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ANNEX I: ROGER LIDDLE'S BRIEF FOR THE EUROPEAN CONVENTION PLENARY SESSION (BRUSSELS)	
Annex II: The European Convention Secretariat - Reactions to Draft Articles 1 to 16 of the Constitutional Treaty - Analyses (CONV 574/03)	PART 10
PART BEGINS: 12 DECEMBER 2002	PART ENDS: 28 FEBRUARY 2003
	CAB ONE

PART 10 LLOYDS

Labour Administration

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Part 1 of 2

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PART 10

CLOSED

DATE CLOSED	28/2/2003

Series : **EUROPEAN POLICY**

File Title : **FUTURE OF EUROPE**

Part : **10**

Date	From	To	Subject	Class	Secret
12/12/2002	EC		Issues Paper	U	
16/12/2002	ss/dti	SS/WO	Convention of the future of europe: competence issues	C	
19/12/2002	SS/WO	PM	Convention on the future of europe	C	
19/12/2002	FA/APS	PM	Convention: Sweden and Finland	U	
20/12/2002	EU/PS	PM	European convention: endof year update	C	
23/12/2002	PM	SS/WO	Thank you for the note on the European Convention	U	
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21/01/2003	ukrep	FCO	European Convention/Italy: Mr Hain's Meeting with Fini, 21/1	U	
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30/01/2003	POL	PM	Political brief on Giscard meeting	C	
30/01/2003	EU/PS	PM	Your Meeting on the Convention on the Future of Europe: 5 February	U	
30/01/2003	FA/APS	FCO	PM's Lunch with Giscard D'Estaing	R	
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File

From: Stephen Wall
Date: 28 February 2003

PRIME MINISTER

I have an idea on GMV also. Speak to me.

cc: Jonathan Powell
Alastair Campbell
Sally Morgan
Jeremy Heywood
Roger Liddle
Matthew Rycroft
Steven Morris
Rachel Cowburn
Sir Andrew Turnbull
Sir Nigel Sheinwald
Martin Donnelly

EUROPEAN CONVENTION: WEEKLY UPDATE

The Convention Plenary met on 27 and 28 February to give its reactions to the first set of draft Treaty articles. Baroness Scotland represented the Government and made the following main points:

- That the Treaty should make clear that the powers flow from the Member States to the Union, not vice versa;

- That 'federal' was for us an unhelpful and politically charged word;

- That the objectives of the Union are used by the Courts to interpret the Treaty, and therefore must reflect the competences;

- That the present draft looks too much like a catalogue of competences;

- That we will need to ring-fence CFSP and certain aspects of JHA;

- That the Charter language is not acceptable and needs further detailed work as prescribed by the Working Group;

- That Member States, rather than the Union, should co-ordinate economic policy.

There was some support for our views, particularly from Government representatives, on the need for a clear description of EU competences that would not amount to an inflexible catalogue. Several spoke out against any new competences on economic policy and on the need to keep CFSP distinct. There were interventions criticising the Praesidium's attempt to describe the four freedoms (movement of goods, services, capital and people) as all exclusive competences of the Union – a move which would represent a considerable shift of power to the EU.

Views on the word "federal" were mixed. Some speakers agreed with Giscard that it was simply true to speak of certain competences being exercised on a federal basis. Others preferred to replace the adjective with a full statement of the EU being a "Federation of Nation States." But others still (including, surprisingly the Portuguese, Austrians and Greeks) agree with us that it simply isn't helpful to use the word at all. How strongly do you feel about this? It is clearly not desirable but the 'F' word was very much a hang up from our anti days and I am sure we should not turn it into a King Charles' head for ourselves.

I am not sure on this. But exclusive it may be good.

Giscard has a pile on his desk of over 1000 proposed amendments to Articles 1-16. The Praesidium is struggling to find an adequate working method to take

things forward, not least given the wide range of differences of opinion. And many Government representatives complain bitterly about the impossibility of keeping up with the brisk pace of business (e.g. responding to draft treaty articles within one week).

But if the Laeken timetable of completing the Convention in June is to be adhered to, Governments will have to keep up with the pace. And, more importantly, Convention members will have to accept the need for compromises, or (even better) recognise the final text will have to leave the IGC a number of options. So far, the only wheeze the Praesidium have come up with is to organise more Plenaries. This will put a real strain on most busy Government representatives, including Peter Hain and Patricia Scotland. Giscard is quite open about wanting the Convention to be extended beyond June and has encouraged Government representatives to take this debate to the European Council. I see no merit in delay. The sooner the Convention finishes, the more leeway member states will have in the IGC. And I agree with Roger's view that the more pressure Giscard is under to conclude the more he will veer in the direction of member states anyway so that the Convention has a real chance of delivering a result.

Meanwhile, another set of draft Articles has been published. These include a draft Protocol giving effect to the early warning mechanism for national Parliaments to monitor subsidiarity. It falls short of our aim: to have a system which obliges the Commission to take the views of national Parliaments into account when a large proportion of them object. It will be very difficult to convince the Convention that this must be the case, but, for the credibility of the

mechanism, I believe we must try. A subsidiarity mechanism which leaves the Commission a virtually free hand is worthless.

STEPHEN WALL

in box

fyi

From: Stephen Wall
Date: 28 February 2003

ROGER LIDDLE

cc: Jonathan Powell
Alastair Campbell
Sally Morgan
Andrew Adonis
Peter Hyman
Matthew Rycroft
Steven Morris
Joe Griffin

CONVENTION: MEETING WITH AMATO

A very useful discussion.

I agree with you on Federation of Nation States, though we may yet get a better formulation.

The Germans also have difficulties over some shared competences. So we may be on better ground than we fear. The problem with the Praesidium's approach is that it includes one or two controversial ideas but is, at the same time, only a partial list. Our approach is more logical.

Amato was right to rib you about our position on trade in services. But the Praesidium placing of the four freedoms in the annex of exclusive competence was a try on.

On Commission size Giscard and Amato will come a cropper. That is their problem.

On QMV in foreign policy, Amato's position is far too loose. The European Council has decided already that it has a common policy on Iraq. Would we want QMV to allow the GAC to decide that the EU member states should now vote against war in the Security Council? No thanks. Apart from anything else, we are being watched like hawks on this by Parliament.

So I think we have to stick close to the language of the existing Treaty (Article 23).

STEPHEN WALL

From: **Roger Liddle**
Date: **27 February 2003**
Cc: **Jonathan Powell**
Stephen Wall
Alastair Campbell
Sally Morgan
Andrew Adonis
Peter Hyman
Matthew Rycroft
Francis Campbell
Steve Morris

PRIME MINISTER

In Rome last Friday while you were meeting Berlusconi, I was meeting Amato to discuss the Convention.

Amato began with an admission that we were right to be concerned that the Praesidium's draft of the first 16 Articles did not properly reflect that it is the **Member States who confer power on the Union**, and not the other way round. This would be corrected in later drafts.

However he argued strongly (and convincingly) that **our objection to articles that begin "the Union shall coordinate ..." was fundamentally misplaced.** The "Union" is a hybrid of supranational decision making and Member States cooperating intergovernmentally to achieve common goals. The Union acts through both routes: this is why the EU would always be different from the United States where the Union at federal level acts solely through federal institutions.

I responded that as long as the Preamble or Articles clarify that essential point, I though the use of Union as Guiliano described it would be acceptable to you.

Your concept of European integration envisages both strengthened supranational institutions and closer intergovernmental cooperation, which is our distinguishing point from classic federalism. (Amato does not see himself as a classic federalist in that sense either.)

Amato then explained that **"federal"** had been included in the first article at the insistence of Giscard. This was a classic French manoeuvre to cloak what would be 'nation-state based' institutional proposals in ambitious, forward sounding language. Giscard's two vice presidents, Dehaene and himself, were indifferent to the use of the 'F' word. As Jean-Luc had put it "move a couple of Articles to qualified majority and I'll happily strike out federal". This confirmed my biggest worry about too heavy a focus on our part on the 'federal' symbolism: like John Major at Maastricht, we end up paying too high a price for its removal.

Amato asked me **if we would live with the classic French formulation of the 'Federation of Nation States'.** I said that it depended on how bold we were feeling on that particular day, which was at the moment, not very. (But privately I think the best way of killing this issue might be to move quickly to accept this formulation and defend it on the grounds that it asserts the pre-eminence and centrality of the nation state to the European construction.)

We next discussed competences. **The Praesidium will resist British and French attempts to remove the cataloguing of 'shared competences'** in Part One of the Constitution. These merely list on one place competences which are at present scattered about the Treaties. But as a response to our sensitivity that such a cataloguing creates a perception of a shift in power to Brussels, Amato would prefer Part One to specify and limit the nature of Union action in the fields

of 'shared competence'. This would make clear that the Union was **only empowered** to pass **Framework Laws** (ie not prescriptive laws or regulations) or legislate for **Minimum Standards** in these fields. This would limit fears of harmonisation. I expressed interest in this clarification, without suggesting that it would fully meet our concerns. It would be helpful politically to us in for example the Union's shared competence over social policy, that EU legislative action would be so circumscribed. Our lawyers ought to consider whether precise definitions in the Constitution of 'framework law' and 'minimum standards' could, if combined with the tougher subsidiarity and proportionality mechanisms proposed, limit EU competence in helpful ways. If so, it could possibly justify moving to QMV in areas where hitherto we have regarded unanimity as our only protection against unwanted harmonisation.

Amato ribbed me about the **Hain amendments to remove the Single Market and competition from the EU's exclusive competences**. Did this reflect a new alliance with the French on our part to protect national monopolies and limit cross border takeovers? I explained, somewhat lamely, that our amendments reflected Whitehall lawyers' faithful adherence to established UK positions, rather than a statement of the present Government's political priorities. Your letter to Giscard was a better guide to these.

I explained that because of the Iraq crisis I had limited expectations of the senior Ministerial attention that the Convention would receive over the next couple of months. Amato well understands this. He doesn't expect the Convention to bring forward revised Articles until April. Until then he thinks we would be wise to stick to the well known political principle that we won't agree to any single thing until we've seen the lot!

On institutional questions, Amato thinks that the full time chair of the European Council will be accepted by the Praesidium and the Convention – but that the relationship between the European Council Chair and the President of the Commission in the function of internal coordination needs to be 'clarified'. I said we would resist the idea that the Commission President should as compensation chair the new Coordinating Council of Ministers. Amato dismissed this idea (which he has canvassed publicly himself) as a 'negotiating ploy'.

Amato is **not** however **persuaded of the argument for team Presidencies** – a 'messy idea' in his view. He would prefer Council's to elect their own chairs.

He also agrees with Giscard that the Convention must tackle the question of **Commission size**. This reduction could not come into effect immediately: so the new Members would initially have their own Commissioner. He favours reform coming into effect on ratification of the new Constitution. I put to him our doubts about the tactical wisdom of pressing this question now rather than when the Nice provisions kick in. But Amato and Giscard appear set on proposing a Commission of 15 with provisions that lay down how many members must come from MS of different categories of size. He would like to propose that all six 'bigs' be automatically represented, but he thinks this would prove totally unacceptable.

On **QMV for CFSP,** Amato said that the limit of his ambition was that QMV would apply only where on a foreign policy issue the European Council decides the EU shall have a common policy.

Signed electronically, 27.2.03

ROGER LIDDLE

Ms. Griffiths
& JSW
MD
MR
RG
JS
RL

DEPUTY PRIME MINISTER

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Press

The Rt Hon Jack Straw MP
Foreign Secretary
King Charles Street
London
SW1A 2AH

27 February 2003

Dear Jack

CONVENTION ON THE FUTURE OF EUROPE

I have seen Margaret Beckett's letter to you of 13 February, about the first draft articles of the EU Constitutional Treaty produced by the Praesidium of the Convention on the Future of Europe. I share her concern that some sections of the draft would weaken existing Treaty commitments on environmental protection and sustainable development.

The agreement reached under the UK's Presidency in 1998, for all Council formations to develop integration strategies – the "Cardiff process – was one of the significant achievements of our Presidency. We have achieved much since Cardiff but the process is still in its early stages. Far from weakening efforts for integration, we should be seeking to develop this approach further. In particular we should not allow our achievements to be diminished through inadequate wording of the new treaty.

Furthermore we worked hard with EU colleagues in the preparations for the World Summit on Sustainable Development to ensure that we sent a strong message on the importance we attach to all three pillars of sustainable development. Any watering down of our commitments, coming so soon after Johannesburg, would send a negative message to the wider international community. Therefore I agree that we should seek to ensure that the new Constitutional treaty reflects all three pillars of sustainable development, retains strong language on the quality of the environment, and continues to support the Cardiff process of integration.

Finally, I agree that we should resist attempts to transfer more external competence on environmental matters to the Commission. To do so diminish the UK's international role and, in particular, our ability to influence EU positions in international negotiations, for example on climate change.

Website: www.odpm.gov.uk
Email: john.prescott@odpm.gsi.gov.uk

I am copying this letter to the Prime Minister, members of EP and Peter Hain, and to Sir Stephen Wall, Sir Nigel Sheinwald and Sir Andrew Turnbull.

JOHN PRESCOTT

file

From: Denis MacShane

Date: 25 February 2003

cc: Foreign Secretary
Ed Owen
Jonathan Powell
Stephen Wall
Sally Morgan
Matthew Rycroft
Peter Hyman
Francis Campbell
Nick Baird (EUD I)
John Ramsden (CNWED)

cc: FC (own copy)
RL
SW

Roger Liddle new Roger,

POLES AND THE CONVENTION

I read your note on the meeting with the Polish government representatives on the Convention with interest.

I am cultivating a good governmental and party linkage with Warsaw. Danuta Hubar and I have spoken on a common platform. I am accompanying the Polish Ambassador to open the Sheffield Europe week on 28th February. I am working on a joint Labour-SPD-SLD pamphlet on 21st century social democratic values. I will meet Mr Hubner in a visit to Warsaw and other regions next month and am planning a major visit, including a trip to my father's village, in June.

All this will, I hope, strengthen UK-Polish political relations. In addition to working on a London-Paris- Berlin triangle (difficult right now, but it will come good) we need to shape a new rectangle:

London — Warsaw

Rome/Madrid — Prague/Budapest

We have four main objectives:

1. To argue that Europe should not reject its Atlantic culture and traditions but that modern progressive politics embraces both European and American values;

2. To engage with Poland politically to offset the economic domination of Germany;

3. To connect to "Polonia" – the influential Polish diaspora in the UK and wider afield from Brzezinski (USA) to Moscovici (France) and ensure that this influential network sees the British government under Tony Blair as a natural ally;

4. To make the British people take pride in the leadership of the Government in promoting the integration of Europe to include the new democracies of Poland, Hungary, Czech Republic etc.

Yours sincerely

Denis

Denis MacShane
Minister for Europe

DCs (file copy)

From: **Roger Liddle**
Date: **20 February 2003**

STEPHEN WALL

cc: **Kim Darroch, FCO**
Nick Baird, FCO
Joe Griffin, CO
Michael Pakenham, Warsaw

POLES AND THE CONVENTION: NEXT STEPS

Please find attached the Polish amendments to Articles 1-16, and the Hubner paper. You will have seen my note to the PM.

Someone good needs to go through with their officials our positions on the Charter.

On the Hubner paper, I suggested joint work on Team Presidencies and theircoordination/arbitrage ideas. Should we invite key Polish officials over?

ROGER LIDDLE

Team - 4 or 5 ; eff. wieney 2½ yrs.
Five enlargement
Decide amongst themselves who chairs what

ANNEX

Effective management in the enlarged European Union.
Contribution by Professor Danuta Hübner,
Representative of the Government of Poland to the European Convention.

Ensuring efficiency, transparency and democratic accountability in the future European Union will not be an easy task. It nevertheless remains the key to the success of the Convention. It will not be easy because the European Union has developed over the years a very unique method of integration, which finds its reflection in the institutional system. We are not building anything from scratch but are trying to improve what we have. The current set-up has passed the test of time but is under increasing strain from the rapidly widening agenda and the growing complexity of decision-making. Therefore changes are necessary. They should aim at combining the strengths of the status quo with developments that would help to overcome the obvious inadequacies of the current situation. **My proposal is to bring together the idea of the group presidency and that of the elected chairman of the European Council.** This would represent the best scenario for constructive management in the future European Union.

Rotating presidency: more pros than cons.

One of the key areas for reform, identified already in the Laeken declaration, is the rotating six month Presidency of the Union. **The current system, although making continuity difficult, offers incentives for political leadership by countries holding the rotating presidency.** It creates value-added by empowering governments and administrations to make the best of their expertise and experience. When taking enlargement negotiations as an example, the successive presidencies each brought a new dynamic to the process and contributed decisively to the timely completion of the talks. What is more, the system of rotation allows citizens in the member states to take an active interest in EU affairs and identify themselves with the process of integration. In other words it brings the EU into the country. Having one's Prime Minister at the helm is a source of pride and encouragement. In addition, rotating presidencies allow the administrations of the member states to demonstrate their strengths and expertise at the EU level and acquire invaluable management experience. **We should therefore retain elements of rotation when designing the new institutional system.** All the more so that the changes introduced by the Seville European Council are already bearing fruit in better organisation of work. More continuity should still be injected and **the best way** to do this is **to reform the rotation system so as to create group presidencies** of 4 countries taking the helm in the Union for 2-2½ years.

Group presidency: bringing better management and equality together

The group presidency should be composed of a diverse range of countries so as to ensure a constructive balance of views and interests. There should be both big and small member states represented, old and new as well as countries from different corners of the enlarged European Union. **That way the group presidency could be a microcosm of the larger Union. As such it would be able to find compromises likely to be adopted and supported by all the other members. The group presidency should be guided by a light Steering Committee consisting of the Chairman of the European Council and chairpersons of the respective Council formations.** They would only meet to approve the agenda prior to each of the European Council sessions. The Steering Committee

would also have a working level dimension consisting of the Permanent Representatives of the countries concerned who would establish effective communication channels between themselves. The Steering Committee would be supported by the General Secretariat of the Council. No new bureaucratic structures need therefore to be established.

Creating the group presidency means that there would have to be an additional effort at coordinating policy among countries holding the presidency before they would turn to the rest of the European Union. However, one should not overestimate the challenges of such coordination while undervaluing its potential benefits, which are substantial. **There would be specialisations within the group presidencies, meaning responsibility for council formations would be delegated to specific countries and coordination would be limited to ensuring that the progress stays within the programme of the presidency.** The advantage, on the other hand, would be that countries would be able to focus their effort on performing well with respect to a number of council formations rather than the entire spectrum. Chairmanship of the council formations would be assigned in such a way so as to make the best use of our different specialisations. What is more, having 4 countries at the helm, acting in line with agreed policy, would mean that there are better prospects of that policy carrying the day. Therefore even if some effort would have to be put into communicating between members of the group presidency, it would pay back later.

An elected Chairman of the European Council: continuity combined with improved leadership

The European Council is by definition responsible for providing leadership. If it is to do its job, it needs a good manager setting the agenda and watching over its implementation. Six-month presidencies are not ideal for this task. This is the main reason for the proposal to elect a longer-term Chairman of the European Council.

There is good logic in believing that extending the term of the Chairman of the European Council will help ensure the kind of continuity the European Union needs. However, **there are two issues that have to be addressed before we all become convinced of the virtues of such a solution. First of all, the need not to distort the institutional balance means that the tasks of the Chairman of the European Council have to be clearly defined.** Preparing European Council sessions, overseeing implementation of its decisions and representing the European Union in the wider world are all legitimate tasks for a Chairman of the European Council. **At the same time, none of these tasks should be performed independently of the other two key institutions, the European Commission and the European Parliament**. The Commission, as the guardian of the treaties and the sole source of legislative initiative needs to be in general agreement with the Chairman when he or she establishes the agenda of the European Council. Similarly, overseeing the implementation of decisions should only be confined to monitoring and preserving the political dynamic while the implementation proper, at the Union level, ought to remain in the hands of the European Commission.

Group presidency with an elected Chairman of the European Council: a linkage that works

Ensuring sound management within the group presidency means that there needs to be a factor of stability and cohesion in the system. **Such stability can best be provided by having the best of both worlds: a group presidency and an elected Chairman of the European Council. The way to make it happen would be for the group presidency to**

designate candidates for the post of the Chairman of the European Council who would then be elected by a qualified majority vote of the entire European Council. The suggested method would have a unique feature of making the group presidency identify with the person in charge. What it means is that the group presidency would back him or her whenever necessary, hence ensuring smooth decision-making **The continuity factor, already enhanced by extending the term of the Presidency, would be further strengthened if the Chairman of the European Council were to be elected half a year prior to the taking up of the post. In such a situation he or she would already participate in the agenda-setting functions of the Chairman with regard to two important European Council sessions.** In line with that arrangement, it should be the task of both the outgoing and the incoming Chairman to shape the tasks of each successive Presidency, so that the necessary policy span is ensured. The Chairman would also take over the functions of the current Secretary General of the Council. Council formations should also be chaired by officials appointed for the same term as the Chairman of the European Council. The same mechanism would apply as for the election of the Chairman - the group presidency would designate candidates and the European Council would make the final decision by qualified majority.

Preserving the institutional balance

Keeping both policy-making institutions on board should be a prerequisite of any functioning management system. What it means is that **a separate channel of communication ought to be created and enshrined in the treaty for the Chairman of the European Council and the President of the European Commission to consult each other regularly on the policy agenda.** The Chairman of the General Affairs Council and the double-hatted Foreign Representative should also be consulted and present on such occasions. No item should be placed on the agenda of the European Council without it being discussed by the two. The Commission would not have the power to prevent items being placed on the agenda of the European Council but it would have every possibility to influence events.

Combining agenda-setting and brokerage roles: an arbitrage/leadership committee

One problem that has to be resolved concerns an important function of the current rotating President of the European Council who is not only an agenda-setter but also a broker of last resort if decisions are not taken at the ministerial level. It is in this context that the pendulum could shift excessively in favour of the European Council should we have an elected Chairman. **One possibility to avoid distortions of the institutional balance and potential conflicts of competence would be to engage the President of the Commission in a sort of arbitrage/leadership committee meant to resolve outstanding issues.** Since member states would be capable of activating the committee, the fears and concerns of some of them with respect to possible peer pressure of big member states could thus be allayed. The arbitrage committee would be an ad hoc mechanism activated in case of need. What the latter means is that the Chairman of the European Council would serve a facilitator of decision-making rather than an omnipresent ruler. He or she would translate the leadership demonstrated by the heads of state and government into a cohesive and ambitious EU policy.

AMENDMENT FORM

Suggestion for amendment of Article 1

By: Mr Józef Oleksy

Status: Member

Proposed Amendments:

Article 1: Establishment of the Union

1. Reflecting the will of the peoples and the States of Europe to build a common future, this Constitution establishes a Union [entitled ...], within which the policies of the Member States shall be coordinated, and which shall administer certain common competences.

2. The Union shall respect the national identities of its Member States, ***inherent in their fundamental structures and essential State functions, especially their political and constitutional structure, including the organization of public administration at the national, regional and local level.***

Explanation:

1. Deleting the phrase *„on federal basis”*. This phrase is unclear. The choosing of federalism essentially resolves the dispute between federalists and supporters of the intergovernmental method. It's inclusion is bewildering as certain declarations which constitute the basis for the work of the Convention (Nice, Laeken) do not indicate that a federalist vision of Europe had been accepted. Such vision is inseparably connected with the intention

to transform the Union into a state, as no federal international organizations exist. The current formula, which is mixed (the community method supplemented by the intergovernmental method [included in the TEU and TEC without any reference to federalism]) seems to be more advantageous.

2. Para. 2 of art. 1 in its current wording was replaced by para. 6 of art. 9.

AMENDMENT FORM

Suggestion for amendment of Article 2

By: Mr Józef Oleksy

Status: Member

Explanation:

Taking into account the current wording of article 2 and the fact that the possible text of the Preamble of the Constitution has not yet been drafted, I see the possibility of a reference in art. 2 to the spiritual dimension and the values deeply rooted in the european tradition.

AMENDMENT FORM

Suggestion for amendment of Article 3

By: Mr Józef Oleksy

Status: Member

Proposed Amendments:

Article 3: The Union's objectives

2. The Union shall work for a Europe of sustainable development based on balanced economic growth and social justice, with a free single market, and economic and monetary union, aiming at *high level* of employment and generating high levels of competitiveness and living standards. It shall promote economic and social cohesion, equality between women and men, and environmental and social protection, and shall develop scientific and technological advance. It shall encourage solidarity between generations and between States, and equal opportunities for all.

3. The Union shall constitute an area of freedom, security and justice.

Explanation:

1. In para. 2 of art. 3, the term "*full* (employment)" was deleted as was the term "*including the discovery of space*".

2. In para. 3 of art. 3 the term "*in which its shared values are developed and the richness of its cultural* diversity *is respected*" was deleted. The objective of para.3 basically reflects the third pillar

of title IV of the Treaty establishing the European Community. In this context, it is unclear as to why the concept of ethnic diversity was associated solely with it.

AMENDMENT FORM

Suggestion for amendment of Article 4

By: Mr Józef Oleksy

Status: Member

Proposed Amendments:

Article 4: *delete*

Explanation:

Transferring to part II of the Treaty (see art. 281 and 282 of the current Treaty establishing the European Community)

AMENDMENT FORM

Suggestion for amendment of Article 5

By: Mr Józef Oleksy

Status: Member

Proposed Amendments:

Article 5: Fundamental rights

1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out in the second part of this Constitution.

3. *delete*

Explanation:

It is assumed that the Charter will become the second part of the Treaty. In addition to this, the deletion of para. 3 confirms the treaty legitimacy of the Charter of Fundamental Rights and not the European Convention on Human Rights (ECHR), which the Union may (or may not) choose to adapt . As the Charter of Fundamental Rights is raised to an act of constitutional rank and includes basic rights, including those, which the Court of Justice articulated in the form of general legal rules, questions arise as to why provisions on basis rights are kept as general rules.

AMENDMENT FORM

Suggestion for amendment of Article 6

By: Mr Józef Oleksy

Status: Member

Proposed Amendments:

Art. 6: *delete*

Explanation:

This is a consequence of including the Charter in the Treaty.

AMENDMENT FORM

Suggestion for amendment of Article 7

By: Mr Józef Oleksy

Status: Member

Proposed Amendments:

Art. 7: *delete*

Explanation:

This is a consequence of including the Charter in the Treaty.

AMENDMENT FORM

Suggestion for amendment of Article 8 and Article 9

By: Mr Józef Oleksy

Status: Member

Proposed Amendments:

Article 8: Fundamental principles

1. The limits and use of Union competences are governed by the principles of conferral, subsidiary, proportionality and loyal cooperation.

New Article 8a

1. In accordance with the principle of conferral, the Union shall act within the limits of the competences conferred upon it by the Constitution to attain the objectives the Constitution sets out. Competences not conferred upon the Union by the Constitution remain with the Member States.

2. The Constitution, and law adopted by the Union Institutions in exercising competences conferred on it by the Constitution, shall have primacy over the law of the Member States.

New Article 8b

1. In accordance with the principle of subsidiary, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

2. In exercising the Union's non-exclusive competences, the Institutions shall apply the principle of subsidiary as laid down in the Protocol on the application of the principles of subsidiary and proportionality annexed to the Constitution. The procedure set out in the Protocol shall enable national parliaments to ensure compliance with the principle of subsidiary.

New Article 8c

1. In accordance with the principle of proportionality, the scope and form of Union action shall not exceed what is necessary to achieve the objectives of the Constitution.
2. In exercising the Union's competences, the Institutions shall apply the principle of proportionality as laid down in the same Protocol.

New Article 8d

1. In accordance with the principle of loyal cooperation, the Union and the Member States shall, in full mutual respect, assist each other to carry out tasks that flow from the Constitution.
2. In accordance with the principle of loyal cooperation, Member States shall facilitate the achievement of the Union's tasks and refrain from any measure that could jeopardize the accomplishing of objectives set out in the Constitution. The Union shall act loyally towards the Member States.

New Article 9

Member States shall take all appropriate measures, general or particular, to ensure fulfillment of the obligations flowing from the

Constitution or resulting from actions taken by the Union Institutions.

Explanation:

The new wording of article 8 and 9 of the Treaty is of a regular character. The definition will be combined with the explanation (regulation). As such, this allows for independently excluding the contents of the proposed art. 9, which is legally binding and conclusive (a general norm) for the application of rules contained in art. 8 and 8a- d.

AMENDMENT FORM

Suggestion for amendment of Article 11, 12 , 15

By: Mr Józef Oleksy

Status: Member

Proposed Amendments:

The possibility of supplementing art. 11, 12 and 15 with new areas of material law (Union policy) on the basis of the annexed attachment.

Explanation:

Attachment

Proposals for division of competences

Name of document	Exclusive competence	Shared competence	Supplementing and supporting competences
attachment CONV 17/02 dated 28 March 2002 r. titled „Description of the current system for the delimitation of competence between the European Union and the Member States", transmitted by the Secretariat of the Convent to its members."	**These constitute legislative competence, which include:** -common commercial policy; -biological protection of the natural resources of the sea; -monetary policy for the twelve Member States of the EMU -Internal Market; (harmonization of legislation); -expansion of joint institutions such as Europol and Eurojust.	-EU citizenship; -agriculture and fisheries; -free movement of persons, goods, services and capital; -visas, asylum and immigration policy; -transport; -competition; -taxation (fiscal policy); -social policy; -environment; -consumer protection; -health; -trans-European networks (interoperability" and standards) -energy; -protection from natural disasters (civil protection); -tourism; -Title V of TEU with the exception of defense -Title VI of the TEU.	-economic policy; -employment; -education; -vocational training; -culture; -trans-European networks; -industry; -economic and social cohesion; -technological research and development; -development cooperation; - defence (Title V of the TEU).

The Belgian proposal dated 13.05.2002 r. (submitted to the European Convent).	-rights and duties of EU membership; -customs policy; -immigration and asylumn policy; -common commercial policy; -EU budget; -representation of the Union abroad; -special cases such as protection of natural resources of the sea.	-establishing the functioning of the Internal Market (free movement of persons, capital, goods and services as well as competition policy); -common agricultural policy; -policy on fishing; -economic policy; -social policy; -employment; -health care; -consumer right's protection; -transport; -trans-European networks -energy policy; -environmental protection -policy on economic and social cohesion; -cooperation of the police and courts in penal cases; -cooperation of courts in civil cases; -common foreign and security policy; -defense policy; -cooperation in development; -association of nations and transoceanic territories.	-education; -vocational training; -culture; -youth; -industry; -technical research and development.

AMENDMENT FORM

Suggestion for amendment of Article 1

By: **Danuta Hübner**

Status: **Member**

Text of the Praesidium	*Proposed Amendments*
Article 1: Establishment of the Union	Article 1: Establishment of the Union
1. Reflecting the will of the peoples and the States of Europe to build a common future, this Constitution establishes a Union [entitled …], within which the policies of the Member States shall be coordinated, and which shall administer certain common competences on a federal basis.	1. Reflecting the will of the peoples and the States of Europe to build ~~a common future~~ among them an ever closer Union, this Constitution establishes the European ~~a~~ Union ~~[entitled …],~~ within which the policies of the Member States shall be coordinated, and which shall ~~administer~~ manage certain common competences ~~on a federal basis~~ in the joint interest.
	2. The Union shall have legal personality.
2. The Union shall respect the national identities of its Member States.	3~~2~~. The Union shall respect the national identities of its Member States, their constitutional and political structures including regional and local self-government~~.~~
3. The Union shall be open to all European States whose peoples share the same values, respect them and are committed to promoting them together.	4~~3~~. The Union shall be open to all European States whose peoples share the same values, respect them and are committed to promoting them ~~together~~.

Explanation:

1. The notion of "an ever closer Union" should be reinserted.
2. The wording "in the joint interest" could be a compromise solution. Moreover, the subsequent Treaty provisions describe the basis on which certain common competences are managed.
3. This Article seems to be appropriate to include also legal personality of the Union.
4. At this stage we should already give up the discussion on the future name for the Union and agree on the current name which, I would not hesitate to say, finds an overwhelming support of political leaders, commentators and public opinion.
5. It is essential to underline at the beginning of the text the importance and independence of the administrative structures of the Member States.

AMENDMENT FORM

Suggestion for amendment of Article 12

By: **Danuta Hübner**

Status: **Member**

Text of the Praesidium	*Proposed Amendments*
Article 12: Shared competences	**Article 12: Shared competences**
1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles 11 and 15 .	1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles 11 and 15 .
2. The scope of shared competences is determined by the provisions of Part Two.	2. The scope of shared competences is determined by the provisions of Part Two.
3. Where the Union has not exercised or ceases to exercise its competence in an area of shared competence, the Member States may exercise theirs.	3. ~~Where the Union has not exercised or ceases to exercise its competence in an area of shared competence, the Member States may exercise theirs.~~
4. Shared competence applies in the following principal areas: – internal market – area of freedom, security and justice – agriculture and fisheries – transport – trans-European networks – energy – social policy – economic and social cohesion – environment – public health, and – consumer protection.	4. ~~Shared competence applies in the following principal areas:~~ ~~– internal market~~ ~~– area of freedom, security and justice~~ ~~– agriculture and fisheries~~ ~~– transport~~ ~~– trans-European networks~~ ~~– energy~~ ~~– social policy~~ ~~– economic and social cohesion~~ ~~– environment~~ ~~– public health, and~~ ~~– consumer protection~~
5. In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to implement programmes; however, the exercise of that	5. ~~In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to implement programmes; however, the exercise of that competence may not result in Member~~

competence may not result in Member States being prevented from exercising their competence. 6. In the areas of development cooperation and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.	~~States being prevented from exercising their competence.~~ ~~6. In the areas of development cooperation and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.~~

Explanation:

1. The details of shared competences will be defined in the part II of the Constitutional Treaty.

AMENDMENT FORM

Suggestion for amendment of Article 2

By: **Danuta Hübner**

Status: **Member**

Text of the Praesidium	*Proposed Amendments*
Article 2: The Union's values The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.	**Article 2: The Union's values** The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law, ~~and~~ respect for human rights, tolerance, justice and solidarity, values which are common to the Member States. ~~Its aim is a society at peace, through the practice of tolerance, justice and solidarity~~.

Explanation:

1. The wording "its aim is..." seems inappropriate as it suggests objectives and not values.
2. Although not proposed in this Article, a reference to the religious heritage should be mentioned in the Preamble.

AMENDMENT FORM

Suggestion for amendment of Article 3

By: **Danuta Hübner**

Status: **Member**

Text of the Praesidium	*Proposed Amendments*
Article 3: The Union's objectives	**Article 3: The Union's objectives**
1. The Union's aim is to promote peace, its values and the well-being of its peoples.	1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall work for a Europe of sustainable development based on balanced economic growth and social justice, with a free single market, and economic and monetary union, aiming at full employment and generating high levels of competitiveness and living standards. It shall promote economic and social cohesion, equality between women and men, and environmental and social protection, and shall develop scientific and technological advance including the discovery of space. It shall encourage solidarity between generations and between States, and equal opportunities for all.	2. The Union shall work for a Europe of sustainable development based on balanced economic growth and social justice, with a free single market, and economic and monetary union, aiming at a high level of~~full~~ employment and generating high levels of competitiveness and living standards. It shall promote economic and social cohesion, the richness of its cultural and linguistic diversity, equality between women and men, and environmental and social protection, and shall develop scientific and technological advance including the discovery of space. It shall encourage solidarity between generations, social groups and between States. It should also strive to create~~, and~~ equal opportunities for all.
3. The Union shall constitute an area of freedom, security and justice, in which its shared values are developed and the richness of its cultural diversity is respected.	3. The Union shall ~~constitute an~~ foster the area of freedom, security and justice.~~, in which its shared values are developed and the richness of its cultural diversity is respected.~~
4. In defending Europe's independence and interests, the Union shall seek to advance its values in the wider world. It shall contribute to the sustainable development of the earth, solidarity and mutual respect among peoples, eradication of poverty and protection of children's rights, strict observance of internationally accepted legal commitments, and peace between States.	4. In defending Europe's independence and interests, the Union shall seek to advance its values in the wider world. It shall contribute to the sustainable development of the earth, solidarity and mutual respect among peoples, eradication of poverty and protection of children's rights, strict

5. These objectives shall be pursued by appropriate means, depending on the extent to which the relevant competences are attributed to the Union by this Constitution.	observance of internationally accepted legal commitments, and peace between States. 5. These objectives shall be pursued by appropriate means, depending on the extent to which the relevant competences are attributed to the Union by this Constitution.
Explanation: 1. The notion of "high level of employment", already enshrined in the Community law, should be maintained. 2. The term "to foster" underlines that the area of freedom, security and justice is an aim of the Union. The verb "constitute" could be in this context a sort of confusion. The wording in para. 3 including cultural diversity together with the area of freedom, security and justice is not appropriate. Therefore is should be brought forward to para. 2.	

AMENDMENT FORM

Suggestion for amendment of Article 4

By: **Danuta Hübner**

Status: **Member**

Text of the Praesidium	*Proposed Amendments*
Article 4: Legal personality The Union shall have legal personality.	~~**Article 4: Legal personality**~~ ~~The Union shall have legal personality.~~
Explanation: 1. This Article would be brought forward and included into Article 1.	

AMENDMENT FORM

Suggestion for amendment of Article 5

By: **Danuta Hübner**

Status: **Member**

Text of the Praesidium	*Proposed Amendments*
Article 5: Fundamental rights	**Article 5: Fundamental rights**
1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out [in the second part of/in a Protocol annexed to] this Constitution.	1. As a reflection of the political unity reached among the Member States, citizens of the Union are endowed with the rights set out in the ~~T~~the Charter of Fundamental Rights which is ~~shall be~~ an integral part of the Constitution. The Charter is set out in the second part of~~/in a Protocol annexed to]~~ this Constitution.
2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.	2. ~~The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.~~
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.	~~3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.~~

Explanation:

1. The including of the Charter of Fundamental Rights directly into the Treaty was supported by the vast majority of the Convention and of the Working Group II. The proposed wording is of a more solemn nature.
2. The enabling clause for ECHR accession should be put in the Final Provisions of the Constitutional Treaty.

AMENDMENT FORM

Suggestion for amendment of Article 6

By: **Danuta Hübner**

Status: **Member**

Text of the Praesidium	*Proposed Amendments*
Article 6: Non-discrimination on grounds of nationality In the field of application of this Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.	~~**Article 6: Non-discrimination on grounds of nationality**~~ ~~In the field of application of this Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.~~
Explanation: 1. Deleted as a consequence of the inclusion of the CFR into the second part of the Treaty. Should the CFR be annexed to the Treaty as a Protocol, this Article could be maintained.	

Copy file

From: Roger Liddle
Date: 20 February 2003

PRIME MINISTER

cc: Jonathan Powell
Stephen Wall
Sally Morgan
Matthew Rycroft
Peter Hyman
Francis Campbell

POLES AND THE CONVENTION

On the institutions, the Poles are moving much closer to our position. On the constitutional text, they listened hard to my explanations of the difficulties we face with Articles 1-16 tabled by the Praesidium but are less persuaded, particularly on the Charter of Fundamental Rights. We should use every opportunity to strengthen bilateral cooperation with them.

In Warsaw I had good meetings with Danuta Hubner, an outstanding Europe Minister and the Polish Government representative on the Convention; Josef Oleksy, the very sharp former Prime Minister who is the SLD Parliamentary representative on the Convention; Edmund Wittbrodt, the centre right Parliamentary representative; and their chief officials and advisers.

Danuta had just returned from discussions in Rome with Amato and Fini. They had put heavy pressures on her to resist Giscard's attempts to extend the Convention beyond June and support completion of the IGC in the Italian Presidency. Her concern is that in a 2003 IGC the accession states will be included on the basis as if they were full members, not kept as observers in the back row. I assured her you would be sound and insistent on this, but added our scepticism as to whether completion by end 2003 is in practice feasible. (My

guess is that the Convention text will need a lot of technical ironing out since it will be the outcome of a fairly chaotic political process, with important points unresolved.)

Hubner has just tabled a helpful paper to the Convention which supports our proposal for a 2-2½ year chair of the European Council, combined with a system of 2-2½ year team Presidencies, that the chair would lead. Her innovative ideas are:

(i) the **nomination** of the chair should be in **the hands of the team Presidency** to be approved by the European Council (a personal and political 'compatibility' test);

(ii) a regular **quadrupartite coordination meeting** between the chair of the European Council, President of the Commission, Foreign Affairs High Representative and GAERC chair. In her view bringing the President of the Commission into that coordination mechanism would minimise the potential for institutional conflict. I suspect this will emerge in Eurospeak as some form of "bureau" though not a "directoire"! It is not a bad idea, but we would want to strengthen the European Council chair by making him or her chair of the GAERC as well.

(iii) **to involve the President of the Commission as well as the European Council chair in the "banging heads together/breaking deadlock" function.** However, this would only work if the two office holders shared the same objective: sometimes the Council will want to assert itself over the Commission.

All this of course is 'nerdy' detail by comparison with the **achievement of getting the Poles on board for the Council chair.** I was told firmly by senior advisers that Hubner speaks with Miller's full authority. Indeed Oleksy gave me the impression that he would go along with Hubner's proposal, even though hitherto he has been taking a more vocally federalist line in the Convention. Hubner and Oleksy are strong rivals for Miller's nomination as Poland's first Commissioner!

I had a little less promising a time will the Poles on Articles 1-16. They agree with us on:

- the deletion of ***'federal'***, though they are prepared to put back ***'ever closer union'*** as the price of achieving it;
- the Polish Government agrees with our lawyers that the Part I of the Constitution should **not list competences, other than exclusive competences.** Otherwise the powers of the Union look unbalanced in favour of Brussels. Oleksy on the other hand takes the view that the different types of competence should be fully listed, but without following through the logic of listing what remains the primary responsibility of Member States. The impact of this would be to give the impression of Europe having sweeping powers over wide fields (which under the Treaties the EU in theory has) while merely stating that Member States are responsible for everything not listed. (My instinct, which conflicts with the general opinion in Whitehall and the Convention, is that it would help us politically a lot to devise an impressive list of 'no go' areas for Brussels.)

On the other hand the Poles **unhelpfully want to strengthen the wording on the Charter's incorporation in the Constitution.** They want to emphasise the "rights" that go with EU membership: our negative view of how "rights" challenge Parliamentary "sovereignty" is beyond their comprehension.

The Poles will support us, however, on language that makes clear that it the Member States who confer powers on the Union, not the other way round. They see the necessity for wording that stresses the primacy of the Member States role in economic policy and CFSP.

Oleksy (not the Government), with his sensitivity to the Polish psychology, canvasses **the inclusion of a reference to spiritual values.** In a manner reminiscent of Labour policy debates in the 1990s. Oleksy and the Government want the mention of **full** employment in EU objectives, which we have supported, amended to a **'high level'** of employment

All in all promising. The Poles see themselves as **breaking away from the mindset of the other new members** in the Convention. They recognise that they started out thinking of themselves as a 'small' when as in fact they are a 'big'. And they are ditching the stance of the other candidates who are immensely conservative about institutional change (and unwilling to accept that the organisation they have struggled to join requires radical reform). They are instinctively sovereignty minded.

On the other hand the **key relationship for the Poles is with Germany;** they want a bigger EU budget and a bigger share; and in the years ahead they will not

want to get on the wrong side of the Commission, who will prove a difficult supervisor over State Aids, implementation of the 'acquis' and budget deficits.

We can build a good relationship with the Poles. We have a certain amount of political goodwill in the bank, though not much hard cash and business investment to offer. We gain credit for being Atlanticist as well as pro-Europeans. But we shouldn't push them too far and be mindful of their domestic sensitivities.

pp **ROGER LIDDLE**

File

MH

In DCO Inbox

SUBJECT MASTER

10 DOWNING STREET
LONDON SW1A 2AA

19 February 2003

THE PRIME MINISTER

Dear Giuliano,

Thank you for your letter of 22 January about your idea of a Single Legislative Council (SLC). In my Cardiff speech I said that we would consider carefully this and other proposals put forward by you.

Like you I would like to see greater transparency, through the Council meeting in public when legislating. I would also like better quality of legislation. But I see problems with the idea.

I am not convinced that it is possible or desirable to separate legislative and executive functions (with the latter staying with sectoral Councils) in this way. Does it, for example, really make sense for one to discuss the legislative framework for Europol and another its operational priorities? On economic reform, non-binding measures and legislation are part and parcel of the same overall action programme. Should they be discussed separately? In reality does the legislation not need to be done by specialist Ministers?

I foresee difficulties over accountability to national Parliaments. The symbolism of an elected Minister, permanently in Brussels, distant from his own Parliament would raise questions over his accountability.

4

Is there also not a strong risk of a poor relationship developing between this Minister and the Ministers in national Governments responsible for the relevant policy? Even if they were present alongside the permanent Minister in the SLC for their dossiers, the latter would be bound to become the most powerful figure in national delegations. Over time, this could make sectoral Ministers institutionally hostile to EU as opposed to domestic solutions, which would not be in the EU's best interests.

I wonder whether there is not another approach which retains the advantage of the SLC but not the risks. I would favour:

(a) a smaller number of sectoral Councils retaining legislative and executive functions as now, but with clear separation of the two in their agendas and the Council meeting in public for the former;

(b) better co-ordination of Council activity ensured by a full-time Chair of the European Council working with the Chairs of sectoral Councils within the framework of the European Council's strategic agenda.

I hope we can stay in close touch on this and other issues in the Convention.

Yours ever,

Tony

His Excellency Senor Giuliano Amato

SENATO DELLA REPUBBLICA

MR

cc SW.
DM
JPo.

Dear Prime Minister, dear Tony,

I understand that objections are raised against my (still firm) idea of one single Council for Legislative Affairs in Brussels. From your last and beautiful speech in Cardiff I also understand that you are ready to support the idea, which makes me confident and gives me one more reason to ask you a few minutes o attention for the arguments of this letter.

First of all let me tell you that the proposal is widely (almost unanimously I would say) shared in ou political family and also in the EPP. The basic reasons of it are in fact stronger than any objection legislation that comes from sectoral councils, and therefore from Ministers responsible for one only of the several collective interests that any piece of legislation necessarily touches upon, violates basic democratic principles. Having said so:

1. there is no reason to exclude sectoral Ministers from the Legislative Council, the permanent member of which (Ministers for European Affairs acting under the direct authority of their Prime Ministers should be accompanied time by time by the 'relevant' sectoral Ministers. There will be, in othe words, national delegations, that the permanent members should head;
2. there is no reason to exclude our Foreign Services from the preparation of the Council and it would be silly to do it, for they have the necessary expertise. It is obvious for me that the Coreper will remain where it is. And it is even more obvious that it would be a non sense for us to train a new bureaucracy when the existing one can keep working on European legislation, whoever the Minister in charge of it

I will keep you informed of any development on this matter. But there is no reason to give up with a crucial innovation in terms of democratic 'lisibilité' of the future Europe for the sake of interests that may find satisfactory solutions also in the new system. Thank you again for your attention.

All the best.

Giuliano

Rome, 22 January 2003.

DCs (file).

14 February 2003

Nick Baird
Head
EUD(I)
FCO

cc: Stephen Wall
Martin Donnelly
Michael Roberts
Richard Crabtree
Paul McKinnon
+ back to me.

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To the European Union

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Dear Nick

EUROPEAN CONVENTION: QMV: NICE REWEIGHTING VS SDM

1. I promised you some time ago that I would do some work on simple dual majority voting. I apologise for the delay in doing so; more immediate concerns intervened.

2. I attach a draft paper which might serve as the basis for further work in EUD(I) before submission to Ministers. Three points on it:

   a) You may wish to commission further work on the performance of both Nice and SDM in certain key coalitions. I made a start on this process and a couple of models are attached at annex C. But the uncertainty over the position of the applicants makes it a haphazard exercise. Alex Ellis' excellent paper on the EU at 25 is a good starting point. But until we, and the applicants, are clearer about their views on key subjects, I'm doubtful that there is much to be gained from a mathematical approach.

   b) Some eyebrows here have been raised by the assertion in my paper that Kerr is proposing a DM system with the threshold set as high as 66% for both criteria. Is he really so ambitious? I took the point from a personal John Kerr letter to Stephen Wall, copied to Nigel Sheinwald, on 8 August 2002. I am not sure if Kerr has lowered his sights since then. But even if he has, the point that we would not benefit from opening up a debate on thresholds in the Convention remains valid.

   c) The threshold issue opens up the wider question of super QMV – setting a much higher threshold for issues currently covered by unanimity. As you know the Commission Communication raises this, with the threshold set at three quarters of member states and two thirds of the population. I have not covered the point in the paper, but it may bear further analysis of whether, and if so how, we should bat it off.

3. Given the preliminary nature of the paper, I'm copying it no further than CFSPD, Cabinet Office and HMT at the moment.

Yours ever,

Matthew

Matthew Taylor

p/a Roger Liddle

p/a Joe Griffin

I agree the same conclusion. The only merit of DM is via SDM. Agree go no further for the moment. It seems complex and unnegotiable. And SDM is probably too risky for us.

Hope any papers for minutes should demonstrate the point.

10/2

cc: Sarah Lyons, PS/Secretary of State for Wales
Catherine Royle, EUD(I)
Joe Griffin, Cabinet Office
Jill Parkinson, CFSPD
Daniel Thornton, HMT
UKREP Convention

EUROPEAN CONVENTION: QMV: NICE RE-WEIGHTING VERSUS SDM

Introduction

1. John Kerr has asked for a considered HMG view on the prospect of **jettisoning the Nice re-weighting deal in favour of a dual majority system**. We owe him an answer.

Nice

2. Under Nice, **321 votes** will be distributed amongst the 25 Council members from 2005. A qualified majority is formed by **232** votes, cast by **a simple majority of states**[1], with a population lock **that the majority must represent 62% of the EU population. It is a triple majority system.**
3. In an **EU27, the QM threshold will be 255 of 345 votes**. The 62% population threshold will still apply.

A dual majority system

4. The Commission Communication resurrected the pre-Nice proposal of a **simple dual majority (SDM) system**. The adoption of any measure would be subject to support from a simple majority of states representing a simple majority of the EU population.
5. Giscard, Kerr and certain Praesidium members are advocating an SDM system for areas where simple majority currently applies; and **raising the threshold on both criteria to 66% for QMV areas.**

Protecting the gains of Nice

6. Nice achieved a number of key objectives for the UK. Would a DM system protect them?

- **Maintaining our ability to block.** Under Nice we can do so with any two of Germany, France or Italy under the population lock in an EU 25. A DM system would do the same if the threshold were set **no lower than 62%.** Blocking with the same coalition in an EU27 would require a population threshold set at 64%. But the consequence of a greater voting influence for the bigs is that we will find it more difficult to form a blocking minority or a qualified majority with a coalition of small Member States.
- **A substantial increase in our relative voting influence.** In an EU27, the UK would hold 8.4% of the total Nice weighted votes. We would represent 12.4% of the total EU population. This criterion is met.[2]

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[1] Two-thirds when not acting on a Commission proposal.

[2] Again, our increase in voting weight is at the expense of the smalls, who often are key allies.

- **The differentiation between the weight of the four large Member States is hidden.** Though Germany has a greater weight through the 62% population lock, we were able to explain Nice as the same increase in votes for all the Bigs. A DM system would require us to **explain the hike in Germany's weight to Parliament and the media**. This is a problem for us; it is likely to be a greater issue for France (which will lose in comparison to Germany) and Spain (which will lose in comparison to the bigs).
- **Simplicity**. We were able to explain Nice in terms of votes gained rather than an entirely new model, which helped public understanding. DM is an entirely new system. But it is clear and fair, with none of the hidden complexity of Nice.

Do our interests lie in blocking or passing legislation?

7. It is difficult to say, because the attitude of the applicants in key areas is impossible to predict:

- **None of the applicants are likely to be budget disciplinarians**. The effect of enlargement on the attitudes of existing member states to budget discipline is unclear. So, if we are to maintain budget discipline, we should **err on the side of blocking**.
- In **policy areas** the picture is mixed. Our interests are in **outvoting** others in CAP reform and Asylum policy. In social policy we generally want to **block**. In other areas, the picture is **mixed**, depending on the particular legislative proposal.
- More speculatively, **the Franco-German paper has opened up the issue of QMV for CFSP**. If this does run, we could not accept a low QM threshold which would allow us to be outvoted. **Our interests lie in blocking**.

8. Given this mixed picture, it is a political judgement whether our interests primarily lie in blocking legislation which could cause political and economic harm, or in pushing through measures we wish to see adopted. Our judgement is that the uncertainty in the position of the applicants means we should be cautious.

Tactics in the Convention

9. A table showing the likely views of others is attached at Annex B. The **key tactical considerations are**:

- **Is the Kerr model deliverable**? Probably not. MEPs, the Commission and federalist states will argue that enlargement risks paralysing EU decision making; the threshold should therefore be lowered. We will not achieve anything above 62%, and that figure may even be chipped away. Could we

resist that pressure? This unpredictability is particularly unpalatable in the context of a debate on **QMV for CFSP**.

- **The effect on our other key priorities**: the big winner from SDM would be Germany. But France and Spain would resist it strongly. The Smalls might see advantage in reopening Nice, but would resist a voting model under which their voting weight diminished. Given the fact that our key interests are not engaged in SDM, would it be tactically wise to support an approach which so many others would resist?

Effect on Enlargement

9. We also have to consider the effect on **ratification of enlargement**. Both Members and applicants have to ratify by May 2004. How will national Parliaments react to a key element of the deal being changed before then? Equally, how will a proposal to give greater voting weight to the large Member States play in the applicants' referenda? The EU is already being criticised for shifting the goalposts; this would reinforce that point of view.

Conclusions

10. A DM with a 66% threshold would be good. But **we won't get it and we risk antagonising others in trying**. Given the fact that Nice reflects our interests well, we should **discourage Kerr** from opening up a debate which risks **dangerous negotiation on the QM threshold**. We should revert to him with the following points:

    - **Nice met our key objectives**. Convention has enough on its plate. See no need to reopen this debate.
    - A **DM system would be difficult to present domestically** because of the increase in German voting weight. Do not think that France or Germany would support.
    - We **do not want to open a debate on thresholds**, in particular given the discussion on QMV for CFSP. We believe 66% is non-negotiable.
    - Discussion on this now would play badly during **Enlargement ratification**.
    - We **will therefore not support a DM system should the Praesidium propose it**.

Annex A – Comparison of voting weights and populations (EU 25 and 27)

Member State	*Nice Votes @ EU25*[3]	*Nice Votes @ EU27*[4]	*Population*[5]	*EU25%*	*EU27%*
Germany	29	29	82.4	18.1	17.0
UK	29	29	60.1	13.2	12.4
France	29	29	59.3	13.1	12.2
Italy	29	29	58	12.8	12.0
Spain	27	27	40.4	8.9	8.3
Poland	27	27	38.6	8.5	8.0
Romania		14	22.4		4.6
Netherlands	13	13	16.1	3.5	3.3
Greece	12	12	10.6	2.3	2.2
Portugal	12	12	10.3	2.3	2.1
Belgium	12	12	10.3	2.3	2.1
Czech Republic	12	12	10.3	2.3	2.1
Hungary	12	12	10.2	2.2	2.1
Sweden	10	10	8.9	2.0	1.8
Austria	10	10	8.1	1.8	1.7
Bulgaria		10	7.9		1.6
Slovakia	7	7	5.4	1.2	1.1
Denmark	7	7	5.4	1.2	1.1
Finland	7	7	5.2	1.1	1.1
Ireland	7	7	3.9	0.9	0.8
Lithuania	7	7	3.5	0.8	0.7
Latvia	4	4	2.4	0.5	0.5
Slovenia	4	4	2.0	0.4	0.4
Estonia	4	4	1.4	0.3	0.3
Cyprus	4	4	0.8	0.2	0.2
Luxembourg	4	4	0.4	0.1	0.1
Malta	3	3	0.4	0.1	0.1
Total	**321**	**345**	**484.7 (25=454.4)**	**100**	**100**

[3] A QM is formed by 232 votes, cast by a majority of States upon a Commission proposal, or by 2/3 of States where this is not the case. A Member State may request verification that the Member States constituting the QM represent at least 62% of the total population. If that condition is shown not to have been met, the decision shall not be adopted.

[4] As at EU25, but the QM threshold is 255.

[5] Population figures are estimates for 1/1/2002, from 'Statistics in Focus: Population and Social Conditions' Main Demographic Trends for 2001, Joint Council of Europe/Eurostat demographic data collection.

Annex B – Attitudes of other Member States to DM

Member State	Attitude
France	Supported vote re-weighting at Nice, provided it did not make a distinction between Germany and France. Did not support a population threshold.
Germany	The only big to support dual majority based on their population dominance. Although they came round to vote re-weighting (compensated by extra MEPs), they were prepared to support a population threshold as low as 60%.
Italy	Supported vote re-weighting at Nice, putting forward a proposal based on a range of votes from 33 to 3. They were prepared to accept a population threshold of 60%.
Spain	A sensitive issue since Amsterdam. They were keen to retain their status as a big at Nice. They argued for the same increase in votes as the other bigs. They would suffer under this criterion in a DM system.
Netherlands	Happy to accept vote re-weighting at Nice, provided any adjustment did not place Belgium and Austria on an equal footing with them. DM would meet this criterion.
Smalls	Additional weight for bigs easier to justify under population criterion. But would they be willing to lose further now? Most argued for a population threshold of no more than 60%, to minimise the blocking power of the bigs.
Ireland	Unlikely to welcome discussion of this in light of their Nice referendum
Candidates	Position unclear, although typical big/small split likely to emerge. May resent reopening key aspect of enlargement negotiations to their detriment in run up to referenda. May add to criticism that we are shifting goalposts.

Annex C – Some illustrative models

(i) Budget discipline

	Nice Votes	*Population*	*EU25 %*	*EU27 %*
Germany	29	82.4	18.1	17
UK	29	60.1	13.2	12.4
France[6]	29	59.3	13.1	12
Netherlands	13	16.1	3.5	3.3
Sweden	10	8.9	2.0	1.8
Austria	10	8.1	1.8	1.7
Denmark	7	5.4	1.2	1.1
Finland	7	5.2	1.1	1.1
Total	***124***	***245.5***	***54***	***50.4***

Such a group can, if France is included, construct a blocking minority under Nice on grounds of weighted votes and population, at both EU25 and EU27. Without France, it still blocks on votes in EU25 and EU27, but on population in EU25 only[7].

In a DM system, it would block with or without France at a 66% population threshold at EU25 and EU27. At a 62% threshold, France is required for EU27, but not otherwise. At 60%, the same occurs.

(ii) Common Agricultural Policy

	Nice Votes	*Population*	*EU25%*	*EU27 %*
France	29	59.3	13.1	12.2
Italy	29	58	12.8	12.0
Spain	27	40.4	8.9	8.3
Poland	27	38.6	8.5	8.0
Greece	12	10.6	2.3	2.2
Belgium	12	10.3	2.3	2.1
Portugal	12	10.3	2.3	2.1
Austria	10	8.1	1.8	1.7
Ireland	7	3.9	0.9	0.8
Total	***165***	***239.5***	***52.9***	***49.4***

Such a group could block under Nice on weighted votes and population in an EU25 and an EU27. Under a DM system, it could block unless the threshold were lowered to 50% in an EU27.

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[6] With the notable (and very large) exception of CAP spending.

[7] Where the figures are at the margins, the success of a coalition may be dependent on fluctuations in census information.

(ii) Environment – Brown Member States

	Nice Votes	*Population*	*EU25%*	*EU27%*
UK	29	60.1	13.2	12.4
Spain	27	40.4	8.9	8.3
Poland	27	38.6	8.5	8.0
Greece	12	10.6	2.3	2.2
Portugal	12	10.3	2.3	2.1
Hungary	12	10.2	2.2	2.1
Ireland	7	3.9	0.9	0.8
Total	***126***	***174.1***	***38.3***	***35.9***

Such a group could block under Nice on votes and population in an EU25[8] and under votes only in an EU27. Under a DM system, it would squeak a BM on a 62% threshold in an EU25, but not in an EU27.

[8] Although population is marginal.

FAXED

From: Stephen Wall
Date: 14 February 2003

PRIME MINISTER

cc: Jonathan Powell
Alastair Campbell
Sally Morgan
Jeremy Heywood
Roger Liddle
Matthew Rycroft
Steven Morris
Rachel Cowburn
Sir Andrew Turnbull
Sir Nigel Sheinwald
Martin Donnelly

EUROPEAN CONVENTION: WEEKLY UPDATE

Following your letter to Giscard, Peter Hain officially tabled our proposed amendments to the Praesidium's draft Articles 1-16 of the constitution this week.

As with your letter, our comments focus on the fact that the description of the relationship between the constitution, the Union and the member states is misleading. The draft gives the impression that the Constitution is the source of all competences which it bestows on the Union and partly on member states: rather than competences flowing the other way round. Giscard told Peter Hain that he tended to agree, and that "it would be sorted out."

Our comments also ask for language on economic policy to be amended: the Praesidium draft states that it is the Union and not the member states who have responsibility for co-ordinating economic policy. We call for more careful drafting of the provisions on CFSP so that its legally distinct nature is preserved. And we have suggested pretty tough language on the incorporation of the Charter

that sends a signal that we are not yet ready to sign up to it. We have compared notes with the French whose approach is pretty similar to ours. The Germans buy the Praesidium text without demur.

We are now getting into the real business of this Convention and language agreed at this stage will be difficult to row back from later. Parliament, and to a lesser extent, the media are following this closely.

It remains to be seen how the Praesidium now deal with a hundred or so sets of amendments. They tell us that they will circulate an amended version of articles 1-16 ahead of the debate in Plenary at the end of the month. How they respond to people's comments will tell us much about the prospects for the Convention to reach a consensus before June.

Meanwhile the institutional debate rumbles on. We are working on a joint paper with the Spanish ahead of your summit with Aznar on 27 and 28 February. This still needs work, but it is likely to focus on the need to strengthen all three institutions and the Court, and will put powerful arguments in favour of a full-time Chair of the European Council.

There are encouraging signs that we are winning others round on this. The Poles submitted a paper to the Convention this week, calling for an end to the rotating Presidency system and a full-time Chairman of the European Council. Lars Danielsson told me that the Swedes are close to signing up the Finns, and even raised the prospect of a joint Nordic position. This would be a real breakthrough, as Finland had previously been among the staunchest opponents of the proposal and ringleader of the Smalls. If this happens, we ought then to

concentrate on winning over the candidate countries. The Polish paper will clearly help in this regard – Roger Liddle visits Warsaw on Monday and will encourage them to spread the word.

On the election of the Commission President, Denis MacShane has submitted a note to you, in which he notes that there is considerable support in capitals for involving national Parliaments in some way. There are a variety of proposals for doing this, ranging from a "Eurovision song contest approach" with each national Parliament voting on a list of candidates, to an electoral college comprising national MPs and MEPs.

I think there is mileage in the electoral college. It would be difficult to negotiate a complete exclusion of MEPs from the process, but involving national Parliamentarians would mean that the Commission was not exclusively beholden to the Parliament.

Both Giscard and Dehaene gave interesting speeches this week.

Speaking in Washington, Giscard said that Europe was "not building a nation" and that the Union would continue to be a "unique construct" which would borrow from both federal and confederal models. He also claimed that the Convention aimed to strengthen the EU so that it could be a "much more valuable partner and ally for the United States of America."

Meanwhile, Dehaene gave a speech at King's College, London, where he noted that the Convention was not aiming to rewrite whole chunks of the Treaties or change existing policies, but to simplify and clarify. He accepted that CFSP

would remain "essentially intergovernmental," even if more decisions should be taken by QMV. As you would expect, he was less helpful on institutions, rejecting a Chair of the European Council and calling for a European Foreign Minister.

Finally, it is worth noting that amidst the excitement over draft Treaty articles the Plenary did real business on 7 and 8 February. There was a debate on the final report from the Social Europe working group and on the future role of the regions in the EU. On Social Europe, the report was much better than we could have expected. The working group recommended balanced, Lisbon friendly language on the EU's social objectives and recorded a lack of consensus on moving to more QMV in the social field, even though most members of the working group supported it.

On the regions, Peter Hain's paper (negotiated and agreed with the Devolved Administrations) went down well as a sensible way of boosting recognition of the regions' role in implementing legislation. This includes acknowledging the relevance of subsidiarity for sub-member state administrations and the requirement for the Commission to consult them at the pre-legislative stage. All of this could have real advantages in ensuring that the Commission takes subsidiarity seriously. It has also pleased the Devolved Administrations in the run up to the electoral period.

STEPHEN WALL

From: Stephen Wall
Date: 10 February 2003

PRIME MINISTER

cc: Sally Morgan
Roger Liddle

YOUR MEETING WITH GISELA STUART: 11 FEBRUARY

You are seeing Gisela Stuart tomorrow. As you know, Gisela is one of twelve members of the Praesidium of the Convention on the Future of Europe (full list attached).

The Praesidium's work is crucial. But, as witnessed by the draft text that emerged on Thursday, we have not yet succeeded in exercising maximum influence on it. This is in part due to it being dominated by integrationists and Brussels-insiders who know the system well and are able to play it to best advantage. It is also due to the fact that we have less influence over Gisela than we might like: she has insisted on taking her loyalties as Parliament's (rather than the Government's) representative very seriously and has taken on an adviser from the House of Commons, rather than from the FCO.

This is a delicate balancing act for Gisela, who is under pressure from Parliament, as well as from Peter Hain and the Government side. You might underline the importance of getting a message across in the Praesidium that will be of equal benefit to the Government and to Parliament. Often that will be as much political as legal in nature: she should focus on three or four key messages that she wants to deliver.

To that end you could encourage her to remain in close touch with us. We will, of course continue to offer her the support that she feels she needs.

/ I attach the text of a note that Gisela addressed to you ahead of your meeting last week on the Convention.

STEPHEN WALL

INTRODUCTION
- Organisation
- Composition
- Praesidium
- Secretariat

PROCEEDINGS
- Timetable of meetings
- Agendas
- Plenary sessions
- Working Groups

DOCUMENTS
- Documents
- Contributions
- Speeches
- Related documents

PRESS
- Press and information

TOOLS
- Keywords

YOUTH
- Youth Convention

Praesidium

The Praesidium has the role of lending impetus to the Convention and providing it basis on which to work.

The Praesidium consists of the Convention Chairman and Vice-Chairmen and nine members drawn from the Convention: the representatives of all the governments the Presidency of the Union during the Convention (Spain, Denmark and Greece), national parliament representatives, two European Parliament representatives and Commission representatives.

The Praesidium meets on a regular basis, normally twice a month: before each ple session of the Convention and once between sessions.

It has specific roles in preparing draft agendas for plenary sessions, and in oversee activities and organisation of the Forum.

Mr Peterle, the representative of the Slovene Parliament in the Convention, attend meetings of the Praesidium as an invitee. He was designated by the representative the parliaments of the candidate countries.

Chairman

Mr Valéry GISCARD d'ESTAING

Vice-Chairmen

Mr Giuliano AMATO

Mr Jean-Luc DEHAENE

Representatives of the Governments holding the Council Presidency durin Convention

Ms Ana PALACIO

Mr Henning CHRISTOPHERSEN

Mr Georges KATIFORIS

Representatives of the national parliaments

Mr John BRUTON

Ms Gisela STUART

Representatives of the European Parliament

Mr Klaus HÄNSCH

Mr Íñigo MÉNDEZ DE VIGO

Representatives of the European Commission

Mr Michel BARNIER

Mr António VITORINO

Mr Antonio VITORINO

Invitee

Mr Alojz PETERLE

Note to the Prime Minister from Gisela Stuart MP
3rd February 2003

Prime Minister,
I am sorry our meeting for today has had to be cancelled and please accept my apologies for not being present for your meeting on the Convention on 5th of February, as I will have to attend a Presidium meeting in Brussels.

I thought I might be helpful if I briefly put down the points I wanted to raise with you.

1) State of negotiations inside the presidium
Giscard is determined to ensure agreement from all four components of the convention i.e. the commission, national governments, The European Parliament and national parliaments. Whilst Giscard clearly supports us in our desire to protect the integrity of the nation state, as evidenced in his support for the subsidiarity mechanism, he ultimately wants to create a Union driven by the large countries.
The key people to work with on the Presidium are Ana Palacio, Henning Christopherson and Antonio Vitorino.

2) Dynamics of decision-making
Whilst the secretariat and Giscard himself have considerable influence, this is neither an IGC where governments start with taking maximum positions to be negotiated down, nor is it comparable to the Charter Convention, which was chaired by a constitutional lawyer, worked with a smaller group and enabled a single individual like Peter Goldsmith to have huge influence. The process of negotiations is conducted at the four levels of the components.

3) Working with Peter Hain
Clearly there are some areas where decisions will be made by governments e.g. role of commission president, role of Council Chair, but there are a number of significant other areas where influencing the Convention will take place at different levels.
I have therefore set up small group of national parliamentarians who work together to table submissions to the convention.

We would weaken our input if I simply tried to duplicate the work Peter does and have focused on building up a second line of defence to support and supplement his work.

I am always mindful that I am there as the representative of Parliament.

This week I am tabling a paper spelling out in detail how the "subsidiarity mechanism" will work and suggested a strengthening of the process. This involves 1/3 of national parliaments being able to require the Commission to reconsider their proposals [yellow card] and strengthen the mechanism by introducing a further step, which would mean that if 2/3 of national parliaments object, the commission would have to withdraw its proposals.

4) Domestic handling of the Convention
I am mindful that the Commons and colleagues in the Labour Party have not fully appreciated the full implications of the possible outcome of the Convention e.g. agreement to a written Constitution, giving the union legal personality, incorporating the Charter on Fundamental rights. This must not come as a shock to them later in the year.
To ensure that they are fully involved in the process I have been giving regular evidence to Commons as well Lord's committees explaining the reasons for our position. I expect there to be some backlash when the first Treaty articles appear at the end of the week, and when I have to give 3 hours evidence to a joint Lords and Commons Committee next week.

To answer our sternest critics in the Commons I feel it is necessary to have further three things in addition to strengthening the subsidiarity mechanism:

a) A clause, which spells out the process of returning competences to Member States. This provides an answer for those who argue the EU is a one-way street, which simply weakens the national state at every turn. I have succeeded to have such a clause introduced into the treaty at the last presidium meeting
b) An explicit exit clause. In the interest of logic, if we spell out how to join the union, there is a rational case for spelling out

how to leave the union. In practice this has happened once when Greenland left. I will need to be careful in pursuing this aim, to ensure that the "exit clause" does not become an "expulsion clause" which would be most unhelpful. However for domestic political reasons I think an exit clause is desirable

c) Should we remove reference to "an ever closer union"? Symbolically that would be extremely helpful to have the clause removed, to counter the argument that the Union is a "Maoist permanent revolution" with only one aim – deeper federal integration. When we discuss this in the presidium on Wednesday I will argue for its removal, but mindful that it is not replaced with something which would be more damaging in presentational terms.

I trust you are content with this approach in addition to the aims set out by FCO in its briefings to ministers.

5) Working with PES and MEPs

I would be most surprised if PES as a political group emerged as an important grouping to influence decisions in the Convention. The only significant force is Guiliano Amato who has so far succeeded in holding the group together. I intend to remain on the PES steering committee and actively participate in the meetings, but mainly as a damage limitation exercise to ensure that we minimize the integrationist drive displayed by so many who now again enjoy being in opposition, and not having to take responsibility for their actions.

I am working with Finnish colleagues on an interinstitutional agreement to improve the way national parliaments and the European Parliament can work together more effectively. I am also taking this work forward with the Labour Party. However I am mindful that we should not create any "hybrid bodies" as this usually means neither group is prepared to take absolute responsibility. I am resisting any attempts by the European Parliament to give them locus standi in CFSP and Defence.

Yours GS

File

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Andy Lebrecht
Director General for Food, Farming and Fisheries

Sir Stephen Wall, LVO, KCMG
10 Downing Street
London SW1

10 February 2003

Dear Stephen

FUTURE OF EUROPE: INSTITUTIONS

Thank you for copying to Defra your letter of 23 January to Kim Darroch. The Convention's discussions on EU institutions are of key interest to this Department because the vast majority of our policies - whether on agriculture, environment, fisheries, rural development, veterinary or food policy - are founded upon EU legislation. Our ability to achieve UK policy objectives in all these areas is highly dependent on the legislative processes in Brussels. You might find it helpful therefore to have our views on the issues touched upon in your letter.

In terms of Councils, our primary interest is in the sectoral councils. We share the general Whitehall consensus that the single legislative council is not a remotely practical way forward. On the assumption, therefore, that the work is likely to be undertaken by sectoral councils, our interest is in the arrangements that will be necessary in EU 25 for managing Council business and future Presidencies. Clearly there is a need to strengthen the Presidency arrangements to cope with enlargement. A key consideration will be how these arrangements are designed to avoid UK interests being disadvantaged in individual Councils. They will also need to take account of the administrative capabilities of some of the smaller Member States. This latter point is clearly a delicate issue, but it is not a simple picture. Experience in agriculture, for example, suggests that smaller administrations are often surprisingly effective. Their limited resources lead them to depend more heavily than big countries do on the Commission and the prospect for conducting business promptly are thereby improved. We would be happy to discuss how to strengthen the Presidency and hope that it is given sufficient prominence in future work.

Another major issue for us is the question of co-ordination across Councils. This is particularly important in relation to environment policy where, in order to give real effect to Article 6 of the Treaty, we need to ensure that the environment is taken into account in the work of other Councils (the so-called Cardiff integration process). We also need to ensure that the Environment Council takes full account of the impact of its decisions in respect of the wider sustainability agenda, particularly its social and economic aspects. Since the Seville European Council, the GAERC has been mandated to co-ordinate the Council's work on sustainable development. Up till now, despite our best lobbying efforts, we have not been able to get the Presidency to take this forward, despite the commitment to COREPER to return to consider a suitable mechanism. We shall continue to push for an informal Friends of the Presidency group. Possibly the inefficient preparation of the sustainable development agenda for this Spring Council – tossed into the Environment Council by the Greeks – may persuade others of the merits of our suggestion. Certainly, this Department has a strong interest in ensuring that under the new constitution, the GAERC is well able to discharge its responsibilities as regards sustainable development.

In terms of the Commission, our main interest is to ensure that it is effective, properly co-ordinated and discharges its responsibilities efficiently. In many areas we find ourselves close to the Commission and would not want its influence diminished. We look forward to seeing the next version of the text on comitology and have offered to meet Michael Roberts to help him to take that forward. Departments, like Defra, which are heavy users of comitology need to take an active role in shaping the paper. We primarily need procedures that help us deliver the Government's policy goals. This is an important issue for us because many of the decisions involved (eg approving GM crops and managing trade in the context of animal and plant disease outbreaks) are of great public, NGO and economic significance. While we recognise that there may be a case for improving the transparency and democratic legitimacy of decision making through the comitology procedures, efficiency and effectiveness are also high priorities. Comitology procedures are necessary precisely because urgent measures sometimes have to be invoked in order to protect the public and the environment.

In terms of the other institutions, our main concern is about the possible extension of co-decision to Article 37 (agriculture and fisheries) and to Article 300. This is something we see as likely to damage our ability to deliver the outcomes the Government wants from European legislation. It is an issue in which Margaret Beckett continues to take a close interest. I hope therefore the UK will remain firm in fighting against co-decision in these areas. We would not be alone in doing so. My French contacts in particular are very clear that France will oppose co-decision on agriculture and fisheries as they have consistently done in the past. Working with the French on this would provide an added bonus of demonstrating that we are capable of collaborating with them in this tricky policy area.

You mention in your letter the need to establish a decent intellectual justification for resisting co-decision. We circulated a paper on this some time ago and I attach a further copy. At heart, I think we can respectably argue that Council activity in agriculture and fisheries is different from in other areas. Under the CAP and CFP, the bulk of the Council legislation is managing – through directly applicable Regulations – existing policies, and doing so in a way that has a direct impact on Community and international markets and the livelihoods of individual EU citizens. This process of policy management via legislation is very different from the way the Council and EP act elsewhere. It is of course arguable that this sort of activity should be carried out through comitology procedures. But the fact is most of it is too political and too important in budgetary and economic terms for this to be left to comitology. Considerations of timing and urgency with such lelgislation are also a critical factor: the fisheries deal last December would not have been possible if co-ecision had applied; and the prospects of doing a sensible deal on CAP reform in time for Cancun would be off the horizon.

Related to this is the question of the handling of the DO/DNO split under the budget procedures. We support the Treasury's earlier proposal for identifying some smaller and more tightly defined area of mandatory expenditure as a trade-off for a more general abolition of the DO/DNO distinction. But I see the Treasury may no longer be pressing for this. If there is any prospect of conceding co-decision in this oblique way, I think Ministers need the opportunity to express their views soon.

We also foresee serious difficulties if co-decision were to be extended to Article 300, particularly as regards the ratification of international environmental agreements. The additional involvement of the European Parliament could lead to serious delays in ratification. This could have serious political consequences, and could also lead to the Community being unable to participate in meetings of Parties, and so reducing its ability to advance its policies.

We agree that there is no need to say anything about the ESC and we are content with the proposals in the paper on regions for the Committee of the Regions. Equally we would be content if not very much happened to the Committee of the Regions.

I am copying this letter to other members of ESG.

Yours

Andy

Andy Lebrecht

EXTENSION OF CO-DECISION TO AGRICULTURAL LEGISLATION

Note by the Department for Environment, Farming and Rural Affairs,

1. On 24 July, EP asked DEFRA to circulate a paper on the implications of extending co-decision to EU agricultural legislation (under Article 37 of the Treaty). This is a live issue in the Future of Europe discussion, the Convention Secretariat having raised the possibility of extending co-decision to all Council Acts adopted by qualified majority (QMV). The Common Agricultural Policy (CAP) and Common Fisheries Policy (CFP) are both at present subject to QMV but covered by the consultation procedure. The arguments about extension of co-decision would be much the same in both areas.

Present Position

2. Co-decision in agriculture would give considerable extra power to the European Parliament in an area involving major expenditure. Under the present consultation procedure, the Council is not obliged to adopt any recommendations from the Parliament. This has proved helpful to the achievement of UK policy objectives – the Parliament has been heavily influenced by its agriculture and fisheries committees who have traditionally been dominated by producer interests. Other Committees have made little effort to counter the producer bias in agriculture; and the EP's stance has in consequence been conservative and protectionist.

3. The latest report by the Agriculture Committee on CAP Reform (issued in May 2002) is typical. It rejects a scaling down of agricultural expenditure and makes clear that, in its view, the main objective of the Mid Term Review (MTR) should be to protect employment in agriculture and safeguard farmers' incomes. It proposes that external protection for agriculture should be subject to social and environmental conditions to be negotiated with our trading partners. It underestimates the WTO implications.

What would be the implications of extending co-decision to Article 37

4. All CAP and CFP legislation (other than that affecting health which is already subject to co-decision) is based on Article 37 of the Treaty, virtually all is made in the form of directly applicable Regulations. Broadly the Common Agricultural Policy comprises:

(a) market support regimes which regulate market price and supply. Key elements, including support measures and levels, are enshrined in the Council regulations. Day to day market management is delegated to Management Committees. Some of this is commercially sensitive and frequently needs very rapid decisions;

(b) direct payment regimes. The structure, levels and allocations of direct payments are enshrined in the market support Council legislation, supplemented by horizontal rules in a separate Council regulation affecting all direct payments. Detailed rules are dealt with in Management Committees;

(c) rural development: there is a framework Council regulation, with detailed rules decided through Management Committee procedure;

(d) veterinary and phytosanitary legislation not having an impact on public health. There is a wide range of Council legislation, supported by Commission legislation decided through regulatory committees. This often requires urgent decision taking, eg responding to outbreaks of infectious disease;

5. In the past, a key argument against granting co-decision over agriculture has been the need for time-sensitive Council decisions governing market management, for example in the annual price-fixing. This concern has diminished in recent years, as the emphasis has moved away from annual price fixing and more market management powers have shifted to comitology procedures. But it has not disappeared. Markets remain prone to disruption – for example following the BSE crisis in Autumn/Winter 2000 – creating a requirement for Council measures to be taken relatively quickly in order to contain expenditure or calm the markets. Even under present arrangements, speed is not easily achieved and co-decision would make this more difficult. Similar considerations in respect of the need for timely reactions can apply to the management of fisheries stocks under the CFP.

6. Despite the changes, the Agriculture and Fisheries Councils adopted some 54 Regulations last year. Applying co-decision to this body of legislation would create a significant additional burden for the Council itself and for the Council machinery, especially COREPER, at a time when it will also be coping with the impact of enlargement. There must be a real risk to the Community's ability to act effectively in this area.

7. A further – and for the UK the principal – concern is that applying co-decision to agricultural and fisheries legislation would make the achievement of CAP and CFP reforms considerably more difficult. Securing reform of the €45 billion a year CAP has always been a slow and costly process due to the power the farm lobby and other vested interests exercise through the Council. Most CAP negotiations – by their nature – involve decisions about allocating or re-distributing significant financial sums. They therefore offer an opportunity to the anti-reformers to extract potentially expensive concessions as the price for agreeing change. Co-decision would hand the anti-reformers an additional tool for preventing change, or for ensuring that change was only secured at a

(b) direct payment regimes. The structure, levels and allocations of direct payments are enshrined in the market support Council legislation, supplemented by horizontal rules in a separate Council regulation affecting all direct payments. Detailed rules are dealt with in Management Committees;

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higher price. UK policy interests would be significantly damaged. The likely outcome would not just be a more costly CAP, but also a more anti-economic CAP focusing resources yet more onto smaller and subsidy-dependent farms.

8. Because CAP regulations directly determine expenditure, granting co-decision over agriculture would also call into question the "obligatory" status of CAP expenditure on market support and direct payments. This would hand a further tool to the Parliament to affect agricultural expenditure which, on the evidence of its approach to date, would conflict with UK interests.

9. There is of course an argument that, whatever the current positions taken by the European Parliament on agriculture, it would take a wider and more balanced view if it were given more power – the dynamics would change. There is little evidence to suggest that this will be the case; and some evidence to the contrary. For example it has inclined to protectionism in some areas (eg hormones) where it has co-decision powers. Enlargement is likely to add to the number of anti-reform MEPs and reinforce the Parliament conservative tendencies. And the experience of the US Congress on farm spending is not an encouraging precedent!

Arguments to use in resisting co-decision for Article 37

10. It is not easy to promote to MEPs a case against co-decision solely on the grounds that we expect it to damage UK policy goals. Nevertheless, the evidence of their anti-reform record significantly weakens the EP's case. The following elements can be drawn upon to defend resistance to co-decision for Article 37.

- co-decision does not apply in any area of Community policy involving major budgetary expenditure and budgetary transfers between member states. Applying it to the CAP would mean a major transfer of budgetary powers from the Council to the European Parliament which we do not consider appropriate at this time;

- the EP has a consistently poor record on the CAP of resisting change in the direction of liberalisation and budget discipline which are essential if the enlarged EU is to be a success. It needs to demonstrate a greater degree of responsibility in order to justify being given more power in this area;

- the volume of legislation made under Article 37 is so significant that co-decision could seize up the machinery, both for the EP and the Council. The model of co-decided framework legislation plus secondary legislation made through comitology committees is difficult to apply in agriculture so long as market management remains a

function of the CAP. The situation could change once the CAP is properly reformed.

- some Council legislation on both agriculture and fisheries is responding to short term management of the market or the state of fish stocks. This requires a relatively quick reaction. Co-decision would be inconsistent with this;

Might co-decision be more acceptable if we changed the Treaty Articles governing the CAP/CFP or changes the Council's and EP committees' remits?

11, The UK has considered in the past whether to seek to change the Treaty Articles governing the CAP, but has concluded that negotiating effort was better spent on securing reforms (which would not require Treaty change) in the Council. Clearly, radically changed Treaty provisions might eventually reduce the risks associated with applying co-decision. But the chances of securing significant change are slight: and the benefits would only arise once the CAP legislation itself had changed. The key to dealing with the risk is not to change the Treaty but the CAP itself.

12. Similarly it must be doubtful that widening the remit of the Council or EP committees would make a significant impact when faced with the weight of vested interests benefiting from different elements of the CAP.

Financial Control

13. The recent paper for the Convention suggested the removal of the distinction between obligatory (DO) and non-obligatory expenditure (DNO). Traditional CAP expenditure (eg market support) is currently classified as obligatory, and the major non-obligatory expenditure is on rural development. As things currently stand, the Council and Commission are not obliged to accept amendments proposed by the Parliament on obligatory agricultural expenditure, but the EP can have the final word on non-obligatory expenditure.

14. Agriculture is the one major area where total expenditure is closely defined by legislation, rather than within an overall financial envelope. Therefore discussions on co-decision and the classification of expenditure as compulsory/non-compulsory (DO/DNO) are interdependent. If we grant co-decision on agricultural legislation, then it is difficult to see how we could maintain CAP expenditure as compulsory. This result would leave the Council very little power, with the financial perspectives (FP) providing the only real constraint.

15. At present, however, the FP would not act as a constraint as there is a significant margin between the budget and the FP ceiling. In the absence of any further controls, there would thus be a tendency for the overall EU budget to reach the FP ceilings in each year. In the event that expenditure might

breach the FP, the budget discipline regulation states that the three institutions shall use their powers to ensure that ceilings are complied with. If the EP has the final say over expenditure, it could force the Council to compromise on agriculture policy so that the FP can be respected.

16. It is difficult to assess to what extent co-decision and more influence over the budget might make the EP more responsible regarding agricultural expenditure. As indicated above, there are strong reasons to be sceptical. It would depend, to an extent, on the balance between the Agriculture and Budget committees. We have little evidence to suggest that the change would provide a positive outcome regarding agricultural policy in the long-term. What is necessary is a device which attracts a wider EP audience to the agriculture debate.

17. It is possible to consider some solutions which provide for co-decision but which limit the potential negative effects for agriculture. For example, an inter-institutional agreement could provide a stricter budgetary framework than at present, by, for example, building in significant reductions in agricultural expenditure. Alternatively if spending threatened to breach the FP, the Council could be given the sole power to make legislative changes in order to provide savings. But that would be presentationally difficult to put to the EP in the context of the Convention.

Article 300

18. In addition to the above considerations, the debate on extending co-decision to all acts adopted by QMV occasions an important concern on environment policy. It would impact on the ratification of Multilateral Environmental Agreements, on which the Council acts by QMV as a general rule. Extending co-decision to Article 300-based instruments would allow the European Parliament considerable influence over such issues as whether to conclude and sign a treaty, and its legal base. It could also cause significant political damage through introducing inevitable delay to the ratification process.

Conclusion

19. Extension of co-decision over agriculture and fisheries (and environment) would strengthen the hand of anti-reform forces and result in more costly and less economically and environmentally rational common policies.. It would slow the decision making process, and add significantly to the pressures on COREPER and the Council itself. Agriculture would be the first major spending area to be covered by co-decision (the structural funds, for example, are not). If it followed that the major CAP expenditure was no longer compulsory, this would leave the Council very little influence, and the only real constraint on expenditure would be that provided by the financial perspectives.

20. For all the above reasons, granting co-decision over article 37 legislation would not be consistent with UK agriculture and fisheries policy interests.

EUIP Directorate
19 September 2002

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MATRIX - for eu-future -

E

the european convention

The Secretary General

Brussels, 10 February 2003

Sir Stephen Wall KCMG
Cabinet Office
LONDON

Dear Stephen,

When we talked yesterday, I mentioned the speech which Giscard will make in Washington tomorrow, and promised to send you a text. It may reassure anyone tempted to believe the thesis in the Times leader that last week's draft Articles prove that he envisages a federalist Constitution.

Yours ever,

John Kerr

cc. Sir Nigel Sheinwald, KCMG
Kim Darroch Esq.

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E

the european convention

THE PRESIDENT

SPEECH ELEMENTS BY

Valéry GISCARD D'ESTAING

CHAIRMAN OF THE EUROPEAN CONVENTION

"THE HENRY KISSINGER LECTURE"

Library of Congress - Washington

11th February 2003

Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort

People, states or continents face, at certain times in their history, crucial decisions. They stand at crossroads. When they rise to the challenge, they make history. When they don't, they miss an opportunity which may not necessarily recur.

The Philadelphia Convention (1787) was such a determining moment in American history. The 13 newly independent founding states of the United States of America were economically weak, internally divided, only 4 million strong, and still exposed to external threats. The success of their Convention was by no means guaranteed. Could they have foreseen that the United States they created would come to play a major role - let alone the dominant role - in world affairs? Could they have foreseen that their personal triumph would still evoke admiration across the world, that "Founding Brothers" or David Maculloch's great biography of Adams would still today fascinate scholars and statesmen alike, and not only in America?

Today, the European Union is also at a major crossroads in its history. It has already made tremendous strides. Western Europe has enjoyed an unprecedented half-century of peace and prosperity, and knows it owes it to the bonds forged by European integration. The Single Market is an emerging reality. The latest achievement, the introduction of the common currency, the Euro, is a success. New coins and notes are, since the beginning of 2002, in the hands of most of European citizens.

Nevertheless, and partly as the result of its success, the European Union now stands at a crossroads, not wholly unlike that of Philadelphia 1787.

It faces a triple challenge:

i) First, the Union is about to complete the most important enlargement of its history. Ten new Member States from Central and Eastern Europe will have joined the European Union by 2004. At last - after decades of confrontation and war, after the fall of the Berlin wall, after the implosion of the Soviet Union, after the explosion of democratic freedom in the former Warsaw Pact, Europe has, for the first time in history, the opportunity to unite in peace. Unification by force of arms has often been attempted, and always, inevitably, failed. But unification by consent, by the free will of states and peoples, will be the basis of Europe's political and economic future.

ii) Second, in a rapidly changing, evermore globalised world, the Union has to define the role it wishes to play on the international scene in coming decades. In economic terms, Europe already is an important global player: the joint GDP of the 15 European Union Member States, at some 9 thousand billion USD, is close to that of the US. But politically, today's Europe is weak, too weak to be an effective ally, too divided to match words with deeds in effective global defence of its values and principles: human dignity, human rights, tolerance and respect for international law. I shall argue today that a stronger, more united, Europe would be a much more valuable partner and ally for the United States of America.

iii) Finally, decision-making in the European Union has, over the last decade, become much too complex, and obscure. Governments and people don't sufficiently understand, or trust, the processes. And they don't work well. The machinery was designed for an economic community of six Member States. Today, our task is to organise a political union of 25 Member States, and more than 450 million people. It will have to be able in

coming years to take decisions on a broad range of issues on which the Member States will be better able to advance the interests of their citizens by acting together. Of course we must, and shall, respect the centuries-old history of the European states, their cultural and linguistic diversity. But the process of their joint decision-making has to be simpler, more effective, better understood, more democratically legitimate.

Of course, to compare the situation of the European Union at the beginning of the 21st century with the situation the Founding Fathers faced at the end of the 18th century is facile and misleading. Our aims are not as grand as theirs: we are not building a nation. But in some ways our task is trickier, because we are a Europe of many nations, and with strikingly disparate dimensions, territorial and demographic, wealth, and living standards.

Consider the following facts:

- In the future European Union of 25 Member States, the most populated Member State is more populated that the most populated State of the USA, and the smallest is less populated than the least populated State of the USA.

- The six biggest Member States, each with more than 40 million inhabitants - Germany, France, the United Kingdom, Italy, Spain and Poland - will account for 74% of the European population, and 85% of its GNP.

- Eight more Member States, with between 8 and 16 million inhabitants, will together represent 19% of the European population. I refer to the Netherlands, Greece, Portugal, Belgium, the Czech Republic, Hungary, Sweden and Austria.

- The eleven remaining Member States - Slovakia, Denmark, Finland, Ireland, Lithuania, Latvia, Slovenia, Estonia, Cyprus, Luxembourg and Malta - will account for only 7% of the population.

So it is not easy to find the right balance between two major demands:

- equality between citizens, in accordance with the fundamental democratic principle of one man, one vote; and
- equality of rights between Member States - and, remember, these are nation-states, proud of their history and their independence, whether long-standing or newly regained.

This difficulty brings us back to the basic question of the nature of the Union.

- Is the European Union a federation, or at least developing into a federation?
- or is the European Union a confederation of Member States, and likely to remain such?

The issue is one which arose here too, and tragically was not finally settled in 1787. It took a terrible Civil War to settle it.

I don't think we will finally settle it for Europe in our Convention. But let me quickly add that nor do I predict a civil war.

There is a paradox worth noting.

The creation of a Federation has, wherever undertaken in the past, as for example in the US, started with the pooling of certain key aspects of sovereignty: foreign policy and defence; justice at federal level; and to finance them a federal budget financed by federal taxes. Such federal powers are given to a strong central executive, democratically elected on the basis of one man, one vote. The Member States, responsible for all remaining areas of public life, tend to be represented at the centre in a Senate, where - as here - all States, whatever their population disparities, have equal weight.

Alexis de Tocqueville wrote in "Democracy in America", "*The first question which awaited the Americans was so to divide the sovereignty that each of the different states which composed the Union should continue to govern itself in all that concerned its internal prosperity, while the entire nation, represented by the Union, should continue to form a compact body and to provide for all general exigencies*". A correct description of the classical approach.

The development of the European Union follows almost exactly the opposite approach. European Union Member States have continued to exercise the classical sovereign powers in foreign policy and defence, while the Union was empowered to work for economic integration, first with a common market and now with the introduction of a common currency, but still with no sign of a common fiscal system.

When we look at it from this angle, from the angle of Powers not the angle of Institutions, it is evident that the Union is - and will remain for some time to come - a mixed system. Europe's answer to the question "federation" or "confederation" ? is the acknowledgement that the Union is a unique construct, which borrows from both models. The Convention will not change that answer: rather it will formalise it in Constitutional provisions.

The first article of the current draft of our Constitution will describe this very specific nature of the Union in the following way:

> *"Article 1: Establishment of the Union*
>
> *1. Reflecting the will of the peoples and the States of Europe to build a common future, this Constitution establishes a Union [entitled...], within which the policies of the Member States shall be coordinated, and which shall administer certain common competences on a federal basis."*

In this system, the three components of our unique institutional triangle - the Council of Ministers, the European Parliament and the European Commission - all need to be strengthened to match the challenges of the Union's Enlargement and its additional tasks. And this is not a zero sum game. We are not talking about a hierarchy, about the subordination of one institution to another: we are talking about balance.

What then is our aim? We need a constitution which

- makes decision-making simpler, while maintaining institutional balance;
- weaves together the intergovernmental and the federal strands, suppressing neither;
- pulls the different treaties into a single coherent text, transparent and readable, so that people can better understand, and better identify with, their Union.

We have much to learn from the clear prose which flowed from the Philadelphia pens.

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SUBJECT MASTER FAXED
EP
Filed: Pt 10.

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

7 February 2003

Dear Jonathan,

FUTURE OF EUROPE: SWEDISH VIEWS

At the end of his conversation with the Prime Minister on Iraq on 7 February (recorded separately), Persson raised the Convention on the future of Europe.

Persson thought that the Prime Minister had shifted position on three or four issues, for instance agreeing to convergence criteria for defence expenditure. UK policy was becoming hard to read, and too federal for Persson! This was extremely worrying. The Prime Minister assured him that there was no overall shift in our policy, and said that Stephen Wall would talk the issues through with his opposite number. Persson welcomed this.

Comment: Stephen Wall will pursue.

I am copying this letter to John Grant (Stockholm) and Sir Nigel Sheinwald (UKRep Brussels).

Yours,

Matthew Rycroft

MATTHEW RYCROFT

Jonathan Sinclair
FCO

RESTRICTED

file-revised copy.

From: Stephen Wall
Date: 7 February 2003

PRIME MINISTER

cc: Jonathan Powell
Alastair Campbell
Sally Morgan
Jeremy Heywood
Roger Liddle
Matthew Rycroft
Steven Morris
Rachel Cowburn
Sir Andrew Turnbull
Sir Nigel Sheinwald
Martin Donnelly

THE CONVENTION: LETTER TO GISCARD

As you know, the first 16 draft articles for Giscard's new EU constitution were presented to the Convention on Thursday (attached). The articles cover Titles I (Definition and objectives of the Union), II (Fundamental Rights and citizenship) and III (Competences).

Good

- Explicit statement that "competences not conferred upon the Union by the Constitution remain with the Member States" (Article 8(2);

- Reference to a Protocol on subsidiarity (not yet finalised) which allows for national parliaments to ensure compliance (Article 9(2));

Bad

- An overall political, if not legal, sense that all powers from the Union to the member states and not the other way round. Powers to the EU are conferred by the Constitution, rather than by the member states. The constitution talks only of common competences to be administered on a federal basis, or Member State policies which must be co-ordinated;

- What seems to be a wholly new basis for EU membership based not simply on states complying with certain obligations but on the pro-active commitment of their people. This suggests a political correctness test i.e. 70% of the people are in favour of joining fine, it it's closer to 50% then not. (Article 3.1);

- A move to make the Charter an "integral part of the Constitution", which may be incorporated lock, stock and barrel into the text of the Treaty (bad) or as a Protocol (better) (Article 5);

- An explicit statement that the Union shall have competence to co-ordinate the economic policies of the Member States, and that the Member States shall conduct their economic policies in such a way that will contribute to the achievement of the objectives of the Union;

- An explicit statement that the Union shall have competence to define and implement a common foreign and security policy, which the member states shall actively and unreservedly support in a spirit of loyalty and mutual solidarity. Although much of this is drawn from the existing Treaty, its

generalised scope and use of the word "competence" risks giving the Union much greater power in the new, unified Treaty structure, where the Union has an explicit single legal personality;

- Wacky elements such as the Union having an objective "to explore space" and ensure "solidarity between the generations."

The most troubling thing for many at the Convention is that this draft does not properly reflect the final reports of the relevant working groups. It is clear that integrationists within the Praesidium – Dehaene, Amato, the Commission – have unpicked the relevant working group conclusions. Gisela Stuart has done her best, but it has been an unequal contest.

We now have a week in which to submit written comments to the Praesidium before the draft text is debated at the 27 and 28 February Plenary. We will seek to forge a common approach with the French, Spanish and others. But we will make it clear that this sort of document would simply not be a basis for a consensus outcome to the Convention.

As discussed at your meeting on 5 February, it would be helpful if you were able to write to Giscard, making clear your disappointment with this draft and following up one or two points from your lunch. I attach a draft.

STEPHEN WALL

10 DOWNING STREET
LONDON SW1A 2AA
020 7930 4433

THE PRIME MINISTER

Thank you for coming to London recently: it was good to see you again.

I thought you might find it helpful, following our lunch, to have written confirmation of my thoughts on some of the key issues in the Convention.

As you know, I regard the work of the Convention as extremely important. We have the opportunity to shape the way the European Union works for a generation. It will have a tremendous impact on public opinion across Europe, including in this country. I hope the constitution that emerges from the Convention will persuade the doubters that Britain's best interests really do lie in being at the heart of a strong and integrated European Union.

That is why I hope I will be able to endorse the Convention outcome at Thessaloniki as a good basis for discussion at the Intergovernmental Conference. But, as I explained over lunch, there are certain proposals in the Convention which, if adopted, would make it very difficult for me to do this.

We have been pleased with the final reports of the different working groups. I know that these often represent hard-won compromises that have enabled the groups to present a consensual outcome.

Against this background, I was disappointed with the first set of draft Treaty articles which were published last week. In this crucial first part of the constitution, there is a suggestion that the balance is very much in favour of a Union which naturally holds most competences, which are sometimes devolved to the Member States, rather than the other way around. The fact that the European Union is founded on the Member States must be recognised clearly on the face of the Treaty.

As it is, the exclusive competences of the Union are drawn very widely. And the clauses which give the Union "competence to coordinate the economic policies of the member states" or "to define and implement a common foreign and security policy" need to be more narrowly defined to avoid any suggestion that the Union has autonomous authority in those areas. We agreed when we first discussed these issues that the present legal status of the Union Common Foreign and Security Policy must be preserved in the new Treaty, albeit within a unified structure. That remains a crucial point for me.

A further problem is majority voting on tax issues, upon which I offered to reflect at our lunch. I am afraid I have no room for manoeuvre here. This Government was elected on a manifesto commitment not to see QMV extended in this area. Furthermore, it is entirely feasible that a single currency zone should be able to tolerate, or even benefit from, with tax competition within it.

As you and I have discussed, greater integration depends upon people seeing it clearly recognised that the Union remains a Union of states, as well as of people, and that sovereignty flows from the member states to the Union, not

the other way round. Is that what is meant by a federal basis? The early drafts suggest that the word federal means what many fear: that the Union delegates downwards on the basis of inherent powers. So this Constitution would represent a significant shift in the institutional balance. If this is not remedied then I fear a long IGC following an inconclusive Convention. That is not what I want.

M. le Président Valéry Giscard d'Estaing

THE EUROPEAN CONVENTION
THE SECRETARIAT

Brussels, 6 February 2003
(OR. fr/en)

CONV 528/03

NOTE

from :	Praesidium
to :	Convention
Subject :	**Draft of Articles 1 to 16 of the Constitutional Treaty**

Members of the Convention will find in Annex I a draft of Articles 1 to 16 (Titles I, II and III) as proposed by the Praesidium, and in Annex 2 an explanatory note.

These Articles generally correspond to the description given in the document containing the draft structure for the Constitutional Treaty (CONV 369/02). A few minor changes have been made to the numbering to take account of the debate in the Convention. The draft texts given here reflect the reports of the Working Groups on Legal Personality, the Charter, Economic Governance, Complementary Competencies, the Principle of Subsidiarity and External Action, as well as the guidelines that emerged on the basis of their recommendations during the plenary debate.

DRAFT TEXT
OF THE ARTICLES OF THE TREATY
ESTABLISHING A CONSTITUTION FOR EUROPE

TITLE I: Definition and objectives of the Union

Article 1: Establishment of the Union

1. Reflecting the will of the peoples and the States of Europe to build a common future, this Constitution establishes a Union [entitled …], within which the policies of the Member States shall be coordinated, and which shall administer certain common competences on a federal basis.

2. The Union shall respect the national identities of its Member States.

3. The Union shall be open to all European States whose peoples share the same values, respect them and are committed to promoting them together.

Article 2: The Union's values

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.

Article 3: The Union's objectives

1. The Union's aim is to promote peace, its values and the well-being of its peoples.

2. The Union shall work for a Europe of sustainable development based on balanced economic growth and social justice, with a free single market, and economic and monetary union, aiming at full employment and generating high levels of competitiveness and living standards. It shall promote economic and social cohesion, equality between women and men, and environmental

and social protection, and shall develop scientific and technological advance including the discovery of space. It shall encourage solidarity between generations and between States, and equal opportunities for all.

3. The Union shall constitute an area of freedom, security and justice, in which its shared values are developed and the richness of its cultural diversity is respected.

4. In defending Europe's independence and interests, the Union shall seek to advance its values in the wider world. It shall contribute to the sustainable development of the earth, solidarity and mutual respect among peoples, eradication of poverty and protection of children's rights, strict observance of internationally accepted legal commitments, and peace between States.

5. These objectives shall be pursued by appropriate means, depending on the extent to which the relevant competences are attributed to the Union by this Constitution.

Article 4: Legal personality

The Union shall have legal personality.

TITLE II: Fundamental rights and citizenship of the Union

Article 5: Fundamental rights

1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out [in the second part of/in a Protocol annexed to] this Constitution. [1]

2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.

---

[1] [The full text of the Charter, with all the drafting adjustments given in Working Group II's final report (CONV 354/02) will be set out either in a second part of the Constitution or in a Protocol annexed thereto, as the Convention decides.]

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Article 6: Non-discrimination on grounds of nationality

In the field of application of this Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

Article 7: Citizenship of the Union

1. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship; it shall not replace it. All citizens of the Union, women and men, shall be equal before the law.

2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in this Constitution. They shall have:

   - the right to move and reside freely within the territory of the Member States;
   - the right to vote and to stand as a candidate in elections to the European Parliament and in municipal elections in their Member State of residence under the same conditions as nationals of that State;
   - the right to enjoy, in the territory of a third country in which the Member State of which they are a national is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;
   - the right to petition the European Parliament, to apply to the Ombudsman, and to write to the institutions and advisory bodies of the Union in any of the Union's languages and to obtain a reply in the same language.

3. These rights shall be exercised in accordance with the conditions and limits defined by this Constitution and by the measures adopted to give it effect.

TITLE III: The Union's competences

Article 8: Fundamental principles

1. The limits and use of Union competences are governed by the principles of conferral, subsidiarity, proportionality and loyal cooperation.

2. In accordance with the principle of conferral, the Union shall act within the limits of the competences conferred upon it by the Constitution to attain the objectives the Constitution sets out. Competences not conferred upon the Union by the Constitution remain with the Member States.

3. In accordance with the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

4. In accordance with the principle of proportionality, the scope and form of Union action shall not exceed what is necessary to achieve the objectives of the Constitution.

5. In accordance with the principle of loyal cooperation, the Union and the Member States shall, in full mutual respect, assist each other to carry out tasks which flow from the Constitution.

Article 9: Application of fundamental principles

1. The Constitution, and law adopted by the Union Institutions in exercising competences conferred on it by the Constitution, shall have primacy over the law of the Member States.

2. In exercising the Union's non-exclusive competences, the Institutions shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Constitution. The procedure set out in the Protocol shall enable national parliaments to ensure compliance with the principle of subsidiarity. [1]

3. In exercising the Union's competences, the Institutions shall apply the principle of proportionality as laid down in the same Protocol.

4. Member States shall take all appropriate measures, general or particular, to ensure fulfilment of the obligations flowing from the Constitution or resulting from actions taken by the Union Institutions.

5. In accordance with the principle of loyal cooperation, Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the objectives set out in the Constitution. The Union shall act loyally towards the Member States.

6. The Union shall respect the national identities of its Member States, inherent in their fundamental structures and essential State functions, especially their political and constitutional structure, including the organisation of public administration at national, regional and local level.

Article 10: Categories of competence

1. When the Constitution confers on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union.

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2. When the Constitution confers on the Union a competence shared with the Member States in a specific area, the Union and the Member States shall have the power to legislate and adopt legally binding acts in this area. The Member States shall exercise their competence only if and to the extent that the Union has not exercised its.

3. The Union shall have competence to coordinate the economic policies of the Member States.

4. The Union shall have competence to define and implement a common foreign and security policy, including the progressive framing of a common defence policy.

5. In certain areas and in the conditions laid down in the Constitution, the Union shall have competence to carry out actions to coordinate, supplement or support the actions of the Member States, without thereby superseding their competence in these areas.

6. The Union shall exercise its competences to implement the policies defined in Part Two of the Constitution in accordance with the provisions specific to each area which are there set out.

Article 11: Exclusive competences

1. The Union shall have exclusive competence to ensure the free movement of persons, goods, services and capital, and establish competition rules, within the internal market, and in the following areas:

   – customs union,
   – common commercial policy,
   – monetary policy for the Member States who have adopted the euro,
   – the conservation of marine biological resources under the common fisheries policy.

2. The Union shall have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union, is necessary to enable the Union to exercise its competence internally, or affects an internal Union act.

Article 12: Shared competences

1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles 11 and 15 .

2. The scope of shared competences is determined by the provisions of Part Two.

3. Where the Union has not exercised or ceases to exercise its competence in an area of shared competence, the Member States may exercise theirs.

4. Shared competence applies in the following principal areas:

- internal market
- area of freedom, security and justice
- agriculture and fisheries
- transport
- trans-European networks
- energy
- social policy
- economic and social cohesion
- environment
- public health, and
- consumer protection.

5. In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to implement programmes; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.

6. In the areas of development cooperation and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.

Article 13: The coordination of economic policies

1. The Union shall coordinate the economic policies of the Member States, in particular by establishing broad guidelines for these policies.

2. The Member States shall conduct their economic policies, taking account of the common interest, so as to contribute to the achievement of the objectives of the Union.

3. Specific provisions shall apply to those Member States which have adopted the euro.

Article 14: The common foreign and security policy

1. Member States shall actively and unreservedly support the Union's common foreign and security policy in a spirit of loyalty and mutual solidarity. They shall refrain from action contrary to the Union's interests or likely to undermine its effectiveness.

Article 15: Areas for supporting action

1. The Union may take coordinating, complementary or supporting action. The scope of this competence is determined by the provisions of Part Two.

2. The areas for supporting action are:
   - employment
   - industry
   - education, vocational training and youth
   - culture
   - sport
   - protection against disasters.

3. The Member States shall coordinate their national employment policies within the Union.

4. Legally binding acts adopted by the Union on the basis of the provisions specific to these areas in Part Two cannot entail harmonisation of Member States' laws or regulations.

Article 16: Flexibility clause

1. If action by the Union should prove necessary within the framework of the policies defined in Part Two to attain one of the objectives set by this Constitution, and the Constitution has not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the assent of the European Parliament, shall take the appropriate measures.

2. Using the procedure for monitoring the subsidiarity principle referred to in Article 9, the Commission shall draw Member States' national parliaments' attention to proposals based on this Article.

3. Provisions adopted on the basis of this Article may not entail harmonisation of Member States' laws or regulations in cases where the Constitution excludes such harmonisation.

EXPLANATORY NOTE

TITLES I and II

Article 1:

This Article establishes the Union and describes its fundamental characteristics. In response to requests made at the plenary, the wording proposed is designed to adequately express the dual dimension of a Union of States and of peoples of Europe in terms appropriate to a Constitutional Treaty.

Because of its fundamental political importance, it was deemed advisable to emphasise in Article 1 the Union's respect for the national identity of its Member States; Article 9(6) then lists certain features of national identity which more specifically require respect in the legal sense when the Union is exercising its competences.

It also seems appropriate already to list the conditions for membership of the Union in Article 1, although the procedures for accession of new Member States, suspension of rights and withdrawal from the Union would be dealt with in more detail in Title X.

Article 2

This Article concentrates on the essentials – a short list of fundamental European values. Further justification for this is that a manifest risk of serious breach of one of those values by a Member State would be sufficient to initiate the procedure for alerting and sanctioning the Member State (see Article 45 of the preliminary draft Treaty which would incorporate the mechanism set out in Article 7 TEU), even if the breach took place in the field of the Member State's autonomous action (not affected by Union law). This Article can thus only contain a hard core of values meeting two criteria at once: on the one hand, they must be so fundamental that they lie at the very heart of a peaceful society practising tolerance, justice and solidarity; on the other hand, they must have a clear non-controversial legal basis so that the Member States can discern the obligations resulting therefrom which are subject to sanction.

That does not, of course, prevent the Constitution from mentioning additional, more detailed elements which are part of the Union's "ethic" in other places, such as, for instance, in the Preamble, in Article 3 on the general objectives of the Union, in the Charter of Fundamental Rights (which, unlike this Article, does not, however, apply to autonomous action by the Member States), in Title VI on "The democratic life of the Union" and in the provisions enshrining the specific objectives of the various policies.

Article 3

The philosophy of this Article is to set out the *general* objectives justifying the very existence of the Union and its action for its citizens in a more cross-sectoral fashion and not to list the specific objectives pursued by the various policies of the Union which are to be found in Part Two of the Treaty.

The fundamental difference between this Article and Article 2 therefore needs to be emphasised: while Article 2 enshrines the basic values which make the peoples of Europe feel part of the same "union", Article 3 sets out the main aims justifying the creation of the Union for the exercise of certain powers in common at European level.

Article 4

In accordance with the recommendation from Working Group III (CONV 305/02), this Article confers legal personality on the Union.

An Article on the Union's legal capacity (see Article 282 TEC), given its highly technical nature, should appear in Part Two of the Constitutional Treaty.

Article 5:

The text proposed reflects two central recommendations by Working Group II (CONV 354/02), on the one hand to incorporate in the Constitution the Charter of Fundamental Rights so that it has constitutional status and is legally binding and, on the other hand, to enable the Union to accede to the European Convention on Human Rights.

As to the technique for incorporating the Charter, the fact that the complete text (with all the drafting adjustments mentioned in the Working Group's final report) will appear either in a separate second part of the Constitution or as a Protocol annexed to it will safeguard its fully binding legal nature and allow the general rules concerning future amendments of the Constitution to be applied to the Charter. Moreover, that technique will also keep the structure of the Charter intact and avoid making the first part of the Constitution more lengthy. At the same time, the reference to the Charter in the first few articles of the Constitution will underline its constitutional status.

The legal basis in paragraph 2 enabling the Union to accede to the ECHR also expressly provides that accession must not affect the division of competences between the Union and the Member States, in line with a recommendation from Working Group II. Only the European Convention on Human Rights is mentioned in this paragraph because of the fact that a Court of Justice opinion in 1996 had rejected Community competence to accede to that Convention on the basis of considerations specific to it. This paragraph is not therefore intended to rule out the possibility of Union accession to other international conventions relating to human rights on the basis of the competences conferred in Part Two of the Treaty.

Paragraph 3 draws on Article 6(2) TEU as it now stands and is intended to indicate clearly that, in addition to the Charter, Union law recognises additional fundamental rights as general principles resulting from two sources – the European Convention on Human Rights on the one hand and the constitutional traditions common to the Member States on the other. As stressed by various members of the Convention in Working Group II (see pages 9 and 10 of the final report, CONV 354/02) and at the plenary, the usefulness of this provision is to make clear that incorporation of the Charter does not prevent the Court of Justice from drawing on those two sources to recognise additional fundamental rights which might emerge from any future developments in the ECHR and common constitutional traditions. That is in line with classic constitutional doctrine which never interprets the catalogues of fundamental rights in constitutions as being exhaustive, thus permitting the development, through case-law, of additional rights as society changes.

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Article 6

This Article takes over unchanged the prohibition on all discrimination on grounds of nationality, which is currently enshrined in Article 12 TEC. In line with the structure of the current EC Treaty and of the Charter, this prohibition is here placed in a separate Article rather than forming part of the provision on citizenship of the Union. Because of its fundamental importance for the development of Union law, this provision must be placed in Part One of the Constitution. The legal basis for rules prohibiting discrimination on grounds of nationality (see second paragraph of Article 12 of the current TEC) would be placed in Part Two of the Treaty, as would the current Article 13 TEC, which creates a legal basis for combating certain other forms of discrimination.

Article 7

The definition of citizenship of the Union in paragraph 1 follows that given in the current EC Treaty. This paragraph also establishes the principle of equality between all European citizens.

The citizens' rights listed in paragraph 2 include all those currently appearing in the "citizenship" part of the EC Treaty. The right of access to documents of the institutions, at present established in Article 255 of the TEC, would be placed in the Titles on "the democratic life of the Union" or "Union institutions" of the Constitutional Treaty. This could also be the case for the right to good administration established by the Charter (Article 41), since the Charter grants that right to "every person".

More detailed provisions and the legal bases relating to the definition of the conditions for and limits on the exercise of those rights (see Article 18(2); the second sentences of Article 19(1) and (2); the second sentence of Article 20; Article 194 and Article 195 TEC) would appear in Part Two of the Treaty. The same would apply to the provision of the current Article 22 TEC concerning the possible subsequent development of citizens' rights.

TITLE III: The Union's competences

1. The Nice European Council called on the Convention to consider **"how to establish and monitor a more precise delimitation of powers between the European Union and the Member States, reflecting the principle of subsidiarity"**. More specifically, the Laeken European Council called on the Convention to consider **"how the division of competence can be made more transparent", "whether there needs to be any reorganisation of competence"** and **"how to ensure that a redefined division of competence"** is maintained and **"ensure at the same time that the European dynamic does not come to a halt"**.

2. These questions have been discussed in plenary sessions and in Working Groups. On the basis of those discussions, the Praesidium has drawn up a draft text of articles the aim of which is, inter alia, to:

   (a) Define clearly the fundamental principles governing the limits of the competences between the Union and the Member States and the way in which the Union's competences are to be used (as well as the rules for applying those principles).

   (b) Determine the different categories of the Union's competences. The key factor in establishing those categories is the extent of the legislative competence conferrred on the Union in relation to that of the Member States, according to whether such competence is conferred on the Union alone (exclusive competence) or shared between the Union and the Member States (shared competence), or whether it continues to lie with the Member States (areas for supporting action).

   (c) Indicate the areas covered by each category of competences. The lists of areas of shared competence are not exhaustive, which takes account of the the Convention's wish not to establish a fixed catalogue of competences. The reference in Article 12 to "principal areas" avoids having to define in detail each area of shared competence. The exact definition, and the extent of each area, are determined by the relevant provisions of Part Two.

(d) In line with the wish of a large number of members of the Convention, include a provision introducing a measure of flexibility in order to enable the Union to react in unforeseen circumstances. But that flexibility is restricted to the areas already specified in Part Two. The provision requires that the Member States' national parliaments be informed explicitly whenever the Commission proposes to use the flexibility clause.

3. In addition to these general remarks, the Praesidium wishes to draw the Convention's attention to the following points:

1. **Definition and application of the fundamental principles (Articles 8 and 9)**
   - Article 8 lists and defines, clearly and explicitly, the fundamental principles governing the limits and exercise of competences.
   - Article 9 contains certain rules for the application of those principles. The inclusion of a reference to the role of the national parliaments is intended to highlight their importance in monitoring the principle of subsidiarity, in accordance with the conclusions of the Working Group chaired by Mr Méndez de Vigo. The Praesidium's conclusions further to the plenary debate on the Working Group's recommendations will be incorporated in the Protocol on the application of the principles of subsidiarity and proportionality.
   - The existing principle according to which Member States implement European Union law is also incorporated in this Article.
   - Paragraph 6 on the Union's respect for national identities develops a principle set out in Article 1 of the Constitution.

2. **Categories of competence (Article 10)**
   - This Article lists and describes the different categories of the Union's competences, stating for each category what the consequences of the Union's exercise of its competences are for the competences of the Member States.
   - The common foreign and security policy and coordination of the Member States' economic policies are given separate paragraphs, in order to reflect the specific nature of the Union's competences in those areas.

3. **Exclusive competences (Article 11)**

- The list in paragraph 1 of the areas of the Constitution in which the Union has exclusive competence goes beyond the present situation, as it includes the entire common commercial policy. This reflects the conclusion of Mr Dehaene's Group that Article 133(6) of the Nice Treaty should be deleted.
- Paragraph 2 of this Article reflects the case law of the Court of Justice on the Union's exclusive competence to conclude international agreements.

4. **Shared competences (Article 12)**

- Areas in which there are shared competences are identified by their exclusion from the areas of exclusive competence and the areas for supporting action. The reference in paragraph 2 to Part Two of the Constitution is a link to the specific provisions of that Part determining the extent and intensity of Union competence in each area.
- The inclusion of energy in the list of areas of shared competence requires the creation of a specific legal basis for that area in Part Two of the Constitution as no such legal basis exists in the current Treaties (thus far acts relating to this area have been adopted on the basis of Article 308).
- The areas of development cooperation and research and technological development (and space) appear in separate paragraphs to indicate that even though the Union exercises its competence in these areas exhaustively, Member States still retain their competences. Despite the importance and scale of Union programmes for development aid and research the Constitution does not envisage the abolition of national programmes.

5. **The coordination of economic policies (Article 13)**

While, for those Member States which have adopted the euro, monetary policy falls within the exclusive competence of the Union, the economic policies of the Member States remain within the competence of the latter, in accordance with the conclusions of Mr Haensch's Working Group.

In this area Union competence consists in coordinating national policies. In view of the importance of such coordination the Praesidium considered that it merited a separate Article.

6. **<u>The common foreign and security policy</u> (Article 14)**

This Article seeks to identify Member States' specific obligations in exercising their competences in this area.

7. **<u>Areas for supporting action</u> (Article 15)**

– As in the case of shared competences, the reference to Part Two is to indicate that the extent and intensity of Union competence in each area are determined by the specific provisions of that Part and to ensure that there are no changes as compared with the current situation other than those expressly decided on by the Convention.

– The inclusion of "sport" and "protection against disasters" in the list of areas for supporting action follows on from the conclusions of Mr Christophersen's Group and involves the creation of a specific legal basis for those two areas in Part Two, given that there is no such basis in the current Treaties (thus far acts in the area of civil protection have been adopted on the basis of Article 308).

8. **<u>Flexibility clause</u> (Article 16)**

– In view of the Convention's desire to ensure that the implementation of this provision respects the limits of the competences conferred on the Union by the Constitution, paragraph 1 states that this provision may be used only "within the framework of the policies defined in Part Two".

– The procedure involving European Parliament assent is proposed (by way of derogation from the conclusions of Mr Amato's Group, which decided that codecision should be the general rule for the adoption of legislative acts and that assent should be reserved for the conclusion of international agreements) and also unanimity for the Council vote. The possibility of a qualified majority could be examined during the Convention's general debate on the question. This procedure is being proposed in order to restrict the use of this provision, while at the same time expediting matters when it is necessary to have recourse to it.

– Paragraph 2 follows up the proposals by Mr Mendez de Vigo's Group.

– Paragraph 3 seeks to introduce into the Constitution a limitation on the scope of the flexibility clause which reflects current Court of Justice case law.

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PRIME MINISTER'S MEETING ON THE CONVENTION, 5 FEBRUARY

CAST LIST: Prime Minister
Attorney General
Secretary of State for Wales
Minister for Europe
Baroness Scotland
Lord Tomlinson
Linda McAvan MEP
Stephen Wall
Kim Darroch

Chancellor of the Exchequer (tbc)

AGENDA:

1. Convention update: Peter Hain

2. Process: timing of draft Treaty; discussion by Heads of State and Government (Brussels, Thessaloniki); timing of the IGC;

3. The working group reports: Subsidiarity, the Charter, Legal Personality, National Parliaments, Competences, Economic Governance, External Action, Defence, Simplification, JHA, Social Europe;

4. The institutions: Council reform (including Chair of the European Council, Team Presidencies, Single Legislative Council); the Commission; and the European Parliament.

   Issues for the endgame.

5. Forming alliances. Contacts and lobbying.

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From: Stephen Wall
Date: 30 January 2003

PRIME MINISTER

cc: Jonathan Powell
Alastair Campbell
Sally Morgan
Jeremy Heywood
Roger Liddle
Matthew Rycroft
Steven Morris
Rachel Cowburn
Sir Andrew Turnbull
Sir Nigel Sheinwald
Martin Donnelly

YOUR MEETING ON THE CONVENTION ON THE FUTURE OF EUROPE: 5 FEBRUARY

You are chairing a second meeting of the key UK players on the Convention on the Future of Europe (cast list attached) on Wednesday. From the participants at the last meeting on 17 September, John Kerr, Nigel Sheinwald, Gisela Stuart (and, at time of writing, probably the Foreign Secretary) are unable to attend.

As previously noted, the Convention is now in the business of drafting the new Constitutional Treaty. The Praesidium still face a daunting task in seeking to assemble a text that can garner consensus in the Convention, is acceptable to the Member States, and is legally sound.

We are well placed on many of the key issues. As you discussed with Giscard (along with other Member States) we have our red lines, but on a number of issues which might have been difficult for us (JHA, Defence) we are close to the centre of gravity. You might use this meeting to give a political steer on some of

the difficult issues and how we handle them with our partners and in the Convention.

Item 1: Convention Update

You might begin the meeting by asking Peter Hain to give a brief update.

Item 2: Process: From here to the endgame

We might then briefly look at the timetable from here to the end of the IGC. A summary timeline is attached.

There is still a debate about the handling of the IGC. The Copenhagen European Council agreed that Giscard will present the new draft Constitutional Treaty to the 20/21 June European Council. Thereafter, the Italians are very keen to host a short, sharp IGC that begins and ends under their Presidency. We have no dogmatic objection to that, except that we want the new Member States to participate as equal players in the IGC (which ought not to be a problem) and we want the Swedes to win their Euro referendum on 14 September. Assuming that Persson rules out an early IGC on those grounds, it is likely that anything other than a Convention outcome which is 99% acceptable to member States would begin in October and end, at the earliest, in March - under the Irish Presidency. Do you agree that we should support Persson on this?

Item 3: The Convention Working Groups

You might go through the conclusions of the different working groups - you need not go into great detail, but it would be worth getting a sense of the overall picture

You might ask Kim Darroch for a brief summary of each and then turn to colleagues for additional comment as indicated below.

Subsidiarity: UK representative on the Working Group: Peter Hain

A good early gain for us. The working group recommended the establishment of an early warning mechanism, whereby national Parliaments will be able to rule on whether new EU legislation respects subsidiarity. We need to pin down the details of what will become a Protocol attached to the Treaty: notably on ensuring that the Commission is obliged to withdraw or amend proposals to which a reasonable number of Parliaments object. We also need to ensure that national Parliaments can object on the grounds of proportionality - i.e. that the legislation does not try to do more than its stated objective.

The draft Treaty text on this should emerge by the end of the week. You might underline (as you did with Giscard) the importance of getting a mechanism that will really make a difference. All members of the UK team should lobby hard on this. Gisela Stuart is already planning to submit a paper to the Praesidium with support from fellow Parliamentarians.

The Charter: UK representative on the Working Group: Baroness Scotland

You have written to Baroness Scotland to congratulate her on the results of this working group, which were much better than we might have expected. The report, skilfully drafted by Commissioner Vitorino, calls for the incorporation of the Charter into the Treaty, but suggests a number of amendments to the so-called horizontal clauses, which make it clear that the Charter informs citizens about existing rights in the Treaties, ECHR and national law, but does not itself create new competences for the EU. There is still a question mark over how the Charter would be incorporated: we would prefer putting the text of the Charter in a protocol attached to the Treaty.

At time of writing, the Attorney-General was studying these proposed amendments to see whether they met our concerns. You might invite him to summarise his conclusions.

Legal Personality: UK representative on the Working Group: Lord MacLennan

I submitted to you on legal personality in December. The Convention working group report calls for the Treaty to confer upon the Union a single, explicit legal personality. This represents the majority view in the Convention as a whole.

You agreed, on legal advice from the Attorney-General, that we should not oppose granting the EU legal personality per se, but that we should seek to limit the potential of such a move to restrict Member States' freedom to act. The danger is that granting the EU a single, explicit legal personality would give the Union (as opposed to the Community or the Member States) capacity to act in its

own right at international level. Where the Union exercised its powers to do this, e.g. by concluding international agreements, Member States' freedom to conclude bilateral agreements on similar subjects would be lost. This could, over time, have serious implications for our ability to continue to conduct an independent foreign policy.

We need, therefore, to ensure that we maintain unanimity in the Council for sensitive foreign policy decisions; maintain the exclusion of the ECJ in these areas; keep distinct instruments and procedures for CFSP; and more tightly define the powers and conditions under which the Union may act on the international stage.

David Owen has recently written to you about this: it has the potential to be a highly sensitive issue. FCO lawyers are working on these questions.

National Parliaments: UK Representative on the Working Group: Gisela Stuart

Not much to say about this group, which made some worthy, but unspectacular, recommendations on minimum standards for scrutiny in the EU and on improving the links between MPs and MEPs.

Competences: UK Representative on the Working Group: Lord Tomlinson

One of the most important issues in the Convention - how we define competences in the Treaty could determine the respective powers of the EU and the Member States for a generation. The Working Group report attempted to classify competences as either exclusive for the EU, shared between the EU and Member

States or restricted to where the EU can support the national policies of the Member States. The Praesidium should present their draft Treaty language on this at the Plenary on 6 and 7 February: you might stress how crucial it is that we get this ostensibly technical issue right.

Economic Governance: UK Representative on the Working Group: Linda McAvan MEP

At time of writing, the Chancellor had not confirmed his attendance at the meeting. The key issues for him here will be to QMV for tax and to prevent the Commission getting more powers in overseeing the Stability and Growth Pact. This is one area where we cannot rely on either French or German support, as they have explicitly called for progress on both our most difficult issues in a joint paper. As you know, Giscard too is keen to see more action in this area, as his lobbying of you at lunch (and partial summing up of the otherwise inconclusive Plenary debate) demonstrated.

External Action: UK Representative on the Working Group: Peter Hain

The most difficult issue for us here will be double-hatting the CFSP High Representative (Solana) and the External Relations Commissioner (Patten), and the call for more QMV in foreign policy decisions. The Franco-German paper called for both: the creation of an EU Foreign Minister, and for QMV in foreign policy to be the rule except for matters with defence or security implications.

We should continue to work with our allies on this – particularly Spain, Sweden, Ireland and Denmark. Tactically, we should continue to raise doubts about the double-hatted approach while working to define it to our satisfaction.

Defence: UK Representative on the Working Group: Gisela Stuart

The final report was not too bad for us and steered clear of controversial proposals for an EU territorial defence guarantee. We are close to the centre of gravity e.g. on an EU capabilities agency to encourage investment and plug gaps in our capabilities. Conclusion of Berlin Plus and the summit with the French have returned the focus to the imminent launch of ESDP, rather than future institutional fixes.

Simplification: UK Representative on the Working Group: Lord MacLennan

A raft of issues were tackled in this working group, ranging from the extension of QMV and co-decision, to the procedure for setting the EU budget, to the powers of the Commission over secondary legislation. We secured an agreement that QMV and co-decision will be looked at on a case by case basis.

You might signal that we cannot camp out on the status quo on all these issues, but must prioritise e.g. on tax.

Justice and Home Affairs: UK Representative on the Working Group: Baroness Scotland

Again, the UK close to the centre of gravity. Some wins for us in the working group report: QMV for asylum; mutual recognition as cornerstone of judicial co operation. But work still to be done on where QMV should apply– our priority in criminal law co-operation is to limit it to a list of serious and cross-border offences defined in the Treaty, retaining unanimity for procedural law (i.e to stop moves to harmonise legal procedures, where we have unique aspects in our common law system – habeas corpus, rules of evidence).

We also want to avoid the creation of a European Public Prosecutor (i.e. an individual with the a right to bring prosecutions in the Member States – as opposed to a European system of public prosecution, which obliges Member States to act against certain cross border crime but according to their own national legal systems.) There are also issues around not impeding the freedom of the security agencies to act, which we are addressing with them.

Social Europe: UK Representative on the Working Group: Peter Hain

This working group is due to be debated in Plenary on 6 February. Peter Hain has done well to push Lisbon agenda language on full employment through labour market reform and protecting the rights of those out of work. The working group will record that there was no consensus on extending QMV in social policy, which suits us fine.

There will be battles ahead in Plenary, but you might assure Peter that the positive tone and engagement he has shown is the right tactic.

Item 4: The institutional debate

Following this, you might turn to the institutional debate. You are familiar with the main issues, most of which were covered in your lunch with Giscard and in the Franco-German paper on the institutions. The Foreign Secretary, Peter Hain and Denis MacShane will have views on the main issues, which are:

Chair of the European Council: the Germans, Swedes and Danes are on board, but how do we sell it to the other Smalls?

Reform of Ministerial Councils: Team Presidencies, Host Presidencies, the Single Legislative Council (Amato wrote to you recently on this);

Selecting the President of the Commission: if we want an overall deal, MEPs should have some role, but what? Should they share responsibility with MPs in an electoral college? Should the European Council offer a slate of candidates?

Re-opening the Nice deal: voting systems (Dual Simple Majority), size of the Commission, size of the Parliament. You discussed with Giscard. If we go down this route we will endanger the ability of the Convention or the IGC to reach any agreement.

The Congress: Giscard and Chirac are still keen. Should we give it the kiss of life? How different is it from the Danish idea of an electoral college to elect the President of the Commission?

Item 5: Forming Alliances

You might note the importance of the UK remaining at the centre of the debate. We have work in hand with the Spanish, preparing your summit with Aznar on 27 February and are close to the French, Schroeder's people, the Italians, Swedes and Danes. You might underline the importance of these alliances and encourage all the UK team to keep looking for opportunities to get close to others: especially the small Member States and the candidates.

STEPHEN WALL

file
Copy in DCO Intray

10 DOWNING STREET
LONDON SW1A 2AA
020 7930 4433

5 February 2003

Dear Kim,

COMMENTS ON SPANISH PAPER ON THE INSTITUTIONS

Thank you for your letter of 31 January.

I agree that the Spanish draft paper is a good basis for agreement, and I am content with the changes you suggest. My only quibble was whether we should tone down and tighten up the language on comitology to ensure that we have Whitehall on board. So in your re-drafted paragraph 10, re-draft the fourth sentence to read:

> "We should explore the scope for recognising in the Treaty a category of "delegated acts" for implementing framework laws."

I also wonder whether we need to qualify the reference to defining the Open Method of Co-ordination in the Treaty: i.e. it should not lose its flexibility, nor interfere with the setting of economic policy.

Yours ever,

Stephen

J S WALL

Kim Darroch CMG
FCO

4 February 2003

Foreign & Commonwealth Office

London SW1A 2AH

Dear Stephen,

Single Legislative Council: Reply to Amato

The Vice President of the Convention on the Future of Europe wrote to the Prime Minister on 22 January on this subject. I enclose a draft reply.

Although Amato says the Prime Minister's Cardiff speech indicates that he was "ready to support the idea", in fact he said: "we will examine carefully all the interesting proposals put forward in this area by Giuliano Amato and others". The Foreign Secretary opposes the idea for the reasons set out in the draft letter and because many of its proponents want to use it as a step towards a federal model with a bicameral legislature (EP first chamber, Council second chamber) with the Commission becoming the sole executive of the Union.

Yours ever,

Jonathan

(Jonathan Sinclair)
Private Secretary

Sir Stephen Wall KCMG LVO
10 Downing Street

Couple of changes if this has not already gone

Jonathan

4/2

DRAFT LETTER FROM THE PRIME MINISTER TO HE SNR ~~GUILIANO~~ AMATO, VICE PRESIDENT OF THE CONVENTION ON THE FUTURE OF EUROPE

Thank you for your letter of 22 January about your idea of a Single Legislative Council (SLC). In my Cardiff speech I said that we would consider carefully this and other proposals put forward by you. ~~This I have now done.~~

Like you I would like to see greater transparency, through the Council meeting in public when legislating. I would also like better quality of legislation. But I also see problems with the idea.

I am not ~~however~~ convinced that it is possible or desirable to separate legislative and executive functions (with the latter staying with sectoral Councils) in this way. Does it, for example, really make sense for one to discuss the legislative framework for Europol and another its operational priorities? On economic reform, non-binding measures and legislation are part and parcel of the same overall action programme. Should they be discussed separately? In reality does the legislation not need to be done by specialist ministers?

I foresee difficulties over accountability to national Parliaments. The symbolism of an elected Minister, permanently in Brussels, distant from his own Parliament would raise questions over his accountability.

Is there also not a strong risk of a poor relationship developing between this Minister and the Ministers in national Governments responsible for the relevant policy? Even if they were present alongside the permanent Minister in the SLC for their dossiers, the latter would be bound to become the most powerful figure in national delegations. Over time, this could make sectoral Ministers institutionally hostile to EU as opposed to domestic solutions; which would not be in the EU's best interests.

I wonder whether there is not another approach which retains the advantage of the SLC but not the risks. I would favour:

(a) a smaller number of sectoral Councils retaining legislative and executive functions as now, but with clear separation of the two in their agendas and the Council meeting in public for the former;

(b) better co-ordination of Council activity ensured by a full-time Chair of the European Council working with the Chairs of sectoral Councils within the framework of the European Council's strategic agenda;

I hope we can stay in close touch on this and other issues in the Convention.

TONY BLAIR

[Nick Baird, EUD(I), 020 7008 2311]

Stephen Wall
cc: Matthew Rycroft
Roger Liddle.

In the end, the FCO were reluctant to veer off the straw-agreed language in this. Roger's manuscript comments (attached) were not factored in, perhaps in the knowledge that this would come to No 10 anyway.

Joe Griffin 3/2.

From: Nick Baird, EUD(I)
Date: 31 January 2003

cc: PS/Dr MacShane
Kim Darroch
Catherine Royle EUD(I)
Ed Owen, Special Advisers
Shelagh Brooks, Legal Advisers
Roger Liddle, No 10
Joe Griffin, Cabinet Office
Matthew Taylor, UKREP Br

To: Private Secretary

SINGLE LEGISLATIVE COUNCIL: REPLY TO AMATO

1. I attach a reply to the letter to the Prime Minister on this subject from the Vice President of the Convention on the Future of Europe together with a covering PS/PS No 10 letter.

2. The reply follows the line in the paper on this subject approved by the Foreign Secretary.

Nick Baird
Head
W 35
0207 008 2311

Matthew

Fine Gyne

From: Private Secretary

To: Matthew Rycroft
No 10

SINGLE LEGISLATIVE COUNCIL: REPLY TO AMATO

The Vice President of the Convention on the Future of Europe wrote to the Prime Minister on 22 January on this subject. I attach a draft reply.

Although Amato says the Prime Minister's Cardiff speech indicates that he was "ready to support the idea", it in fact said: "we will examine carefully all the interesting proposals put forward in this area by Giuliano Amato and others". The Foreign Secretary opposes the idea for the reasons set out in the draft letter and because many of its proponents want to use it as a step towards a federal model with a bicameral legislature (EP first chamber, Council second chamber) and the Commission becoming the sole executive of the Union.

Private Secretary

From: The Prime Minister date: .....

To: HE Snr Guiliano Amato
Vice President of the Convention on the Future of Europe

Thank you for your letter of 22 January about your idea of a Single Legislative Council (SLC).

I can certainly see attractions in your idea. I too would like to see greater transparency, through the Council meeting in public when legislating. I would also like better quality of legislation. But I also see problems with the idea.

I am not convinced that it is possible to separate legislative and executive functions (with the latter staying with sectoral Councils) in this way. Does it, for example, really make sense for one to discuss the legislative framework for Europol and another its operational priorities? On economic reform, non-binding measures and legislation are part and parcel of the same overall action programme. Should they be discussed separately? In reality does the legislation not need to be done by specialist ministers?

I foresee difficulties over accountability to national Parliaments. The symbolism of an elected Minister, permanently in Brussels, distant from his own Parliament would raise questions over his accountability.

Is there also not a strong risk of a poor relationship developing between this Minister and the Ministers in national Governments responsible for the relevant policy? Even if they were present alongside the permanent Minister in the SLC for their dossiers, the latter would be bound to become the most powerful figure in national delegations. Over time, this could make sectoral Ministers institutionally hostile to EU as opposed to domestic solutions; which would not be in the EU's best interests.

I wonder whether there is not another approach which retains the advantage of the SLC but not the risks. I would favour:

(a) a smaller number of sectoral Councils retaining legislative and executive functions as now, but with clear separation of the two in their agendas and the Council meeting in public for the former;

(b) better co-ordination of Council activity ensured by a full-time Chair of the European Council working with the Chairs of sectoral Councils within the framework of the European Council's strategic agenda;

I hope we can stay in close touch on this and other issues in the Convention.

Prime Minister

10 DOWNING STREET

London SW1A 2AA

FAX HEADER SHEET

TEL NUMBER 020 7321 0905

To: Joe Griffin (7276 0074)

From: Roger Liddle

Title of document: Single Legislative Council / Reply to Straw

Classification: Secret / ~~Confidential / Restricted~~ / UC

Date of document: 29/1

Date faxed: 31/1

Time: 14:10

Number of pages: Leader + 4

Message:

Julia Hardy

Susan Claridge

From: Griffin Joe - European Secretariat [joe.griffin@cabinet-office.x.gsi.gov.uk]
Sent: 29 January 2003 16:34
To: Wall Stephen - No 10 -
Subject: FW: SINGLE LEGISLATIVE COUNCIL; REPLY TO AMATO

Importance: High

Alternate Body Parts containin...

Letter from PM to Guiliano Ama...

Too techie for the PM? Perhaps a blander reply with the substance attached as an annex? Not yet copied to Roger I see - let me know if you would like me to forward.

Stephen Wall
To Griffin (FCO)
please.
My suggestions for a compromise!

FCO are asking for comments by noon tomorrow.

Joe

> -----Original Message-----
> From: Veronica.West@fco.gsi.gov.uk [mailto:Veronica.West@fco.gsi.gov.uk]
> Sent: 29 January 2003 16:28
> To: joe.griffin@cabinet-office.x.gsi.gov.uk
> Cc: Catherine.Royle@fco.gsi.gov.uk; Kim.Darroch@fco.gsi.gov.uk;
> Olivier.Evans@fco.gsi.gov.uk; Matthew.Taylor@fco.gsi.gov.uk;
> Nick.Baird@fco.gsi.gov.uk; Veronica.West@fco.gsi.gov.uk
> Subject: SINGLE LEGISLATIVE COUNCIL; REPLY TO AMATO
> Importance: High
>
> <<Alternate Body Parts containing the same information>> <<Letter from
> PM to Guiliano Amato. Single Legislative Council.doc>>
>

****
The Cabinet Office's computer systems may be monitored and communications carried on them recorded, to secure the effective operation of the system and for other lawful purposes.

Mr Griffin - Re...

I agree with you. We need to start saying that we want transparency but the Council may - publish other legislative advice but retain protection for legislative advice. But there is a long way to go before we differentiate between executive and legislative functions in Council and that is really the reason why there will have to be long separation meetings. But also to make the point we need to move but you have not attached his letter to which I am to reply for me to comment on[1]. Stephen Wall 29/1

Susan Claridge

From: Veronica.West@fco.gsi.gov.uk
Sent: 29 January 2003 16:34
To: list
Subject: Alternate Body Parts containing the same information

Importance: Low

ATT1334111.htm

I attach a draft reply to Amato's letter to the PM. Grateful for any comments by 1200 tomorrow, 30 January.

Nick <<Letter from PM to Guiliano Amato. Single Legislative Council.doc>>

From: The Prime Minister date: .....

To: HE Snr Guiliano Amato
Vice President of the Convention on the Future of Europe

Thank you for your letter of 22 January about ~~your idea of a~~ the Single Legislative Council (SLC). As you know, when we have discussed this idea, I suggested the Council needs fundamental reform.

I can certainly see attractions in your idea, but ~~I also see~~ there are problems ~~as follows:~~ which would have to be overcome

(a) is it possible to separate legislative and executive functions (with the latter staying with sectoral Councils) in this way? Does it, for example, really make sense for one to discuss the legislative framework for Europol and another its operational priorities? On economic reform, non-binding measures and legislation are part and parcel of the same overall action programme. Should they be discussed separately? Would we be weakening policy coherence in order to achieve more transparency?

(b) Accountability to national Parliaments. ~~The symbolism of~~ I recognise the argument that an elected Minister, ~~permanently~~ who would spend large parts of time in Brussels, distant ~~from his own Parliament would raise questions over where his loyalty lay.~~ would improve the democratic visibility of European decision making. But equally such a person might come across as remote from national decision making and open to the accusation that they had gone native in Brussels, where the documents on them in Parliaments to be too great.

(c) The relationship between this Minister and the Ministers in national Governments responsible for the relevant policy areas. Even if they were present alongside the permanent Minister in the SLC for their dossiers, the ~~latter would be bound to become the most powerful figure in national delegations. Over time, this could make sectoral Ministers institutionally hostile to EU as opposed to domestic solutions, which would not be in the EU's best interests.~~ technical nature of the subjects under discussion would tend to give the lead role to the 'expert' departmental Ministers.

I wonder whether there is not another approach which retains the advantage of the SLC but not the risks. I would favour:

(a) a smaller number of sectoral Councils retaining legislative and executive functions as now, but with clear separation of the two in their agendas and the Council meeting in public for the former;

(b) better co-ordination of Council activity ensured by a full-time Chair of the European Council working with the Chairs of sectoral Councils within the framework of the European Council's strategic agenda;

(c) a much pruned Number of the Europa "coordinating Council", but Member States in a General Affairs

I hope we can stay in close touch on this and other issues in the Convention.

not taking responsibility for every single point of EU legislation.

Prime Minister

RESTRICTED

File
(Th Matrix)

SUBJECT
MAS
Filed:

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

30 January 2003

Dear Simon

PRIME MINISTER'S LUNCH WITH GISCARD D'ESTAING

The Prime Minister met President Giscard D'Estaing for lunch today. The Secretary of State for Foreign and Commonwealth Affairs, The Secretary of State for Wales, Sir Stephen Wall, Sir John Kerr, Jonathan Powell, Roger Liddle and I were also present.

Competences

Giscard said that everyone opposed any change in existing competences, but it was impossible to have a Constitutional Treaty without listing competences. He expected to produce a good text within the next week. The Prime Minister asked if it would detail specific competences. Giscard said yes and it would also include how competences could be changed and added to. The British issue would be the social aspect, but there would be no extension of social competences for the Union.

Tax & QMV

On QMV, Giscard wanted the British position to change. He proposed leaving income tax entirely in national hands, but wanted movement on those taxes which distorted the market – the indirect taxes. For the proper functioning of the market, and to end unfair competition, it would be better to have some harmonisation. The change could be factored into the Single Market rules and dealt with under QMV. Subsidies were not allowed in the Single Market, but some forms of taxation were in effect being used as subsidies. Stricter definitions were needed.

The Prime Minister said that there were two areas of difficulty for the UK. Firstly, the political, which Giscard was familiar with. Secondly, there was a genuine fear that whatever power was given to the Commission and regardless of

the original mandate, it would push taxation in a very different direction. Without a veto on taxation, the Commission would not hold back and rather than the issue being about removing unfair competition it would in the end be used to protect against competition. The UK would reflect on Giscard's point and examine options in this area. Jack Straw said that without some flexibility on corporation tax, the centre would assume immense power. Giscard said that he would not propose nonsense, but something sensible. It would not be possible to ignore taxation in the Convention. Something had to be found to stop unfair competition, but safeguards could be found which would prevent the Commission going too far. The Prime Minister said that clearly some way had to be found to deal with the Estonian situation. Stephen Wall said that we believed that you could not make a distinction between rules and rates of taxation. If taxation was being used in such a way as to produce unfair competition in the Single Market then it could be tackled via the State Aid Rules.

Institutions

Giscard said that the Franco-German document was quite good. A majority of the big states now agreed on handling the rotating Presidency (UK, France, Germany, Italy, Spain, Poland, Denmark, Sweden; and Belgium was on the move). On other issues, some important questions remained. Who would be the Chair of the Council? What would be their function? Would he/she have to be a member of the Council or be chosen by the Council? Giscard thought that whoever was appointed should have at least five years recent experience of the Council. Experience of the Council was a must, but not active membership of it.

Giscard said that the Chair should be a 'wise man' who would not want to rule Europe, but someone who would make the system work. The major states would have to think about the profile of such a person and should not leave the decision to the last moment. John Kerr said that the individual might have to be confirmed in the post by some form of assembly. Giscard said that the choice was between proposing a candidate with some form or confirmation procedure or proposing an appointments process. The situation would probably first arise in 2005, but there would be no structure in place to provide for ratification. There would have to be some form of democratic confirmation, but not the European Parliament on its own – it was too closed. The European Parliament could be joined by elements of national parliaments in some form of joint assembly. In 2005 the Council could elect, but after that some form of democratic procedure would have to be decided on for subsequent appointments. Stephen Wall said that there was something of a paradox surrounding the appointment of a Chair of the Council in that some complained that a President of Europe was being created

without a democratic mandate, but that very mandate would subsequently reinforce the notion of a President of Europe.

On the Foreign Secretary for Europe, Giscard said that the Council would have to appoint the individual. The UK should be wary of quickly accepting the double-hatting idea. The Franco-German paper accepted it, but it did not make much sense. How would the post holder handle relations within the Commission? What about the handling of foreign aid which was only dealt with by the European Commission? To be effective the post holder would have to be anchored into the Council structure. The big states should also begin to think about the profile of the office holder. Ideally the candidate should come from one of the larger member states – one with diplomatic weight. Naturally they could not come from the same country as the President of the Council.

Giscard said that the Council did not function very well. Better organised and more stable meetings were needed. The problem was the inherited structure. The role of the foreign ministries and the rotating minister's seat were partly at fault. It was the way the structure had evolved. Some work on Council reform was going on, but it was limited. The Council needed to be looked at again, but Foreign Ministries were trying to block a re-examination of the structures.

On the Commission, Giscard said that he could not understand how the Nice deal on the composition had got through. The six largest countries of the Union, with over 80% of the population would have only 6 of the 25 seats. It would play very badly in France – only one Commissioner, but with 13% of the population. The new Commission would find it impossible to agree proposals for spending because of the composition – the majority of the members would come from spending states. The budget decision would probably have to be resolved by the Council and that would undermine the Commission.

Giscard said that public opinion would not accept a Commission of 25. What would 25 Commissioners do? The Prime Minister said that it was the classic problem between efficacy and politics. One Commissioner per country was all that could be achieved at Nice. Giscard said that it would have to be changed. Peter Hain asked if bringing the Commission composition issue into the Convention risked wrecking the forum. Giscard thought not and said that a second element of the Commission could be looked at; a Commission of 12 selected by the Commission President not on the basis of nationality, but reflecting a regional spread. Building on that it could be possible to have a Commissioner from each of the six largest states and the remaining six posts

rotating between the other Member States. Peter Hain asked if the model would allow for deputy Commissioners to be appointed. Giscard said that that was a possibility – one could appoint Commissioners without portfolio – a watching brief. The Prime Minister said that they would have to have a real job.

Giscard said that someone should raise the issue of Commission composition in the Convention and say that if it was not looked at again it would undermine the Commission's effectiveness. Each Member State was already represented in the Council – it was not necessary to have the same principle in the Commission. The Commission was a College pursuing the common European interest. John Kerr said that Nice imposed a cap on the Commission size anyway and the issue would have to be dealt with at some stage. Stephen Wall said that the Spanish had been very clear that if any aspect of Nice was opened up then every aspect would have to be opened up. Giscard said that Belgium had grasped the issue and they were exploring ideas. Jack Straw agreed and said that clearly the Belgians saw this as being in their national interest – possibly other smalls could arrive at a similar conclusion.

The Prime Minister agreed with Giscard on the Commission's composition, but thought that it would be very hard to re-open the Nice deal. It raised an interesting point about the interplay between the Council and the Commission. Europe needed a strong Commission and Council. The existing arrangements weakened the Commission and this could not be in the interests of the smalls. Stephen Wall said that, bar Belgium, the smalls were wedded to the idea of one Commissioner per Member State.

Other issues

Giscard was pleased with the British participation in the Convention. The members of the Presidium were helping him to write the texts and they were working together. The Presidium members had asked for assistants to help them write up the texts – this had been granted, but they had chosen high level officials (John Bruton had picked a senior Commission official). Giscard was trying to restrict the assistants from becoming too involved in the process.

Giscard said that ratifying the Convention would not be easy. If France had to hold a referendum on Nice it would have lost by a sizeable margin. Stephen Wall and Peter Hain raised subsidiarity. The principle would need to have some teeth to be effective. There needed to be some consequences for over riding subsidiarity otherwise the Commission would just look at the issue, but

ignore concerns and continue with their original plan. There would have to be a decision on the threshold – possibly one third. Giscard said that the Convention had not yet addressed the consequences issue in subsidiarity. John Kerr said that Gisela Stuart had submitted some proposals, which would be considered next week, but they looked too complex.

I am copying this to the Private Secretaries to members of the EP committee, Sir Nigel Sheinwald UKREP, Brussels.

Yours ever

E. McA

FRANCIS CAMPBELL

Simon McDonald
FCO

From: Rachel Cowburn
Date: 30 January 2003

PRIME MINISTER

cc: Jonathan Powell
Stephen Wall
Roger Liddle
Sally Morgan
Pat McFadden

YOUR MEETING WITH GISCARD

Gisela Stuart called me last night. She asked if you would raise the following during your meeting with Giscard:

- In addition to the idea of national parliaments being able to give a "yellow card" to the Commission as an early-warning system if they feel that subsidiarity is being breached, they should also be able to show a "red card".
- Practically, this would rarely be used, as the yellow card would already have given a warning to the Commission.
- However, in political, presentational terms, having a red card at the parliament's disposal (underlining possible reversal of competencies) is very important and will make it easier for Gisela to sell the results of the Convention to her Westminster colleagues.
- Giscard is sympathetic to the "red card" idea. The FCO are supportive but don't think that we will get it. Gisela feels that this would be far more likely if you mentioned it to Giscard at today's meeting.

RACHEL COWBURN

From: Sharon Jubb
Date: 29 January 2003

PRIME MINISTER

cc: Jonathan Powell
Stephen Wall
Roger Liddle
Fiona Millar
Katie Kay
Saeed Khan
Daniel Pruce
Facilities Management
Messengers
Custodians
Detectives

LUNCH – 30 JANUARY 2003 – GISCARD d'ESTAING – 1215-1345 HRS

Please find attached the guest list for the above lunch.

1215 hrs	PM to meet Giscard d'Estaing at front door. Handshake photograph on arrival (tbc Press Office) All guests escorted to Small Dining Room for lunch
1315 hrs	All guests depart

Sharon.

SHARON JUBB

Full list of Guests to be invited for Lunch - Giscard D'Estaing

Invitations Accepted as at 28 January.

Host: Prime Minister. Event Date: 30 January 2003. From 12:15 to 13:45.

Mr Matthew Rycroft

The Right Honourable Peter Hain MP
Minister of State for Europe, Foreign & Commonwealth Office

Giscard D'Estaing

10 Downing Street

Mr Jonathan Powell
Chief of Staff, 10 Downing Street

Sir Stephen Wall

Mr Roger Liddle

Officials

Sir John Kerr

From: Stephen Wall
Date: 29 January 2003

PRIME MINISTER

cc: Jonathan Powell
Alastair Campbell
Sally Morgan
Roger Liddle
Matthew Rycroft
Steven Morris
Sir Andrew Turnbull
Sir Nigel Sheinwald
Martin Donnelly

YOUR LUNCH WITH PRESIDENT GISCARD D'ESTAING, 30 JANUARY

You are seeing Valery Giscard d'Estaing for lunch on Thursday. John Kerr will accompany him; Peter Hain will also be there.

The Convention is now in its final phase: the business of actually drafting the new Treaty. Building on the conclusions of the different working groups and the debates on their final reports in Plenary, the Praesidium has begun filling out Giscard's skeleton Treaty with worked up text. This will be presented in tranches to the Plenary for debate between here and Easter. A first draft of the Treaty will be ready in April, with debate and negotiation over its final shape to follow right up to its presentation to Heads of State and Government at the European Council on 20 June.

Giscard's views, and summary of the state of play, were set out with characteristic clarity in Le Monde on 13 January (attached). He noted that the Convention had already produced several results:

- a mechanism to allow national Parliaments to enforce the principle of subsidiarity (Good);

- a move to simplify the Treaties and replace the existing four with one constitutional Treaty, with a small number of annexed protocols (Good, although this is a legal minefield and we must avoid unintended changes to substantive articles and re-opening the entire acquis to re-ratification);

- a move to reduce the number of legislative instruments in the EU from 10 to 5, and re-name them (e.g. European laws, European framework laws) to give them greater familiarity (Good);

- a definition of "serious and cross-border crimes" to be written into the Treaty, for which an intergovernmental approach would be replaced by a more effective model close to the Community method (Good, although we must circumscribe ECJ jurisdiction);

- to give the Charter of Fundamental Rights constitutional force (Bad – although the Attorney is considering this week the changes proposed to the Charter to see if we could live with this);

- to give a greater coherence between the EU's monetary policy and the economic policies of her Member States (Bad, if this means tax harmonisation).

On the institutions, Giscard notes that the EU is a Union of people and of States: "that is what gives it its originality, and its ambiguity." The current institutional

system reflects this and responds to this double legitimacy. He says that it would be wrong to concentrate too much power in any one institution, as this would risk upsetting this balance, provoking a conflict which could threaten the Union's legitimacy and unity.

Specifically, Giscard mentions:

- the need to reduce the size of the European Parliament: 700 and growing – according to Giscard the largest such assembly in the western world (Good in theory, but would re-open the difficult Nice negotiations);

- the need to reduce the size of the Commission, where, after enlargement, Commissioners from the large Member States, representing 78% of the EU's population, will only represent 24% of the Commission (Good, but still viscerally opposed by the small Member States);

- the need to end the present rotation system in the Council (Good);

- the need for a forum (his Congress) to forge closer links between Europe's national Parliamentarians and MEPs (Not harmful, if a proper job can be found for it to do).

On foreign policy, Giscard notes that EU Member States (and one candidate) currently provide 5 out of 15 seats on the UN Security Council. He claims that a common EU approach on Iraq, if it existed, would have been decisive. He ascribes the absence of this to a lack of political will to create a genuinely EU foreign policy. His solution is to propose a mechanism to incite the key players:

a catalyst for a common foreign policy in the shape of a European Foreign Minister, chairing the General Affairs Council. You ought to be able to give a cautious welcome for this, provided that this new figure is answerable to the Council and not the Commission. This has to be clear and legally watertight.

Giscard's thinking is not a million miles away from our own. He is, of course, subject to the pressures of the Convention floor, although he has not been averse to summing up in a pretty partial way. Sometimes this has worked to our advantage, given the in-built integrationist majority in the Convention; sometimes (e.g. on economic issues) it has not. He is, however, keenly aware of the need for Heads of State and Government broadly to welcome his draft Constitution at the June European Council. He wants to fulfil his mission and secure his legacy.

With this in mind, you might want to get across the following key messages:

- Unwavering support for a full-time Chair of the European Council;

- Serious doubts about the European Parliament electing the President of the Commission: we must avoid making the President hostage to political groupings in the Parliament – or being answerable to the EP more than any other institution;

- Uncertainty about an EU Foreign Minister: any "double-hatted" figure must be answerable to the Council and not the Commission;

- We like the National Parliaments Subsidiarity mechanism, but it must have teeth. Must be able to force the Commission to think again or, if enough

Parliaments are opposed, even withdraw its proposal. National Parliaments should rule on proportionality grounds too;

- We have some real red lines:

  - on QMV: e.g. social security and more particularly tax. On JHA too, we support QMV for asylum, and for criminal law on a list of serious and cross-border offences defined in the Treaty, but will insist on unanimity for procedural law;

  - communitisation of foreign policy: i.e. Commission initiative, ECJ jurisdiction in CFSP. Legal personality for the Union must be defined so as to prevent these lines being crossed;

  - a territorial defence guarantee;

  - a European Public Prosecutor ie an individual with a right to bring prosecutions in the member states, as opposed to a European system of public prosecution which oblige member states to act against certain cross-border crime but according to their own national legal systems;

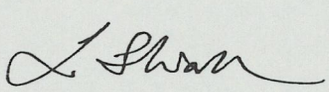
  - incorporation of the Charter in a way which could create new competences for the EU.

There are some points, too, that John Kerr tells me Giscard will want to raise. These will include:

- Double Simple Majority Voting: i.e. the system rejected at Nice, whereby every Qualified Majority vote must be approved by a majority of Member States also representing a majority of the EU's population. You should say that we are not opposed in principle, but would need a high threshold for a super Qualified Majority. The most important point though, is that we want the IGC to finish in reasonable order and time: which it will not if we re-open these Nice questions which go to the heart of the balance of power in the EU;

- a Single Legislative Council. Again, we are not opposed in principle, but note the difficulty of clearly distinguishing between policy making and legislating in most Councils, as well as finding a representative with sufficient authority to commit his or her fellow Ministers in Brussels. You could easily end up with a single legislative Council in theory but with the real negotiations still being done by the specialist Ministers. But there is more that can be done to separate the executive and legislative functions of the Council without going as far as a JLC;

- the need to reduce the size of the Commission. Giscard apparently feels that France would not now be able to ratify Nice on the basis of one Commissioner per Member State. You should say that we remain in favour of a smaller Commission, where this can be achieved. You might note the strength of feeling on this within the Convention, however, particularly on behalf of the Smalls and the candidates. We do not want a re-run of Nice.



STEPHEN WALL

• LE MONDE | 13.01.03 | 13h28
• MIS A JOUR LE 13.01.03 | 15h54
Point de vue
La Convention européenne à mi-parcours, par Valéry Giscard d'Estaing

voir séquence
Analyses et forums

La convention sur l'avenir de l'Europe est aujourd'hui au milieu de son parcours, et même un peu au-delà. Comme en juillet dernier, je souhaite faire le point de nos travaux pour toutes celles et tous ceux – les Européennes et les Européens – qui veulent bien suivre notre démarche. Ce n'est pas un document de travail destiné aux conventionnels, mais plutôt une réflexion ouverte sur ce que nous avons fait, et sur ce qui nous reste à achever. Les résultats de la première partie de la Convention sont allés au-delà de ce que nous espérions. Cela donne une indication sur l'efficacité de la méthode suivie. Ces résultats ont conforté, dans une certaine mesure, l'image de la Convention et ont conduit les gouvernements à suivre de plus près ses travaux, en s'y faisant représenter par de nouveaux "poids lourds".

Quels sont donc ces résultats ?

D'abord, de proposer un contrôle politique de la subsidiarité, c'est-à-dire de donner la garantie que l'Union européenne n'interviendra pas – je devrais écrire : n'interviendra plus – au-delà de ce qui est nécessaire pour exercer ses compétences, à la place des Etats membres et de leurs collectivités locales, lorsque ceux-ci sont qualifiés pour conduire l'action. Nous n'entendrons plus la complainte "Pourquoi l'Europe se mêle-t-elle de tout ?", puisqu'il suffira que les Parlements nationaux exercent leur contrôle. Je leur fais confiance pour cela.

Deuxième résultat : la simplification des traités. Au lieu de quatre traités difficilement lisibles, et compliqués de nombreux protocoles, un seul traité constitutionnel – la Constitution européenne – avec un petit nombre de protocoles annexes.

Cette simplification sera étendue à la manière dont l'UE prend et applique ses décisions. Alors qu'il existe aujourd'hui dix catégories d'instruments différentes, ce nombre serait ramené à cinq, correspondant à des notions avec lesquelles l'opinion publique est familiarisée : lois européennes, applicables dans toute l'Union ; lois-cadres européennes, qui doivent être transcrites dans les législations nationales ; textes d'application ; simple avis ; et enfin décisions individuelles, lorsque l'Union est chargée d'appliquer directement

ses compétences, par exemple en matière de concurrence. Ainsi pourra-t-on enfin savoir "qui fait quoi en Europe".

Concernant le problème sensible de la lutte contre la criminalité internationale et les trafics organisés, la Convention proposera d'inscrire dans la Constitution une définition de la criminalité grave et transfrontalière. Cela permettra d'élaborer une législation pénale communautaire, applicable à ce type de crimes. Elle sera plus efficace que les législations nationales existantes, dont les réseaux criminels savent habilement utiliser les divergences ou les lacunes.

Enfin, la Convention proposera de donner force constitutionnelle à la Charte des droits fondamentaux, dont pourront bénéficier toutes les citoyennes et tous les citoyens d'Europe.

Ce tableau n'est pas complet. Il reste des sujets sur lesquels la Convention doit encore progresser, tel que celui de la gouvernance économique et sociale de l'Europe. Mais un point fait déjà l'unanimité : la compétence monétaire est une compétence de l'Union, les compétences économiques restent celles des Etats membres. Il faut encore considérer les mécanismes de coordination et de surveillance indispensables pour assurer une cohérence élevée entre l'exercice par l'Union de ses compétences monétaires, et celles des politiques économiques des Etats membres.

Ces résultats significatifs s'expliquent par la méthode choisie par la Convention : celle de la recherche du consensus, c'est-à-dire de l'accord du plus grand nombre, sans se laisser bloquer par la règle de l'unanimité. Sur la plupart des points que j'ai mentionnés, nous avons recueilli l'accord du plus grand nombre, mais si nous étions tenus par la règle de l'unanimité, nous serions empêchés de conclure ! Ce point est très important, car les travaux de la Convention, seront prolongés par ceux de la Conférence intergouvernementale, chargée d'approuver la Constitution. Or celle-ci retrouvera la règle de l'unanimité. C'est dire l'importance qui s'attache à ce que nous allions le plus loin possible dans l'élaboration de solutions "achevées".

Les résultats obtenus par la Convention ont, semble-t-il renforcé son image. L'attention sympathique, mais distante, que lui portaient certains gouvernements, a fait place à un intérêt plus marqué. Celui-ci s'est manifesté lorsque des circonstances électorales nationales ont entraîné le changement des représentants des gouvernements : la Convention a vu arriver un nombre croissant de ministres des affaires étrangères, ou de personnages importants de la vie politique nationale. De même les participants – conventionnels, partis politiques, représentants des Etats – ont déposé des contributions devant la Convention. La Commission européenne a donné un retentissement particulier à son rapport, que le président Romano Prodi est venu présenter lui-même à la Convention.

Cette évolution ne doit pas conduire à une interprétation erronée, celle d'un glissement vers une conférence intergouvernementale déguisée, où les gouvernements négocieraient en dehors de la Convention. La Convention est une enceinte démocratique. C'est là que le débat se déroule, et se déroulera au grand jour. Ce sont les conventionnels qui devront

poursuivre, avec beaucoup de modération, d'humilité devant l'histoire, et d'indépendance vis-à-vis des idées reçues et des pressions institutionnelles, la recherche du consensus sur la meilleure Constitution possible pour l'Europe.

C'est désormais notre tâche, pour la nouvelle et dernière étape de la Convention : rédiger les articles de la Constitution, et proposer les adaptations du système institutionnel exigées par l'élargissement, nécessaires pour accomplir les nouvelles missions de l'Europe, et pour accroître l'efficacité du système et de sa légitimité démocratique. Sans ces adaptations, l'Union risque de perdre la confiance des citoyens, de s'enliser – voire de se diluer.

Le travail de rédaction des articles est passionnant et, si le mot ne doit pas choquer, il est même enchanteur. Je m'y suis exercé pendant les vacances de fin d'année, en cherchant à rédiger les articles sur les compétences, de l'article 7 à l'article 13. Les préjugés s'envolent, la nécessité de la précision et de la concision apparaît. Adieu les adverbes qui diluent la vigueur du texte en croyant la renforcer, et les incidentes contournées qui aimeraient dire une chose et son contraire ! Le style de la Constitution ne doit pas être celui d'un acte notarié, voire d'un traité international, où l'on cherche à se protéger de toutes les malversations et de toutes les ruses imaginables. Ce doit être un texte rigoureux, entraînant, créatif, où apparaissent à la fois la volonté de répondre à des attentes fortes, et le désir de mettre en place une architecture qui résistera au temps, en protégeant les faibles et en facilitant les avancées vigoureuses du progrès. Le lyrisme d'une Constitution, c'est en quelque sorte, la calligraphie de l'histoire ! Nous allons nous y essayer.

Le praesidium présentera les premiers articles du projet à la Convention d'ici à la fin du mois de janvier. Celle-ci les discutera d'une manière approfondie, au besoin en recourant à des "cercles de discussion", avant que le praesidium n'en établisse la proposition finale.

Nous débuterons par les articles portant sur les principes et les valeurs de l'Union – qui sont des notions essentielles pour établir les fondements de l'identité européenne – puis par l'article de "constitutionnalisation" de la Charte des droits fondamentaux. Nous poursuivrons par les articles sur les compétences de l'Union, et leur exercice. Et ainsi de suite, jusqu'à la deuxième partie du projet, qui décrira les politiques de l'Union.

En même temps que se poursuivra ce travail de rédaction, nous allons aborder la réflexion sur les institutions de l'Union. C'est intentionnellement que j'écris "aborder la réflexion", car rien ne serait plus néfaste que de sauter d'un seul coup jusqu'aux conclusions, sans avoir engagé et conduit une recherche approfondie sur les deux interrogations qui dominent ce sujet : quelles sont les modifications des institutions qu'impose l'effet de nombre, c'est-à-dire le passage de 6 à 25 du nombre des Etats membres de l'Union européenne ? Faut-il ou non remettre en cause l'architecture initiale choisie par les pères fondateurs, et qui repose sur trois institutions distinctes, le Parlement, le Conseil et la Commission, pour faire face aux nouvelles tâches que l'Union souhaite accomplir ?

Il serait prématuré de ma part de tenter de fournir les réponses, aussi je me contenterai de donner quelques éclairages sur les préalables de ce débat.

D'abord sur l'effet de nombre. Celui-ci affecte les trois institutions : le Conseil européen qui passera de 19 membres en 1975, à 32 aujourd'hui, et à 52 après l'élargissement en cours (les présidents ou chefs de gouvernement de chacun des Etats et leurs ministres des affaires étrangères, auxquels s'ajoutent deux membres de la Commission) ; le Parlement européen qui dépassera le plafond qu'il s'était fixé lui-même à 700 membres, et qui deviendra ainsi la plus grande assemblée dans le monde occidental ; et la Commission dont le nombre initial était de 9 membres, et qui est de 20 membres aujourd'hui, dont 10 désignés par les 5 Etats les plus peuplés et 10 par les Etats les moins peuplés. Elle passera désormais à 25 commissaires, dont 6 désignés par les Etats les plus peuplés, et 19 par les Etats les moins peuplés. Ce passage à 25 sera dû à la désignation par les nouveaux Etats membres de 10 nouveaux commissaires, partiellement compensé par la suppression du 2e commissaire des Etats les plus peuplés (Allemagne, France, Espagne, Grande-Bretagne, Italie). Ce sera la première fois, depuis la signature du traité de Rome, que le nombre des commissaires provenant des Etats les plus peuplés de l'Union, représentant 78 % de sa population, diminuera de moitié, et ne représentera plus que 24 % du total.

Pour chacune de ces institutions se pose le problème de savoir si elle sera en état de délibérer utilement en aboutissant à des conclusions précises et rapides – le Conseil européen sera-t-il, par exemple, en situation de le faire ? –, si sa représentativité démocratique, qui repose sur le principe d'"un homme, une voix", sera durablement reconnue et comment, enfin, chacune d'elle prendra ses décisions, et selon quelles règles de vote.

La rotation semestrielle de la présidence du Conseil, lorsque l'Union passera à 25 membres, et que le retour de la présidence ne s'effectuera que tous les douze ans et demi, fragilisera le fonctionnement des institutions en introduisant des priorités semestrielles, tout en empêchant la continuité et le suivi des décisions. Elle ne pourra pas être maintenue.

Il ne semble pas que l'analyse des problèmes posés par l'effet de nombre ait été poussée très avant. La Commission ne les évoque pas dans sa contribution. La seule institution à avoir élaboré des propositions est le Parlement européen. Lors du Conseil européen de Nice, le Parlement européen avait adopté une résolution qui ouvrait des pistes intéressantes. La Convention pourra reprendre à son compte cette réflexion.

L'autre interrogation porte sur l'architecture institutionnelle de l'Union. Faut-il la conserver, l'améliorer, ou la modifier ? C'est un débat qui passionne les initiés, et galvanise le milieu politique bruxellois, mais qui intéresse peu l'opinion publique, qui a du mal à se reconnaître dans les complications du système. J'en rappelle les grands traits. L'UE est gérée par trois institutions : le Parlement européen élu au suffrage universel, le Conseil qui exprime la participation des Etats membres à l'action de l'UE, et la Commission européenne organe indépendant et a-politique, qui définit et propose le bien commun européen.

Leur rôle peut-être résumé ainsi : la Commission propose les mesures d'intérêt commun européen, le Parlement délibère et légifère, le Conseil décide. Ajoutons que la Commission gère certaines actions, qui lui sont confiées par le Conseil.

Une remarque fondamentale est que ce système a bien résisté à l'épreuve du temps. Il a tenu pendant près de cinquante ans ! S'il a un peu vieilli, comme toutes les institutions humaines, il a surmonté les crises, et sa légitimité n'a pas été contestée, même par les adversaires du système qui ont siégé régulièrement dans ces institutions.

Dans un monde instable et dangereux, cette solidité et cette légitimité sont des atouts qu'il faut préserver.

Si l'on veut éclairer le débat sur les institutions, il est nécessaire, je crois, de remonter en amont, et de s'interroger sur la finalité même du projet. On rencontre alors quatre questions : l'Union européenne a-t-elle vocation à devenir un ensemble unifié, avec un système de pouvoir unique, comme le rêvent certains, et le redoutent d'autres ? C'est la première question que j'ai posée à la Convention, et la réponse a été quasi unanimement négative.

Faut-il modifier la répartition des pouvoirs entre les institutions, en direction de ce qu'on appelle le système communautaire (Commission et Parlement), ou bien améliorer la coopération entre les trois institutions existantes ?

Lorsque nous parlons d'égalité dans l'UE, pensons-nous d'abord à l'égalité entre les Etats, ou à l'égalité entre les citoyens ?

Et enfin, existe-t-il chez les dirigeants la volonté politique d'aller plus loin, et de doter l'UE d'une personnalité internationale unique, et, un jour, d'une diplomatie commune ?

L'Union européenne est à la fois une union de peuples et une union d'Etats. C'est ce qui fait son originalité, et son ambiguïté ! Lorsqu'elle se ressent comme une union d'Etats, les droits des Etats doivent être égaux. Lorsqu'elle se perçoit comme une union de peuples, ce sont les droits des citoyens qui doivent être égaux : droits à une représentation égale, et à un accès équivalent aux différentes fonctions de l'Union. L'avantage du système actuel, c'est qu'il offre une réponse satisfaisante à cette double demande, à condition d'être corrigé de l'"effet de nombre": égalité des citoyens vis-à-vis des compétences de l'Union – et donc du dispositif communautaire – égalité des Etats lorsqu'il s'agit de leurs compétences propres, et de leur contribution à la vie de l'Union, telle qu'elle s'exerce au Conseil.

En tentant de modifier cet équilibre et de concentrer le pouvoir dans une seule des institutions de l'Union, on risquerait de rencontrer un conflit portant sur la légitimité et l'égalité qui mettrait en danger l'unité de l'Union. Si la concentration du pouvoir s'effectuait autour du Conseil, l'intérêt commun européen ne serait plus pris en compte, et l'égalité des citoyens serait sacrifiée à l'égalité des Etats. Si cette même concentration du

pouvoir s'effectuait en direction des institutions strictement communautaires – Conseil exclu – ce sont les intérêts propres des Etats qui ne trouveraient plus à s'exprimer, et, contrairement à ce qu'imaginent aujourd'hui certains responsables à partir d'une lecture à court terme du fonctionnement des institutions, l'égalité des Etats, petits ou grands, finirait par s'effacer devant l'égale représentation des citoyens.

Le respect de la double légitimité paraît être la référence la plus sûre lorsqu'on s'interroge sur la solidité future du système. Encore faut-il la compléter par un dispositif amélioré de coopération entre les trois institutions. Le monolithisme du pouvoir, malgré son mérite de simplification apparente, ne paraît guère adapté à la gouvernance du 3e regroupement de population de la planète (après la Chine et l'Inde), et du plus diversifié. Une judicieuse répartition des pouvoirs, verticale grâce à la subsidiarité, et horizontale sous la forme d'une coopération intense et organisée entre les trois institutions de l'Union, fournirait un cadre plus solide, plus original, et certainement mieux adapté, aux tâches à venir de l'Union.

Déjà en juillet dernier, j'avais constaté l'absence d'un véritable débat entre les niveaux politiques européens et nationaux. Voici pourquoi nous disposons aujourd'hui d'une Convention dans laquelle les institutions sont représentées ainsi que les responsables politiques des pays membres.

Je pense toujours que le besoin d'un tel forum subsistera après la fin de la Convention. Il faut maintenir un lieu où se rencontreront périodiquement les principaux dirigeants de la vie politique nationale et européenne.

C'est souvent dans le domaine de la politique étrangère, ou, pour être plus précis, de la diplomatie, que certains envisagent une redistribution des pouvoirs, et un déplacement du droit d'initiative.

Arrêtons-nous sur cet exemple. Le débat a été engagé comme s'il s'agissait de déterminer qui déciderait de la conduite de la politique étrangère commune de l'UE. Or, la réalité est différente : la politique étrangère commune de l'UE n'existe pas encore. Il y a certes des "actions de politique étrangère communes", souvent réussies, comme aujourd'hui dans les Balkans. Mais de diplomatie commune sur scène internationale, point encore ! En veut-on un exemple ?

Depuis le 1er janvier, sur les 15 membres du Conseil de sécurité des Nations unies, 4 appartiennent à l'Union européenne (France, Royaume-Uni, Allemagne et Espagne), et un 5e est un pays candidat, la Bulgarie. Ainsi, à un moment où le Conseil de sécurité va devoir se prononcer sur les justifications d'une intervention militaire en Irak, un tiers de ses membres proviennent de l'UE. S'il existait une diplomatie commune, son rôle serait déterminant, et l'opinion internationale s'interrogerait sur l'attitude de l'Europe qui détiendrait la clé de la situation.

Ce déficit de politique étrangère commune ne tient ni aux hommes ni aux institutions. Les deux hommes en situation de responsabilité, Javier Solana au Conseil, et Chris Patten

à la Commission, sont parfaitement compétents, et on aurait grand mal à en trouver de meilleurs !

Or, quel sont aujourd'hui leur rôle et leur capacité d'influence sur l'attitude des Etats de l'Union vis-à-vis de la crise irakienne ?

Quant aux institutions, le traité de Maastricht prévoyait déjà en 1992 que "l'Union européenne se donne pour objectif d'affirmer son identité sur la scène internationale, notamment par la mise en œuvre d'une politique étrangère et de sécurité commune". Si la carence ne tient ni aux hommes ni aux institutions, d'où peut-elle provenir ? Elle s'explique par l'absence de détermination politique à vouloir faire entrer progressivement la compétence diplomatique des Etats dans le champs de leur action commune, et de réduire la part des initiatives nationales, qui reste aujourd'hui prépondérante. Peut-on imaginer de les y conduire par la contrainte, en les soumettant à un pouvoir externe ? Ce serait faire montre d'une singulière naïveté, et le résultat obtenu serait paradoxal, car il inciterait chacun des Etats à afficher encore plus nettement sa position nationale. On ne peut espérer avancer qu'en mettant en place, à l'intérieur même du dispositif, un mécanisme qui incite les acteurs à développer des analyses et des positions communes, et qui agisse, en quelque sorte, comme "catalyseur" de la politique étrangère commune. La promotion du haut représentant au rang de ministre des affaires étrangères de l'UE, et le fait de lui confier la présidence permanente du conseil des ministres des affaires étrangères, serait un moyen non d'imposer, mais d'engager la convergence nécessaire des actions diplomatiques des Etats européens. La stabilité de la présidence du Conseil assurerait la continuité nécessaire.

Il resterait à assurer la coordination entre ce dispositif et les actions internationales, qui relèvent des compétences de la Commission. Plusieurs solutions sont envisageables. Elles doivent être examinées sans préjugé ni passion, et on doit comparer leurs mérites en prenant bien soin de préserver la nature de la Commission – c'est-à-dire son indépendance et sa cohésion – et d'éviter le risque de conduire à des positions contradictoires du Conseil et de la Commission.

Il apparaît, me semble-t-il, que la réflexion sur la structure institutionnelle de l'UE a beaucoup à gagner à se concentrer sur la nature et sur les objectifs politiques de l'Union. La confusion qui entoure les débats sur la répartition des pouvoirs se dissiperait au fur et à mesure que s'affirmerait la double légitimité de l'Union – union des peuples et union des Etats – et que se préciserait davantage l'ancrage, tantôt dans la dimension communautaire, tantôt dans la compétence des Etats membres, des actions à conduire.

Lorsque j'ai présenté au praesidium de la Convention le projet d'architecture de la future Constitution européenne, je m'étais permis de rédiger l'article premier qui donnait la définition de l'Union : "une union d'Etats, et de peuples, qui coordonnent étroitement leurs politiques, et qui gèrent sur le mode fédéral certaines compétences communes".

J'ai eu l'heureuse surprise de retrouver ce texte pratiquement inchangé dans l'avant-projet de contribution de la Commission. Il décrit, je crois, le caractère propre du projet

européen : un avion qui vole en prenant appui sur ses deux ailes. Et il fait apercevoir l'évolution possible du dispositif : l'émergence de fonctions fédérales dans les deux institutions à vocation exécutive – le Conseil et la Commission – qui finiront un jour par se réunir en faisceau, pour donner naissance au gouvernement de l'Europe Unie.

Valéry Giscard d'Estaing, ancien président de la République, est président de la Convention européenne.

• ARTICLE PARU DANS L'EDITION DU 14.01.03

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From: **Stephen Wall**
Date: **24 January 2003**

cc: **Jonathan Powell**
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EUROPEAN CONVENTION: WEEKLY UPDATE

The Convention Plenary met on 20 and 21 January to discuss the institutions. Unsurprisingly, the Franco-German proposals, published four days before, provided more of a focus for debate than the (deliberately) bland discussion paper prepared by the Secretariat. Villepin and Fischer presented the proposals in choreographed fashion to the Plenary on the morning of the second day: Villepin very effectively and eloquently; Fischer glumly reading out his prepared text.

Villepin's intervention only partially rescued an otherwise difficult debate for the French and Germans. The previous evening's Plenary session began with a withering attack on their proposals from the Dutch Government Representative, de Vries, and ended with a Dutch MEP asking Giscard to note that out of 83 speakers, only 12 had supported the proposal for a full time Chair of the European Council. A table summarising Government reactions to the Franco-German paper is attached.

On substance, it is clear that most of the Convention intensely dislike the idea of a full time Chair of the European Council. To some extent, they are the usual suspects: many (though not all) of the Smalls' Government Representatives, together with integrationist/federalist MPs and MEPs.

Their opposition is based on a variety of reasons. Some claim that a full-time Chair of the European Council would inevitably lead to institutionalised conflict between the Commission and the European Council. Others complain that this figure would not be accountable, or at least less directly so in EU terms, than the Commission President or the EP. Finally, there are fears that an effective European Council President could usurp the functions of the Commission or would clash with the proposed new EU Foreign Minister.

These criticisms are not baseless. But they can be met and we are working hard to try and convince reasonable members of the Convention that they are groundless. We will have soon a joint paper with the French and Germans setting out how the Council chair will work. There are, of course, less reasonable but more visceral criticisms too, such as the feeling that it would "affect the balance of the institutions" or destroy "the equality of the Member States." This is often code from the Smalls that they will not be pushed around by a Chair that they assume (wrongly) would come from a large Member State. They fear too (rightly) that a strong Chair of the European Council would make the Council a more effective force in the EU's architecture than the Commission.

Some of this is tactical. The Belgians indicate that Verhofstadt actually could possibly live with a Chair of the European Council at the end of the day, and

even the Finns privately accept that that is where we will end up. The Dutch (especially after their elections), Irish and Portuguese will be harder work.

What is more difficult is the feeling that the lumpen mass of MPs and MEPs in the Convention will not play ball. There is a sense in the Convention that what they call the "progressive majority" will win the day, without the need to make substantial concessions. This begs the question of how the Convention could reach a consensus. No consensus on these issues seems to me to be more than likely, in which case the IGC provides a safety net because it has to take the final decision. This makes it more likely that the Franco-German package, or something close to it, will prevail.

I think that we should continue to work closely with our friends (eg the Italians and Spanish) on our key objectives. Neither of them, for example, like the Franco/German idea of the Commission president being chosen by the EP. They favour the Council submitting candidates to the EP for final decision. But that is not risk free: you still end up with a partisan choice. The Danish Prime Minister has suggested an electoral college to choose the Commission President consisting half of MPs, half of MEPs, who would choose from a slate provided by member states, with at least five member states need to put forward a candidate. The choice would be confirmed by QMV in the European Council.

This is arguably a better model. Its downside is that it gives the Commission President democratic legitimacy. Its advantage is that his loyalties are sufficiently split to prevent him taking his legitimacy anywhere much. We are doing some more work on this.

/ The Foreign Secretary's views on these issues, drafted before the Franco-German paper was published, are attached. As you will see, he believes that a full-time Chair of the European Council is achievable in the Convention, but should not be taken at any price.

You will have an opportunity to discuss this with Giscard at lunch on Thursday. I will submit briefing.

STEPHEN WALL

conqueror

Reactions to Franco-German proposals on the Institutions

	Full-time **President of European Council**	**EP elected President of Commission**	Double-hatted **European Foreign Minister**	**QMV for foreign policy** (not defence)	**More QMV and co-decision**	**Press reactions**
France	Support strongly	Support as part of Fr-Ger package	Support as part of Fr-Ger package, but dependent on Council	Support as part of Fr-Ger package, with national interest brake	Open	Welcoming
German	Support as part of Fr-Ger package	Support – want low threshold for vote	Support	Support	Support	Two heads will lead to trouble
Italy	Support, with host Presidency idea	Oppose – or must be elected from Council shortlist	Support	Support	Open	
Spain	Support strongly	Oppose publicly – but are open	Sceptical	Open	Open	More opportunity than threat
Nether-lands	Oppose – want rotating Presidency	Support	Support	Support	Support	Mildly critical – too pro-Bigs
Belgium	Oppose	Support	Support	Support	Support	Bigs stitch up
Luxem-bourg	Oppose - confuse EU architecture	Support	Support	Support	Support	Doubts re Council President
Sweden	Support if serving Head of State	Oppose	Oppose	Oppose	Open	Support two Presidents; pro double-hatting
Denmark	Open but if rotates to smalls; oppose group presidencies	Pushing electoral college of MPs and MEPs	No position – likely to support		Support QMV on indirect tax	
Finland	Oppose - upsets inst. balance	Support	Support	Support	Support	Oppose Council President
Austria	Oppose strongly	Support	Support	Support	Support	Support Govt
Portugal	Oppose – want rotating Presidency	Support	Support	Support	Open	Paper paves way for Bigs directoire
Greece	Open but sceptical	Support	Support		Support	Factual only
Ireland	Sceptical – want rotating Presidency	Support – but could accept status quo	Support	Open (but not on defence)	Oppose QMV on tax	
Poland	Reservations – depends on detail	Commission must not be partisan	Want more detail	Oppose		"Directoire" planning takeover
Czech Rep	Oppose – want rotating team	Support	Support			Opposition from smalls
Hungary	Oppose – want rotating Presidency	Oppose – proposal goes too far	Support	Support		Two heads will cause trouble
Slovakia	Oppose – open to team Presidency	Support	Support	Support	Oppose QMV on tax	Franco-German motor revived
Slovenia	Oppose – want rotating Presidency					Fragile balance
Estonia	Oppose – want rotating team	Oppose	Oppose	Oppose		Paper weakens Commission
Latvia	Oppose – want team					
Lithuania	Oppose – want team					Favours the Bigs
Cyprus	Oppose – want rotating Presidency					
Malta	Open – want rotation elements	Commission must not be partisan		Oppose		
Bulgaria						
Romania	Support	Support	Support			
Turkey		Unofficial concern				
C'ssion	Opposed	Support	Support	Support	Support	

Empty boxes denote no official view.

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From: **Roger Liddle**
Date: **21 January 2003**

PRIME MINISTER

Cc: **Jonathan Powell**
Stephen Wall
Alastair Campbell
Sally Morgan
Andrew Adonis
Peter Hyman
Matthew Rycroft
Francis Campbell
Steve Morris

PES SEMINAR IN FLORENCE/CONVENTION: NEXT STEPS BEYOND THE FRANCO-GERMAN COMPROMISE?

The **Franco-German proposals** have initially had a **rough ride**. At the PES Seminar in Florence last weekend, an alliance of European Parliamentarians and "small staters" criticised them virulently. The same was the case at the Convention where at the Monday session I attended, only seven speakers supported unequivocally a full time President of the European Council: forty spoke against. (Peter Hain says the atmosphere was marginally better the following day when Villepin and Fischer spoke). Particularly depressing were the number of contributions from the accession countries in the hostile camp, except for the Estonians and the Poles. By the end of the afternoon, every time I heard the statement "*we support rotation because it is crucial to the principle of equality between Member States*" I let off an internal scream.

John Kerr thinks this is an inevitable reaction to the big boys laying down the law: everybody recognises that the Franco-German proposals will form the basis for the eventual institutional compromise. On the basis of the PES Seminar, I think this is right. As the debate was running heavily against a Council

President, Klaus Haensch, in a remarkably tough and brave speech, argued that those opposed to the Franco-German ideas had to accept political reality:

- as the Danish Rasmussen had recognised after his personal experience of the Presidency, it would be impossible in an enlarged Union for a serving Prime Minister to do the job properly. (This is quite a plus from an unexpected quarter.)
- If people are serious about wanting Europe to be strong in the world, for a generation at least this will require a strengthening of the Council, because the big states will never accept foreign and defence policy being conducted through the Commission.

This was the classic voice of the Labour pragmatist who believes half a loaf is better than none, but Haensch infuriated many of his European Parliament colleagues.

The strongest argument we have to counter is that **a "two President" system will create institutionalised conflict** at the heart of the Union. For this reason, Amato dallied with a single President for a while. But he now sees the challenge as working within the Franco-German Framework to produce partnership, not conflict between the institutions. At the PES meeting Amato agreed (against a background of continued protests from the floor) that the central question is now to elaborate "how this curious animal with three legs – the Council, Commission and Parliament – and two heads can be made to function?"

I took him up on this and talked about how the next step would be to clarify the executive roles of the Commission and the strategic role of the European Council.

There are various ways of doing this, some of which are pretty unattractive to us. It is going to be a hard slog. We face a situation where most of the Franco—German paper is now "acquis" and **all the debate centres round how the responsibilities of the European Council President should be defined – and in many people's eyes limited.** The Federalists will want to pull these back as far as they can. At the same time acceptance of the election of the Commission President by the Parliament is now taken for granted. Not only do we have to assert that we will only agree to EP election as part of an institutional **package** that is acceptable to us **overall**, we also have to lay down our own **red lines for the process of EP election of the Commission President.**

At the PES Seminar Amato sketched out his own inventive solutions to the 'institutional conflict' problem. These may not be to the British liking but I confidently make the forecast that this is where the debate will now move. Giscard and John Kerr look as though they are buying into large parts of these. In Amato's view, the key is **radical re-structuring of the Council to ensure that the European Council President does not encroach on the "executive" functions of the Commission** and the Commission President. He sees the need for clear distinctions between:

- The **European Council** with a full time President of its own responsible for **strategy**, but strategy alone (the "setting guidelines" function that Jean

Monnet originally envisaged, but now much enlarged as the external and JHA activities of the Union have grown in importance).

- A Single Legislative Council, bringing together all the legislative functions of the existing Councils in one body, which would retain a **six monthly rotating chair.**
- A **reduced number of Council "executive" formations** to which a **variety of chairmanship solutions** might apply. The new "double-hatted" High Representative will chair the Foreign Ministers' Council. Amato floated the idea that these Councils might be chaired by Commissioners (as he puts it tendentiously "on that model"). However he recognises that there are other possibilities such as election of a longer term Chair from within the Council for, say, ECOFIN and JHA, combined with some scheme of rotation for the "lesser executive councils".
- **The Co-ordinating Council of Ministers** responsible for preparing the European Council to be **chaired by the President of the Commission** (not the Chair of the European Council as in our own schema). This would in practice give much of the responsibility for internal coordination of EU business to the Commission, not the Council Chair.

There is a logic to what Amato is trying to do, much as we may not like it. Institutionalised conflict between the two Presidents is avoided by so defining the European Council's functions so that they do not encroach on the "executive" functions of the Commission. In particular, Amato wants to specifically **exclude the European Council from acting as a Court of Appeal** on difficult dossiers, like patents or energy liberalisation. That function would be carried out by the Co-ordinating Council under the Commission President. Amato also wants to **exclude executive decision making on issues such as the sites of agencies,**

(Helsinki v Parma) which in his view should be left to the Commission. Maybe he would accept that the coordinating Council of Ministers would retain a role, but under the chairmanship of the Commission.

In terms of institutional balance, Amato's ideas imply a reduction in the existing powers of the six monthly Presidency on day to day lesser issues, in return for more continuity over strategy. Our objective must be to ensure that the strategy setting role of the European Council has some real bite to it. **The European Council must be more than a 'fire-side chat'**. Agreement on a multi-annual programme between the European Council and Commission, as decided at Seville, may be a promising instrument to achieve this. But is it enough? In my view **the key is that responsibility for coordinating the internal work of the Council in its different formations should rest with the Chair of the European Council.**

In our conception of the full-time European Council Chair, we have tried to preserve as much as possible of the existing Presidency function. The idea of a **rotating team Presidency** has been crucial to this concept. The proposal for different Councils chaired by different countries on a rotating basis, requires almost by definition, a strong full time Council Chair to keep this diverse show on the road. In principle this model ought to have a lot of attractions to new members and smalls, because it guarantees a reasonably frequent starring role for national Ministers. **But so far we have failed to make the team Presidency concept run.** In part this may have been the reluctance of others to accept a full time European Council Chair. However with some at least, team Presidencies may be seen as vesting too much authority in the Council Chair at the expense of the Commission. To preserve institutional balance, the argument that the

Commission should play a role in chairing executive councils may gather strength. I can see not only European Parliamentarians backing this – but also the new Member States, who want both to build up the role of the Commission and guarantee that each of them will have a Commissioner. Giscard's decision to reactivate the debate on Commission size, however right in principle it may be, will cause others to seek to justify roles for a Commission of 27. That I believe will be **the** top priority for the new Members.

Separately, there is the argument for a **Single Legislative Council**, chaired by member States on six monthly rotation. In Amato's scheme, Member states would have **two representatives**:

- A Minister for European Affairs who would also serve on the Co-ordinating Committee.
- The second place would be reserved for the sectoral minister responsible for the particular piece of legislation under discussion.

The Legislative Council would be served at official level by Coreper: Amato is anxious to emphasise that there would be no change in the status of the roles of Permanent Representatives in Brussels. A Council where the 'expert' Departmental minister sits alongside the Europe Minister would ensure that decisions are taken with full expert knowledge available, while at the same time resolving one of the gravest weakness of the Brussels system where environment ministers decide environmental policy and farm ministers farm policy etc. The Legislative Council would also be responsible for conciliation with the European Parliament on questions of co-decision: it would put politicians visibly in charge.

The idea of a Legislative Council can be attacked as a move towards a federalist two-chamber model. Stephen questions the workability of dividing existing Council activities between 'executive' and 'legislative' functions. On the other hand, I see its **principal attraction as rooting the legislative decision making of the Union very visibly in the Cabinet Government and Parliamentary accountability of the Member States**. It creates much greater transparency at home about how decisions are taken in the EU and creates a European Minister who would take Ministerial responsibility for our overall European policy. It doesn't detract from the Foreign Office, because for years no Foreign Secretary has properly filled this function (because they have other more important things to do) and the machinery would still be serviced by COREPER.

Additionally, to appeal to the smalls and new members, we might combine a rotating chair of the Legislative Council with functions of a 'rotating' host Vice President from the Member States.

What should our tactics now be?

First, we need to establish that we will **only accept the Franco-German compromise on the basis of an overall package that meets our requirements**. We are not prepared to see the functions of our European Council Chair whittled away to nothing. And we have very bold and clear red lines for the election of the Commission President which cannot be crossed. Your forthcoming lunch with Giscard, and your Summits with Chirac, Aznar and Berlusconi are opportunities to do this.

Second, we need a coherent proposal for **how the rest of the Council Presidency will function,** on the basis of rotation, or individual Council election, **on the assumption that a full time Chair of the European Council is accepted.** One option would be to go for a **modified team Presidency** model with the **variant** that some Councils should be free to elect their own Chair for a two and a half year period. My personal preference would be to add an additional twist to this and compromise with Amato and Giscard: **accept the concept of a Legislative Council chaired on rotation, but rule out the idea of the President of the Commission, or individual Commissioners chairing 'executive' Councils.** You need to think this through before you lunch with Giscard. At the same time **I would like to write to Amato**, giving him a clear steer as to what you will and will not accept.

Third – and I think this is less urgent – we need to decide on **an acceptable model for the election of the Commission President.** This is not just a technical question of 'fancy franchises' to prevent a partisan Commission emerging. You need to think through the **politics** of how a new system will work. For example:

- If the European Council draws up **the shortlist**, there will be pressure for that shortlist to be made up of **nominees from each of the European political parties:** in other words, your main opportunity for influence would be as a member of the PES Bureau. Is that where you want to end up?
- Alternatively we might simply leave the decision to the EP, but with the requirement that a two-thirds majority be obtained and the European Council endorse the outcome. **But could the Council in practice even turn down a candidate elected by a two-thirds majority?**

- With the two-thirds 'requirement' in place, this would tend to favour candidates with strong **'centrist'** credentials. But is there any way of making it more likely that such a candidate would be of the **'radical centre'**, rather than a compromise **'fudger and nudger'**?
- What are the 'pros and cons' of a **wider electoral college,** involving national Parliamentarians as well as the EP, that the Swedes favour?

I recommend you should talk these issues through with people who have some direct political experience of the European Parliament such as Neil Kinnock, Geoff Hoon, Simon Murphy, Gary Titley, Richard Corbett, Julian Priestley.

We need to clarify our thinking soon in all these areas so that we can move to the next intensive stage of lobbying.

Roger

ROGER LIDDLE

FCO
In box
(e-mailed to all)

E-MAILED

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23 January 2003

Dear Kim,

FUTURE OF EUROPE: INSTITUTIONS

We discussed with Peter Hain this morning the work we need to do following the Convention Plenary debate on the institutions, I think we ought to do some more internal thinking on some other key questions. Giscard has promised that subsequent Plenary debates will be held on each institution before the Convention looks again at the overall EU architecture. We need quickly to work up, finalise and clear with Whitehall our lines on each.

We need also to consider the tactics of submitting written comments to the Secretariat: should we do this in tandem with others (e.g. the Spanish) or alone; should these joint submissions be on all the institutions or focused on an institution at a time?

Chair of the European Council

The more rational criticisms of our proposal are that:

- it would lead to institutionalised conflict between the Commission and the European Council;

- the Chair would not be accountable;

- he or she would usurp the functions of the Commission;

- he or she would have a difficult relationship with the double hatted Foreign Minister.

As discussed with Nick Baird, we need further work on our paper to demonstrate more clearly:

- that strengthening the Council is a legitimate aim of the Convention: that it should not be the only institution left alone by the Convention;

- that the European Council is accountable through its members to national Parliaments and to national electorates;

- why the Commission would not lose out by the Council having a stronger Chair. There are some tasks – pre-European Council tours, deal brokering on dossiers that are tricky politically – which need the leadership of the Council Presidency.

The Commission

Lamy complained to me on Monday that we had missed a great opportunity in not pocketing the Commission's offer to allow the European Council to remove them en masse. As well as looking again at the details of this proposal (in the December Commission Communication) we should:

- Consider the wider issues of who removes the Commission and under what circumstances. Should we support proposals for the EP or the Council to be able to remove individual Commissioners for misdemeanours? Could the European Council be able to sack the President of the Commission e.g. for toeing an EP party line?

- Consider the tactics of supporting a smaller Commission. I share Peter Hain's view that we should not get into this battle at this stage.

- Work up the UKREP paper on our positive agenda for the Commission.

- Conclude our deliberations on comitology and consider how we handle the final version of the UK paper – e.g. do we submit to the Secretariat?

European Parliament/Congress/Electoral College

I am sure work is in hand on how the President of the Commission might be chosen. Any paper should consider the different modalities of doing this, i.e:

- Voting thresholds (under the French/German model);

- how the European Council might submit a slate of candidates to the Parliament (the Blair/Italy idea);

- the merits (and demerits)of the Danish proposal for an electoral college of MPs and MEPs, or giving the role to the Congress.

In any case, we should make clear that this is off the agenda for as long as the Convention continues to reject the Chair of the European Council.

We also need to re-visit the Simplification WG formula on co-decision. If we intend to oppose co-decision we will need decent intellectual justifications for doing so. HMT are also drawing up a paper on the budget.

European Court of Justice

Following the 22 January COLA meeting, FCO are drawing up a paper. We should consider whether we can sign up others to our ideas, particularly on the appointment of judges post-enlargement. There have been rumours of joint Spanish-Dutch work in this area.

Court of Auditors, Ombudsman, Economic and Social Committee

We should not forget these issues.

What do we think of David Bostock's paper on the Court of Auditors? Should we be pushing it?

Do we want to say anything about the Ombudsman or the Economic and Social Committee? My own view is not.

Work on the Committee of the Regions is being swept up in our paper on the Regions.

We should have something on paper ready for a Wall/Sheinwald discussion by mid-February.

I am copying this letter to the other members of ESG.

Yours ever,

Stephen

J S WALL

Kim Darroch CMG
FCO

21 January 2003

Gone to JG.

Sarah Lyons
PS/Mr Hain

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Matthew/Ryan to see

Dear Sarah, Yesterday

EUROPEAN CONVENTION/ITALY: MR HAIN'S MEETING WITH FINI, 21 JANUARY

1. Mr Hain had a meeting with Fini (Italy, Government Representative) in the margins of the European Convention on 21 January.

2. Franco-German contribution: Mr Hain said the previous day had been depressing, with lots of opposition to the permanent European Council President. Fini agreed – the French and Germans had got their timing wrong. But Mr Hain wondered if more could be done to assuage the concerns of those who remained attached to the principle of rotation, for example by fleshing out the idea of a host Presidency/rotating Vice President, which might include e.g. hosting informal Foreign Ministers' meetings and deputising for the President in certain circumstances. Fini agreed strongly, suggesting that something should be put down on paper. Mr Hain and Fini agreed that both sides would do some more work on the issue before their next meeting.

3. Single Legislative Council: Fini asked what we thought of Amato's idea. Mr Hain said we were open, but not yet convinced. Indeed, we saw some significant problems: how could a resident Minister retain the confidence of his government; how could he be held accountable to his national parliament; how would sectoral Ministers interact with him? Mr Hain said it would be useful if the idea could be worked up in a paper; the Italian side promised to produce one shortly.

4. Social Europe: Mr Hain said we were feeling lonely in the Social Europe working group. It had become clear that the majority of MEPs and others wanted all social policy issues decided by QMV. Fini said it was impossible to avoid QMV for social policy, except in fiscal areas. He preferred to look at the problem from the perspective of competence. It would be better if the EU set overarching guidelines and left implementation for member states. Mr Hain reiterated that the more QMV was extended, the less social policy would be an issue for nation states. He asked whether we could count on Italian support when the issue came to Plenary. Fini said we could: he had got the message and would be "very nasty" with the Italian Parliamentary members of the group.

5. Iraq: As the meeting closed, Fini stressed to Mr Hain that public opinion in Italy remained strongly against military action. The Catholic church was also taking an active role. Should there be a military intervention, Italy would support the US and the UK. But it would be constrained in its support. Mr Hain thanked Fini for his comments. We had many of the same problems in the UK. But the paradox was that international consensus could only be maintained and Saddam could only be persuaded to disarm through the threat of military action. It was also essential for the UK to remain close to the US, to help guide policy towards an internationalist approach. Fini agreed. This was exactly why the UK role was so fundamental.

Yours ever,

Matthew

Matthew Taylor

First Secretary

cc: Stephen Wall, No 10
Kim Darroch, FCO
Nick Baird, EUD(I)
Charles Gray, MED
Catherine Royle , EUD(I)
Tom Drew, EUD(I)
John Fletcher, EUD(I)
Joe Griffin, Cabinet Office
Daniel Thornton, HMT
Peter Jones, Rome
Jo Kuennsberg, Paris
Susannah Simon, Berlin
UKREP Convention

The Permanent Representative
Sir Nigel Sheinwald KCMG

20 January 2003

Sir Stephen Wall KCMG LVO
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Dear Stephen

THE SINGLE LEGISLATIVE COUNCIL: A GOOD IDEA?

1. This idea has been gaining some ground in the Convention. But it has not been discussed in any depth, and is not yet on anything like a roll – the Franco-German paper referred to the issue of legislative versus operational Council functions, but did not back the SLC idea as such.

2. Nevertheless, people are now starting to talk and think more about it. I understand that EP/JMC(E) may cover it at a future meeting. In any event it would be useful for senior officials to discuss the pros and cons in the ESG or a similar forum one Friday.

3. The basic concept is that a Single Legislative Council should be formed which should handle all legislative dossiers, at all stages of the legislative process, in public. Identifiable executive functions would be retained by the Council, which would meet separately in a smaller number of formations, eg General Affairs, External, Ecofin, probably JHA; but it is not clear whether those Councils which have a primarily legislative agenda would survive.

4. There would probably be two Ministers per Member State – one a "Legal" or General Minister, who would be the principal national representative; he/she would be accompanied by the Minister responsible for the particular dossier. The SLC would move across the waterfront – from financial services to agriculture to environment.

5. The detail is set out in the attached paper by Caroline Wilson, which I commend. As Caroline makes clear, there are some, at least superficial, attractions to this idea. But there are also a number of points which we need to consider carefully:

- quality of decision-making: would the UK benefit from moving away from negotiating fora which are subject-specific, with the Minister responsible for UK domestic policy also responsible for the conduct of negotiation? Would it be better for us to have a General or Europe Minister in charge, able to do deals and make trade offs between the dossiers? How would this affect Whitehall decision-making

and the handling of European issues? I think we would have to accept that the formation of such a new Council would require each Government to nominate a Cabinet-level Minister who would represent his/her country in it; and that the second Minister would normally be seen as having subsidiary status.

- Can the Council's executive functions subsist once separated from the legislative? Clearly some of the proponents of the SLC would like executive functions to fall primarily, or even exclusively, to the Commission. We and others would not want this. But how would Councils fare once their legislative work had been taken away? For example, much of the **JHA** agenda is legislation-based – would it be able to reinvent itself in executive format? Even if **Ecofin** were prepared to accept tax and financial services legislation being handled in a general SLC, what would Ecofin be like in executive format given the rival existence of the Eurogroup?

- How would we avoid the federalist vision becoming a reality, whereby the Council evolves into a second amending legislative chamber, with executive power passing to the Commission?

6. My own tentative conclusion is that we should remain sceptical about the idea. But the status quo will not do either. I would go for a third option in which the legislative and executive functions were clearly separated in each Council agenda; with the legislative activity open to the public throughout the process (as in the original UK/German proposal). This would help with clarity and transparency of decision-making; but would not produce the horizontal effects, positive and negative, of a single new Council.

Yours
Nigel

Nigel Sheinwald

cc: ESG Members
Roger Liddle, No.10
Jonathan Sinclair, PS/SoS, FCO
Sarah Lyons, PS/Peter Hain, FCO
David Dunn, PS/Denis MacShane, FCO
Nick Baird, EUD(I), FCO
Catherine Royle, EUD(I), FCO

THE SINGLE LEGISLATIVE COUNCIL

1. **The concept of a separate Single Legislative Council (SLC),** inspired by Amato, has been gaining ground at least with non-practitioners, the Convention Praesidium and some Member States (Italy, Belgium). The Franco-German paper advocates separation in the Council's "operational" and legislative functions. The Convention working group on national parliaments recommends an open legislative function.

2. **Those in favour believe a SLC means**

   - a more rational functioning of the Council through a separation of powers,
   - a more democratic and visible decision-making process
   - greater transparency: the SLC would have open sessions throughout
   - better quality of legislation: the SLC would take account of the wider European interest rather than indulge in over-specialised nit-picking (so its advocates say), and the continuous presence of a 'legal expert' of Ministerial rank would improve the quality of drafting .
   - those with a federalist agenda see the SLC as the precursor of a bicameral legislature (the EP being the other half), with a general extension of co-decision and QMV, and the Commission taking on more executive functions.

3. **So far, talk of a SLC has been highly abstract.** The details have never been fleshed out. The key issues are:

   - Remit: The definition of "legislative" – *stricto sensu* all legally binding Council acts (even Decisions) are "legislation" under the Treaties, and many of the Council's policy debates centre on legislative proposals. Presumably working groups / Coreper would continue to work to it.

   - Participation: one suggestion is for a Minister competent in drafting legislation (a high-ranking law officer) and the relevant sectoral Minister to attend. But most EU Governments don't have such a figure, or at least not in an external role. Most people assume continuity would be provided by Europe Ministers of Cabinet rank, assisted by (maybe junior) sectoral Ministers.

   - Consequences for sectoral councils – Councils with substantial executive roles (e.g. ECOFIN, GAERC) would no doubt continue. What of the role of other Councils?

4. The **executive/legislative distinction** is superficially attractive. But in the EU the boundary is murky, and possibly artificial. This paper attempts to gauge **where the boundary** might lie, **whether the distinction makes sense** in the EU, and **the consequences for the organisation of the Council**.

5. **What are the "legislative" and "executive" functions? the definitions:**

- The Council Rules of Procedure (RoP) describe the Council as "**a legislator**" when it adopts rules which are legally binding … whether by …regulations, directives or decisions, … with the exception of … internal measures, administrative or budgetary acts, acts concerning inter-institutional or international relations or non-binding acts (such as conclusions, recommendations or resolutions).

- The Convention Simplification working group final report proposes categorising EU laws and framework laws (i.e. current Regulations and Directives) as **legislative** – a decision would not be legislative.

- Where does that leave the Council's **"executive" function?** The classic executive function is Treaty-based: in CFSP, EMU and a few other areas such as the open method of coordination on employment, 3rd pillar JHA - police and judicial cooperation in criminal matters). But …

6. **The practice is less clear.** The whole nature of the Community's output is based on laws. The need to formalise decisions in the EU (even ones that might be "executive" in a national context) **tends towards formal instruments**, often legislative. The RoP acknowledge this by excluding "international relations" from legislative (the tools of EU foreign policy are often regulations on restrictive trade/visa measures).

7. Conversely, **many non-binding acts are related to legislation.** The best policy discussions often arise when real world legislative consequences are at issue - policy is forced by negotiating legislation, it crystallises on the "technical" detail. Strategy / action plans, bench-marking and peer reviews are not divorced from the legislative context.

8. Rather than separation of powers, **clarification of powers** might work better. The perceived added value in a SLC could be gained **in sectoral councils** by

- **Clearer separation in agendas between legislative and executive**. Council agendas already highlight legislative dossiers for decision, this year the Competitiveness Council agendas for the first time split items into "horizontal issues" and "individual policy files"

- **Greater transparency** – opening up the Council for all stages of debate on legislative dossiers

- **Parliamentary type procedures** in terms of working methods, voting and amendments, so ensuring higher quality drafting

Possible consequences of an SLC for individual Councils:

- **GAERC – GENERAL**: mostly executive / policy, institutional or cross-cutting strategic dossiers – should retain current remit.

- **GAERC – EXTERNAL**: mostly executive / policy. Although decisions often implemented by "legislation" (e.g. visa ban regulation, sanctions / restrictive trade measures, development issues), excluded SLC as concern international relations

- **ECOFIN**: Large executive component (economic policy coordination via SGP and BEGs, and the Lisbon agenda). Some heavy legislative dossiers in tax and financial services, but these are highly political.

- **JHA**: Executive character results from nature of much JHA work (combating crime, terrorism, police cooperation) although Council agendas dominated by legislative. Siphoning off legislative might allow for more strategic discussions in Council, but even here, the key strategy in JHA has been decided at European Council level (Tampere, Seville).

- **COMPETITIVENESS**: Majority of time spent on legislative dossiers, horizontal policy dossiers closely linked to legislative programmes

- **TRANSPORT, TELECOM AND ENERGY**: as for Competitiveness.

- **EMPLOYMENT, SOCIAL POLICY, HEALTH AND CONSUMER**: employment guidelines (consultation and qualified majority) are not "legislative" but close to it.

- **ENVIRONMENT**: almost entirely legislative. Discussion on the 6th Environmental Action Plan ("executive") would be meaningless without full knowledge of the legislative backdrop.

- **AGRICULTURE AND FISH**: mainly legislative, pure policy discussions (such as those preceding CAP Mid-Term Review) are highly detailed, closely tied to forthcoming legislative proposals for Review.

- **EDUCATION, CULTURE, YOUTH**: the Council with hardly any legislative acts. No coincidence then that it's regarded as the least important Council.

Caroline Wilson
UKRep Brussels
20 January 2003

IN DCO in box

CONFIDENTIAL

file

10 DOWNING STREET
LONDON SW1A 2AA
020 7930 4433

20 January 2003

Dear Jonathan,

THE CONVENTION: FRANCO-GERMAN CONTRIBUTION

The Prime Minister has now read the Franco-German contribution to the Convention on the institutions of the European Union. The following reflects his comments:

(i) Chair of the European Council

The fact that the French were able to persuade the Germans to 'our' concept of the chair of the European Council is a big prize. We now need to think about how to turn that into a greater degree of support among our partners, particularly the small member states. We have a briefing paper, which we have deployed privately with some colleagues. I remain in favour of not issuing it formally because I think it needs to be something which evolves in the light of comments. For example, it is a step forward that the Germans accept that the chair of the European Council should do the job on a full-time basis, though Silberberg told me on Friday that Fischer was still trying to reopen the question. We may need to do some further work on how the chair of the European Council is elected. The Franco-German paper says QMV, but the idea is more likely to be acceptable to smaller member states if it is based on simple majority. Simple majority would have presentational advantages, though consensus would probably apply in practice.

We may, equally, need to develop our paper a bit more on the division of responsibilities between the chair of the European Council and the President of the Commission eg to ensure that the Commission know that the Council is not going to trespass on their prerogatives, eg in trade negotiations.

Equally, we need to address the extent of the supporting bureaucracy to the chair of the European Council. My Belgian opposite number told me last week that Verhofstadt is much more open to the idea of the elected chair than are his

6

partners in the Benelux. But the Belgians are worried about a large and powerful Council Secretariat setting itself up as a rival to the Commission.

(ii) President of the Commission

The Prime Minister accepts that, if the French had to compromise to get a deal with the Germans, they were right to compromise on how the President of the Commission is chosen rather than to accept the German idea of a single President of the Council and Commission. So he does not want to oppose the deal which the French and Germans have reached on the Commission President for fear of giving, eg Joschka Fischer, an opportunity to reopen the rest of the deal. But it may be possible to shift things a bit. For example, decision by the EP by qualified majority needs to be translated into numbers of votes. The higher the threshold the less chance of the appointment being partisan. It might be possible to get the Parliament to draw up a shortlist of candidates from which the European Council would choose or, conceivably, for the European Council to draw up a shortlist from which the Parliament would choose. The Danish Prime Minister had some quite interesting ideas in this field in his recent speech, and we should clearly look at those to see where we might make common cause.

(iii) Constituting the Commission

The Prime Minister thinks that the Franco-German proposal to give the President of the Commission the power to constitute the College of Commissioners, taking account of geographic and demographic balance, is a brave attempt to reopen the idea of a Commission smaller than the number of member states but he does not think it will fly, given the opposition of most of the existing EU members and all of the candidates. We may have to wait until the terms of the Nice Treaty are fulfilled before we can reopen this, ie at the point of Bulgarian and Romanian accession.

(iv) Powers of the European Parliament

The Franco-German paper increases the probability that the notion that wherever there is QMV there should be co-decision, will emerge as part of the consensus from the Convention (since Giscard d'Estaing defines consensus as a large majority rather than unanimity). Our principal concern is managing agriculture and the budget, and the Prime Minister thinks that the work that has been done in Whitehall is on the right lines: in other words we should see how best we can manage agricultural decision making to develop a pro-reform tendency within the

European Parliament. Equally, we should be open to abolition of the distinction between obligatory and non-obligatory expenditure provided that we can find other mechanisms to ensure the continuation of fiscal discipline.

(v) The Franco-German proposal that QMV should be the general rule

This is not new. It allows implicit room for exceptions. But it is obviously better for us if we can keep the exceptions we have to argue for to a minimum. From a UK point of view, our position will be much more sustainable if we have allies for particular issues.

(vi) Chairs of Council

The Prime Minister believes we should be open to the idea of some of the most important Councils electing their own chair, as per the Franco-German proposal. He thinks that we and other like-minded member states ought to be able to ensure that a candidate acceptable to us is elected in each case.

(vii) Foreign policy

The Prime Minister thinks that the idea of a European Foreign Affairs Minister will now run. He does not think we should oppose the idea but it is essential to get the modalities of it in a form that genuinely amounts to reverse takeover. The paper which the FCO prepared is a good basis and we should probably now see whether we can firm that up with the French so that they can get the Germans on board for that particular model.

(viii) Decision making in foreign policy

The Prime Minister would like us to work on what we would have to do to make the Franco-German construction on decision making in foreign policy one that we could live with. We know that the French and Germans have done a deal to prevent each other from being outvoted. We know that the French are interested in us joining that deal. The Prime Minister would like to explore the scope for interlocking alliances, eg France/Germany/UK or Spain/Italy/UK, which would protect our position.

(viii) The Congress

It may be that the Franco-German paper is the Congress's last gasp. But the Prime Minister does not really care about the idea of a Congress one way or the other.

I am copying this letter to the Private Secretaries to members of the EP Committee and Sir Nigel Sheinwald (UKRep Brussels).

Yours ever,

Stephen

J S WALL

Jonathan Sinclair
FCO

SENATO DELLA REPUBBLICA

MR

cc SW.
DM
JPo.

Dear Prime Minister, dear Tony,

I understand that objections are raised against my (still firm) idea of one single Council for Legislative Affairs in Brussels. From your last and beautiful speech in Cardiff I also understand that you are ready to support the idea, which makes me confident and gives me one more reason to ask you a few minutes o attention for the arguments of this letter.

First of all let me tell you that the proposal is widely (almost unanimously I would say) shared in ou political family and also in the EPP. The basic reasons of it are in fact stronger than any objection legislation that comes from sectoral councils, and therefore from Ministers responsible for one only of the several collective interests that any piece of legislation necessarily touches upon, violates basic democratic principles. Having said so:

1. there is no reason to exclude sectoral Ministers from the Legislative Council, the permanent member of which (Ministers for European Affairs acting under the direct authority of their Prime Ministers should be accompanied time by time by the 'relevant' sectoral Ministers. There will be, in othe words, national delegations, that the permanent members should head;
2. there is no reason to exclude our Foreign Services from the preparation of the Council and it would be silly to do it, for they have the necessary expertise. It is obvious for me that the Coreper will remain where it is. And it is even more obvious that it would be a non sense for us to train a new bureaucracy when the existing one can keep working on European legislation, whoever the Minister in charge of it

I will keep you informed of any development on this matter. But there is no reason to give up with a crucial innovation in terms of democratic 'lisibilité' of the future Europe for the sake of interests that may find satisfactory solutions also in the new system. Thank you again for your attention.

All the best.

Giuliano

Rome, 22 January 2003.

C.M.FABRIANO

fje

From: **Stephen Wall**
Date: **17 January 2003**

PRIME MINISTER

cc: **Jonathan Powell**
Alastair Campbell
Sally Morgan
Jeremy Heywood
Roger Liddle
Matthew Rycroft
Steven Morris
Rachel Cowburn
Sir Andrew Turnbull
Sir Nigel Sheinwald
Martin Donnelly

THE CONVENTION: FRANCO-GERMAN CONTRIBUTION

/ We do not yet have the text in English. I attach the full French version. It will be presented by Villepin and Fischer to the Convention on Tuesday. Peter Hain is briefed to be positive, but not to over-do the praise, not least because reaction from the small member states has been predictably suspicious. Reaction from the Commission has been characteristically ungracious.

There are a number of issues that we need to decide:

(i) Do we basically accept the trade off ie the concession which the French have made on the selection of the Commission President in exchange for getting the Germans on board for 'our' model of the President of the European Council.

I have to come clean and confess that the French have followed the advice I gave them. They were tempted to do the deal the other way ie to

concede the joint chair of the Council/Commission while maintaining the Council's right to nominate the President of the Commission subject to approval by the European Parliament. I said that if they had to compromise they should go the other way.

The proviso that the European Parliament nominate the President of the European Commission by a qualified majority has to be translated into exact numbers of votes but is a useful assurance that the appointment will not be a partisan one. It would obviously be better if the Parliament were required to draw up a shortlist from which the European Council would choose. But I would be loath to do anything which gave people, including Joschka Fischer frankly, the chance to reopen the deal. Silberberg, who was here today, told me that even now the agreement which is in the Franco-German document to have a full-time chair of the European Council is not accepted by Fischer, and Schröder still has to work on him.

Why not the Council do the shortlist?

(ii) The French and Germans are proposing to give the President of the Commission the power to constitute the College of Commissioners, taking account of geographic and demographic balance. This is a brave attempt to reopen the idea of a Commission smaller than the number of member states. But it will not fly. We will need to return to this issue, but I do not myself think we can so until we reach 27, ie the timetable set out under the Nice Treaty. The new member states are adamant that they will not contemplate not having a Commissioner. And we risk losing them on everything else if we take them on on this one.

(iii) Powers of the European Parliament. The French and Germans propose co-decision wherever there is QMV and greater powers for the Parliament over the Community budget.

Both these points are controversial within Whitehall, in particular the idea of co-decision over agriculture. Defra have convinced themselves that co-decision for agriculture will favour the agricultural lobby within the European Parliament. I am not so convinced of this and the fact that the French, up till now, have opposed co-decision for agriculture suggests that they think it would help the liberalisers.

On the budget, we have done quite a lot of work in Whitehall and, I think, can reach an agreed position between ourselves, France and Germany.

(iv) The Council. The paper proposes QMV as a general rule. This has effectively been the French and German position since before Nice. The paper is also proposing a variant of our idea of elected Council chairs ie elected Council chairs for the Foreign Affairs Council, ECOFIN, the Eurogroup and the JHA Council, with rotating Presidency for the others. This is quite a neat trick of ensuring efficacy in the Councils that have the highest profile, while giving a sop to the smaller member states on the other Councils. The Chancellor will not like the idea of elected chairs of ECOFIN or the Eurogroup, but we can hardly have any say over the Eurogroup since we are not part of it. His fear for ECOFIN is that, if you get a bad chair, then you cannot get rid of them. I do not think this is a very convincing argument The way to get a good chair is to ensure that

you cooperate with enough like-minded member states to get the person you want. It just requires us to box clever.

I agree.

(v) Foreign policy. The paper proposes a single double-hatted figure replacing Solana and Patten. He or she would be called the European Foreign Affairs Minister. He would be a member of the Commission but with a special status; taking part in meetings of the Commission but (by implication) not voting. It is also made clear on the face of the paper that the Commission will not take decisions on foreign policy issues. The issue for us is whether we accept that there will be a single double-hatted figure or whether we go back to our idea of a Solana replacement with, effectively, deputies within the Commission. I recommend that we stick to the Franco-German idea and ensure that its modalities genuinely amount to reverse takeover ie that the person concerned is not subject to Commission control and is fully answerable to the Council.

absolutely necessary.

(vi) More difficult is the question of decision making. The paper says that foreign policy decisions should generally be taken by qualified majority, but by unanimity for decisions which have security and defence implications. If a member state has a serious national interest which means that they object to being voted down, then a procedure would take place involving, first of all, mediation by the European Minister for Foreign Affairs; secondly, mediation by the chair of the European Council; and, thirdly, referral to the European Council itself, where a decision would be taken by qualified majority.

Under existing treaties the Council can act by qualified majority when it adopts joint actions or common positions or any other decision "on the basis of a common strategy". In other words, you write into the common strategy (say, the broad policy towards Russia) the necessary safeguards to ensure that you can live with majority voting decisions that arise from it. Or you seek to define common positions as being outside the scope of the common strategy and therefore not subject to QMV in the first place.

The French have much the same concerns as we do, but they argue as follows:

(i) More often that not we want action and do not want to see it thwarted by one recalcitrant member state.

(ii) The occasions on which a large member state would be outvoted are minimal.

(iii) They have done a deal with the Germans to ensure that they could not be outvoted and seem open to extending the deal to us. The three of us together would constitute a blocking minority.

(iv) The really difficult decisions will have security and defence implications, which triggers unanimity.

I think the problem for us is more political than substantive ie if the Franco-German agreement was translated into a legal text in theory you would have to acknowledge to the House of Commons that on some foreign policy issues you could be outvoted. I think this would be more theory than practice because, if there was ever a decision that was really unacceptable to us, we would say that it had security implications and

therefore invoked unanimity. Even if our partners went ahead and voted we would simply refuse to implement the outcome. For them, there is no recourse to the ECJ, so nothing that could be done about it. So the key question is whether you think something on these lines is defensible publicly. I think it's doable but we need a Benelux alliance on it & with Fr/Ge & Sp/It/Lux.

(vii) National parliaments. The stuff on national parliaments is fine. There is reference to an annual debate between members of the EP and national parliaments, possibly taking place in 'the' Congress. Since the Congress does not already exist, and there is no other mention of it in the paper, this is slightly bizarre. I suspect this is the last gasp of the French idea, unless Giscard insists on giving it artificial respiration.

I really don't care on this.

STEPHEN WALL

Overall I think it could be much worse.

Paris et Berlin, le 15 janvier 2003

Contribution franco-allemande à la Convention européenne sur l'architecture institutionnelle de l'Union

Lors du Conseil européen de Copenhague qui s'est tenu il y a quelques semaines, l'Union a réalisé le plus grand élargissement de son histoire. Si elle entend conserver son unité et sa capacité d'action à l'intérieur comme à l'extérieur avec 25 Etats membres et plus, l'Union doit plus que jamais s'approfondir.

Nous souhaitons réussir une réforme des institutions qui réponde à trois exigences : clarté, légitimité et efficacité. Afin d'atteindre ces objectifs, un renforcement du triangle institutionnel (préservant son équilibre) ainsi qu'une réforme fondamentale de la représentation extérieure de l'Union sont nécessaires dans la Constitution européenne.

A cet égard, nous nous félicitons de l'avant-projet de traité constitutionnel présenté par le président de la Convention européenne. Nous estimons que ce texte devrait définir précisément dans sa première partie les objectifs des politiques de l'Union.

L'Europe est une Union des Etats, des peuples et des citoyens. Cette vocation politique peut s'exprimer dans les institutions par l'idée de fédération d'Etats-nations.

Nous souhaitons que l'Union soit dotée d'une personnalité juridique unique ainsi que d'institutions communes fortes qui prennent appui sur une architecture rénovée mettant fin à l'organisation actuelle en piliers, tout en conservant des procédures adaptées selon les domaines.

Nous souhaitons que les citoyens d'Europe puissent se reconnaître dans une communauté de valeurs et de droit : c'est pourquoi la Charte des droits fondamentaux doit être intégralement insérée dans la future Constitution. Un autre préalable important réside dans une meilleure délimitation des compétences entre l'Union et les Etats membres, conformément aux principes de subsidiarité et de proportionnalité.

Nous faisons toute confiance à la Convention pour présenter un traité constitutionnel ambitieux appelé à remplacer les traités existants et souhaitons que la conférence intergouvernementale qui s'en suivra puisse parachever cette Constitution dans les plus brefs délais, si possible avant la fin de cette année.

1. Le Conseil européen

Il a notamment pour fonctions :

- d'arrêter les grandes orientations politiques et stratégiques de l'Union, en liaison avec la Commission ;

- de définir les principes et les grands axes de la politique étrangère et de sécurité commune, y compris en matière de défense.

Comme la Commission et le Parlement européen, le Conseil européen doit être doté d'une présidence stable. Dans une Europe élargie, il est indispensable de donner une continuité, une stabilité et une visibilité à la direction du Conseil européen.

Le Conseil européen élit son président à la majorité qualifiée pour une durée de cinq ans ou de deux ans et demi renouvelables. Cette personnalité exerce ses fonctions à temps plein pendant la durée de son mandat.

Le président du Conseil européen a deux fonctions principales :

- il prépare, préside et anime les travaux du Conseil européen et veille à l'exécution de ses décisions ;

- il représente l'Union sur la scène internationale lors des rencontres des chefs d'Etat ou de gouvernement, sans préjudice des compétences de la Commission et de son Président, sachant que la conduite quotidienne de la politique étrangère et de sécurité commune revient au ministre européen des affaires étrangères.

2. La Commission européenne

Au moment où l'Europe devient plus diverse en s'élargissant, le traité constitutionnel doit confirmer la Commission européenne dans son rôle de moteur de la construction européenne, de gardienne des traités ainsi que dans sa vocation à incarner l'intérêt général européen.

La Commission a le droit d'initiative selon les procédures prévues par les traités.

Elle est chargée de l'exécution de la législation adoptée par le Parlement européen et le Conseil ainsi que du suivi et du contrôle de la bonne application des décisions du Conseil par les Etats membres. Elle doit avoir les moyens d'exercer pleinement ce rôle majeur. Cela suppose une simplification radicale de la procédure de comitologie. Pour être en mesure d'assumer leur responsabilité politique, les commissaires disposent d'un pouvoir d'instruction sur les Directions générales.

Dans le domaine de la politique économique, le rôle de la Commission doit être renforcé, notamment dans la surveillance du pacte de stabilité et de croissance, par la possibilité de constater l'existence ou le risque de déficits publics excessifs.

Sa légitimité doit être mieux assurée, sans que cela porte atteinte à son indépendance et à son autonomie. Sa désignation et celle de son président doivent intervenir au lendemain des élections du Parlement européen. Après l'élection du président de la Commission par le Parlement européen à une majorité qualifiée de ses membres, il est approuvé par le Conseil européen statuant à la majorité qualifiée.

Le président de la Commission constitue son collège en tenant compte des équilibres géographiques et démographiques. Le président de la Commission peut opérer une distinction au sein du collège entre commissaires ayant un portefeuille sectoriel et commissaires chargés de fonctions ou de missions spécifiques, avec un système de rotation égalitaire. Après approbation du Parlement européen, les membres de la Commission sont nommés par le Conseil, statuant à la majorité qualifiée.

Le président de la Commission donne des directives politiques aux travaux de la Commission.

La Commission est politiquement responsable à la fois devant le Parlement européen et le Conseil européen.

3. Le Parlement européen

Le Parlement européen exerce, conjointement avec le Conseil, le pouvoir législatif. Toute extension de la règle du vote majoritaire au Conseil doit s'accompagner automatiquement d'un pouvoir de codécision conféré au Parlement européen.

L'Allemagne et la France souhaitent que la procédure budgétaire soit rationalisée et simplifiée et qu'une réflexion s'engage sur les conditions selon lesquelles le Parlement Européen pourrait statuer sur tout ou partie des recettes du budget, sans accroître la charge fiscale globale.

4. Le Conseil des ministres

Le Conseil des ministres, qui élabore avec le Parlement européen les lois européennes, exercera aussi des responsabilités opérationnelles accrues – en particulier en matière de JAI et de PESC – qui imposent une direction plus stable.

Il doit se concentrer sur l'essentiel : les décisions prises par le Conseil doivent laisser à la Commission et aux Etats membres une large capacité de mise en œuvre et d'exécution.

Il doit être efficace : les décisions doivent être prises, en règle générale, à la majorité qualifiée.

Pour rendre l'action du Conseil plus visible et plus compréhensible, il est souhaitable de séparer dans son activité les tâches opérationnelles et législatives. Dans le premier cas, les méthodes de travail doivent privilégier efficacité et rapidité dans la prise de décisions. Dans le second cas, les débats du Conseil sont publics et ses attributions s'exercent, de manière générale, en codécision avec le Parlement européen.

Les modalités de la présidence du Conseil des ministres varient selon les matières. Ainsi, le Conseil affaires générales est présidé par le secrétaire général du Conseil ; la présidence du Conseil Relex incombe au ministre européen des affaires étrangères ; le Conseil Ecofin, l'Eurogroupe et le Conseil JAI élisent leurs présidents pour deux ans parmi les membres du Conseil. La présidence d'autres formations du Conseil doit être organisée de manière à garantir la plus grande participation possible de tous les Etats membres sur la base d'une rotation égalitaire.

5. L'action extérieure de l'Union

Pour que l'Europe soit forte et crédible sur la scène mondiale, ses moyens opérationnels, financiers et humains doivent être en adéquation avec sa volonté politique. Cette exigence de cohérence implique que les fonctions de haut représentant et de commissaire chargé des relations extérieures soient exercées par une seule et même personne, un ministre européen des affaires étrangères.

Le rôle de ce ministre européen des affaires étrangères est renforcé par rapport à la situation actuelle : il dispose d'un droit d'initiative formel en matière de PESC et préside le Conseil des ministres chargé des relations extérieures et de la défense.

Le Conseil européen nomme le ministre européen des affaires étrangères à la majorité qualifiée, en accord avec le président de la Commission européenne. Le Ministre européen des Affaires étrangères participe ès qualités et en tant que membre de la Commission doté d'un statut spécial, aux réunions de la Commission. La Commission ne prend pas de décisions en matière de PESC.

En matière de politique étrangère et de sécurité commune, les décisions sont prises en général à la majorité qualifiée. Toutefois, les décisions qui ont des implications en matière de sécurité et de défense sont prises à l'unanimité. Si un Etat membre invoque un intérêt national pour s'opposer à une décision, le ministre européen des affaires étrangères est invité à rechercher avec lui une solution ; s'il n'y parvient pas, le président du Conseil européen en fait de même ; si aucune solution n'est trouvée, le Conseil européen est saisi de la question en vue d'une décision à la majorité qualifiée.

Le ministre européen des affaires étrangères s'appuie sur un service diplomatique européen associant la direction générale des relations extérieures de la Commission à une unité de politique étrangère qui doit être créée. Celle-ci comprend les services de politique étrangère du secrétariat du Conseil et est renforcée par des fonctionnaires envoyés par les Etats membres et la Commission. Le service diplomatique européen travaille en étroite relation avec les diplomaties des Etats membres. Les délégations existantes de la Commission sont transformées en délégations de l'Union européenne. Ce schéma permettrait l'émergence d'une diplomatie européenne.

Dans le domaine de la politique européenne de sécurité et de défense, il est souhaitable que tous les États membres de l'Union participent. Néanmoins, il y aura des situations où tous les États membres ne seront pas disposés à participer à des coopérations ou ne seront pas en mesure de le faire. Dans ce

cas de figure, ceux qui le souhaitent doivent pouvoir utiliser l'instrument de la coopération renforcée pour la PESD.

6. <u>Les parlements nationaux</u>

Les parlements nationaux doivent être mieux associés à l'élaboration et au contrôle des décisions de l'Union européenne : ils sont un relais irremplaçable entre les citoyens et l'Union et contribuent au sentiment d'appartenance à l'ensemble européen. C'est une exigence de démocratie.

Les parlements nationaux interviennent dans le contrôle du principe de subsidiarité, par un mécanisme "d'alerte précoce".

Les parlements nationaux participent aux futures réformes des traités dans une Convention européenne.

Sans créer de nouvelles institutions, un dialogue entre parlementaires européens et parlementaires nationaux est développé, par exemple par l'organisation d'un débat annuel sur l'état de l'Union au sein du Congrès. Ces réunions, qui se tiendraient à Strasbourg, seraient présidées par le président du Parlement européen.

File

From: Stephen Wall
Date: 15 January 2003

JONATHAN POWELL

Cc Alastair Campbell
Sally Morgan
Jeremy Heywood
Steve Morris
Danny Pruce
Matthew Rycroft
David Manning
Roger Liddle
Nigel Sheinwald, UKRep Brussels
Kim Darroch, FCO
Martin Donnelly, CO

FAXED 15/1

FUTURE OF EUROPE: FRANCO-GERMAN PROPOSALS

The Germans will send us their agreed text with the French in a couple of hours time. It will become public later today.

Good Bids: They have abandoned honorific president and gone for a president of the European Council on our lines.

Less Good: The European Parliament will nominate the President of the Commission for approval by the European Council.

Bad: Foreign policy (not defence) decisions would be taken by QMV with a right of appeal to the European Council which would also decide by QMV. The French and Germans have reached a private agreement that they would not allow each other to be voted down.

I am sure we should not get ourselves out in public in opposition to a Franco-German text. I think we should welcome the proposals as a serious contribution to the debate and in particular welcome the agreement on the Chair of the European Council. On foreign policy, we should say that we have always been open to the use of Qualified Majority in foreign policy subject to the fact that at the end of the day each country has to be able to determine its own vital foreign policy interests.

STEPHEN WALL