EU is about to welcome many more member states. Soon it will embrace virtually the entire continent. A strong and stable Europe needs strong and stable institutions. All the more reason, therefore, to strengthen them all.⁹

On 1 April 2003 the Heads of State of seven small EU Member States (the so-called “seven dwarfs”: Belgium, Netherlands, Luxembourg, Portugal, Austria, Finland and

⁸ The accession states are: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. 19 of the future 25 EU members will be small states.

⁹ *The European Convention: a mid-term assessment*, Contribution of Gijs de Vries, Representative of the Netherlands at the European Convention, Netherlands Institute of International Relations ‘Clingendael’, The Hague, 22 November 2002.

Ireland) held a summit in Luxembourg to prepare their common position on institutional reform, with a view to submitting a contribution to the Convention. The seven governments aimed to create a united front to try and prevent the larger Member States from dominating the future Union. They initially rejected proposals for an EU president, which was regarded as one of the reasons why Denmark had not been invited to join the group (Denmark supported the proposal).

By the Athens European Council on 16 April 2003, 16 of the smaller Member States and accession states had signed up to a paper entitled *Reforming the institutions: Principles and Premises*.¹⁰ This called for the maintaining and reinforcing of the ‘Community method’. It took a firm stand against “any arrangements which sought to establish a hierarchy of Member States”¹¹ and was against establishing a permanent Council president. To prevent large state dominance the small countries want to maintain the current six-month rotating Presidency, to which they attach symbolic importance. At the Athens summit Mr Giscard d’Estaing noted that two smaller states, Denmark and Sweden, had recently announced their support for the idea of an EU president. The creation of such a post would, he thought, help to settle the question posed by the former US Secretary of State, Henry Kissinger, of whom to call in Europe in an emergency, and it could also help to prevent a repetition of the arguments that erupted over military action in Iraq. Candidates for such a post were rumoured to include Mr Blair, Fogh Rasmussen, the Danish Prime Minister, and José María Aznar, the Spanish Prime Minister.

In May 2003 the Benelux states withdrew from the small state alliance and decided to support limiting the number of Commissioners to 15. The Benelux states were also said to be willing to approve of instituting a permanent president of the Council.

Some commentators believe that elements of the small versus large argument are misleading, even irrelevant. Max Kohnstamm and Guillaume Durand of the European Policy Centre have observed:

[..] it is misleading and unjustified to consider that a blow to the Community method harms the interests of smaller Member States or to contend that abandoning the rotating Presidency is in breach of the principle of equality of Member States.

The Community method is the core of a well-functioning Union and its preservation is therefore a ‘common good’. To pretend that a shift towards intergovernmentalism would favour larger Member States is tantamount to denying the specificity of the Union, which is based on the idea that the Union is stronger than the sum of its Member States.¹²

¹⁰ CONV 646/03, 28 March 2003 at <http://register.consilium.eu.int/pdf/en/03/cv00/cv00646en03.pdf>

¹¹ Ibid

¹² The European Policy Centre, *Common nonsense – Defusing the escalating ‘Big versus Small’ row* Max Kohnstamm and Guillaume Durand, at

They criticised the small Member States for their ‘misguided’ support for the current rotating presidency:

Their insistence on a misguided concept of equality between Member States for the rotating Presidency of the Council is itself highly problematic since what they see as a key feature of the Community method is also deeply rooted in an intergovernmental attitude that postulates the equivalence of all states.¹³

They described the European Commission as the “catalyser of a European interest” but also believed that having one Commissioner per Member State was, in theory at least, the way in which “national specificities and sensitivities” could be taken into account. They favoured a strong, hierarchical,¹⁴ two-tier Commission made up of a College and several ‘regular’ Commissioners who could rotate in and out of the College.

Aoife Halligan, a Junior Policy Analyst with the European Policy Centre, has examined the level of support among EU Member States for the various institutional provisions. The results of this research can be found in a study published on the Futurum website, dated 12 May 2003 at:

http://europa.eu.int/futurum/forum_convention/documents/contrib/acad/0284_c6_en.pdf

IV UK Views on Institutional Reform

A. Government

The British Government has supported the creation of a post of president of the EU, who would be a high-profile figurehead and would enhance the Union’s global standing. A full-time past or serving EU head of government would chair EU summits, supervise policy implementation and be the public face of the Union in international fora. In July 2002 Peter Hain, then the Minister for Europe and the Government’s representative at the Convention on the Future of Europe, set out the British position on the role of the EU institutions, with particular reference to external affairs:

First, although the Seville reforms are an important start, more needs to be done to get real and essential coherence in the EU's external policy. So my proposal would be that the new external relations sub-formation of the General Affairs Council should be chaired by the High Representative. Most people recognise that, amongst the other problems with the rotating Presidency system, it detracts from continuity and therefore from an effective European Union foreign policy.

http://europa.eu.int/futurum/forum_convention/documents/contrib/acad/0284_c4_en.pdf

¹³ Ibid

¹⁴ The Commission is already to some extent hierarchical in that Chris Patten has an enhanced status as the Commissioner for External Affairs XXXX

Without reform, a serious foreign policy will not be deliverable. And Washington will ignore Europe and we will not get the partnership that Mr Peterle of the Slovenian Parliament rightly called for.

Second, on common interests, I agree with the Praesidium paper that we need to look at the role of the European Council and GAERC. All of us - both member states and the Commission - need to bring our different knowledge and expertise to the table. We should consider whether the External Relations Commissioner and the High Representative would make joint proposals to the Council.

Third, flexibility. We should make a strength and asset of the historical and traditional diversity within the Union. For example, in East Timor Europe acted promptly and effectively because the Netherlands and Portugal had close associations there. Equally, a Member State may wish to act because of this own national interest while the Union chooses not to, as Britain did in Sierra Leone. And what Elmer Brok called a coalition of the willing should not be seen as a challenge but an asset to the Union.

Fourth, although the appointment of the High Representative has provided a clearer Union voice, this should be strengthened by giving him the formal right of initiative in CFSP and a greater say in CFSP resources. He should also attend Commission meetings on external policy. Former Yugoslavia is a striking example of what Europe can do - consistent diplomacy, co-ordinated with the USA and Russia; tough economic and political sanctions; promise of aid and engagement to democratic forces; and active engagement of Chris Patten and Javier Solana.¹⁵

The Government's views on the future power balance among the main EU institutions were described by the Foreign Secretary, Jack Straw, in an article in the *Economist* in October 2002.

The European Council should set the strategic agenda for the Union. But one of the problems with delivery has been that - unlike the commission which is appointed for five years - there are musical chairs every six months in the European Council and the Councils of Ministers. The presidency switches from one country to the next. This stop-go comes at the expense of consistency and efficiency.

I therefore support Jacques Chirac's proposal for a full-time president of the European Council, chosen by and accountable to the heads of government. He or she would serve for several years, overseeing delivery of the Union's strategic agenda and communicating a sense of purpose to Europe's citizens. For the functional councils, there should be 'team presidencies' whereby a group of member states would each chair, say, two of the councils for two to three years.

¹⁵ Verbatim report of plenary 11 July 2002 at http://www.europarl.eu.int/europe2004/textes/verbatim_020711.htm

At the same time, the six-monthly rotation for countries to be 'vice-presidents', hosting informal ministerial meetings - an important showcase for the EU - should continue.¹⁶

The British Government has insisted that the Commission should remain “at the centre of Europe’s institutional architecture”.¹⁷ The Prime Minister said in a speech in Warsaw in October 2000:

We need a strong Commission able to act independently, with its power of initiative: first because that protects smaller states; and also because it allows Europe to overcome purely sectional interests. All governments from time to time, Britain included, find the Commission's power inconvenient but, for example, the single market could never be completed without it.¹⁸

Mr Blair told an audience in Cardiff in November 2002 that the response to European integration should not be

[...] to reach for intergovernmentalism as a weapon against European institutions - again, if not a traditional British position, certainly perceived as such - but to recognise that Europe is and should remain an alliance of European and national Government. The very purpose of having a Council is to recognise that ultimately Europe represents the will of sovereign states.

The main concern, he believed, should not be whether reform “tilts the balance towards national governments or European government”, but whether it strengthened Europe: “does it make it more effective; does it make it more democratic?” He described the EU as “the voluntary coming together of sovereign nations. Their will is to combine together in the institutions of Europe in order to further their common interests”. In a further comment on the matter of national sovereignty, he said:

In so far as it is necessary to achieve these interests, they therefore pool their sovereignty in Europe. There is no arbitrary or fixed limit as to what they do collectively; but whether they do it depends on their decision as a group of nations. So whilst the origin of European power is the will of sovereign nations, European power nonetheless exists and has its own authority and capability to act.¹⁹

The Prime Minister expressed strong views on the role of the Commission:

¹⁶ *Economist*, 11 October 2002, FCO website at: <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029392547&aid=1034270166922>

¹⁷ Peter Hain, interview in *Financial Times*, 15 November 2002.

¹⁸ Warsaw speech, 6 October 2000, at <http://www.number-10.gov.uk/output/page3787.asp>

¹⁹ Prime Minister’s speech, “A clear course for Europe”, 28 November 2002, FCO website at: <http://www.pm.gov.uk/output/page6709.asp>

It is easy to knock the Commission. By definition, because it is based in Brussels, it is a remote bureaucracy - but smaller in size than many single Whitehall Departments. It takes unpopular decisions - because it is responsible for keeping Member States to the commitments they have agreed. This role as enforcer is unenviable, but essential. Governments rarely give it credit for its achievements, but are always quick to criticise its shortcomings. And it has at times in the past not managed its internal affairs well. But we should stand up for the Commission. It plays an essential role. Along with the Court of Justice, it is the best guarantee of equality in the Union, ensuring that small countries or new Member States are not treated as second class members. And on enlargement, economic modernisation and CAP reform, the Commission has been a strong progressive force.

Its role is two-fold: the initiation of detailed proposals within the strategic priorities set by the European Council and the implementation of political decisions. I want to see both those roles strengthened. I do believe it is time to communitise much of the Justice and Home Affairs Pillar. This will not, of course, affect the agreement Britain secured at Amsterdam in 1997 on our border controls. But it will mean integrated and effective action on issues to do with organised crime, drug dealing, asylum and immigration that affect all of Europe, cause huge distress and difficulty and cannot seriously be tackled by nations alone. The Commission is rightly responsible for ensuring that there is a level playing field across the Member States; and that the detailed legal rules can be changed rapidly where that is sensible: for example through the Lamfalussy procedures to keep our financial services industry competitive in the new global market. We should improve the way the Commission consults on future framework legislation. In addition I favour strengthening the Commission's authority in making sure Europe's rules are obeyed and redress is available quickly in circumstances of a breach of the law.²⁰

Mr Blair was anxious not to alter the present institutional balance too radically:

We cannot simply see the Commission as an executive accountable to the Parliament. The Commission also has a crucial partnership with the Council which we must not weaken, and a vital independence which we must protect. In this instance, therefore, we should not sanction any dramatic departures from the Community model as we know it. The Commission derives its legitimacy and authority from its independence. I am not arguing for an apolitical Commission: I am arguing for an impartial Commission, an independent Commission which draws its authority with Member States from this impartiality.²¹

In his support for 'team presidencies', the Prime Minister appeared to be addressing the fears of the smaller States that the large States would dominate the future EU:

²⁰ Prime Minister's speech, "A clear course for Europe", 28 November 2002, FCO website at: <http://www.pm.gov.uk/output/page6709.asp>

²¹ Ibid

We could move to some form of "team Presidency" which allows the chairs of the principal Councils to be divided amongst Member States for a decent length of time, with the more permanent Chair of the European Council to co-ordinate that team. We should choose the team Presidency on a formula that I hope can combine fair rotation with the possibility of allowing Councils to elect candidates of outstanding merit. Within any team at any one time there will obviously be a majority of small countries because there are 19 small countries and 6 big ones in the Europe of 25.²²

Mr Blair emphasised that Council openness was one of the main areas of reform needed both within the Council and in the Member States:

The Council needs to be strengthened in other ways. Back home in Member States, the public should be better able to understand the Brussels processes. National Ministers' decisions should be visible. So Councils should vote on, and declare national positions on, legislation in the open. And we need fewer Councils. We have made progress towards cutting back the confusing multiplication of Councils from almost twenty to ten, but we should go further to make the Council simpler and easier to follow; and we will examine carefully all the interesting proposals put forward in this area by Guiliano Amato and others.²³

More controversially for some, the Prime Minister supported more qualified majority voting:

An enlarged Europe will need more qualified majority voting so that progress in a Europe of 25 or more is not constantly blocked by veto, and to provide a set of rules that are understandable to ordinary members of the public. All Member States in practice have their red lines on QMV, some of which must remain - for Britain on national control of taxes for example. But inevitably there will be more QMV and we welcome that.²⁴

On the European Parliament, the Prime Minister said:

I believe we need a strong European Parliament which concentrates on what it does best - improving legislation. [...] and it is right that the European Parliament's voice should be heard in all annual decisions on the EU spending.²⁵

Turning to the ECJ and with an implicit reference to France's illegal ban on British beef imports and the Commission's failure to fine the French Government, in spite of ECJ rulings against it, Mr Blair said:

²² <http://www.pm.gov.uk/output/page6709.asp>

²³ Ibid

²⁴ Ibid

²⁵ Ibid

[...] all must be put under stronger pressure to live up to their obligations swiftly. We should now examine ways to speed up its decisions - better fast tracking for priority cases for example. And we should look again at the effectiveness of the fines system. If the European Court were given the power to set a deadline for implementation then, if that deadline were not met, fines could follow immediately.²⁶

Peter Hain spoke about the role of the Commission President to the European Scrutiny Committee in November 2002:

[...] the Commission President should not be the big political leader of Europe, The Commission President should be the person responsible for making sure the European Union works well, that it works effectively and that it is delivering for the citizens of Europe the matters which are proper to it. The other model, which is one we favour, is that you have a much clearer chain of accountability, with the European Council reconfigured and reformed [...] in such a way that you have an elected president of the European Council who is a full-time figure rather than rotating every six months, as is the present situation, who is elected by elected heads of government, those heads of government themselves elected and answerable to their national parliaments and thereby to voters. That is a chain of accountability much more readily understood by the average citizen. If you then introduce greater transparency into the Council's decisions then I think you get a much clearer picture for the average citizen and a better connection to what is going on in Europe.²⁷

B. UK Parliament

The European Scrutiny Committee (ESC) concluded in its *Report on Democracy and Accountability in the EU and the Role of National Parliaments* that the system of six-monthly Presidencies should be replaced, but that any new system for chairing individual Councils would have to “respect the principle of equality of Member States”.²⁸

Presiding over the European Council produced some difficult issues: Either the six-monthly rotation could be retained, or the European Council could elect its President for a longer term of office.²⁹

²⁶ <http://www.pm.gov.uk/output/page6709.asp>

²⁷ Minutes of Evidence to ESC, 20 November 2002, 16 December 2002, HC 103-I, at: <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmeuleg/103-i/2112002.htm>

²⁸ Para.60, ESC 33rd Report, at: <http://www.publications.parliament.uk/pa/cm200102/cmselect/cmeuleg/152-xxxiii/15207.htm#a10>

²⁹ Convention document CONV 27/02, p. 41; *Preparing the Council for enlargement*; *Financial Times*, 16 May 2002.

Any such elected President would be an influential figure. **It will be essential to establish parliamentary accountability for an elected President of the European Council, and the joint meetings of national parliamentarians and MEPs proposed below would be a means of doing so. Subject to that, we support the proposal that the European Council should have an elected President with a term of office of two years or more.**³⁰

The ESC was not on balance in favour of the Commission President being elected, for two main reasons:

If the *raison d'être* of the Commission is to rise above sectional interests, its effectiveness in doing so can only be weakened by election, and especially by election on a party political basis; Election would give the Commission President far greater authority and significantly change the balance between the EU institutions, while making him less accountable and not necessarily doing much to reconnect citizens and EU decision-making.³¹

V The Franco-German Proposal

On 14 January 2003, in the context of the 40th anniversary of the signing of the Elysée Treaty on Franco-German solidarity, President Jacques Chirac and Chancellor Gerhard Schröder agreed two joint initiatives. The first of these concerned closer bilateral co-operation, including regular attendance by ministers of Cabinet meetings in the other country, and ways of aligning more closely the two countries' legislation in certain areas. The second was a contribution to the Convention on institutional matters, following on from three joint contributions on particular policy areas which had been made by the two countries' foreign ministers, Dominique de Villepin and Joschka Fischer.³²

The two leaders agreed that their institutional proposals represented a 'compromise' between the federalist and integrationist inclinations of German policy and the French

³⁰ CONV 27/02, Para. 61

³¹ Para.80, ESC 33rd Report, at:

<http://www.publications.parliament.uk/pa/cm200102/cmselect/cmeuleg/152-xxxiii/15207.htm#a10>

³² CONV 489/03, Franco-German contribution to the European Convention on the institutional structure of the Union, Paris and Berlin 15 January 2003, French Embassy Statement, 15 January 2003, at: http://www.ambafrance-uk.org/asp/presse_item.asp?LNG=en&TYPE=discours&ID=820&FROMT=Europe&FROML=presse_dossier.asp?ID=11. The two leaders acknowledged that they had different views on the institutional structure of Europe and in their joint press release spoke of each taking "a step towards the other. In this spirit, France agreed to the Commission President being elected by the European Parliament, and Germany agreed to the European Council being headed by a president elected by qualified majority by the Council for a once-renewable two-and-a-half-year term or a single one of five years".

desire to strengthen the position of the Member States in the European Council. The compromise reflected Germany's wish for stronger EU institutions and the French, British and Spanish insistence that decisions in key areas must remain with the national governments. The French appeared to have accepted the German approach to the Commission and the Germans to have accepted the French approach to the Council. The biggest concession by France was abandoning a right of veto in a wide area of foreign policy.

The Franco-German proposal aimed to strengthen the “institutional triangle, maintaining its balance and carry out a fundamental reform of the Union's external representation”. The Union's institutions would express the “idea of a federation of nation-states”. The Union would have a single legal personality that would end the three-pillared structure, but keep procedures that are adapted to the different pillars. The proposals gave rise to a great deal of comment, particularly as they represented a compromise between the two opposing views held by two of the Union's dominant members. A summary of the Franco-German proposals is contained in **Appendix 3**.

The Franco-German proposal was discussed at the Convention plenary debate on the institutions on 20-21 January 2003. The press release on the meeting commented:

The Franco-German proposal was welcomed by some Convention members, including Mr Hubert Haenel (Parliament - Pt - F) who saw it as 'an attempt to bring things together and reconcile divergent views'. Mr Peter Hain (Gvt, UK) said that the European Council did need a long-term President, not a President of Europe but a Presidency of the European Council that would work in partnership with the Presidencies of the Commission and the EP. Mr Jozef Oleksy (Pt, Pol) took the view that the Franco-German compromise enhanced the authority of both the Council and the Commission, but that the responsibilities of each should be made clearer.

Mrs Danuta Hübner (Gvt, Pol) saw the election of a President of the European Council for a two and a half-year term as an 'attractive idea', which would ensure continuity. However, it would remain to be seen whether the holder would be a political leader or simply an administrator. The six-monthly rotation system should, nonetheless, be retained for the individual Councils. Mrs Lena Hjelm-Wallen (Gvt, S) said the idea was acceptable if the various roles were properly shared out vis-à-vis the Commission. Mr Esko Seppänen (EP, EUL/NGL, Fin) welcomed the proposal, which he saw as having the advantage of placing the emphasis on intergovernmental procedures. Mr Erwin Teufel (Pt, D) expressed the view that the six-monthly rotation system could be abandoned if the competences of the long-term President were clearly differentiated from those of the President of the Commission, so as to avoid 'damaging overlaps'. Mr Henrik Dam Kristensen (Pt, DK) also saw it as a 'good idea', if the new presidency did not create more bureaucracy in competition with the Commission. Mr Algirdas Gričius (Pt, Lith) said that the new idea gave rise to the following dilemma: if the new President were given extensive powers, there would be a risk of tensions arising with the Commission, while if those powers were too limited, there would be little point in having such a President. Mr Josep Borrell Fontelles (Pt, E) said

that the role of each would need to be clarified, since history was packed with failed triumvirates.

Mr Klaus Hänsch (EP, PES, D) called on the Convention to look at the whole package of reforms needed to strengthen all the institutions and not just focus on the possible problem of a dual presidency. It was clear, however, that the latter would require clarification of the fields of competence of the two presidents and it must not lead to the creation of an additional administration. He was in favour of overhauling the rota system but not abolishing it. Mr Jürgen Meyer (Pt, D) noted that, despite the strong opposition to the idea of a long-term Presidency of the European Council, the Convention appeared to be in favour of the other Franco-German proposals. He felt, nonetheless, that the proposal regarding the six-monthly rotation system could be amended so as to retain the system's advantages, which had been highlighted by many of the smaller Member States.

Mr Gianfranco Fini (Gvt, I) played down the importance of the Franco-German document, which he saw as just another suggestion. In his view, all the institutions should be strengthened without any of them undermining the position of the others. He suggested that a President could be chosen for the European Council from outside, with the appointment being subject to ratification by the EP. Mr Antonio Tajani (EP, EPP-ED, I) said that the Franco-German proposal maintained the institutional balance but concealed a number of difficulties. The rotating presidency should be retained within the Council of Ministers. Mr Francesco Speroni (Gvt, I) disagreed, stating that he firmly believed that the six-monthly rotation system should be discontinued and that this could be offset by more permanent Vice-Presidencies. A large majority of the Convention members were much more hostile to the idea of electing a permanent President of the European Council. Mr Gijs de Vries (Gvt, NL) said that the EU did not need a new President 'who would be likely to nibble away at the Commission's powers'. Mr Louis Michel (Gvt, B), in line with the Benelux countries' views, said that a Presidency of this kind would be in competition with the Commission, an idea which he found 'totally unacceptable'. Mr Jacques Santer (Gvt, L) brought up the old idea of a single Presidency comprising both the European Council and the Commission. Agreeing with Mr Ben Fayot (Pt, L), he said that some individual Councils, such as that for Financial Affairs, could be given a more permanent Presidency. Mr Dick Roche (Gvt, Irl) said that a permanent Presidency of the European Council might even lead to an institutional coup d'état.

Mr David Heathcoat-Amory (Pt, UK) said that the Franco-German proposal advocated the election of two presidents because it had been impossible to reach agreement on a single president. This was likely to create a 'Europe of presidents'. Mr Hannes Farnleitner (Gvt, A) was also opposed to the idea, taking the view that other means, such as the introduction of multiannual programmes, could be used in order to enhance the continuity of the Council's work. Mr Ernani Lopes (Gvt, P) stressed the need to safeguard the Commission's central role and said that any changes to the current institutional balance would be likely to be a step backwards. It was imperative to retain the current rotation system within the European Council. Mrs Teija Tiilikainen (Gvt, Fin) also emphasised the advantages of the six-monthly rotation system, which could be streamlined by distributing the workload more effectively. She took the view that 'if we were to

reject the rotation system, we would lose a symbol of equality between the Member States. There is no place for this type of President of the Union'.

Mr Andrew Duff (EP, ELDR, UK) said that the Franco-German proposal brought together two contrasting approaches, namely a 'presidential' Europe and a 'parliamentary' Europe. However, instead of combining them, the proposal accentuated the differences between the federal and non-federal aspects of European integration, and this would enhance neither the legitimacy nor the consistency of the institutions. Mr Elmar Brok (EP, EPP-ED, D) felt that the proposal confiscated powers from the Commission and gave them to the Council. It would thus place the Commission in a position of inferiority with respect to the Council. There was a risk of this leading to two separate European Unions, with the Commission being restricted to managing the internal market and related policies and the European Council keeping foreign and security policy and justice for itself, which 'could not possibly work in the long term'. Mrs Hanja Maij-Weggen (EP, EPP-ED, NL) expressed the view that this type of President of the European Council would ride roughshod over the President of the Commission, to the detriment of the small countries.

Mr Johannes Voggenhuber (EP, Greens/EFA, A) welcomed the fact that 'the Franco-German motor is running once again', but said that 'they really ought to get rid of the reverse gear'. The Union needed republican institutions in which the Council would act as a second House, but a permanent President was not necessary. Mr Reinhard Rack (EP, EPP-ED, A) agreed, stating that 'a Commission President is enough'. The Franco-German proposal for a dual presidency was contrary to the Convention's aim, which was to simplify the institutional set-up. Mr Jens-Peter Bonde (EP, EDD, D) said that 'what the Union needs is not more presidents at the top but more democracy at the bottom'. Mrs Maria Berger (EP, PES, A) said that the governmental model put forward in the Franco-German proposal might 'work in Andorra, but certainly not in the European Union'.

Mr Luis Marinho (EP, PES, P) wondered whether the Convention was still relevant or whether it was already politically dead. He was concerned that the Franco-German proposal might result in the Convention members retreating into a form of conformism, with their ambitions shrinking as the 'steely grip of *raison d'état* starts to tighten'. Mr William Abitbol (EP, EDD, F) said that the Franco-German proposal was neither clear nor innovative. It was 'neither fish nor fowl' and reminded one of the Holy Roman Empire, where there was a standoff between Pope and Emperor.

Many of the members of the national parliaments - particularly those from the applicant countries- also stated their opposition to the proposal. Mr Peter Balazs (Gvt, H), who was opposed to the idea of any competition between the two presidents, said: 'I shall quote not Henry Kissinger, but rather a Hungarian proverb which says that there is only room for one flutist in an inn - if there are two, there is a risk of cacophony. Furthermore, with a High Representative of the type being contemplated, you would actually have a trio. So we would be back once again to a 'Holy Trinity', following on from the three Communities and the three pillars, with the European Council in the role of the Father, the High

Representative in the role of the Son, and the President of the Commission in that of the European Spirit'. Mr Göran Lenmarker (Pt, S) took much the same view, asking 'why get rid of the three pillars if they are to be replaced by twin towers?'

At the end of the debate the Chairman, Hanja Maij-Weggen, estimated that, out of the 91 speakers, 12 supported the Franco-German proposal, 64 were against and 15 had serious reservations.³³

Not unexpectedly, the Commission was critical of the proposal and did not think that having two executives was an "intelligent reform of the Union that makes it clearer, more efficient and more accountable".³⁴

The EP President, Pat Cox (Liberal Democrat), speaking in January 2003 to the European Policy Centre about the proposal for an EP-elected Commission, said that the EP's position was "consonant with, identical to, the Franco-German proposal".³⁵ He thought this would confer "an additional degree of legitimacy on the office of the President of the Commission" because:

It connects it, however indirectly it may be, to a political process, one which is visible and transparent, not done behind closed doors, but done on the floor of a parliament, through the groups in a parliament.³⁶

His personal view was that the question of the Council Presidency represented "potentially the greatest change in institutional equilibrium and balance". He asked:

How will this office help democratic consent? How will this office offer public accountability? Will this office be transparent? Will it engage also with an unbroken chain of parliamentarianism? Will it offer the capacity to improve checks and balances?³⁷

The German SPD MEP, Jo Leinen,³⁸ thought the Franco-German proposal was "a weak compromise" and risked "missing the opportunity for real democratic reform in the EU".³⁹ The reaction from the smaller Member States was cautious. The proposal indicated a

³³ Press Release 21 January 2003 at http://www.euoparl.eu.int/europe2004/textes/verbatim_030121_Summary.htm

³⁴ *Financial Times*, 17 January 2003

³⁵ Pat Cox, speech to European Policy Centre, 22 January 2003 at <http://www.euoparl.eu.int/president/speeches/en/sp0042.htm>

³⁶ Ibid

³⁷ Ibid

³⁸ Jo Leinen is the President of the Union of European Federalists (UEF) and since January 2002 the 1st Vice-chairman of the EP's Committee for Constitutional Affairs.

³⁹ *EUObserver*, 16 January 2003 "Double Executive a poor compromise", at: <http://www.euobserver.com/index.phtml?aid=9037>

shift in power to the Member States (the French influence), but in their view, this usually meant more power for the large States.⁴⁰

In March 2003 the Minister for Europe, Denis MacShane, said:

The Government welcomes the Franco-German contribution to the debate on Europe's future. Strong French and German engagement is essential to take the debate on the future of the EU forward towards a more democratic, accountable and effective European Union. The paper is good for the UK. It contains important proposals which the UK has advocated, such as a full-time Chair of the European Council. The UK will continue to engage with confidence in the debate on the Future of Europe.⁴¹

VI Praesidium Reflection Paper and Plenary Debate

In January 2003 the Praesidium put out a 'reflection paper' on the "Functioning of the Institutions",⁴² which was discussed in the Convention plenary on 20-21 January 2003. Mr Giscard d'Estaing opened the debate by recalling the need to adapt the institutions to allow them to meet the challenges of new policy objectives in foreign policy, defence, internal security and justice in an enlarged Union. He asked whether the future Union should:

... move gradually towards more federal structures, or should it continue to be based on a mixed system, with a confederal element for those issues still subject to cooperation between Member States, and a federal system for those competences managed at the level of the Union?⁴³

The Convention summarised the outcome of the debate as follows:

25. A number of principles had emerged from the discussion. The Convention favoured a mixed system, combining both federal and confederal elements. There was consensus for strengthening all the institutions and improving their efficiency, but also for doing so in a way which maintained the institutional balance. Many had emphasised the importance of increased transparency and democratic accountability. There was also strong support for ensuring that equality between Member States was guaranteed.

⁴⁰ <http://www.euobserver.com/index.phtml?aid=9037>

⁴¹ HC Deb 7 March 2003 c 125W

⁴² CONV 477/03, 10 January 2003 at <http://register.consilium.eu.int/pdf/en/03/cv00/cv00477en03.pdf>

⁴³ CONV 508/03, account of plenary debate on institutional proposals, 27 January 2003 at <http://register.consilium.eu.int/pdf/en/03/cv00/cv00508en03.pdf>

26. Further work was needed on specific issues. In particular, alternatives to the current system of the rotating Presidency of the Council would need to be looked at, but doubts had been expressed over the suggestion that the European Council move to a more permanent full-time Presidency. Questions had been raised over both the role and selection procedure. It was clear that these would need to be addressed and the role of the European Council properly defined. The idea of creating a legislative Council meeting in public session had received very large support. The implications of this, together with the future role of the General Affairs Council, would need to be looked at. Further reflection was required on the issue of Qualified Majority Voting: in particular what should be basis for any new system?

27. Equally, there needed to be a more detailed look at the future role and tasks of the European Foreign Affairs Minister. On the Commission, many had spoken in support of maintaining one Commissioner for each Member State. Some thought this necessary in the short term, but thought that an alternative, better suited for efficiency, would have to be found in due course. Further work was needed on the different options, as well as on the issue of the procedures for selecting the President of the Commission.⁴⁴

In the debate Peter Hain spoke about the need for the Commission to be strengthened and made more efficient by means of:

a bigger say in criminal judicial cooperation; its contribution to the Council's strategic agenda formalised; an ability to seek redress more quickly when the rules are broken; and a fresh look at implementing legislation through the comitology procedures, so as to ensure proper democratic oversight.⁴⁵

He did not want to see the Commission's independence threatened by partisanship and believed that it should be held to account by "an effective and responsible Parliament, which scrutinises and improves legislation in partnership with the Council, with the Commission and with civil society". On the matter of a Council president, he told the Convention:

In a European Union of 25, a Council with a constantly changing president cannot be an effective partner for the Commission or Parliament. Just like those Institutions, the European Council needs the continuity and strategic drive of a long-term president if it is to play its full role in the dynamic of a new, enlarged European Union. We do not want ... a president of Europe but we need a president of the Council working in partnership with the presidents of both Parliament and the Commission, as France and Germany have proposed in their welcome contribution. We will also need to think about the relative merits of

⁴⁴ CONV 508/03, Summary report on the plenary session, 20 and 21 January 2003, 27 January 2003 at <http://register.consilium.eu.int/pdf/en/03/cv00/cv00508en03.pdf>

⁴⁵ Verbatim report of plenary, 20 January 2003 at http://www.europarl.eu.int/europe2004/textes/verbatim_030120.htm

team presidencies or elected presidents of Councils of Ministers. We want a system based on equality for each Member State that gives all Member States greater buy-in to the leadership of the Union than they have in the existing system.⁴⁶

Turning to the ECJ, Mr Hain thought this body should be reinforced and its processes for fining Member States streamlined, in order to avoid the “unnecessary delay of the Commission going to the Court twice”. He concluded:

In short, we need a strong and independent Commission, a well-run Council, a Parliament better able to scrutinise and a Court better equipped to enforce the law. We need all this within the institutional balance that has served Europe so well.⁴⁷

One of the two UK parliamentary representatives on the Convention, David Heathcoat-Amory,⁴⁸ thought that new powers for the EU institutions would run the risk of “simply creating a Europe of presidents and politicians - more titles, more status, more powers for everybody”.⁴⁹ He emphasised the need to make the proposed double presidency model appeal to the public:

I agree with Mr Hain that if we are going to persuade people that there is going to be no conflict between these two elected presidents, then we have to be more precise in that regard. The presidents themselves are to be elected by indirect means. This means that the link between the candidate who is successful and the public is a very distant one, via a list system and then a secondary election. Therefore, it can hardly be called a popular election. The overall impression the public is getting is of a top-heavy structure being created, a Europe of presidents, the result of institutional bargaining rather than an examination of political principles.⁵⁰

He supported calls for national parliaments to be empowered without creating new institutions.⁵¹ He also thought “it is no longer defensible for the Commission to have a sole right of initiative. This means that directives and regulations are conceived in opaque surroundings, disconnected from the perceived needs of national parliaments and voters”.

Finally, Mr Heathcoat-Amory turned to the ratification of the constitution:

⁴⁶ http://www.europarl.eu.int/europe2004/textes/verbatim_030120.htm

⁴⁷ Ibid

⁴⁸ The other UK parliamentary representative, Gisela Stuart, is also a Praesidium member, which has to some extent inhibited her from contributing to the plenaries and from submitting proposals for amendments to the Convention

⁴⁹ Verbatim report of plenary, 20 January 2003

⁵⁰ Ibid

⁵¹ Proposed by the other UK Representative on the Convention, Gisela Stuart, who chaired the Working Group on the Role of National Parliaments

This requires national referendums in as many national jurisdictions as possible, if possible on the same day. I would suggest the date should be the European Parliament elections in 2004, so that we can genuinely involve the public and get their endorsement for what we are trying to construct here.⁵²

VII Praesidium Draft Articles on the Institutions

On 23 April 2003 the Praesidium published a set of draft institutional proposals in Title IV of the draft constitution.⁵³ Breaking with earlier practice, these articles were not accompanied by a detailed commentary, but had a covering note stating that on several major points two approaches were available: to keep to the provisions of the Treaty of Nice or go beyond them. The complex voting arrangements agreed at the Nice IGC had given a disproportionate degree of power to the smaller states (which Mr Giscard d'Estaing did not support). Nice also put a ceiling on the number of MEPs and Commissioners, setting the latter at 27 (one per Member State until the EU numbers 27 Members, and reduced thereafter). This was a compromise solution to facilitate the enlargement process.

When the Praesidium published its amended draft Part 1 constitutional articles on 26 May 2003, the institutional provisions were the only ones not to have been amended.⁵⁴ The Praesidium stated:

The very numerous amendments received and the comments made at the plenary on these Articles often go in opposing directions, particularly on central questions, including the three linked questions highlighted in the note of 23 April (representation in the European Parliament, definition of the qualified majority, and composition of the Commission). The Praesidium therefore thinks it would be appropriate to devote more time to discussion and thought on those subjects.⁵⁵

On 2 June 2003 the Praesidium issued revised articles on the institutions,⁵⁶ this time with comments, showing how they had been changed to take account of proposed amendments. The Praesidium stated: "This corrected version is meant only to clear the ground: the changes concern a number of questions on which either there is no real divergence of views or improvements can be made without affecting the central issues".⁵⁷

⁵² Verbatim report of plenary, 21 January 2003 at http://www.europarl.eu.int/europe2004/textes/verbatim_030121.htm

⁵³ CONV 691/03 at: <http://european-convention.eu.int/docs/Treaty/cv00691.en03.pdf>

⁵⁴ Although the numbering of the draft articles was different because of other amendments to the text

⁵⁵ CONV 724/03, 26 May 2003 at <http://european-convention.eu.int/docs/Treaty/cv00724.en03.pdf>

⁵⁶ CONV 770/03, 2 June 2003 at <http://european-convention.eu.int/docs/Treaty/cv00770.en03.pdf>

⁵⁷ Ibid

A second revised version was published following consultations on 6 June 2003 between Mr Giscard d'Estaing, the Convention vice-presidents, Jean-Luc Dehaene and Giuliano Amato, and the component groups of the Convention. The results of the Praesidium's discussions were given to Convention members in their component groups and were generally well received. The Praesidium compromise retained elements of the Treaty of Nice settlement, but changed others. The main features of the compromise (in relation to the revised text of Articles I-18 to 31 in CONV 724/1/03) are:

European Parliament

- Retention of the Praesidium's original proposal for composition on the basis of 'degressive proportionality' and a minimum of 4 MEPs per Member State.
- Reversion to the Nice maximum of 732 (originally the Praesidium proposed 700).
- The final composition will be fixed by a European Council decision, on an EP proposal, before the 2009 elections.
- No mechanism for dissolving the EP

European Council and Chair

- The President of the Council's 2½ year term of office will now be non-renewable (rather than renewable once).
- No bar on the President being a member of another European institution,
- A bar on him/her having a national mandate.
- The posts of Council, Commission and EP Presidents and Foreign Affairs Minister must be held by people of different nationality.
- The provision (Article I-21(3)) for creation of a board of three European Council members to assist the President is dropped

Council of Ministers

- No separate Legislative Council: this will be combined with the General Affairs Council and will operate in two formations. It will meet in public when carrying out legislative functions.
- The Foreign Affairs Council, chaired by the Foreign Affairs Minister, will be the only other formation referred to in the constitutional treaty.
- The European Council will be able to decide on other formations.
- The rotation of the Presidency is retained, except for the Foreign Affairs Council. (Precise details of the rotation to be worked out, but mandates will be for the minimum of one year, and could involve team presidencies).

Qualified majority voting

- The Nice provisions will apply until 1 November 2009. From then on, ordinary QMV will be 50% of Member States representing 60% of the Union's population.
- The European Council can decide beforehand by QMV to extend Nice for up to 3 more years.

- There is a ‘super-QMV’ provision of two-thirds of Member States and four-fifths of the population, which could be used in JHA or CFSP matters.
- The European Council could also unanimously decide to apply the ordinary legislative procedure instead of a special legislative procedure.

Commission

- Until 2009 all Member States will have one Commissioner.
- The maximum of 15 thereafter is retained, but the wording on the principle of rotation, ensuring geographical and demographic balance, is reintroduced from Article 3 of the Nice Protocol on enlargement.
- There would be up to 15 Associate Commissioners, who could not be of the same nationality as full Commissioners.
- The Praesidium has retained the proposal that the Commission President would be elected/rejected by the EP on the basis of one name put forward by the European Council (now after consultation)

Foreign Affairs Minister

The earlier proposal has been retained.

European Court of Justice

Now to be called the “Court of Justice”.

A table in **Appendix 5** looks at the existing Treaty Articles on the main EU institutions, compared with the Praesidium’s draft articles in Part I in CONV 797/03, 10 June 2003 at <http://european-convention.eu.int/docs/Treaty/cv00797.en03.pdf> and Part III articles in CONV 805/03, 11 June 2003 at <http://register.consilium.eu.int/pdf/en/03/cv00/cv00805en03.pdf>, CONV 727/03, 27 May 2003 at <http://european-convention.eu.int/docs/Treaty/cv00727.en03.pdf> and CONV 734, 12 May 2003 at <http://register.consilium.eu.int/pdf/en/03/cv00/cv00734en03.pdf>.

VIII Views on the Praesidium’s Proposals

This section considers reactions to the Praesidium’s April/May 2003 proposals for Title IV of the constitution on the institutions.

A. Convention plenary debate, 15-16 May 2003

Over 650 amendments to the April institutional drafts were proposed. Peter Hain, for the British Government, spoke about the importance of maintaining the institutional balance and improving efficiency:

Mr President, last year in Cardiff Tony Blair emphasised the importance we attach to the principles of equality between Member States and of maintaining the institutional balance. The European Union has outgrown its structures, we need reform to modernise and strengthen institutions that were designed for six Member States to reflect our new membership of twenty-five and more. The Praesidium has done a good job in trying to find the consensus and the compromise that we need in this Convention.

The old system of the Presidency, rotating every six months, will not withstand the rigours of an enlarged European Union. This is not about big versus small, it is about turning the Council into an institution fit to fulfil its role: a real partner for the Commission, able to speak for and deliver governance. We need to replace the six-monthly rotation with a mechanism that provides coherence and continuity. As Sweden, Spain and Poland among others have said, that means a team presidency, and we have suggested a model designed to give each Member State the chance to chair every Council formation and to showcase their role in Europe by hosting a Council.

That team will need to be coordinated. Do any of our prime ministers have the time needed to do this task, the time needed to visit twenty-four and more countries twice every six months and find where the compromises might lie and help to deliver the European Council's strategic agenda? Do they have the time to represent the Union in its foreign policy dealings with other countries, the time to get the most from a summit with China and to develop relations with Latin America? I would like to stress here that I am talking about the existing duties of the Council Presidency; there is no question of reducing the Commission's existing role in this area. I have yet to hear an alternative to a full-time chairman of the European Council that meets our vision of a Union capable of delivering on the issues that really matter.

As for Council formations, I cannot accept a single legislative Council. I sympathise with the aims of coherence and transparency that the EU does not work like a national government. There is no neat distinction between legislation and policy. Often policy is agreed by debates over legislation. A false distinction will obscure rather than open up our procedures. It will give the dangerous impression that the Council is some sort of second chamber. I notice that ECOFIN and all the foreign ministers on it have rejected the idea of a single legislative Council.

We have yet to find a consensus on the structure of the Commission and how it chooses its president, but we are agreed on its importance as the guarantor of the Treaty. We must base any settlement on equality and rotation of countries, big and small, and on securing the independence of the Commission and, especially, the independence of its president.

Europe needs a strong, independent and impartial Commission, accountable to the Parliament and to the Council.

Regarding the so-called Foreign Minister, the draft articles serve to show that such an appointment can only be made if responsibility for policy remains with

the Council and if we are prepared to create a new category of commissioner, who is not bound by the normal collegiate procedures.

This Convention must not be paralysed by institutional, vested interests because that would demonstrate to the world that the European Union is not serious about being strong and effective. We must be ambitious, equipping the European Union to be a strong and progressive force for good in the world, promoting our values of democracy, human rights and social justice.⁵⁸

Mr Hain later spoke about the need to compromise in drafting articles in order to avoid re-opening arrangements agreed, with difficulty, at Nice:

Mr President, I would just like to make some brief points on the idea that we need more compromise. I believe we do. However, I believe that your proposals, Mr President, were a compromise. The elected Chairman of the Council and the proposals for the election of the President of the Commission were a compromise between the two different strands in this Convention. That is what we have to build on and we must get the detail right. I very much sympathise with the arguments of Spain and Ireland, amongst others, that it is going to be virtually impossible to reopen the Nice Treaty in respect of voting and one commissioner per country. That is part of the compromise as well.

Regarding the Chairman of the Council, what we are talking about is existing duties of the existing presidency being carried out by a full-time member, much more efficiently and better. We are not talking about a super-president who is going to be either a rival of, competing with, or dominating the President of the Commission. That is not what we want. We just want an effective Chairman of the Council to carry out the existing functions, remit or duties far more effectively in helping to lead the governments more effectively. That is part of the compromise as well. I say to people that if they want an outcome to this Convention, as I do, with a single text all agreed, compromising and forming a consensus, an elected president/chairman of the Council is an indispensable part of that, as is strengthening the position of the Commission President and some of the ideas I have suggested, particularly on equality of commissioners and rotation for each Member State and the new Member States who also have to win referenda.⁵⁹

Mr Hain was concerned about the proposal for a single legislative Council:

Mr President, I should like to come back to the subject of the new single Legislative Council, which worries me greatly and is an idea to which we are opposed. This is a new institution. I want to explain why I do not believe that any of the cabinets of our Member State governments will buy it.

⁵⁸ Convention Plenary verbatim report, 15 May 2003, at http://www.europarl.eu.int/europe2004/textes/verbatim_030515.htm

⁵⁹ http://www.europarl.eu.int/europe2004/textes/verbatim_030515.htm

If I have to go back to my cabinet and say to the Transport Minister, the Minister for Agriculture, the Finance Ministers who rejected the idea yesterday, that they cannot legislate any longer because this is the responsibility of a European minister in a single Legislative Council based in Brussels, I will not be able to get that through. I do not think I should try. Under the sectoral Councils we have succeeded in binding into Europe the environment ministers, the transport ministers, the agricultural ministers much more effectively than delegating this responsibility to one person who, in a coalition government, would find it much more difficult to carry out.

We ought to take the best ideas from this and improve transparency and openness in existing Council meetings. All sectoral Councils, when they are legislating, should be open, democratic and transparent. We should also look at how we can strengthen the ability of the General Affairs Council, when it has the report back from other Council formations - usually a ritual item that goes through in a matter of seconds. They have the ability to look again at any legislation that has come up from a sectoral Council and ask if it is in the general European interest.

That way, rather than in a new institution which will not be acceptable to all of our cabinets and would indeed be rejected by them, is the way to go forward and meet some of the very good ideas that Mr Amato, amongst others, has put forward for greater transparency and accountability when the Council legislates.⁶⁰

Mr Heathcoat-Amory was critical of the proposals:

Frankly, these institutional proposals are something of a mess. The reason is that they are the result of institutional ambition and a series of unsatisfactory compromises. Therefore I doubt that we will fulfil the simplification mandate from the Laeken Declaration. If one takes the example of the foreign minister, he or she will be a member of the Commission and therefore he or she will be bound by the collegiate rule specified in draft Article 18a(4). This person will also chair the Foreign Affairs Council. So there is an immediate conflict of interest there. It is very difficult to serve two masters in this way. It may be possible in quiet times, but if there is a crisis or a challenge such as the Iraq war, then these internal contradictions will lead to weakness, not strength, in Europe's foreign policy-making.

Secondly, on the question that we have been debating about a permanent president of the Council, I believe that this is becoming - certainly in the eyes of the public - a kind of sharing-out of jobs between politicians. We are going to have a president, an appointed foreign minister, a president of the Commission, elected or appointed according to a novel new procedure, and then we are going to have a great raft of vice-presidents. These posts will be semi-permanent and will constitute a kind of European government, but without the accountability and

⁶⁰ http://www.europarl.eu.int/europe2004/textes/verbatim_030515.htm

control that we demand from government. More important, this "Europe of presidents" will do nothing to move Europe closer to its citizens. Again, that is not an option, but a requirement. If this whole Constitution is rejected by Member States it will be because we have not fulfilled the Laeken Declaration, which they told us to right at the start.

This issue of presidents and permanent presidents is not just about small states. I sympathise with their view that these proposals will alienate their people. It is more important than that. It is about whether people, even in big states, will feel excluded from the eventual organisation. Therefore we must return to the principle on which we are founded, which is the principle and practice of the equality of Member States and between Member States. These are the essential building blocks of Europe from which we can build upwards. Therefore I have tabled my amendments and signed others to give practical effect to this founding principle, one of the central rules of the game for a more successful, more enduring and, above all, a more democratic Europe.⁶¹

The Liberal Democrat UK Alternate on the Convention, Lord MacLennan, spoke of the need to reconcile the two proposed presidency models and avoid institutional rivalry:

Mr President, on the role of the presidency of the Council two positions, supported by two rationales, have now been advanced. The first would retain the rotating presidency to sustain the equality and input of all the Member States. The second would appoint a long-term chairman to ensure the continuity and effectiveness of Council decision-making. These two positions must be reconciled. One solution would have the president of the Commission chair the General Affairs Council - as proposed by the Benelux countries, Mr Duff and a number of others. I hope that flies. If not, an alternative solution would be to share the different functions between the rotating chair – to chair the Legislative Council, host European Council meetings and communicate their decisions – and a longer-serving, politically- eminent secretary-general to chair the General Affairs Council, other formations and to drive forward the European Council's agenda.

Like the proposed foreign minister, a secretary-general appointed by the Commission could sit in the Commission, with particular personnel responsibilities preventing the emergence of rival bureaucracies.⁶²

The UK Conservative MEP, Timothy Kirkhope, strongly supported the principle of one Commissioner per Member State:

First of all I want to support the view that each Member State, regardless of its size or its date of entry, should be represented in Brussels by a commissioner. This is only fair, and it is in the spirit of a genuine and equal community of nation

⁶¹ http://www.europarl.eu.int/europe2004/textes/verbatim_030515.htm

⁶² http://www.europarl.eu.int/europe2004/textes/verbatim_030515.htm

states, both old and new, and of their citizens. Consequently, I am urging Members of the Convention to support my suggested amendment to Article 18a(2) that ‘each Member State shall nominate one person whom it considers qualified to be a European Commissioner. The President-elect shall allocate portfolios for each of those Commissioners.’ Those who say it cannot be done because it is not practical to split portfolios or deal with it that way should look at the relative strengths and sizes of governments around Europe. It is, of course, perfectly proper and perfectly possible, and it can be very efficient. The idea, as somebody has suggested, of starting with one commissioner per state and then gradually reducing it, would seem to me to be a total nonsense, apart from being impractical. We should take a commissioner for each state and retain that position. It would be very acceptable all round.

The Commission should be more non-political than it is currently. I would personally prefer that each Commissioner appointed should be either a current or former civil servant from the Member State concerned. I appreciate the view may not be generally shared, and it obviously is not, but being a commissioner quite often requires more specialist skill than is sometimes available from that large number of retired or preferred politicians that seem to be all over the place. I know that I have at least one supporter on the platform today.

My second proposal is this. Each commissioner should ‘be submitted individually to a vote of approval by the European Parliament’. A censure motion must be able to apply to the Commission, not just as a whole but to individual commissioners. Why should the whole Commission be rejected if one commissioner is thought to be unfit for office? That produces, as it did not long ago, a chaotic and farcical situation and it should not be allowed to continue.⁶³

B. UK Committees

On 7 May 2003 the Standing Committee on the Convention met to consider the Eighth Report (14th March 2003) and Ninth Report (6th May 2003) from the United Kingdom Representatives to the Convention on the Future of Europe. One of the two UK representatives on the Convention and Praesidium member, Gisela Stuart, opened the debate by applauding the “significant achievement” of the decision to create the position of a president of the Council, “a view that a few months ago was seen very much as an isolationist view of the British Government, but which was supported first by Spain and then by France and Germany”.⁶⁴

She continued:

It was quite extraordinary that throughout the time when the Iraq problem was clearly developing, the Council of Ministers never formally discussed the issue to

⁶³ http://www.europarl.eu.int/europe2004/textes/verbatim_030515.htm

⁶⁴ 7 May 2003 c4 at <http://www.publications.parliament.uk/pa/cm200203/cmstand/conven/st030507/30507s01.htm>

form an opinion. The change will allow the Union to have a forum where member states can discuss their own strategic long-term interests and those of the Union.⁶⁵

Ms Stuart considered how this might affect the UK official representatives at the EU (UKREP):

If we had a legislative council, a permanent Minister would represent us in many of the ways in which the permanent representative, UKREP, currently represents us in our negotiations. Then there is the proposal that the European Council—the Prime Ministers—would no longer be represented, together with their Foreign Secretaries, simply on merit. I sometimes wonder what the trade union of Foreign Offices across Europe thinks of the proposals.⁶⁶

Ms Stuart sought to clarify the functions of the proposed Chair of the European Council, insisting that:

... we are not creating a President of Europe, which is what would have been created if the Presidents of the Commission and of the Council had been given joint responsibility. It will be a co-ordinating role at member state level, because some national interests are much better delivered through the Union, such as our relationship with the outside world and in connection with defence.⁶⁷

David Heathcoat-Amory had serious misgivings about the institutional articles:

Giscard, our President, got his way over having a permanent President of the European Council, to be elected by the Council, instead of the rotating presidency that we have now, but he has paid a heavy price for that. All the other institutions have become more powerful. The Commission, for instance, gets executive powers, which contrast with its present powers in the treaty, under which its management and implementing powers come under the control of the Council of Ministers. In addition, it is now going to make use of a new type of Act, a non-legislative Act, that will allow the Commission to bypass national Parliaments and to make laws that are directly binding on member states. The Commission is a non-elected body that I regard as a civil service, and it will be able to make laws that are directly binding on everybody that we represent without the intermediate decision making of this House or the other place. That would, of course, reduce the power of national Parliaments.⁶⁸

⁶⁵ <http://www.publications.parliament.uk/pa/cm200203/cmstand/conven/st030507/30507s01.htm> c5

⁶⁶ Ibid c19 at

<http://www.publications.parliament.uk/pa/cm200203/cmstand/conven/st030507/30507s05.htm>

⁶⁷ Standing Committee on the Convention 7 May 2003 c38 at

<http://www.publications.parliament.uk/pa/cm200203/cmstand/conven/st030507/30507s10.htm>

⁶⁸ Standing Committee on the Convention 7 May 2003 c8 at

<http://www.publications.parliament.uk/pa/cm200203/cmstand/conven/st030507/30507s02.htm>

He regretted the lack of attention paid to the role and powers of national parliaments, commenting that the EP had gained powers at the expense of national parliaments. He continued:

We are creating a Europe of presidents. Everybody will get more titles and powers and there will be many more jobs for politicians, but not for ordinary people, which means that the gap between them will widen. We are reducing democracy in the Union rather than increasing it, which is what we are mandated to do.⁶⁹

He was particularly worried about institutional trade-offs that could result in more integration:

We see a process of institutional bargaining, which has a heavy integrationist bias, and I am concerned that the end product will be less democratic than what we started with. Unless someone starts to insist that we discharge the Laeken mandate, which is primarily about democracy, the entire project could come off the rails by simply being rejected by the people.⁷⁰

The House of Lords Select Committee on the European Union has considered a range of constitutional draft articles in a series of Reports on the Future of Europe. The Committee looked at the institutional articles in its 21st Report, *The Future of Europe: constitutional treaty – draft articles on the institutions*, HL 105, 2002-03, 13 May 2003, at <http://www.publications.parliament.uk/pa/ld200203/ldselect/ldcom/105/10501.htm>.

C. The Commission

On 4 December 2002 the Commission adopted a Communication on institutional reform, *For the European Union: Peace, Freedom, Solidarity* (the so-called “blueprint for the future institutional architecture of Europe”).⁷¹ This focused on three themes: democracy, effectiveness and clarity, and contained some controversial recommendations that brought institutional power-balances to the top of the Convention’s agenda in the following weeks. A summary of the Commission’s ‘Blueprint’ can be found in **Appendix 2**.

The Commission was disappointed by the Praesidium proposals and set out its reasons in a press release, as follows:

⁶⁹ <http://www.publications.parliament.uk/pa/cm200203/cmstand/conven/st030507/30507s02.htm>

⁷⁰ Ibid c13 at

<http://www.publications.parliament.uk/pa/cm200203/cmstand/conven/st030507/30507s03.htm>

⁷¹ Brussels, 11.12.2002, COM (2002) 728 final/2, *For the European Union Peace, Freedom, Solidarity* “Communication of the Commission on the Institutional Architecture”, at: http://europa.eu.int/comm/commissioners/prodi/pdf/com_728_2002_en.pdf. See also Annex II of this Note for Questions and Answers on the Communication.

As to substance, the Commission takes the view that the proposals run counter to the orientations of the debate in the Convention and its working groups. Neither does it reflect in a satisfactory way the discussions at the informal European Council in Athens.

The President of the Convention suggests that a seven-member 'Bureau' within the European Council, with the participation of the Presidents of the European Commission and Parliament, would oversee the coherence of the Union's activities. This would undermine the checks and balances in place between the EU institutions. It could lead to unequal treatment of Member States and this would jeopardise the trust between them. The Union does not need power to be concentrated in the hands of an intergovernmental "Bureau". Such a change would undermine accountability and effectiveness. In short, it would damage the Community method, firmly based on an equilibrium between Council, Parliament and Commission, which has been at the heart of the success of 50 years of European integration.

The Union needs a clearly defined and fully accountable executive, acting in the general interest. The proposals fall short of clarifying who would play this role and, instead, contribute to institutional fragmentation.

No mention is made of the Commission's executive function, although this is and will be even more crucial for ensuring coherence in an enlarged Union. Nor do the proposals refer to the Commission's function of external representation outside of the realm of foreign and security issues and its responsibility for the execution of the Union's budget.

Increasing the number of Presidents and Vice-Presidents and setting up a "Bureau" can only bring confusion. Duplication of bureaucracies goes against common sense and against indications coming from all sides. Instead, our aim should be to simplify executive powers, not to allow them to proliferate.⁷²

The Commissioner for institutional reform, Michel Barnier, commented in May 2003 that, in creating a more stable presidency for the Council, the Union had to guard against creating conflicts between the institutions and not establish a new administrative executive that would rival the Commission. He agreed that the creation of a foreign minister who would also be a member of the Commission was a good idea, but insisted that the Commission had to retain its credibility as the body representing coherence and the common interest. For this it needed to be collegiate, pluralist, independent and under the authority of a strong president.⁷³

⁷² Commission press release, 23 April 2003 at:

http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/03/563|0|RAPID&lg=EN&display=

⁷³ Speech 03/246, 16 May 2003 at

http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=SPEECH/03/246|0|RAPID&lg=FR&display=

D. The European Parliament

The European Parliament's views on the role of the institutions in the future decision-making procedures were set out in a Resolution in December 2002, *Typology of acts and hierarchy of legislation in the European Union*.⁷⁴ Regarding its own powers the EP has called for:

- wider use of the codecision procedure (linked to QMV)
- closer involvement in the sphere of trade policy and external economic relations, the CFSP and police and judicial cooperation on criminal matters (Communitarisation)
- the right to elect the President of the Commission, whose political role should be strengthened
- involvement in the procedure for authorising use of enhanced cooperation
- involvement in the work of drafting the European Council's multiannual strategic programme and the Council's activity programme
- There should be no EP 'second chamber'.

The EP has not published a position paper on the current institutional drafts, but the views of MEPs were summarised in a document based on the Praesidium's Draft Preliminary Constitution of October 2002, which is summarised below.⁷⁵

The EP supported a single institutional structure, which would go "hand in hand with the Communitarisation of both the CFSP and police and judicial cooperation on criminal matters".⁷⁶ It has been critical of the system of rotating presidencies and believes the Council should give up its executive powers to the Commission and focus on its legislative role. On the issue of Council formations, the EP favours up-grading the General Affairs Council and reducing the number of sectoral Council formations.

On the Commission, the EP acknowledged two options: either a set number of 20 Commissioners (with rotation), or one Commissioner per Member State (with a stronger role for the President and a clear hierarchy of functions). The Commission's powers should include a monopoly on the right to propose legislation (subject to Article 192

⁷⁴ European Parliament resolution on the typology of acts and the hierarchy of legislation in the European Union (2002/2140(INI)), 17 December 2002 at http://www3.europarl.eu.int/omk/omnsapir.so/pv2?PRG=CALDOC&TPV=PROV&FILE=021217&TX_TLST=1&POS=1&LASTCHAP=20&SDOCTA=18&Type_Doc=FIRST&LANGUE=EN. See also report by Jean-Louis Bourlanges, A5-0425/2002, 3 December 2002, at http://www2.europarl.eu.int/omk/sipade2?SAME_LEVEL=1&LEVEL=0&NAV=X&PUBREF=-//EP//TEXT%2BREPORT%2BA5-2002-0425%2B0%2BDOC%2BXML%2BV0//EN

⁷⁵ CONV 369/02, 28 October 2002

⁷⁶ *Parliament's Position on the Preliminary Draft Constitutional Treaty*, at http://www.europarl.eu.int/comparl/conv/documents/ep_position_en.pdf

TEC), a general executive role (implementing power), the leading role in the preparation of the European Council and the role of guardian of the Treaties.

Its views on the Court of Justice were that judges should be appointed for nine years by the Council, acting by QMV and with the EP's assent; that there should be an odd number of judges equal to or higher than the number of Member States; that the Statute for the Court should be adopted by the Council by QMV and with the EP's assent; and that there should be no restrictions in the JHA area. There should be improved access to the Court for all 'natural and legal persons'.

For the Court of Auditors, the EP supported the appointment of a fixed number of members by the Council by QMV and with the EP's assent, with membership partially renewed every three years. The Court's powers should include the right of direct access to the preliminary work in the sphere of financial control carried out by national and regional authorities. The EP wants the Executive Council of the ECB to be appointed subject to its assent, or the power to confirm that appointment.

E. The European Courts

The Treaty of Nice had introduced some reforms to enable the Courts to cope more efficiently with the increased workload of past years and the expected increase with enlargement. These changes are discussed in Library Paper 01/61, *The European Communities (Amendment) Bill: Implementing the Treaty of Nice, Bill 3 of 2001-2003*, 28 June 2001.

Antonio Vitorino, the President of the Discussion Circle on the Court of Justice set up by the Convention, put forward proposals for the nomination of judges, the number of judges, the length of their term and direct access by individuals to the European Courts. The Circle had heard evidence from the presidents of the two EU Courts (ECJ and the Court of First Instance), as well as from members of the Council of Barristers (CCBE). The majority of the Circle wanted to maintain the present principle of one judge per Member State for the ECJ, while for the CFI the Circle's report concluded that the formula of 'at least' one judge per Member State was 'satisfactory'.⁷⁷ The Report proposed retaining the system by which the judges are nominated by their respective governments with the agreement of the other Member States. The Circle was divided on this matter, with opponents recommending the nomination of judges by the Council acting by QMV. The President of the ECJ, Gil Rodriguez Iglesias, believes the present system adequately assures the independence of the Court and his counterpart in the CFI, Bo Vesterdorf, thinks reform of the current system is not absolutely necessary.⁷⁸

⁷⁷ For several years the Council has promised the CFI six extra judges who would have supplemented the present 15, but they have never been appointed because the Council could not agree on their nationality, the large Member States believing that they should be theirs.

⁷⁸ *Agence Europe* 31 March 2003

The Report also envisaged the creation of a committee of evaluation, a filtering mechanism whose task would be to give an opinion to the Member States (or the Council) on the ‘appropriateness’ of a candidate. This Committee could reinforce the strict requirement for accuracy by the Member States in presenting their candidates. It could be composed of former members of the Court, from representatives of the highest national courts. The EP could be associated with the procedure. The Report did not envisage public hearings. The CCBE proposed that the nominations for judges should be examined by a consultative committee composed of highly qualified independent lawyers helping the Member States. The CCBE rejected the principle of public investiture hearings (as in the US for the Supreme Court).

Mr Vitorino suggested that the future constitution could distinguish between the ECJ and the CFI regarding the length of their term. ECJ judges could be fixed at 12 years, non-renewable, while for the CFI judges it could be the present six years renewable. The two Presidents declared their preference for the present system, but were open to lengthening the ECJ mandate to 12 years.

IX Accession States: institutional provisions and status at IGC

The Copenhagen summit of December 2002 resolved the question of the timing of participation in the EU institutions by the acceding states and both interim and permanent institutional provisions are included in the Treaty of Accession.⁷⁹ This stipulates that Commissioners from the new Member States will join the current Commission as from the date of accession on 1 May 2004. After the nomination of a new Commission President by the European Council, the newly elected EP would approve a new Commission to take office on 1 November 2004. On the same date, the Nice Treaty provisions on the Commission and voting in the Council will enter into force. The new Member States will be represented in the EP from the date of their accession by national representatives elected by their own procedures until the EP elections in June 2004.

The accession states have attended Council meetings as observers and have had 162 observers in the EP since 1 May 2003. This has taken the total number of MEPs/observer MEPs to a temporary high of 788.⁸⁰ They will not have speaking or voting rights in plenaries until accession on 1 May 2004, when they will be replaced by, or become, the nationally appointed MEPs until the end of the parliamentary term of office. They will

⁷⁹ For information on the institutional provisions in the Accession Treaty, see Library Research Paper 03/48, *Enlargement and the European Union (Accessions) Bill* (Bill 98 of 2002/03), 19 May 2003

⁸⁰ This will be reduced once the Nice requirements for a reduction in EP seats takes effect in 2004.

have speaking but not voting rights in committees and they will be able to submit documents through the chairman of the body in which they are participating.

The Copenhagen Conclusions also stated that the accession states would “participate fully”.⁸¹ The Treaty of Nice had stipulated that the next IGC should be launched in 2004, but the decision on the opening of the Conference will be taken at Thessaloniki on 20 June 2003. It is expected to start in autumn 2003, after the final accession country referendum (and after the Swedish referendum on adopting the euro), and end in early 2004. Some Member States, led by Italy, the next holder of the EU Presidency, would like it to finish by the end of 2003 and therefore result in another ‘Treaty of Rome’. The Copenhagen Conclusions also stated that “The new Treaty will be signed after accession. This calendar shall be without prejudice to the timing of the conclusion of the IGC”. In other words, agreement will probably be reached before 1 May 2004, but will not be signed. Mr MacShane said in reply to a parliamentary question in June 2003: “We understand this to mean they will have the same negotiating rights and voting rights as current member states”.⁸² The Nice institutional provisions for the EP will probably run until the 2009 elections, although other aspects of the constitutional treaty could come into effect before then, if ratified.

X Conclusion

The Convention on the Future of Europe has been unable to agree on some basic institutional issues, such as the size of the Commission and votes in the Council of Ministers. These were issues that could not be resolved at either the Amsterdam or Nice IGCs and are again proving to be equally difficult. A meeting on 4 June 2003 between Mr Giscard d’Estaing and government representatives on the Convention to try and agree compromise positions on the institutional issues was not fruitful and was described as “quite hopeless” by a diplomat.⁸³ The familiar positions could not be shaken. Reports of the meeting suggest that attempts by France and Germany to put forward proposals that would further integration were, predictably, rejected.⁸⁴

Discussions on the institutions continued with a view to piecing together the various elements of agreement, and emerged as the set of draft institutional articles presented by the Praesidium on 10 June 2003. At the plenary debate on 11 June the familiar voices of criticism or support for the revised text were heard. They concerned QMV, the position of chairman of the Council, the rotation of the Council, the head of the European Council and Commissioners with no voting rights.

⁸¹ Presidency Conclusions, 29 January 2003, 15917/02 at <http://ue.eu.int/pressData/en/ec/73842.pdf>

⁸² HC Deb 4 June 2003 (Part 2), c437W

⁸³ *EUObserver.com*, 5 June 2003 at <http://www.euobserver.com/index.phtml?aid=11608>

⁸⁴ By the UK, Spain and Poland, as well as the 16 smaller Member and accession states, which want to observe the status quo

The different components in the Convention gave their positions on the latest text to the Praesidium on 12 June. The Praesidium will try again to “draw the strings together” and produce a compromise on the controversial matters at the final Convention plenary. The last few days have seen the Praesidium pushed to produce successive revised compromise texts. However, although there is now agreement in some areas of institutional reform, there does not appear to be any real conviction in the Convention that the final draft texts are wholly satisfactory.

Appendix 1 Selected Contributions on the Institutions

Peter Hain <http://register.consilium.eu.int/pdf/en/03/cv00/cv00591en03.pdf>
and <http://register.consilium.eu.int/pdf/en/02/cv00/00367en2.pdf>

Andrew Duff <http://register.consilium.eu.int/pdf/en/03/cv00/cv00524en03.pdf>
and <http://register.consilium.eu.int/pdf/en/03/cv00/cv00487-re01en03.pdf>

Romano Prodi

http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=SPEECH/03/202|0|RAPID&lg=FR&display=

and <http://register.consilium.eu.int/pdf/en/02/cv00/00469en2.pdf>

Jakob Söderman (EU Ombudsman)

<http://register.consilium.eu.int/pdf/en/03/cv00/cv00505en03.pdf>

Alain Lamassoure <http://register.consilium.eu.int/pdf/en/02/cv00/00235en2.pdf>

<http://register.consilium.eu.int/pdf/en/02/cv00/00452en2.pdf>

<http://register.consilium.eu.int/pdf/en/03/cv00/cv00507en03.pdf>

<http://register.consilium.eu.int/pdf/en/02/cv00/00453en2.pdf>

Members of the Convention <http://register.consilium.eu.int/pdf/en/03/cv00/cv00646en03.pdf>

Benelux <http://register.consilium.eu.int/pdf/en/02/cv00/00457en2.pdf>

and <http://www.diplobel.fgov.be/Press/Home/homedetails.asp?ID=236>

Several Convention members <http://register.consilium.eu.int/pdf/en/03/cv00/cv00590en03.pdf>

Franco-German contribution <http://register.consilium.eu.int/pdf/en/03/cv00/cv00489en03.pdf>

Sweden http://europa.eu.int/futurum/documents/other/oth250402_en.pdf

Czech Government <http://register.consilium.eu.int/pdf/en/03/cv00/cv00485en03.pdf>

European Policy Centre

http://www.theepc.be/europe/strand_one_detail.asp?STR_ID=1&TWSEC=Commentary&TWDOSS=&REFID=1049

and http://europa.eu.int/futurum/forum_convention/documents/contrib/acad/0284_c3_en.pdf

Ingolf Pernice (academic)

http://europa.eu.int/futurum/forum_convention/documents/contrib/acad/0403_c4_en.pdf

Appendix 2 Commission ‘Blueprint’

The main proposals:

- **Commission**
 - The Commission President would be elected by the EP and approved by the European Council. For the rest of the Commission, designation by QMV and approval of Commission President, with the current situation of EP approval collectively.
 - The European Council would have a new right to censure the Commission (the proposals seek to create accountability to both the EP and Council, while preserving the current balance between them).
 - Commission to be composed of one national from each Member State but restructured around Union’s core tasks.
 - Commission President should have wider steering powers and be able to oppose initiatives he judges ‘inopportune’.
 - The Commission’s collective and exclusive right of initiative would be affirmed in all non-CFSP matters.
 - The Commission’s internal organisation would allow Commission members to take decisions individually on behalf of Commission.
 - The Commission’s role as the monitor of EU law will have to be strengthened: Commission should be given power to take decisions on alleged breaches of EU law
- **European Council and Council of Ministers**
 - The six-monthly rotating Presidency would remain for the European Council, the General Affairs Council and COREPER, while other special Council formations (e.g. finance or agriculture ministers) would choose Presidents for a year (to ensure coherence of Council business by having the same Presidency in charge of ‘horizontal’ issues, while trying to ensure continuity in individual policy areas and providing presidency experience for all states).
 - The European Council would be restricted to Heads of State and Government (without foreign ministers). The Commission President would be allowed to attend, but not as a member.
- **European Parliament**
 - the European Parliament would be elected under a dual system, with European-wide lists supplementing elections on a national basis.
- **European legislation**
 - co-decision would become the legislative procedure for all EU law with Qualified Majority Voting the general rule.
 - QMV would involve a simple dual majority system: simple majority of Member States representing a majority of total Union population. In special cases use of enhanced majority: three-quarters of governments representing two-thirds of Union population.

- a clear hierarchy of legislative norms would be established, involving institutional laws, co-decision laws (including framework laws and laws which are directly applicable in Member States), regulations (implementing laws adopted by Commission), with provision for delegation of adoption of legislation to Commission unless opposed by Council or EP.
- **Third Pillar: Cooperation in Police Matters**
 - With abandonment of pillar structure, this area should be covered by general EU legislative procedures of co-decision and QMV.
 - Administrative cooperation would be the responsibility of national authorities with the Commission proposing cooperative measures.
 - QMV to decide planning, arrangements and field of coordination of national action in police matters after five-year transitional period.
- **Common Foreign and Security Policy**
 - Merging functions of High Representative and External Relations Commissioner
 - the CFSP High Representative would become the 'Secretary of the Union', with a supporting secretariat detached from the Council and composed of Commission, Council and Member State officials. For a five-year transitional period the Secretary would be a member of the Commission with a special mandate from the Council, and could only bring forward CFSP initiatives in accordance with that mandate. After five years the Secretary would still be appointed between the Commission and Council and would report in a personal capacity to both. Both the European Council and the Commission President would be able to terminate his job. As a member of the Commission, he would also report to the European Parliament.
 - He would have the sole right of initiative on CFSP matters, subject only to a veto by the Commission President. Commission external representations would become 'Union delegations' managed by the Commission under the authority of the Secretary of the Union (unity of administration is essential for effective common action).
- **Economic Policy**
 - Strengthening economic policy co-ordination, in particular, co-operation between the euro zone countries, with the establishment of a euro zone Finance Ministers Council with decision making powers.
 - Economic policy will remain a national prerogative, with coordination a joint obligation and with stronger role for the Commission and Council's decision-making capacity.
 - Effective external representation for euro zone at international fora.
- **Funding Common Policies**
 - The Treaty must extend the Union's capacity to define its funding arrangements to achieve fairness, a balance between expenditure and revenue and simplicity.
 - The multiannual financial perspective should be adopted by the EP and Council on a proposal from the Commission.

- The Own Resources decision should be an EP and Council decision by enhanced majorities, and the role of national parliaments in this process needs reconsideration.
- The budget would be adopted by EP and Council by co-decision and the distinction between compulsory and non-compulsory expenditure dropped.
- Establishment of European Public Prosecutor to protect the Union's financial interests.⁸⁵

- **National parliaments**
 - The report of the Convention Working Group on national parliaments is generally welcomed. The Commission could transmit legislative proposals, consultative documents and strategic planning documents directly to national parliaments.
 - National parliaments should play a role in monitoring subsidiarity *ex ante* and possibly through *ex post* judicial control.
 - National parliaments should cooperate more with the EP and give views on EU funding arrangements.

- **Treaty restructuring and ratification**
 - The Treaty should present powers which show different levels of intensity of Union action, but not an inflexible catalogue of competences.
 - The need to safeguard the *acquis*.
 - The Treaties should be replaced by a constitutional treaty.
 - There is a need to explore the unanimity requirement for Treaty amendment to prevent blocking a new constitutional text, including the possible implementation of a new Treaty before ratification by all Member States.

⁸⁵ See COM (2000)608 final and COM (2001)715.

Appendix 3 Franco-German Proposal

The specific institutional proposals were:

1. European Council

- A stable presidency to give the leadership of the European Council continuity, stability and a higher profile.
- A five-year full-time elected president or a term of two and a half years with re-election.
- President would prepare, chair and organise the proceedings of the European Council and ensure its decisions are carried out
- President would represent the Union on the international arena at meetings of the heads of State or government, without prejudicing the responsibilities of the Commission and its President. The European Minister of Foreign Affairs would conduct the day-to-day business relating to the CFSP.

2. European Commission

- Commission remains the mainspring of European integration and guardian of the treaties
- The Commission has the right of initiative in accordance with the procedures provided for by the treaties
- It is responsible for implementing the legislation adopted by the European Parliament and the Council and for monitoring and controlling the proper implementation of Council decisions.
- Need for a radical simplification of the committee procedure.
- In order to fulfil their political responsibility, Commissioners must be authorised to instruct the directorates-general
- In the field of economic policy, the role played by the Commission, particularly in the supervision of the Stability and Growth Pact, must be strengthened by giving the Commission the means of establishing that excessive public deficits have been, or are liable to be, incurred
- The accountability of the Commission must be guaranteed more effectively without prejudice to its independence and autonomy.
- The Commission and its president must be appointed immediately after the EP elections. The President of the Commission would be elected by the EP by QMV and approved by the European Council by QMV
- The Commission President forms the college of Commissioners, taking account of the geographical and demographic balance.
- The President may distinguish between commissioners with a sectoral portfolio and commissioners with specific functions or missions, with a strict system of rotation.
- Once approved by the European Parliament, Commissioners are appointed by the Council by QMV
- The President of the Commission gives political directives to the proceedings of the Commission
- The Commission is politically accountable to the EP and the European Council.

3. European Parliament

- The EP has joint legislative power with the Council.
- Where the rule of the majority vote is extended in any way to the Council, codecision-making power must be automatically conferred on the European Parliament
- The budgetary procedure should be rationalised and simplified and thought given to the conditions under which the EP could take decisions on all or part of the budget revenue, without increasing the overall tax burden.

4. Council of Ministers

- The Council of Ministers would have greater operational responsibilities, in particular in the JHA and CFSP areas, which will make more stable leadership imperative
- The Council must concentrate on essentials: decisions taken by the Council must allow the Commission and the Member States extensive powers of implementation and administration
- The Council must be efficient: decisions must be taken as a general rule by qualified majority voting
- To give the action of the Council a higher profile and make it more comprehensible, a distinction should be made between its operational and legislative tasks. For operational tasks, its working methods must give precedence to efficiency and promptness in decision-making. With regard to its legislative tasks, the debates of the Council should be public and its duties generally performed on the basis of joint decision-making with the EP
- The modalities of Council chairmanship would vary according to the matters under discussion. The General Affairs Council, for instance, would be chaired by the Secretary-General of the Council; the External Relations Council by the European Minister of Foreign Affairs. The ECOFIN, Eurogroup and JHA Councils would elect their chairmen for two years from amongst their members. The chairmanship of the other Council formations must be organised so as to guarantee the greatest possible participation of all Member States on the basis of a strict system of rotation.

5. External activities of the Union

- The functions of the High Representative and the Commissioner for external relations should be performed by the same person, a European minister of foreign affairs with a strengthened role.
- The European minister of foreign affairs would have a formal right of initiative in the field of the CFSP and would chair the Council for external relations and defence
- The European Council would appoint the European minister of foreign affairs by QMV in agreement with the Commission President. He/she would participate in that capacity and as a member of the Commission with special status, in the meetings of the Commission. The Commission would not take any decisions in CFSP matters

- With regard to the CFSP, decisions would be taken as a rule by QMV, but those with implications for security and defence by unanimity. If a Member State invoked national interest to oppose a decision, the European minister of foreign affairs would work with that State to find a solution; if he/she did not succeed, the President of the European Council would do likewise; if no solution were found, the matter would be referred to the European Council, which would decide by QMV.
- The European minister of foreign affairs would have the support of a European diplomatic service in which the Commission's directorate-general worked together with a foreign policy unit. This would include the foreign policy services of the Council's secretariat and civil servants from the Member States and the Commission. The European diplomatic service would work closely with the diplomatic services of the Member States. The existing Commission delegations would be converted into delegations of the European Union. This set-up would provide a framework within which a European diplomatic service could emerge.
- All EU Member States should participate in European Security and Defence matters. However, there will be situations where all the Member States will not be willing or prepared to participate in cooperation projects, or will not be in a position to do so. In this case, those who so wish must be able to use the enhanced cooperation instrument for the Common Security and Defence Policy (CSDP).

6. National parliaments

- National parliaments must be involved to a greater extent in elaborating and supervising Union decisions: they are irreplaceable links between citizens and the Union and help to create the feeling of belonging to Europe as an integral entity.
- National parliaments should intervene in the monitoring of the subsidiarity principle by means of an "early warning" system.
- National parliaments should participate in future reforms of the Treaties in a European Convention.
- Without creating new institutions, a dialogue has to be developed between MEPs and national parliamentarians, for example through the organisation of an annual debate on the state of the Union in the Congress. These meetings, which would be held in Strasbourg and chaired by the EP President.

Appendix 4 UK Contributions to the Convention

This section includes institutional proposals by Government and Opposition party representatives to the Convention.

A. Hain/Palacio Contribution

At the end of February 2003, Peter Hain made a joint contribution with his Spanish counterpart Ana Palacio, entitled *The Union Institutions*.⁸⁶ The key elements of this proposal were:

- The Commission President would be appointed by QMV in the European Council and approved by the European Parliament;
- A full-time ‘chair’ of the European Council appointed for four years;
- The Chair would be responsible for presiding over European Council meetings, ensuring follow-up of decisions taken there by chairing the General Affairs Council, enhancing the profile of the external representation of the EU and informing EP of work;
- A collective Council presidency consisting of a team of Member States. The share of portfolios within the team could be fixed in advance. Each member of a four- member team would chair two ministerial councils for six months, so that over two years they chaired all the different Councils;
- Extension of EP power through a wider application of the co-decision procedure and QMV in the Council;
- A Minister of Foreign Affairs who would chair external relations meetings, participate in Commission meetings and have a formal right of initiative in the CFSP;
- Possibility of European Congress bringing together once a year representatives from the EP and national parliaments to adopt resolutions or recommendations only;
- A more effective division of labour between the Court of Justice, the Court of First Instance and the judicial panels foreseen in the Treaty of Nice. The ECJ should only handle the most important cases.

B. Peter Hain: proposed amendments to Title IV articles

Article : 14, Title IV, Part I⁸⁷

1. *OK.*
2. *We note the intention to designate the European Council as an institution. Final decisions on the desirability of this change will need to be taken when we have the whole Constitutional Treaty.*
3. *OK.*

⁸⁶ CONV 591/03, ? February 2003

⁸⁷ <http://european-convention.eu.int/Docs/Treaty/pdf/414/14Hain.pdf>

Article : 15, Title IV, Part I⁸⁸

1. The European Parliament shall, jointly with the Council, enact legislation, as well as exercise functions of political control and consultation as laid down in the Constitution. **It shall elect the President of the European Commission.**
2. The European Parliament shall be directly elected by universal suffrage **of European citizens** in free and secret ballot for a term of five years. Its members shall not exceed seven hundred in number. Representation of European citizens shall be degressively proportional, with a minimum threshold of four members per Member State.
3. *OK.*

Explanation :

Article 15.1 The last sentence is misleading. If there is to be a reference to the EP's role in electing the President of the Commission here, it should be brought into line with the provisions set out in 18.4 in their entirety. It is clearer simply to delete the reference here.

Article 15.2 The UK has, since the introduction of direct elections, given EP voting rights to Commonwealth citizens who fulfil certain conditions but who are not UK nationals for Community law purposes more generally. In order not to disenfranchise them, "of European citizens" should be deleted.

Article : 16, Title IV, Part I⁸⁹

1. *OK.*
2. The European Council shall consist of the Heads of State or Government of the Member States, together with its President and the President of the Commission. The Foreign Minister **Minister and the Foreign Ministers of the Member States** shall take part in its work.
3. The European Council shall meet quarterly, convened by its President. When the agenda so requires, its members may decide to be assisted by a minister, and, in the case of the President of the Commission, a Commissioner. **The President shall also invite the Economic and Finance Ministers to participate in European Council meetings when the European Council is discussing matters relating to economic and monetary union.** When the situation so requires, the President shall convene an additional meeting of the European Council.
4. *OK.*

Explanation :

An article equivalent to the current Article 207 TEC establishing COREPER and the Council Secretariat will be required in Part II of the Treaty. This should also specify that the Council Secretariat will provide support to the European Council and its President.

Article 16.2 Foreign Ministers, as now, should continue to have a seat at the European Council. It is particularly important that they be allowed to replace their Head of State or Government should he/she be absent from the Council chamber.

Article 16.3 This amendment reflects the existing situation under the Declaration on Part Three, Title VII (ex Title VI) of the TEC (the « Maastricht declaration »).

Article : 16a, Title IV, Part I⁹⁰

1. The European Council shall elect its President, by qualified majority, for a term of two and a half years, renewable once. [The person elected must be, or have been for at least two years, a member of the European Council.] In cases of serious **malpractice/misconduct**, the European Council can end his mandate according to the same procedure.
On issues concerning its common foreign and security policy he shall ensure that the Union at

⁸⁸ <http://european-convention.eu.int/Docs/Treaty/pdf/415/15Hain.pdf>

⁸⁹ <http://european-convention.eu.int/Docs/Treaty/pdf/416/16Hain.pdf>

⁹⁰ <http://european-convention.eu.int/Docs/Treaty/pdf/41699/16bisHain.pdf>

his level is effectively represented in the wider world.

2. The President of the European Council shall chair it and drive forward **its the Council's** work, ensuring proper preparation and continuity. He shall endeavour to facilitate cohesion, **and** consensus **within the European Council and consistency**. He shall present a report to the European Parliament after each of its meetings.

3. *See comments below.*

4. *OK.*

Explanation :

Article 16a 1 A change to the detail of the article only. We strongly support the substance and believe that, in practice, the Chair is most likely to meet the criteria. But would not a Constitutional provision confining candidates to people who are or have been members of the European Council for two years too restrictive? "Malpractice" is not the correct word in English.(cf Article 216 TEC).

Article 16a 2 When it will no longer be the case that any single Member State holds the Chair of every Council formation at the same time, the Chair of the European Council will have an important role to ensure the work of the Council formations is properly coordinated and consistent with the agenda set by the European Council. Our amendment makes this explicit in the Treaty. In order to achieve this, the Chair might also chair the General Affairs Council and meetings of the Chairs of the sectoral Councils.

Article 16a 3 It is not clear what the role of this board would be. We propose instead a system of team presidencies, in which 4 or 5 countries, by rotation, would chair the sectoral councils for a set period of time (1 to 2 ½ years). Membership of the team would be governed by the principle of equality. The members could meet, under the chairmanship of the Chair of the European Council, to coordinate the work of the Council formations. This could be set out in Article 17a 6.

Article : 17, Title IV, Part I⁹¹

1. The Council of Ministers shall, jointly with the European Parliament, enact legislation, and shall carry out policy-making, **executive** and co-ordinating functions, as laid down in the Constitution.

2. *OK.*

3. *OK.*

Explanation :

Article 17.1 The language has been changed to be consistent with that used in Article 18.1.

Article : 17a, Title IV, Part I⁹²

1. The General Affairs Council shall ensure consistency in the work of the Council of Ministers. With the participation of the Commission, it shall prepare meetings of the European Council.

It shall be chaired by the Chair of the European Council.

2. *Delete.*

3. *OK.*

4. *Delete.*

5. *OK.*

6. *Replace with :*

These formations shall be chaired by a team of Member States, membership of which shall be determined by a system of rotation, following the principle of equality between Member States.

Explanation :

Article 17a 1 See our comment on article 16a 2. As there, our amendment makes clear the role of

⁹¹ <http://european-convention.eu.int/Docs/Treaty/pdf/417/17Hain.pdf>

⁹² <http://european-convention.eu.int/Docs/Treaty/pdf/41799/17bisHain.pdf>

the Council Chair. Article 17a 2 We do not support the creation of a Legislative Council. We believe that the function of ensuring consistency across the sectoral Councils should be performed by the GAC (as in 17a).

We do not judge the distinction between the executive and legislative functions of the Council to be sufficient to support this institutional structure.

Article 17a 4 We believe that the Council should be free to decide on its remaining formations, as set out in 17.5. The current treaties do not specify individual formations, and we believe that to limit the Council's work in the way proposed could lead to inflexibility.

Article 17a 6 We welcome the aim of the original article, but believe that it should be more specific and create a "team presidency" system for the chairs of all the Council formations except General and Foreign Affairs. It would spread the burden of chairmanship between member states, maintain equality through rotation, and provide longer term continuity. The team could be in place for up to 2 ½ years. See our comment on Article 16a 3.

Article : 17b, Title IV, Part I⁹³

- 1. We are content with the agreement reached at Nice for vote reweighting, which has not yet come into force.*
- 2. It is unclear whether this provision applies to when the European Council takes decision by consensus. We believe it should.*

Article : 18, Title IV, Part I⁹⁴

- 1. The European Commission shall, within the scope of its powers, safeguard the general European interest. It shall ensure the application of the Constitution, and steps ensure that the provisions of the Constitution and the measures taken by the institutions under the Constitution are applied, in order to safeguard the general European interest. It shall also exercise coordinating, executive and management functions as laid down in the Constitution. 2-4 OK.*

Explanation :

Article 18.1 Clarification of the scope of application of the provision is required.

Article : 18a, Title IV, Part I⁹⁵

- 1. OK.*
- 2. Each Member State shall submit one persona list of three persons, of which at least one must be a woman, whom it considers qualified to be a European Commissioner. The President elect, taking account of European political and geographical balance, shall, from among the names submitted, select as members of the Commission [up to thirteen persons] chosen for their competence, European commitment, and guaranteed independence. The President and the persons so nominated for membership of the Commission shall be submitted as a body to a vote of approval by the European Parliament.*
- 3. The Commission, as a body, shall be accountable responsible to the European Parliament and to the Council of Ministers. Under the procedures set out at Art. X of the Constitution, it may pass a censure motion on the Commission. If such a motion is passed, the members of the Commission must all resign. They shall continue to handle everyday business until their successors are nominated. 4,5 OK.*

⁹³ <http://european-convention.eu.int/Docs/Treaty/pdf/417999/17terHain.pdf>

⁹⁴ <http://european-convention.eu.int/Docs/Treaty/pdf/418/18Hain.pdf>

⁹⁵ <http://european-convention.eu.int/Docs/Treaty/pdf/41899/18bisHain.pdf>

Explanation :

Article 18a 2 The success of such a system depends on its ability to attract candidates of the highest calibre. The complexity of the proposed system risks dissuading the best candidates from putting themselves forward. A system whereby each country put forward only one candidate is more likely to attract good candidates. We support the aim of making the Commission more representative of the diverse population of the Union.

More generally, while we support the aim of a smaller Commission, we had expected this to be addressed on the basis agreed at Nice.

Article 18a 3 The Commission should continue to be accountable to the Council as well as to the Parliament in order to maintain the current institutional balance.

Article : 19, Title IV, Part I⁹⁶**Article 19 : The Foreign Minister European External Representative**

1,2 OK.

3. The Foreign Minister shall be one of the Vice-Presidents of the Commission. He shall be responsible there for handling those external relations issues and for co-ordinating other aspects of the Union's external action, for which the Commission has responsibility. In exercising these responsibilities within the Commission, and only for these responsibilities, he shall be bound by Commission procedures he shall enjoy special status and not be bound by the Commission's duty to act collectively.

Explanation :

The title "European Foreign Minister" could be misleading as to the content of the job.

References to it should therefore throughout be replaced by the European External Representative, as suggested in the report of the External Action Working Group.

Article 19.3 It is important to clarify the exact status of the "Foreign Minister" in the Commission.

We assume that development and trade matters will be handled, as now, by Commissioners with specific responsibilities in those areas and therefore subject to Commission procedures. The "Foreign Minister" should however, NOT be bound by those procedures as this would compromise his need both to present the Commission view and to speak for the Council on an external issue.

Article : 20, Title IV, Part I⁹⁷

1. OK.

2. OK. Provision will be needed for an advisory panel for appointments, to reflect the conclusions of the Discussion Circle. If not in this Article, it should be in Part II.

3. This paragraph paraphrases inaccurately a number of important Treaty articles. Either we require a lot more detail which may be inappropriate for Part I, or we could substitute the text with:

The jurisdiction of the Court of Justice, including the High Court, is set out in Part II.

4. The Court of Justice shall have no jurisdiction over any matter relating to the CFSP.

Explanation :

Article 20.4 New additional paragraph required.

Amendments submitted by the UK to Article 9 of the Freedom, Security and Justice title reflected the distinct arrangements we would wish to see for ECJ jurisdiction in JHA. An alternative to this would be to include similar language in Article 20.

⁹⁶ <http://european-convention.eu.int/Docs/Treaty/pdf/419/19Hain.pdf>

⁹⁷ <http://european-convention.eu.int/Docs/Treaty/pdf/420/20Hain.pdf>

Article : 21, Title IV, Part I⁹⁸

1. The European Central Bank shall direct the European System of Central Banks (the ESCB), of which it, alongside the national central banks, forms part.
2. The primary objective of the Bank and the ESCB shall be to maintain price stability. Without prejudice to the objective of price stability, it they shall support general economic policies in the Union with a view to contributing to the achievement of the Union's objectives.
3. The Bank shall define and, in conjunction with the ESCB, implement the monetary policy of the Union. It alone may authorise the issue, or in the case of coins approve the volume of issue, of the Union currency, the Euro. It shall conduct other Central Bank tasks according to the provisions of Part II of the Constitution.
- 4,5 OK.
6. Within its areas of competence, the Bank shall be consulted on all proposed Union acts, and all proposals for regulation legislation at national level; and may given an opinion.
7. The organs of the Bank, their composition and operating methods are set out in articles X to Y of Part II, as well as in the Statute of the Bank and of the ESCB.

Explanation

The article as drafted does not accurately reflect the relationship between and the respective roles of the European Central Bank and the European System of Central Banks. The amendments suggested to paragraphs 2, 3 and 7 would correct this.

Article 21.3 In the case of coins, only the volume of issue and not the issue itself is approved by the ECB.

Article 21.6 The ECB should continue to be consulted only on proposals for legislation at national level, not proposals for regulation (which is much broader).

Article : 22, Title IV, Part I⁹⁹

- 1,2 OK.
3. It shall be managed and directed by a Board of Auditors General, consisting of nine members appointed by the Council for a term of six years, and supervised by a Governing Committee of representatives of the Member States. Members of the Board shall be chosen from among persons who belong or have belonged to external audit bodies or who are especially qualified for the office. It shall consist of one national of each Member State. In the performance of their duties, its members they shall be completely independent.

Explanation :

Article 22.3 The UK will this week submit a paper setting out our proposals for reform of the European Court of Auditors. The suggested amendments to the article reflect this paper and the text it proposes for the ECA article in Part 2 (old article 247).

Article : 23, Title IV, Part I¹⁰⁰

- OK.
2. OK. (But see 518/03, the British Government's paper on the role of the regions in Europe, which makes several proposals for boosting the role of the Committee of the Regions, which should be incorporated in Part 2 of the Constitution.)
3. OK.
4. OK.
5. OK.

⁹⁸ <http://european-convention.eu.int/Docs/Treaty/pdf/421/21Hain.pdf>

⁹⁹ <http://european-convention.eu.int/Docs/Treaty/pdf/422/22Hain.pdf>

¹⁰⁰ <http://european-convention.eu.int/Docs/Treaty/pdf/423/23Hain.pdf>

C. David Heathcoat-Amory: proposed amendments to Title IV articles

Article 14 : The Union's Institutions¹⁰¹

1. The Union shall be served by *[Delete: a single]* **an** institutional framework which shall aim to: *[Delete- advance the objectives of the Union,]*

[- promote the values of the Union,]

- serve the interests of *[the Union, its citizens and its]* Member States **and their citizens**, and ensure *[the]* a consistency, effectiveness and continuity of the policies and actions *[which it undertakes]* **undertaken** in pursuit of its objectives.

2. This institutional framework comprises :

The European Parliament,

The European Council,

The Council of Ministers,

The European Commission,

The Court of Justice of the European Union,

The European Central Bank,

The Court of Auditors.

3. Each institution shall act within the limits of the powers conferred on it *[in the Constitution]* **by the Treaties**, and in conformity with the procedures and conditions set out in it. The institutions shall practice full mutual **administrative** cooperation.

Explanation (if any) : These amendments underline the cooperative and distinct nature of the Communities, which is not a single corporative entity. There should be no legal obligation for different institutions to mutually cooperate (ie compromise) in an instance of mutual contention, eg over institutional fraud.

Article 15 : The European Parliament¹⁰²

1. The European Parliament shall, *[jointly]* with the Council, *[enact legislation]* **assist in drafting legislative proposals**, as well as exercise functions of political control and consultation as laid down in the Constitution. It shall *[elect]* **confirm the appointment of** the President of the European Commission.

2. The European Parliament shall be directly elected by universal suffrage. *[of European citizens]* in free and secret ballots for a term of five years. Its members shall not exceed seven hundred in number, **and shall be elected as national representatives**. *[Representation of European citizens shall be degressively proportional, with a minimum threshold of four members per Member State.]*

3. The European Parliament shall elect its President and its officers from among its members, for a *[term of five years]* **set term**.

Explanation : Amendments to (1) define the EP as assisting the Council, rather than as holding equal legislative power. The changes to (2) remove any possibility that MEPs may be elected on a Common European List. This would alienate the MEP even further from the ordinary citizen. The concept of « degressive proportionality » is too vague.

The change to (3) permits presidencies to be split between two individuals or political groups during a parliamentary term.

¹⁰¹ <http://european-convention.eu.int/Docs/Treaty/pdf/414/14Heathcoat-Amory%20EN.pdf>

¹⁰² <http://european-convention.eu.int/Docs/Treaty/pdf/415/15Heathcoat-Amory%20EN.pdf>

Article 16 : The European Council¹⁰³

1. The European Council shall provide the Union with the necessary impetus for its development, and shall define its general political directions and priorities.
2. The European Council shall consist of the Heads of State or Government of the Member States, together with *[Delete: its President and]* the President of the Commission. *[The Foreign Minister shall take part in its work.]*
3. The European Council shall meet quarterly, convened by its *[President]* **Chairman**. When the agenda so requires, its members may decide to be assisted by a minister, *[and, in the case of the President of the Commission, a Commissioner]* **or in the case of the President of the Commission, a Commissioner may take his place**. When the situation so requires, the *[President]* **Chairman** shall convene an additional meeting of the European Council.
4. Except where the *[Constitution]* **Treaty** provides otherwise, decisions of the European Council shall be taken by *[consensus]* **unanimity**.

Explanation : The Council of Ministers should not have a permanent President, nor an EU Foreign Minister. Both detract from the democratic accountability of ministers before national parliaments.

Article 16a : The European Council Chair¹⁰⁴

1. The European Council shall **be chaired on a rotating basis**. *[elect its President, by qualified majority, for a term of two and a half years, renewable once. The person elected must be, or have been for at least two years, a member of the European Council. In cases of serious malpractice, the European Council can end his mandate according to the same procedure. On issues concerning its common foreign and security policy he shall ensure that the Union at his level is effectively represented in the wider world.]*
2. The *[President]* **Chairman** of the European Council shall *[chair it and drive forward its work, ensuring proper preparation and continuity. He shall endeavour to facilitate cohesion and consensus within the European Council. He shall]* present a **written** report to the European Parliament **and to national parliaments** after each of its meetings.
3. The European Council may decide by *[consensus]* **unanimity** to create a **temporary** board consisting of three of its members chosen according to a system of equitable rotation.
- [4. The President of the European Council may not be a member of another European institution or hold a national mandate.]*

Explanation : The Council should continue to be chaired by national representatives, from all countries, on a rotating basis.

Article 17 : The Council of Ministers¹⁰⁵

1. The Council of Ministers shall, *[jointly with]* **assisted by** the European Parliament, enact legislation, and shall carry out policy-making and co-ordinating functions, as laid down in the *[Constitution]* **Treaty**.

New 1a. They shall facilitate the legislative process for laws initiated and concluded by national parliaments.

2. The Council of Ministers shall consist of a representative of each Member State at ministerial level for each of its formations. Only this representative may commit the Member State in question, and cast its vote.

¹⁰³ <http://european-convention.eu.int/Docs/Treaty/pdf/416/16Heathcoat-Amory%20EN.pdf>

¹⁰⁴ <http://european-convention.eu.int/Docs/Treaty/pdf/41699/16bisHeathcoat-Amory%20EN.pdf>

¹⁰⁵ <http://european-convention.eu.int/Docs/Treaty/pdf/417/17Heathcoat-Amory%20EN.pdf>

3. Except where the Constitution provides otherwise, decisions of the Council shall be taken by *[qualified majority]* **unanimity**.

Explanation : A counter proposal on how the European Union should operate, which puts national parliaments in the role of carrying out First and Third Readings (ie initiation and final approval), will shortly be presented to the Convention : A Europe of Democracies. The amendment in paragraph 3 turns around the default position so that matters have to be identified as QMV, rather than that they are assumed so to be.

Article 17a : Council formations¹⁰⁶

1. The General Affairs Council shall *[ensure]* **facilitate** consistency in the work of the Council of Ministers. With the participation of the Commission, it shall prepare meetings of the European Council.

[Delete: 2. The Legislative Council shall consider and, jointly with the European Parliament, enact European laws and European framework laws, in accordance with the provisions of the Constitution. Each Member State's ministerial representative may be assisted by one or, if necessary, two specialist ministers, reflecting the business on the Council agenda.]

3. The Foreign Affairs Council shall, on the basis of strategic guidelines laid down by the European Council, *[flesh out the Union's external policies,]* **discuss elements of mutual concern in international policy**. *[and ensure that its actions are consistent.]* It shall be chaired by *[the Union's Foreign Minister]* **a rotating foreign minister**.

4. The Council shall also meet in *[the configuration of]* an Economic and Financial Affairs Council, and a Council on Justice and Security.

5. The Council, in its General Affairs formation, may decide on further formations **by unanimity**.

6. The European Council may decide by *[consensus]* **unanimity** that the Presidency of a Council formation, other than that of Foreign Affairs, should be undertaken by a Member State for a period of *[at least]* **up to** a year, taking into account European political and geographical balance and the diversity of all Member States.

Explanation (if any) : These amendments keep the CFSP intergovernmental, and retain the rotating foreign minister.

Article 17b : Qualified majority¹⁰⁷

[Delete: 1. When the European Council or the Council take decisions by qualified majority, such a majority shall consist of the majority of Member States, representing at least three fifths of the population of the Union.]

2. Within the European Council, its President and the President of the Commission do not vote.

Explanation : The current levels at which Qualified Majority Voting is set, is the result of considerable negotiating time and effort. This should not be reopened.

Article 18 : The European Commission¹⁰⁸

1. The European Commission *[Delete : shall safeguard the general European interest. It]* shall ensure the application of the *[Constitution]* **Treaty**, and steps taken by the **administrative** institutions under the Constitution. It shall also exercise *[coordinating, executive and]* management functions as laid down in the *[Constitution]* **Treaty, and as monitored by national parliaments and by the European Parliament**.

2. Except where the Constitution provides otherwise, Union acts can be adopted only on the basis of a *[Commission]* **Council** proposal.

¹⁰⁶ <http://european-convention.eu.int/Docs/Treaty/pdf/41799/17bisHeathcoat-Amory%20EN.pdf>

¹⁰⁷ <http://european-convention.eu.int/Docs/Treaty/pdf/417999/17terHeathcoat-Amory%20EN.pdf>

¹⁰⁸ <http://european-convention.eu.int/Docs/Treaty/pdf/418/18Heathcoat-Amory%20EN.pdf>

3. The Commission shall consist of a President and *[up to fourteen other members. It may call on the help of Associate Commissioners.]* **other Commissioners, the sum number to be not less than the total number of Member States, which shall all be represented by a national.**
4. In carrying out its responsibilities, the Commission shall be completely independent. In the discharge of their duties members of the Commission shall neither seek nor take instructions from any government or other body.

Explanation : The original draft appears to confer a monitoring power on the Commission for the whole of the institutional framework (including, for instance, the EP). Its role should rather be akin to a civil service. The original draft also removes the possibility that many states will have one of their citizens as a full member of the Commission. While Commissioners should be independent (in reality some are not), even an independent Commissioner may understand national particularities better than his colleagues when a particular issue of national concern is under discussion.

Article 18a : The President of the European Commission¹⁰⁹

1. Taking into account the elections to the European Parliament, the European Council, deciding by *[qualified majority]* **unanimity**, shall put forward to the European Parliament *[its]* **two** proposed candidates for the Presidency of the Commission. This candidate shall be elected by the European Parliament by a majority of its members. If this candidate does not receive the required majority support, the European Council shall within one month put forward *[a]* **two** new candidates, following the same procedure as before.

2. Each Member State's **Parliament** shall *[submit a list of three persons, of which at least one must be a woman,]* **nominate a person** whom it considers qualified to be a European Commissioner.

[Delete: The President-elect, taking account of European political and geographical balance, shall, from among the names submitted, select as members of the Commission up to thirteen persons chosen for their competence, European commitment, and guaranteed independence.] The President *[and the persons so nominated for membership of the Commission]* shall be submitted *[as a body]* to a vote of approval by the European Parliament.

3. The Commission, as a body, shall be *[responsible]* **accountable** to the European Parliament **and the Council of ministers**. Under the procedures set out at Art. X of the Constitution, it may pass a censure motion on the Commission. If such a motion is passed, the members of the Commission must all resign. They shall continue to handle everyday business until their successors are nominated, **for a period not exceeding one month.**

4. The Commission shall work to guidelines laid down by *[its President]* the Council. He shall decide its internal organisation, ensuring that it acts consistently, efficiently and on a collegiate basis. *[He shall appoint vice-presidents from among the members of the Commission.]*

[Delete: 5. The President may appoint Associate Commissioners, chosen according to the same criteria as apply for members of the Commission. Their number must not exceed the number of members of the Commission.]

Explanation (if any) : An improved model would be for the Council to propose two candidates, one of whom is selected by the European Parliament. He then attributes Portfolios to candidates selected by national parliaments.

Reference to « European commitment » is removed as vague, unquantifiable and undemocratic.

On the resignation of the Commission, a period of one month is suggested in order to prevent the ex-Commission from remaining in post over an extended period.

¹⁰⁹ <http://european-convention.eu.int/Docs/Treaty/pdf/41899/18bisHeathcoat-Amory.pdf>

Article 19¹¹⁰

Delete whole article

Explanation : The establishment of an EU Foreign Minister is a major step away from intergovernmentalism and democratic accountability**Article 20 : The Court of Justice of the European Union¹¹¹**

1. The Court of Justice, including the [*High Court*] **Court of First Instance**, shall [*ensure respect for the Constitution and Union law.*] **adjudicate on matters referred to it by a Member state concerning the application and enforcement of Union laws.**

The Member States shall provide rights of appeal sufficient to ensure effective legal protection in the field of Union law.

New 1a. National laws passed notwithstanding Union law is superior to European law. When a Member State has recourse to this clause, it shall raise the matter in the next Council meeting.

2. The Court of Justice shall consist of one judge from each Member State, and shall be assisted by Advocates-General. The High Court shall include at least one judge per Member State: the number shall be fixed by the Statute of the Court of Justice. The judges of the Court of Justice and the High Court, and the Advocates-General of the Court of Justice, chosen from persons whose independence is beyond doubt and who satisfy the conditions set out at Article [XX] of Part II, shall be appointed by common accord of the governments of the Member States for a term of six years **1**, renewable.

New 2a. For issues in which a divergence in legal tradition is evident, between Common, Napoleonic, Scots law or similar, then due consideration shall be made to such distinction and consequence, and the pertinent judges shall sit in attendance.

New 2b. The EU, in pursuit of this article, shall not itself fund the teaching of Union law.

3. The Court of Justice shall be competent for :

- ruling on actions brought by the Commission, a Member State, an institution or a natural or legal person in the cases and according to the modalities foreseen in article [YY] of Part II;

- preliminary rulings, at the request of Member State courts, on the interpretation of Union law or the validity of acts adopted by the institutions;

- ruling on appeals on decisions given by the High Court or exceptionally reviewing these decisions under conditions laid down in the Statute of the Court.

New 4. It shall have no competence in issues concerning the Common Foreign and Security Policy, or other matters concerning national criminal justice, or policing.

Explanation :

(1) « Ensuring respect » is proactive and open to interpretation.

(1a) Acknowledges that there are constitutional issues that arise from the supremacy of EU law, and addresses the concerns of such as the German Constitutional Court, and Thomas Paine (« no Parliament can bind its successor »)

(2a) Recognises that the EU has different legal traditions. The Canadian Supreme Court does likewise, by providing for a set number of its judges to come from the minority tradition.

(2b) Provides for the EU not to be involved in funding EU law courses, which may be interpreted as unduly supporting a tradition of the superiority of EU law

(4) Prevents the ECJ from interpreting on areas currently dealt with on an intergovernmental basis.

¹¹⁰ <http://european-convention.eu.int/Docs/Treaty/pdf/419/19Heathcoat-Amory%20EN.pdf>

¹¹¹ <http://european-convention.eu.int/Docs/Treaty/pdf/420/20Heathcoat-Amory%20EN.pdf>

Article 22 : The Court of Auditors¹¹²

1. The Court of Auditors shall carry out the audit.
2. It shall examine the accounts of all Union revenue and expenditure, and shall ensure good financial management.
3. It shall consist of one national of each Member State. In the performance of their duties, its members shall be completely independent.

New 4. Its assent is required at the close of every financial year to allow the continuation of the funding of non-essential programmes under the Communities budget.

Explanation : The Court of Auditors is currently powerless. This amendment allows the Court of Auditors to suspend budget lines subject to fraud. Essential expenditure, such as rent and pay, would continue in the interim.

Article 23 : The Union's Advisory Bodies¹¹³

Delete all

D. Lord Maclennan and others: proposed Amendments to Title IV articles

Suggestion for amendment of Article : 14¹¹⁴

Mr Andrew Duff, Mr Lamberto Dini, Mrs Lone Dybkjaer, Lord Maclennan, Mr Adrian Severin (members and alternate members of the Convention).

Article 14 : The Union's Institutions

1. The Union shall be served by a single institutional framework which shall *advance its objectives, promote its values and serve its interests*. *The institutions shall ensure the coherence, effectiveness and continuity of the Union's policies and actions.*
2. This institutional framework comprises :
The European Parliament,
The European Council,
The Council of Ministers,
The European Commission,
The Court of Justice of the European Union,
The European Central Bank,
The Court of Auditors.
3. Each institution shall act within the limits of the powers conferred on it in the Constitution *and be responsible for their own working arrangements*, in conformity with the procedures and conditions *laid down*. The institutions *may conclude interinstitutional agreements*.
4. *The seat of the institutions, bodies and agencies of the Union shall be determined by the Council, acting by qualified majority, with the assent of the European Parliament.*

Explanation:

1. *We suggest a more felicitous formulation of the first sentence, without changing the meaning of*

¹¹² <http://european-convention.eu.int/Docs/Treaty/pdf/422/22Heathcoat-Amory%20EN.pdf>

¹¹³ <http://european-convention.eu.int/Docs/Treaty/pdf/423/23Heathcoat-Amory%20EN.pdf>

¹¹⁴ <http://european-convention.eu.int/Docs/Treaty/pdf/415/14Duff%20EN.pdf>

the Praesidium's draft. However, the substitution of 'coherence' for 'consistency' is important: something that is both consistent and continuous may be changeless. The insertion of the need for coherence provides the right dynamic.

3. A reference is appropriate here to the prerogative each institution needs to devise their own methods of work. This implies that they must agree Rules of Procedure. The Praesidium's formulation of 'full mutual cooperation' is curious. Sometimes the institutions will choose not to cooperate with each other while respecting constitutional constraints. However, the Constitution should provide here for interinstitutional agreements.

4. At present, the treaties provide that the question of where institutions be located is to be decided by unanimity, leading often to paralysis after an ignoble row. The particularly controversial issue of the seat of the European Parliament has to be determined by common accord of the Member States (Article 289 TEC). The time has come to rationalise the decision making procedure and to bring it into line with democratic norms.

Suggestion for amendment of Article 15¹¹⁵

Article 15 : The European Parliament

1. The European Parliament, **representing the citizens of the Union**, shall, jointly with the Council, enact legislation, as well as exercise **other** functions as laid down in the Constitution. It shall **nominate** the President of the European Commission.

2. The European Parliament shall be directly elected by universal suffrage of European citizens in free and secret ballot for a term of five years **according to a uniform electoral procedure**. Its members shall not exceed seven hundred in number. Representation of European citizens shall be degressively proportional, with a **minimum** of four members per Member State **and a maximum of ninety-five**.

3. The European Parliament shall elect its **President from** among its members, for a term of **two and a half** years.

4. Members of the Parliament shall enjoy immunity from prosecution for opinions expressed and votes cast in performance of their parliamentary duties.

Explanation:

1. The Constitution should establish the popular basis for the representative capability of the Parliament, as does Article 189 TEC. The Parliament has many functions concerning legislation, the budget (including discharge), political scrutiny, inquiry and control, as well as its constitutional duties and the powers of assent over international agreements. The article should either set them all out comprehensively or leave them all out with the exception of its prime function, which is to act as a branch of the legislature. Brevity suggests the latter option.

As far as the election of the President of the Commission is concerned, we propose in Article 18a that the process is reversed - in other words, that the Parliament nominates and the European Council decides.

2. This clause should establish that there is to be a uniform electoral procedure, to be determined according to the provisions of Part Two. To be as equitable as possible to all Member States, the application of the principle of degressive proportionality needs a ceiling as well as a threshold. If the smallest Member State is to take a cut in numbers, so should the largest.

3. No criticism has yet been voiced in the Convention about the present term of office of the President of the Parliament. It is strange to copy the present treaty in mentioning other 'officers' of the Parliament: there are many varieties of office holder in the Parliament, and their competences, terms and conditions are best left to the Rules of Procedure.

4. The present regime of parliamentary privilege and immunity is based on the 1965 Protocol, reflecting the situation when MEPs were delegates of national parliaments, and has given rise to much confusion. The Constitution needs to establish a clear legal base for a new system of EU privileges and immunities, to be fleshed out in Part Two.¹

¹ See a separate contribution by Mr Duff on this subject

¹¹⁵ <http://european-convention.eu.int/Docs/Treaty/pdf/415/15Duff%20EN.pdf>

Suggestion for amendment of Article : 16¹¹⁶

Article 16 : The European Council

1. The European Council *shall define* the general political directions and priorities of the Union *at home and abroad*. It shall establish the *medium-term strategic programme of the Union, on a proposal of the Commission, after having consulted the European Parliament and national parliaments. It may act on behalf of the Council of Ministers, as well as exercise other functions as laid down in the Constitution.*
2. The European Council shall consist of the Heads of State or Government of the Member *States and* the President of the Commission. The [*Minister of Foreign Affairs/Secretary of the Union*] shall take part in its work.
3. The European Council shall meet quarterly *or additionally whenever the situation so requires*, convened by its President.
4. Except where the Constitution provides otherwise, decisions of the European Council shall be taken by consensus.

Explanation:

1. *In view of its growing importance in the life of the Union, and of the consequent effect on the interinstitutional balance, the role of the European Council needs more precise definition. We have therefore dropped the ambiguous phrase 'provide the Union with the necessary impetus for its development'. We have added the phrase 'at home and abroad' to give currency to the Convention's strongly expressed will that the Union should have an enhanced capacity to act in the international scene.*

In the second sentence, we have inserted a key item of annual business, which is to formulate and refresh a medium-term political programme of the Union. This should be decided by the heads of government but proposed by the Commission and be the subject of consultation with both MEPs and MPs.

This is a key element in the reform of the Council presidency, and puts an end to the distractions of the current six-monthly national programmes.

In the third sentence, we give the leadership role of the European Council more scope, but as constrained by the Constitution. That it can and does act on behalf of the Council of Ministers acting in an executive capacity should not be disguised.

The reference to 'other functions' accords with Article 15, concerning the European Parliament.

2. *We do not support the proposal for a President of the European Council to be appointed from outside the membership of the European Council. Former prime ministers are not inevitably best placed to take on major international duties. Currently serving prime ministers will not take easily to playing second fiddle to one of their former colleagues. And such a 'chairman of the board' as seems to be proposed would sooner or later assume executive responsibilities that would lead to head-on clashes with the President of the Commission.*

Some of us prefer the title Secretary of the Union as being less confusing with the traditional nomenclature of national ministers of foreign affairs. One might also recall that one of the chief interlocutors of this person will be the US Secretary of State.

3. *The Praesidium's wording is unnecessarily complicated for a fairly straightforward concept: the European Council will meet at least four times a year.*

It should fall to the Rules of Procedure of the European Council and not the Constitution to designate who each leader can bring along to the meetings.

¹¹⁶ <http://european-convention.eu.int/Docs/Treaty/pdf/416/16Duff%20EN.pdf>

Suggestion for amendment of Article : 16 a¹¹⁷**Article 16a : The European Council Chair**

1. *The President of the Commission shall chair the European Council, ensuring proper preparation and continuity, and seeking cohesion and consensus. He or she shall present a report to the European Parliament after each of its meetings.*

2. **Delete**

3. **Delete**

4. **Delete.**

Explanation:

1. *Our proposal is that the President of the Commission should chair the European Council and could be re-styled 'President of the Union'.¹*

We propose extending the logic of the double hat to the top level, so that the President of the Commission would chair the European Council. The proposal would bring greater leadership and efficiency, whilst at the same time firmly placing the more stable Council Presidency within the 'Community system'.

The solution has all of the advantages sought by many members of the Convention in seeking more continuity, leadership and coordination of the executive resources of the Union, whilst at the same time providing the guarantees required that inter-institutional struggles between the Presidents of the Commission and of the European Council will not paralyse the system. The proposal also avoids institutionalising rivalry between the larger and smaller Member States.

1 Such a stand-alone clause could also be added to Article 16.

The concept of the unified presidency is more fully explained in CONV 524/03.

The content of paragraph 2 is merged with paragraph 1.

Paragraph 3, creating a board or steering committee, is not a constitutional issue and could be achieved within the Rules of Procedure. In our scenario, of course, paragraph 4 is null and void.

Suggestion for amendment of Article : 17¹¹⁸**Article 17 : The Council of Ministers**

1. The Council of Ministers, *representing the governments of the Member States*, shall, jointly with the European Parliament, enact legislation, *as well as exercise other functions* as laid down in the Constitution. *The Council shall ensure the coordination of the general economic policies of the Member States, the definition of the common foreign, security and defence policy, and the close collaboration between Member States' police, security services and judicial authorities.*

2. The Council of Ministers shall consist of a representative of each Member State at ministerial *level*. *Only* this representative may commit the Member State in question, and cast its vote.

3. Except where the Constitution provides otherwise, decisions of the Council shall be taken by qualified majority.

Explanation:

1. *The Constitution should establish the fact that the Council is made up of*

¹¹⁷ <http://european-convention.eu.int/Docs/Treaty/pdf/41699/16bisDuff%20EN.pdf>

¹¹⁸ <http://european-convention.eu.int/Docs/Treaty/pdf/417/17Duff%20EN.pdf>

representatives of Member State governments. The Council has executive functions as well as legislative functions, and this should be made explicit.

2. *The reference here to 'each of its formations' is superfluous (see Article 17a).*

Suggestion for amendment of Article : 17 a¹¹⁹

Article 17a : Council formations

1. The General Affairs Council shall ensure consistency in the work of the Council of *Ministers, and* shall prepare meetings of the European Council. *The President of the Commission shall chair this formation of the Council.*

2. The Law Council shall *participate in the legislative procedure*, in accordance with the provisions of the Constitution. Each Member State's ministerial representative may be assisted *by specialist* ministers, reflecting the business on the Council agenda. *Each Member State shall hold the office of President in turn for a term of three months in an order decided by the European Council.*

3. The Foreign Affairs Council shall, on the basis of strategic guidelines laid down by the European Council, flesh out the Union's external policies, and ensure that its actions are consistent. It shall be chaired by the *[Minister of Foreign Affairs/Secretary of the Union]*.

4. The Council shall also meet in the configuration of an Economic and Financial Affairs Council, and a Council on Justice and Security. *These formations of the Council shall be chaired respectively by the responsible Vice-President of the Commission.*

5. **Delete**

6. **Delete.**

Explanation:

Our proposal for the integrated presidency (see Article 16a) necessitates a clean separation between the executive and legislative functions of the Council. Clearly, a Commissioner cannot preside over the legislative work of the Council.

In paragraph 1 we propose that the Commission shall not merely participate in the General Affairs Council, but chair it.

We propose that the Law Council could be chaired on a rotation basis, respecting the principles of equality of states. In the light of enlargement, however, we reduce the term of office from six months to three, thereby reducing the burden and increasing the pace of rotation. This arrangement could be linked to the hosting of European Councils, thus helping the visibility of the Union across its territory.

In paragraph 4 we propose that Vice-Presidents of the Commission chair the remaining executive formations of the Council as well as the preparatory working groups.

Paragraph 5 is deleted because there will be no need for an ad hoc proliferation of executive formations of the Council.

We suppress paragraph 6 as inconsistent with our overall approach.

In Part Two we will propose that the working groups of the Council be chaired by the Commission, apart from COREPER which would continue to be chaired by the Permanent Representative of the President-in-Office of the Law Council.

Suggestion for amendment of Article : 17 b¹²⁰

Article 17b : Qualified majority

1. When the European Council or the Council take decisions by qualified majority, such a majority shall consist of the majority of Member States, representing at least three fifths of the population of the Union. *Where the Constitution provides for an enhanced qualified majority, the Council must obtain the consent of at least three-quarters of the Member States, representing three fifths of the population.*

2. *The President and Vice-Presidents of the Commission do not vote in the European Council or Council.*

¹¹⁹ <http://european-convention.eu.int/Docs/Treaty/pdf/41799/17bisDuff%20EN.pdf>

¹²⁰ <http://european-convention.eu.int/Docs/Treaty/pdf/417999/17terDuff%20EN.pdf>

Explanation:

1. *There will be circumstances, some already foreseen in the work of the Convention, where super qualified majorities will be required. We suggest three-quarters of Member States (19 out of 25).*
2. *The re-formulation of this paragraph conforms to the overall approach adopted, but does not change the substance from that of the Praesidium's draft.*

Suggestion for amendment of Article : 18¹²¹**Article 18 : The European Commission**

1. The European Commission shall safeguard the general European interest. It shall ensure the application of the Constitution, and steps taken by the institutions under the Constitution. It shall ***ensure the proper functioning of the Union and*** exercise coordinating, executive and management functions as laid down in the Constitution.
2. Except where the Constitution provides otherwise, Union acts can be adopted only on the basis of a Commission proposal. ***The Commission shall determine the annual legislative programme.***
3. The Commission shall consist of ***one national per Member State.***
4. In carrying out its responsibilities, the Commission shall be completely independent. In the discharge of their duties members of the Commission shall neither seek nor take instructions from any government or other body.

Explanation:

1. *We include the phrase about the proper functioning of the Union drawn from Article 211 TEC in order to avoid the impression that the Convention has wished to reduce in any way the classical role of the Commission.*
2. *The production of the annual legislative programme is a key Commission prerogative, and deserves a reference in Part One.*
3. *We have concluded that the political argument for having one Commissioner per Member State outweighs the technical advantages of moving to a smaller college. What it might lose in terms of efficiency it will gain in terms of legitimacy. In any case, as the Commission is set gradually to gain more powers in an enlarged and more competent Union there should be plenty to do.*

Suggestion for amendment of Article : 18 a¹²²**Article 18a : The President of the European Commission**

1. ***Immediately following its election, the European Parliament, acting by a majority of its members, will choose its candidate for the Presidency of the Commission and submit the nomination to the European Council.*** The European Council, deciding by qualified majority, shall ***elect the President.*** If ***the Parliament's*** candidate does not receive the required majority support ***of the European Council,*** the ***Parliament*** shall within one month put forward a new candidate, following the same procedure as before. ***Ibis. The President of the Commission may be dismissed on the proposal of either the European Council or the European Parliament if confirmed by the other, according to the provisions in Part Two.***
2. Each Member State shall submit a list of three persons, of which at least one must be a woman, whom it considers qualified to be a European Commissioner. The President elect,

¹²¹ <http://european-convention.eu.int/Docs/Treaty/pdf/418/18Duff%20EN.pdf>

¹²² <http://european-convention.eu.int/Docs/Treaty/pdf/41899/18bisDuff%20EN.pdf>

taking account of European political and geographical balance, shall, from among the names submitted, select as members of the *Commission persons* chosen for their competence, European commitment, and guaranteed independence. The President and the persons so nominated for membership of the Commission shall be submitted as a body to a vote of approval by the European Parliament.

3. The Commission, as a body, shall be responsible to the European Parliament. Under the procedures set out at Art. X of the Constitution, it may pass a censure motion on the Commission. If such a motion is passed, the members of the Commission must all resign. They shall continue to handle everyday business until their successors are nominated. ***Upon the passing of a motion of censure, the European Parliament will be dissolved.***

4. The Commission shall work to guidelines laid down by its President. He shall decide its internal organisation, ensuring that it acts consistently, efficiently and on a collegiate basis. ***With the exception of the [Minister of Foreign Affairs/Secretary of the Union], who shall be appointed according to the provisions in Article 19, the President shall appoint vice-presidents from among the members of the Commission. Each member of the Commission shall offer his or her resignation at the request of the President.***

5. Delete.

Explanation:

1. *The Praesidium's proposal falls short of being a real election of the President, and is, indeed, not much of an improvement on the present system. The Parliament would be asked to rubber-stamp the European Council's nomination or to re-open nominations. Such a process would fail to connect directly with the European Parliamentary election campaign, and would therefore fail to give the President the extra democratic legitimacy he or she so badly needs.*

We propose here, therefore, a reversal of the burden. Newly elected MEPs would choose a candidate and the European Council would elect him or her, or not, as the case may be. Support by a cross-party majority in the Parliament plus a qualified majority of heads of government would guarantee the incoming President a good start (at least).

Ibis. The joint appointment of the President of the Commission implies a joint procedure for dismissal. Inclusion of a constitutional procedure for the sacking of the President will serve to sharpen accountability.

2. *We remove the reference to a specific number of Commissioners.*

3. *Faithful to our goal of heightening the responsibility of the European Union institutions, we propose the addition here of the dissolution of the Parliament if and when it sacks the Commission. This mirrors normal practice in Member States.*

4. *We propose in the next article a separate procedure for the appointment of the Secretary of the Union.*

It would be appropriate here to repeat the sense of the agreement reached at Nice with respect to the sacking of individual members of the Commission.

5. *We are not convinced that the creation of a formally separate class of Associate Commissioners is either necessary or prudent. In a large Commission with a strong President, portfolios can be distributed according to the tasks to be achieved. There are more important tasks and less important tasks.*

Suggestion for amendment of Article : 19¹²³

Article 19 : The Minister of Foreign Affairs/Secretary of the Union

¹²³ <http://european-convention.eu.int/Docs/Treaty/pdf/419/19Duff%20EN.pdf>

1. The European Council, deciding by qualified majority, with the agreement of the President of the Commission, shall **nominate the [Minister of Foreign Affairs/Secretary of the Union]. The [Minister of Foreign Affairs/Secretary of the Union] shall be one of the Vice-Presidents of the Commission and a full member of the college.**

Ibis. The [Minister of Foreign Affairs/Secretary of the Union] may be dismissed on the proposal of either the European Council or the European Parliament if confirmed by the other, according to the provisions in Part Two.

2. The [Minister of Foreign Affairs/Secretary of the Union] shall be responsible to the **Commission** for handling external relations and for co-ordinating **all** aspects of the Union's external actions. **The [Minister/Secretary] shall contribute proposals to develop the Union's common foreign, security and defence policy, which he or she shall conduct as mandated by the Council.**

Explanation:

We have already stated our wish for a further discussion about the term 'Secretary of the Union' over 'Foreign Minister'.

The Praesidium's proposal for the double-hatted job is more ambiguous than it needs to be. Proper accountability will be assured if and when the Secretary is both grounded in the Commission, sharing responsibility for the decisions of the college, and also working to a clear mandate obtained from the Foreign Affairs Council.

We re-formulate the draft in paragraph 1 with the intended effect that the candidate for the post is chosen by the European Council but then submitted to the approval of the European Parliament as a member of the Commission in the normal way.

In paragraph 1 bis we repeat the procedure for the sacking of the President of the Commission in order to increase the Secretary's accountability.

In paragraph 2 we try a clearer and more succinct formulation of his (or her) job. We substitute 'all' for 'other' in respect of coordination.

And we offer a less convoluted - and more assured - draft which establishes, in our view, the desired dynamic.

Suggestion for amendment of Article : 20¹²⁴

Article 20 : The Court of Justice of the European Union

1. The Court of Justice, including the High Court, shall ensure **that, in the interpretation and application of the Constitution and of acts made under it, the law is observed.**

The Member States shall provide rights of appeal sufficient to ensure effective legal protection in the field of Union law.

2. The Court of Justice shall consist of one judge from each Member State, and shall be assisted by Advocates-General. The High Court shall include at least one judge per Member State: the number shall be fixed by the Statute of the Court of Justice. The judges of the Court of Justice and the High Court, and the Advocates-General of the Court of Justice, chosen from persons whose independence is beyond doubt and who satisfy the conditions set out at Article [XX] of Part II, shall be appointed by common accord of the governments of the Member States for a term of **nine years, non-renewable.**

3. The Court of Justice shall be competent for :

- ruling on actions brought by the Commission, a Member State, an institution or a natural or legal person in the cases and according to the modalities foreseen in article [YY] of Part II;
- preliminary rulings, at the request of Member State courts, on the interpretation of

¹²⁴ <http://european-convention.eu.int/Docs/Treaty/pdf/420/20Duff%20EN.pdf>

Union law or the validity of acts adopted by the institutions;
- ruling on appeals on decisions given by the High Court or exceptionally reviewing these decisions under conditions laid down in the Statute of the Court.

Explanation:

1. *The description of the powers of the Court seems too limited. We propose here a reformulation of the present Article 220 TEC in order to guarantee that there is to be no regression from the present acquis.*
2. *The term of office of nine years, non-renewable, is the best way to achieve the joint objective of stability and neutrality.*

Suggestion for amendment of Article : 21¹²⁵

Article 21 : The European Central Bank

1. The European Central Bank shall direct the European System of Central Banks, of which it, alongside the national central banks, forms part.
2. The primary objective of the Bank shall be to maintain price stability. Without prejudice to the objective of price stability, it shall support general economic policies in the Union with a view to contributing to the achievement of the Union's objectives.
3. The Bank shall define and implement the monetary policy of the Union. It alone may authorise the issue of the Union currency, the Euro. It shall conduct other Central Bank tasks according to the provisions of Part II of the Constitution.
4. The Bank shall have legal personality. In the exercise of its powers and for its finances, it shall be independent. Union institutions and bodies, and the governments of the Member States, shall undertake to respect this principle. ***The Bank shall account for its activities to the Council and the European Parliament.***
5. The Bank shall adopt such measures as are necessary to carry out its tasks in accordance with the provisions of Articles [A-B] of Part II of the Constitution, and with the conditions laid down in the Statutes of the Bank and of the European System of Central Banks. In accordance with these same provisions, those Member States which have not adopted the Euro, and their central banks, shall retain their powers in monetary matters.
6. Within its areas of competence, the Bank shall be consulted on all proposed Union acts, and all proposals for regulation at national level; and may give an opinion.
7. The organs of the Bank, their composition and operating methods are set out in articles X to Y of Part II, as well as in the Statute of the Bank.

Explanation:

4. *One of the main adjustments that the ECB has made since its inception is its greater openness, especially in its relationships with the Parliament and Council. This is a welcome development for the sake of market confidence as well as for reasons of democratic accountability. It should be recognised as such in the Constitution.*

¹²⁵ <http://european-convention.eu.int/Docs/Treaty/pdf/421/21Duff%20EN.pdf>

Appendix 5 Comparative Table of Institutional Articles

Treaty Establishing the European Communities (as amended)	Praesidium Draft Articles Part I (CONV 797/03, 10 June 2003)	Praesidium Draft Articles Part III (CONV 805/03, 727/03 and 734/03)
<p>Article 3 TEU The Union shall be served by a single institutional framework which shall ensure the consistency and the continuity of the activities carried out in order to attain its objectives while respecting and building upon the <i>acquis communautaire</i>.</p> <p>Article 7 TEC 1. The tasks entrusted to the Community shall be carried out by the following institutions: — a EUROPEAN PARLIAMENT, — a COUNCIL, — a COMMISSION, — a COURT OF JUSTICE, — a COURT OF AUDITORS.</p> <p>Each institution shall act within the limits of the powers conferred upon it by this Treaty.</p> <p>Article 192 In so far as provided in this Treaty, the European Parliament shall participate in the process leading up to the adoption of Community acts by exercising its powers under the procedures laid down in Articles 251 [co-decision] and 252 [co-operation] and by giving its assent or</p>	<p>Article I – 18 1. The Union shall be served by a single institutional framework which shall aim to:</p> <ul style="list-style-type: none"> – advance the objectives of the Union, – promote the values of the Union, – serve the interests of the Union, its citizens and its Member States, and ensure the consistency, effectiveness and continuity of the policies and actions which it undertakes in pursuit of its objectives. <p>2. This institutional framework comprises: The European Parliament, The European Council, The Council of Ministers, The European Commission, The Court of Justice.</p> <p>3. Each Institution shall act within the limits of the powers conferred on it in the Constitution, and in conformity with the procedures and conditions set out in it. The Institutions shall practice full mutual cooperation.</p> <p>Article I-19: The European Parliament 1. The European Parliament shall, jointly with the Council, enact legislation, and exercise the budgetary function, as well as functions of political control and consultation as laid down in the Constitution.</p>	

<p>delivering advisory opinions.</p> <p>Article 214 [2. The Council, meeting in the composition of Heads of State or Government and acting by a qualified majority, shall nominate the person it intends to appoint as President of the Commission;] the nomination shall be approved by the European Parliament.</p> <p>Article 189 The European Parliament, which shall consist of representatives of the peoples of the States brought together in the Community, shall exercise the powers conferred upon it by this Treaty.</p> <p>The number of Members of the European Parliament shall not exceed 732.</p> <p>[N.B Protocol on the Enlargement of the European Union: 4. By way of derogation from the second paragraph of Article 189 of the Treaty establishing the European Community and from the second paragraph of Article 107 of the Treaty establishing the European Atomic Energy Community, in the event of the entry into force of accession treaties after the adoption of the Council decision provided for in the second subparagraph of paragraph 3 of this Article, the number of members of the European Parliament may temporarily exceed 732 for the period for which that decision applies. The same correction as that referred to in the first subparagraph of paragraph 3 of this Article shall be applied to the number of representatives to be elected in the Member States in question.]</p> <p>Article 190 1. The representatives in the European Parliament of the peoples of the States brought</p>	<p>It shall elect the President of the European Commission.</p> <p>2. The European Parliament shall be directly elected by universal suffrage of European citizens in free and secret ballot for a term of five years. Its members shall not exceed seven hundred and thirty two in number. Representation of European citizens shall be degressively proportional, with a minimum threshold of four members per Member State.</p> <p>Sufficiently in advance of the European Parliamentary elections in 2009, and, as necessary thereafter, the European Council shall adopt by unanimity, on the basis of a proposal from the European Parliament and with its consent, a decision establishing the composition of the European Parliament, respecting the principles set out above.</p> <p>3. The European Parliament shall elect its President and its officers from among its members,</p>	<p>Article III-227 (ex Article 190) 1. The European Parliament shall draw up a proposal for a European law for the election of its Members by direct universal</p>
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together in the Community shall be elected by direct universal suffrage.

[...]

3. Representatives shall be elected for a term of five years.

4. The European Parliament shall draw up a proposal for elections by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States.

The Council shall, acting unanimously after obtaining the assent of the European Parliament, which shall act by a majority of its component members, lay down the appropriate provisions, which it shall recommend to Member States for adoption in accordance with their respective constitutional requirements.

5. The European Parliament, after seeking an opinion from the Commission and with the approval of the Council acting by a qualified majority, shall lay down the regulations and general conditions governing the performance of the duties of its Members. All rules or conditions relating to the taxation of Members or former Members shall require unanimity within the Council.

Article 191

Political parties at European level are important as a factor for integration within the Union. They contribute to forming a European awareness and to expressing the political will of the citizens of the Union.

The Council, acting in accordance with the procedure referred to in Article 251, shall lay down the regulations governing political parties at European level and in

suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States.

The Council shall, acting unanimously after obtaining the approval of the European Parliament, which shall act by a majority of its component members, adopt the law referred to in the preceding subparagraph, which it shall recommend to Member States for adoption in accordance with their respective constitutional requirements.

2. A European law of the European Parliament, adopted on its own initiative, shall lay down the regulations and general conditions governing the performance of the duties of its Members. The European Parliament shall act after seeking an opinion from the Commission and with the approval of the Council. All rules or conditions relating to the taxation of Members or former Members shall require unanimity within the Council.

3. Throughout the 2004-2009 Parliament, the composition of the European Parliament shall be as set out in the Protocol on the Representation of Citizens in the European Parliament.

Article III-228 (ex Article 191)

Pursuant to Article [I-45] of the Constitution, a European law shall lay down the regulations governing political parties at European level and in particular the rules regarding their funding.

particular the rules regarding their funding.

Article 192

In so far as provided in this Treaty, the European Parliament shall participate in the process leading up to the adoption of Community acts by exercising its powers under the procedures laid down in Articles 251 and 252 and by giving its assent or delivering advisory opinions. The European Parliament may, acting by a majority of its Members, request the Commission to submit any appropriate proposal on matters on which it considers that a Community act is required for the purpose of implementing this Treaty.

Article 193

In the course of its duties, the European Parliament may, at the request of a quarter of its Members, set up a temporary Committee of Inquiry to investigate, without prejudice to the powers conferred by this Treaty on other institutions or bodies, alleged contraventions or maladministration in the implementation of Community law, except where the alleged facts are being examined before a court and while the case is still subject to legal proceedings.

The temporary Committee of Inquiry shall cease to exist on the submission of its report.

The detailed provisions governing the exercise of the right of inquiry shall be determined by common accord of the European Parliament, the Council and the Commission.

Article 194

Any citizen of the Union, and any

Article III-229 (ex Article 192)

The European Parliament may, acting by a majority of its component Members, request the Commission to submit any appropriate proposal on matters on which it considers that a Union act is required for the purpose of implementing the Constitution. If the Commission does not submit a proposal, it shall inform the European Parliament of the reasons.

Article III-230 (ex Article 193)

In the course of its duties, the European Parliament may, at the request of a quarter of its component Members, set up a temporary Committee of Inquiry to investigate, without prejudice to the powers conferred by the Constitution on other institutions or bodies, alleged contraventions or maladministration in the implementation of Union law, except where the alleged facts are being examined before a court and while the case is still subject to legal proceedings.

The temporary Committee of Inquiry shall cease to exist on the submission of its report.

A European law adopted by the European Parliament on its own initiative shall lay down the detailed provisions governing the exercise of the right of inquiry. The European Parliament shall act after seeking an opinion from the Commission and with the approval of the Council.

Article III-231 (ex Article 194)

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right to address, individually or in association with other citizens or

natural or legal person residing or having its registered office in a Member State, shall have the right to address, individually or in association with other citizens or persons, a petition to the European Parliament on a matter which comes within the Community's fields of activity and which affects him, her or it directly.

Article 195

1. The European Parliament shall appoint an Ombudsman empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where the Ombudsman establishes an instance of maladministration, he shall refer the matter to the institution concerned, which shall have a period of three months in which to inform him of its views. The Ombudsman shall then forward a report to the European Parliament and the institution concerned. The person lodging the complaint shall be informed of the outcome of such inquiries.

The Ombudsman shall submit an annual report to the European Parliament on the outcome of his inquiries.

persons, a petition to the European Parliament on a matter which comes within the Union's fields of activity and which affects him, her or it directly.

Article III-232 (ex Article 195)

1. The European Parliament shall appoint a European Ombudsman on its own initiative. The European Ombudsman shall be empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Union's institutions or bodies, with the exception of the Court of Justice acting in its judicial role.

In accordance with his duties, the European Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where the European Ombudsman establishes an instance of maladministration, he shall refer the matter to the institution concerned, which shall have a period of three months in which to inform him of its views. The European Ombudsman shall then forward a report to the European Parliament and the institution concerned. The person lodging the complaint shall be informed of the outcome of such inquiries.

The European Ombudsman shall submit an annual report to the European Parliament on the outcome of his inquiries.

2. The European Ombudsman shall be appointed after each election of the European Parliament for the duration of its term of office. The European

<p>2. The Ombudsman shall be appointed after each election of the European Parliament for the duration of its term of office. The Ombudsman shall be eligible for reappointment. The Ombudsman may be dismissed by the Court of Justice at the request of the European Parliament if he no longer fulfils the conditions required for the performance of his duties or if he is guilty of serious misconduct.</p> <p>3. The Ombudsman shall be completely independent in the performance of his duties. In the performance of those duties he shall neither seek nor take instructions from any body. The Ombudsman may not, during his term of office, engage in any other occupation, whether gainful or not.</p> <p>4. The European Parliament shall, after seeking an opinion from the Commission and with the approval of the Council acting by a qualified majority, lay down the regulations and general conditions governing the performance of the Ombudsman's duties.</p> <p>Article 196 The European Parliament shall hold an annual session. It shall meet, without requiring to be convened, on the second Tuesday in March. The European Parliament may meet in extraordinary session at the request of a majority of its Members or at the request of the Council or of the Commission of the European Communities</p> <p>Article 197 The European Parliament shall elect its President and its officers from among its Members.</p>		<p>Ombudsman shall be eligible for reappointment.</p> <p>The European Ombudsman may be dismissed by the Court of Justice at the request of the European Parliament if he no longer fulfils the conditions required for the performance of his duties or if he is guilty of serious misconduct.</p> <p>3. The European Ombudsman shall be completely independent in the performance of his duties. In the performance of those duties he shall neither seek nor take instructions from any body. The European Ombudsman may not, during his term of office, engage in any other occupation, whether gainful or not.</p> <p>4. A European law of the European Parliament, adopted on its own initiative, shall lay down the regulations and general conditions governing the performance of the European Ombudsman's duties. The European Parliament shall act after seeking an opinion from the Commission and with the approval of the Council.</p> <p>Article III-233 (ex Article 196) CONV 727/03 The European Parliament shall hold an annual session. It shall meet, without requiring to be convened, on the second Tuesday in March.</p> <p>The European Parliament may meet in extraordinary part-session at the request of a majority of its Members or at the request of the Council or of the Commission.</p> <p>Article III-234 (ex Article 197) CONV 727/03 Members of the Commission may attend all meetings of the European Parliament and shall, at their request, be heard on behalf of the Commission.</p> <p>The Commission shall reply orally or in writing to questions put to it by the European</p>
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<p>Article 198 Save as otherwise provided in this Treaty, the European Parliament shall act by an absolute majority of the votes cast. The Rules of Procedure shall determine the quorum.</p> <p>Article 199 The European Parliament shall adopt its Rules of Procedure, acting by a majority of its Members.</p> <p>The proceedings of the European Parliament shall be published in the manner laid down in its Rules of Procedure.</p> <p>Article 200 The European Parliament shall discuss in open session the annual general report submitted to it by the Commission.</p> <p>Article 201 If a motion of censure on the activities of the Commission is tabled before it, the European Parliament shall not vote thereon until at least three days after the motion has been tabled and only by open vote. If the motion of censure is carried by a two-thirds majority of the votes cast, representing a majority of the Members of the European Parliament, the Members of the Commission shall resign as a body. They shall continue to deal with current business until they are replaced in accordance with</p>		<p>Parliament or by its Members. The Council shall be heard by the European Parliament in accordance with the conditions laid down by the Council in its Rules of Procedure.</p> <p>Article III-235 (ex Article 198)(CONV 727/03) Save as otherwise provided in the Constitution, the European Parliament shall act by a majority of the votes cast. The Rules of Procedure shall determine the quorum.</p> <p>Article III-236 (ex Article 199) The European Parliament shall adopt its Rules of Procedure, acting by a majority of its Members. The proceedings of the European Parliament shall be published in the manner laid down in its Rules of Procedure.</p> <p>Article III-237 (ex Article 200) The European Parliament shall discuss in open session the annual general report submitted to it by the Commission.</p> <p>Article III-238 (ex Article 201) If a motion of censure on the activities of the Commission is tabled before it, the European Parliament shall not vote thereon until at least three days after the motion has been tabled and only by open vote. If the motion of censure is carried by a two-thirds majority of the votes cast, representing a majority of the Members of the European Parliament, the Members of the Commission shall resign as a body. They shall continue to deal with current business until they are replaced in accordance with [Article III-245]. In this case, the term of office of the Members of the Commission appointed to replace them shall expire on the date on which the term of office of the Members of the</p>
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<p>Article 214. In this case, the term of office of the Members of the Commission appointed to replace them shall expire on the date on which the term of office of the Members of the Commission obliged to resign as a body would have expired.</p> <p>Article 4 TEU The European Council shall provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof.</p> <p>The European Council shall bring together the Heads of State or Government of the Member States and the President of the Commission. They shall be assisted by the Ministers for Foreign Affairs of the Member States and by a Member of the Commission.</p> <p>The European Council shall meet at least twice a year, under the chairmanship of the Head of State or Government of the Member State which holds the Presidency of the Council.</p>	<p>Article I-20: The European Council</p> <ol style="list-style-type: none"> 1. The European Council shall provide the Union with the necessary impetus for its development, and shall define its general political directions and priorities. 2. The European Council shall consist of the Heads of State or Government of the Member States, together with its President and the President of the Commission. The Foreign Minister shall take part in its work. 3. The European Council shall meet quarterly, convened by its President. When the agenda so requires, its members may decide to be assisted by a minister, and, in the case of the President of the Commission, a Commissioner. When the situation so requires, the President shall convene an additional meeting of the European Council. 4. Except where the Constitution provides otherwise, decisions of the European Council shall be taken by consensus. <p>Article I-21: The European Council Chair</p> <ol style="list-style-type: none"> 1. The European Council shall elect its President, by qualified majority as defined in Article I 24(2), for a term of two and a half years, renewable once. In cases of serious malpractice, the European Council can end his mandate according to the same procedure. 2. The President of the European Council shall chair it and drive forward its work, ensuring proper preparation and continuity. He shall endeavour to facilitate cohesion and consensus within the European Council. He shall present a report to the European Parliament after each of its meetings. 	<p>Commission obliged to resign as a body would have expired.</p> <p>Article III-239 (new) Where a vote is taken, any member of the European Council may also act on behalf of not more than one other member. Abstentions by members present in person or represented shall not prevent the adoption by the European Council of decisions which require unanimity. The European Council shall adopt its Rules of Procedure by a simple majority. The President of the European Parliament may be invited to be heard by the European Council. The European Council shall be assisted by the Secretariat mentioned in Article III-242.</p>
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<p>The European Council shall submit to the European Parliament a report after each of its meetings and a yearly written report on the progress achieved by the Union.</p> <p>The Council Article 202 To ensure that the objectives set out in this Treaty are attained the Council shall, in accordance with the provisions of this Treaty:</p> <ul style="list-style-type: none"> — ensure coordination of the general economic policies of the Member States, — have power to take decisions, — confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down. The Council may impose certain requirements in respect of the exercise of these powers. The Council may also reserve the right, in specific cases, to exercise directly implementing powers itself. The procedures referred to above must be consonant with principles and rules to be laid down in advance by the Council, acting unanimously on a proposal 	<p>The President of the European Council shall in that capacity ensure, at his level, the external representation of the Union on issues concerning its Common Foreign and Security Policy, without prejudice to the responsibilities of the Minister for Foreign Affairs.</p> <p>3. The President of the European Council may not hold a national mandate.</p> <p>Article I-22: The Council of Ministers</p> <p>1. The Council of Ministers shall, jointly with the European Parliament, enact legislation, exercise the budgetary function and carry out policy-making and coordinating functions, as laid down in the Constitution.</p> <p>2. The Council of Ministers shall consist of a representative of each Member State at ministerial level for each of its formations. Only this representative may commit the Member State in question, and cast its vote.</p> <p>3. Except where the Constitution provides otherwise, decisions of the Council shall be taken by</p>	<p>Article III-240 (ex Articles 203 and 204)</p> <p>1. The Council shall meet when convened by its President on his own initiative or at the request of one of its members or of the</p>
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<p>from the Commission and after obtaining the opinion of the European Parliament.</p> <p>Article 203 The Council shall consist of a representative of each Member State at ministerial level, authorised to commit the government of that Member State. The office of President shall be held in turn by each Member State in the Council for a term of six months in the order decided by the Council acting unanimously.</p> <p>Article 204 The Council shall meet when convened by its President on his own initiative or at the request of one of its Members or of the Commission.</p> <p>Article 205</p> <ol style="list-style-type: none"> 1. Save as otherwise provided in this Treaty, the Council shall act by a majority of its Members. 2. Where the Council is required to act by a qualified majority, the votes of its Members shall be weighted as follows: [...] For their adoption, acts of the Council shall require at least: <ul style="list-style-type: none"> — 62 votes in favour where this Treaty requires them to be adopted on a proposal from the Commission, — 62 votes in favour, cast by at least 10 members, in other cases. 3. Abstentions by Members present in person or represented shall not prevent the adoption by the Council of acts which require unanimity. <p>Article 206 Where a vote is taken, any Member of the Council may also act on behalf of not more than one other member.</p>	<p>qualified majority.</p> <p>Article I-23: Council formations</p> <ol style="list-style-type: none"> 1. The General Affairs and Legislative Council shall ensure consistency in the work of the Council of Ministers. When it acts in its General Affairs function, it shall, in liaison with the Commission, prepare and ensure follow-up to, meetings of the European Council. When it acts in its legislative function, the Council shall consider and, jointly with the European Parliament, enact European laws and European framework laws, in accordance with the provisions of the Constitution. In this function, each Member State's representation shall include one or two representatives at ministerial level with relevant expertise, reflecting the business on the Council agenda. 2. The Foreign Affairs Council shall, on the basis of strategic guidelines laid down by the European Council, flesh out the Union's external policies, and ensure that its actions are consistent. It shall be chaired by the Union's Foreign Minister. 3. The European Council shall decide on further formations. 4. The Presidency of a Council formation, other than that of Foreign Affairs, shall be held by Member State representatives within the Council on the basis of rotation, for periods of at least a year. The European Council shall establish the rules of such rotation, taking into account European political and geographical balance and the diversity of Member States. 	<p>Commission.</p> <ol style="list-style-type: none"> 2. The European Council shall adopt, on its own initiative and by unanimity, a decision establishing the rules governing the rotation of the Presidency of Council formations. <p>Article III-241 (ex Articles 205 and 206) CONV 727/03 Where a vote is taken, any member of the Council may also act on behalf of not more than one other member. Where the Council is required to act by a simple majority, the Council shall act by a majority of its members. Abstentions by members present in person or represented shall not prevent the adoption by the Council of acts which require unanimity.</p> <p>Article III-242 (ex Article 207) CONV 727/03</p> <ol style="list-style-type: none"> 1. A committee consisting of the Permanent Representatives of the Member States shall be responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the Council. The Committee may
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<p>Article 207</p> <p>1. A committee consisting of the Permanent Representatives of the Member States shall be responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the Council. The Committee may adopt procedural decisions in cases provided for in the Council's Rules of Procedure.</p> <p>2. The Council shall be assisted by a General Secretariat, under the responsibility of a Secretary-General, High Representative for the common foreign and security policy, who shall be assisted by a Deputy Secretary-General responsible for the running of the General Secretariat. The Secretary-General and the Deputy Secretary-General shall be appointed by the Council acting by a qualified majority.</p> <p>The Council shall decide on the organisation of the General Secretariat.</p> <p>3. The Council shall adopt its Rules of Procedure. For the purpose of applying Article 255(3), the Council shall elaborate in these Rules the conditions under which the public shall have access to Council documents. For the purpose of this paragraph, the Council shall define the cases in which it is to be regarded as acting in its legislative capacity, with a view to allowing greater access to documents in those cases, while at the same time preserving the effectiveness of its decision-making process. In any event, when the Council acts in its legislative capacity, the results of votes and explanations of vote as well as statements in the minutes shall be made public.</p> <p>Article 208</p> <p>The Council may request the Commission to undertake any studies the Council considers desirable for the attainment of the</p>	<p>Article I-24: Qualified majority</p> <p>1. When the European Council or the Council takes decisions by qualified majority, such a majority shall consist of the majority of Member States, representing at least three fifths of the population of the Union.</p> <p>2. When the Constitution does not require the European Council or the Council of Ministers to act on the basis of a proposal of the Commission, or when the European Council or the Council of Ministers does not act on the initiative of the Foreign Minister, the required qualified majority shall consist of two-thirds of the Member States, representing at least three fifths of the population.</p> <p>3. The provisions of paragraphs 1 and 2 will take effect on 1 November 2009, unless the European Council decides by qualified majority to prolong for a maximum period of three years, the interim arrangements as set out in the Protocol on the representation of citizens in the European Parliament and the weighing of votes in the Council.</p> <p>4. Where the Constitution provides in Part III for laws and framework laws to be adopted by the Council according to a special legislative procedure, the European Council can adopt, on its own initiative and by unanimity, after a period of consideration of six months, a decision allowing for the adoption of such laws or framework laws according to the ordinary legislative procedure. The European Council shall act after consulting the European Parliament and informing the National Parliaments.</p>	<p>adopt procedural decisions in cases provided for in the Council's Rules of Procedure.</p> <p>2. The Council shall be assisted by a General Secretariat, under the responsibility of a Secretary-General. The Council shall decide on the organisation of the General Secretariat by a simple majority.</p> <p>3. The Council shall adopt its Rules of Procedure by a simple majority.</p> <p>Article III-243 (ex Article 208) CONV 727/03</p> <p>The Council, acting by a simple majority, may request the Commission to undertake any studies the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals. If the Commission does not submit a proposal, it shall inform the Council of the reasons.</p>
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<p>common objectives, and to submit to it any appropriate proposals.</p> <p>Article 209 The Council shall, after receiving an opinion from the Commission, determine the rules governing the committees provided for in this Treaty.</p> <p>Article 210 The Council shall, acting by a qualified majority, determine the salaries, allowances and pensions of the President and Members of the Commission, and of the President, Judges, Advocates-General and Registrar of the Court of Justice and of the Members and Registrar of the Court of First Instance. It shall also, again by a qualified majority, determine any payment to be made instead of remuneration.</p> <p>The Commission Article 211 In order to ensure the proper functioning and development of the common market, the Commission shall: — ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied, — formulate recommendations or deliver opinions on matters dealt with in this Treaty, if it expressly so provides or if the Commission considers it necessary, — have its own power of decision and participate in the shaping of measures taken by the Council and by the European Parliament</p>	<p>Where the Constitution provides in Part III for the Council to act unanimously in a given area, the European Council can adopt, on its own initiative and by unanimity, a decision allowing the Council to act by qualified majority in that area. Any initiative taken by the European Council under this article shall be sent to National Parliaments no less than four months before any decision is taken on it.</p> <p>5. Within the European Council, its President and the President of the Commission do not vote.</p> <p>Article I-25: The European Commission</p> <p>1. The European Commission shall promote the general European interest and take appropriate initiatives to that end. It shall ensure the application of the Constitution, and steps taken by the Institutions under the Constitution. It shall oversee the application of Union law under the control of the Court of Justice. It shall execute the budget and manage programmes. It shall exercise coordinating, executive and management functions, as laid down in the Constitution. It shall ensure the Union's external representation for areas falling within its responsibility. It shall initiate the Union's annual and pluriannual programming with a view to achieving interinstitutional agreements.</p>	<p>Article III-244 (ex Article 209) CONV 727/03 The Council shall adopt, on its own initiative by a simple majority, the European decisions laying down the rules governing the committees provided for in the Constitution. It shall act after consulting the Commission.</p> <p>Article III-253 (ex Article 212) The Commission shall publish annually, not later than one month</p>
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<p>in the manner provided for in this Treaty, — exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter.</p> <p>Article 212 The Commission shall publish annually, not later than one month before the opening of the session of the European Parliament, a general report on the activities of the Community.</p> <p>Article 213 1. The Commission shall consist of 20 Members, who shall be chosen on the grounds of their general competence and whose independence is beyond doubt. The number of Members of the Commission may be altered by the Council, acting unanimously.</p> <p>Only nationals of Member States may be Members of the Commission. The Commission must include at least one national of each of the Member States, but may not include more than two Members having the nationality of the same State.</p> <p>2. The Members of the Commission shall, in the general interest of the Community, be completely independent in the performance of their duties. In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties. Each Member State undertakes to respect this principle and not to seek to influence the Members of the Commission in the performance of their tasks. The Members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or</p>	<p>2. Except where the Constitution provides otherwise, Union legislative acts can be adopted only on the basis of a Commission proposal. Other acts are adopted on the basis of a Commission proposal where the Constitution so provides.</p> <p>3. The Commission shall consist of a College comprising its President and fourteen European Commissioners selected on the basis of a system of equal rotation between the Member States. This system shall be established by a decision of the European Council on the basis of the following principles:</p> <p>(a) Member States shall be treated on a strictly equal footing as regard determination of the sequence of, and the time spent by, their nationals as Members of the College; consequently, the difference between the total number of terms of office held by nationals of any given pair of Member States may never be more than one;</p> <p>(b) subject to point (a), each successive college shall be so composed as to reflect satisfactorily the demographic and geographical range of all the Member States of the Union.</p> <p>These arrangements will not take effect before 1 November 2009.</p> <p>The Commission President shall appoint non-voting Commissioners, chosen according to the same criteria as apply for Members of the College and coming from all other Member States.</p> <p>4. In carrying out its responsibilities, the Commission shall be completely independent. In the discharge of their duties, the European Commissioners and Commissioners shall neither seek</p>	<p>before the opening of the session of the European Parliament, a general report on the activities of the Union</p> <p>Article III-245 (ex Article 213(1) and ex Article 214) European Commissioners and non-voting Commissioners shall be appointed for a period of five years, subject, if need be, to Article III-238. Only nationals of Member States may be European Commissioners and Commissioners.</p> <p>Article III-246 (ex Article 213(2)) European Commissioners and Commissioners shall refrain from any action incompatible with their duties. Each Member State undertakes to respect this principle and not to seek to influence European Commissioners and Commissioners in the performance of their tasks.</p> <p>European Commissioners and Commissioners may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. In the event of any breach of these obligations, the Court of Justice</p>
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<p>not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. In the event of any breach of these obligations, the Court of Justice may, on application by the Council or the Commission, rule that the Member concerned be, according to the circumstances, either compulsorily retired in accordance with Article 216 or deprived of his right to a pension or other benefits in its stead.</p> <p>Article 214 [..]</p> <p>2. The Council, meeting in the composition of Heads of State or Government and acting by a qualified majority, shall nominate the person it intends to appoint as President of the Commission; the nomination shall be approved by the European Parliament.</p> <p>The Council, acting by a qualified majority and by common accord with the nominee for President, shall adopt the list of the other persons whom it intends to appoint as Members of the Commission, drawn up in accordance with the proposals made by each Member State.</p> <p>The President and the other Members of the Commission thus nominated shall be subject as a body to a vote of approval by the European Parliament. After approval by the European Parliament, the President and the other Members of the Commission shall be appointed by the Council, acting by a qualified majority.</p>	<p>nor take instructions from any government or other body.</p> <p>5. The Commission, as a college, shall be responsible to the European Parliament. The Commission President shall be responsible to the European Parliament for the activities of the Commissioners. Under the procedures set out in Article III-238 of the Constitution, the European Parliament may pass a censure motion on the Commission. If such a motion is passed, the European Commissioners and Commissioners must all resign. The Commission shall continue to handle everyday business until a new college is nominated.</p> <p>Article I-26: The President of the European Commission</p> <p>1. Taking into account the elections to the European Parliament and after appropriate consultations, the European Council, deciding by qualified majority, shall put forward to the European Parliament its proposed candidate for the Presidency of the Commission. This candidate shall be elected by the European Parliament by a majority of its members. If this candidate does not receive the required majority support, the European Council shall within one month put forward a new candidate, following the same procedure as before.</p>	<p>may, on application by the Council acting by a simple majority or by the Commission, rule that the Member concerned be, according to the circumstances, either compulsorily retired in accordance with Article III-248 or deprived of his right to a pension or other benefits in its stead.</p> <p>Article III-245 (ex Article 213(1) and ex Article 214) European Commissioners and non-voting Commissioners shall be appointed for a period of five years, subject, if need be, to Article III-238. Only nationals of Member States may be European Commissioners and Commissioners.</p> <p>Article III-247 (ex Article 215) 1. Apart from normal replacement, or death, the duties of a European Commissioner or Commissioner shall end when he resigns or is compulsorily retired. A European Commissioner or Commissioner shall resign if the President so requests.</p>
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<p>Article 215 Apart from normal replacement, or death, the duties of a Member of the Commission shall end when he resigns or is compulsorily retired. A vacancy caused by resignation, compulsory retirement or death shall be filled for the remainder of the Member's term of office by a new Member appointed by the Council, acting by a qualified majority. The Council may, acting unanimously, decide that such a vacancy need not be filled. In the event of resignation, compulsory retirement or death, the President shall be replaced for the remainder of his term of office. The procedure laid down in Article 214(2) shall be applicable for the replacement of the President. Save in the case of compulsory retirement under Article 216, Members of the Commission shall remain in office until they have been replaced or until the Council has decided that the vacancy need not be filled, as provided for in the second paragraph of this Article.</p> <p>Article 216 If any Member of the Commission no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct, the Court of Justice may, on application by the Council or the Commission, compulsorily retire him.</p> <p>Article 217 1. The Commission shall work under the political guidance of its</p>	<p>2. Each eligible Member State shall submit a list of three persons, in which both genders shall be represented, whom it considers qualified to be a European Commissioner. The President elect, shall select, from among the three names submitted, the thirteen European Commissioners for their competence, European commitment, and guaranteed independence. The President and the persons so nominated for membership of the College, including the future Minister for Foreign Affairs, shall be submitted as a body to a vote of approval by the European Parliament. The Commission's term of office shall be five years.</p> <p>3. The Commission shall work to guidelines laid down by its President. He shall decide its internal organisation, ensuring that it acts consistently, efficiently and on a collegiate basis. He shall appoint vice-presidents from among the members of the College. A European Commissioner or Commissioner shall resign if the President so requests.</p>	<p>2.A vacancy caused by resignation, compulsory retirement or death shall be filled for the remainder of the European Commissioner or Commissioner's term of office by a new European Commissioner or Commissioner appointed by the President of the Commission according to the same procedures.</p> <p>3. In the event of resignation, compulsory retirement or death, the President shall be replaced for the remainder of his term of office. The procedure laid down in Article I-26(1) shall be applicable for the replacement of the President.</p> <p>4. In the case of the resignation of all European Commissioners and Commissioners, they shall remain in office until they have been replaced, for the remainder of their term of office, in accordance with the procedures laid down in Articles I-25 and I-26.</p> <p>Article III-248 (ex Article 216) If any European Commissioner or Commissioner no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct, the Court of Justice may, on application by the Council acting by a simple majority or by the College, compulsorily retire him.</p> <p>Article III-249 (ex Article 217) The responsibilities incumbent upon the Commission shall be structured and allocated among its Members by its President, subject to Article I-26(3). The President may reshuffle the allocation of those responsibilities during the Commission's term of office. European Commissioners and Commissioners shall carry out the duties devolved upon them by the</p>
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<p>President, who shall decide on its internal organisation in order to ensure that it acts consistently, efficiently and on the basis of collegiality.</p> <p>2. The responsibilities incumbent upon the Commission shall be structured and allocated among its Members by its President. The President may reshuffle the allocation of those responsibilities during the Commission's term of office. The Members of the Commission shall carry out the duties devolved upon them by the President under his authority.</p> <p>3. After obtaining the approval of the College, the President shall appoint Vice-Presidents from among its Members.</p> <p>4. A Member of the Commission shall resign if the President so requests, after obtaining the approval of the College.</p> <p>Article 218</p> <p>1. The Council and the Commission shall consult each other and shall settle by common accord their methods of cooperation.</p> <p>2. The Commission shall adopt its Rules of Procedure so as to ensure that both it and its departments operate in accordance with the provisions of this Treaty. It shall ensure that these Rules are published.</p> <p>Article 219</p> <p>The Commission shall act by a majority of the number of Members provided for in Article 213.</p> <p>A meeting of the Commission shall be valid only if the number of Members laid down in its Rules of Procedure is present.</p> <p>Article 18 TEU</p> <p>3. The Presidency shall be</p>	<p>Article I-27: The Foreign Minister</p> <p>1. The European Council, deciding by qualified majority, with the agreement of the President of the Commission, shall appoint the Union's Foreign Minister. He shall conduct the Union's common foreign and security policy. The European Council may end his tenure by the same procedure.</p> <p>2. The Foreign Minister shall contribute by his proposals to the</p>	<p>President under his authority.</p> <p>Article III-251 (ex Article 218)</p> <p>The College shall adopt its Rules of Procedure so as to ensure both its own operation and that of its departments. It shall ensure that these rules are published.</p> <p>Article III-252 (ex Article 219)</p> <p>The College shall act by a majority of its Members. The Rules of Procedure shall determine the quorum.</p>
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<p>assisted by the Secretary-General of the Council who shall exercise the function of High Representative for the common foreign and security policy.</p> <p>Article 26 TEU The Secretary-General of the Council, High Representative for the common foreign and security policy, shall assist the Council in matters coming within the scope of the common foreign and security policy, in particular through contributing to the formulation, preparation and implementation of policy decisions, and, when appropriate and acting on behalf of the Council at the request of the Presidency, through conducting political dialogue with third parties.</p> <p>The Court of Justice Article 220 The Court of Justice and the Court of First Instance, each within its jurisdiction, shall ensure that in the interpretation and application of this Treaty the law is observed. In addition, judicial panels may be attached to the Court of First Instance under the conditions laid down in Article 225a in order to exercise, in certain specific areas, the judicial competence laid down in this Treaty.</p> <p>Article 221 The Court of Justice shall consist of one judge per Member State. The Court of Justice shall sit in</p>	<p>development of the common foreign policy, which he shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.</p> <p>3. The Foreign Minister shall be one of the Vice-Presidents of the Commission. He shall be responsible there for handling external relations and for coordinating other aspects of the Union's external action. In exercising these responsibilities within the Commission, and only for these responsibilities, the Foreign Minister shall be bound by Commission procedures.</p> <p>Article I-28: The Court of Justice 1. The Court of Justice shall include the European Court of Justice, the High Court and specialised courts. It shall ensure respect for the law in the interpretation and application of the Constitution.</p> <p>The Member States shall provide rights of appeal sufficient to ensure effective legal protection in the field of Union law.</p> <p>2. The European Court of Justice shall consist of one judge from each Member State, and shall be assisted by Advocates-General. The High Court shall include at least one judge per Member State: the number shall be fixed by the Statute of the Court of Justice. The judges and the Advocates General of the Court of Justice and the judges of the High Court, chosen from persons whose independence is beyond doubt and who satisfy the conditions set out in Articles III-256 to III-257, shall be appointed by common accord of the governments of the Member</p>	<p>Article 221 (CONV 734/03) The Court of Justice shall sit in chambers, in a Grand Chamber or as a full Court, in accordance with the rules laid down for that purpose in the Statute of the Court of Justice.</p> <p>Article 222(CONV 734/03) The Court of Justice shall be assisted by eight Advocates-General. Should the Court of</p>
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<p>chambers or in a Grand Chamber, in accordance with the rules laid down for that purpose in the Statute of the Court of Justice.</p> <p>When provided for in the Statute, the Court of Justice may also sit as a full Court.</p> <p>Article 222</p> <p>The Court of Justice shall be assisted by eight Advocates-General. Should the Court of Justice so request, the Council, acting unanimously, may increase the number of Advocates-General.</p> <p>It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice, require his involvement.</p> <p>Article 223</p> <p>The Judges and Advocates-General of the Court of Justice shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence; they shall be appointed by common accord of the governments of the Member States for a term of six years.</p> <p>Every three years there shall be a partial replacement of the Judges and Advocates-General, in accordance with the conditions laid down in the Statute of the Court of Justice.</p> <p>The Judges shall elect the President of the Court of Justice from among their number for a term of three years. He may be re-elected.</p> <p>Retiring Judges and Advocates-General may be reappointed.</p> <p>The Court of Justice shall appoint</p>	<p>States for a term of six years, renewable.</p> <p>3. The Court of Justice shall:</p> <ul style="list-style-type: none"> – rule on actions brought by a Member State, an Institution or a natural or legal person in accordance with the provisions of Part III; – give preliminary rulings, at the request of Member State courts, on the interpretation of Union law or the validity of acts adopted by the Institutions; – rule on the other cases provided for in the Constitution. 	<p>Justice so request, the Council, acting unanimously, may increase the number of Advocates-General.</p> <p>It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice, require his involvement.</p> <p>Article 223(CONV 734/03)</p> <p>The Judges and Advocates-General of the Court of Justice shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence; they shall be appointed by common accord of the governments of the Member States after consulting the panel provided for in Article 224a.</p> <p>Every three years there shall be a partial replacement of the Judges and Advocates-General, in accordance with the conditions laid down in the Statute of the Court of Justice 1.</p> <p>The Judges shall elect the President of the Court of Justice from among their number for a term of three years. He may be re-elected.</p> <p>The Court of Justice shall establish its Rules of Procedure. Those Rules shall require the approval of the Council, acting by a qualified majority.</p> <p>Article 224(CONV 734/03)</p> <p>The number of Judges of the High Court shall be determined by the Statute of the Court of Justice. The Statute may provide for the</p>
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<p>its Registrar and lay down the rules governing his service. The Court of Justice shall establish its Rules of Procedure. Those Rules shall require the approval of the Council, acting by a qualified majority.</p> <p>Article 224 The Court of First Instance shall comprise at least one judge per Member State. The number of Judges shall be determined by the Statute of the Court of Justice. The Statute may provide for the Court of First Instance to be assisted by Advocates-General. The members of the Court of First Instance shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high judicial office. They shall be appointed by common accord of the governments of the Member States for a term of six years. The membership shall be partially renewed every three years. Retiring members shall be eligible for reappointment. The Judges shall elect the President of the Court of First Instance from among their number for a term of three years. He may be re-elected. The Court of First Instance shall appoint its Registrar and lay down the rules governing his service. The Court of First Instance shall establish its Rules of Procedure in agreement with the Court of Justice. Those Rules shall require the approval of the Council, acting by a qualified majority. Unless the Statute of the Court of Justice provides otherwise, the provisions of this Treaty relating to the Court of Justice shall apply to the Court of First Instance.</p>		<p>High Court to be assisted by Advocates-General.</p> <p>The members of the High Court shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high legal office. They shall be appointed by common accord of the governments of the Member States for a term of six years after consulting the panel provided for in Article 224a. The membership of the High Court shall be partially renewed every three years. Retiring members may be reappointed.</p> <p>The Judges shall elect the President of the High Court from among their number for a term of three years. He may be re-elected. The High Court shall establish its Rules of Procedure in agreement with the Court of Justice. It shall act after receiving the approval of the Council, acting by a qualified majority. Unless the Statute of the Court of Justice provides otherwise, the provisions of the Constitution relating to the Court of Justice shall apply to the High Court.</p> <p>Article 224a (CONV 734/03) A panel shall be set up in order to give an opinion on candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the High Court before the governments of the Member States take the decisions referred to in Articles 223 and 224. The panel shall comprise seven persons chosen from among former members of the Court of Justice and the High Court, members of national supreme courts and lawyers of recognised competence, one of whom shall be proposed by the European</p>
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<p>Article 225</p> <p>1. The Court of First Instance shall have jurisdiction to hear and determine at first instance actions or proceedings referred to in Articles 230, 232, 235, 236 and 238, with the exception of those assigned to a judicial panel and those reserved in the Statute for the Court of Justice. The Statute may provide for the Court of First Instance to have jurisdiction for other classes of action or proceeding.</p> <p>Decisions given by the Court of First Instance under this paragraph may be subject to a right of appeal to the Court of Justice on points of law only, under the conditions and within the limits laid down by the Statute.</p> <p>2. The Court of First Instance shall have jurisdiction to hear and determine actions or proceedings brought against decisions of the judicial panels set up under Article 225a.</p> <p>Decisions given by the Court of First Instance under this paragraph may exceptionally be subject to review by the Court of Justice, under the conditions and</p>		<p>Parliament. The appointment of members of the panel and the panel's operating rules shall be decided by the Council, acting by a qualified majority, on a proposal from the President of the Court of Justice.</p> <p>Article 225 (CONV 734/03)</p> <p>1. The High Court shall have jurisdiction to hear and determine at first instance actions or proceedings referred to in [Articles 230, 232, 235, 236 and 238], with the exception of those assigned to a judicial panel and those reserved in the Statute for the Court of Justice. The Statute may provide for the High Court to have jurisdiction for other classes of action or proceeding.</p> <p>Decisions given by the High Court under this paragraph may be subject to a right of appeal to the Court of Justice on points of law only, under the conditions and within the limits laid down by the Statute.</p> <p>2. The High Court shall have jurisdiction to hear and determine actions or proceedings brought against decisions of the judicial panels set up under Article 225a.</p> <p>Decisions given by the High Court under this paragraph may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Union law being affected.</p> <p>3. The High Court shall have jurisdiction to hear and determine questions referred for a preliminary ruling under Article 234, in specific areas laid down by the Statute.</p> <p>Where the High Court considers that the case requires a decision of principle likely to affect the unity or consistency of Union law, it may refer the case to the</p>
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<p>within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Community law being affected.</p> <p>3. The Court of First Instance shall have jurisdiction to hear and determine questions referred for a preliminary ruling under Article 234, in specific areas laid down by the Statute.</p> <p>Where the Court of First Instance considers that the case requires a decision of principle likely to affect the unity or consistency of Community law, it may refer the case to the Court of Justice for a ruling.</p> <p>Decisions given by the Court of First Instance on questions referred for a preliminary ruling may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Community law being affected.</p> <p>Article 225a</p> <p>The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Court of Justice or at the request of the Court of Justice and after consulting the European Parliament and the Commission, may create judicial panels to hear and determine at first instance certain classes of action or proceeding brought in specific areas.</p> <p>The decision establishing a judicial panel shall lay down the rules on the organisation of the panel and the extent of the jurisdiction conferred upon it.</p> <p>Decisions given by judicial panels may be subject to a right of appeal on points of law only or, when provided for in the decision establishing the panel, a right of appeal also on matters of fact, before the Court of First Instance.</p> <p>[...]</p>		<p>Court of Justice for a ruling.</p> <p>Decisions given by the High Court on questions referred for a preliminary ruling may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Union law being affected.</p> <p>Article 225a (CONV 734/03)</p> <p>1. The European Parliament and the Council, in accordance with the legislative procedure, may adopt European laws establishing specialised courts attached to the High Court to hear and determine at first instance certain classes of action or proceeding brought in specific areas. They shall act either on a proposal from the Commission after consulting the Court of Justice or at the request of the Court of Justice after consulting the Commission.</p> <p>2. The European law establishing a specialised court shall lay down the rules on the organisation of the court and the extent of the jurisdiction conferred upon it.</p> <p>3. Decisions given by specialised courts may be subject to a right of appeal on points of law only or, when provided for in the European law establishing the specialised court, a right of appeal also on matters of fact, before the High Court.</p> <p>4. The members of the specialised courts shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office. They shall be appointed by the Council, acting unanimously.</p> <p>5. The specialised courts shall establish their Rules of Procedure in agreement with the Court of</p>
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<p>Article 234 The Court of Justice shall have jurisdiction to give preliminary rulings concerning:</p> <ul style="list-style-type: none"> (a) the interpretation of this Treaty; (b) the validity and interpretation of acts of the institutions of the Community and of the ECB; (c) the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide. <p>Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.</p> <p>Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall</p>		<p>Justice. They shall act after receiving the approval of the Council, acting by a qualified majority.</p> <p>6. Unless the European law establishing the specialised court provides otherwise, the provisions of the Constitution relating to the Court of Justice and the provisions of the Statute of the Court of Justice shall apply to the specialised courts. [...]</p> <p>Article 234 (CONV 734/03) The Court of Justice shall have jurisdiction to give preliminary rulings concerning:</p> <ul style="list-style-type: none"> (a) the interpretation of the Constitution; (b) the validity and interpretation of acts of the institutions of the Union; (c) the interpretation of the statutes of agencies or bodies established by an act of the Union, where those statutes so provide. <p>Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.</p> <p>Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.</p> <p>If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice shall act with the minimum of delay.</p>
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bring the matter before the Court of Justice. [Other areas of jurisdiction in Articles 235-239]		
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