College of Europe
Collège d'Europe

CONTRIBUTION

prepared by the participants

of the

Bruges Convention on the Future of Europe

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We would hereby like to acknowledge the different contributions posted on the European Convention website, which helped us in no small measure. More specifically, we used the "Penelope" draft and the outline presented by the Presidium (CONV 369/02).

Bruges, 6 March 2003

It is now one year ago that the Convention was set up with the mandate of preparing a draft constitution for the EU, and it is fair to say that it has generated a much wider public debate among interested citizens than the previous IGCs.

Our students have this year the great opportunity to specialise themselves in European Studies at the same time as the Convention debates different ways to re-shape the Union's very foundations. To reflect the importance of this debate, the College has not only organised a seminar and various conferences on the topic, but has also proposed a Convention simulation game in order to allow the students to debate some of the most salient questions of the Union's future constitution.

During the first week of January, twenty-three students from three different departments (politics, law and economics) and from fourteen countries worked together in this simulation game. They drafted a contribution to the constitutional debate currently under way within and outside of the European Convention. Although in its composition and interdisciplinary background the simulation game very much resembled to the "real" convention, there remained two fundamental differences. First, they had to address – at a relatively early stage of their academic year in Bruges – complex matters and agree on common proposals within an extremely short time frame. Second, they managed this research and negotiation process without the help of personal assistants and experts.

The course of this "Bruges Convention" has been marked by a great diversity among the participants. Their different cultural and disciplinary backgrounds, as well as their political opinions did not fail to bring to the fore many divergent – sometimes conflicting – views and ideas. The students chose to proceed by endeavouring to reach the broadest consensus possible, an approach often leading them to reach "classical" compromises on many important issues. Nevertheless, the overall result of the Convention simulation game is not only the product of an intensive learning experience but also in some respects an interesting contribution to the present constitutional debate.

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FOREWORD

During one week, twenty-three students from the three departments of the College of Europe (politics, law and economics) worked together to draft a contribution to the constitutional debate currently under way both within and outside the Convention on the Future of Europe.

The first deliberative body set up in 1999 by the European Council in order to draft a core constitutional text – the Charter of Fundamental Rights – decided to label itself "Convention" in order to underline the great importance of its work. It was hence not surprising that the body convened by European Council in Laeken in order to prepare a throughout reform of the Union's constitutional texts was called "Convention on the Future of Europe".

This denomination ("Convention") is a symbol. It is a reference to the basic debate about the very foundations of the political life in Europe. We are not the first to claim that the people must have an active role in this debate in order for these foundations to be legitimate.

Thus, when we met it was not as experts, or as students, but first of all as European citizens trying to elaborate a modest contribution to this founding debate. This experience was also truly European, fourteen nationalities being represented: Belgium, Estonia, France, Germany, Italy, Luxembourg, Netherlands, Poland, Rumania, Spain, Sweden, Switzerland, United Kingdom.

One can often hear that democracy is not efficient, and that some matters are best left to experts. We chose another path, and it was a week of intense discussions. We did not leave the decisions to our specialised working groups but used their preparatory work as a basis for a broad discussion within the plenary. Every point, every idea formulated in this contribution has been submitted to and discussed in the plenary. Our proposals are based either on consensus and, if it was not possible to reach it, on a majority vote.

Being students of European integration, the text may be modest in some parts regarding the progress it proposes. Other ideas may appear utopical, at least for the moment. This reflects our debate that shifted between a realist and a visionary spirit.

One week is a short period of time and of course there are shortcomings in our work, but nevertheless hope that this contribution will be useful to add an extra value to the current debate taking place in Europe.

EXECUTIVE SUMMARY

1. Structure of the Constitution and of the Treaty on Policies

1.1. Simplification of the Treaties, organisation of the Constitution and the Treaty on Policies of the European Union.

The new constitutional framework of the European Union will be based on two distinct treaties: first the Constitution of the European Union (CEU) comprising the constitutional structure of the European Union and secondly the Treaty on Policies of the European Union (TP) comprising its policies.

1.2. Adoption, ratification and entry into force of the Constitution and the Treaty on Policies of the European Union.

Considering the fact that the adoption and the ratification of the CEU and of the TP have to be submitted to the same procedure, the Council has to decide by unanimity, the European Parliament has to give its assent by the majority of its component members and all Member States have to ratify both the CEU and the TP according to their national constitutional procedures. A European referendum will be held at a final stage of the ratification process.

1.3. Revision of the Constitution and the Treaty on Policies.

According to the re-organisation of the treaties there will be two different revision procedures: one for the Constitution, which demands unanimity among the Member States and another one for the Treaty on Policies, which demands a reinforced qualified majority (5/6 of the Member States within the Council and 5/6 of the national ratifications) with the consequence that the amendments will be imposed on the Members States in minority.

1.4. Right of secession

In the Constitution of the European Union there will be no provision providing the right of secession of a Member State.

1.5. Enhanced cooperation

The conditions for the application and implementation of the instrument of "enhanced cooperation" as they are formulated for the (existing) first pillar of the Union in the Treaty on European Union and Treaty establishing the European Community (as amended by the Treaty of Nice) will be generalised to the entire (existing) second and third pillar of the Union. Thus there will be one general provision for all policies of the Union.

2. The Union citizens' rights

2.1. The whole text of the Charter of Fundamental Rights (the Charter) will be included as a Title of the Constitution.

2.2. There shall be no substantial changes in the Charter, only formal changes in order to facilitate integration into the Constitution.

2.3. A new horizontal clause shall be included in the Charter for the interpretation of fundamental rights of the Charter in harmony with common constitutional traditions.

2.4. The present article 6.2 of the TEU shall be removed, as it will be redundant.

2.5. Jurisdictional protection of fundamental rights shall be given a greater scope.

2.6. The European Union shall be authorised to sign international agreements on human rights and especially the European Convention on Human Rights. This would give citizens the same degree of protection vis-à-vis acts of the Union as they presently enjoy vis-à-vis all the Member States. It will also give the Union more legitimacy to demand the respect of its provisions by other parties.

3. The Institutional framework

3.1. The Union will have a single institutional structure with basic institutional provisions (including delimitation of powers) set by the Constitution. The principle of loyal cooperation and the European Code of Good Administrative Behaviour shall apply to the activities of the institutions.

3.2. A uniform electoral system should be adopted for the European Parliament, while keeping the present situation of national constituencies. There should be a treaty provision providing for a proportional voting system, the same in all Member States. Constituencies would continue to exist only on a national basis, although the Treaty provision would provide for the possibility of establishing transnational constituencies in the future, with the agreement of all Member States.

3.3. Genuine European Political Parties should be created soon, in order to strengthen the Union citizens' participation in the European integration process. This shall be encouraged by the setting up of an appropriate legal and financial framework.

3.4. The European Council should be renamed as "European Summit" and institutionalised. It will be chaired by a rotating presidency of one Member State, changing every 6 months.

3.5. A system of Presiding Secretaries shall be introduced within the Council, COREPER and Committees, thus abolishing the present rotation of Member States ministers. The Council Secretariat will establish the agenda following proposals by members of the Council. The Secretaries will chair the meetings of the Council.

3.6. The Commission shall be designated by and accountable to both European Parliament (appointing the President of the Commission) and Council (sharing with the EP the power to censure the Commission).

3.7. The size of the Commission should be fixed at 20 members. The Members of the Commission should be chosen according to a rotation system based on the principle of equality between the Member States.

The President of the Commission will be designated by the European Parliament (EP) and approved by Council. The other Members of the Commission should be chosen

in the same way as today (designation by the Council in agreement with the President of the Commission; approval by the EP).

3.8. The Economic and Social Committee as well as the Committee of the Regions should remain Union's advisory bodies. The role of the European Ombudsman will be strengthened.

3.9. Reform of the decision-making process should make the co-decision procedure the basic one for most of the Union's legislative actions, also in areas where it is not applied today. The judicial bodies shall remain outside the EP powers of designation.

4. Union competences and actions

COMPETENCES

4.1. The basic principles regulating the competence order remain unchanged. The Union will be competent in different sectors according to functional objectives of the Constitution and procedural provisions of the Treaty. A list of competences reserved for the Member States shall be introduced.

4.2. Provisions of the present Article 308 TEC (ensuring in part the necessary flexibility of the Union) should be maintained. However, the EP shall be associated through the co-decision procedure.

4.3. The exercise of the Union's competences shall be subject to both political and judicial control to allow for a stronger direct involvement of national parliaments in the legislative process and therefore their better control over the action of the governments in the EU fields.

- Political control: early warning system carried out by national parliaments.

- Judicial control: a right of action for national parliaments of subsidiarity through an action grounded on misuse of competences.

4.4. The Court of Justice (CJ) will be the competent organ for making judgment on matters of competence.

INSTRUMENTS

4.5. The Union's system of instruments must be simplified and its coherence improved. The number of instruments shall be reduced.

4.6. The hierarchy of norms must be strengthened. The separation of legislative and executive actions should be reflected in the names of the instruments. Norms used in the implementation of decisions must differ in both name and order of enactment from legislative action.

4.7. The Open Method of Coordination must be integrated in the Constitution.

4.8. A number of measures which essentially concern matters within the institutions will remain necessary for the proper functioning of the Union. For example: resolutions, inter-institutional agreements, guidelines or declarations, due to their political, indicative or preparatory value.

5. Organisation and access to the judicial system

5.1. “The Court of Justice is the Constitutional and Supreme Court of the European Union”.

5.2. “The Court of Justice and the Court of First Instance as the main element of the judicial system of the European Union shall remain placed in Luxemburg”.

5.3. “The members of the Court of Justice, Court of First Instance and Judicial panels shall not be appointed for more than two terms, each appointment lasting for a period of six years”.

5.4. “The Presidents of the Court of Justice, of the Court of First Instance and of each Judicial panel shall ensure efficient organisation of the relevant courts’ work”.

5.5. “Within the respect of their national procedural autonomy, national courts shall carry out their task of ‘Union judges of common law’. In comparison with the national courts required to apply Union law, the Court of Justice, the Court of First Instance and the Judicial panels shall make every efforts to avoid a double standard of judicial protection”.

5.6. “In order to respect equality between applicants before Judicial panels and before the Court of First Instance, against the rulings adopted by the latter on appeal versus the judgments of the former, only the review procedure shall be available before the Court of Justice”.

5.7. “In case of a general act, a direct action to the Court of Justice for the protection of fundamental rights shall be available to the individual, when no other EU judicial remedy is possible”.

5.8 “The Court of Justice, the Court of First Instance and Judicial panels shall have jurisdiction on issues regarding the legality of all binding measures adopted by any institution or body of the European Union.”

5.9. “The legality control shall be carried out by the Court of Justice for all international agreements, also in the area of Common Foreign Security Policy and Justice and Home Affairs”.

6. Economic Governance

6.1. A reference to the Internal Market shall be added as a guiding principle for economic governance.

6.2. Economic Policy of the European Union must be coordinated within the Council as well as in the Eurogroup.

6.3. Economic growth has to be added as a policy objective in the field of Monetary Policy, alongside price stability.

6.4. The procedures for the coordination of the economic policies of the Member States must insure democratic legitimacy and unified implementation; the framework must be simplified and streamlined by integrating the different procedures and setting clear priorities.

6.5. In view of enlargement a maximum number of members of the governing bodies of European Central Bank (ECB) has to be established, and a rotating scheme elaborated.

6.6. The mandate of the ECB must be widened to include the objective of economic growth besides price stability.

6.7. The accountability of the ECB must be reinforced and transparency guaranteed.

6.8. The external representation of the Eurozone should be improved. Therefore a High Representative will be appointed by the Eurogroup countries in the Council.

7. Union budgetary matters

1st OPTION : New own resource – European Union Tax

7.1. The Union will have the competence to levy taxes. These taxes will not replace the system of own resources but add another resource. The Treaty will make no reference to a particular tax base.

7.2. The more supranational the Union becomes the less comprehensible it is why it should rely on financial transfers from the Member States. We believe that the net payer debate is rather fostered by the system of national contributions. Applying a uniform tax on EU citizens would decrease the spirit of *juste retour*.

7.3. The tax base should take into consideration the still heterogeneous economic situation in the Member States.

2nd OPTION : Increased transparency – European national “surtax”

7.4. The Union should not receive taxing power. However, in order to increase transparency, the national GDP contribution shall be translated by the Member States themselves into a “surtax” in the national taxes collected by the Member States.

8. Social and Education Policies

8.1. Solidarity and social protection are part of the Union’s basic values and must be mentioned in the Preamble.

8.2. A reference to the European societal and social model, the emergence of a true social dialogue, the protection of social rights, the commitment of the Union to ensure a high level of qualitative employment should be included among the Union’s objectives. Moreover, we also propose to mention among those objectives: protection of public health, consumer protection and the fight against poverty.

8.3. The relationship between the coordination of the economic policies and the coordination of social policies should be strengthened.

8.4. There is no need to transfer new competences to the Union in the social field.

8.5. The Open Method of Coordination must be formalised.

8.6. Qualified majority voting and the co-decision procedure will be extended in certain areas of social protection: protection of workers with regard to employment contract termination, representation and collective defence of the interests of workers and employers, including co-determination and conditions of employment for third countries' nationals legally residing in the Union territory.

8.7. Civil society will be recognised by the Constitution as being part of the democratic life of the Union.

8.8. Language diversity among Member States and regions, as well as the role of regions' cultural diversity, shall be mentioned in the part of the Constitution dealing with the relations between the Union and Member States.

8.9. The Treaty will stress the responsibility of the Member States for teaching foreign languages and the awareness of European diversity from primary school onwards. A European Education Agency shall be created.

9. Area of Freedom, Justice and Security

9.1. The competences in the area of Justice and Home Affairs shall be submitted to regular decision-making procedures using the common instruments, with particular concern for ensuring democratic and judiciary control and transparency. The Member States accept to share their competences with the Union in this area in full accordance with the principle of subsidiarity.

9.2. In order to acknowledge the difference in nature between the different policies regrouped under the heading of "freedom, justice and security", their location in the Treaty has been reconsidered.

CRIMINAL (JUDICIARY & POLICE) POLICIES

9.3. The Union is competent to approximate national legislations in order to support and facilitate judiciary and police cooperation in criminal matters among Member States. This shall be done through:

- approximation/minimal rules on substantive criminal law for cross-border offences
- approximation/minimal rules on the rules on criminal procedure
- approximation/minimal rules on operational cooperation in criminal matters

9.4. As the competences of the Union in this field are coordinative, the voting procedures must protect the prerogatives of the Member States and thus require not only unanimity in the Council but also the involvement of the national parliaments. The scope of scrutiny by national parliaments and the European Parliament should be highly enhanced. Through transparency and more accountability, the citizens would be able to intervene in the legislative decision-making process of the European Union.

9.5. The Union decides on the operational instruments that foster judiciary and police cooperation in criminal matters among Member States. This operational cooperation shall be carried out through:

- giving the status of European Agencies to Europol, Eurojust and Eurobord and adapting their competences

- instituting an accountable European Public Prosecutor to prosecute persons committing fraud against the interests of the Union before national jurisdictions

9.6. The above-mentioned Agencies and the European Political Prosecutor shall be controlled both by the Council and the European Parliament. The Court of Justice shall receive full competence to review their actions.

IMMIGRATION POLICY

9.7. The Union shall progressively develop its actions taken in the field of immigration into a coherent policy. This policy shall address not only the economic, but also the political and social dimensions of the immigration phenomenon. The common objective of the Union is to create a legal framework

for the immigration flows to Europe and to facilitate the integration of non-EU citizens into European societies in order to give an adequate answer to these new challenges.

ASYLUM POLICY

9.8. The Union shall progressively develop its actions taken in the field of asylum into a coherent policy based on relevant human rights instruments. The Union shall seek to adopt an exemplary role in the world for the protection of Human rights and of refugees.

10. External relations

10.1. The European Union will have a single legal personality, replacing the existing legal personalities of the Communities.

10.2. In matters of Common Foreign and Security Policy (CFSP), the functions of the current High Representative (HR) for CFSP will be included among those of the Commissioner for External Relations, accountable to the European Parliament and to the Council, being a full member of the Commission. The Commission shall keep the European Parliament and the Council regularly informed regarding the state of the Union's external relations.

The Commissioner for external relations is proposed shortly after the Commission President's election and nomination, by the President of the Commission in common accord with the Council. In political dialogue meetings he will ensure the external representation of the Union, replacing the current 'troika' practice. The Secretary (new system of Presidency) of the General Affairs Council will relinquish this task of external representation.

10.3. Common Foreign and Security Policy

The functions of the political committee monitoring the international situation and contributing to the definition of policies [Art. 25 TEU] must be changed: its role will

be to advise the Commissioner for External Relations and guarantee that the interests of the Member States are respected.

10.4. European Security and Defence Policy (ESDP)

- The ESDP shall not be communitarised

- Enhanced cooperation shall be enabled

- A "solidarity clause" should be included in the Treaty

10.5. Common Commercial Policy

In order to enhance democratic control, the European Parliament shall be involved in trade negotiations. A representative of the European Parliament will be in the committee assisting the Commission in its negotiation tasks. Furthermore, the assent procedure will apply to trade agreements.

10.6. Development Policy

With the objective of making the development cooperation policy the third pillar of the external relations of the Union (the two others being the CFSP and the Commercial Policy), its objectives shall be deepened and its coordination with other policies reinforced.

10.7. Justice and Home Affairs

As the questions regarding the Area of Freedom, Security and Justice are now subject to the common European Union procedures and shall be carried out through the common instruments, the conclusion of international agreements in this field should be carried out according to the common procedure [Article 300 TEC].

OUTLINE OF INSTRUMENTS

Constitution of the European Union

Preamble [8.1.]

Title I. Charter of Fundamental Rights [2.1. - 2.4.]

Chapter I	Human dignity
Chapter II	Freedoms
Chapter III	Equality
Chapter IV	Solidarity
Chapter V	Citizenship
Chapter VI	Justice
Chapter VIII	General provisions

Title II. Definitions and objectives of the European Union

Article	Creation of the Union
Article	Constitutional structure: Constitution and Treaty [1.1.]
Article	Objectives [6.1., 8.2.]
Article	Legal personality [10.1.]
Article	Member States
Article	Relations between the Union and Member States [6.4., 8.8.]

Title III. Union competences and actions [4., 9.1.]

Chapter I	Fundamental principles: conferred competences, subsidiarity and proportionality
Chapter II	List of reserved competences [4.1.]

Title IV. Union institutions and bodies [3.1.]

Chapter I	European Parliament [3.2. –3.3.]
Chapter II	European Summit [3.4.]
Chapter III	Council [3.5.]
Chapter IV	Commission [3.6. - 3.7., 10.2.]

Chapter V	Court of Justice [4.4.], Court of First Instance and Judicial panels [5.]
Chapter VI	Court of Auditors
Chapter VII	Economic and Social Committee [3.8.]
Chapter VIII	Committee of the Regions [3.8.]
Chapter IX	European Central Bank and ESCB [6.5. - 6.7.]
Chapter X	European Investment Bank
Chapter XI	European Agencies [8.9., 9.5.]
Chapter XII	European Ombudsman [3.8.]

Title V. Implementation of Union action [8.7.]

Article	Instruments of the Union [4.5.-4.8.]
Article	Legislative procedures [3.9., 9.1.]; principle of transparency [9.4.]
Article	Voting rules; possibility of constructive abstention
Article	Enhanced cooperation [1.5.]
Article	Procedure for the conclusion of international agreements [2.6., 5.9., 10.7.]
Article	Procedure for the conclusion of association agreements
Article	External representation of the Union [6.8., 10.]

Title VI. Union finances

Article	Union resources [7.]
Article	Principles of budgetary balance
Article	Budgetary procedure

Title VII. General provisions

Article	Repeal of previous Treaties; provisions on legal continuity
Article	Adoption, ratification and entry into force of the Constitution and the Treaty on Policies [1.2.]
Article	Revision procedures for the Constitution and the Treaty on Policies [1.3.]
Article	Accession to the Union
Article	Suspension of membership rights
Article	Territorial application
Article	Languages
Article	Duration [1.4.]

Treaty on Policies of the European Union

Introductory Article: Relation with the Constitution

Part I. Internal policies and their implementation

Title I. Internal Market [6.1.]

Chapter I. Free movement of persons and services

Section I	Workers [8.6]
Section II	Freedom of establishment
Section III	Freedom to provide services
Section IV	Visas, immigration and other policies related to the free movement of persons [9.2, 9.7.]

Chapter II. Free movement of goods

Section I	Customs Union
Section II	Prohibition of quantitative restrictions
Section III	Capital and payments
Section IV	Harmonisation of legislation

Title II. Economic and Monetary Policy [6.2.-6.4., 8.3.]

Title III. Policies in other specific areas

Chapter I	Competition rules
Chapter II	Social policy [8.3.-8.6.] and employment
Chapter III	Agriculture and fisheries
Chapter IV	Environment
Chapter V	Consumer protection
Chapter VI	Transport
Chapter VIII	Trans-European networks

Chapter IX	Research and Development
Chapter X	Peaceful use of atomic energy
Chapter XI	Industry
Chapter XII	Health
Chapter XIII	Culture [8.8.]
Chapter XIV	Education [8.9.]

Title IV. Criminal policies [9.3.-9.6.]

Title V. Asylum policy [9.8.]

Part II. External policies and their implementation

Title I	Commercial policy [10.5.]
Title II	Development policy [10.6.]
Title III	External aspects of policies covered in Part I, Titles I - V [6.8.]
Title IV	Common Foreign and Security Policy [10.3.]

Part III. Defence [10.4.]

CONTRIBUTIONS

1. Structure of the Constitution and of the Treaty on Policies

1.1. Simplification of the Treaties, organisation of the Constitution and the Treaty on Policies of the European Union.

The new constitutional framework of the European Union will be based on two distinct treaties: first the Constitution of the European Union (CEU) comprising the constitutional structure of the European Union and secondly the Treaty on Policies of the European Union (TP) comprising its policies.

The new entity established by the two treaties will be called “European Union” thus maintaining the denomination to which the citizens of Europe have become accustomed for more than a decade and which describes best its specificity as a supranational organisation. In the following contributions the name European Union (the Union) refers to this “new” entity if there is no other reference.

The Constitution of the European Union (CEU) contains seven Titles. The first Title incorporates the Charter of Fundamental Rights of the European Union. Following Titles comprise the principles of the “new” European Union such as its definition and objectives as well as the functions and tasks of the different institutions and bodies. The last Title includes general provisions about various matters, e.g. the adoption and revision of the Constitution and the Treaty on Policies, as well as the accession procedure.

The Treaty on Policies of the European Union (TP) contains all its policies. That includes the policies of the existing European Community but also the CFSP (the second pillar), the JHA (third pillar) and the Euratom policy. The underlying logic of the Treaty on Policies resides in the existence of three groups of policies that correspond to three different methods and procedures. One group would consist of those policies that respect the pure community method (co-decision procedure and qualified majority voting within the Council). Another group would include the policies that are still governed by a rather intergovernmental procedure like the current second pillar (little participation of the European Parliament and unanimity within the Council). The third group would consist of policies that respect an “in-between” procedure that leads to a communitarisation of these policies. The idea is to allow a dynamic evolution of the Union: a model consisting of only three different decision-making procedures, dynamic integration being institutionalised.

The idea of separating the constitutional provisions from the policies into two different treaties has the following advantages: the Constitution will be a core document that makes the foundations and principles of the Union visible to the citizens and that will “fit into any pocket”. The Constitution will not often be subject to amendments as the amendment procedure is very demanding (unanimity), thus providing necessary stability. The Treaty on Policies will have to be adapted to the ongoing integration process. It is

therefore the "flexible" document, which might be subject to amendments in shorter intervals and which is subject to a less demanding amendment procedure.

1.2. Adoption, ratification and entry into force of the Constitution and the Treaty on Policies of the European Union.

Considering the fact that the adoption and the ratification of the CEU and of the TP have to be submitted to the same procedure, the Council has to decide by unanimity, the European Parliament has to give its assent by the majority of its component members and all Member States have to ratify both the CEU and the TP according to their national constitutional procedures. A European referendum will be held at a final stage of the ratification process.

There is a need for the same adoption and ratification procedure due to the following logic: submitting the two treaties to different procedures means, for example, the requirement of unanimity in the Council and ratification in all Member States for the CEU and only of a majority of 5/6 in the Council and of national ratifications for the TP The consequence would be that the Member States that do not agree in the Council or do not ratify the Treaty on Policies according to the national constitutional procedures will not participate in the European Union.[1] In this case a Member State will never accept to ratify the Constitution if it disagrees with the Treaty on Policies as the adoption and the ratification process of both treaties will take place in parallel. In other words, from a political (not legal) point of view it is impossible to separate those two treaties for the adoption and ratification procedures.

According to that practical reasoning, there are two options: either unanimity or 5/6 majority (Council and national ratification) for both treaties. The latter option (cf. Penelope proposal) presents the following three disadvantages:

- First the status of the "outs" (i.e. the Member States in minority that will not participate in the European Union) needs to determined, which is extremely complicated.[2])
- Secondly, there is the Ireland-Nice-argument: if a Member State basically agrees on adopting and ratifying both treaties and votes for it within the Council, but the national parliament rejects the text or the national referendum fails, the Member States will have to withdraw from the Union. This consequence appears to be absurd considering the fact that the "negative" decision, in particular as a

[1] A reinforced qualified majority of, for example, 5/6 implies, in the context of the adoption and the entry into force of the Constitution and the Treaty on Policies, the consequence that the Member State(s) in minority will not participate in the European Union under the following hypothesis. Both treaties (CEU and TP) must be subject to national ratifications according to the constitutional law in the Member States. If the national ratification fails due to the fact that the national parliament does not agree or the national referendum is negative, it cannot be imposed on these Member States by the European Union. Therefore the reinforced qualified majority cannot legally imply the idea of the Member States in minority having to accept the outcome of the procedure and to follow the majority.

[2] According to community law and to international public law the "outs" cannot be forced to withdraw from the European Union with the consequence of losing all their existing rights under the present treaties. Therefore, they may keep the *status quo* - if they want to - but do not participate in the European Union which is then based on the CEU and the TP. The problem is to define that *status quo*. From a practical and legal point of view it is difficult to imagine a model according to which the European Union can function at two different levels with one or more Member State(s) for which the time of membership in the EU "stands still" and with the other Member States moving on in the same policy areas and, moreover, on a different constitutional basis.

result of a referendum, might only reflect a "snapshot", possibly influenced by national political debates and not expressing a fundamental, stable attitude.

- Thirdly, a procedure providing 5/6 majority would mean a breach of Article 48 of the existing Treaty on European Union, which entails as its core element the need for unanimity among the Member States.

Therefore, the unanimity option appears to be the favourable one. The main disadvantage of this option is that one Member State can block the whole process and prevent both Treaties (CEU and TP) from entering into force. This possibility has to be avoided by reaching a consensus among the Member States during the negotiations of the elaboration of the CEU and TP.

After the signature of the two treaties and before the national ratifications a European referendum will take place with the aim of increasing the legitimacy of the European Union. The conditions of this European referendum are the following: a twofold majority will be needed. First, a simple majority of the European citizens has to vote for the CEU and TP. Secondly, a simple majority of the citizens must also be reached in the majority of the Member States. The proposal to have a European referendum before and not after the national ratifications aims at avoiding a contradiction between a "negative" outcome of the European referendum and the "positive" national ratification.

1.3. Revision of the Constitution and the Treaty on Policies.

According to the re-organisation of the treaties there will be two different revision procedures: one for the Constitution, which demands unanimity among the Member States and another one for the Treaty on Policies, which demands a reinforced qualified majority (5/6 of the Member States within the Council and 5/6 of the national ratifications) with the consequence that the amendments will be imposed on the Members States in minority.

In case of an amendment of the Constitution of the European Union, a Convention would prepare a draft proposal that will be voted on by the Council (unanimity) and the European Parliament (reinforced majority). Consequently each Member State would have to ratify the revision according to its national constitutional procedure. Thus the Convention will replace the Intergovernmental Conferences, which have prepared the revision of the existing treaties up to now. The Convention will be a non-permanent body. Its composition shall take into account, in particular, members of the European Parliament and of the national parliaments in order to maintain (or to increase) the level of legitimacy. The working methods of the Convention have to be generally fixed by law.

The need of unanimity for the amendments of the Constitution is appropriate, given the fundamental importance of this document for the Union.

Concerning the amendments of the Treaty on Policies of the European Union the preparatory phase will, in general, not include a Convention, nor an Intergovernmental Conference. This phase will be subject to the "normal legislative process" (right of initiative of the Commission which will take into account the proposals made by the Member States).

A reinforced qualified majority of 5/6 of the Member States within the Council and of the national ratifications is necessary, apart from the participation of the European Parliament in order to get the amendments into force. That means that the minority of the Member States which either did not vote for the amendment within the Council or which did not ratify the amendment (because of a failure of a national referendum or a negative voting of a national parliament) will have to accept the amendments agreed on by the majority. The advantage of the reinforced qualified majority option for the revision procedure is that a certain pressure is put on the Member State that does not agree with the amendment to come to an agreement with the rest of the Member States. It is deprived of the possibility to block the whole process. The deepening of the integration process is thus simplified.

The implementation of the idea of imposing the amendments on the minority of Member States touches the core issue of the sovereignty of the Member States and has far-reaching consequences for the role of the national parliaments.

At the present stage of the integration process and of community law, the Member States still have the *Kompetenz-Kompetenz*. Therefore they have to agree on each transfer of competence to the Union. If an amendment to the Treaty on Policies (i.e. the transfer of a competence in order to create a new Union policy or in order to deepen an existing policy) was to have effect in all Member States, they would all have to ratify this amendment according to their national constitutional law. The national ratification incorporates this transfer of competence agreed on at European level into the national (constitutional) law. If a Member State should fail to ratify such a revision of the TP, the amendment would not be introduced into the law of this Member State and would therefore have no legal effect for the latter.

Our proposal is only legally possible if the Member States agree on attributing to the Union the *Kompetenz-Kompetenz*. Such a fundamental modification has to be incorporated into the Constitution of the European Union. If the Member States adopt and ratify this kind of Constitution they agree in advance on any transfer of competences. The national parliaments may transfer – in a final stage – any competences to the Union, and therefore this proposal includes the possibility of moving on progressively to a European federal state.

Minority opinion:

We support the basic idea of facilitating the revision procedure for the Treaty on Policies in order to prevent a small minority of Member States from blocking the revision process.

However we think that the proposal of imposing the amendments on the minority of Members States goes too far at the current stage of integration. We see the risk of some Member States not being willing to adopt and ratify the CEU and TP at the present stage in the perspective of being possibly forced to accept the transfer of sovereignty rights to the Union in the (near) future. We therefore propose the same 5/6 majority for the Council and national ratification, but another consequence for the minority of the Member States that either voted against the amendments within the Council or do not ratify the amendments (because of a negative referendum or a negative voting in the national parliament). The consequence would be the complete withdrawal of this minority of Member States from the Union. In this case, a special procedure will elaborate a regime, which will govern the future relationship between this/these Member State(s) and the Union. It could resemble a certain associated status. In any case, such a withdrawal would lead to the loss of any rights for the Member State(s). Thus the problem of the status of the “outs” in the context of the revision of the treaties is not comparable to the problem in the context of the adoption and entry into force of the CEU and TP.

The total withdrawal from the European Union would be a high price to pay for the non-acceptance of the amendment. Nevertheless we think that such a scenario will only constitute an *ultima ratio* solution as the Member States will do everything to reach a consensus and each Member State whose constitution demands a national referendum will do everything to convince its people to vote "yes" (in order to avoid the "Ireland-Nice-Case").

Signed by: Sebastian Kirsch, Berni Ferrer Jeffrey, Oliver Mross, Liina Sillaots, Ralf Tutsch.

1.4. Right of secession

In the Constitution of the European Union there will be no provision providing the right of secession of a Member State.

The explicit recognition of a right of secession in the Constitution of the European Union would express an idea, which is contrary to the integration *leitmotiv*. It would also have as a consequence that this possibility would always be referred to in case of a national political crisis or in case of disagreement between Member States linked to a sensitive issue. That could undermine negotiations and could be used as an instrument of "blackmail".

Minority opinion:

Without undermining the necessity of the European Union's creation according to a federal pattern, the evolution of this organisation does not resemble a classical process of State creation. Being a union of peoples (with a growing conscience of constituting one people) of Europe as well as of European States (who founded the Communities and still remain the so called 'Masters of the Treaties') it should not pretend to be irreversible *de iure*, but rather become so *de facto*. A secession clause should specify a clear procedure of possible withdrawal from the Union, in order to avoid legal uncertainty about such a step should a Member State consider taking it. The advantages of this clause would be: on the one hand, higher level of awareness of participation in the EU and thus also of the consequences (costs) of leaving it; on the other hand, the present Member States as well as candidate countries will not be disturbed by a "no-exit" threat when accepting the European Constitution.

Signed by: Janek Tymowski, Wim Palmers.

1.5. Enhanced cooperation

The conditions for the application and implementation of the instrument of "enhanced cooperation" as they are formulated for the (existing) first pillar of the Union in the Treaty on European Union and Treaty establishing the European Community (as amended by the Treaty of Nice) will be generalised to the entire (existing) second and third pillar of the Union. Thus there will be one general provision for all policies of the Union.

The enhanced cooperation is a very important instrument in order to guarantee the dynamic integration within the framework of the Union. Even though unanimity is not required for the revision of the Treaty on Policies, this instrument might become useful in the future if a small majority or a strong minority of Member States wants to advance further in special policy areas.

2. The Union citizens' rights

We consider it essential that fundamental rights be enshrined in the future Constitution.

2.1. The whole text of the Charter of Fundamental Rights (the Charter) will be included as a Title of the Constitution.

Other options than complete inclusion in the body of the Constitution (reference in an article as is now the case for the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in art. 6 of the Treaty on European Union (TEU), or including the Charter in an Annexe of a constitutional value) could give the Charter a legally binding status. However including the Charter as a Title of the Constitution is the most appropriate option, fulfilling the objective of having a clear and accessible catalogue of fundamental rights for all the citizens.

2.2. There shall be no substantial changes in the Charter, only formal changes in order to facilitate integration into the Constitution.

In order to avoid confusion, the preamble of the Charter shall be removed, as long as the principles and values recognised inside find their place in the general Preamble of the Constitution.

Based on the premise that the substance of the Charter, as a compromise reached by the previous Convention, should be respected, the horizontal articles of the Charter are the main part on which we need to focus our attention at this moment.

Concerning the compatibility of some provisions with other articles of the existing treaties and regarding the specific case of those fundamental rights which are already expressly enshrined in the Treaty establishing the European Community (TEC) and merely "restated" in the Charter (notably rights derived from Union citizenship), there already was consensus in the previous Convention on the principle that the legal situation as defined by the TEC should remain unaffected by the Charter; this is presently expressed in the "referral clause" of Article 52.2 of the Charter.

In the event that we should suppress provisions of some articles of the TEC in order to avoid duplication, this should be considered as a technical operation raising no political problems.

Minority opinion:

There is an unsatisfactory protection of the social rights included in the Charter and inherent difficulties for the jurisdictional implementation of those rights. Indeed, the fact that these rights make a reference to national laws and practices allows for different standards of protection depending on the Member State.

Signed by: Tony Fernandez, Raphaël Meyer.

2.3. A new horizontal clause shall be included in the Charter for the interpretation of fundamental rights of the Charter in harmony with common constitutional traditions.

Proposed text:

> Art. 52.4: "Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions."

We stress that the Charter has firm roots in the Member States' common constitutional traditions, which were brought together impressively in the previous Convention's work. The extensive case law on fundamental rights derived from the common constitutional traditions established by the Court of Justice (CJ) and confirmed by Article 6.2 TEU, represents an important source for a number of rights recognized by the Charter. In order to emphasize the importance of these roots and in the interest of smooth incorporation of the Charter as a legally binding document, we propose to include a rule of interpretation in the general provisions. This rule is based on the wording of the current Article 6.2 TEU and takes due account of the approach to common constitutional traditions followed by the CJ. Under that rule, rather than following a rigid approach of "a lowest common denominator", the Charter rights concerned should be interpreted in a way offering a high standard of protection which is adequate for the law of the Union and in harmony with the common constitutional traditions.

2.4. The present article 6.2 of the TEU shall be removed, as it will be redundant.

This article concerns the respect of fundamental rights as guaranteed in the ECHR and as they result from the common constitutional traditions of the Member States.

Having agreed on the complete incorporation of the Charter in the Constitution, we have taken the view that maintaining such a reference would be redundant and create legal confusion, given that the Charter already includes rights derived from the ECHR and the common constitutional traditions and makes references to these sources.

2.5. Jurisdictional protection of fundamental rights shall be given a greater scope.

(vide 5.7.)

The right shall be provided for individuals to act against a Union's act wherever it threatens their fundamental rights.

2.6. The European Union shall be authorised to sign international agreements on human rights and especially the European Convention on Human Rights. This would give citizens the same degree of protection vis-à-vis acts of the Union as they presently enjoy vis-à-vis all the Member States. It will also give the Union more legitimacy to demand the respect of its provisions by other parties.

Proposed text:

> "With the aim of complementing the protection of human rights supported mainly by the Charter of Fundamental Rights, the Council, deciding by unanimity, authorises the Commission to open and conduct negotiations for an accession treaty to international agreements on human rights, particularly to the European Convention on Human Rights. The Council will likewise set the concrete framework of those negotiations to make the necessary technical arrangements in order to preserve the supreme authority of the Court of Justice. The Council, deciding by unanimity and with the assent of the European Parliament, will sign the Accession Treaty in the name of the Union."

We have observed a list of procedural implications to give this power to the Union:

- The need to create a legal basis in the Constitution (to solve the problem observed by the CJ in its Opinion 2/96).
- Final decision of the Council shall be adopted by unanimity. We stress that our Convention has decided only on the introduction of an authorisation, enabling the Union to accede to international agreements on human rights and particularly the ECHR.
- The need to define the relations between the CJ and the European Court of Human Rights in Strasbourg. As regards this particular problem, the following paragraphs lay out the proposed solution.

Political and legal arguments in favour of eventual accession of the Union to the ECHR:

1. Accession to the ECHR would give citizens the same degree of protection vis-à-vis acts of the Union as they presently enjoy vis-à-vis all the Member States. This appears to be a question of credibility, given that Member States have transferred substantial competences to the Union.
2. The accession of the Union to the ECHR would put in place an effective external control mechanism of the legislative and enforcement activity of the Union institutions, providing for a possibility of direct access of individuals to an independent court ensuring full protection of human rights.
3. Even if there are some problems regarding the current state of the ECHR (new members with lower standards of protection, possible judgment of Union legislation by judges coming from non-Union countries, heterogeneity in the respect of the Convention by the different members…), the accession of the Union to this convention will give us the legitimacy to demand the respect of its provisions to other parties, such as Russia.

4. Regarding the relations between the CJ and the ECHR in Strasbourg, we think that there would not be major problems, especially in comparison with the relations between the national constitutional courts and the European Court of Human Rights.

Proposal of a consultation mechanism similar to a preliminary reference between the CJ in Luxembourg and the ECHR in Strasbourg:

Despite the fact that the consultation mechanism proposed by some contributions to the European Convention could be useful in order to eliminate the problems arising from the possible lack of coherence in the interpretation of human rights of the two courts, we are not convinced by the necessity of its introduction. The purpose of the establishment of a consultation mechanism in the Union legal order has been related to the specific character of the Union's judicial system; hence this mechanism is not essential in the CJ – ECHR relationship and would delay the decision of the cases excessively.

In our opinion the autonomy of the Union law is not affected by the accession, given that the Court in Strasbourg shall have no competence in the interpretation of Union law nor in the annulment of Union legal acts.

3. The Institutional framework

3.1. The Union will have a single institutional structure with basic institutional provisions (including delimitation of powers) set by the Constitution. The principle of loyal cooperation and the European Code of Good Administrative Behaviour shall apply to the activities of the institutions.

Proposed text:

1) "The Union has a single institutional structure, which will ensure the consistency and continuity of the policies and activities carried out in order to attain the Union's objectives – activities both in the areas of competence allocated wholly or partly to the Union and in those areas in which competence belongs to the Member States and is jointly exercised by them.
2) The Institutions of the Union are:
    - European Parliament,
    - European Summit,
    - Council,
    - Commission,
    - Court of Justice,
    - Court of Auditors.
3) Each Institution acts within the limits of the powers conferred upon it by this Constitution, in accordance with the procedures and under the conditions and for the purposes laid down in the Treaty in each area.
4) The Institutions are to conduct their activity in accordance with the provisions of the European Code of Good Administrative Behaviour.
5) The principle of loyal cooperation regulates the relations between the Institutions. According to this principle, they shall take all appropriate measures to ensure fulfilment of their obligations. They shall facilitate the achievement of the Union's tasks. They shall abstain from any measure, which could jeopardize the attainment of the objectives of this Constitution."

The number and name of Institutions of the Union do not change, with the exception of the European Summit, as one of the aims this Convention has set itself is to simplify the institutional framework, not to make it more complicated for citizens and political actors alike.

We believe that there should only be one head of the European executive, the President of the Commission. If this role were to be shared with the President of the European Summit, it would only entail tension between the Presidents and a certain degree of confusion.

The European Code of Good Administrative Behaviour was adopted as a resolution by the European Parliament on 6 September 2001. We assume that in the future the Code will be incorporated in a 'European law' and thus the rules and principles that it contains will become binding.

3.2. A uniform electoral system should be adopted for the European Parliament, while keeping the present situation of national constituencies. There should be a treaty provision providing for a proportional voting system, the same in all Member States. Constituencies would continue to exist only on a national basis, although the Treaty provision would provide for the possibility of establishing transnational constituencies in the future, with the agreement of all Member States.

Among the main issues in this topic there is the dichotomy between legitimacy and representativity, as well as the equality of the individual vote. The present system does not give the same weight to every ballot cast in the elections (e.g., 1 Luxembourg MEP is elected by roughly 60 000 people, one French by 800 000).

There is now consensus among Member States for a proportional voting system throughout the Union (See Council Decision of 25 June 2002 and 23 September 2003 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, OJEC, 21.10.2002, L-283/1). It is therefore the more realistic option. It exemplifies the step-by-step approach that has always characterised the community method. It can eventually lead to transnational constituencies, but for the moment the Member States and citizens are still not ready for it.

3.3. Genuine European Political Parties should be created soon, in order to strengthen the Union citizens' participation in the European integration process. This shall be encouraged by the setting up of an appropriate legal and financial framework.

Proposed text:

> "European Political Parties 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 of co-decision, shall lay down the regulations governing European Political Parties and in particular the rules regarding their funding."

Gradually, the role of European level Political Parties in the European Parliament (EP) is being enhanced. Through the incentive of funding their status should be strengthened, thus making it possible that elections to the EP are based on a debate at the Union level and not on national controversies of each Member State, as is mainly the case today.

3.4. The European Council should be renamed as “European Summit” and institutionalised. It will be chaired by a rotating presidency of one Member State, changing every 6 months.

The European Council is a driving force for European integration. For example, European Monetary Union would not be a reality if not for the European Council. It reflects a mutation of the inter-institutional relations.

Institutionalisation would entail a number of consequences, among them liability ex post, a binding internal regulation, applicability of the institutional equilibrium principle, etc. It would also add formality to the work of the European Council, pushing it down the supranational road (as opposed to the intergovernmental one).

This would change the very nature of the institution. Its decisions would become binding, this being an advantage as regards legal certainty.

In order to add to clarity vis-à-vis European citizens and to avoid any confusion with the Council acting in its formation of heads of State and government, the European Council will be renamed as “European Summit”, which is, in any event, the name already used by citizens world-wide to refer to the existing European Council.

In opposition to the solution found for the Council’s presidency, the idea of a rotating presidency would be maintained for the European Summit. The idea behind this is that the problem of coherence between different presidencies is less debated for the European Council. Here the principle that a peer should chair the meetings should be kept. It would also ensure the political nature of the European Council and its natural role as a source of political impulsion that could hardly be reconciled with a Secretary presiding over it.

The President of the Commission will continue to be a member of the European Summit, at the same level as the heads of State or government.

The European Summit will have its own Secretariat, independent from that of the Council but in close cooperation therewith. This is but another logical consequence of institutionalisation.

3.5. A system of Presiding Secretaries shall be introduced within the Council, COREPER and Committees, thus abolishing the present rotation of Member States ministers. The Council Secretariat will establish the agenda following proposals by members of the Council. The Secretaries will chair the meetings of the Council.

The present system of rotating presidencies in the Council shall be replaced by a system of presiding Secretaries.

On ministerial and COREPER level, every formation of the Council elects a non-member as a Secretary.

For the working group level a pool of Council officials specialising in the various policy fields would be envisaged. The pool would reflect the present needs of the Council working groups. The Secretaries should be based in Brussels.

The Secretary of the General Affairs and External Relations Council would be the Secretary General of the Council, who would coordinate the work of the different Council formations. He chairs regular meetings between the secretaries of the different Council formations and thus assures coherence of the workings of the Council.

Tasks

- **Agenda-setting**

  A draft agenda would be set up by the Secretary of each Council formation according to the legislative proposals sent to it by the Commission, proposals of members of that Council formation and of the European Summit. The Secretariat of the Council would have the sole task of putting the proposals into a coherent order prioritising when necessary. The draft agenda would then be submitted to a vote at the beginning of every Council meeting. Amendments require simple majority of weighted votes.

- **Chairing of meetings**

The proposal responds to the need for continuity and coherence between the Council formations and the need to relieve small member states of the growing burden of organising Council meetings. Few options for an outsider as Council president can be conceived. Leaving aside proposals for Commissioners heading the Council formations, the chair of the Council sessions would have to be elected by every Council formation itself. The Secretaries should be seen as mediators without interests of their own at stake. The sometimes difficult situation for the presiding country to present its own priorities as a member of the Council on the one hand and to negotiate an acceptable neutral compromise on the other would cease to exist.

The COREPER has a task similar to that of the new Secretary of the General Affairs Council thereby it also has the overall view on legislative procedures. It discusses all legislative issues. The Secretary of the General Affairs Council should therefore preside its meetings.

On working group level some expertise should be developed by the Secretariat due to the technicality of issues discussed on that level. The limit in the choice of a Secretary from a given pool of candidates is justified also because of this very technicality of the issues.

Political impulse would be assured on the one hand by the multi-annual strategic programmes of the European Summit as agreed upon by the European Council of Seville and the right of every national minister to have issues set on the agenda. The political character of the Council can thus be assured. On the other hand, in legislative fields to which the Community method applies, the Commission also provides political impulse by its right to initiate legislation.

One could easily see the parallel to a secretariat of international organisations of the "classical" type and thus compare its power to that of the Commission. This proposal clearly limits the powers of the Secretaries most importantly by the fact that the Commission will keep its right of legislative initiative. No rival actors would develop. The role of the Secretaries is limited to the inner proceedings of the Council.

The status of the Secretaries for the ministerial level (and consequently COREPER) would be temporary.

Considerations of legitimacy

The question of legitimacy of "Secretaries" immediately arises. They would be accountable to the Council who at any moment could replace them. We believe that this improves the question of accountability compared to the current situation. Today a Council presidency is not truly accountable to the Council or to any other EU body. The ministers are legally only accountable to their national parliaments.

Doubts about legitimacy would arise the more the Secretariat were able to shape the workings of the Council itself. A certain effect of "Brusselisation" could probably occur. We therefore see it more as a service agent, acting as a chair of meetings, facilitating the negotiations. Its power to shape the agenda is strongly limited. The Union agenda should be shaped by the Commission, which is elected by Parliament and Council. We can imagine some parallel to the selection process of the Commission presidents in the past. His strength depended very much on the choice of the member states. The same will happen here. The independence and political weight of the secretaries will depend on the choice of member states. They may choose a former minister or a figure comparable to the current High Representative for CFSP, Javier Solana.

Minority opinion

A system of rotating team presidency would be preferred. Its advantages are clearly that a peer presides the sessions and the fact that every member state can give new impetus to the working of the Union. Moreover, during the time of the Presidency, the Union would become more visible in this Member State. The submitted proposal (Council Secretary) adds an odd player in the Union decision-making process, the role of which remains unclear.

Signed by: Oliver Mross, Liina Sillaots, Ralf Tutsch.

3.6. The Commission shall be designated by and accountable to both European Parliament (appointing the President of the Commission) and Council (sharing with the EP the power to censure the Commission).

On the one hand, the European Parliament (EP) is given the power to appoint the President of the Commission. This should contribute to making the Commission more responsive to the demands of the EP, thus strengthening the democratic character of the Union. On the other hand, the Council is given the power to censure the Commission. The Commission would gain legitimacy from being accountable to both the EP and the Council. This is a precondition for transferring the responsibility for implementing the Common Foreign and Security Policy to the Commission.

3.7. The size of the Commission should be fixed at 20 members. The Members of the Commission should be chosen according to a rotation system based on the principle of equality between the Member States.

The President of the Commission will be designated by the European Parliament (EP) and approved by Council. The other Members of the Commission should be chosen in the same way as today (designation by the Council in agreement with the President of the Commission; approval by the EP).

In an enlarged union having one Commissioner per Member State would mean creating a Commission of 25 Members or more. In a Commission of this size, coordination between the different Commissioners would become difficult, resulting in a less coherent

action of the Commission. Moreover it would become harder for each Commissioner to keep updated about the actions of the other Commissioners. This risks undermining the collective responsibility of the Commission for all its decisions, thus weakening the protection of individual Commissioners from external influences. Finally, in a Commission of 25 it would become difficult to provide each Commissioner with a meaningful portfolio. For all these reasons the size of the Commission after enlargement should be limited to 20.

However, even a Commission of limited size should reflect, as far as possible, the diversity of the Union. This is necessary in order for the Commission to keep in touch with the debates in the different Member States and define the common interest. The Members of the Commission should therefore be chosen according to a rotation system based on the principle of equality between the Member States.

3.8. The Economic and Social Committee as well as the Committee of the Regions should remain Union's advisory bodies. The role of the European Ombudsman will be strengthened.

The European Parliament, the Council and the Commission would continue to be assisted by an Economic and Social Committee and a Committee of the Regions, organs acting in an advisory capacity. The former would include, apart from the types of members it comprises today, representatives belonging to NGOs, as well as representatives of social partners. This would be done in order to improve the quality of its opinions, as well as its legitimacy.

The European Ombudsman (EO) will see his role strengthened once the Charter of Fundamental Rights is enshrined in the Constitution. The Charter contains the right to good administration and the right to complain to the Ombudsman about maladministration in the activities of the Union institutions or bodies.

Among the constitutional functions of the European Parliament there is the appointment and supervision of the European Ombudsman. His role is to bridge the gap between the citizens and the Union's administration. He has been doing so now since 1995; during this period, more than 11'000 complaints have been submitted to him. He strives to redress instances of maladministration in the EU's institutions and bodies, operating at a different level than the Court, in a more forthright and less formalistic manner.

The Charter, in its article 43, reproduces the EO's mandate, thus establishing the possibility to complain to the Ombudsman as a fundamental right of EU citizens and persons residing or having their registered offices in a Member State. This constitutionalisation is bound to highlight the EO's role in contributing to a more open, accountable and citizen-orientated administration.

3.9. Reform of the decision-making process should make the co-decision procedure the basic one for most of the Union's legislative actions, also in areas where it is not applied today. The judicial bodies shall remain outside the EP powers of designation.

The co-decision procedure should generally apply to the procedures to adopt "European laws" and "European framework laws". It would also apply to any legislation having notable financial consequences.

The cooperation procedure (currently only applied in the field of European Monetary Union) should be replaced by the co-decision procedure, not only for reasons of simplification, but also in order to democratise the European Monetary Union (EMU).

The European Parliament would not be involved in the designation of the members of other Institutions, namely the Court of Justice and the Court of Auditors.

Minority opinions

**A different model for the Union's institutional framework:
a strong executive, its President elected by the national parliaments**

This alternative combines ideas from Robert Toulemon's project and from one of Simon Hix's proposals. Taken together the resulting proposal would create a strong and accountable executive for the Union.

A strong executive

The basic idea would be to create a "Presidium" in the Commission composed by the president and 8 vice-presidents and let this inner core preside the Council (without the right to vote, of course). The Commission President would preside the General Affairs Council, whereas the Vice-presidents would preside over the other council formations.

A sole collegiate presidency for the executive of the Union preserves that which is essential of the community method: the monopoly of the legislative initiative, exercised by an institution supported by the Member State governments but remaining independent towards them.

The composition of the inner core of the Commission would change every 2'5 years according to a system assuming equilibrium between large, medium sized and small Member States. At any time there would be 2 Vice-presidents from the large Member States, 3 from the medium-sized States and 3 from the small ones.

An accountable and legitimate executive

The President of the Commission would be chosen through an electoral college, composed of national MPs. This could work by giving each national parliament a certain number of 'electoral college votes', maybe the equivalent to the number of seats in the EP, and then letting the national parliaments all vote on the same day in order to elect the Commission's President (Hix).

The other Commissioners (including the vice-presidents) would be designated by the Council by Qualified Majority in agreement with the President of the Commission. The EP then approves all of these Commissioners collectively by simple majority.

Both the EP and the Council can censure the Commission.

Signed by Berni Ferrer Jeffrey.

Qualified majority voting in the Council: a double simple majority

As the Commission suggests in its feasibility study of 4/12/2002, qualified majority would be attained when the majority of the Council's members, representing more than half the Union's population, voted in favour of a given proposal. A reinforced qualified majority could be envisaged for certain instances. Its thresholds would be: three quarters of the Council's members, representing at least two thirds of the Union's population.

The current system presents several disadvantages (e.g., it is too complicated, there is an overrepresentation of small Member States).

We think that the double simple majority proposal is more appropriate. It had already been contemplated in the IGC of 1996 and proposed by the Commission in its communication of 26/01/2000.

Advantages:

Decision-making would not be rendered more difficult.
Any qualified majority scenario would include at least half of the Member States.
There would be a greater degree of proportionality than at present.
The system would be easier to comprehend by the general public.
The system would be easier to apply.
Three large Member States will not be able to block a decision.

Signed by Berni Ferrer Jeffrey, Michael Wimmer.

4. Union competences and actions

COMPETENCES

As a condition for effective democratic control, the Treaty should set out clearly the principles underlying the division of competences as well as the scope of the European Union competences and explains the different ways for the EU to exercise them, allowing a sufficient degree of flexibility to respond to changing needs and circumstances.

4.1. The basic principles regulating the competence order remain unchanged. The Union will be competent in different sectors according to functional objectives of the Constitution and procedural provisions of the Treaty. A list of competences reserved for the Member States shall be introduced.

The following principles shall apply:

- The Union competences rest on the principle of conferred powers
- Principle of subsidiarity
- Principle of proportionality

The three categories of competences (exclusive, shared and complementary):

Exclusive powers: the mere existence of such a norm prohibits Member States from acting in this area. An area should only be classified as of exclusive competence if actions by Member States would severely prejudice later Union action and a common legal framework is necessary in any case.

Concurrent powers: concurrent competences permit autonomous legislation, provided that the Union has not made use of its competence. If the Union has taken action, the concurrent competence allows it to regulate the field exhaustively – the Member States retain the right to regulate a particular field only as long as the Union has not exercised its power.

The complementary competences are preferably to be named "assisting measures" or "supporting measures", as they are not exclusive competences of the Union.

The present situation of functional competences rather than sectoral competences will be maintained. There will be no "positive catalogue" defining sectoral competences as in most federal states.

Dealing with harmonisation of the Internal Market, the CJ has clarified the scope of Art. 95 of the TEC in the *British American Tobacco* case (10.12.2002, C-491/01), delimiting its problematic breadth. This harmonisation competence is only applicable to those cases where, in order to realise basic freedoms, a EU measure is necessary to eliminate relevant competitive distortions. The EU is only empowered to harmonise insofar as such action is necessary for the Internal Market. This also serves to prevent the creeping extension of competences. Accordingly we propose to maintain Art. 95 with the scope of application conveyed to it in the *British American Tobacco* judgment.

Reserve competences catalogue

A catalogue of reserve competences of Member States will be included. In the field of these competences no harmonisation will be allowed.

The catalogue of reserve Member States' competences will more clearly show the delimitation without restraining the integration process too much. It meets both the demands of dynamism and legal certainty. For example, this catalogue could include areas of Member States' culture and educational policy, public services, internal state organisation, family structures, social security or national security issues. The situation would not change much, as some articles (i.e. Art. 152 TEC) already include provisions excluding harmonisation. It would be mostly a political message when a functional competence (completion of the single market) collides with the reserve competences (as seen in the recent *British American Tobacco* case.

The other possibility discussed in this respect – a "positive" catalogue of competences, i.e. a fixed list of Union competences within the Constitution – should be rejected for the following reasons:

It is not compatible with the dynamic and evaluative character of European integration. Furthermore, it does not guarantee the limitation of centralisation tendencies. Lastly, a further development of the EU law below the level of a treaty amendment would no longer be possible.

However, we are aware of the Member States' concern about losing power, as well as the lack of transparency and legal certainty inherent to the current system of delimitation of competences. For this reason, we propose the inclusion of a negative catalogue of competences into the Constitution to make sure that the Union does not increase its competences at the cost of national competences.

4.2. Provisions of the present Article 308 TEC (ensuring in part the necessary flexibility of the Union) should be maintained. However, the EP shall be associated through the co-decision procedure.

If action by the Community should prove necessary to attain one of the objectives of the Community and the treaty has not provided the necessary powers, Article 308 TEC allows the Council to take the appropriate measures.

Article 308 is viewed by some as problematic with regard to the principle of attributed powers. Nevertheless that subsidiary competence should be retained.

Abolishing Article 308 for lack of certainty would deprive the Union of its dynamic nature. The flexibility of the Union depends mainly on this norm. Excluding Article 308 would demand the recognition of additional competences to the Union for it to be able to react to unforeseen developments. The procedure must still be unanimity in Council, but with a stronger involvement of the EP, not just its consultation, but co-decision.

Article 308 confers on the Union the possibility to fill gaps within the Treaty under certain conditions by Council decision; this is currently not to be seen as an infringement of the principle of limited powers, but as a mechanism to confer instruments for the Community.

In relation to the proposed negative catalogue of competences, the scope of application of Article 308 is limited to the fields not listed in the negative catalogue. But as said before, the negative list is not meant to be as exhaustive as a positive competence

catalogue would be. Article 308 would therefore still be applicable in a wide range of cases.

4.3. The exercise of the Union's competences shall be subject to both political and judicial control to allow for a stronger direct involvement of national parliaments in the legislative process and therefore their better control over the action of the governments in the EU fields.

- **Political control: early warning system carried out by national parliaments.**

National parliaments receive the Commission's legislative proposals for consideration. They may point to infringements of the respect of competences and the principle of subsidiarity. The resolutions of national parliaments concerning an infringement of the principle of subsidiarity are not binding.

The advantage compared to the current situation is a more public debate on matters of subsidiarity.

- **Judicial control: a right of action for national parliaments of subsidiarity through an action grounded on misuse of competences.**

Provisions of the *ex post* legal control should include a *locus standi* for national parliaments limited to questions of misuse of competences. It should be limited to those national parliaments, having made use of the early-warning mechanism.

The political control of the principle of subsidiarity by the national parliaments must be backed by the possibility to exercise judicial control. The choice of an action grounded on misuse of competence rather than on subsidiarity is justified by the fact that making subsidiarity enforceable means to set up a judicial control on the way the Community exercises the competences which are not exclusive, because subsidiarity does not relate to the matter of having competences but to that of exercising some of them. Furthermore, this judicial control would also permit an assessment on matters of proportionality

The inclusion of a restricting criterion (*locus standi* limited to those national parliaments, having made use of the early-warning mechanism) is meant to encourage the use of the early-warning mechanism. We are aware that the Commissions proposal might change during the course of the legislative procedure.

4.4. The Court of Justice (CJ) will be the competent organ for making judgment on matters of competence.

In the past, there have been several proposals to set up a competence court. We decided against such a court, be it an *ad hoc* assembly of national constitutional court judges or an institutionalised counterpart, be it a chamber within the CJ. In our view, the CJ in its normal composition should deal with competence issues, as it is unnecessarily complicated to set up a separate new institution. Most of the CJ judgments produce effects on the competence order. An *ad hoc* court would not be able to deal with that, it would therefore have to be institutionalised. Additionally, it might not be possible to separate the competence related issues from the rest of the case, needing much more time to reach a verdict as the decision of the CJ would have to be postponed until the competence court had decided about the competence issues.

The criticism against the CJ's competence that the CJ itself might not be neutral but would have a tendency towards enlarging central competences has, especially in the last years, not proven true.

INSTRUMENTS

4.5. The Union's system of instruments must be simplified and its coherence improved. The number of instruments shall be reduced.

The Union's system of instruments shall comprise:

- European laws (*lois européennes*; present Regulations)
- European framework laws (*lois-cadre européennes*; present Directives)
- Decisions
- Recommendations
- Opinions

It is desirable to rename decisions and framework decisions of the third pillar regulations and directives.

The reform must aim at a clearer and more understandable system in which different kinds of instruments differ more distinctly than presently in both nature and legal effects. It is essential to consider how to bring the pillars as close together as possible. That is why we propose to rename decisions and framework decisions of the JHA.

4.6. The hierarchy of norms must be strengthened. The separation of legislative and executive actions should be reflected in the names of the instruments. Norms used in the implementation of decisions must differ in both name and order of enactment from legislative action.

According to the principle of proportionality, the legal instruments available should be explicitly limited to acts interfering in the sphere of the Member States in the least extensive way necessary to achieve the objectives of the relevant policy.

4.7. The Open Method of Coordination must be integrated in the Constitution.

(vide 8.5.)

4.8. A number of measures which essentially concern matters within the institutions will remain necessary for the proper functioning of the Union. For example: resolutions, inter-institutional agreements, guidelines or declarations, due to their political, indicative or preparatory value.

5. Organisation and access to the judicial system

Proposed articles in the relevant part of the Constitution should be:

5.1. "The Court of Justice is the Constitutional and Supreme Court of the European Union".

A reference to the Supreme Court role of the Court of Justice (CJ) is required by the new competence, introduced by the Treaty of Nice, for the Court of First Instance (CFI) to give preliminary rulings. This reference is aimed at avoiding risks of conflicts and contradictions in the exercise of the preliminary ruling procedure between the CJ and the CFI. At the same time, in a draft of a European Constitution, the CJ's role as a constitutional court should be stressed. This role stems from the functions the CJ carries out, which are comparable to those of some European constitutional courts: the legality control of the Community legislation, the maintenance of the institutional balance between the institutions of the Union, the delimitation of competences between the Union and its member States, the protection of fundamental rights and the consistency control of international agreements the Union foresees to conclude.

Moreover, this underlying constitutional court role of the CJ would add something new to the existing perception of the Union judicature, being it useful for old and new member States and for their citizens as well. It would point out who is the final instance of constitutionality in the Union, responsible for ensuring the respect of the rule of law within its boundaries.

5.2. "The Court of Justice and the Court of First Instance as the main element of the judicial system of the European Union shall remain placed in Luxemburg".

An increasing number of judges coming from countries with different legal backgrounds will make any decentralization not welcome, being it important for the sake of a uniform and coherent application of European law, that all the judges can work in the same place.

Minority opinion

Some flexibility would be desirable as regards the location of the Judicial panels introduced by the Treaty of Nice. One Judicial panel should be based in one of the new Member States (e.g., in Warsaw). This would not entail serious logistic problems and would strengthen the feeling of integration within the enlarged Union, particularly in the Central and Eastern European countries.

Signed by Berni Ferrer Jeffrey.

5.3. "The members of the Court of Justice, Court of First Instance and Judicial panels shall not be appointed for more than two terms, each appointment lasting for a period of six years".

In order to avoid the situation that the possibility of a reappointment by their State could influence independence of judges in carrying out their tasks, a maximum number of reappointments for the judges should be introduced. At the same time, taking in due account the long time necessary to decide a case, judges should not be at the Court for a too short period of time. A maximum of one reappointments should be introduced in

order to consider the requirements of independence and continuity in the exercise of the judicial functions. The present period of six years for each mandate should be kept.

The two period limit applies if the government of a Member State wants to reappoint the judge. It does not entail any obligation of reappointment.

5.4. "The Presidents of the Court of Justice, of the Court of First Instance and of each Judicial panel shall ensure efficient organisation of the relevant courts' work".

Taking into account the increasing workload the Union's judiciary has to cope with, but also the foreseeable increase in human resources, it seems a good idea to enforce the efficiency of the organisation by giving more powers to the Presidents of the relevant courts.

5.5. "Within the respect of their national procedural autonomy, national courts shall carry out their task of 'Union judges of common law'. In comparison with the national courts required to apply Union law, the Court of Justice, the Court of First Instance and the Judicial panels shall make every efforts to avoid a double standard of judicial protection".

Being aware of the existing practice, the plenary agreed that an express reference to the relation of cooperation between the national and Union judges should be made, in order to ensure a coherent judicial protection when Union measures and rights rising from them are at stake. However, due account of the need to respect the national procedural autonomy must always be taken.

5.6. "In order to respect equality between applicants before Judicial panels and before the Court of First Instance, against the rulings adopted by the latter on appeal versus the judgments of the former, only the review procedure shall be available before the Court of Justice".

According to the Treaty of Nice (new Art. 225 TEC), only the review procedure on grounds of law should be available against the rulings of the CFI taken on appeal against decisions of the Judicial panels. In fact, if this were not the case, an applicant concerned with some special matters might have three levels of judicial review (Judicial panel, CFI and CJ) while for all the rest - where the Judicial panels are not competent - two (CFI and CJ). The general rule should be that of only one possible appeal.

Being aware of the fact that such a hypothesis of an other appeal from the CFI to the CJ could already be excluded on the basis of Article 225(a) TEC (which extends to the Judicial panels only the rules regarding the CJ, and not those related to the CFI), we point out however that this extension is provided unless the Council proposes something different. That is the reason why, for the sake of certain equality among applicants, it should be stressed that the two-tier judicial review has to remain a principle followed in the Union's judiciary for all the applicants.

5.7. **"In case of a general act, a direct action to the Court of Justice for the protection of fundamental rights shall be available to the individual, when no other EU judicial remedy is possible".**

A direct action before the national constitutional court is provided for in some legal orders of Member States, such as the *Verfassungsbeschwerde* in German constitutional law. The introduction of such a new judicial remedy would strengthen the protection of fundamental rights in the Union, especially in the case of a complete introduction of the Charter of Fundamental Rights into the Constitution, giving them more visibility and making it easier to enforce the right to judicial review, as recognised by Article 47 of the Charter.

The judicial review of a general act is particularly needed, being easier for private applicants to seek judicial review before national courts or before Union courts in cases of more specific national or Union measures of implementation of a Union general act.

Furthermore, its introduction could enable the Court to fill the vacuum created by its case law as to the *locus standi* for the action of annulment of private applicants (based on the interpretation of the words "direct and individual concern" as contained in Article 230(4) of the TEC and confirmed by the CJ in the *UPA* case (25 July 2002, C-50/00P)) when general acts are at stake and a preliminary ruling cannot be requested from the CJ. Triggering a preliminary reference procedure can be impossible, namely because of the lack of a national act of implementation of the Community measure, as Advocate General Jacobs points out in his opinion delivered on 21 March 2002 in the mentioned *U.P.A.* case, or because of the lack of a chance whatsoever to go to the national court, as the CJ has made it clear in the *British American Tobacco* judgment (10.12.2002, C-491/01). For this purpose this proposal could be adopted through an addition to Article 230(4) of the TEC.

Being it an exceptional remedy, the President of the CJ should ensure a filter mechanism to avoid an overflow of actions. The competence should be of the CJ, for reasons of procedural economy and to respect the exceptional nature of the action.

Moreover, in order to make this new remedy coherent with the existing system of Union judicial remedies, this direct action should be possible if any other Union judicial remedy is not available. The words "when no other Union judicial remedy is possible" mean that the direct action should be possible not only when no other judicial remedy is available, but also in case of an unfruitful exercise of the latter.

This would entail an improvement of the efficiency and effectiveness of the existing system of Union judicial remedies for the protection of fundamental rights. As a matter of consequence, the direct action would become a sword of Damocles on the judges' heads inciting them to more thorough attention to issues regarding fundamental rights rising in other cases. The better they consider matters of fundamental rights in these cases, the less possible another procedure involving these matters via a direct action of the CJ. Finally, this action could also be used for the "European law".

5.8 **"The Court of Justice, the Court of First Instance and Judicial panels shall have jurisdiction on issues regarding the legality of all binding measures adopted by any institution or body of the European Union."**

The aim of this provision is to ensure respect for the rule of law in all the European Union. It goes without saying that it is nothing but an extension of the action for annulment to some fields not covered by this action. That is the reason why it would be possible to insert this provision through a modification of Article 230 TEC.

This new provision should erase the jurisdiction's limits provided for at Article 68(2) TEC and Article 35(5) TEU. The requirement of a binding force should avoid actions lodged against political measures. Finally, the EU courts would be able to develop an interesting case law regarding the issue of *locus standi*.

5.9. "The legality control shall be carried out by the Court of Justice for all international agreements, also in the area of Common Foreign Security Policy and Justice and Home Affairs".

This extension of the CJ's jurisdiction is aimed at better respect of the rule of law in the field of the international relations. The existing judicial remedies should be used in order to carry out such a legality control also for the area of CFSP and JHA (agreements provided for in Articles 24 and 38 of the present Treaty on European Union): the action for annulment, the preliminary ruling procedure and the *a priori* control.

6. Economic Governance

The general framework as given by the Treaties is the starting point of the proposals and only some changes in specific areas are suggested.

6.1. A reference to the Internal Market shall be added as a guiding principle for economic governance.

The European Union is an area free of internal borders based on the free movement of people, goods, services and capital, as well as a custom union. The need for further development towards the real completion of the Internal Market in all its four components should be explicitly mentioned in the Treaty.

6.2. Economic Policy of the European Union must be coordinated within the Council as well as in the Eurogroup.

Having defined the same common goals and by fully respecting the principles of competition and market economy, the Member States should coordinate their economic policies.

Currently, coordination takes place in the ECOFIN Council (the EU Ministers of Finance) and at the informal meetings of the Ministers of Finance of the euro area, the Eurogroup. We propose to maintain the informal nature of the Eurogroup so as to insure free and open discussions.

6.3. Economic growth has to be added as a policy objective in the field of Monetary Policy, alongside price stability.

The Monetary and exchange rate Policy will be conducted within the Eurozone with the main objective of maintaining price stability and an explicit focus on economic growth. Without any prejudice to these objectives, the European System of Central Banks (ESCB) shall support the general economic policies of the Union.

In fulfilling its goals the Union and the Member States shall respect the main economic policy guidelines: stability of prices, sound fiscal policies and stable balance of payments.

6.4. The procedures for the coordination of the economic policies of the Member States must insure democratic legitimacy and unified implementation; the framework must be simplified and streamlined by integrating the different procedures and setting clear priorities.

The Member States will lead their economic policies in order to contribute to the fulfilment of the Union's objectives. They shall regard their economic policies as a matter of common concern and coordinate them within the Council.

In principle, the current framework of economic policy coordination should be maintained, but simplification of the procedures is needed. Furthermore, the success of such coordination requires democratic legitimacy as well as unified implementation.

The Broad Economic Policy Guidelines should be changed to Broad Economic and Social Policy Guidelines to reflect the importance of the social consequences of these

guidelines. The Broad Economic and Social Policy Guidelines shall be set jointly by the Council and the European Parliament based on a proposal from the Commission. This will mean applying co-decision procedure to Economic Policy decisions.

6.5. In view of enlargement a maximum number of members of the governing bodies of European Central Bank (ECB) has to be established, and a rotating scheme elaborated.

No changes regarding either tasks or status are proposed. However, in view of the upcoming enlargement, a change should be made in the composition of the ECB´s Governing Council (with a maximum of only 15 members) and the Executive Board (maximum 8 members).

Enlargement makes a well-functioning Governing Council impossible without reform. The solution will be to elaborate a rotating scheme that should be as simple as possible and should mainly serve the interest of the European Monetary Union (EMU) in general and not the interests of particular Member States.

6.6. The mandate of the ECB must be widened to include the objective of economic growth besides price stability.

The tasks, mandate and statute of the ECB will remain unchanged with only one major exception: the mandate of the ECB will be widened to include - besides the objective of maintaining price stability - the objective of economic growth.

Although we do not contest the importance of price stability, we believe that if we only follow this objective, it could come at the expense of economic growth. For the last ten years, the European countries have had to face high interest rates with a negative influence on economic growth. Systematically, high interest rates are sending wrong signals to investors. Since the investments of today are the productive capacity of tomorrow, potential output or potential growth itself will suffer. This negative effect on growth is also influencing employment negatively.

Therefore we propose a model in which price stability and high growth go hand in hand. We consider it absolutely necessary that the ECB supports growth. Indeed we believe that if a big increase in investments can be generated, this will add to productive capacity. This increase in productive capacity makes it possible to keep the economy growing at a faster rate without rekindling inflationary pressures. This could be done by the ECB by stabilising the business cycle and keeping effective output as close as possible to potential output. If the central bank succeeds in this, investors will be given reassurance on sufficient demand prospects even when a negative output gap is looming. Inversely, in times of a possible overheating the policy of the ECB could prevent a “boom”.

Moreover, we believe that the ECB is to some extent already taking growth prospects into account for its decisions. This lends support to the idea that an explicit growth objective should be included in the missions of the ECB. Furthermore, as budgetary policy directed towards stimulating growth is bound to be ever more coordinated within the Euro area, some degree of fine-tuning with monetary policy seems necessary. This also pleads the case in favour of assigning a growth objective to the ECB.

A strong minority opinion:

Pleading for a single main objective of the monetary policy: maintaining price stability

There are a list of reasons for which imposing only one main objective to a central bank is, in our opinion, the best solution, especially in the case of the European Central Bank which leads the monetary policy for the whole Euro area.

From the point of view of accountability, the more bound a central bank is to a specific objective, the easier it would be to evaluate the performance of its decisions. Including economic growth as an objective alongside price stability would decrease the accountability in the sense that given the heterogeneity of the Euro area, different policies implemented at Member States level could lead to different rates of growth, the failure of such a policy lead at national level could then be considered to be caused by the ECB.

The objectives of the monetary policy need to be clearly defined. If a maximum inflation rate could be established for the illustration of the price stability objective, it is much more sensitive to establish a minimum-range growth rate for the Euroarea in either medium or long term.

There are some strong arguments that plead for the primacy of the price stability objective of the ECB:

- a study of Emerson and al. (1990) estimates that inflation of 10% could significantly reduce the transaction advantages that a single currency could bring;
- higher inflation does not lower unemployment in the long run;
- although unanticipated inflation may temporarily have real effects, it also increases the average level of inflation and repeated recourse to such a surprise inflation leads to stop-and-go policies, which would increase the macroeconomic costs of inflation in the long run;
- the existence of a statistically highly significant negative correlation between inflation and real growth in EU was found.

In the long term, price stability and growth are not two distinct objectives. Monetary authorities cannot systematically enhance higher growth and keep the unemployment rate below its natural level. They can only temporarily influence growth and unemployment through surprise inflation, which, if systematically repeated, as mentioned above, results in a loss of credibility of the Central Bank and a loss of effectiveness of its policies.

The key contribution that monetary policy can make to achieving sustainable economic growth is to bring about price stability, that is low inflation. Thus the objective of growth is a long-term objective, a pre-condition for achieving it being price stability.

We agree that further changes are needed in order to increase the transparency of the way decisions are taken. The publication of a supplementary report on inflation and monetary policy as well as the publication of the minutes of the governing board meetings would make it more clear to both the general public as well as to the specialists how the ECB conducts its policy.

To summarise, the ECB should not have an explicit focus on growth and employment besides its main objective of price stability. In reality, the ECB already takes growth and employment into consideration when making monetary policy decisions, as these are part of the indicators defined in the second pillar of the ECB strategy. However, this is only implicitly referred to in the Treaty. One of the arguments for not including growth or employment objectives is that the non-realisation of either of them in the medium term, which is very possible to happen, would harm the credibility of monetary policy and price stability in the EMU. Another argument is that the ECB does not have the instruments to influence the functioning of the segmented and rigid labour markets in the EU.

Signed by: Cristina Crespo, Kirsten Guijaux, Berni Ferrer Jeffrey, Puri Mancebo, Dimitrios Magos, Anisia Popescu, Liina Sillaots.

6.7. The accountability of the ECB must be reinforced and transparency guaranteed.

In order to increase transparency and accountability of the ECB, the Constitution will explicitly state the obligation of the ECB to clarify its strategy and way of making decisions before the European Parliament (EP). The annual report on the monetary policy shall be submitted to the EP, Council and Commission. In order to increase transparency and accountability of the ECB, the obligation of publishing the minutes (without the individual votes) will be foreseen. Beyond these provisions, the Constitution will foresee the full independence of the ECB.

6.8. The external representation of the Eurozone should be improved. Therefore a High Representative will be appointed by the Eurogroup countries in the Council.

The Eurogroup members of the Ecofin Council become responsible for the external representation of the Eurozone in international organisations and should nominate a High Representative. This High Representative will represent the Eurozone in international organisations such as the IMF and World Bank. This person will be advised on monetary matters by the President of the ECB.

Once the Euro-zone has been created it appears necessary that in monetary matters this zone need to be represented by one person. Acknowledging that representation in the above-mentioned organisations is rarely about strictly technical monetary issues, we reject the proposal to have the President of the ECB play this role of common representation. We also reject a full communitarisation of this representation by giving responsibilities to the Commission in this respect.

Beyond this, all present provisions regarding Monetary Policy should be upheld.

7. Union budgetary matters

The discussion in our Convention dealt with the possibility to give the Union the right to levy tax or not. The plenary of the Convention did not reach a consensus but there was a slight majority in favour of the European tax.

1st OPTION : New own resource – European Union Tax

7.1. The Union will have the competence to levy taxes. These taxes will not replace the system of own resources but add another resource. The Treaty will make no reference to a particular tax base.

The introduction of a European tax would demand the adjustment of the decision-making process. The principle of "no taxation without representation" should be respected. On the Union level "representation" in this sense cannot be assumed to be embodied by the European Parliament alone. As taxation touches the very heart of state power, a strong involvement of Member States interests would have to be envisaged.

The principle will be the application of the present majorities in budgetary matters, i.e. in the Council qualified majority keeping the weighted votes and a majority of currently 10 Member States; in the EP a majority of members and 3/5 of votes cast.

In view of enlargement the majority of Member States required should be adapted accordingly.

In addition to this procedure, taxation will be subject to an approval by national parliaments. A proposal will need the consent of 3/5 of national parliaments.

7.2. The more supranational the Union becomes the less comprehensible it is why it should rely on financial transfers from the Member States. We believe that the net payer debate is rather fostered by the system of national contributions. Applying a uniform tax on EU citizens would decrease the spirit of *juste retour*.

The procedure would ensure a triple "safety net" to ensure participation of the citizens through EP and national parliaments and governmental interests. Compared to the current procedure of bargaining contributions and rebates, the proposed procedure for a tax is more open and transparent. A rise in a tax is harder to justify as it is directly felt by the citizens. The present situation of contributions touches citizens only indirectly through the national budget.

7.3. The tax base should take into consideration the still heterogeneous economic situation in the Member States.

Tax collection would remain a competence of the Member States in order to avoid creating double administrations. The administrations would keep an amount to cover the costs of collection as under the present system for customs duties and agricultural levies.

2nd OPTION : Increased transparency – European national "surtax"

7.4. The Union should not receive taxing power. However, in order to increase transparency, the national GDP contribution shall be translated by the Member States themselves into a "surtax" in the national taxes collected by the Member States.

Due to the divergences of the economies in the Union and especially after enlargement, taxation should not be harmonised or centralised. According to the subsidiarity test it would be more efficiently carried out by the national governments.

A possibility of improvement of the current Union financing system would be the translation of the national GDP contributions resource and the VAT resource to the Union budget into a "surtax" in the national taxes collected for the EU. It must be noted that the amount of the national contributions should first be fixed. Governments are free to design the collection of this tax under the condition of not harming the tax harmonisation processes of the internal market.

The main advantage of this option is that the Member States will be able to design the optimal fiscal national policy according to their economic situation. This implies more transparency for Member State contributions (which could increase tensions in the current net payer debate). In order to moderate the net payer debate we propose to improve efficiency of the redistribution expenses (CAP, Structural and Cohesion Fund) and to increase the public goods expenses (defence, security, environment...)

8. Social and Education Policies

Our proposals are line with the questions formulated by the Working Group XI of the European Convention. Our attempt is to provide a balanced proposal on how to increase social awareness in European policy-making.

8.1. Solidarity and social protection are part of the Union's basic values and must be mentioned in the Preamble.

Proposed text:

> "The Union is founded on the principles of liberty, democracy, the rule of law, <u>solidarity, social protection,</u> as well as respect for human rights and fundamental freedoms, and for spiritual and moral values, principles which are common to the Member States."

In our opinion, solidarity and social protection should be included - among other values, such as liberty, democracy and respect for human rights - in the basic values of the Union as stated in the Preamble of the Constitution, to emphasise the commitment of the Union in the social field. We believe that social protection and solidarity are part of the basic values common to the peoples of Europe, Member States and European Union institutions.

8.2. A reference to the European societal and social model, the emergence of a true social dialogue, the protection of social rights, the commitment of the Union to ensure a high level of qualitative employment should be included among the Union's objectives. Moreover, we also propose to mention among those objectives: protection of public health, consumer protection and the fight against poverty.

Proposed text:

> "The Union shall seek to promote the European societal and social model by a sustainable development of economic and social activities, the flowering of the Member States' cultures, the protection of social rights, the emergence of a true social dialogue, a high degree of social protection, solidarity between all its regions and the protection of the environment.
>
> On the basis of the *acquis communautaire*, consisting of an area without internal frontiers, the Union is committed to ensure a high level of qualitative employment and greater social cohesion. To that end, it shall promote the competitiveness of the European economy and the acquisition of knowledge by everyone. The Union shall endeavour to ensure the protection of public health and of consumers, as well as the fight against poverty."

8.3. The relationship between the coordination of the economic policies and the coordination of social policies should be strengthened.

(vide also 6.4)

It is necessary to link the achievements in the economic policy also to social objectives. Therefore, we propose to transform the Broad Economic Policy Guidelines into Broad Economic and Social Policy Guidelines in order to show that these two objectives are inter-related, and that each decision on economic policy shall contain an assessment of the possible social consequences of the measures. A report should be made and broad consultation of all parties including labour and enterprises should be organised.

8.4. There is no need to transfer new competences to the Union in the social field.

The problem in this field is indeed not the lack of competence of the Union, but the way in which it is exercised and the funding that is allocated to the corresponding programmes.

8.5. The Open Method of Coordination must be formalised.

The so-called Open Method of Coordination (OMC) - introduced during the Lisbon Summit (2000) - is an independent political process, which supplements the Community legislative procedures. The method should help the Member States in developing their own policies through the discussion and dissemination of best practices, with the aim of reaching commonly agreed goals. It involves defining those goals, translating them into national policies, establishing indicators and benchmarks, periodic monitoring, evaluation and peer review, organised as a mutual learning process and a framework for the exchange of information.

Proposed text[3]*:*

> "In the fields of combating social exclusion and modernisation of social protection systems, the Council, in a manner compatible with respect to other policy tools, on a proposal from the Commission, and after consulting the European Parliament, the Economic and Social Committee, the Committee of Regions, representatives of enterprises and labour and the Social Protection Committees, shall adopt a set of commonly agreed indicators, draw up guidelines which the Member States shall take into account in their policies, and adopt reports on the implementation of this cooperation process.
>
> The process shall be transparent and the results of this process shall be incorporated into the Broad Economic and Social Policy Guidelines."

[3] This article is based on the proposal of the Belgian Minister of Social Affairs Frank Vandenbroucke.

8.6. Qualified majority voting and the co-decision procedure will be extended in certain areas of social protection: protection of workers with regard to employment contract termination, representation and collective defence of the interests of workers and employers, including co-determination and conditions of employment for third countries' nationals legally residing in the Union territory.

We believe that effectiveness and democratic legitimacy should be increased in the framework of social policy. Therefore it is important to extend qualified majority voting and co-decision procedure. However, we should not forget that social protection has been a shared competence of the Community. The only issues that should remain subject to unanimity would be social security and social protection of workers (beyond employment contract termination) as those are issues very closely related to the exercise of national sovereignty.

8.7. Civil society will be recognised by the Constitution as being part of the democratic life of the Union.

Proposed text:

> "The institutions and Member States of the Union shall, when necessary, consult and take into account the opinion of labour, management and non-governmental organisations".

8.8. Language diversity among Member States and regions, as well as the role of regions' cultural diversity, shall be mentioned in the part of the Constitution dealing with the relations between the Union and Member States.

Proposed text:

> "In compliance with the subsidiarity principle, the Union shall act in good faith in relation to the Member States and shall preserve their identity and their national and regional diversity. <u>The Union shall respect the language diversity among Member States and regions.</u> It shall respect the constitutional organisation of the Member States, also in its relations with their territorial units. The Union shall be mindful of the specific features of the Member States as regards their internal and external security and their public services."

8.9. The Treaty will stress the responsibility of the Member States for teaching foreign languages and the awareness of European diversity from primary school onwards. A European Education Agency shall be created.

The European Educational Agency will act as a facilitator for increasing access to information on the different educational systems in the Union and on exchange programmes. It will provide quantitative and qualitative evaluations of those programmes and promote innovative initiatives, in particular initiatives which have been successful at reducing illiteracy and education drop-out, developing new methods of learning for minorities or people excluded from education. By increasing access to the full range of the Union's educational resources and co-operation networks, a greater proportion of Union citizens could benefit from the academic excellence of each Member State's educational system.

The mutual recognition of diplomas and degrees and the coordination of educational institutional structures are essential in order to attain an efficient validation of qualifications. In order to fulfil this objective, a transparent system is essential. Only in this way can students and institutions know which courses are offered, at which level, and how many credits each course is worth. To emphasise the importance of the latter, we propose to include encouraging the mobility of students and teachers and encouraging the academic recognition of qualifications and periods of study as two separate objectives.

Proposed text:

1. "The Union shall contribute to the development of quality education by encouraging cooperation between Member States and by supporting and supplementing their action. It shall fully respect the responsibility of the Member States for the teaching programmes and the organisation of education systems as well as their cultural and linguistic diversity. It shall support the Member States in their commitment to teach European languages and awareness of European diversity from primary school onwards.

2. Action by the Union shall be aimed at:

   - developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States;
   - encouraging mobility of students and teachers;
   - encouraging the academic recognition of qualifications and periods of study;
   - promoting cooperation between educational establishments;
   - developing the exchange of information and experience on issues common to the education systems of the Member States;
   - encouraging the development of youth exchanges and exchanges of socio-educational instructors;
   - encouraging the development of distance education.

3. To this end a European Education Agency is created. The missions, composition and functioning of this agency shall be established by European law.

4. In order to reach the objectives mentioned in paragraph 2, incentive measures shall be adopted by European law."

9. Area of Freedom, Justice and Security

9.1. The competences in the area of Justice and Home Affairs shall be submitted to regular decision-making procedures using the common instruments, with particular concern for ensuring democratic and judiciary control and transparency. The Member States accept to share their competences with the Union in this area in full accordance with the principle of subsidiarity.

Competences in the field of Immigration and Asylum shall be exercised according to decision-making procedures with unanimity in the Council and consultation of the EP. The Council may at any time decide by unanimity to extend the co-decision procedure to these areas. The Court of Justice shall have full competence with regard to measures taken in this field.

9.2. In order to acknowledge the difference in nature between the different policies regrouped under the heading of "freedom, justice and security", their location in the Treaty has been reconsidered.

Even though certain aspects of immigration (such as illegal immigration) touch upon criminal policy, a common immigration policy should have a wider perspective and be treated along with other issues concerning the free movement of persons. Furthermore, asylum policy is distinct from immigration policy in that it concerns affording protection to those who are persecuted in their own country.

CRIMINAL (JUDICIARY & POLICE) POLICIES

9.3. The Union is competent to approximate national legislations in order to support and facilitate judiciary and police cooperation in criminal matters among Member States. This shall be done through:

- **approximation/minimal rules on substantive criminal law for cross-border offences**

Certain crimes are transnational by nature and cannot be effectively dealt with at the Member State level. This type of criminality must be tackled in a uniform and coordinated way across the Union's territory. In order to do so a common framework for the definition of these offences is needed. Therefore, the Union must be given competences to enact common rules on a list of such offences.

This list will be included in the Treaty. These offences should be selected on the basis of their particularly serious nature and transnational character and with full respect of the principles of subsidiarity and proportionality.

- **approximation/minimal rules on the rules on criminal procedure**

In order to progress towards mutual recognition of judgments in criminal matters, the first step must be to approximate the rules on criminal procedure. The Union shall receive competence to act in this field.

These minimal rules could include the definition of a fair trial, the admissibility of evidence and minimal standards for the protection of the rights of individuals. Other elements of due process could likewise be included.

This approximation must be done with due respect to the applicable human rights instruments (namely the Charter of Fundamental Rights as part of the Constitution and the European Convention of Human Rights) and must aim at high standards.

- **approximation/minimal rules on operational cooperation in criminal matters**

In order to ensure that the creation of an area of free movement of persons does not allow criminals or suspects to escape the jurisdiction of the Member State where they are suspected of a crime or have been convicted of one, cooperation between national judges has to be facilitated. However, the rights of defence have to be protected and in the current situation criminal procedures and definitions are still not yet harmonised. Therefore, the Union needs competences in order to approximate the instruments of this cooperation.

The rules concerned are those that facilitate and accelerate cooperation between competent judicial and prosecuting authorities of the Member States in relation to proceedings and the enforcement of decisions (European arrest warrant, legal assistance in criminal matters, extradition, etc.)

9.4. As the competences of the Union in this field are coordinative, the voting procedures must protect the prerogatives of the Member States and thus require not only unanimity in the Council but also the involvement of the national parliaments. The scope of scrutiny by national parliaments and the European Parliament should be highly enhanced. Through transparency and more accountability, the citizens would be able to intervene in the legislative decision-making process of the European Union.

In our view scrutiny concerns both parliaments and citizens because both have a role to play in democratic decision-making. Parliaments should be the contact point between national governments, the European Commission and the Council on the one hand and citizens on the other.

We suggest placing an explicit provision in the EU Treaty favouring the exercise of effective scrutiny at the national level by parliaments. The mechanics of that scrutiny must of course remain a matter for national constitutional law.

In the Member States where they exist we believe that scrutiny reserves should have more force and leave less discretion to a national government to override them. At the very least where a parliamentary report has indicated a strong reservation on a particular point or issues this should be formally communicated to the Council, the Commission and the European Parliament. Furthermore, the European Parliament should be obliged to take into consideration specific reserves from any formal report from a national parliament.

9.5. The Union decides on the operational instruments that foster judiciary and police cooperation in criminal matters among Member States. This operational cooperation shall be carried out through:

- **giving the status of European Agencies to Europol, Eurojust and Eurobord and adapting their competences**

The existing Europol and Eurojust should become European Agencies. They will only be competent in the field of the communitarised offences as defined above. They shall act in full respect of fundamental rights, particularly with regard to the protection of personal data.

The objective of Europol is to collect data transmitted by national administrations and to organise and coordinate specific investigations and missions in close relation to national police forces. The field operations will be left to national police forces. The role of Eurojust is to coordinate the action of the national prosecuting authorities.

A new Agency, Eurobord, should be created. The role of this new agency would be to coordinate national border control systems, for example by exchanging "good practices". This agency shall be the embryo for future deepened cooperation in this field.

- **instituting an accountable European Public Prosecutor to prosecute persons committing fraud against the interests of the Union before national jurisdictions**

The European Public Prosecutor is appointed and may be dismissed by the Council after assent of the EP. The prosecutor 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 legal experts of recognised competence.

This person will be subject to the control of the Council which will define the principles of criminal policy underlying his action. The Prosecutor's status, the substantial and procedural rules applicable to his action, as well as the conditions applicable to the judicial review of his action shall be defined in a European law.

9.6. The above-mentioned Agencies and the European Political Prosecutor shall be controlled both by the Council and the European Parliament. The Court of Justice shall receive full competence to review their actions.

In order to prevent any abuse of fundamental rights and ensure transparency and accountability, the Agencies (particularly Europol, which has operational powers) and the European Political Prosecutor shall be controlled both by the Council and the EP. Regarding the control by the EP, this will be ensured through an annual report followed by hearings.

The CJ shall receive full competence to examine the actions of these bodies to ensure effective judicial protection for human rights and to ensure that such bodies are acting legally.

(vide 5.8)

IMMIGRATION POLICY

9.7. The Union shall progressively develop its actions taken in the field of immigration into a coherent policy. This policy shall address not only the economic, but also the political and social dimensions of the immigration phenomenon. The common objective of the Union is to create a legal framework for the immigration flows to Europe and to facilitate the integration of non-EU citizens into European societies in order to give an adequate answer to these new challenges.

The competences already transferred in this area to the European level will be maintained. The Union should moreover receive the competence to:

- confer legal status to long-term non-EU residents. This status will embrace social, economic and eventually even political rights on the European level. The conferment of this status can be subject to certain conditions (e.g. criminal records…)
- support and increase the coherence between the national integration policies.

Minority opinion

Regarding the conferment of a status to long-term non-EU citizens

With this contribution we would like to express our concern with the adoption of this proposal under its current formulation. The current proposal seeks to give the EU competence in this area but requires unanimity in the Council to set the conditions to attribute this status.

However, under the current formulation of the proposal it is not defined whether this status will only be attributed to legal immigrants in the EU. Thus, it would be up to the Council to decide whether the legal status of the immigrant is a criterion to attribute this status. Despite the fact that we acknowledge the unlikelihood of having this status approved by the Council for immigrants without a legal status, this does not change the fact that there has been a transfer of competence to attribute economic, social and political rights to illegal immigrants to the EU level.

It is our opinion that this gives a very mistaken signal towards the EU citizens. The removal of internal borders has already made it more difficult to fight illegal immigration. Many EU citizens who are not against (legal) immigration as a principle, are becoming more and more concerned by the increase in illegal immigration, often organised by mafia organisations. We fear that in the long term the ineffective (or lack of) combating of illegal immigration will lead to resentment by the EU citizens against any kind of immigration. This is what we would like to avoid. Therefore, giving the EU competence for attributing economic, social and political rights to illegal immigrants would give out a mistaken message to the EU citizens. We belive that it is the duty of all politicians to always state very clearly when talking about immigrants, whether they refer to legal or illegal immigrants. This would help citizens to gain insight into the complex migration issues and it would reduce xenophobic feelings.

Signed by: Sebastian Kirsch, Wim Palmers, Liina Sillaots.

ASYLUM POLICY

9.8. The Union shall progressively develop its actions taken in the field of asylum into a coherent policy based on relevant human rights instruments. The Union

shall seek to adopt an exemplary role in the world for the protection of Human rights and of refugees.

This policy shall be based on the principles stated in the Charter of Fundamental Rights, in the European Convention on Human Rights, the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties.

In exercising its competences, the Union shall strongly encourage the Member States to provide effective and rapid protection to asylum seekers. More particularly the principle of *non-refoulement* and access to the national procedures of demand for asylum must be effectively guaranteed. As long as a decision on this request has not been made, the asylum seeker must benefit from effective and durable protection as long as he is in danger in the country he has fled.

Competence in the field of the subsidiary protection accorded to displaced persons from third countries who cannot return to their country of origin and for persons who otherwise need international protection shall be maintained.

Minority opinion

The Protocol on asylum for nationals of Member States of the EU ("Aznar Protocol") should be repealed. It is contrary to the Convention of Geneva and it creates a limitation of the rights of EU citizens that is absolutely not justified and creates an arbitrary discrimination against EU citizens.

This Protocol was annexed to the Treaty of Amsterdam in a peculiar context and at the Spanish government's request: Belgium had accepted to examine the asylum applications of two Spanish citizens suspected of terrorism who feared they would be subjected to torture. In our view this limitation is against the spirit and the text of the Geneva Convention of 1951. This regional limitation of international agreements on human rights and refugees, if followed in other regions of the world, would strongly undermine the protection of refugees.

It should also be stressed that the situation in a country can always change, and that the democratic nature of a regime does not preclude it from violating the human rights of certain individuals. This Protocol, by limiting the rights of EU citizens, creates an arbitrary discrimination that should be removed. It is not by maintaining such limitations that the Union can play a role of world leader in human rights.

Signed by: Tony Fernández, Raphaël Meyer, Janek Tymowski.

10. External relations

We consider that the concept of foreign policy has to be seen in a broad light, including trade policy, development policy, commercial policy as well as defence and security issues; it is stressed that the different aspects of foreign policy are inter-dependent.

10.1. The European Union will have a single legal personality, replacing the existing legal personalities of the Communities.

Some recent agreements have lead already to a *de facto* recognition of the existence of the legal personality of the Union: a number of authors derived its existence from the agreements that the Union had concluded with third countries. To confer explicit legal personality to the Union is however still necessary, for reasons of legal certainty (simplification and clarification necessary in the Union's external relations) and in order to strengthen the Union's identity and the Union's influence in the international scene. For its international relations this will have the consequence that the Union as such becomes a subject of international law, having the right to conclude treaties as well as to make international commitments, whether it concerns an agreement within the framework of the "communitarised" policies or within that of the intergovernmental policies.

10.2. In matters of Common Foreign and Security Policy (CFSP), the functions of the current High Representative (HR) for CFSP will be included among those of the Commissioner for External Relations, accountable to the European Parliament and to the Council, being a full member of the Commission. The Commission shall keep the European Parliament and the Council regularly informed regarding the state of the Union's external relations.

The Commissioner for external relations is proposed shortly after the Commission President's election and nomination, by the President of the Commission in common accord with the Council. In political dialogue meetings he will ensure the external representation of the Union, replacing the current 'troika' practice. The Secretary (new system of Presidency) of the General Affairs Council will relinquish this task of external representation.

In diplomacy trust and personal relationships are crucial. The changing and multiple way in which the EU handles its meetings with third parties considerably undermines the negotiation power of the Union in the world. The external representation of the EU is related to the legal personality of the Union as well as to the internal institutional structures in the Union's external relations. Since the Amsterdam Treaty, external political dialogue meetings with third parties are mostly carried out by the new style 'troika' (the Presidency of the Council, the HR for CFSP, and the Commissioner for external relations) in the framework of CFSP. This practice confuses discussion partners and causes lack of coherence and capability to react.

The proposal of 'double-hatting' enables the Union to speak with one single voice on the international scene, to formulate common positions and, preferably, to deploy a single delegation to negotiate agreements. The function of HR for CFSP has been created to provide for an element of continuity and visibility in EU external representation on the

basis of the rotating presidency system. In our proposal such rotation will be abandoned (or it will bear only a symbolic status within the framework of European Summit).

We claim that the success achieved by the present HR for CFSP, Javier Solana and his cooperation with the Commissioner for external relations, are chiefly related to the personal capacities of these persons. However, there is no guarantee that the future will not bring about a struggle over competencies. The functions need to be carried out by one single person, a Commissioner, taking over the HR functions of assisting the Council and conducting political dialogue with third parties. Another advantage is that the Commission disposes of valuable information through its numerous embassies in the world. Since Amsterdam, not only has the Commissioner for external relations continued to be 'fully associated' but has already successfully taken part in the reformed troika.

The President of the Commission will not be entrusted with the general external representation of the EU, because this would give to this person, and thereby also to the Commission, a true presidential status in the EU.

Proposed text:

> "When the Union is admitted to an international organisation or conference, the Union has to be represented by the Commission. Within other international organisations and conferences the position of the Union will be expressed by the Member State appointed to do so by the Council. It shall be for the Commission to ensure the maintenance of appropriate close relations with these organisations.
>
> The representation of the Eurozone regarding the European Monetary Policy within international organisation will be accomplished by a High Representative, chosen and mandated by the Eurogroup Council members."

The issue of Union representation in international organisations is compound and sensitive. The Union's international representation concerns in particular the possible status of the Union in various international organisations and conferences. The nature of such representation depends on whether the organisation is open only to States (e.g. ILO) or whether it provides for membership by international organisations (e.g. FAO). When the Union is admitted to membership it should be represented by a single delegation so as to be able to defend its interests more effectively and to give the Union more political weight.

If the EU is not allowed to become a member, the Member States should enhance the coordination of their positions in international organisations, in order to promote as much as possible a single EU point of view. In a system of elected secretaries presiding the Council, instead of a rotation system of Member States, the best method to ensure the expression of the Union's position is to appoint one Member State to play this role.

In the field of EMU, the Union cannot be represented by only one person as not all Member States are part of the Eurozone. However, in order for the Eurogroup to have one voice, a High Representative will be mandated by the Eurogroup Council members. The other Member States will be represented by their own representatives (vide 6.8).

10.3. Common Foreign and Security Policy

The functions of the political committee monitoring the international situation and contributing to the definition of policies [Art. 25 TEU] must be changed: its role will be to advise the Commissioner for External Relations and guarantee that the interests of the Member States are respected.

Reconciliation and coordination between community and national interests will take place in the political committee. If we presume that the representation of external policies will be, more than before, in the hands of the Commission, it is especially important to have a good coordination of CFSP issues which will aim to represent both community and national interests. The committee will provide both the Council and the Commission with expertise in foreign policy matters.

Concerning the CFSP, the Commission shall conduct negotiations within the framework of the Council's directives. A special committee appointed by the Council shall assist the Commission in this task.

Proposed text:

> 1. "When it is necessary to conclude an agreement with one or more States or international organisations in implementation of this Title, the Council, acting unanimously, may authorise the Commission to open negotiations to that effect. The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council. This committee will assist the Commission in its task within the framework of any directives that Council may have adopted. The Council shall conclude such agreements on a recommendation from the Commission.
>
> 2. The Council shall act unanimously when the agreement covers an issue where unanimity is required for the adoption of internal decisions. When the agreement is envisaged in order to implement a joint action or common position, the Council shall act by a qualified majority.
>
> 3. No agreement shall be binding on a Member State whose representative in the Council states that it has to comply with the requirements of its own constitutional procedure; the other members of the Council may decide that the agreement shall apply provisionally to them."

This amendment is the logical consequence of our proposal to change the present presidency system of the Council into a system of presiding Secretaries. The Commission would play the role that is now played by the Council presidency. It opens the way to a single set of provisions to cover the conclusion of international agreements in the fields of the former "community" policies and in the field of the CFSP. This would contribute considerably to simplification and transparency of EU law. To balance greater power of the Commission, a steering committee has to be created, through which the Council can follow and guide the Commission's negotiations. This is necessary to avoid totally blocking the adoption of international agreements that have to be concluded (unanimously) by the Council.

10.4. European Security and Defence Policy (ESDP)

- **The ESDP shall not be communitarised**

Since the treaty reforms of Amsterdam and Nice, the CFSP encompasses the ESDP[4]. All ESDP decisions require unanimity, thus strengthening the sovereignty-preserving element in the whole CFSP.

Still, we support neither total communitarisation of ESDP nor common armament of the EU. Creation of common compulsory EU army is not feasible due to the different interests (Austria, Finland, Ireland, Sweden are neutral) and the military capabilities of the Member States. It would only be feasible to have a rapid reaction force and the EU should mostly be dealing with crisis management issues.

- **Enhanced cooperation shall be enabled**

We support opening security and defence matters for enhanced cooperation, which would enable more coherent cooperation in security and defence matters for those Member States that are willing to cooperate in these issues.

- **A "solidarity clause" should be included in the Treaty**

We support adding a "solidarity clause" which would state, in the same way as article 5 of the Washington Treaty, that when the territory of one State is attacked, all instruments available in the Union will be mobilised to take action in order to protect the territory and the civilian population of the State attacked.

10.5. Common Commercial Policy

In order to enhance democratic control, the European Parliament shall be involved in trade negotiations. A representative of the European Parliament will be in the committee assisting the Commission in its negotiation tasks. Furthermore, the assent procedure will apply to trade agreements.

Proposed text:

> "The European Parliament will be involved in the committee set up under [Art. 133.3] which assists the Commission during negotiations through a representative with observer status and the right to contribute to the discussions. Confidentiality will be assured following the principles for parliamentary involvement in sensitive matters."
>
> "The Council shall conclude agreements in the field of Common Commercial Policy only after receiving the assent of the European Parliament"

We acknowledge the problems that could be caused by parliamentary involvement in the field of international negotiation. Involvement of the EP can slow down the process of negotiations. However, international trade issues have given rise to mass protests alongside international trade negotiations, the lack of transparency and democratic control in these international trade negotiations is of concern to citizens. In a globalised economy, trade negotiations may no longer be the reserved domain of governments. We believe that a closer involvement of the EP would give citizens the possibility to express their views through the channel of elections: involvement of the EP will enhance democratic control of the European peoples over trade negotiations.

[4] Article 17 of the existing Treaty on European Union forms the principal legal basis for the ESDP

10.6. Development Policy

With the objective of making the development cooperation policy the third pillar of the external relations of the Union (the two others being the CFSP and the Commercial Policy), its objectives shall be deepened and its coordination with other policies reinforced.

Proposed text:

1. "The European Union policy in the sphere of development cooperation shall be to foster sustainable economic and social development in order to eradicate poverty in developing countries and integrate smoothly and gradually these countries into the global economy.
2. European Union policy in this area is founded on the principle of equitable and participatory human and social development. Respect of human rights and fundamental freedoms, developing and consolidating democracy, the rule of law and good governance are an integral part of it.
3. The European Union and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.
4. The European Union shall keep consistency between its development cooperation policy with other European Union policies that may have an impact on developing countries, in particular in the fields of the negotiation of the external debt of developing countries, the common agricultural policy and the commercial policy. The European Union shall respect this guiding principle in the conclusion of international agreements and when negotiating and acting in international organisations."

There must be greater coherence between the various Community policies touching on sustainable development. Efforts must be made to ensure that development cooperation policy objectives are taken into account in the formulation and implementation of other policies affecting developing countries. A special emphasis is put on the most sensitive policies in this respect: common agricultural policy, commercial policy and negotiation of the external debt of developing countries.

10.7. Justice and Home Affairs

As the questions regarding the Area of Freedom, Security and Justice are now subject to the common European Union procedures and shall be carried out through the common instruments, the conclusion of international agreements in this field should be carried out according to the common procedure [Article 300 TEC].

(vide also 5.8)

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