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TIME FOR A GOVERNMENT OF THE UNION

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List of Abbreviations

CFSP	Common Foreign and Security Policy
COREPER	Committee of Permanent Representatives
COPS	Political and Security Committee
EER	European External Representative
EP	European Parliament
ESDP	European Security and Defence Policy
GAC	General Affairs Council
GAERC	General Affairs and External Relations Council
HR	High Representative for CFSP
JHA	Justice and Home Affairs
QMV	Qualified majority voting
TEC	Treaty establishing the European Community
TEU	Treaty on the European Union
WG	Working Group

*«Rien n'est possible sans les hommes, rien n'est durable sans les institutions.»
(J. Monnet)*

Executive Summary

This Working Paper outlines the building blocks of a sensible debate on the key question of how to shape the government of the European Union. It argues that a suitable solution to the problems of leadership, policy coordination and accountability at the EU level requires careful prior consideration of the specific features, strengths and weaknesses of each institution or body involved in the government of the Union. At the same time, the recognition of the distinctive features of the EU as a political actor means that, while 'governmental functions' need to be provided, a unitary government will not be established along the lines of national constitutional orders. But there is a need for a purposeful political authority and innovative and dynamic leadership.

As to the central question of the envisaged long term President of the European Council, the 'job description' of this new key position is the subject of detailed analysis. This shows the potential disruptive impact it could have on the balance of power in the EU institutional framework. The merits of moving on to an integrated Presidency of the Union, whereby one person would chair both the Commission and the European Council, are recognised. However, it is also acknowledged that a consensus around this proposal is unlikely to emerge in the Convention, and this idea might, therefore, be premature.

A constructive solution is finally suggested including the establishment of a long-term Chairman of the European Council on very precise conditions, in order to respect the inter-institutional balance. This new figure would not have governing functions but would contribute to streamlining EU decision-making in the inter-play with other actors. At the same time, it is argued that the unique role of the Commission in promoting policy initiatives and reconciling different national priorities should be preserved and expanded by providing the President of the Commission with a stronger political mandate following European elections.



Key recommendations

1. The institutional debate in the Convention should first of all focus on the future role, functions and organisation of the European Council, the Council, the Commission, the Presidency and the European External Representative. In the absence of agreement on these essential points, confrontation on the question of the presidencies of the three institutions makes little sense, and is not conducive to suitable solutions.
2. Account should be taken of major political trends, internal and external to the Union, which are re-shaping the environment of European integration. The reform of the Union is about establishing the instruments and procedures for the Union to deliver on concrete matters, not to function according to abstract models. In particular, current global instability and the crisis in Iraq should be a key element of the debate in the Convention. Reform has to be envisaged with a view to future pressing requirements, and not to interests and agendas of the past.
3. Europe needs innovative and dynamic leadership. Given the consensual dynamics of EU decision-making, leadership in the EU is more about influence and persuasion than about imposing decisions. European decision-making is less about establishing a line of command than about mobilising political support because of the quality of initiatives and ability to promote dialogue in the pursuit of the common interest. Enough political authority has to be allocated to EU institutions, and the Commission in particular, to table ambitious initiatives and be a credible interlocutor.
4. The basic tension underlying European integration is between cohesion and diversity. The latter has to be accommodated at all levels with the requirements for a coherent and efficient institutional framework. A strong institutional 'centre of gravity' should be created to reconcile multiple centrifugal forces. The European Commission should be the core of such a framework.

5. The Commission should be mandated to provide political impulse to European integration. For this to happen, the Commission needs a strong 'power base'. The President of the Commission should be elected by the European Parliament and appointed by the European Council. Fears of a contradiction between further politicisation and independence are misplaced. It should be accepted that independence is best preserved by providing proactive initiative.
6. The European Council is intended to be a political body giving strategic leadership, not a fully-fledged institution enmeshed with more mundane business. It is evident that a European Council with more than 50 individual participants, and meeting four times per year, cannot in any case fulfill the latter function. Its effectiveness should be maximised by improving the cooperation between the Commission and the Council in preparing its meetings and following up its conclusions.
7. The governing Council should be totally separated from the Legislative Council. In the interest of efficiency and coordination the governing formations should be chaired by the relevant Vice-President of the Commission for each policy area. The European External Representative should chair the External Relations Council. The Commission and the Council should share, at the initiative of the former, the key task of yearly and multi-annual planning of the EU work programme and political priorities. These could then be discussed and endorsed by the European Council.
8. The appointment of a long-term President of the European Council with important governing powers should be rejected by the Convention. Such a change would inevitably lead to fragmentation in decision-making and marginalisation of the role of the Commission, and alter the balance of the institutional triangle. There is enough evidence that intergovernmental cooperation falls well short of expectations.



9. The proposal to establish a single President of the European Union who would chair both the Commission and the European Council, should be subject of serious debate. This is arguably the most effective institutional recipe to match the requirements for simplification, legitimacy, efficiency and leadership; and shape a workable government for the Union. However, many practitioners and observers feel that this solution is premature and that the inter-institutional balance might be adversely affected.
10. In order to achieve a constructive solution to the sensitive question of Presidencies, the establishment of a long-term figure to chair the European Council should be accepted but only on very precise conditions. These could be presented as the job description for this new position in the Union. Tasks should include: chairing the European Council, regular exchanges with national leaders, weekly meetings with the President of the Commission to monitor the political situation, and chairing inter-institutional meetings in times of crisis.
11. The Constitution should include a clause whereby, when Heads of State or Government feel appropriate, and at the latest in 2014, they should vote by qualified majority on the merger of the two presidential positions, with a view to establish a President of the European Union.

1. Introduction: time to step back before taking a leap

The Convention will soon hold the sensitive debate on the new institutional framework of the Union, following the presentation of related articles by the Praesidium (Title IV, to be circulated by mid-April, and discussed at the plenary session of the Convention on 24-25 April). In this context, the question of the 'government' of the Union is widely regarded as the decisive issue. In particular, the reform of the mechanism of the rotating Presidency and the nomination of the presidencies of the European Council and of the Council, as well as the new procedure to elect the President of the Commission, are at the core of deliberations. This aspect of the debate is central to the outcome of the Convention, as the new models for the Presidency of the European Council and of the Commission have far-reaching implications for the functioning of the whole institutional framework. The balance of power between EU

institutions and between the Union and Member States will be set for many years to come.

This is why it seems worthwhile to take a step back from the many proposals being circulated and the increasingly confrontational discussions, and to look at the substance of the problem. In fact, reading some of the blueprints for institutional reform gives the impression that the description of the respective roles of different institutions flows from the solution envisaged to establish their 'leadership', as opposed to inspiring it.

It is, on the contrary, advisable to begin by looking at the actual role, and structural problems, of each of the institutions involved in providing 'governing functions' to the Union, and assessing their potential role after enlargement. Once these questions are met with a comprehensive and coherent response, the issue of the Presidencies of the European Council, Council and Commission can be addressed on a much sounder basis.

When developing this line of analysis, it seems helpful to distinguish between the institution as a whole and its head. For example, the Commission as a whole and the College of Commissioners, including the President, will be treated separately since different, specific issues emerge in relation to the various components of the institutional jigsaw¹. This paper examines:

- The Commission
- The College of Commissioners and the President
- The European Council
- The Council of Ministers
- The Presidencies of the European Council and of the Council
- The High Representative for CFSP/European External Representative

Some preliminary considerations underpin this reflection:

- The EU does not have a body responsible for leadership, strategic policy-making, policy coordination, and emergency decisions: in other words, a government. The absence of a 'government', however, does not mean that there is no need for political authority to carry out 'governing functions'.²



- The *sui generis* character of the Union as a political actor *in fieri* makes the identification of one centre of political authority and legitimacy impractical and unsuitable for guaranteeing the necessary balance. All the institutions involved need reviewing and strengthening. The real challenge is therefore to define a framework where the different actors interact efficiently. This means, above all, that each of them should build upon its strengths and give up functions for which it is unsuited.
- As the Union increasingly becomes a political actor confronted with core political decisions, the basic rules of politics cannot be neglected. In this perspective, the 'power base' of each authority should receive as much attention as the rules through which different actors cooperate. This is one of the central consequences of the fact that democratic politics is progressively replacing diplomacy as the engine of EU integration. From this standpoint, there is a clear need for balancing the growing political authority of EU institutions with additional democratic legitimacy. And a choice should be made as to whether the Union is ready to accept a form of partisan leadership.
- Finally, when confronted with major political challenges, with the disarray of political cohesion in the wake of the crisis in Iraq, and on the eve of enlargement, a policy of cautious, incremental changes might not be adequate. While Talleyrand argued that, to save a revolution, one must prevent it from going too far, it is equally true that the Union risks falling behind the curve with respect to the structural changes in the political environment in which European integration takes place. The United States has a strategic concept: a clear vision of the world, of its role in it and of the means required to achieve the ends. What is the vision inspiring European integration, the contribution of the European Union to global stability, and the definition of the appropriate institutional design for the Union to deliver?

PART I

2. The Commission

Tasks of the Commission

The Commission is now more than ever a 'contested institution'. The good news is that its role is contested because it is too important to be ignored. When, however, considering the degree of divergence of the innumerable contributions to the political and academic debate on the future position of the Commission, the danger is to lose sight of what is distinctive about this institution, and should be preserved. It is argued here that the Commission has two basic distinctive features: independence from national interests and the power of initiative.

The essential tasks attributed to the Commission include:³

- Initiative: the power (and responsibility) to initiate the decision-making process in the pursuit of the common interest applies both when exercising the monopoly of legislative initiative enjoyed by the Commission under the Community framework, and when competing with Member States to outline broader policy proposals.
- Implementation: the translation of EC law into practice takes different forms, ranging from direct application to the supervision of implementation by Member States through the 'comitology' framework. In the light of the proposals laid down in the White Paper on European Governance, and of the progressive reform of important policies areas, the involvement of national and sub-national authorities is likely to grow. Implementation would therefore be more decentralised, relying upon instruments such as tripartite contracts and mechanisms such as networking of national regulatory authorities.
- Ensuring the respect of the Treaties and of EC law: as 'Guardian of the Treaties' the Commission is responsible for ensuring that the provisions of the TEC and "*the measures taken by the institutions pursuant thereto are applied*".



- Oversight and coordination: in broad policy areas where the traditional Community method does not apply, the Commission is given 'soft' powers to ensure the respect of shared commitments through non-binding measures such as recommendations and warnings. This is notably the case under the 'Lisbon strategy', progressing upon the basis of the method of open coordination, and of the coordination of national budgetary policies within EMU.
- External representation and negotiation: the Commission runs about 130 delegations around the world, providing diplomatic services to EU institutions. The Commission has developed important powers on a wide range of external policies where the competence of the Community is explicitly recognised, including environment, development cooperation and research. More specifically, the Commission is the EU negotiator on trade matters (following the mandate of Member States) and represents the EU in important international organisations such as the WTO. According to the principle of parallelism between internal and external competences, moreover, the EC is competent to undertake external action in those policy areas where internal powers have been exercised. Finally, enlargement is a major, comprehensive foreign policy initiative entirely managed by the services of the Commission.
- Mediation: as an independent body mandated with the promotion of the general interest, as opposed to national priorities, the Commission has played a distinctive role in brokering deals on major policy packages and strategic initiatives. The establishment of the structural funds and the achievement of Monetary Union are normally referred to as landslide victories of the Commission in proactively enhancing the convergence of Member State preferences. In this perspective, the role of mediation is blurred with the ability to generate policy initiatives and dynamism. In other cases, the Commission acts more 'defensively', in an attempt to avoid disruptions in the flow of policy-making. The ability of the Commission to broker compromises, however, is increasingly questioned. The European Council has to some extent replaced the Commission by acting as 'Court of Appeal' with respect to individual Council formations when agreement cannot be reached by sectoral ministers. The long negotiations on the establishment of a European patent and the quarrels concerning the location of the European Food Agency are only but two examples of a wider failure to streamline decision-making.

The performance of these wide-ranging tasks has led to increasing structural tensions in the way the Commission works and in intra-institutional relations. These could be broadly described as:

- Autonomy versus dependence.
- Political initiative versus administrative (management and implementation of common policies) tasks.
- Political actorness in a competitive environment versus hub of multiple horizontal networks.
- Joined-up policy-making versus increasing specialisation and fragmentation.
- Growing tasks versus relatively limited resources.

The reform of the Commission: time for a choice

These tensions are reflected in the agenda for the reform of the Commission in the short to medium term, which includes issues requiring careful consideration at the present stage of institutional reform. This agenda mainly revolves around:

- Whether the exclusive right of legislative initiative should be preserved and, if so, whether it should be extended to new policy areas.
- What powers should be allocated to the Commission in policy areas where the Community method does not apply.
- Whether some of the current tasks of the Commission should be delegated to independent bodies.
- How to improve the relation between the College of Commissioners and the services, and between different administrative branches within the Commission.
- The internal administrative reform of the Commission launched by Neil Kinnock.

As the Union grows in membership and diversity, and as the need for coherent policy-making is increasingly felt in sensitive policy areas, notably including external relations, security, asylum and immigration, police and criminal justice, budgetary and fiscal matters, it is legitimate to argue that the Commission is confronted with a choice. The hybrid character of the Commission has been an important asset in previous stages of EU integration and should be preserved in the future, as a



that political leadership entails. This is where the old antinomy between independence and partiality lies.⁶

It is time to provide a clear and definitive set of responses to this false dilemma. First, it is arguable that full independence does not belong to the sphere of politics (if to human nature at all), be it at the stage of elaboration or of implementation of policies. Believing so is largely a matter of (misplaced) perception or (instrumental) convenience. Moreover, it does not seem that the requirement of independence shields the Commission from harsh reactions and public criticism when it touches political 'raw-nerves' in the fulfillment of its tasks. Second, independence does not amount to not having a clear vision of where the common interest lies.

A sense of political direction entails choices and is partial by definition. Independence does not mean defensive neutrality but proactive initiative, with the obvious consequence of promoting some interests above others, which is after all the essence of politics.

Third, the Commission will simply be neglected in the absence of a clear description of its institutional role – focused on providing political initiative – and of the purposeful leadership required to fulfill that task. Its restored credibility would be the best insurance that its power of agenda-setting is not prone to anyone's special interests.

Finally, it is a matter of course that the Commission should not have the power to impose its will upon Member States. That is neither legally nor politically conceivable. All the more so when strategic political choices have to be made. On the one hand, the Commission will work in close partnership with the European Council and the Presidency of the Council formations. On the other hand, as Jacques Delors put it, "*The Commission cannot achieve much but it can generate ideas. Its main weapon is conviction.*"⁷ All that can be added to this realistic and insightful assessment is that, in the light of the evolution of the institutional and political landscape, national politicians will not be convinced by a European clerk, but by a prominent political figure leading a strong institution.

That being said, the question is whether the positioning of the Commission back at the heart of policy-making in both ‘traditional’ and ‘new’ policy-areas would affect the pursuit of some of the other functions of this body. It has been questioned whether the Commission should be entitled to perform quasi-judicial tasks and to broaden its responsibilities for policy implementation (following the likely reform of the ‘comitology’ system and the introduction of ‘delegated acts’),⁸ while becoming a more political body. These legitimate remarks have to be properly addressed, but it should be stressed yet again that enhanced politicisation does not necessarily entail less independence; quite the contrary. If, however, it were felt that the ‘governing’ role of political initiative and agenda-setting of the Commission is not compatible with the management of some policy areas, then one should draw the conclusions already indicated by Romano Prodi at the opening of the Convention: *"The Commission will not shirk its responsibilities and is ready to play its part, to change in accordance with Europe's new needs. It is ready to redefine its own tasks to take on new responsibilities in fields where the future of Europe is at stake. It is also ready to give up part of its powers...All the institutions...have in fact the duty to call themselves into question in the context of this Convention."*⁹

3. The President of the Commission and the College

The Commission is a ‘mixed’ executive with both governmental and bureaucratic features. The College of Commissioners is the political component of the Commission. Given the emphasis to be put on the political role of the Commission in the enlarged Union, the size, composition and organisation of the College, as well as the relationship between the President and the 19 Commissioners, deserve particular attention. According to current Treaty provisions:

- The President is appointed by QMV (Nice) by the Council meeting in the composition of Heads of State and Government and is subject to a vote of approval by the EP.
- The President participates, together with Member State governments, in the nomination of the appointees to become members of the Commission. Both the President and the College are then subject to a vote of approval by the EP.



- The President provides political guidance to the Commission and decides on its internal organisation by structuring and allocating responsibilities among its members (Nice). This includes appointing Vice-Presidents and requesting the resignation of a member of the College.

The role and the functions of the President and of the College are the subject of a number of rather divergent proposals in the Convention, reflecting different visions of the nature of the Commission and of its essential tasks. These proposals particularly touch upon:

- The appointment/election of the President of the Commission.
- The size and composition of the College, with a view to enlargement.
- The internal structure of the College, and the position of the High Representative in it.
- The preservation of the principle of collegiality, whereby the decisions adopted by the Commission are endorsed by each member of the College.

A number of options have been advanced addressing each of these points in detail. It is significant that all proposals attempt to define a suitable balance between four key-requirements: independence, politicisation, representativeness, and efficiency. The analysis of these requirements leads to the identification of two familiar trade-offs: independence versus politicisation, and representativeness versus efficiency.

A democratic mandate for the President

As already stressed, the contraposition between independence and politicisation is artificial and misleading. That is exactly why this question should be at the core of the debate in the Convention, with a view to unveiling the myth of neutrality and finding a solution to enhance the political authority of the Commission and of its President. The most sensitive issue is whether to endow the President of the Commission with a political mandate (and, if so, how), or whether to simply tinker with the present procedure for his or her appointment. There are important arguments in support of both theses.¹⁰

Leaving aside the argument whereby politicisation would inevitably affect the credibility of the Commission in managing some of its core functions, referred to above, some believe that a politically partisan Commission would not enjoy the trust and respect of Member States, who would perceive it either as an ally, or as a rival. Its institutional role would therefore be undermined and the common interest would suffer. Moreover, following this line of argument, were the President of the Commission to be elected by the European Parliament (this is the option collecting most support in the Convention), the dependence of the former upon the Parliament would dramatically constrain his or her room for manoeuvre. This would excessively enhance the powers of the Parliament, and potentially lead to a form of parliamentary democracy that would not correspond to the twin foundations of EU legitimacy: the Member States and the peoples of Europe.

These concerns should be taken seriously, since the proposal to provide the President of the Commission with a democratic mandate following European elections would mark an important departure from the current allocation of political authority in the Union.

It is arguable, however, that the Commission cannot be isolated from wider developments and that it would risk marginalisation if its status was not upgraded in line with the demanding tasks it is expected to fulfill. If the Union is to become more political and to play a significant role for its citizens and the rest of the world, then the Commission has to evolve accordingly, and to be provided with enough political capital to invest in strategic initiatives.

That being said, the right balance has to be found in establishing a sensible procedure to elect the President of the Commission. Among the various solutions on the table, some include the participation of members of national parliaments and, possibly, the setting up of a new body – the Congress – composed by MEPs and MPs and essentially mandated with the task of appointing the President of the Commission.¹¹



However, only the nomination of candidates by the political parties in European elections, followed by the election of the President by the European Parliament, would give European citizens a real choice, making European politics a matter of debate in Member States. Moreover, that would ensure that the elected President is accountable to a permanent representative body and, indirectly, to voters.

There are many questions and options to be discussed by the Convention when considering the possibility of the election of the President by the European Parliament.¹² Key points include:

- How best to encourage the national components of European political parties to mobilise and agree a candidate for President of the Commission before European elections. The idea of pan-European party ‘congresses’ where primaries are held to select the candidate one year before the elections seems worth exploring.
- How to ensure that the results of European elections are reflected in the choice of the nominee for President, minimising the scope for bargaining among political parties in the European Parliament once the electoral campaign is over. The key issue here is the threshold required for the election of the President. While an absolute majority of its component members could lead to a stronger political connotation of the nominee, too high a threshold (two-thirds or more) would entail much political bargaining and the gap between the will of voters and the final nomination might grow wider. Absolute majority would appear a more suitable requirement, considering that this vote would only concern the election of the President and not the designation of the other members of the College, whose political background will be diverse and reflect different political traditions across Europe.
- What procedure to establish to reconcile the political weight of democratic parliamentary investiture with the subsequent decision by Heads of State and Government whether or not to confirm the nomination. It could be envisaged that, following a failure to confirm the parliamentary nominee at the first ballot, a second attempt should be undertaken by the European Council before sending the candidate back to the EP, and inter-institutional consultation should occur in between.

- Whether the President of the Commission should be free to appoint the members of the College and, if not, who should indicate the appointees for the post of Commissioner, and how should their nomination be approved. It seems unlikely that the rotation system outlined at Nice, which will enter into force once the Union has 27 Member States, will be replaced by an altogether different solution. However, it could be envisaged that it is the President of the Commission who indicates the 'eligible' nationals of relevant Member States to their respective governments, whose approval will of course be required. Presidential autonomy would not therefore apply to the selection of nationalities, but to the choice of people.
- What procedures should be envisaged for the dismissal of the Commission by the European Parliament and/or by Heads of State and Government, and what consequences should such a dismissal entail. The President of the Commission requires support both by the European Council and by the EP. In the absence of one of these two bases of legitimacy, the President would find it difficult to fulfill his tasks. The power to dismiss the Commission should therefore be entrusted both to the European Council and to the EP, separately. Given the envisaged parliamentary election of the President of the Commission, however, it seems arguable that if the Commission is dismissed by the EP, then the European Council should have the power (but not the obligation) to dissolve the EP by QMV. This perspective requires much further thinking, as the political implications are considerable. The question of the individual resignation of members of the College, and of whether the European Parliament should have the right to request such resignation, also needs to be addressed. Broadly speaking, it seems that such power should remain in the hands of the President of the Commission, who could act as the recipient of parliamentary requests to this end.

The President and the College

The democratic mandate of the Commission President entails a strengthening of his or her authority in the College, in line with the increasing powers granted to the President by the Treaties of Amsterdam and Nice. The size of the College is of course a major



variable, affecting the extent to which the President can effectively run the Commission. It is undeniable that, the larger the College, the more difficult it will be to ensure proper coordination and to determine a coherent policy line. The underlying question is the unresolved trade-off between representativeness and efficiency.¹³

The size and composition of the College are at the centre of intense discussion. The Convention might re-open the question of the size of the Commission by amending the compromise formula agreed at Nice in December 2000, whereby the number of the members of the College would be lower than the number of Member States, once the Union expands to include 27 countries. As argued below, Treaty reform issues (the size and composition of the College) are closely intertwined with intra-institutional politics (the functioning of the College and of the Commission at large), and the ongoing debate should address both aspects of Commission reform at the same time.

Two basic positions have emerged in this context. Some believe that the College should include one national per Member State while others argue that, following enlargement, there should be less Commissioners than Member States. How to achieve this limitation of the number of Commissioners is open for discussion. The solution envisaged at the Nice consists of establishing a mechanism of equal rotation among Member States. The question of the size of the College has considerable impact on its organisation and functioning. The Commission has been reflecting internally on these related issues for years, as successive reports testify. The latest proposal, advanced by Romano Prodi on 17 June 2002, includes three key points: the re-organisation of the College around four groups of Commissioners dealing with four broad areas of policy-making; the appointment of four Vice-Presidents who would chair the meetings of these four groups; and a differentiated schedule of meetings for the Commission as a whole – to meet once or twice per month – and for the inner core including the President and the four Vice Presidents – meeting on a weekly basis to ensure proper coordination.¹⁴

This plan attempts to reconcile the growing pressure from small Member States and candidate countries to include in the College (to be appointed in 2004) one national from each Member State, and the need to preserve the cohesion of the Commission. The expansion of the College to 25 Commissioners or more necessarily entails some degree

of differentiation among them. This might include the distinction between a small number of Vice-Presidents responsible for key policy areas and the other Commissioners, along the lines of the recent Commission proposal, as well as the definition of specific tasks for individual Commissioners, with or without portfolios.

Of course, this important aspect of Commission reform cannot be considered in isolation from the question of the core tasks that the Commission should be expected to undertake and from related issues of intra-institutional relations. This is essential in order to establish a better synergy between the Commission, the European Council and the Council in performing governing functions. The institutional position of the future European Foreign Minister is also part of the equation.

4. The European Council

The tasks of the European Council

Since its creation in 1975, and its inclusion in the Treaties by the Single European Act in 1986, the European Council has been accumulating a growing range of functions. The expansion of these tasks mainly derives from the failure of the institutional system as a whole to provide adequate responses to pressing political needs, and from the expansion of the European agenda to policy areas close to the core of national sovereignty. In fact, the European Council could be portrayed as the archetype of an intergovernmental model and approach to European integration, as opposed to the supranational inspiration traditionally underpinning the European Commission and the European Court of Justice. This assessment reflects the most important features of the European Council: a distinctively political actor within the institutional framework of the Union, given its informality, discontinuity, but at the same time unparalleled authority.¹⁵

The European Council is embedded in a complex network of mainly informal, but often highly structured and very influential, relationships with other institutional and non-institutional actors at the European and national level. It has been argued that "*even if the European Council is basically intergovernmental in nature, the system it has so largely contributed to establishing is not mainly intergovernmental.*"¹⁶ Looking at it in this wider perspective, the European Council is:



- The authority providing strategic guidelines for the development of the Union. The European Council is also *de facto* ultimately responsible for deciding on the reform of the Treaties, therefore determining major systemic adaptations of the EU framework.
- The source of direction for policy development in practically all domains of EU activity, by instructing specific Council formations or the Commission to develop legislation or to take policy initiatives.
- The ultimate arbiter – or ‘court of appeal’ - in the case of conflict between EU institutions or between Member States, responsible for proper coordination between specific Councils and divergent agendas, given the poor performance of the General Affairs Council in this respect.
- The recipient of the burdensome and multi-level preparatory activity carried out by the Commission, by the Council Secretariat and by the Presidency, often at its own request.
- The interface between domestic political priorities and pressures on the one hand, and political developments at the EU and global level on the other, thereby channeling inputs upwards and downwards across a multi-level system.
- Increasingly, the platform for political confrontation between national leaders holding different preferences as to sensitive political choices, such as the liberalisation of services of general interest.
- The external point of reference for other international partners to interact with the Union at the highest political level and for the Union to express its position to them on a variety of subjects.
- The only real ‘star’ in terms of media coverage of European politics, as it brings together all the main political leaders for a very short time, often with a view to taking decisions important to domestic audiences.

In other words, the European Council is the institutional ‘personification’ of an intergovernmental regime. It is the political and

institutional theatre where pressures, demands and expectations converge from different levels of governance across the Union and beyond. In striking a balance between these often diverging inputs, it addresses a wide range of fundamental, and closely interconnected, policy domains and priorities therein. Recent notable developments include the growing frequency of meetings; the repetition of different types of meetings (informal, thematic, emergency); and the location of all future meetings in Brussels, as decided at Nice.

A mixed record of achievements and paths for reform

Overall, the record of the European Council in providing "*the Union with the necessary political impetus for its development*" and in defining "general political guidelines" is mixed. Progress in those domains that are generally indicated as being most relevant to the development of the Union as a political actor, including external and internal security, and the quest for a shared model of social and economic development, has been slow and patchy. Most importantly, when it comes to defining the posture of the Union in relation to serious international crises, the European Council has proven distinctively weak, to the point of appearing irrelevant. This was painfully evident on the occasion of the emergency meeting called to agree some sort of common European position on the perspective of a war in Iraq: in the end, a striking demonstration of weakness.

As is the case with the other institutions, the role and the functions of the European Council are now the subject of scrutiny and debate in the Convention. These issues are, however, not new to the reform agenda. Simultaneously to the launch of the Convention in early 2002, efforts at redefining the role of the European Council and of the Council, and at reforming the presidencies of these bodies, have been undertaken by the Council Secretariat. A number of important statements by national leaders have steered this debate and Javier Solana presented two reports to the European Councils of Barcelona (March 2002) and Seville (June 2002).¹⁷ Concerns were voiced that this parallel process would pre-empt the debate of the Convention. The Council Secretariat responded that there was no such danger, since the exercise consisted of a diagnosis of the matters to be confronted and of recommendations for reform that did not require Treaty amendment. Be that as it may, it is interesting to note that the key points identified in the Solana reports and in parallel contributions largely correspond to the questions of



direct interest for the forthcoming debate in the Convention. As far as the European Council is concerned, these involve:

- Re-focusing the European Council on its essential role of impulsion and coordination of major policy issues. The European Council should not spend its time discussing second-ranking political questions that could not be agreed upon by sectoral formations of the Council. The European Council should in fact be able to discuss all the issues submitted for its consideration.
- The efficient preparation of the European Council and its agenda. Consistent with the recommendations outlined in the Solana report, the European Council in Seville entrusted the GAERC with the preparation of the European Council, including the drawing up of an annotated draft agenda following a proposal by the Presidency.
- The adoption of a multi-annual strategic programme for three years. According to the Seville conclusions, the European Council should perform this strategic agenda-setting role on the basis of a joint proposal submitted by the Presidencies concerned in consultation with the Commission and acting on a recommendation by the GAERC.
- The decision-making role of the European Council. Following a confusing debate as to whether the European Council should be able to take political decisions (including decisions by qualified majority when the Treaty so provides) or not, the Seville conclusions indicated a less than clear solution. In exceptional circumstances, the European Council should be able to discuss matters that are submitted for decision. The "*political conclusions*" ensuing from this discussion "*shall be brought to the attention of the Council so that it may consider the implications for subsequent proceedings.*"
- The conclusions of European Councils should be much shorter, set out policy guidelines but also, according to the Seville conclusions, indicate "*the stages of the procedure to follow up from them.*"

Time to question the European Council

A number of national leaders have emphasised over the last few months the key-role that the European Council should play in matters related to CFSP and ESDP. While the merits of this assertion will be addressed below, it should be noted that the actual functions of the European Council are largely a matter for discussion. The Seville conclusions, constrained by the intention of not explicitly touching upon issues of institutional reform, fall short of outlining the real powers of this body. But they provide much food for further thought and scope for questions as to the future of the inter-institutional balance.

- What should be the role reserved for the Commission in planning long-term policy initiatives? How should the Commission, the GAC and the European Council cooperate? This is particularly relevant with a view to setting the agenda of the Union: from this standpoint, the approach adopted at Seville disregards the requirements for enhanced inter-institutional cooperation, as it envisages a marginal participation of the Commission in the definition of a work programme that seems refer solely to the Council's activities, but which inevitably affects the development of the Union. This programme could of course conflict with the five-years strategic objectives indicated by the Commission at the beginning of its mandate, and pre-empt the ability of the Commission to freely determine its priorities, in the exercise of its central role of political and legislative initiative.
- What is the nature of the "*political conclusions*" to be adopted by the European Council when a matter is submitted for decision? These cannot be legally binding measures to be implemented by the Council formations. That would require the adoption of one of the legal instruments indicated in the new draft articles of the Constitution, and would effectively make the European Council a legislative body, or a fully-fledged executive body together with the Commission and the Council. The European Council should abide by the decision-making rules laid down in the Treaty for the adoption of these acts. On the other hand, the ambiguous wording of the Seville conclusions might lead to a situation where the European Council takes over important decision-making tasks outside the rules and procedures envisaged for the regular functioning of Union.



This observation is related to the central unresolved contradiction as to the future position of the European Council. On the one hand, it has been repeatedly stressed that the distinctive feature of the European Council consists of the confidential nature of high-level discussions among those who have the ultimate responsibility for taking the final decisions on key matters. The European Council should therefore become the powerhouse for strategic political developments, providing the necessary leadership for the long-term development of the Union. On the other hand, however, pressures to institutionalise the European Council are now reflected in Articles 15 and 15bis of the Preliminary Draft Constitutional Treaty submitted by the Praesidium on 28 October 2002.¹⁸ That seems to go down the road of further formalisation of the European Council as a fully-fledged institution. The emphasis should arguably be on the role of the European Council as final decision-taker or court of appeal. If so, as mentioned above, voting rules and proper inter-institutional codes of conduct would have to be established.

Flexibility and improvisation cannot be the rule when legal acts are to be adopted. The focus of the proceedings of the European Council should be sharpened. This requires that the remit of the European Council is limited to the discussion and adoption of key strategic guidelines for the development of the Union (following extensive preparation and policy proposals by the Commission in cooperation with the GAC) and to important decisions in the context of CFSP and ESDP. The solution to the unresolved tension between informality and institutionalisation is preliminary to the discussion on the features of the Presidency of the European Council.

5. The Council of Ministers

An ongoing process of reform

The debate on the reform of the Council of Ministers has been developed in parallel to the debate on the European Council. In fact, since the so-called Trumpf report, tabled in March 1999, up to the conclusions of the Seville summit last June, five main shortcomings have been consistently indicated:¹⁹

- The inability of the GAC to ensure proper coordination in the activity of different Council's formations, and to prepare the European Council.
- The failure of Foreign Ministers meeting in the GAC to produce significant improvements towards a credible CFSP.
- The excessive proliferation in the number of Council formations.
- The inadequate planning of the Council's activities in the medium and long-term.
- The lack of transparency in Council proceedings, particularly when it performs a legislative function.

In response to the broad agreement on the diagnosis of the problems, the Seville summit adopted a number of important decisions.²⁰ But the 'conservative' attitude emerging from the analysis of these decisions upon non-Treaty reform sends the wrong signal to the Convention, mandated with elaborating comprehensive and far-reaching reform. Looking at the 'questions' listed above, the following are the 'responses' provided in the Seville conclusions:

- The old GAC should change its name, and become the General Affairs and External Relations Council. The new configuration would hold separate meetings, with separate agendas and possibly on different dates, depending on the areas of activity. These should be separated into the preparation for and follow-up to the European Council, institutional questions and horizontal dossiers on the one hand, and the whole of the Union's external action on the other. This perspective falls short of complete separation between GAC and External Relations Council, advocated in the Solana report. This does not promote greater simplicity. Moreover, it disregards the fundamental concerns expressed as to the ability of foreign ministers to properly manage the huge task of coordinating EU policies and preparing the European Council, together with leading decision-making in the increasingly central area of foreign affairs and security.
- The number of Council formations is reduced from 16 to nine. This is a constructive contribution towards streamlining decision-making.
- The proceedings of the Council, when it performs a legislative role, will be open to the public. This is a positive but rather modest step.



Publicity is in fact limited to the initial stage of the procedure – presentation by the Commission of its legislative proposal – and to the final stage – voting and explanation of voting.

- As to the planning of Council activities, the annual operating programme should *"be proposed jointly by the next two Presidencies in line and shall have regard, inter alia, to relevant points arising from the dialogue on the political priorities for the year, conducted at the Commission's initiative. The final version of the annual programme shall be drawn up on the basis of the General Affairs Council's discussions."* This is a sensitive aspect of the reforms adopted at Seville, since the input of the Commission in the planning seems relatively marginal. The Commission currently enjoys the right to add issues to the agenda of individual Council formations, and internal procedures already envisaged that the six-month programme of Council activities under each Presidency is established following consultations with the Secretary-General of the Commission. Whether this will be still the case should be made clear, with a view to enhancing, not diminishing the synergy between the Council and the Commission.

The question of agenda-shaping is of crucial importance, and the consistency of planning in the medium- to long-term largely depends on the performance and coordination of successive Presidencies. In particular, the role of the GAC in preparing the European Council and following up its decisions is vital to the proper functioning of the governing framework of the Union.

The reform of the GAC should be the subject of particular attention, in order to achieve two fundamental objectives: providing continuity and ensuring that the GAC is in the position to exercise real authority over the other governing formations of the Council.

Together with the question of agenda-shaping, a better distinction, and perhaps separation, between the legislative and the governing (executive) functions (and formations) of the Council will be the key point at the centre of the work of the Convention.²¹ This is to be considered a preliminary requirement for a more efficient framework of government to be established at the top of the EU. The distinction

between legislative and executive formations of the Council is also important to achieve transparency in the system and to speed up law-making activities by identifying one institutional actor to function as the 'upper chamber' of a bicameral legislature, and be the only interlocutor of the EP. Such separation would of course have considerable implications on how to arrange the Presidency of the Council.

Finally, at a non-Treaty level, there are signs of strain in the functioning of the Council when considering CFSP policy-making, following the establishment of new internal bodies depending on the CFSP High Representative/ Council Secretary-General. The fragmentation between the traditional bureaucracy in the Secretariat General of the Council; the CFSP Policy Unit and Situation Centre; new COPS, MC and MS; and relevant Commission services does not seem conducive to consistent policy-making. As argued below, the solution to this problem will largely depend on the institutional positioning of the HR in the future EU structure.

6. The Presidency of the Council

The tasks of the Presidency

The tasks of the Presidency, rotating on a six-monthly basis, have evolved more by default than by design, mainly driven by the requirement for more efficient management of EU business, more visibility in the eyes of public opinion and growing international commitments.²² The Presidency fulfills five major tasks:

- Business manager
- Promoter of initiatives
- Broker
- Liaison point
- Collective external representative

The ambiguous institutional position of the rotating Presidency has been famously described as "*responsabilité sans pouvoir*".²³ In fact, the scope for effective action available to each Presidency is rather limited. Practitioners argue that the average Presidency is only 5% about substance, and 95% about procedure.²⁴ Underlying political agendas



run through different Presidencies, and the lack of continuity is identified as one of the fundamental reasons for the lack of strategic focus and necessary innovation of the EU agenda. There is broad agreement that the basic problems affecting the performance of the current system are:

- Lack of continuity.
- Tension between national allegiances and neutrality.
- Tension between diffusion of power across MS and EU institutions and need for some degree of centralisation.
- Mixed and overlapping responsibilities between national officials, Council and Commission secretariats.
- Lack of coordination and/or divergent agendas between competing bureaucracies or political players at the national level.
- Different size and resources of MS (particularly when taking action at the international level).

Chairing the Council of Ministers

Against this background, it has been remarked that the relatively limited scope for agenda-setting *stricto sensu* is compensated by other tools available to the Presidency in shaping the agenda of the Union, namely ‘agenda structuring’ (determining the priorities) and ‘agenda exclusion’.²⁵ This, however, does not necessarily bode well for the consistency of EU action over time. On the contrary, as mentioned above, the inherent competition for agenda-shaping between national civil servants from the Presidency, the Secretariat of the Council and the Commission’s services risks becoming more serious if the conclusions of the Seville summit are applied to the letter. The role of the rotating Presidency in defining the medium- and long-term work programme of the Council would in fact be enhanced, to the potential detriment of the ability of the Commission to ensure that strategic policy guidelines are developed. Various solutions have been envisaged to overcome fragmentation both in time and between different sectoral formations of the Council:

- According to the Franco-German contribution to the Convention in January,²⁶ the legislative and executive functions of the Council should be separated. The model of the Presidency of the Council of Ministers would vary according to the different formations: the

Secretary-General of the Council would preside over the General Affairs Council, the Foreign Minister would preside over the External Affairs Council and members of the Council elected for two years would preside over ECOFIN, Eurogroup, and JHA Council.

- The earlier Benelux memorandum,²⁷ supported by a large number of smaller Member States and candidate countries, also argues in favour of a separation between legislative and executive functions. The solution to the question of the Presidency, however, departs more radically from the current system. It is envisaged that the General Affairs Council and External Relations Council should be presided over by the Commission, and more precisely by the President of the Commission for the General Affairs Council and by the High Representative for the External Relations Council. Rotation should apply to presiding over the other Council formations.
- The position most recently outlined by the UK and Spain²⁸ takes a different direction, as it envisages that a long-term Chairperson of the European Council should preside over GAC meetings, therefore ensuring continuity in the preparation and follow-up of the decisions of the European Council. A team of Member States would hold a collective Presidency over a two-year period, thereby preserving some element of rotation.
- Other solutions include various options for establishing long-term Presidents of individual Council formations, notably including the appointment of the Chairperson of each Council by its members for two years or more. In its 'Penelope' contribution, the Commission suggests limiting this period to one year, while preserving rotation for the European Council and the GAC.²⁹

The numerous shortcomings of the current system are offset, according to some, by two important positive features. On the one hand, every Member State takes responsibility for six months for the running of the Union, thereby strengthening the sense of belonging to a common enterprise, and instilling a new (if short-term) sense of initiative into the life of the Union every six months. Moreover, it is in the interest of each Presidency to be successful: that could be a powerful incentive to steer policy-making towards tangible results. This, for example, was



the case of the Portuguese Presidency and the setting up of the famous Lisbon strategy and of the German Presidency's staunch efforts to reach an agreement on the financial perspectives 2000-2006 in Berlin.

On the other hand, the rotation mechanism is considered one of the main expressions of the formal equality between all Member States. Smaller countries, notably including the candidates, have forcefully argued that this system should be preserved as a guarantee against the predominance of large Member States. In fact, according to some observers, replacing rotation with some sort of long-term Presidency of both the European Council and of individual Council formations would inevitably lead to an intergovernmental drift and abandon the Union to the more or less explicit control of the most influential national governments. Others, however, take the opposite view, and argue that the deficiencies of rotation would sooner or later entail the consolidation of 'contact groups' or '*directoires*' outside the institutional framework for the management of urgent business.

The question is particularly sensitive with respect to foreign policy-making and matters of external security and defence. The advocates of replacing rotation with models providing more continuity to decision-making stress that varying priorities weaken the impact of the Union on international affairs and that external partners are unclear as to who the interlocutor is when they want to talk to Europe. This is a problem that can only be considered in conjunction with debate on the future role of the HR, and on the instruments at his or her disposal.

Chairing the European Council

The reform of the Presidency of the European Council is the most prominent issue in the debate on the future of Europe both within the Convention and in national capitals. The entire argument developed in this contribution shows that, while such a visibility is understandable in terms of media relevance, this emphasis is misplaced in political and institutional terms.

The question is not whether there should be a President, or Chairman, of the European Council and what he or she should do, but what the European Council is meant to be, whether it is a fully-fledged institution or not, and what relationship should be established with the various Council formations and with the Commission, while bearing in mind that these institutions are undergoing a process of fundamental reform too.

So far, however, various players have outlined their proposals about how to shape the Presidency of the European Council, in the absence of in-depth debate as to the role of, or balance between the institutions. They have consolidated their positions ahead of the debate in the Convention on institutions between April and May. This approach is likely to make compromise much harder to achieve, because actors in the debate seem to use the same vocabulary for different purposes. By way of short overview, the models that have emerged are essentially four:

- Some advocate the preservation of the current system of rotation, arguing that strategic policy-making can be supported by improving the coordination of successive Presidencies and by strengthening the role of the GAC in preparing the European Council. As noted when looking at the Council of Ministers, smaller Member States and many candidate countries are keen to preserve rotation as an expression of equality among Member States.³⁰ Also, they are generally prepared to accept a more significant contribution by the Commission in supporting their chairmanship. Rotation is the solution submitted by the Commission in its 'Penelope' contribution.
- Spain and the UK are the staunchest supporters of a long-term full-time President of the European Council.³¹ This person, to be appointed by its members, should be entrusted with a number of key functions in order to enhance the coordination of Council formations, set their agendas, guarantee that the European Council's decisions are effectively implemented, and represent the Union in the world. According to this vision, the President of the European Council should also chair the GAC. A more detailed analysis of this position is developed at a later stage.



- France and Germany have tried to move the debate further by forging a compromise between these two divergent approaches.³² This compromise has not met much support, but is still an important point of reference as will be explained below. The long-term full-time Chairman of the European Council should be mandated with preparing, presiding over and following up the meetings of this body, and represent the Union externally. However, the President of the Commission should be elected by the European Parliament, the role of the Commission should be enhanced in various respects and the new HR should be embedded in the College, albeit with a special status.
- Some members of the Convention and external observers have pleaded in favour of merging the two top jobs of the EU into one, creating a President of the Union chairing both the European Council and the Commission.³³ This solution would avoid likely political tensions between two Presidents and the progressive consolidation of a 'parallel Europe' where CFSP is shaped through an altogether different line of command. It would also seem to match the requirements of simplification, efficiency, accountability and leadership. Many players, however, believe that this option is ahead of the political reality of the Union, while others are wary that it would upset the inter-institutional balance, either to the detriment of the Commission, or of the Council.

The reform of the Presidency of the Council and of the European Council requires much further debate. However, it is important that the discussion continues along three basic tracks, corresponding to the key priorities: continuity, inter-institutional cooperation and policy coordination, including CFSP and ESDP.

In this perspective, it is questionable that rotation is the appropriate solution to enhance the performance of the governing formations of the Council. On the other hand, while the European Council requires continuity, it should not be transformed into a fully-fledged decision-making body, and its President should not be in control of the institutional framework, to the disadvantage of the Commission.

7. The European External Representative

While not an institution in its own right, decisions on the future position of the High Representative for CFSP will have a significant impact on the ability of the Union to deliver coherent policy-making over time across different policy areas. The Working Group on External Relations of the Convention has suggested adopting for this position the rather neutral definition of European External Representative.³⁴ The choice of this expression shows the considerable degree of controversy behind the description of the main features of this role, and of the instruments at the disposal of the EER. When considering this aspect of the debate, it seems useful to distinguish, once again, between the top figure and the machinery underpinning his activity. An unbalanced reform, strengthening or weakening either of these terms of reference, would not lead to better policy-making.

As to the 'bureaucratic' side of reform, the conclusions of the relevant WG of the Convention indicated significant innovations, most notably the establishment of "*one joint service (European External Action Service) composed of DG RELEX officials, Council Secretariat officials and staff seconded from national diplomatic services.*" Also, and equally important, an EU diplomatic service and an EU diplomatic academy are envisaged, together with the formal transformation of Commission's delegations into EU embassies. This is a set of important steps to strengthen CFSP from the bottom-up, and progressively develop a shared vision of policy priorities and, in security terms, a common strategic doctrine. The work undertaken in 2000, on an interim basis to begin with, by the three new committees charged with CFSP/ESDP policy-making in the Council – namely the COPS, the Military Committee and the Military Staff– has proved quite successful.

This is not, however, enough to develop a common foreign policy and to use the vast range of available instruments to deliver upon the high-sounding objectives outlined in the current TEU and in the future Constitution. Too many institutional actors share tasks in this field: the Secretariat General of the Council, the three new committees, the Policy Unit and Situation Centre, the relevant Commission and national diplomatic services. The idea of merging the EU services into one body would enhance coordination, together with a clear determination to considerably expand the very limited financial resources presently allocated to the pursuit of CFSP. Looking, on the



other hand, at the basis upon which common decisions can be adopted, the role of intelligence-sharing and adequate information seems crucial. This is why the proposal to boost the diplomatic capabilities of the Union in the world, alongside the services of Member States, is the logical completion of a process well underway whereby the remit of Commission's delegations has already been extended to cover political issues.

If significant progress in this direction is likely and would improve the EU performance and influence in international politics, what is the state of the debate as to the political figure at the head of the new, joined-up institutional framework? A large majority in the Convention supports merging the functions of the RELEX Commissioner and of the HR for CFSP (the latter abandoning the role of Secretary-General of the Council). The Franco-German contribution of January outlines, in this perspective, a very similar model to the one envisaged in the Benelux memorandum of last December, in the Penelope draft Constitution of the Commission and in the conclusions of the Convention WG. The new figure – variously defined as Foreign Minister, Foreign Secretary or simply EER – would be appointed by the European Council with the agreement of the President of the Commission, would take part in the activities of the Commission (with different status depending on the proposal, ranging from regular 'external' participation to the position of Vice-President of the Commission), would chair the External Relations Council and would be endowed with the right of initiative in CFSP matters. Those calling for the fully-fledged inclusion of the new role in the Commission stress that different decision-making procedures would apply depending on the policy-issue under consideration, whether pertaining to CFSP or not.

This perspective, which is the subject of growing consensus, is nevertheless strongly opposed by some Member States who feel that the position of the HR should remain embedded in the Council. The latter would otherwise be weakened and national Governments would lose grip of foreign policy-making, which should on the contrary remain essentially their domain. The recent Anglo-Spanish contribution, for example, envisages a considerable upgrading of the functions of the HR but he or she would remain part of the Council. This would be the condition for granting the HR the right of initiative, and the chairmanship of the External Relations Council. Others argue that the separation between the HR and the RELEX Commissioner

should be maintained with a view to preserving the independence and collegiality of the Commission. The loyalty that the new Commissioner would maintain towards the European Council would represent a dangerous threat to the cohesion of the College. It is necessary to take issue with these arguments as they both point, for different purposes, to excluding the proposal to merge the two positions.

What is envisaged is not a fusion of two functions, with the consequent homogenisation of decision-making procedures, but the combination of two functions – HR and RELEX Commissioner – in one person. This seems consistent with the attempt at streamlining policy-making across the board, while preserving procedural differences where necessary.³⁵

The enduring distinction of functions is described in detail in the Report of the Convention WG on External Action. Political practice is, moreover, less schematic than subtle distinctions on paper. This holds valid here in three main respects. First, in the presence of adequate bureaucratic and financial support – as stressed above – it is likely that this person will be able to smoothen contrapositions as opposed to building new inter-institutional walls: that would simply be against his or her interest. Second, multiple loyalties are rather common in political life at all levels. In EU politics, this is notably the case of national ministers presiding over Council formations during their Presidency, while at national level there are political constraints due to party affiliation, when prominent leaders hold high-level political party positions. Finally, the combination of the right of political initiative and the chairmanship of a (non-legislative) Council formation does not seem to pose a particular problem. The wider question has been explored above, against the background of the distinction between executive and legislative formations of the Council. Looking at the domain of foreign and security policy, the Secretary-General of NATO regularly tables proposals, and chairs the meetings where subsequent decisions should be adopted.

8. The parameters of the debate

Drawing from this overview of the institutions directly involved in shaping the new government of the Union, some remarks seem



appropriate before proceeding to examine what solution would best respond to the need for reform. Some basic coordinates of a very complex debate are defined here to contribute to a far-reaching discussion in the Convention.

From fragmentation to cohesion

The most fundamental dilemma in the process of reforming EU institutions is the underlying tension between fragmentation/diversity on the one hand, and cohesion/unity on the other.

This basic duality recurs at different levels.

- Within individual institutions, the desire of each Member State to be represented has to be reconciled with efficiency in policy-making. As remarked, this is the case when it comes to determining the size of the College of Commissioners, as well as when reviewing the rotating Presidency of Council formations. Some argue that this is a matter of democracy, since the diversity of the Union should be respected and reflected in institutional arrangements that preserve the equality among Member States. But this argument is weak for two main reasons. First, as the Union grows, the diversity of interests and the opportunity for limited, issue-based policy-alliances increase exponentially.

The more heterogeneous a political system is, the more an institutional centre of gravity is required to act as a catalyst acting against potentially centrifugal forces.

Second, and more importantly, the idea that equality consists of equal participation in all components of the institutional framework is a basic misunderstanding that should be addressed by the Convention, in the interest of the EU and of small Member States in particular. Taking a step beyond international law, towards supranational integration, or from diplomacy to politics, European countries are all but equal in many respects: demographic size, wealth, political influence, military power etc. This is a fact, and as the Union progressively evolves into a political actor it would be advisable to

acknowledge it now, and draw relevant institutional implications. It is untenable to bind a political system to legal assumptions increasingly disconnected from reality. This choice would also be undemocratic and probably lead to the ultimate irrelevance of those institutions supposed to defend the interest of all, including the smallest.

If Europe is more than a market, as the vast majority of the members of the Convention believe, then it should be accepted that, on the basis of shared values and common interests, not everybody will always participate in all decisions. And that these decisions will sometimes, as is the case in any polity, favour some more than others.

On the contrary, it is arguable that when one political player will not be part of a specific step in the decision-making process, the others would take his interests in due account to prove expectations to the contrary wrong and strengthen the legitimacy of their decision. While, therefore, preserving an effective system of checks and balances within the Union, to ensure that all positions are taken in due account, the requirement for cohesion/unity should prevail over the danger of fragmentation/diversity within each institution. This is the best guarantee that all actors, large and small, will play by the rules.

To conclude, it is well known that the much-voiced split between large and small Member States does not correspond to the actual cleavages on EU policy issues. It would be grossly misplaced to shape institutional reform on the basis of this false assumption. On the contrary, it is increasingly clear that the big Member States feel less and less inclined to abide by common rules, when it comes to sensitive political issues, in the absence of a strong institutional centre of gravity.

- Moving up from intra-institutional to inter-institutional relations, the tension between cohesion/unity and fragmentation/diversity leads to divergent solutions as to the division of tasks and distribution of authority between EU institutions. This debate is of course a by-product of the determination of some Member States to firmly hold the reins of European decision-making in some policy areas, namely CFSP, ESDP, and the whole field of economic, fiscal and social



policies. The schematic distinction between power balance between EU institutions on the one hand, and power balance between the EU and Member States on the other (this one normally considered a matter of subsidiarity and division of competences) is not exhaustive. A third dimension should be added: the power balance between the Union and Member States through EU institutions.

It is arguable that most calls to preserve, or establish, a multiplicity of procedures and 'lines of command' in the enlarged Union are basically directed at consolidating the traditional compartmentalisation of decision-making. In fact, various formulas have been used to portray the institutional framework in the making: the three 'Pillars' would be replaced by two 'ivory towers' or by 'underground Pillars'.³⁶ The dangers of a parallel Europe have been extensively denounced during debates in Convention plenary, but proposals leading to a duumvirate of two Presidents in Europe seem to make this scenario more likely. The Community business (with the addition of some important areas of JHA) would be managed by the institutional triangle (Commission, Council and EP) under the legal scrutiny of the ECJ. Member States, on the other hand, would remain free to determine their policies in a rather loose intergovernmental (or at best transgovernmental) framework. Since, however, such a framework would essentially apply to those policy areas that will be key to the success of the Union as a political actor in the eyes of citizens and of international partners, there is a real risk that fragmentation/diversity will take precedence to the prejudice of cohesion/unity.

The only solution to keep a credible perspective of European political integration open is to set up a single institutional framework. Exceptions, not extensive intergovernmental 'safe heavens' can be inserted to accommodate the necessary degree of flexibility in sensitive domains, and avoid fragmentation.

- Turning, finally, from inter-institutional politics to the relationship between the Union and international partners, the contrast between the aim of cohesion/unity and the disappointing reality of fragmentation/diversity could not be starker. Confronted with the disarray of the Union faced with the war in Iraq, the view is widely

held that fragmentation has more to do with deep-rooted differences between Member States than with the inefficiency of the institutional framework. The solution does not therefore lie, primarily, in institutional reform but in a fundamental, collective re-think of what the shared interests and priorities of European countries are in international politics.

It is, however, arguable that such a re-think can be greatly supported and enhanced by establishing a suitable common institutional framework for permanent dialogue. As outlined above, important steps have been envisaged to this end and, while meeting considerable resistance, progress is likely to be achieved. But progress will be sustainable only if embedded in a solid, unitary institutional framework and if clear responsibility to sustain this process is entrusted to a strong institutional actor.

Either the new EER should be given the necessary powers and means, or the position should not exist. It is arguably preferable to have a capable HR in the current position than a EER or Foreign Secretary unable to shape common policy lines, but widely expected to do so. But this outcome would be a major defeat for the Convention and, worse than that, the best evidence of the future irrelevance of the Union in world matters. As the world evolves at 'fast-forward' speed, Europe remains stuck in a permanent 'pause'.

All things considered, therefore, it does not seem that the best solution to enhance the performance of the HR is to put him or her at the centre of four actors: two bureaucratic – the Commission services and the Secretariat of the Council – and two political – the President of the Commission and the European Council. Against the background of this fragmented model, decisive steps should be taken to streamline decision-making across different policy areas.

From leadership 'by stealth' to innovative and dynamic leadership

A clear definition of what 'leadership' means in Europe is fundamental to move the Convention debate further. It is interesting to note that the



question of leadership in Europe has not been the subject of much literature and discussion until recent times, as if leadership were not particularly relevant for European integration.

The 'leadership test' is impossible in the absence of parameters against which to measure leadership in Europe. Forms of political authority have been classified as 'rational-legal', when authority is based on frameworks of rules such as an institutional system; 'traditional', when authority derives from the shared values and common traditions to a polity; and 'charismatic', when authority is expressed by a public figure able to inspire public opinion and steer decision-making at the highest level. It has been argued that the Union has been built mainly on the basis of the technical interplay of legal and institutional provisions than upon other forms of authority.³⁷

If this is hard to deny, it should be acknowledged that the Union has been growing thanks to the (unequal) contribution of different forms and sources of political authority on different issues at different times. It has been argued that people today tend to accept European integration as a fact of life, which they share with the other citizens of Europe.³⁸ Moreover, it is not uncommon for people to look at Europe with confidence and expect the Union to be able to tackle problems far beyond the reach of any individual Member State. The massive and widespread opposition to the war in Iraq across the EU, and the support for the role of the Union as an element of stability in a multilateral framework, is striking evidence that Europe today goes far beyond a rules-based legal system. Finally, the role played by Jacques Delors in launching the Single Market initiative and Monetary Union showed the considerable margin for personal leadership in the original arena of the Union.

If anything, it seems that what has been common to different ways of expressing political authority or a sense of leadership in Europe is the disguised nature of political action. Sometimes, initiatives were purposely presented as low-key, in order to avoid publicly hurting national sensitivities. On other occasions, there was simply no means of bringing European initiatives to the forefront in national debates, and national media have not filled this gap. It is arguable that, in the light of the rapidly developing political environment, and of the ambitious objectives of the Union indicated by the Convention, leadership 'by stealth' is not an adequate recipe any longer. What then?

Given the distinctive nature of EU decision-making, which is more consensual than in most national systems, leadership in the EU is more about influence and persuasion than about imposing decisions or forcing political actors to accept measures which they oppose. European decision-making is less about establishing a line of command than about commanding authority because of the quality of initiatives and ability to promote dialogue in the pursuit of the common interest.

In this perspective, what is needed is dynamic and innovative leadership, which should be openly and legitimately expressed by the institution mandated with pursuing the common interest and launching policy initiatives: the Commission. The basis of such leadership includes of course independence, technical expertise and in-depth knowledge of and sensitivity for the positions of national actors. This is, however, not enough. What is essentially required at this stage is enough political weight to push through strategic guidelines and convince interlocutors, from the European Council down to sectoral Council formations, and of course the European Parliament. And the two foundations of political authority should be a unitary, cohesive institutional system, and more personal leadership at the top of the Commission.



PART II

9. A matter of Presidencies.

After delimiting the ground of the forthcoming debate, particular attention should be paid to the burning issue of the organisation of the Presidency of the three institutions (assuming that the European Council will become one) at the core of the future government of the Union. The following table is not meant to be comprehensive and entails much simplification, but offers a quick sketch of the three main models under consideration and, at the same time, of the various options submitted for each institution. It should be noted that the table assumes the separation between the legislative and the governing formations of the Council, and deals only with the Presidency of the latter.

	Upgraded Status Quo	Duumvirate	Integrated Presidency
European Council	<ul style="list-style-type: none"> • Six-monthly rotation • Part-time Chairman chosen among members of the European Council for a period longer than six months 	<p>Long-term full-time President of the European Council appointed by members of the European Council</p>	<p>President of the EU chairing the European Council and the Commission</p> <p>Appointed by:</p> <ul style="list-style-type: none"> - Members of the European Council + approved by EP or - Congress
Council of Ministers (governing formations)	<ul style="list-style-type: none"> • Six monthly rotation • Rotation of Team Presidencies including 3 or 4 Member States • HR becomes Vice-President of the Commission and chairs CFSP Council (double hatting) 	<ul style="list-style-type: none"> • Team presidency by: <ul style="list-style-type: none"> - Each Council formation electing its own Chair or - Rotation including 3 or 4 Member States • President of the European Council chairing GAC and group of Presidents of Council formations • HR part of the Council and chairing CFSP Council • Relevant members of the COM chairing respective Council formations 	<ul style="list-style-type: none"> • President of the EU chairing GAC <p>HR becomes Vice-President of the Commission and chairs CFSP Council (double hatting)</p> <ul style="list-style-type: none"> • Team presidency by: <ul style="list-style-type: none"> - Each Council formation electing its own Chair or - Rotation including 3 or 4 MS • Relevant members of the COM chairing respective Council formations
Commission	<p>President of the Commission elected by the EP by:</p> <ul style="list-style-type: none"> - Absolute majority - Qualified majority (2/3, 3/4) <p>and confirmed the European Council</p>	<ul style="list-style-type: none"> • President of the Commission elected by the Council in the composition of Heads of States and Governments + approved by EP • President of the COM elected by the EP by: <ul style="list-style-type: none"> - Absolute majority - Qualified majority (2/3, 3/4) <p>and confirmed by the European Council</p>	<p>President of the EU chairing the Commission</p> <p>Appointed by:</p> <ul style="list-style-type: none"> - Members of the European Council + approved by EP or - Congress



10. Upgrading the status quo

Proponents of an ‘upgraded status quo’ favour strengthening the position of the Commission while essentially preserving the mechanism of rotation of the Council’s Presidency. Different options are envisaged to this end. As far as Council formations are concerned, for example, the perspective has been indicated of groups of 3 or 4 Member States holding the Presidency of the Council of Ministers together and rotating every two years or so.

Turning to the European Council, the idea of a part-time Chairman – an acting Head of State or Government appointed by his or her peers for more than six months but less than five years – has also been tabled. The pros and cons of these models should be subject of careful scrutiny, before considering alternative paths of reform. Such an assessment is conducted against four key parameters that should underpin all discussions on the reform of the Presidency system, and ultimately on the government of the Union. These are simplicity, legitimacy, efficiency and leadership.

Simplicity

This is a key priority of the current reform agenda, as the President of the Convention Valéry Giscard d’Estaing relentlessly reminds colleagues. The proposal to preserve the system of six-monthly rotation of the Presidency of the Council would, by definition, leave the situation unchanged from the standpoint of simplification. It would still be difficult for citizens to understand why part of the governing machine should be chaired by a flow of different people following each other. While the Union would remain prominent in national media for six months, the coverage of European business would return in a state of quiescence for twelve years in a Union at 25, in the absence of major events. The system would be even less readable if a sort of team presidency was to be set up, including a limited number of Member States rotating on, for example, a two-year basis. Understanding who does what in that context would be difficult for observers, let alone for the layman.

Maintaining rotation at the top of the European Council would not greatly improve the comprehension of the system either: things would simply stay as they are. The solution whereby an acting national leader

should be appointed by his peers and dedicate part of his time to chairing this body leaves much scope for ambiguity too. What difference would this innovation make in terms of the powers and responsibilities of this figure? If little or none, then perhaps the system could be just left as it is. If significant, then the risk is that important changes would take place in the balance of power, but European citizens would not be aware.

On the contrary, the indirect election of the President of the Commission by the European Parliament, following European elections, seems a very positive contribution to establishing a recognisable source of political authority in the EU framework.

Legitimacy and accountability

The degree of democratic legitimacy of the Presidency of the Council and of the European Council would not significantly change. National leaders and national ministers are of course fully entitled to take part in EU decision-making through the Council and to interact with the other institutions of the Union. The extent to which national governments are accountable to their national parliaments and public opinions when performing their tasks at the European level remains, however, questionable. That will to some extent depend on the actual progress of national parliamentary scrutiny envisaged by the Convention, but experience from the past shows that national governments have been rather successful in pursuing hidden agendas at the European level, thereby weakening the legitimacy of decision-making.

At the same time, however, as the agenda of the Union becomes more political, it is arguable that those responsible for determining EU policy priorities should receive a more direct mandate to do so. In this perspective, the election of the President of the Commission by the European Parliament is consistent with enhancing the legitimacy of the central actor in the government of the Union.

In terms of accountability, the relationship between the President of the Commission and the EP would result strengthened, since the former would be ultimately accountable to European voters through the EP itself. The President of the Commission, however, should also be politically responsible to the European Council, that confirms his or



her nomination. As argued above, the President needs the full trust of both the European Council and of the EP, and could not work properly while being opposed by either of them. Both these bodies should have the power to dismiss the President of the Commission and the College. Of course, appropriate consultation procedures, and perhaps ‘early warnings’, should be put in place to minimise the chances of open inter-institutional conflict.

The appointment of a part-time Chairman of the European Council seems, on the other hand, to raise some difficulty in terms of legitimacy. His ‘power base’ would lie in the national electorate. Where would the allegiance of this person lie? He or she would be at the same time a Head of State or Government and the Chairman of the European Council, mandated with outlining the strategic direction of the Union and, sometimes, taking very sensitive political decisions. As mentioned above, the underlying tension between impartiality and national preferences is a well-known element of weakness of the current rotation system. While this might be acceptable for six-months – not enough time to fundamentally alter the course of EU policies – that might prove to be disruptive if this Chairman is appointed for one year or more.

Efficiency

The inefficiency of the model of rotating Presidency is considered the main reason why this should be scrapped, and replaced by solutions ensuring more continuity. Supporters of the current system, however, argue that more continuity and better coordination can derive from ‘managerial’ improvements of the way the Council works. This is correct, and the Seville conclusions indicate interesting solutions to bridge the gaps between various Presidencies. At the same time, a stronger Commission would have more clout in shaping the agenda of the Council and ensure consistency in the long-term.

When looking at the flaws of EU policy-making in the preparation and follow up of European Council meetings and in developing CFSP, however, it seems that ‘external’ help from the Commission and stronger ‘bureaucratic’ support may fall short of what is required. This is why the supporters of this model propose that the HR chairs the External Relations Council. Preserving rotation, on the contrary, seems an inadequate solution to the difficulty that the GAC meets in fulfilling

its core tasks. Alternatives are considered below, when exploring different models for reform.

Looking at the establishment of a half-time chairman of the European Council, it is hard to see how this innovation would bring more efficiency to EU policy-making. As already noted, such a reform would either leave the state of affairs unaffected, or would possibly create more confusion. In fact, one cannot see how an acting Head of State or Government could dedicate a significant amount of time to help streamlining European policy-making while performing his national duties. National leaders (and bureaucracies!) already undergo very severe stress in fulfilling the Presidency's responsibilities over six months. There is no indication that the situation would be different were this period to be extended.

Leadership

The parliamentary investiture of the President of the Commission will boost his credibility as a fully-fledged political figure. The elected President would be able to see eye to eye with national leaders and his face would be familiar to European citizens following the electoral campaign. The authority of the President of the Commission, however, would underpin and reinvigorate only half of the governing framework of the Union. Member States would still lead the governing formations of the Council. Leadership would not come from the European Council either. In the absence of more focused preparation by the GAC (in full cooperation with the Commission), the European Council may well become more an obstacle to than a protagonist of strategic policy making. Of course, this opens the wider issue of how to ensure leadership from the European Council while preserving the institutional balance and, in that context, the key role of the Commission.

Upgrading the institutional status quo by strengthening the Community method and the role of the Commission in EU policy-making is to be welcomed. It is, however, questionable whether this set of proposals outlines adequate solutions to the shortcomings of EU decision-making, particularly in terms of simplicity, efficiency and leadership. All the more so considering the perspective of growing fragmentation of EU decision-making following enlargement.



11. Towards a single President of the Union?

This solution consists of establishing an ‘integrated presidency’.³⁹ According to this proposal, a newly established Presidency of the Union should chair both the European Council and the Commission. Selecting from the various elements of this proposal those that seem most conducive to a strong presidency of a strong institutional system, the following can be indicated:

- The President of the Union would be appointed by the European Council and approved by the European Parliament.
- He or she would be politically accountable both to the European Parliament and the European Council.
- Three or four Vice–Presidents of the Commission would assist the President in the vital function of policy coordination and relations with other institutions at different levels of interaction.
- The Vice-President of the Commission responsible for CFSP would take over the functions previously entrusted to the HR and to the RELEX Commissioner. He or she would be appointed by the European Council, upon designation by the President of the Union, and approved by the European Parliament.
- The other members of the Commission – whose number need not be enshrined in the Treaty – would be selected by the President and be approved by both the European Council and the European Parliament. Alternatively, were the Commission to include one representative per Member State, a clear division of tasks within the Commission would need to be established, possibly including some degree of hierarchy among Commissioners.
- The separation between governing and legislative formations of the Council should be clearly established, and the former (presumably three or four Council formations) should be chaired by the Vice-President of the Commission responsible for the relevant policy area.

This model departs from the priorities for institutional reform outlined above in one key respect: the President of the Union (and therefore of the Commission) would not receive a direct parliamentary mandate, but would be appointed by the Members of the European Council.

Considering the current political climate, however, prior parliamentary investiture of such a powerful figure does not seem acceptable for Member States. On the contrary, the new President should enjoy the confidence of the Member States, and receive the approval of the European Parliament. Overall, taking into account the many advantages that establishing an ‘integrated Presidency’ would entail, as argued below, in terms of simplicity, legitimacy, efficiency and leadership, a compromise on the appointment procedure seems acceptable.

Simplification

The identification of a single head of the EU executive would enhance the comprehension of the form of government of the Union for the average citizen, who would be able to identify a person ultimately responsible for the direction of EU policy-making. The same applies in the context of foreign affairs, where the Union would be formally represented by one leader, the President, and by the Vice-President of the Commission responsible for CFSP, effectively acting as a sort of Foreign Secretary of the Union. Two faces would surely convey the impression of more consistency in the foreign policy stance of the Union than three or four.

Legitimacy and accountability

The President would enjoy the support of the two sources of legitimacy in the Union: the Member States through the European Council and the citizens of Europe through the European Parliament. However, democratic legitimacy would be somewhat indirect, since the President would actually be ‘appointed’, and not elected. This framework reflects the current procedure for the appointment of the President of the Commission, but, given the fundamental responsibilities entrusted with the new position of President of the Union, it seems particularly important that he or she enjoys the trust of Member States’ governments.



On the other hand, it could be argued that the President would owe his or her appointment mainly to Heads of State and Government, and would therefore remain primarily 'loyal' to them. But the European Council, where they meet, is not a permanent body, and the Council of Ministers is a very small bureaucracy. It is therefore very likely that the President would spend most of his or her time in the Commission, frequently meeting his colleagues from the College and drawing on the relatively large resources of the Commission services. The personal link with national governments would, therefore, be balanced by the progressive entanglement in the wider environment of supranational policy-making. This has proven to be in the past one of the most effective recipes for furthering European integration.

In terms of political accountability, the newly appointed President and the Commission should be accountable both to the European Parliament and to the European Council. The argument developed for the President of the Commission holds valid: it seems appropriate that both these bodies can separately trigger the procedure to dismiss the President of the Union (and the College of Commissioners led by him).

Efficiency

The degree of efficiency of European decision-making depends on a number of factors, including, most notably, the extension of qualified majority voting in the Council. As stressed above, another important aspect is the ability to promote coordinated initiatives and joined-up policy making across different policy areas. This is possible when differences between decision-making procedures are reduced – and that seems to be the direction of the ongoing debate in the Convention – and when the centre of political input is unitary, and not fragmented between the EU institutions and the Member States.

The combination of the Presidency of the Commission and of the European Council seems to be an important step towards enhancing coordination and, therefore, efficiency in policy-making at different levels. The same applies to the governing formations of the Council, which should be chaired by the Vice-Presidents of the Commission.

A fundamental factor in determining the degree of coordination and efficiency of the Union is the procedure for adopting the yearly work programme of the EU, and multi-annual strategic programmes.

Following the abolition of the division into three ‘pillars’, an integrated work programme should be produced through a process of close and permanent consultation among the institutions.

Of all EU institutions, the most suited to promote this process is the Commission. In fact, the Commission has both the monopoly of legislative initiative, and the responsibility for policy input and coordination in the name of the common interest. In this perspective, both ‘inter-institutional consultation’ and subsequent discussion of the programme in the European Parliament and in the European Council would be facilitated by the President of the Union chairing the latter and being the only political interlocutor of the former.

Looking more specifically at the European Council, the President of the Union would be responsible for setting the agenda for its meetings and for ensuring timely follow-up to its decisions. Two of the basic weaknesses of this body would, therefore, be addressed by identifying a responsible figure, who would moreover be able to draw upon the resources of the Commission to put European Council’s strategic recommendations into practice. The advantages of this synergy would be particularly visible in the field of foreign policy-making, where the European Council can adopt important decisions but often lacks the ability to develop them in practice, and monitor Member States’ policies to that end.

Leadership

Appointing a new President of the Union would surely contribute to the visibility of European politics, as he or she would be identified as the main person responsible for the running of the Union, and would present strategic decisions to both an internal and external audience. The President would establish continuity in policy areas where effectiveness is often diminished by the six-monthly rotation of the Presidency, and would reconcile the ability to coordinate and plan policy initiatives – as President of the Commission – and the responsibility to promote them with Member States’ governments – as chairman of the European Council.

The President would be better equipped to create the conditions for an agreement in the European Council. Presidents would draw on the



Commission's resources, would owe at least part of their legitimacy to a solid political relationship with the European Parliament, and would be the person all Heads of State and Government would talk to when they have a particular concern.

A stronger leader would, moreover, play a positive role towards the institutional machinery of the EU executive and enhance motivation, providing EU structures with the profile and credibility they have sometimes (often unfairly) lacked in recent years. Finally, the President of the Union would be primarily responsible for selecting the members of the Commission, and would exercise clear political authority over the college. The President's right to dismiss individual Commissioners should be fully acknowledged, as well as the responsibility for the internal organisation of the college.

Some criticism has, on the other hand, been made of the proposed solution of one President for two institutions, on the grounds of potentially schizophrenic behaviour and with a view to the risk that either supranational institutional structures or intergovernmental bargaining would prevail and reduce the actual room for manoeuvre of the President. The danger of the newly appointed President being subjected to serious, and often divergent, political pressures has to be taken into account. However, the situation would not seem to be so different than at present.

In a Union of 25, those with key political responsibilities within the new 'government' will have to steer a political course in between contrasting pressures. That would be the case for any leader within the EU framework, whether President of the European Council or of the Commission. What is argued here is that heading both institutions would be a source of strength and authority, as opposed to a recipe for weakness and ambiguity.

12. An institutional coup d'état

The idea to establish a 'duumvirate' at the top of the Union represents a major novelty in the recent institutional debate, and carries considerable weight given the support of large member States. It is, however, essential to acknowledge that very different proposals have

been advanced behind this label.

For the sake of simplification, one can refer to two contributions, both mentioned above: the Franco-German paper submitted to the Convention on 16 January,⁴⁰ and the Anglo-Spanish blueprint presented on 28 February.⁴¹ The basic difference between the two is that, while the former includes a substantial strengthening of the Commission's remit, the latter pays lip service to the Community method but in fact leads to a radical upgrading of the intergovernmental character of the Union. Leaving aside, for the moment, the Franco-German proposal, and how best to develop it, the Anglo-Spanish initiative should be removed from the agenda.

At this stage of the debate, it seems advisable to stop arguing about generalities, and focus on what is the core of the question: the job description of the newly established President (or Chairman) of the European Council.

In this perspective, the public contribution issued in February is too vague. However, an earlier and more precise document is available. A non-paper leaked in January by the UK defines in great detail the tasks of the long-term President of the European Council.⁴² The guidelines of the two texts – public and confidential – are the same, but the latter provides the opportunity to look with a powerful lens at the small print, and find some surprising suggestions. According to the UK non-paper, the tasks of the 'Chair of the European Council' would include, among others:

- The preparation of the European Council's agenda and control of the conclusions
- The proposal of a multi-annual strategic agenda jointly with the Commission President
- Heading the Council Secretariat that "formally becomes his administration"
- Chairing the GAERC (according to the Anglo-Spanish contribution, the external formation of the GAERC should be chaired by the HR)
- Chairing the team of chairs of sectoral Council formations
- Attending Presidency pre-meetings for all sectoral Councils, and of all Council meetings themselves, when he or she so decides



- Approving agendas of sectoral Councils
- Chairing 'trialogue' meetings with the Commission and the EP
- Attending Commission meetings as observer, when he or she so decides
- Making recommendations to the European Council concerning the appointment and dismissal of the HR
- "Ownership" of major summit with great powers
- Coordinating and supervising aspects of crisis management and defence

This concentration of power might sound a bit extreme, but it was actually presented as a constructive step towards "*preserving the balance of power*" and "*improving partnership between the Council and the Commission*". Once again, it is clearly essential that a shared vision of what these institutions are about be established before discussing the question of presidencies. Otherwise, radically different solutions will be achieved in the name of the (deceptively) same principles.

It is important to assess the potential impact of the plan outlined in this non-paper on the wider institutional framework. This seems to amount to nothing short of an institutional coup d'état at three levels:

- Bureaucratic

The Secretariat General of the Council becomes the structure supporting the new President of the European Council. This actually corresponds to a transformation of this body, from mainly bureaucratic machinery preparing the background work to the programme of rotating presidencies, to an instrument meant to serve the political priorities of one leader.

The Secretary General of the Council (whose position is separated from the HR) would chair COREPER, which is entrusted with the preparation of GAERC, in turn chaired by the President of the European Council. The continuity of the chairmanship of the European Council, the GAERC and the COREPER on the part of President of the EC and the Secretary General of the Council amounts to a total control of the line of command, which is even more evident turning to the other configurations of the Council.

- Intra-Institutional

The President of the EC chairs a team of Presidents of sectoral Councils, at least once a month. That arguably amounts to constituting in the Council a structure that much resembles the Commission. The President of the EC approves the agendas of all sectoral Councils and can attend all their meetings and preparatory meetings. The influence of the President of the European Council clearly goes well beyond the strategic direction of the European Council and directly affects the proceedings of all Council formations, casting serious doubts on the actual scope for autonomy of separate presidencies.

Also, when sectoral Councils fail to deliver, the President of the European Council can take specific issues to the GAERC or recommend the use of reinforced cooperation to the European Council. The decision on whether or not to use the GAERC and European Council as a 'Court of Appeal' is therefore up to basically one person - the same who chairs meetings of the team of Presidents and can attend any Council meeting. Can political control be more extensive?

- Inter-institutional

The pervasive control of the Council machinery at both bureaucratic and institutional level weakens by itself the role of political input and initiative of the Commission and of its President. Some of the details outlined in the paper seem to confirm this trend. To begin with, the President of the European Council can attend Commission meetings as an observer, and chairs 'trialogue' meetings with the President of the Commission and the President of the EP. The multi-annual strategic agenda is proposed jointly by the President of the European Council and the President of the Commission, and progress is reviewed every six months on the basis of a joint report by the two Presidents.

The two Presidents seem to have more or less the same role in dealing with the same issue, except that the President of the European Council would also chair the GEARC (GAC formation) and the European Council, where the strategic agenda should be debated and approved. The large overlap of the two roles and a



balance of power pending in favour of the President of the European Council are not conducive to consistent agenda setting in the long-term.

At a broader level, the President of the European Council is supposed to be the public face of the Union both internationally and within the Union. That clearly leaves little room for the President of the Commission to express any visible leadership.

As to the HR, this role is undermined by the assumption of responsibility for high-level foreign policy-making by the President of the European Council. In this case, again, the situation is both unclear and imbalanced. The division of tasks between "*detailed negotiation of major foreign policy issues of the day*" left to the HR and the vast range of responsibilities attributed to the President of the European Council is blurred in practice. Specific responsibilities granted to the President of the EC in the fields of crisis management, defence and armament procurement extend his powers even further.

Following this analysis, it is clear that the adoption of the reform proposals indicated in the Anglo-Spanish contribution would fundamentally upset the balance of power between EU institutions, and between the Union and Member States.

It is advisable that Convention members rule out further consideration of this anti-systemic approach, and focus on shaping a system that responds to four basic demands: simplicity, legitimacy, efficiency and leadership.

13. The road to a EU government: no job advert without job description

Following this overview of the pros and cons of the main options on the table, it seems that the integration of the Presidency of the Commission and of the European Council would be the most suitable solution to establish a strong and cohesive government for the Union, provided that the organisation and powers of the related institutions evolve accordingly. On the contrary, the idea of establishing a President

of the European Council without seriously enhancing the authority and 'power base' of the President of the Commission is a recipe for fragmentation and stalemate. The 'integrated Presidency' option, however, is considered by a majority in the Convention as premature: the current degree of political cohesion across the Union would fall short of entrusting a wide range of 'governing functions' and responsibilities to one person. The inter-institutional balance would be too fragile to resist the 'shockwave' of this radical reform, which would either affect the independence of the Commission, or diminish the influence of national leaders in the European Council to an extent unacceptable for Member States.

What, then, should be the basis for the necessary progress to achieve a government for the Union? It seems that the scope for further debate is defined by the Franco-German proposal on the one hand, and by the Benelux Memorandum on the other.

Essentially, the appointment of a long-term Chairman of the European Council is acceptable but only on very precise conditions, together with the election of the President of the Commission by the European Parliament. The President of the Commission and the relevant Vice-Presidents per policy area should chair, respectively, the GAC and other governing formations of the Council. The Presidency of the Legislative Council and of sectoral legislative formations could rotate according to a variety of mechanisms. The EER should be a Vice-President of the Commission and should chair the External relations Council. He or she would abide by different decision-making procedures depending on the subject matter.

Coming to the crucial question of the powers and responsibilities of the institutional actors in this new framework, these should flow from the detailed analysis and evaluation developed in the first part of this contribution. The tasks allocated to the 'Presidents' should depend on the ability of respective institutions to carry them out. What are the crucial governing functions then, and who is best suited to perform them?

- Strategic impulse to the development of the Union: this role belongs to the European Council and this should remain the case.



But the European Council, soon to include more than 50 individual participants, and meeting four or five times a year, will be incapable to effectively provide such impulse without much stronger support, and much sharper focus on its agenda and on its conclusions.

- Short to long-term planning: appropriate fulfillment of this task essentially requires independence, continuity and authority. It is hard to dispute that a politically stronger Commission is best positioned to prepare and pursue a consistent work programme for the Union. The Commission should prepare one integrated yearly and multi-yearly work programme for the Union, in consultation with Council formations and with the European Parliament. The European Parliament and the European Council should then approve these fundamental documents.
- Political and legislative initiative: the Commission has traditionally played this role and should continue to do so. But this will require the Commission being given greater political authority – not least to persuade all the political actors concerned to pursue agreed and shared objectives. The Commission should therefore expand its powers across the board (leaving aside due exceptions such as in the domain of defence) and work more closely with governing formations of the Council. Some of the major initiatives will naturally require debate at the level of the European Council, and the ‘blessing’ of this body. This belongs to the natural interplay between the institutions.
- Coordination and mediation: an independent body is needed to be sensitive to national concerns, to ensure ‘joined up government’ and, where necessary, to strike agreements between conflicting interests and preferences. The Commission has done so in the past. More synergy with governing formations of the Council and with the European Council seems to be the recipe to reconcile growing diversity into coherent policy-making.
- External representation and action: the EER would convey a clear message to external partners, and would be able to draw on a much wider set of resources in human and financial terms. The ability of this figure to mediate and promote common policies will be crucial: this is why the EER should be in the Commission, but have

a foot in the Council, and enjoy the trust of the Member States' Governments. His relationship with the President of the European Council will be important to develop CFSP and ESDP further. The European Council can of course play a useful role as a collective interlocutor of foreign leaders and in providing basic guidelines for foreign and security policy. These will then be implemented by the EER in cooperation with fellow Commissioners and with Member States.

Against this picture a new, important job at the top of the institutional structure – the Chairman of the European Council – should be 'advertised' only if the job description complies with some key conditions. What would this job advert look like?

- Vacancy at the European Council: Chairman. Two-and-a-half years contract, full-time job.
- Required experience: previous leadership role at the national level, preferably in the position of Head of State or Government. High moral standing, prestigious international reputation, and extensive support by Member States' governments.
- Tasks:
 - Chairing the meetings of the European Council.
 - Meeting with the President of the Commission every week and discussing general political developments. Particular focus on reporting on the attitudes of Member States concerning pressing dossiers.
 - Frequent exchanges with Heads of State and Government, including the tour of capitals before European Council meetings, to present the agenda prepared by the GAC, and reporting to the President of the Commission before the meeting itself.
 - Hosting foreign leaders at European Council meetings, and occasionally traveling abroad and represent the Union at major events.
 - Summoning tripartite meetings with the President of the Commission and the President of the EP in cases of exceptional emergency or inter-institutional conflict.

This is an attractive position for a very senior former national leader. The proper fulfillment of these tasks would indeed bring a useful



contribution to streamlining the work of the European Council and to embodying the sense of shared enterprise of European integration in one prestigious figure *super partes*.⁴³ The clear definition of his or her tasks, however, should be the condition for its coming into existence at all.

Conclusion

Members of the Convention are faced with a major responsibility: adapting the Union to growing diversity following enlargement, and to growing global instability. The Union is in a position to provide a major contribution to improving the living standards of Europeans – by reconciling competitiveness and solidarity across the continent – and helping to shape a more multilateral system of global governance. It is obvious that these tasks are beyond the reach of individual Member States and that, according to the much-celebrated principle of subsidiarity, they should belong to EU responsibilities. But if the Union is to fulfill these tasks, EU institutions need to be strong, cohesive and endowed with enough political authority to drive national actors to agree on often sensitive matters. While recognising the need to preserve the original features of the EU framework, and envisage different procedures for a limited range of specific matters, the Union needs a government.

In this perspective, the strong demand for the appointment of a long-term figure chairing the European Council needs to be addressed, provided that some essential conditions are respected. This person would embody the Union at the highest level and would play a useful role *super partes*, in particular as interlocutor of national governments, but should not have a say in executive business.

If this turns out to be the final compromise, then a clause should be enshrined in the new Constitution, envisaging that Heads of State or Government could take a vote by qualified majority with a view to merging the two positions of President of the European Council and President of the Commission. The Constitution should also state that, were they not to take this step before, a vote should be taken in 2014, when the third Commission after the current one will be appointed. By then, only one Commission term will have elapsed on the basis of the new provisions being elaborated by the Convention.

¹ T. CHRISTIANSEN has provided an interesting perspective on the relationship between intra-institutional and inter-institutional politics, which is in turn helpful when addressing options for reform, "*Intra-institutional politics and inter-institutional relations in the EU: towards coherent governance?*", *Journal of European Public Policy*, 8/5, 2001

² For a clear and synthetic explanation of the distinction between 'government' and 'governance', see J.L. QUERMONNE, "*La question du gouvernement européenne*", *Etudes et Recherches* 20, Notre Europe, Paris, 2002

³ For a broader review of the tasks of the Commission see A. MICHALSKI, "*Governing Europe: The Future Role of the European Commission*", Study 17, NIIR Clingendael Institute, The Hague, 2002

⁴ For a good overview of the diverse roles played by the Commission, see J.H. MATLARI, "*The Role of the Commission: A Theoretical Discussion*", in N. NUGENT "*At the Heart of the Union: Studies of the European Commission*", Macmillan, London, 1997.

⁵ See in this sense B. HALL, "*European Governance and the future of the Commission*", Working Paper, CER, London, 2000 and, more recently, J. PETERSON, "*The European Commission: Plateau? Permanent decline?*", Discussion Paper, EIRU/025, Oxford, 2002.

⁶ This is addressed, among others, by QUERMONNE, cit.

⁷ J. DELORS, 1998, quoted in HALL cit.

⁸ See the very recent proposals for the reform of 'comitology' in the context of the Convention debate by L. ALLIO, "*The case for comitology reform: Efficiency, transparency, accountability*", Working Paper 02, EPC, Brussels, 2003.

⁹ Speech by R. PRODI at the opening session of the Convention on the Future of Europe, 28 February 2002, SPEECH 02/88

¹⁰ See the lively exchange in Challenge Europe on-line Journal, EPC, Brussels, available at www.theepc.be, including J. TEMPLE LANG and E. GALLAGHER, "*What sort of European Commission does the EU need?*", 14 February 2002, S. CROSSICK and G. GREVI, "*The future of the Commission – One way independence?*", 11 April 2002 and J. TEMPLE LANG and E. GALLAGHER, "*The future of the European Commission*", 26 April 2002.

¹¹ See the interesting arguments outlined by S. HIX, "*Linking National Politics to Europe*", FPC, London, 2002, available at www.network-Europe.net and the reservations expressed by C. FRANCK, "*La question du Président de l'Union*", *Annales d'Etudes Européennes de l'UCL*, 6/02, Bruxelles, 2002.

¹² A growing body of opinion backs this solution. Leaving aside the vast number of contributions submitted in this sense to the European Convention, some of which are referred to below, see the report "*Bridging the Leadership Gap*", Thinking Enlarged Group, Bertelsmann Foundation, CAP, 2002; and W. COUSSENS and B. CRUM, "*Towards Effective and Accountable Leadership of the Union*", Working Paper 03, EPIN, Brussels, 2003. See also the working documents by the Commission "*Feasibility Study – Contribution to a Preliminary Draft – Constitution of the European Union*", better known as 'Penelope', 4 December 2002, and the Commission Communication on the Institutional Architecture, "*For the European Union: Peace, Freedom and Solidarity*", CONV 448/02, 5 December 2002.

¹³ See in Challenge Europe J. TEMPLE LANG and E. GALLAGHER and the response by S. CROSSICK and G. GREVI, cit. See also the interesting proposal of R. TOULEMON, "*Schémas constitutionnels pour l'Europe*", document submitted to AFEUR, 8 February 2002.

¹⁴ See, before this recent contribution from the Commission, the Spierenburg Report of 1979 and the Petit-Laurent Report of 1995. The former already called for a



limitation of the number of portfolios allocated to Commissioners, while the latter argued that a flexible division of tasks should be the key to address the growing size of the College.

¹⁵ A number of important contributions are available on the evolution and distinctive features of the European Council: S. J. BULMER and W. WESSELS, "*The European Council: Decision-Making in European Politics*", McMillan, London, 1987; F. HAYES-RENSHAW and H. WALLACE, "*The Council and the European Council*" in "*The Council of Ministers*", McMillan, London, 1997; P. DE SCHOUTHEETE, "*The European Council*", in J. PETERSON and M. SHACKLETON, "*The Institutions of the European Union*", Oxford University Press, Oxford, 2001; P. DE SCHOUTHEETE and H. WALLACE, "*The European Council*", *Research and European Issues* 19, Notre Europe, Paris, 2002.

¹⁶ DE SCHOUTHEETE 2001, cit.

¹⁷ See Council of the European Union "*Préparer le Conseil à l'élargissement*", 1636/1/02, 7 March 2002, and "*Measures to prepare the Council for Enlargement*", 9939/02, 13 June 2002. See also the Presidency Conclusions of the European Council at Seville, "*Rules for organising the proceedings of the European Council*", 13463/02, Annex I, 21 and 22 June 2002.

¹⁸ "*Preliminary draft Constitutional Treaty*", CONV 369/02, 28 October 2002.

¹⁹ See the report of the seminar organised by Notre Europe on 4 September 2002, "*European Union-The reform of the Council of Ministers*", 2001.

²⁰ See Seville Conclusions, cit., "*Measures concerning the structure and functioning of the Council*" Annex II.

²¹ As to the distinction between the governing and legislative functions and formations of the Council, see the contribution by G. DURAND, "*Montesquieu wakes up: Separation of powers in the Council of Ministers*", WP 02, EPC, Brussels, 2003.

²² See F. HAYES-RENSHAW and H. WALLACE, "*The Presidency*" in F. HAYES-RENSHAW and H. WALLACE, cit., for the overview of the Presidency's tasks. A comprehensive empirical analysis of the functioning of the Presidency is provided by C. STEIN, "*What is a good Presidency and how is it achieved?*", Master's thesis, College of Europe, Natolin, 2000.

²³ This is the expression used by J.L. DEWOST, "*La Présidence dans le cadre institutionnel des Communautés Européennes*", *Revue du Marché Commun*, 273, 1984. It should be noted that this early contribution could not take into account the subsequent expansion of the Presidency's remit, which is an important point in the current debate.

²⁴ A. STUBB, quoted in STEIN, cit.

²⁵ See the interesting analysis of J. TALLBERG, "*The Agenda-Shaping Powers of the EU Council Presidency*", *Journal of European Public Policy*, 10/1, 2003.

²⁶ Contribution by D. DE VILLEPIN and J. FISCHER, "*Franco-German contribution to the European Convention concerning the Union's institutional architecture*", CONV 489/03, 16 January 2003.

²⁷ Benelux Memorandum, "*A balanced institutional framework for a more efficient and transparent enlarged Union*", 4 December 2002. Reproduced in CONV 457/02, 11 December 2002.

²⁸ Contribution by A. PALACIO and P. HAIN, "*The Union institutions*", CONV 591/03, 28 February 2003.

²⁹ The Commission 4 December 2002, cit.

³⁰ See in this sense the recent contribution by 16 representatives of national governments to the Convention, "*Reforming the institutions: principles and premises*", CONV 646/03, 28 March 2003. Also, the outcome of the meeting held on April 1 among Heads of State or Government from small countries showed considerable

support for the preservation of the rotation mechanism.

³¹ See PALACIO and HAIN, cit.

³² See DE VILLEPIN and FISCHER, cit.

³³ P LEQUILLER was the first to submit this option to the Convention: "A President for Europe", CONV 350/02, 7 October 2002. See also L. DINI and A. DUFF, "A proposal for a Unified Presidency", CONV 524/03, 31 January 2003. Among the observers, see C. GRANT, hinting at this scenario in "Restoring Leadership to the European Council", CER, April 2002; W. COUSSENS and B. CRUM, cit. and G. GREVI, "An Integrated Presidency for a United Europe", WP, EPC, 4 December 2002, available at www.TheePC.be

³⁴ Working Group VII, External Action, Final Report, CONV 459/02, 16 December 2002.

³⁵ This is the approach adopted by P DE SCHOUTHEETE.

³⁶ K. NICOLAIDIS used this imaginative expression at a seminar organised by the Federal Trust/UACES Study Group on the Convention on 7 February 2002.

³⁷ See the application of these concepts to EU politics in H. DRAKE, "The European Commission and the Politics of Legitimacy in the European Union" in N. NUGENT, cit. For a closer look at the ability of the Commission to provide leadership see N. NUGENT, "The Provision of Leadership", in N. NUGENT, "The European Commission", Palgrave Macmillan, New York, 2001.

³⁸ See the project developed by L. CRAM in the context of the 'One Europe or Several' initiative: "The Europeanisation of State-Society Relations: A Comparative Study"

³⁹ This chapter draws extensively from G. GREVI, "An Integrated Presidency for a United Europe", cit. As for members of the Convention who support this model, see LEQUILLER, cit. and L. DINI and A. DUFF, cit.

⁴⁰ See DE VILLEPIN and FISCHER, cit.

⁴¹ See PALACIO and HAIN, cit.

⁴² "Chair of the European Council", accompanied by an explanatory note, January 2002.

⁴³ This new position is very similar to the one envisaged by R. BADINTER, "Une Constitution Européenne", CONV 317/02, 30 September 2002, reflected in QUERMONNE cit., who adopted the definition of "gouvernement mixte". See also the recent contribution by a group of experts chaired by G. AMATO and F. BASSANINI, "For a Constitution of the European Union – Convergences, Diverges, Possible Paths (and a Few proposals)", ASTRID, Rome, February 2003.





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