

From the Convention to the IGC: a constitutional treaty in search of authors

Introduction

The European Convention will remain in collective memory as a novel method of preparing for the most extensive review of the European treaties so far: it was an unprecedented forum for reflection and deliberation about the future of Europe. When the Convention was first established, its capacity to produce a result – in the form of a single text without recommendations – was severely doubted. Expectations focused on the Convention’s ability to debate, in public, matters which had until then been confined to diplomatic negotiations (at Intergovernmental Conferences, or IGCs), recent instances of which had proved singularly uninventive: the Amsterdam (1997) and Nice (2000) Intergovernmental Conferences. The European Convention was convened purely on account of these failures. At its inaugural session, the Chairman of this assembly set its members the aim of formulating a draft “constitutional treaty”, an ambitious goal to be attained by “consensus” (1). Following what the Chairman described as unexpected agreement on the first two parts of the constitutional treaty (the constitutional part and the Charter of Fundamental Rights), the

¹ “Consensus” has never been defined. According to the Chairman of the Convention, “*by contrast with unanimity, the position of one or more participants cannot stand in the way of continued debate or the adoption of a proposal when it rallies a broad consensus*”, Speech by the Chairman of the European Convention to the 10th Statutory Congress of the European Trade Union Confederation, Prague, 27 May 2003.

Thessaloniki European Council in June 2003 hailed the draft constitutional treaty as a “good basis for starting” on the IGC (European Convention, 2003a). That agreement was only achieved thanks to a modification of the Convention’s working methods but also after alterations were made to some of the social provisions in the third part. Just as the European Council granted the Convention an additional short period to complete its “purely technical work” on Part III of the draft constitutional treaty, a spanner was thrown into the works of the IGC: reservations were expressed by Spain and Poland about one of the clauses in the institutional chapter, namely the new definition of a qualified majority ⁽²⁾.

Once the draft Treaty establishing a Constitution for Europe ⁽³⁾ had been forwarded to the Italian presidency, the IGC was officially launched on 4 October. At the time there was a hardening of attitudes among the proponents of “Nice and nothing but Nice”, headed up by Spain and Poland on the one hand and, on the other, among backers of the constitutional treaty. The definition of a qualified majority was the main stumbling block at the IGC, whose suspension marks - at best - a halt in the process of adopting the most far-reaching reform of the European treaties ever to have been undertaken. It confirms, as if there were any need, the lack of inventiveness on the part of successive IGCs, where a desire to promote national interests repeatedly prevails. That was apparent in this latest instance, when participants defended the capacity to block decisions rather than working together in a pro-European frame of mind. The same applies to the objections to the proposed system for the qualified majority, and also to the rejection of the Legislative Council.

² Ana Palacio, the Spanish Minister of Foreign Affairs representing her country, insisted that “*the Spanish government maintains a reservation of substance on the institutional proposals*”. The Polish government representative, Danuta Hubner, stated that her government “*would pay particular attention to the qualified majority issue when it is raised at the IGC*”. Cf. Verbatim, plenary session of the European Convention on 13 June 2003.

³ The numbering of articles in this chapter is that used in the document submitted to the Italian presidency (CONV 850/03) and published in the OJ C 169 of 18 July 2003. It is numbered slightly differently (Parts III and IV) from the last documents of the Convention (European Convention, 2003b).

Economic and budgetary matters provide further examples of the IGC's inability to improve on the Convention's text. The Convention proved unable to devise any simplified means of reviewing and implementing the treaty, even within the narrow confines of internal policy aspects (Title III).

1. A belated institutional debate

From the “Amsterdam left-overs” – i.e. the composition of the Commission, the weighting of votes in the Council and the scope of qualified majority voting (QMV) – to the issues left unresolved by the Treaty of Nice, the most recent Intergovernmental Conferences had come to grief over the distribution of powers within the EU. Almost all the candidate countries, when consulted at the start of the 2000 IGC, had expressed their preference for a Commission comprising one Commissioner per Member State, and had indicated that the mechanism for the weighting of votes in the Council must protect the interests of the small countries as compared with the large ones ⁽⁴⁾. These views reflected fears of a loss of national sovereignty, which some of them were only just consolidating. In 2003, the principal institutional issues on the agenda of the IGC were items emerging from the work of the Convention: the new definition of QMV (a double majority, i.e. a majority of Member States representing three-fifths of the population) and the composition of the Commission (scaled down to 15 full Commissioners, along with a number of Commissioners “without voting rights”).

The institutional debate had “intentionally” ⁽⁵⁾ been included belatedly on the agenda of the Convention. It had however gathered momentum elsewhere, and hinged on the proposal that the President of the European Council be appointed for a long term of office. This proposal was initially backed by three large Member States: the United Kingdom, France and Spain (and hence became known as the ABC proposal, for Aznar-Blair-Chirac). In that it strengthened the European Council, this

⁴ Cf. Cécile Barbier, “The IGC and the candidate countries”, *IGC Info*, No.4, table, December 2000. See also “The institutional challenges of enlargement”, *Enlargement Research Bulletin*, Issue No.1, DG Enlargement website, European Commission, November 2001.

⁵ Speech by Valéry Giscard d'Estaing, Prague, 27 May 2003 (cf. footnote 1).

proposal fuelled arguments between advocates of the intergovernmental method and backers of the Community method, who maintained that the President of the Commission should be elected by the European Parliament and endorsed by a vote of the European Council. It also rekindled the conflict between the large and small countries (Magnette and Nicolaidis, 2003). By replacing the principle of a six-monthly rotating presidency with a permanent presidency of the Council, the large Member States were calling into question the principles of “*equal treatment of Member States*” and “*institutional balance*”, two principles recalled in the Benelux countries’ Memorandum on reform of the Council (Benelux Memorandum, 2002).

The debate which took place in January revolved around the Franco-German proposals: the President of the European Council should be elected by members of that body for a renewable period of two and a half or five years; the President of the Commission would be elected by a qualified majority vote in the European Parliament, followed by endorsement in the European Council through another qualified majority vote (European Convention, 2003c). A large number of members of the Convention rejected the idea of electing the President of the European Council, because of the rivalry it could cause between the Presidents of the European Council and the Commission⁶. Nor would that solve the question as to the chairmanship of other configurations of the Council, this being another institutional topic at the IGC which appeared to favour the principle of a “team” presidency. While the creation of a Legislative Council enjoyed widespread backing at this stage, the composition of the Commission was another issue addressed by many speakers. Several government representatives from the candidate countries reiterated their desire to keep one Commissioner per country in the long term, as provided for in the Treaty of Nice. (That Treaty does however state clearly that when the Union consists of 27 Member States, the number of members of the Commission will be less than the number of Member States.) They subsequently summarised their views on institutional matters in a

⁶ Hanja Maij-Wegen (PPE-DE, NL), from the European Parliament component, calculated as follows: 12 in favour, 15 had serious misgivings, 64 against (cf. Verbatim, session of 21 January 2003).

document that was also signed by some of the “small countries” already belonging to the EU (Denmark, Austria, Sweden, Portugal, Ireland and Finland) (European Convention, 2003d).

2. Organisation of business during the final phase of the IGC

2.1 Articles put forward “in batches”

From February onwards, proposed articles for the constitutional treaty were put to the Convention only “in batches”. This method complicated the proceedings, in that the impact of many provisions in the first part of the treaty (the truly constitutional part concerning the values, objectives and competences of the Union as well as its institutions and democratic life) could be assessed only in the light of the provisions of Part III on the policies of the Union. The text in its entirety did not become available until the end of May.

2.2 Role of the Praesidium

The Praesidium and its secretariat played a crucial role not only in drafting the initial proposed texts but also in processing the amendments ⁽⁷⁾. Preparation of the institutional chapter highlighted the difficulty encountered by the Praesidium in determining a common institutional approach ⁽⁸⁾. At the head of the Praesidium, its Chairman was well known to favour the election of a President of the European Council for a prolonged period and the establishment of a Congress. The two Vice-Chairmen did not however appear to back the same institutional plans. Jean-Luc Dehaene stated that it was hard to comment on the establishment of a permanent post of President of the Council until such time as there was a description of that person’s duties ⁽⁹⁾. Mr Dehaene

⁷ This was the case for amendments submitted in minority languages. Unlike the amendments tabled by other observers, those from the European Economic and Social Committee were not taken into consideration.

⁸ Cf. the disclosure of institutional proposals to the press by the Chairman of the Convention even before these matters had been discussed and adopted by the Praesidium, *Le Monde*, 23 April 2003.

⁹ Speech by Mr Jean-Luc Dehaene, Vice-Chairman of the European Convention, Kings College, London, 11 February 2003 and Speech by Jean-Luc Dehaene,

dismissed the idea of founding new institutions such as the Congress, and spoke in favour of “institutionalising” the Convention with a view to future reviews of the treaty. As for the presidency, he expressed a preference for “denationalising” it, thereby allowing for different ways of representing the Member States, but also for greater continuity. But he felt that the solution of presidential teams must be discarded because they might give precedence to their own programme. This option had the support of the other vice-Chairman of the Convention, Giuliano Amato, who said at the press conference after the plenary session on 20 and 21 January that he was convinced of the need for continuity in the presidency, adding that he saw it as more of a “collective responsibility”. This proposal had partially been formalised in the recommendations of a working group set up by an Italian think-tank called “Astrid”, one of whose chairmen was none other than Giuliano Amato himself (Astrid, 2003). Do these differences in approach justify the method used by Valéry Giscard d’Estaing, who sent draft articles of Title IV (on the institutions of the Union) to the press before they had even been discussed and adopted by the Praesidium? His method stirred up strong reactions about both style and content. These proposals seriously questioned the institutional balance between the three political institutions of the Union (Commission, Council and Parliament), by placing the European Council at the centre of the system and thus developing an intergovernmental Europe, perhaps even endowed with its own administration. The Congress, made up of one third MEPs and two-thirds representatives of national parliaments, would meet once a year under the chairmanship of the President of the European Parliament. It would have three tasks: to debate the state of the Union on the basis of a report by the President of the European Council; to draw up proposals for review of the Constitution; and above all, in the longer term, to elect the President and Vice-President of the European Council.

The President of the European Commission deplored the method used as well as the content of the suggested articles, stating that these proposals “*ran counter to the debate in the Convention and its working groups. Nor do they properly reflect the decisions of the informal European Council in Athens*”.

Vice-Chairman of the European Convention, “A Constitution for Europe”, Centro Cultural de Belém, 14 March 2003.

Several members of the European Parliament also expressed their discontent. A meeting between the Conference of chairmen of political groups in the European Parliament and the Commission President took place on 13 May, at which the idea of an elected President of the European Council was rejected. These draft articles, slightly altered by the Praesidium, formed the working basis for the continuation of business in the Convention (European Convention, 2003e and 2003f).

2.3 A pre-IGC

Members of the Convention had been asked to voice their own views ⁽¹⁰⁾, and not to express national standpoints ⁽¹¹⁾. While the draft treaty was being formulated, they were also called on to react to their colleagues' verbal contributions rather than reading out written speeches ⁽¹²⁾. The national governments had opted to be represented on the Convention at the highest level, and the presence of a majority of Foreign Affairs Ministers from January 2003 onwards indicates the importance that the

¹⁰ Valéry Giscard d'Estaing called on members of the Convention not to “*regard themselves simply as spokespersons for those who appointed them – governments, the European Parliament, national parliaments and the Commission*”. He added: “*Each person will of course remain loyal to his or her brief, but must make his or her personal contribution to the work of the Convention*” so as to “*gradually foster a ‘Convention spirit’*”. Introductory speech by President V. Giscard d'Estaing to the Convention on the Future of Europe, 28 February 2002.

¹¹ This is how the Chairman of the Convention, Valéry Giscard d'Estaing, called to order Pascale Andréani, the alternate of the French government representative, Dominique de Villepin, at the session on 7 February 2003 devoted to the regional dimension: “*Here we do not express the national positions of national governments. We express the opinions of members of the Convention. Members of the Convention convey, or may convey, national points of view, but those points of view are not expressed here as such. We are not attempting to reconcile the points of view of the governments of individual Member States, and that includes yours, which is in fact mine too*” (cf. Verbatim, European Convention, 7 February 2003).

¹² While chairing the second part of the session on 28 February, Giuliano Amato stated: “*You would be well advised to react to what one another say. (...) This is not a game of ping-pong between the Praesidium and the Assembly*”. Referring not without humour to the *carton bleu* system, “*invented by our Lord*” to facilitate mutual dialogue, he also called on Convention members to listen to each other and not to read out written texts, in order to promote dialogue (cf. Verbatim, 28 February 2003).

work of the Convention had taken on by then. Another consequence of their presence, however, was to transform the proceedings into a “pre-IGC”, at least within the governmental component group: certain government representatives did not hesitate to include explicit references to the IGC in their reasoning. In similar vein, the proceedings of the Working Group on Social Europe brought to light a refusal on the part of an “active governmental minority” to accept the principle of QMV in areas on which there was a broad consensus in the group.

2.4 Work in component groups

At the last few sessions, the centre of gravity of the Convention’s work shifted towards the component groups. This final change in the working methods brought national and European parliamentarians closer together, a move without which the Chairman of the Convention would have been highly unlikely to ascertain a consensus among the four component groups. The consensus was however far from unanimous in respect of institutional matters. Government positions became even more pronounced when government representatives from the small and medium-sized countries came out against any other institutional alternative than that of the Nice compromise (weighting of votes, definition of a qualified majority, national representation in the Commission). Having resolved not to jeopardise the outcome of the Convention, the government component did endorse the draft submitted to the Thessaloniki European Council - with the exception of the institutional chapter. Significantly, a press release circulated on 14 June by the Greek presidency in the run-up to the Thessaloniki European Council already identified certain “open” institutional questions, namely the posts of full-time EU President and Foreign Minister, how they would be elected, number of Commissioners, voting¹³). These issues were placed on the agenda for the IGC. It is interesting to note that the political parties, organised at European level, carried little weight in the institutional debate as a result of the wide divergences amongst them.

¹³ Cf. programme of the Thessaloniki European Council: Briefing by Foreign Ministry spokesman Mr P. Beglitis (14 June 2003) (<http://www.eu2003.gr/fr/articles/2003/6/13/3060/>).

3. Results

The constitutional treaty greatly simplifies the procedures for adopting Union acts. A qualified majority vote is defined as “*the majority of Member States, representing at least three fifths of the population of the Union*” (14). This clause is not however scheduled to take effect until 1 November 2009, after the European Parliament elections. In the meantime, the provisions contained in the Treaty of Nice, namely the weighting of votes in the Council (and the conditions having to be verified), will remain in effect. The legislative procedure (the former codecision procedure) becomes the rule for adopting legislation (European laws and framework laws, replacing regulations and directives). In that this procedure has been extended to a whole range of new cases, the European Parliament is the “big winner” on this point, according to the Chairman of the Convention (15). Some special procedures will nevertheless remain in force, including in respect of social affairs.

3.1 The institutions

The main innovation made by the Convention was the formation of a Legislative Council, accepted by the Convention on condition that it be merged with the General Affairs Council. The Foreign Affairs Council would be chaired by the Union Minister for Foreign Affairs and tasked with formulating EU foreign policy in accordance with an outline strategy laid down by the European Council. The other configurations of the Council would be determined by the European Council (and not by the General Affairs Council, thereby reducing the latter’s coordinating role). The other configurations would be chaired by Member States’ representatives in the Council according to the principle of equal rotation for periods of at least one year, to be fixed by the European Council. Only the Eurogroup, a body for informal dialogue recognised in a Protocol annexed to the treaty, would have a chairperson elected

¹⁴ Article 17b, CONV 691/03, 23 April 2003 and also the wording of paragraph one of Article I-24 of the final draft of the Constitution, CONV 820/1/03, 27 June 2003.

¹⁵ Verbal report to the Thessaloniki European Council by Valéry Giscard d’Estaing, 20 June 2003, page 11.

for a period of two and a half years. The President of the European Council would be elected by the members of that body for a renewable term of two and a half years, but his role would be more akin to that of a meeting chairman than to that of an executive president. We would draw attention to the so-called “*passerelle*” mechanism which would allow the European Council to decide, unanimously and at its own initiative, to switch from the special legislative procedure to the ordinary legislative procedure (currently codecision), as well as from unanimity to QMV. The merit of this procedure, resembling a simplified review procedure, would be to avoid triggering the mechanism for treaty review and the procedures for national ratification ⁽¹⁶⁾. Nonetheless, as with the other *passerelle* mechanisms, the need to achieve unanimity in the European Council reduces the likelihood of successfully utilising this article, for which the IGC contemplated strengthening the role of national parliaments by granting just one of them the power to forestall a decision ⁽¹⁷⁾ (Intergovernmental Conference, 2003a).

The Commission would be scaled down to fifteen members, namely its President and the Minister for Foreign Affairs - who would double as Vice-President - and thirteen Commissioners. In addition, the Commission President would appoint Commissioners “without voting rights”, selected on account of the same criteria as for the members of the College but coming from all Member States. These provisions would not enter into force until 1 November 2009, after the renewal of the European Parliament. The number of MEPs would not exceed 736. Representation of Europe’s citizens would be ensured by means of degressive proportional representation in the Parliament, with a minimum threshold of four seats per Member State. These measures would apply following the 2009 elections. Until then, the European Council would

¹⁶ In the first case, the European Parliament would be consulted and the national parliaments informed in advance. In the second, the proposal would be forwarded only to the national parliaments at least four months before the decision was taken.

¹⁷ Cf. document IGC 60/03, PRAES 14, Annex 35 page 49. See also Cécile Barbier, “IGC: the final phase?”, *Tomorrow Europe*, No.19, November 2003 and “The IGC grinds to a halt”, *Tomorrow Europe*, No.20, December 2003 (<http://www.ciginfo.net/demain/en/lettres.htm>).

unanimously adopt, on the basis of a proposal from the European Parliament and with its approval, a decision determining the composition of the European Parliament in accordance with the principles agreed.

3.2 Results in respect of social policy

The draft constitutional treaty was circulated at the end of May, divided into two volumes (European Convention, 2003g and 2003h). The draft text of Parts II, III and IV incorporated the Charter into the treaty, complete with the amendments to its final provisions as adopted in the working group chaired by Antonio Vitorino. Various aspects of these texts met some of the demands made by the Social Europe Working Group. Certain provisions were further modified or approved on 12 June, others on 9 July.

Ahead of the session on 11-12 June, several social policy demands were gathered together in a contribution signed by a significant number of members of the Convention from all the political families, coming from each of the component parts of the Convention and who participated in the Social Europe Group (European Convention, 2003i). It was also signed by the chairman of the European Parliament's Committee on Social Affairs, as well as by that committee's political group co-ordinators. Their demands included: the values of equality and social justice, inclusion of a horizontal clause (not endorsed by the Convention and proposed afresh at the IGC by the Belgian delegation), procedures for the spring European Council - to include not only the Broad Economic Policy Guidelines and the employment guidelines but also all other aspects of social policy to which the open method of co-ordination applies -, incorporation of these into the treaty, recognition of the role of the social partners, a clause allowing for general use of QMV in Article 137, and an expansion of Union competence in the field of public health.

Following last-minute pressure exerted by the United Kingdom, the draft constitutional treaty amended the preamble to the Charter, adding a sentence to the effect that the Charter will be interpreted by the courts of the Union and the Member States with due regard to explanations formulated under the authority of the Praesidium of the Convention which drafted the Charter (European Convention, 2003j). The risk inherent in such a provision is that it could narrow the scope of possible interpretations. It remains to be seen what scope the Charter

will have in practice. At the IGC, moreover, the UK and the Netherlands called for such explanations (updated by the Praesidium of the European Convention) to be published in section C of the EU Official Journal ⁽¹⁸⁾ (Intergovernmental Conference, 2003b).

The initial wording of the article on social policy ⁽¹⁹⁾ made it possible to apply the ordinary legislative procedure to the three areas currently excluded from it: protection of workers; representation and collective defence of the interests of workers and employers, including co-determination; and conditions of employment for third-country nationals legally residing in Union territory. Pressure from Germany, applied by Klaus Hänsch even though he was a European Parliament representative to the Convention, won through in the end, reintroducing unanimity for the purposes of the article on social policy ⁽²⁰⁾ and preserving the *passerelle* negotiated at Nice with a view to further application of the normal legislative procedure. The final version did not alter this state of affairs.

Economic and social policy co-ordination. In Part I, the Title on the co-ordination of economic and employment policies enables the Union to adopt initiatives to ensure co-ordination of Member States' social policies ⁽²¹⁾. It will be remembered that, when the Praesidium initially proposed including employment in the article on areas for supporting action, several Convention members objected and called for employment and social policy to appear in the article concerning economic policy co-ordination (see Social Developments 2002). However, the final draft of the constitutional treaty took no account of amendments seeking to redress the balance between Parts I and III, while no reference to the social market economy is made in the relevant articles in Part III.

¹⁸ Cf. document IGC 37/03, point 13.

¹⁹ Cf. Article III-99 (current Article 137 of the TEC), CONV 725/03.

²⁰ Cf. Article III-99 (current Article 137 of the EC Treaty), CONV 802/03, 12 June 2003. Situation unchanged and featuring in Article III-104, CONV 850/03, 18 July 2003.

²¹ Cf. Article I-14, CONV 850/03, 18 July 2003.

Qualified majority voting. The article in Part III on social security for migrant workers ⁽²²⁾ provided for the ordinary legislative procedure to be used for the co-ordination of social security systems. This point remained unchanged in the final draft text, but was contested by the IGC, which proposed that, if just one country raised an objection, the matter could be referred to the European Council as a last resort ⁽²³⁾ (Intergovernmental Conference, 2003a).

Non-discrimination. Prior to 9 July, the draft Constitution made no changes to the article on non-discrimination ⁽²⁴⁾. It left the existing situation unaltered, namely a unanimous decision in the Council after consulting the European Parliament (special legislative procedure). Yet a majority of Convention members wished to see a transition to QMV in this area. The only concession ultimately obtained was a right of approval for the European Parliament. With the exclusion of any legislative harmonisation, the “basic principles for incentive measures” will be established by a European law or framework law (i.e. through the ordinary legislative procedure). The Praesidium did not take up the proposal to lay down minimum standards, made by the major political families (European Convention, 2003k).

Services of general interest. At the time when certain proposed amendments to Part III were being circulated, the article on services of general economic interest did not undergo any changes ⁽²⁵⁾. But that was a provisional version subject to alteration by the Convention. The Commission had just made an initial contribution by publishing a Green Paper on services of general economic interest ⁽²⁶⁾, intended to

²² Cf. Article III-18, CONV 725/03, 27 May 2003 and Article III-21, CONV 850/03, 18 July 2003.

²³ Cf. document IGC 60/03, PRAES 14, Annex 25, page 38.

²⁴ Cf. Article III 5 (current Article 13 of the TEC), CONV 847/06, 8 July 2003, amended by CONV 848/03, 9 July 2003. Renumbered Article III-8, CONV 850/03, 18 July 2003.

²⁵ New or revised provisions of Part III, CONV 805/03, 11 June 2003.

²⁶ See also the working document on the Green Paper on the future of services of general interest in the EU, drafted by Philippe Herzog, rapporteur on this topic

launch the debate (CEC, 2003a). This document extended the discussion to “non-economic” sectors such as education, culture and health, even though the existing Treaty makes allowance for action only in economic sectors. The Commission asked in particular whether the criteria used to determine whether a service is economic or non-economic in nature ought to be specified in more detail. The final version of Article III-6 allows for the adoption of European laws defining the principles and conditions enabling services of general economic interest to fulfil their missions. At the IGC, the Italian presidency proposed adding to Article III-6 a clause recognising that Member States have competence in this field ⁽²⁷⁾.

Democratic life. Introduced into the chapter on the democratic life of the Union, and upheld by the Praesidium at the last minute on 12 June, opens the door to real participation by citizens. Under rules yet to be laid down in a European law, “no less than one million citizens coming from a significant number of Member States may invite the Commission to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Constitution” ⁽²⁸⁾.

Role of the social partners. There is an article recognising the role of the social partners and autonomous social dialogue ⁽²⁹⁾, recognition which was widely supported within the Social Europe Working Group but was “left out” of the preliminary texts. The provisions of Part III do not however refer to the tripartite social summit ⁽³⁰⁾. This point, like the extension of recourse to QMV in fiscal and social affairs, is one of those championed by France at the IGC ⁽³¹⁾ (Intergovernmental Conference, 2003b).

for the European Parliament’s Committee on Economic and Monetary Affairs, Document 323 139 of 11 March 2003.

²⁷ Cf. document IGC 60/03 PRAESID 14, Annex 39.

²⁸ Cf. Article I-46(4), CONV 797/1/03, 12 June 2003 and CONV 850/03, 18 July 2003.

²⁹ Cf. Article I-47, CONV 850/03, 18 July 2003.

³⁰ This body had just been established (cf. Council of the European Union, 2003).

³¹ Cf. document IGC 37/03 of 24 October 2003, point 26.

Open method of co-ordination. The text put forward at the end of May contained no reference at all to the open method of co-ordination (OMC). It is also worth noting the adoption of two resolutions on this matter by the European Parliament (European Parliament, 2003a, b and c), as well as a proposal from the Belgian members of the Convention aimed at inserting an article on the OMC into the treaty, and the Swedish government representative's initiative supported by the Netherlands representative backing inclusion but on the basis of a protocol (see also de Búrca and Zeitlin, 2003). At the session on 4 July, the Chairman of the Convention gave assurances to the observer from the European Trade Union Confederation, Emilio Gabaglio, that there would be "*elements concerning the application of the open method of co-ordination (OMC) to certain procedures or certain social policies*" (32). Finally, following scrutiny by four working groups and two debates in the Praesidium (33), four articles were drawn up, providing for the use of the open method of co-ordination but without naming it (social policy, Article III-107; research and technological development, Article III-148; public health, Article III-179; and industry, Article III-180). The chosen "technique" is open to question in terms of both visibility and readability. Its use is confined to just a few articles, the Commission's supervisory role seems to have been stepped up, and the European Parliament is at least granted a right to information. Those opposed to including such a reference had advanced three sets of arguments: the fear of incorporating an intergovernmental method liable to compromise the definition of hard-won competences (34); a lack of transparency and democratic control; and a lack of legitimacy of the experts involved in the process.

32 Cf. speech by the Chairman of the Convention, Verbatim, Convention session of 4 July 2003.

33 The Praesidium held an additional discussion about the open method of co-ordination on the basis of a new draft article produced by the secretariat in close co-operation with Vice-Chairman Amato. After lengthy talks, it confirmed its initial conclusion: there was no need to include any specific provisions on the OMC, and no article would be proposed to the Convention (cf. Meeting of the Praesidium, Brussels, 7 and 8 May 2003).

34 The new mechanism for monitoring application of the principle of subsidiarity relates only to legislative proposals.

Enhanced co-operation. The mechanism for enhanced co-operation contains a *passerelle* enabling the participating Member States to decide among themselves (unanimously) to act by qualified majority instead of by unanimity in accordance with the ordinary legislative procedure, in cases to which the special legislative procedure applies (Article III-328). The availability of this *passerelle* for those countries wishing to forge ahead in certain areas is one of the factors likely to encourage recourse to the enhanced co-operation mechanism, hitherto used only in order to incorporate the Schengen *acquis* into the European treaties (Treaty of Amsterdam). The IGC deleted this article ⁽³⁵⁾.

Economic governance. A protocol acknowledging the existence of the Eurogroup stipulates that its meetings are intended to discuss matters connected with the single currency. The final version states that the Eurogroup chairman would be elected for a two and a half year period ⁽³⁶⁾. Another article underwent a significant change during the two sessions in July: its initial wording envisaged that Member States belonging to the euro zone “may adopt additional measures” to strengthen economic policy co-ordination and budgetary discipline (economic policy guidelines and the monitoring of excessive deficits) ⁽³⁷⁾. The draft disseminated prior to the session on 4 July, for its part, provided for the adoption of “supplementary measures” ⁽³⁸⁾.

The final text is clearer: “*measures specific to those Member States which are members of the euro area shall be adopted*”, firstly to strengthen the coordination of their budgetary discipline and surveillance of it, and secondly to set out economic policy guidelines for them ⁽³⁹⁾. These measures alone are affected, however. For these, the Eurogroup will be more than a forum for “enhanced dialogue”, in that the participating

³⁵ IGC 52/03 of 25 November 2003, page 55.

³⁶ CONV 848/03 of 9 July 2003, as opposed to a two-year period in the May document, CONV 725/03, 27 May 2003.

³⁷ Article III-85a, CONV 802/03, 12 June 2003.

³⁸ Article III-85a, CONV 836/03, 27 June 2003.

³⁹ Article III-88, CONV 850/03, 18 July 2003.

Member States will also be those taking the decisions. Recommendations addressed to a State having received a warning under the excessive deficit procedure do not fall under this specific decision-making mechanism. Nor does it apply to the measures on multilateral surveillance for the euro zone countries or to the decision to admit a new member to the euro zone: these decisions are taken by the Ecofin Council, which encompasses all the EU Member States. The final wording does at least constitute a successful attempt to put the Eurogroup's role on an official footing. This technique differs from what might have been another option: to institutionalise the Ecofin Council of the euro zone, which would have entailed the participation of a Commission representative. Altered in this manner, the institutional framework does not confer any new powers on either the Commission or the European Parliament in the formulation of the BEPGs. The draft constitutional treaty does however give the Commission the right to address a direct warning to a Member State whose economic policies are no longer appropriate. As concerns excessive deficits ⁽⁴⁰⁾, if the Commission considered that an excessive deficit in a Member State exists or may occur, it could address an opinion directly to the Member State concerned (and no longer to the Council). Under the procedure for ascertaining that an excessive deficit exists, the Commission is also entitled to make a proposal rather than a recommendation, and the Council acts by a qualified majority without taking into account the representative of the Member State concerned. This is a significant change, in view of what happened when the stability pact was called into question by the Ecofin Council on 25 November 2003. Not only could the Member States concerned no longer take part in the vote, but a unanimous decision of the Council, and no longer a qualified majority vote, would be required to amend the Commission's text ⁽⁴¹⁾. These provisions, about which questions were raised in September 2003, not least by the informal Ecofin Council in Stresa, are the subject of

⁴⁰ Article III-76, CONV 850/03, 18 July 2003.

⁴¹ When the spotlight fell on them for letting their public deficits slip beyond the 3% limit in three successive years, France and Germany successfully formed blocking minorities, contributing to a suspension of the procedure that should have led to the imposition of financial penalties.

proposed amendments, having been brought forward to the IGC by several delegations ⁽⁴²⁾ (Intergovernmental Conference, 2003b).

External representation of the euro zone. Provision was made in a draft article for representation of the euro in international financial forums to be the subject of “co-ordination” between the Member States and the Commission with a view to formulating “common positions” in the forums concerned ⁽⁴³⁾. Commission representative Michel Barnier, who regarded this proposal as step back from the Treaty of Maastricht, emphasised the potential rivalry between the chairman of the Ecofin Council, the Commissioner responsible for economic and financial affairs, and the president of the euro zone. The long-term solution, in his opinion, would be to create a post of Minister for Economic and Monetary Affairs who would double as a Vice-President of the Commission. This proposal rallied a certain amount of support but there is no trace of it in the draft Constitution. Article III-90(3), based on Article 111 of the TEC, stipulates that: “*the Council of Ministers, on a proposal from the Commission, may adopt appropriate measures to ensure unified representation within the international financial institutions and conferences*”. What is the meaning of this “unified representation”? Does it mean representation of the Union, that of those Member States whose currency is the euro, or that of the euro zone as such? In other words, who will be in charge of economic and financial matters: the chairman of the Ecofin Council, the chairman of the Eurogroup or the Commissioner responsible for economic and financial affairs? Since these questions were not answered by the Convention, the physical representation of the euro zone in the international monetary system is far from having been resolved.

Fiscal provisions. Discussion of the fiscal provisions in Part III was always going to be especially problematical, as presaged by a document signed by several government representatives (UK, Sweden, Poland, Slovakia, Ireland and Spain) rejecting the use of QMV in this area ⁽⁴⁴⁾.

⁴² Cf. document IGC 37/03, point 27 (support from the Irish, Czech, Spanish and UK delegations).

⁴³ Article III- 81, CONV 725/03, 27 May 2003.

⁴⁴ CONV 782/03, 3 June 2003.

In respect of fiscal matters, the Council may unanimously adopt a law or framework law, after consultation of the EP, so as to harmonise legislation concerning turnover taxes, excise duties and other forms of indirect taxation. The only concession to unanimity is a *passerelle* mechanism in two specific fields: the Council could decide unanimously on the principle of acting by a majority as concerns administrative co-operation and combating fraud or tax evasion ⁽⁴⁵⁾. The same applies to company taxation ⁽⁴⁶⁾. No other concessions were made on unanimous voting in the final draft following the two sessions of the Convention in July.

4. Launch of the IGC

The presidency of the Convention officially submitted the draft Constitution to the Italian presidency of the Council, along with a Report from the presidency of the Convention to the presidency of the European Council (European Convention, 2003l). The text was signed by 93 Convention members out of 105, including the Eurosceptics. It calls on the IGC to complete the legal work involved in formulating the treaty. The drafting of certain protocols was another task for the IGC (among others, the protocol containing the list of States participating in structured co-operation in the area of defence). The report refers to the more ambitious demands put forward by some Convention members concerning an extension of QMV and review of the constitutional treaty. These took the form of proposed articles submitted jointly by the leaders of three political families: Giuliano Amato (European Socialist Party, PSE), Elmar Brok (European Peoples' Party, EPP) and Andrew Duff (liberal family, ELDR) (European Convention, 2003k and 2003m). With a few rare exceptions, such as the addition of an article on new possibilities in the event of the enhanced co-operation mechanism coming into play, the draft Constitution took no account of them. The governmental component did everything in its power to oppose the Convention's political proposals.

⁴⁵ Cf. Article III-62, CONV 850/03, 18 July 2003.

⁴⁶ Cf. Article III- 63, CONV 850/03, 18 July 2003.

4.1 The European Parliament

The European Parliament opted for a cautious attitude (European Parliament, 2003d). Despite some limitations and contradictions, the MEPs backed the outcome of the Convention, highlighting certain “*aspects requiring further monitoring during their implementation*” (election and role of the President of the European Council in order to avoid possible conflicts with the President of the Commission or the Union Minister for Foreign Affairs, who should be “supported by a joint administration within the Commission”). The unsatisfactory answers given to certain fundamental questions, in the Parliament’s opinion, include “*further consolidation of economic and social cohesion policy, closer coordination of Member States’ economic policies with a view to effective economic governance, and a more explicit integration of employment, environmental and animal welfare aspects in all EU policies; full recognition of the role played by public services, based on the principles of competition, continuity, solidarity and equal access and treatment for all users; the suppression of the requirement of unanimity in the Council in certain vital areas, including in particular the Common Foreign and Security Policy (...) and certain areas of social policy*”. The Parliament also deplores the fact that the draft Constitution does not provide for approval by the European Parliament of new constitutional texts adopted and contains no simplified review procedures. For future reviews, it advocates greater autonomy for the Convention, which should be able to elect its own chairman.

As for the budgetary procedure, the MEPs point out that they should not have fewer budgetary powers than at present. The Parliament passed a resolution to this effect after the informal Ecofin Council in Stresa in September 2003 called for the IGC to re-examine the balance struck in respect of budgetary matters (European Parliament, 2003e). Some of these proposals, calling into question the budgetary principles adopted by the Convention, were taken up by certain delegations to the IGC and others by the Italian presidency ⁽⁴⁷⁾ (Intergovernmental Conference, 2003b and 2003a). In the draft produced by the

⁴⁷ Cf. document IGC 37/03, points 20, 21 and 22. Also Document IGC 60/03, PRAESID 14, Annex 10 (budgetary procedure) and Annex 11 (possibility of a majority decision in the European Council with a view to extending unanimity in the Council for adoption of the second financial framework).

Convention, the Council would have the final say on own resources. The decision on the multi-annual financial framework (former financial perspectives) would also be taken by the Council (by QMV but unanimously for the adoption of the first financial framework after the constitutional treaty comes into effect), but only following conciliation between the three institutions (Council, Commission and Parliament) and subsequent approval by the European Parliament. The Parliament has the last word on the annual budget (through a simplified procedure).

4.2 The European Commission

The Commission, as implied by its President, Romano Prodi, in a speech given in Bologna on 5 July, was more critical. Mr Prodi felt that more could be done in certain areas and criticised the future being mapped out for his institution. While emphasising the achievements of the Convention, he nevertheless considered that the IGC should not be a “*rubber stamp*”. Like its President, the Commission came out in favour of convening an IGC, and singled out four aspects of the draft Constitution where the result achieved was incomplete or inadequate (CEC, 2003b). On the institutional chapter, the Commission proposed one Commissioner per Member State, including after 2009. Its members, 25 or more, should be divided into groups responsible for specific areas and they would have equal voting rights. The main decisions would be taken by all the Commissioners together. However, other decisions could be taken on behalf of the Commission by the group of Commissioners responsible for a given area. This situation leads to equal national representation within the Commission, but also to a *de facto* inequality between Commissioners, and rekindles fears of a “*directorate*” of the larger States.

As far as the Council is concerned, the Commission asked the IGC to clarify the chairmanship of the various configurations of the Council, suggesting that each one should elect its own chairman from its midst for a one-year period. The Commission questions the merging of the Legislative Council with the General Affairs Council, and calls for the latter to be responsible only for the management of general affairs as well as for ensuring consistency of the Council’s actions in the framework of EU interinstitutional planning.

While recognising that an across-the-board extension is not possible, the Commission asked the Intergovernmental Conference to increase qualified majority voting. To do so, the Commission has a three-pronged approach. It distinguishes between issues where QMV can happen immediately, those where a clearer division of competences should allow unanimity to be dropped, and new approaches (i.e. a superqualified majority and a new definition of unanimity after a certain period of time). It also warns of the difficulty of reaching a unanimous agreement on own resources and for determining the first financial framework to be adopted after the Constitution enters into force.

Like the European Parliament, the Commission is in favour of the IGC introducing more flexible procedures for reviewing the Constitution: both unanimity in the European Council and national ratification should be abolished. These procedures would apply only under well-defined conditions. As concerns Part III on the policies of the Union, the European Council should be able to decide matters by a 5/6 majority of its members after approval by the EP (the draft Constitution does not recognise the latter's right to approve future revisions) and as long as there is a favourable opinion from the Commission. These revisions would no longer be subject to the national ratification procedures, the Member States' parliaments already being involved through their participation in a Convention and through the scrutiny exercised by their governments. Under proposals submitted by the political parties in the Convention (European Convention, 2003m), the European Council should decide on the means of implementing revisions of Part III by a 5/6 majority following an opinion from the Court of Justice and assent of the European Parliament. Unanimity and subsequent ratification by the Member States would however still be required to revise the other parts, including the Charter of Fundamental Rights, the division of powers between the EU and the Member States, the institutions and the fundamental principles and objectives. Further, the Commission has called for an in-depth political debate on the establishment of a "constituent body" made up of the Member States' governments and parliaments as well as the European institutions.

In the field of economic governance, the Commission sees the need for a "true economic government" based on better co-ordination of policies. The Commission's opinion therefore reiterates its call for a

right to make proposals in this area. It also invites the IGC to review the functioning of the ECB Board of Governors and the framework for operational decisions in respect of monetary policy.

Lastly, the Commission draws attention to a gap between the Union's objectives arising from the updating work done by the Convention and the objectives of certain policies which have not been reviewed (sustainable development, the common agricultural policy and the common fisheries policy). It therefore proposes inserting a protocol on the implementation of the sustainable development objective included in the Constitution. Moreover, the Commission insists on the need to align Parts I and III on research and health, since these are two areas of shared competence. As far as social issues are concerned, the Commission points out that Part III has not been brought into line with Article I-14, according to which the Union may co-ordinate the Member States' social policies.

4.3 IGC: the Italian method

Keen to have the Constitution signed in Rome, the Italian presidency expended considerable energy to maintain the achievements of the Convention. President Ciampi even told the European Parliament of his hope that "*the constituent spirit should also inspire the IGC's work*" (48). This was the approach taken by all six founder Member States (Benelux, France, Germany and Italy), joined by Greece and Denmark. They did not want to see an unravelling of the draft Constitution, as was restated at the General Affairs Council of 29 September. The IGC was organised at the very highest level for this reason, namely sessions of Foreign Affairs Ministers and sessions of heads of State or government. A group of legal experts prepared its discussions by resolving technical aspects; it also carried out a legal verification of the text produced by the Convention (49)

⁴⁸ Speech by the Italian President, Carlo Ciampi, to the European Parliament, Conference of Presidents open to all Members, 30 September 2003.

⁴⁹ At a seminar organised on 2 December by the Observatoire social européen and the European Trade Union Confederation, Paul Rietjens, director general of the Belgian permanent representation to the European Union (who participated in the group of legal experts in that capacity), expressed the view that these checks provided an opportunity to correct the text of the

(Intergovernmental Conference, 2003c and 2003d). To try to prevent all the dossiers from being reopened, the Italian presidency proposed a working method that it called “*constructive disagreement*”: discussion of a given subject may take place only if the advocates of counter-proposals can demonstrate their merits. The six founding countries, plus the United Kingdom - which has no particular demands apart from maintaining what it has already achieved elsewhere⁵⁰), backed this method taken from the draft constitutional treaty. The Belgian government had in fact proposed an addition to the Italian presidency method: if no consensus were reached at the IGC on alternative forms of words to improve the draft Constitution, the text of the Convention should prevail. Spain and Poland opposed this principle on the grounds that the Convention had not reached a consensus on the institutions; they did not want to give the Convention constituent powers. Poland and Spain wished to keep the weighting system negotiated at Nice, which gives them each 27 votes, compared with 29 for the large Member States, putting them almost on a par with those countries. It also gives them a greater capacity to block decisions (a blocking minority) than does the double majority system to which they object, but which Germany views as essential. At the beginning of October the Benelux countries also gave their support to the proposal made both by the Convention and the Italian presidency to limit the IGC’s agenda. This support was in part a way of distinguishing themselves from the “small countries” which are about to accede to the

Convention by reinstating the procedures currently in force (Article III-104(4): implementation by the social partners of the European framework law adopted pursuant to Article III-104(2), to which the group added the missing reference to paragraph 3 of that article; as well as implementation of European regulations or decisions adopted pursuant to Article III-106 on agreements reached in the European social dialogue).

⁵⁰ The United Kingdom is especially pleased that the right of veto has been preserved in respect of foreign, social and fiscal policy. It takes issue with the designation of a Union “Minister” for Foreign Affairs. Cf. “A Constitutional Treaty for the EU - The British Approach to the European Union Intergovernmental Conference 2003”, 9 September 2003. The UK government’s other priorities are to preserve unanimous voting for treaty reviews and for making decisions about own resources, in order to maintain the system of rebates granted to the UK.

Union on 1 May, and which have reiterated their request to maintain one fully-fledged Commissioner per Member State.

Items on the initial version of the presidency's outline agenda for the IGC included the Legislative Council, the rotating Council presidency, the Minister for Foreign Affairs, the composition of the Commission, the definition and extent of qualified majority voting and the issue of defence (structured co-operation and mutual defence clause), as well as other non-institutional issues (Christian values, minorities, economic governance) (Intergovernmental Conference, 2003e). Among the non-institutional demands put to the IGC, few requests to improve the text of the Convention were tabled on social and economic issues. The French, Belgian and Swedish delegations respectively proposed: the extension of enhanced majority voting to social and fiscal areas and institutionalisation of the tripartite social summit; the insertion of a horizontal social clause; and recognition of the right of trade unions to mount "*solidarity action from one Member State to another*"⁽⁵¹⁾. The Italian presidency took up Belgium's idea of including a social clause (Intergovernmental Conference, 2003a and 2003b). It is presented in a form which fails to take account of the need to realign the language of Parts I and III of the draft constitutional treaty (one of the demands made by the European Trade Union Confederation to the IGC). Thus, in spite of its restricted content, this proposal may be regarded as a step forward. The social clause is worded as follows: "*In defining and implementing the policies and actions referred to in this Part, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health*"⁽⁵²⁾. The Italian presidency also took on board the proposal to include the principle of equality between men and women among the values of the Union

⁵¹ Cf. document IGC 37/03: points 15, 26 and 57.

⁵² The amendment tabled by the Belgian members of the Convention had been more ambitious: "*In all activities falling within its competence, the Union shall aim (...) to promote full employment and a high level of social protection, protection of human health, advancement of education and training, and to guarantee universal accessibility of services of general interest which are financially viable, of high quality and organised on the basis of solidarity*".

(Article I-2), as well as respect for national minorities and non-discrimination⁽⁵³⁾. On social security, the Presidency's final compromise proposals (Article III-21) did not go as far as the Convention, stipulating that in the event of a disagreement the European Council would be the final arbitration body. Finally, as regards economic governance, the Italian presidency suggested extending the decision-making mechanism specific to the Member States of the euro zone to decisions defining common positions within international financial institutions and conferences, as well as to measures required in order to ensure unified representation of the euro zone. In respect of multilateral surveillance, it proposed that the recommendations addressed to Member States participating in the euro zone, including on the stability programmes and warnings, and the measures relating to excessive deficits should be adopted only by the States whose currency is the euro.

Conclusion

The presence of most countries' Ministers of Foreign Affairs from January 2003 onwards testifies to the importance of the Convention's proceedings. However, having said that, their attendance undoubtedly altered the dynamic of the Convention's proceedings, transforming it into a pre-IGC within the government component. Further, the importance of having a representative within the Praesidium was made apparent by the changes made to certain provisions, particularly in respect of social policy. This is partly why some of the existing Member States which were not represented on the Praesidium distanced themselves from the draft text produced by the Convention⁽⁵⁴⁾. It is

⁵³ A number of amendments, backed by several speakers during one of the two additional plenary sessions of the Convention, called for the principle of male-female equality to be included among the values of the Union. Cf. summary report of the additional plenary session on 26 March 2003 (Articles 1 to 7), CONV 674/03, 8 April 2003 (page 4). For some inexplicable reason, this report does not appear on the European Convention webpage covering all the plenary sessions.

⁵⁴ This was the case for Austria and Finland in particular. Matti Vanhanen, a member of the Convention until being appointed Prime Minister in May 2003, confirmed that this was a major setback for Finland, since the country had felt

nonetheless beyond doubt that the outcome of the Convention enjoyed an unparalleled degree of legitimacy, in that no other IGC has ever been preceded by preparatory work done by representatives both from the European institutions (Commission and Parliament) and from national bodies (representing national parliaments and governments). When the IGC opened, it had two tasks ahead of it: to preserve the achievements of the Convention and to improve on them in some areas. The two major innovations made by the Convention from an institutional point of view - namely the new definition of qualified majority voting and the establishment of a Legislative Council - were immediately challenged by the IGC. The Legislative Council is backed by only two delegations (Germany and Portugal) ⁽⁵⁵⁾. The Italian presidency had no compromise formula to put to the IGC. Ultimately there was a high risk that the December negotiations would come to grief, given that the definition of powers within the EU was always going to be the key element for debate (definition of a qualified majority and composition of the European Commission).

Paradoxically, the negotiations had barely even begun when the IGC ground to a halt. Silvio Berlusconi, whose manner of chairing the discussions came in for criticism, decided on behalf of the European Council to halt the proceedings after a series of bilateral meetings, about which no information leaked out. A document circulated only in English states: “*The European Council noted that it was not possible for the Intergovernmental Conference to reach an overall agreement on a draft constitutional treaty at this stage. The Irish presidency is requested on the basis of consultations to make an assessment of the prospect for progress and to report to the European Council in March*”. The European Parliament asked Silvio Berlusconi to make known the 82 points which, he claims, were resolved (European Parliament, 2003f).

unable to make its voice heard within the Convention. Cf. “Les doutes européens de la Finlande à l’heure de l’élargissement”, *Le Monde*, 10 November 2003.

⁵⁵ Cf. speech by the Federal Minister of Foreign Affairs, Joschka Fischer, to the Bundestag on the European Constitution, 6 November 2003.

Some participants spoke out in favour of developing enhanced co-operation. Such co-operation will inevitably take place in future around the single currency, which not all the Member States wish to join - as made plain by the negative result in the Swedish referendum ⁽⁵⁶⁾. However, with the exception of defence and police and judicial co-operation, few possibilities have come to the fore, apart from that of regarding this instrument not as one of “differentiation” but as the tool of a “Europe *à la carte*”. That would entail a loss of institutional cohesion and, ultimately, the demise of the European project. A process of reflection must begin, but one which offers prospects for everyone and is not merely designed to mask other interests.

Looking ahead to the 2004 IGC, the basic principle for treaty review remains: “nothing is settled until everything is settled”. According to the Irish Foreign Affairs Minister, Brian Cowen, the Irish presidency will be working on the basis of the two texts currently on the table: the draft produced by the Convention and the Italian presidency’s compromise proposals ⁽⁵⁷⁾. On the day after the IGC was broken off, the media spotlight shifted to the arrest of Saddam Hussein, and European affairs receded into the background. Another failure would be synonymous with a deep-seated crisis for the European Union, and the draft constitutional treaty would be abandoned. It would also prove that the enlarged Union is incapable of laying down ground-rules for its future business. If the IGC is to arrive at an agreement, there will have to be a “common accord” on the text in its entirety; a single veto could wreck everything. All of this implies that, in order to allow for future development, the Union must equip itself with a simplified mechanism for reviewing its internal actions and policies. In other words, the status of a real Constitution must be conferred on the text produced by the Convention.

⁵⁶ The turnout at the referendum held on 14 September 2003 was 81.2%. The “no” votes added up to 56.1%, while 41.8% of the votes cast were in favour.

⁵⁷ *Bulletin quotidien Europe*, No.8610 of 19 December 2003 (page 4).

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