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COVER NOTE

from	Secretariat
to	The Convention
Subject :	**Contribution by Mr Jens-Peter Bonde, member of the Convention "The Convention about the FutureS of Europe"**

The Secretary-General of the Convention has received the contribution annexed hereto from Mr Jens-Peter Bonde, member of the Convention.

ANNEX

Contribution to the Convention

The Convention
- on the FutureS of Europe

By Jens-Peter Bonde,

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I. Preface

In 1787 representatives of 13 American states met in Philadelphia to form a democratic Constitution for the United States of America They succeeded.

In 2002 a similar process started in Europe, with the call for a *Convention* to prepare a European Constitution. Will it succeed?

The Convention began its work on 28 February 2002 in the European Parliament Chamber in Brussels under the chairmanship of former French President, *Valéry Giscard d`Estaing*.

The Convention's goal is to deliver a draft Constitution or Treaty to the European Summit in Greece in June 2003.

Subsequently, the Prime Ministers of the 15 EU Member States will call for an *Intergovernmental Conference* to negotiate the next European Treaty, which according to Giscard d`Estaing will contain a *Constitution.*

By the end of the day, the Amsterdam or Nice Treaty will be amended.

There are three main possibilities:

1. We can continue to amend and expand the existing EU Treaties.

2. We can simplify and democratise through the adoption of a *federalist* Constitution as they did in America.

3. We can slim down the EU and form an international agreement between sovereign nation states allowing for legislation only on cross-border issues of common concern. This is the Euro-realist model.

These are the three main options from which to choose. Why not ask the Convention to prepare two new models in concrete Treaty articles?

We could then ask the peoples of Europe whether they prefer the existing form of co-operation, the *Federalist* model, or the *Euro-realist* model for future co-operation in Europe.

1. "Yes" or "Yes, please"?

Until now, only few countries have held referendums. Citizens of Europe have only been able to answer "Yes" or "No" to a finished and agreed text which they could not amend.

The citizens have been threatened with isolation or exclusion from the EU prior to the referendums. Leaders have called for referendums and said that "No" was not a possible answer. One could only choose between "Yes" and "Yes, please".

No one has been asked what he or she expects from European co-operation.

The time has come to put this question to *all* citizens in *all* Member States through referendums. A Constitution or a basic Treaty has to be discussed, understood and agreed upon by the peoples of Europe if it is to be acceptable, have legitimacy and endure.

A new Treaty should not suddenly appear without the possibility of amending it through debate. The answer can easily be a "No" in any country which holds a referendum, as happened in Ireland on 7 June 2001 on the Nice Treaty.

The Irish citizens taught the EU leaders a lesson.

We should praise them for the opportunity they have given us to stop, think and look carefully at the figures from Eurobarometer Poll 55. The figures in the polls - sponsored by the EU - are rather alarming.

The polls tell us that if the EU collapsed, it would only be regretted by the majority of citizens in two of the 15 Member States, Luxembourg and Ireland.

The majority of citizens in 13 of the 15 countries would be indifferent to or even happy with a dissolution of the EU.

There is a lack of confidence between the citizens in Europe as regards EU decision-

making in Brussels. Since it is difficult to change the citizens, it might be easier to change the way we make the decisions in Europe.

The Convention may be the last chance to unite the peoples of Europe around a co-operation they have chosen themselves.

The majority of the members of the Convention are elected representatives of the European Parliament and national parliaments. They never received a concrete mandate from the citizens to draft a new EU Treaty or Constitution.

Therefore, their first and most important decision should be to propose that the result of their work should be put to a referendum.

This will then force the Convention to prepare drafts which stand a good chance of being adopted. It would also force both the vast majority of Federalists and the little circle of Euro-sceptics and Euro-realists to engage in real competition to offer a solution for the best possible future for Europeans.

As citizens, we can "expect more and better" if we, ourselves, have the final say.

That is also what democracy is about:

Let the peoples decide.

Jens-Peter Bonde, 20 May 2002

Content:

II. Let the peoples decide

Our Prime Ministers may have realised that the old methods of changing the EU treaties have run their course. They decided to start the Convention at the Summit in Laeken on 15 December 2001.

They have even called on us – the ordinary citizens - to discuss *the future of Europe.*

15 Prime Ministers have solemnly stated that they want a broad debate involving all citizens.

-*"In order for the debate to be broadly based and involve all citizens, a Forum will be opened for organisations representing civil society (the social partners, the business world, non-governmental organisations, academia, etc)."*

The next Treaty will be elaborated in a more open and *transparent* way.

This is a complete change of tune, which can be seen as a response to the growing criticism of the EU in all Member States.

Opinion polls in most Member States show the decline in support for the EU.

There have been new "No" votes in the referendums in Denmark on the Euro in 2000 and in Ireland on the Nice Treaty in 2001.

1. New tactic or forward strategy

The Prime Ministers seem now to be rather critical towards their own past. They show understanding towards public feeling. This understanding is reflected in the Laeken Declaration:

- *"They want the European institutions to be less unwieldy and rigid and, above all, more efficient and open. Many also feel that the Union should involve itself more with their particular concerns, instead of intervening, in every detail, in matters by their nature better left to Member States' and regions' elected representatives. This is even perceived by some as a threat to their identity. More importantly, however, they feel that deals are all too often cut out of their sight and they want better democratic scrutiny."*

The question is whether this new tone represents a new tactic or a radical change in their forward strategy, aimed at involving and serving the peoples of Europe.

Will the debate on the future of Europe become representative of public opinion or will the same elite operate the same way as before, but dressed in new clothes?

2. A Forum for discussion

To assist the debate, the Prime Ministers will establish a *Forum* for organisations representing civil society.

Will this forum also involve EU-critics or will its members be handpicked to represent established views?

3. A Convention for drafting

A special-purpose *Convention* will draft and analyse different possibilities for European integration.

Will the Convention actually represent public views as they appear in the opinion polls, or will the same people just meet once again?

4. An Intergovernmental Conference to decide

Once the Convention has given birth to a new draft Treaty, the Prime Ministers and their representatives will meet and negotiate at an *Intergovernmental Conference,* including special summits.

At this point, will they listen to the views of the participants in the public debates, the Forum and the Convention?

At the end of the day, will they offer us a new European Treaty between sovereign nation states or a real Constitution?

Will it be a new, clear and understandable model for democratic governance, or will the next Treaty be just as complicated, unreadable and undemocratic as the previous ones have been?

B. <u>The Nice Treaty not seen as a success</u>

After 5 days of intense horse-trading at Nice, no one was really satisfied with the result.

New and important ideas, such as appointing Commissioners by qualified majority, were proposed, discussed and agreed upon as late as after midnight on the very last night of the summit deliberations.

None of the Prime Ministers had a chance to discuss this proposal with their colleagues in their own governments. No government had a chance to consider this far-reaching idea in its own national parliament or have a public debate about it.

In the European Parliament, the idea of appointing Commissioners by qualified majority had been raised in the Constitutional Committee, but it was immediately turned down by Commissioner Michel Barnier.

He told his federalist friends that not one single country had even proposed it during the preparatory talks and that it was unrealistic.

After a few hours of negotiations in Nice, it was suddenly decided that the Commissioners would be appointed in this new way anyway.

1. Big battle about votes

Votes in the Council were changed despite all logical arguments.

Hungary and the Czech Republic were offered fewer members in the European Parliament than Belgium and Portugal, which have fewer citizens. Estonia, with 1.5 million citizens, is offered the same 6 seats as Luxembourg, with less than half a million citizens. Malta is almost the same size as Luxembourg but is only offered 5 seats.

Similarly illogical, France and Germany will be entitled to the same number of votes in the Council even though Germany has 82 million inhabitants and France has only 59 million.

By way of compensation, Germany will get the possibility to claim a special count of votes before a new EU law can be adopted. This count will be based on the size of populations in the individual Member States.

In the future, a "qualified majority" vote will require the agreement of a number of Member States representing at least 62% of the population of the EU.

Summarised, this means that Germany, considering its population size, will have an increased ability to block decisions. However, it will not have any extra say in the decision-making process in the Council.

In the European Parliament, Germany will continue to have 99 representatives as opposed to a foreseen reduction from 87 to 72 for France, Italy and the UK, respectively.

2. New margin for a majority

The margin for a "qualified majority" was raised in a way that no Prime Minister can justify to his

or her fellow citizens.

Today, a"qualified majority" requires 71.3 % of the votes in the Council.

With the Nice Treaty it will gradually be raised to 73.4 %, making it a little more difficult to amend existing EU laws or agree on new laws.

The resulting mess was criticised in the European Parliament. For the first time in its history, the European Parliament did not approve a new Treaty draft or recommend the Member States to ratify it.

Rather than strengthening democracy, as the Prime Ministers later said they wished to do with the Laeken Declaration, the Nice Treaty adds to the democratic deficit.

3. Criticised from more than one side

Leading federalists protested against the result from Nice using the same strong words as the Euro-sceptics.

Both sides criticised the democratic shortcomings in the Treaty and were applauded by the incoming President of the European Council, Belgian Prime Minister, *Guy Verhofstadt.*

At a welcome dinner for the Group Chairs in the European Parliament, Verhofstadt said that the Euro-sceptics were "*completely right in their analysis, but wrong in their solutions*".

Verhofstadt then wrote a draft Declaration that - partly - could have been written by any Euro-sceptic. However, in the final Laeken Declaration he added a lot of questions concerning the democratic shortcomings to which his solutions were all taken from the federalists' arsenal.

On his tour of the different capitals, he was told to limit criticism and broaden his questions. Still, after a lot of amendments and redrafting, the final Laeken Declaration contains historic self-criticism.

C. Secret call for transparency

The Laeken Declaration calls for transparency. Ironically though, the Declaration draft calling for transparency was kept completely secret until its final adoption.

A few journalists had read the draft and quoted a few sentences from it, but no one dared break the promise of keeping the draft secret.

High-ranking civil servants who would normally have access to summit drafts did not get a chance to copy the Laeken draft. Verhofstadt was very efficient in securing secrecy at the same time as he was arguing for transparency.

Transparency, it seems, is always important - in the future - but not just right now.

1. No taboos in the Treaty preparation

The Prime Ministers have agreed on a completely new method for drafting new Treaties. This was the aim of the Belgian Presidency, and Verhofstadt succeeded almost 100 %.

Until now, all negotiations about new Treaties have taken place as secret horse-trading between civil servants and ministers. Meeting documents and minutes have been kept secret, even from most Parliaments.

Now the process will take place in the open. Every topic is up for discussion.

There are *"no taboos"*, said the President in Office, *Guy Verhofstadt*, when he published the revolutionary decision containing the two key words *Convention* and *Constitution.*

The important Summit took place in the Royal Palace in Laeken, a suburb of Brussels, on 14 and 15 December 2001.

D. A federalist dream from America

The idea of a *Convention* is a federalist dream, which resembles the founding of the American State model.

Back in 1787 leading personalities met in a *Convention* in Philadelphia to draft a Federal Constitution for the United States of America.

In Europe, leading politicians are now talking about an EU Federation or a *Federation of Nation States.*

For a long time, the United Kingdom and other hesitant countries opposed the use of federalist keywords such as *Convention* and *Constitution.* It turned out that both words were finally included in the Laeken Declaration.

The Declaration has a headline, *"Towards a Constitution for the European Citizens",* and it summoned the *Convention* to start its work in Brussels on 1st March 2002 under the Spanish Presidency.

1. President Giscard - President again

The work in the Convention is not left to the Spanish and the succeeding Danish and Greek EU Presidencies.

At the Summit in Laeken, three experienced statesmen were appointed to lead the

negotiations.

The former French President *Valéry Giscard d`Estaing* presides with the former Belgian Prime Minister, *Jean-Luc Dehaene* and the former Italian Prime Minister, *Giuliano Amato,* as his two Vice-Chairs

The Praesidium of the Convention totals 13 members. It consists of the Chairperson, the two Vice-Chairpersons, two nominees each from the European Parliament, the national parliaments and the European Commission, one representative form the applicant countries and three representatives from the relevant EU Presidencies – Spain, Denmark and Greece.

The Convention itself consists of 16 members from the European Parliament, two members from each of the national parliaments, one member each from the 15 governments and a similar composition from the 13 applicant countries, each sending a government representative and two from their national parliaments.

With three observers from the EU Economic and Social Committee (EESC, six observers from the Committee of the Regions and the Ombudsman, there will be 105 representatives and 10 observers altogether who takes part in the Convention, together with 100 substitute members.

According to the Laeken Declaration, substitute members only have the right to participate in the absence of full members.

In the first preparatory meeting of the European Parliament, it was agreed that substitute members would be allowed to take full part in all deliberations in the Delegation.

The result was that substitute members can participate in all Convention meetings but only speak if the full member is not present.

In addition to the 16 members and 16 Substitutes, the European Parliament's delegation has agreed to allow the independent MEPs to participate in their delegation with an observer.

Formally, the representatives from the applicant countries cannot "*hinder a consensus among Member States,*" but since there are no votes planned, they might in practice become almost equals in the negotiations on the next Treaty or Constitution.

In the final Intergovernmental Conference, the applicant countries can only take part on the condition that they have already signed agreements on enlargement.

2. Enlargement and European elections in 2004

The discussion about the next EU Treaty or Constitution will take place parallel to the planned

enlargement of the EU with 10 new members and the next European Parliament elections in 2004.

Surprisingly, the 13 Applicant countries include Turkey, which is represented in the Convention, drafting different options for the organisation of an enlarged European Union.

The Prime Ministers wanted to please Turkey because they need Turkey's support to be able to borrow NATO assets for the EU's Rapid Reaction Force.

They also need Turkey to accept an enlargement, which will include the divided island of Cyprus, but not Turkey itself.

E. The Future of Europe

The Belgian Presidency bought full-page advertisements in 32 leading European newspapers to carry the text of the Laeken Declaration.

This well-advertised document from the Summit in Laeken is formally called *"The Future of Europe".*

It raises 64 concrete questions on the future EU construction and suggests, between the lines, a lot of Federalist answers.

Most of the Laeken authors have one specific model for European co-operation in their minds. They want to build a Federalist co-operation.

1. More than one future to choose between

The subtitle of this book is called "The *future**s*** of Europe," to underline that there can be alternatives. We *have* a choice.

This book contains *both* the Federalist solution and the alternative vision of the Euro-sceptics, or Euro-realists, as many of them nowadays prefer to call themselves.

The two different visions could be named *A democratic EU* and *A Europe of democracies.* The two models can be seen as ideal types, which can be modified and even combined in a final European compromise.

We cannot continue to write Treaties which make law-making so complicated that it is impossible to explain to citizens – and even to MPs and ministers - how a law comes into being. We cannot continue changing the basic EU Treaties in an ongoing process, which amounts to a permanent Constitutional revolution. By 2004, a historic decision will have to be made on *how* we unify and organise the whole of Europe.

2. Who should take the final decision?

The peoples of Europe have the right - and duty - to decide *how* we build Europe and reform the enlarged EU.

Can we build a European Super-power without creating a Super-state, as British Prime Minister Tony Blair argues?

How can we organise the division of powers between EU and the Member States if the EU is not to be the ever-expanding Super-state which the 15 Prime Ministers rightly warn against in the Laeken Declaration?

Can today's secret law-making by civil servants and ministers be reformed into a European Parliamentary Democracy as proposed by the European *Federalists*?

Can the European Parliament become an institution that represents the Europeans to their satisfaction?

Would it help if the European Parliament had the right to elect the President of the Commission following a competition between genuine European parties in common European constituencies?

Should the Commissioners be appointed by and represent the national parliaments?

Do you prefer the alternative vision with a slimmer and freer Europe, governed by the different national democracies as proposed by the *Euro-realists*?

The choice is yours. Here are a few facts about the Laeken process and the two different possible futures for Europe.

Why not leave it to the peoples of Europe to choose between the different models in referendums?

Democracy was born in Europe. Generations fought for this bright and simple idea. Millions of Europeans have lost their lives in the fight for democracy. Why then reduce it?

Why not give democracy a chance? Why not rely on democracy in determining our own future? -Also in the way we determine our future?

Why not leave the final say to the electorates?

Let the peoples decide.

It is what democracy is about.

F. <u>Preparations in Nice</u>

On 11 December 2000, the 5-day record long European Summit, in the Mediterranean town of

Nice, finally came to an end.

The leading ministers had spent 330 hours negotiating and horse-trading to finalise the new draft EU Treaty. It was named the *Nice Treaty* after the city in which the summit took place and it was solemnly signed in Nice on 26 February 2001.

The Nice Treaty would alter the governing Amsterdam Treaty. More frequent qualified majority voting was one important amendment.

1. An Irish "No" vote

Eventually, the Irish voters rejected the Nice Treaty in a referendum on 7 June 2001. The Irish Government was surprised and even apologised to the EU Member States for its electorate's "mistake".

The Irish Prime Minister promised the other EU leaders that he would call another referendum.

The other EU Member States have now ratified - or are in the process of ratifying - the Treaty in the expectation that the Irish voters will be induced to change their minds.

However, the Nice Treaty will only come into force and amend the Amsterdam Treaty *if* the Irish voters change their minds and vote "Yes" in a second referendum.

This is the rule of the game: The basic Treaty of the European Union can only be changed if *all* Member States agree. This is also the rule of the game for the new Laeken process.

We can only transform the existing Treaties into a Constitution with unanimity, unless the existing Treaties are replaced by a new system for those countries willing to sign it. Of course, this radical approach would also demand unanimity.

The fundamental demand for unanimity in Treaty amendments proves that the existing EU is still founded on international law. Sovereignty ultimately lies within the 15 Nation States.

G. <u>A constitutional legal system</u>

The 15 nations are the masters of the Treaties, establishing the European Communities and the European Union. It shows that the EU is not yet a federation like the US.

On the other hand, the EU Treaty does not allow Member States to leave the Union without unanimous agreement among the 15 governments.

Furthermore, the European Court has itself established a constitutional legal system.

From the point of view of the EU judges in Luxembourg, the EU is already a

Federation, with EU law prevailing over national law.

The judges, themselves, have amended and altered the basic Treaties with revolutionary verdicts at times.

The Nice Treaty does not alter the requirement of unanimity for amending the basic Treaty, but it changes the position, radically, of countries rejecting Treaty amendments and new areas of co-operation.

1. Enhanced co-operation

The Nice Treaty introduces qualified majority voting for *enhanced co-operation.*
Eight Member States will be able to establish a stronger co-operation between themselves and use the common European institutions for their own purposes.

They can form an "avant-garde club inside the club" or a "federation within a confederation" as proposed by the late French president, *Francois Mitterand* and his Socialist countryman and former Commission President, *Jacques Delors.*

This strengthened co-operation can operate in all areas with the exception of Defence. For matters concerning Defence, unanimity is still required, leaving the right to vetofor every single Member State.

Enhanced co-operation does not change the national right to veto Treaty amendments, but it weakens the negotiating strength of countries in minority positions. They cannot threaten to block new areas of co-operation. They can only isolate themselves thereby, from the mainstream countries.

2. Photocopying EU decisions

Formally, they keep their sovereignty, but small countries in particular will soon find themselves photocopying the decisions made by the avant-garde countries. This is the experience with the so-called Danish Derogations, whereby Denmark copies most European legislation in its opt-out areas.

This is also the experience of Norway, Iceland and Lichtenstein where the EEA-agreement allows a certain freedom, but that freedom is never used by their parliaments or governments. By 2002, Norway had photocopied 3.988 EU laws from the so-called internal Market.

3. Strong weapon for integration

Enhanced co-operation is a powerful weapon for speeding up the European integration process,

isolating countries where the national parliament or a referendum blocks a new EU step.

But the new majority vote for enhanced co-operation also contains a risk of a major split among the EU members if a few countries around a bigger country like the United Kingdom are all outvoted by the more federalist-minded countries.

Formally, enhanced co-operation cannot alter the Treaty but reality can change and the power of the national blocking veto will disappear once the Nice Treaty is ratified or included in a completely new Treaty – or Constitution.

The principle of enhanced co-operation has been chosen.

4. New Treaty for the majority

The Prime Ministers will not re-open the important point of enhanced co-operation in the Laeken Declaration. Nevertheless, the Belgian Prime Minister and other leading Federalists have suggested that the principle that lies behind strengthened co-operation could also be used in Treaty amendments.

When the Belgian Prime Minister met with a delegation from the Euro-sceptic European Parliament Intergroup *SOS-Democracy*, he proposed a European-wide referendum on the next Treaty.

Countries voting "No" should then accept that the other countries could move ahead without acceptance from all.

The question of national veto rights on Treaty amendments will certainly be raised in the Convention, as it has been raised in the European Parliament's Constitution draft.

However, in the short run it is difficult to imagine a European Constitution without national veto rights in constitutional matters.

They might decide on a different compromise along the lines of enhanced co-operation, where no one is allowed to block and no one can be excluded from existing co-operation.

5. The right to withdraw

The French Commissioner *Michel Barnier* has proposed that the next Treaty or Constitution includes the possibility of nation states seceding from the European Union.

This possibility does not exist today unless all Member States allow secession by a unanimous decision. That is what happened when Greenland – formally a part of Denmark - left the EU in 1985.

When *Altiero Spinelli* drew up his first Draft European Constitution for the European Parliament in 1984, he accepted that Member States should have the right to withdraw.

- *The European union should not be a prison,* he said.

The eventual approval of the proposal from the Commissioner responsible for constitutional affairs will show that the new EU is a *federation of Nation States.*

In federations like the US or Germany the participating states have no right to secede and become independent Nation States. In theory, this right was included in Stalin's Soviet Constitution from 1936.

6. A last resort

Perhaps it is not realistic to imagine that any country will ever use such a right to secede, but it can also be seen as a confidence-building measure, assuring people that the EU is not the prison Altiero Spinelli wished to avoid.

It can be seen as the ultimate guarantee that nothing can develop so badly that you cannot find an alternative.

The conditions could be negotiated and settled in an agreement between the seceding country and a qualified majority in the Council.

If they cannot agree on the conditions, it could be decided at the International Court in The Hague.

It could be argued that this possibility already exists today. According to the Vienna Convention on International law of the Treaties, a country can always state valid arguments for wishing to leave an international organisation.

The EU is established under international law and therefore sovereignty lies with the participating states.

However, many EU lawyers do not accept this argument. The Court in Luxembourg has not accepted the possibility. The Treaty itself states that it is concluded for an infinite time. Therefore, the best solution would be to have a clear rule in the next Treaty or Constitution.

Another option could be to demand a referendum in the country in question and settle a possible conflict with the European Court in Luxembourg.

That model would prove that the EU has developed into a federation where sovereignty lies with the Union and not with the participating states.

H. The distribution of competences

When the EU was established as a *Common Market* in 1958, the common institutions had no real law-making power besides trade, agriculture and the customs union.

If laws were *harmonised* it could only be decided by unanimity. If there was a conflict between a decision in the institutions and a national parliament, it was clear that the law of the national parliament would prevail.

The European Court in Luxembourg changed that balance and invented a federal legal system through a sequence of revolutionary verdicts.

The most important verdict was its judgement, that stated that EU law should always prevail over national law. Later it added that EU law should also prevail over national constitutions.

With creative use of the old Article 235, now re-numbered Article 308, the Council of Ministers developed the areas of common law-making in the Common Market and introduced common environmental policy, regional policy etc.

1. From unanimity to majority vote

With the Single European Act in 1987, the EU countries introduced qualified majority in general law-making and forgot the so-called Luxembourg compromise that had given every Member State a possibility of vetoing common legislation.

The Treaties of Maastricht in 1991, Amsterdam in 1997 and Nice in 2000 added more policy areas to qualified majority voting, making it easier to take decisions in the Council. However, there were not many new areas of law making to add.

According to Professor J.H.H Weiler, the principle of legality disappeared in the 1970s and 1980s. He agreed with the Dutch Judge Koen Lenaerts when he wrote in 1990 that there is no longer any core of national sovereignty that cannot be reached by EU decisions:

"*There simply is no nucleus of sovereignty that the Member States can invoke, as such, against the Community*" ("Constitutionalism and the Many Faces of Federalism", 38 A.J.Com.L. 205, 220 (1990)).

2. Common fundamental rights

The European Court in Luxembourg has also developed common human and fundamental rights and even used self-developed principles in the few areas where the Member States explicitly have no competence.

A German woman soldier asked the European Court to give her the same right as men to take part in different military activities. She won her case and was given rights equivalent to men in a policy area area that, at the time (1999), was completely beyond the competence of the EU.

It illustrates the truth of the quotation from the Dutch Judge. There are no areas where the common EU institutions cannot interfere if they wish to.

3. A constitutional legal system

The EU Judges have developed a legal system of their own. In their judgement on an EEA-agreement draft, they even overruled a unanimous Council of Ministers and characterised the EU legal system as a *constitutional legal system.*

A law made by a judge is called *legal activism.* The most important developments in the EU have happened through the decisions made by appointed judges and not by the elected representatives of the people.

4. Legal guarantees for regions

In legal terms, the EU has developed into what one could call a *Super-state*, which also interferes in the competence of the regions in Federal States like Germany and Belgium.

In Bavaria in particular, ordinary people and mainstream CSU politicians have reacted and called for a clearer distribution of powers between the EU and the Member States and their regions.

The Prime Ministers and Presidents have now heard this call. In the Laeken Declaration, the EU's top politicians even offered legal guarantees for regional competence:

"How can we intensify co-operation in the field of social inclusion, the environment, health and food safety? But then, should not the day-to-day administration and implementation of the Union's policy be left more emphatically to the Member States and, where their constitutions so provide, to the regions? Should they not be provided with guarantees that their spheres of competence will not be affected?"

The most time-consuming discussion in the Convention will be the question of the distribution of powers. This is the core of any Constitution. It is also the core of Euro-sceptic criticism of the EU.

Both Federalists and Euro-sceptics criticise centralised law-making. That is why Verhofstadt surprisingly declared that he was at one with that analysis of the Euro-sceptics but in

disagreement with their solutions.

The Laeken Declaration suggests that the EU should gain more competences in Common Foreign and Security Policy, Defence, Asylum and Immigration Policy, and Crime. This is where most Euro-sceptics will disagree.

Nevertheless, common ground can be detected where the Laeken Declaration asks "*what tasks could better be left to the Member States?"*

The Prime Ministers foresee both more tasks for the Union and the return of competences to the Member States. They have warned against over-centralisation:

"*-citizens also feel that the Union is behaving too bureaucratically in numerous other areas*

- What they expect are more results, better responses to practical issues and not a European super state or European institutions inveigling their way into every nook and cranny of life.

- they sometimes have the impression that the Union takes on too much in areas where its involvement is not always essential."

The Prime Ministers will also re-invent the legacy principle and state that all competencies not mentioned in the Treaty belong to the Member States:

"*- And should we not make it clear that any powers not assigned by the Treaties to the Union fall within the exclusive sphere of competence of the Member States?"*

5. Change without changing

The Declaration foresees that competences can be given back to the Member States. This has never happened before.

Notwithstanding that, those opposed to de-centralisation also score an instant victory. The next sentence in the Declaration states that the existing *acquis communautaire* will not be touched.

"Respecting the acquis communautaire," are the words used.

The sentences are contradictory. You must keep the legislation as it is and you must change it at the same time.

This is the usual way ministers make compromises, leaving it to those below them to sort things out.

6. National MPs dominate

Now there is a new level for deliberating on the existing distribution of competences.

The great majority of members of the Convention will certainly propose new tasks for the Union. But the Convention is dominated by elected national parliamentarians. Therefore, there is a chance that the Convention could also produce a list of legislative items or areas that could be returned to Member States and their regions.

The condition for this to happen is that those gaining from the common policies to be returned are prepared to lose economically or have different amounts of compensation offered to them. Otherwise, there will be no return of powers but only more centralisation.

No one is prepared to give up a policy that has a special advantage for his or her own country, except as part of a bigger deal benefiting all and harming no one.

This can be presented as a good argument for the Federal approach where the common interest can prevail over narrow national interests.

Furthermore, it is a good argument for the radical decentralisation proposals put forward by the Euro-realists and Euro-sceptics in SOS Democracy. They propose that the EU should only be able to legislate in cross-border issues where it can be proved that the Member States are not able to deal with matters adequately.

7. Package deals and horse-trading

The Intergovernmental method of horse-trading and "package solutions" in the Council of Ministers has often produced results that no national parliament would have chosen if it had to pay the bill itself.

The Common Agricultural Policy (CAP) is an excellent example. It eats up 40% of the total EU budget. In one year, for example, Greece received Community support to buy 65 % of its production of peaches.

Would the Greek parliament really pay this much to destroy its own country's peaches if Greek taxpayers had had to pay the bill themselves?

I. The skimmed milk circus

For many years one of the richest EU countries, Denmark, received more than €125 million for the production and storage of skimmed milk powder.

The EC budget paid a premium for breeding the calves, paid for their milk, paid for turning the milk into powder, paid to add a copper additive making the powder undrinkable for

human beings, paid for bringing the powder back to the farms to be mingled with water, and for feeding new calves to produce new mountains of skimmed milk powder.

In the 1980s, this was the biggest single subsidy from the EU to Denmark. Most politicians praised such subsidies as the real benefit of EU membership.

Now the subsidy has almost disappeared and price supports have been halved through agricultural reforms. Following the reform, farmers' incomes have grown.

Still the net income for Danish farmers from farming is less than half of the subsidy paid by the EU budget to Danish farming.

The Danish Parliament would never have paid such a large subsidy for the 30,000 full-time farmers now left in agriculture.

Denmark's politicians accept the different schemes of support because Danish tax-payers only pay 2% of the bill, leaving 98% of the subsidy to be paid by tax-payers from the other countries.

The system made even the skimmed milk powder carousel a good business for Denmark.

In Italy it is a similarly good business to receive subsidies to sort and destroy tomatoes or to harvest olive oil from non-existent olive oil trees.

1. The CAP against EU enlargement

The Common Agricultural Policy (CAP) is bad for the environment, a catastrophe for agricultural production in Third World countries, and very expensive for both consumers and taxpayers in Europe – without even producing a good income for farmers. The CAP will also hinder Polish membership if it is not reformed.

No one in the EU is prepared to pay for millions of Polish farmers, intensifying agricultural production for even more storage to be financed by European taxpayers.

It is not unlikely that the Polish people will vote "No" to a membership of an institution in which they will become second class members and not have the same rights as the rest of the other farmers in the EU.

Therefore, both Federalists and Euro-sceptics should now unite to demand the elimination of every subsidy for agricultural *prices*.

They could for example be reduced by 20 % every year and terminated after 5 years.

2. Compensation for those who lose

If farmers lose income by a radical reform of the CAP, they could be compensated from the Community budget for a certain period.

However, this should not be done in a way in which subsidies are capitalised in higher prices for the farms, as this would leave a bigger burden for the next generation of farmers.

What should be left ought only to be the organisation of the Common Market for the sale of safer and more environmentally responsibly produced agricultural products.

Common rules for national subsidies should be allowed so the market will not encourage competition between different levels of national support.

Clearly some Member States would benefit more than others. If necessary, the net losers could be compensated with a special discount for on their contribution.

With EU enlargement, we need to reform the CAP radically. This would greatly benefit everyone by making EU membership cheaper or by reserving the sum saved for alternative purposes.

3. The Structural Funds

Most EU structural funds were devised, in theory, to redistribute money from the richer to the poorer nations. What happens in reality is different.

Most EU funds re-distribute from the poorer people in all countries to some rich people - or investors - in the poorer countries.

If the purpose is to support the poor it would be much more efficient to give all the applicant countries and the 3 poorest current Member States free membership of the EU.

In the budget for 2001, 33 billion euros were put aside for Structural measures.

A free membership for the 10 countries and the 3 poorest current EU countries would only cost 14 billion euros, leaving 19 billion euros to be used for better purposes, including assisting Bulgaria, Romania and other poor countries.

J. <u>Difficult to decide in Brussels</u>

Brussels is the wrong place and level for determining Structural support. Brussels could determine the frameworks for possible levels and criteria for national support.

National parliaments are more qualified to decide what is really needed nationally, since they also represent the interests of the taxpayers.

What gives the civil servants in Brussels a comparative advantage in deciding whether a certain amount of public money should be spent on a golf course in the North of Jutland or a church restoration in Christiansfeld in the South of Denmark?

Why not leave it to the national parliaments and authorities to control internal distribution of money for different purposes?

Why is Brussels better at deciding whether Portugal should have a new airport, motorway or education centre?

1. Focus on cross-border projects

Structural spending in Brussels should focus on cross-border issues where national authorities are in a bad position to judge on their own.

Common projects should be easy to administer and there should be an obvious and significant European extra value added in making the decisions in Brussels.

Research on rare diseases, cleaning the Mediterranean Basin or development of innovations for sustainable energy could be Brussels-level issues.

There needs to be a limited number of projects to safeguard quality management and administration without too much waste and fraud.

The majority of the common projects ought to be especially advantageous for the poorer countries. Through this we would be expressing true Community solidarity.

In the Laeken Declaration, the Prime Ministers from the poorer countries won a battle on economic solidarity because they fear that re-nationalisation of some policies and projects will only be beneficial to the richest countries.

"constantly bearing in mind the equality of the Member States and their mutual solidarity", the Declaration went.

2. Representative offices to have money back

This concern for the poorer countries is real but the solution will never be more spending at European level.

Decisions made in Brussels do not replace those made by the national authorities. The EU level is an additional and very costly decision-making process where national civil servants and lobbyists travel to Brussels to influence the final level of decision-making after having tried to exercise as much influence as possible at the national and/or regional level.

Most Social Fund projects are national social projects seeking Community support.

Local governments open representative offices in Brussels to ensure that money will be spent in *their* particular regions or towns.

It may be rational for a single town or local council to pay 500,000 euro a year to maintain a representative in Brussels, but seen from the level of the Nation State financing the projects through contributions to the Community budget, it is an absurd way of using taxpayers' money.

The salary of a civil servant in Brussels is about three times the salary of national civil servants in the major capitals of the richer European countries and perhaps 10 times the salaries of those in many applicant countries. Are civil servants in Brussels so much more efficient in managing public spending? Certainly not, but it is necessary to have international governance including a common civil service for functions or issues that cannot properly be dealt with at national level.

K. Less and better

The appreciation that the EU is involved in too many activities is not new. When *Jacques Santer* took office as President of the European Commission he said he wanted the EU to be reoriented in terms of "*less and better*".

When he was forced to resign on 15 March 1999 his Commission had delivered *much more and much worse*.

The new President, *Romano Prodi* , has expressed similar views, and even the person most in favour of centralising among former Commission Presidents, *Jacques Delors*, has argued against the Commission being involved in too many areas.

With the Laeken Declaration the Prime Ministers attack the past in strong words.

But...

There is also a call for *more resources* to be spent in Brussels. This will encourage more projects, more fraud and more waste, even if every single project can be argued for positively.

The final outcome will inevitably be one which no national parliament would have chosen on its own.

1. Taxing and spending

It is dangerous to divide into two the responsibility for collecting taxes and the responsibility for

spending public money. Everyone likes to spend money they can easily obtain from others.

Everybody has different needs they want satisfied immediately. The only way to make people prioritise is to let them finance their own needs. Priorities, choices. This is also what democracy is about.

We vote in elections and elect politicians to spend public money the right way. If they fail, next time we elect others.

In relation to Community spending we can elect new politicians but never change the way money is spent. We can elect politicians to fight for more money being spent in our region or to our benefit, but we cannot elect the body responsible for *both* taxation and financing.

This is a good argument for the federal approach: to make the European Parliament the governing body of *both* community taxation and spending.

Similarly it is a good argument for the Euro-realist approach, to slimming the EU to a few cross-border issues that we cannot solve on our own.

2. Forces behind centralisation

We must analyse the forces behind the process of centralisation from which the EU secures its policy competences and responsibilities.

There is a good deal of hypocrisy when Commissioners criticise centralisation, because not one single EU project or one single EU law could have been passed without the support of a majority in the European Commission.

The ongoing, unwanted, centralisation is primarily the responsibility of the Commission, which has the monopoly in initiate regulations and directives. No other body has this right. The Commissioners propose the laws. They propose the projects. They propose the annual budget.

Living in Brussels as they do, they are not the natural watchdog for subsidiarity and decentralisation.

3. Legislation through the Budget

The European Parliamentarians are jointly responsible because they use their limited control over the EU budget to insist on new projects being run from Brussels.

The European Parliament has the final say over just 4-5 % of the budget each year, but it can use its margin of spending to call for pilot projects in new areas.

Through the *discharge* procedure, it forces the Commission to spend money

designated for new purposes even if the Council of Ministers has rejected the cost or refuses to give the proposed spending a proper legal base.

The European Parliament effectively legislates via the budget. This method is contrary to budget rules in all national parliaments.

It is a very bad way of spending public money, but since it is the only way the European Parliament can operate, it exploits its limited powers to the maximum.

A substantial proportion of the projects that are criticised by the European Parliament's own Budgetary Control Committee on grounds of mismanagement, are originally the responsibility of the Parliament itself.

The European Parliament and the Commission are lobbied daily by people with specific interests, asking them to support every possible good cause on earth.

No one can resist demands to spend money on a Centre against Torture in Copenhagen or on the restoration of the Parthenon Temple in Greece, or money for women's, immigrants' or children's rights.

The MEP has only one natural way of reacting: propose a budget line and be popular with parts of the electorate.

In seeking such financing of good causes, the MEP has no responsibility for the taxation of the electorates. This way it is both easy and cheap to propose continual Community spending.

4. The Nation State as competitor

The Commission has seldom admitted to the European Parliament that it has been incompetent to spend money in a proper way. Neither has it ever argued that the proposed purpose would be better served by using national money controlled by the national governments and parliaments.

Both the European Parliament and the Commission see the Nation States, and particularly the national parliaments, as competitors or even direct enemies.

Quite often Commission Departments work together with the relevant committees in the European Parliament to prepare more spending for *their* common interests.

The Commission Department can gain more staff, offices and money, more power internally and externally. Who can resist money and power?

It is useless to criticise a lion for eating meat and it is useless to criticise the Brussels-based European Parliament and Commission for their wish to centralise.

What else could you expect?

If you really want to decentralise, you need to change the way these bodies are elected or change the balance between national authorities and the European institutions.

5. A Catalogue of Competences

The proposed Catalogue of Competences is one way to limit the powers of Brussels, but it will be very difficult to agree on a catalogue.

Most probably, the eventual Intergovernmental Conference will only produce a political document full of good intentions about decentralisation.

The only chance of being positively surprised is that the Convention with its majority of national MPs will produce a draft returning some powers to the national parliaments and proposing procedures to avoid further centralisation in the future.

If decentralisation is not taken on board as the primary task of the Convention, the next Treaty will never succeed with the electorate.

According to Eurobarometer 62 % of all Europeans prefer decisions to be taken at local, regional or national level. Only 18 % prefer the Brussels level.

There is a general feeling among all Europeans that Brussels decides too much.

At the same time, there are also majorities in the polls calling for action against pollution, international crime and other specific cross-national problems.

6. Compromise always means more

Every concrete proposal for returning a policy competence or giving up a project in Brussels will mobilise people and organisations, which profit from the project or legislation in question.

It will not be easy for a decentralisation to succeed.

When the European Parliament's Constititutional Affairs Committee discussed *subsidiarity*, every member who spoke was in favour of a strong application of the principle and of limiting the centralisation resulting from overly detailed regulations.

After several weeks of discussion the various vested interests had ensured that no decisions would be moved from Brussels. Members from strongly tourist-dependent nations were certainly in favour of adding tourism to the existing EU Catalogue of Competences.

By the end a compromise on the Committee was granted the minority their wish and the energy-conserving minority their wish. Exactly the same method is applied in the Council

when they make so-called "package deals".

One country gets this EU agency and another gets that, and we shall create quite new agencies for those countries that have not yet got their fair share of agencies!

7. A Regional Committee for EU school-books

You could at least expect the advisory Committee of the Regions to be sensitive about subsidiarity. Yet, in its last report on subsidiarity the Committee even included a wish for Community interest in the content of school-books – an area in which the Community explicitly has no competence.

If you bring people together in Brussels they will soon start producing solutions from the level of Brussels. We need a radical change.

In the German Federation, Education and Policing are matters for the 16 Constituent States. There is a basket of regional competences and a basket of national competences. In between there is a basket of competences that can be designated for either level on the basis of common accord or certain constitutional procedures.

In the American Constitution there is the famous 10th Amendment designating all competences to be at the level of the Member States unless the competence is explicitly stated to be at the federal level in the Constitution.

In the Swiss Constitution, the same principle applies. Any competence not placed by the Constitution at federal level, belongs by right to the 26 cantons.

In the existing EU Treaties we already apply the same principle. The so-called *legacy principle* demands a special legal base in the Treaty for a Community initiative. However, the quotations from Professor *Weiler* and Judge *Lenaerts* taught us that such words do not guarantee much in practice.

L. <u>Who should control subsidiarity?</u>

If you want to stop centralisation, you need to limit the powers of the Brussels-based institutions.

One could limit the initiative monopoly that currently lies with the Commission. One could make the Commission become the Secretariat of the Council or the Secretariat of the national parliaments. One could change the composition of the European Parliament and go back to indirect representation via the national parliaments. One could give the national parliaments control over subsidiarity.

Without radical institutional change there will not be less centralism - but possibly

much more.

1. The principle of subsidiarity

Subsidiarity is a Catholic social principle which originally referred to the distribution of powers between the state and the family. The State should not decide issues that could be dealt with at a lower level, e.g. in the family.

The principle of subsidiarity is now a part of the existing EU Treaties. A specific Protocol on Subsidiarity defines it as the obligation to find the lowest possible level for a decision to be made.

The principle does not apply to areas where the Communities alone have competence, but even here the Communities are bound by a similar principle of *proportionality*, obliging EU institutions to choose to make decisions in a manner that leaves the greatest possible freedom to the Member States.

The existing principles of legacy, subsidiarity and proportionality should guarantee decentralised decision-making in theory. In practice they do not.

How then would it help just to repeat beautiful words about the right principles in a Constitution?

We need much more radical action.

2. A Sunset Clause

We could introduce a *Sunset Clause* in every piece of EU legislation making decisions disappear after a certain period unless they are confirmed by a new decision.

This would oblige the Commission to put forward a proposal, which would then require a qualified majority in the Council and not to be vetoed in the European Parliament.

A new obligatory reading for legislation after 5 years would ensure that outdated and no longer necessary EU legislation could be repealed.

Without a Sunset Clause, repeal could only occur if the Commission puts forward a proposal to limit its own powers.

The Commission has no incentive to do that. If it were bound to argue repetitively for EU laws in this fashion, a lot of intermediate policy initiatives would never have become permanent regulations.

3. Controlling subsidiarity

The SOS Democracy Intergroup in the European Parliament has produced a radical proposal for controlling the principles of legacy, subsidiarity and proportionality in relation to new EU legislation.

The Group simply proposes to modify the Commission's monopoly of initiative by moving it to the national parliaments.

Every national parliament could appoint for example 20 members to meet twice a year to adopt the current EU legislative programme.

The adoption should include the legal base for proposals and thereby define the scope of the Community competence:

- Should the EU be able to decide on a supra-national regulation, which can never be amended by the individual national parliaments?

- Should the EU only be able to decide a broad framework, leaving the definite decision to the national parliament?

- Could the need for common action not be met with looser forms of co-operation involving mutual recognition of laws, non-binding recommendations, bench-marking etc?

4. The Legislative Programme

The European Commission has now formally required itself to propose the annual EU Legislative programme including the legal basis of the various directives and regulations by October each year, so that the European Parliament can express its view before the New Year.

But the Commission has never done as it promised.

It was only in December 2001 that the Commission published the Work Programme for 2002, and it did not include the proposed legal bases of its proposals.

The programme was impossible to work from and it was impossible to consider whether it applied of the principle of subsidiarity.

If the monopoly of initiative is taken away from the Commission it will be forced to defend its proposals in quite a new way.

If the Commission cannot convince the representatives of the national parliaments, it will simply not be allowed to put forward a proposal.

5. Unanimity to overrule the Commission

Today the Commission decides the legal base of its own proposals and it is only possible to change

its proposed base if *all* 15 Member States agree.

The European Parliament and the national parliaments have no say whatsoever. If the Commission agrees with one single Member State it can insist on keeping a regulation where the majority of Member States might prefer a softer kind of legislation.

The power of the Commission is limited by the fact that it requires a qualified majority in the Council to adopt its proposals. Yet the Commission's monopoly still gives the non-elected Commissioners a major say.

If the right of legislative initiative is moved to the national parliaments we will have a better guarantee of subsidiarity. Why should national parliaments decide to reduce their own legislative powers?

National parliaments can only be expected to move decisions to Brussels in areas where they cannot legislate with efficiency on their own or where they are convinced that they will gain by legislating in common.

In deciding the legal basis of policy proposals the national parliaments can also be expected to choose the legal base which gives themselves the most influence. Why should they propose a binding regulation if it is not necessary for a particular purpose?

6. Increase democracy

On the other hand, when the national parliaments agree there is a need for common legislation because they are powerless or too weak to deal with a problem on their own, there is nothing to lose but everything to win by agreeing on a common method for adopting common cross-national rules.

The national parliaments can then profit from having co-influence in areas where they would have no influence otherwise.

By applying subsidiarity in a meaningful way the national parliaments can *increase democracy* instead of losing influence in areas they can deal with on their own.

III.

A. Types of decisions

Today the EU has more than 30 different ways of taking decisions. It is impossible to explain them in a school book. No ministers or experts are able to name all of them.

Even the experts find it hard to explain the differences and scope of the different legislative and decision-taking models and besides, the scope changes over time.

When the EC was born there were three main types of decisions:

- The *regulation,* to be applied directly in all Member States without national transformation;
- The *directive,* which established a common frameworkfor national legislation, but with no legal effect of its own;
- The *recommendation*, which had no legal effect.

Why not bring back this simple and understandable scheme and give the three types of decisions easier names?

A *regulation* could be named an *EU-law.*

A *directive* could be named a *frame*

A *recommendation* could keep its self-explanatory name.

1. The Court made Directives binding

The European Court confused the original scheme by making *directives* directly applicable if they were precise enough.

The consequence is that no one knows what the Council of Ministers really decides when they issue a directive because it is up to the Court to decide whether it is directly applicable or not.

But it is not the task for a Court to decide whether a document should be binding or not. This is the central function of legislators in all democracies throughout the world.

If the legislators want to adopt a binding obligation which allows no freedom for the Member States, then they should simply have to choose the form of a regulation/EU law.

If the legislators only want to give a policy framework and wish to leave it to national parliaments to decide on the binding law, then they should choose a directive - or frame, as I prefer to call it.

If they want to give the Member States a certain time to implement a law, they could simply state that this regulation enters into force, for example, two years after its publication in the Official Journal of the European Union.

Today the major difference between a directive and a regulation is the time it takes for implementation.

We do not need a special type of legal instrument for such a small difference.

If the legislators prefer soft legislation through recommendations they should simply use the word recommendation to state that it is not legally binding.

To the three types of EU measures could be added administrative acts such as the legally binding *decision* which, in legal terms, is a regulation whose key feature is that it only binds the person or company it is directed to.

But to become a legal decision it needs to have a legal base in the Treaty itself or a regulation.

Directives and recommendations should not give the Commission the possibility to make a legally binding *decision*.

2. Decide the type of Act

Every time the Treaty mentions another type of decision we will then have to decide whether it should be changed to a regulation, directive or recommendation.

It is here that one decides the boundary between supra-national and international co-operation.

It is here that one decides if the supra-national Court in Luxembourg can overrule a national Parliament and a national Constitution, or not.

It is here that one decides whether one wishes to give the supra-national Commission the possibility to overrule national authorities and to administer interfering directly in the member nation states' policies without obtaining national permission to do so.

3. Framework policies and recommendations

Frames and recommendations can be just as important in content and scope as a regulation, sometimes even more, but from a national democracy's perspective they have a completely different status.

Here it should be the national parliaments alone that decide the legal obligations of citizens and companies.

Here it should be the national Courts alone that can overrule a government decision. Here the Commission should have no legal right to overrule national legislation or administration.

For the directly applicable principles in the Treaties one would need to decide which parts should continue to be directly applicable and under the surveillance of the EU Court and which parts should not.

4. Human and fundamental rights

One would also need to decide which parts of the Human and Fundamental Rights developed by the EU Court and then clarified and further developed and extended by the EU Charter of Fundamental Rights should be legally binding.

And one would need to decide if they should be binding outside areas regulated by supra-national legislation.

For a detailed analysis of this matter, the Convention will need to go through all important Court of Justice verdicts imposing legal obligations and then decide concretely which part or parts should be binding and which should no longer be binding on nations, companies and citizens.

It is not an easy exercise, but it is what a basic Treaty or Constitution is about. It must inform citizens of their rights, duties and responsibilities. People should know who decides what and how and when laws can be amended.

5. Simple and qualified majorities

Today most laws are passed in the Council of Ministers by qualified majority vote. The original rule in the Treaties is simple majority, when no other rule is stated. However, other rules are normally stated, so that the main rule becomes the derogation.

It surely makes sense that the main rule should actually be the main rule.

If decisions on a qualified majority voting basis continue to be the main rule, then that should be stated to be the main rule, and the requirement of unanimity or simple majority should explicitly be stated in all Treaty Articles where these modes of decision-taking and law-making are used.

And why not get rid of all special rules referring to an 80% majority, a two-thirds majority etc., and why not also simplify the method of counting votes in the Council?

B. A Federation of Nation States

To prove the Union is truly a Federation of nation states as proposed by Chirac, Jospin, Schröder, Fischer and others, they should get rid of the different voting weights for the different Member States in the Council of Ministers and simply give every nation one vote.

In the American Senate all states, regardless of their size, have two Senators.

A qualified majority could then be fixed as, for example, 75 % of the votes.

1. A special veto for the large countries

To satisfy the bigger countries we could possibly keep the special right of veto from the negotiations on the Nice Treaty, and allow a Member State to question a decision by qualified majority vote if the countries making the qualified majority represent less than 50, 60 or 62 % of the EU's citizens.

50% is necessary to avoid the argument that a European law is made against the wishes of a majority of European citizens.

62 % is the figure from the Nice Treaty which allows Germany to block a decision with one other large country and one country with half the vote of a large country.

2. Hard to remember

The voting system described in the Nice Treaty demands a 71.3 % majority before the enlargement of the EU, but the margin will then gradually be raised to 73.4 % of the total votes.

No one can justify this system, and no one can remember the figures. In practice, most decisions in the Council are taken by consensus anyway.

The drive for consensus reflects the rules of the game and urges countries in a minority to give in and accept a compromise rather than insist on putting something to a formal vote.

The distribution of votes certainly counts. But the different sizes of the Member States is also taken into consideration in their representation in the European Parliament.

Here Germany has 99 seats with 82 million citizens and will continue with this representation after enlargement of the EU even though France, the UK and Italy will have to reduce their seats from 87 to 72 each.

3. Delicate balance between small and large

The balance between the smaller and larger nations is a sensitive question. We need to simplify the differences.

It makes no sense to have a very sophisticated weighting of votes when they are seldom used and impossible to explain to the citizens.

In normal democracies it is very simple to explain how a law is made. A change of

the majority in parliament and a new law comes into being. In most national parliaments it is this simple.

It cannot be just as simple in the EU Council, but why not give simplicity a chance? The advantage of being able to explain a system to citizens cannot be valued highly enough.

If we want to give the larger nations a bigger say in the Council of Ministers it could be done by using easier figures, for example by giving three votes to the countries with more than 40 million citizens, two votes to the countries with more than 20 million and one vote to all other nations.

This is more complicated than the simple solution of one vote for each country, but it is much less complicated that the nightmarish figures from Nice.

4. Vote with simple majority

Today, even the ministers do not know easily the actual distribution of votes.

Only skilled civil servants with the Treaties in their laps are able to say when a decision is properly carried out, and when it is not carried out. Under the rules adopted at Nice only a few civil servants will be able to keep the proper figures in their heads.

In the Council of Ministers, a simple majority is so rarely used that one could gain simplicity by getting rid of it. This way we would only have qualified majority voting and unanimity. Multiplied by three modes of decision-making, we would already then have six forms of decision-making in the Council, which would be multiplied still further by the number of decision-making methods in the European Parliament.

5. Decisions in the European Parliament

Today most decisions in the European Parliament are decided by an absolute majority of the members.

With 626 members it means that 314 members have to vote "Yes" for something to be decided. If an amendment is voted for by 313 votes to nil, when an absolute majority is required, it is rejected!

It is very difficult to explain even to members when and when not they need to be in the Chamber to take part in the votes.

At First Reading under *Common Decision-making* or the *Conciliation Procedure*, as it is often nick-named, the European Parliament only needs a simple majority of the votes cast to adopt

an amendment.

The amendments only have real influence if they can be repeated in the Second Reading with the 314 vote threshold.

6. Get rid of the absolute majority rule

Why not get rid of the absolute majority rule and let the European Parliament express its wishes by simple majority in all questions?

The European Parliament has no final say on EU laws anyway. It is the Commission which has the monopoly of making proposals and the Council which has the monopoly of deciding.

The European Parliament can only propose legislative amendments to the Commission and the Council. It is always up to the simple majority in the Commission or the qualified majority vote in the Council to adopt the amendments from the European Parliament – and to decide whether these should have any effect.

Finally, the European Parliament has the competence to block a decision with an absolute majority. Here I would propose to adopt a simple majority rule as well but to add the possibility of national parliaments overruling a veto from the European Parliament.

The European Parliament could then have its rightful warning function but it would not have the same legislative importance as the Council, representing the Member States, or the national parliaments that represent the electorates much better than the European Parliament.

The veto from the European Parliament against laws under Common Decision-making could then be extended to Treaties of Enlargement, important international Treaties where the European Parliament today exercises the so-called assent procedure - *avis conforme* -in French.

If a European Parliament veto can be overruled by the national parliaments there is no need to require this complicated absolute majority rule.

If Federalists oppose the introduction of national vetoes they could instead propose a 75 % majority in the European Parliament instead of an absolute majority, so that a qualified majority vote would always mean 75 % or some other agreed figure like that.

C. <u>No pairing arrangement in the European Parliament</u>

The absolute majority in the European Parliament is an absurd figure dependent on factors such as when there are national elections that require members to abstain on issues, or on how many

members are on maternity leave without having substitutes to call upon.

The European Parliament has no system of pairing arrangement, as many parliaments have. It would also be very difficult to construct one, since political groups are not homogenous**.** For example in an important vote about competition rules most German MEPs voted more in favour of Volkswagen than in accordance with their political groups. That is not the only case of non-partisan but nationally based voting.

The European Parliament also has a special co-operation procedure, which is now only used for matters relating to the Economic and Monetary Union. Drop it and change it to Common Decision-making procedure where it is appropriate and to the less important *hearing procedure* when it is more logical or desirable.

1. Role of the national parliaments

Federalists and Euro-sceptics will disagree on the roles of the national parliaments and the European Parliament. They should at least agree on the basic democratic principle that either the European Parliament or the national parliaments should approve a law.

We cannot let civil servants, behind closed doors, make laws in democratic nations.

All laws will need to be passed in public deliberations in open parliaments, if they are to have any legitimacy and authority.

Federalists could demand that the existing so-called Common Decision-making procedure be changed to real Common decision-making. Today there is not much "common" about it.

2. Legislation by junior civil servants

70 % of all EU legislation is carried out by junior civil servants in working groups of the Council of Ministers. 15 % is carried out by the ambassadors of the Member States. Only 15% is left to the ministers themselves.

Council meetings seldom amount to real debates. Ministers have speaking notes that are prepared by civil servants. Often ministers are not even part of the meetings but are represented by their civil servants.

Many decisions would be illegal if people insisted on the original Treaty requirement that a majority of members in the Council should be ministers.

Often the participants are only junior ministers or civil servants from the relevant ministries at home or from a country's permanent Representation in Brussels.

D. Public deliberation on laws

The Laeken Declaration puts the question of whether the legislating meetings of the Council of Ministers should be public. The easy and only possible democratic answer is: *Yes.*

All laws should be passed in public meetings, leaving nothing to be decided by working groups.

All laws should also pass the European Parliament and the national parliaments so that we can see who has responsibility for the finally adopted texts.

For the Euro-realists in SOS Democracy the major point of reform is making the national parliaments responsible for all EU legislation without exception.

The Euro-sceptics do not see the European Parliament as a representative or legitimate body. In practice, they are also very critical of many decisions from the national parliaments, but they all accept that there is no alternative to decisions by national parliaments if real democracy is to work.

Whether national parliaments are good or bad, this is where the will of the citizens is represented. Difficult or not, this is where national oppositions should try to achieve a majority. Whether it is fair or efficient or not, it is as Winston Churchill put it: *The least bad way of decision-making.* It is called democracy.

1. Democracy at European level

Federalists would argue that it is possible to establish a genuine European Democracy instead of national democracy in the areas moved to the higher level by means of a Catalogue of Competences.

Their argument runs as follows:

We could have just as vivid and representative elections for the European Parliament as we have for national parliaments.

When most national parliaments were established the turnout was as low as it is for the European Parliament elections. It is only a matter of time before the turnout for the European Parliament could become the same as for national elections.

If we only gave the European Parliament the power to appoint the Government in the same way as the national parliaments appoint the national governments, it would immediately raise the turnout since people would see straight away what they got for their vote.

If we establish genuine European political parties putting forward candidates in European constituencies and not bound to the old nation states, we would see a development comparable to that in the the United States, where federal parties compete for federal representation.

Why not have a direct election of a European President, as proposed by the former French President Giscard d`Estaing, now heading the Convention to draft the next Treaty?

E. No European people

Some Euro-sceptics would say this may look like a beautiful dream, but that is not possible as long you have no European People.

They hold that the first condition for having a European Parliament, Government and President, is the existence of a European People who are prepared to share their sovereignty and solidarity.

That is also the crucial point they make in connection with the single European currency.

- Are all Europeans prepared to pay for development in less prosperous regions which have less growth and employment?

If there is a will for solidarity and mutual identification between the Peoples of Europe, then a European People can emerge by the end of day. We are very far from that situation today.

1. Nation States for their own interests

Every Nation State tries to get as big a share of the cake as possible in all deliberations in the Council of Ministers.

The real reason for secrecy in the Council is that decisions cannot be seen by the public when ministers or ambassadors make package deals with all possible items included.

Bargaining: for example, *you* give in on your position on a particular Foreign Policy issue and *we* promise that you will get an agency before your next national elections…

Before enlargement the rich countries like Germany, Austria, Sweden and the UK have demanded that they be compensated for contributing to the financing of EU enlargement.

2. A common European space

There is no common public space. The Laeken Declaration aims to establish that, but how?

Not even 50 Danes would be able to give the name of the Belgian Prime Minister if asked unprepared.

If the Danish Prime Minister went to neighbouring Sweden, hardly any Swedes would recognise him in the street.

If the more well-known Swedish Prime Minister walked through a Danish street, hardly any Danes would know him either.

Even the most well known politicians from neighbouring countries are bound to be known to most people in their own nation but hardly at all even in the closest neighbouring countries.

Maybe someone like Tony Blair would be recognised in many countries from television, but democracy still demands that people are represented by more than *one* person.

There is only one Danish MEP who regularly takes part in television debates on cross-border issues, and he does not know Blair or any other European politician in the way he knows his own countrymen.

3. No European news room

For many years to come a European space for debate will not exist, just as there is no European newsroom.

There is only one common newspaper in the EU, *European Voice*. Two-thirds of its circulation is in Brussels.

It is a very British newspaper run by the famous Economist group, but it will hardly succeed in being read by Germans and French to the same extent as by British.

There are common European electronic news services like *Euractiv.com* and *EUobserver.com,* but none of them could continue to exist if they were dependent on being paid for by their users alone.

European news agencies such as *Agence Europe* or *European Report* are heavily subsidised by Community funds. The only European television channel, *EuroNews*, is wholly EU financed.

F. National Parliaments better off

The European Federalists owe their populations a little more humility as regards their national

parliaments. The national parliament politicians still represent voters in national elections where the turnout, on average, in many countries is twice the turnout for European elections.

Perhaps Euro-sceptics could also be a little kinder towards the democratic aspirations shown by the genuine Euro-federalists when they argue for their European Parliamentary democracy.

They are, despite everything, just as critical of the existing lack of democracy as the Euro-sceptics are.

They also demand public deliberation on all EU laws. They also fight for transparency and citizens' access to EU documents. And they also call for a referendum on the next EU Treaty or Constitution.

1. Common democratic ground

There is much more common ground between European Federalists and Euro-sceptics than many people think.

When leading Euro-federalists saw some working documents from SOS Democracy they supported 85 % of the Euro-sceptical claims.

This is not a cover or excuse for the more important differences between those wanting a European Federal State and the Euro-sceptics who want to avoid that.

Euro-sceptics and Federalists are political enemies, but they also have a strong common enemy in the manifest existing lack of democracy in the EU. Their different aspirations will both be defeated unless they unite their forces in areas in which they might agree.

Perhaps a possible compromise between the two directions could be that the Euro-realists accept a certain role for the European Parliament in cross-border issues and the Federalists accept that European laws need to have at least one reading in all national parliaments?

Such a compromise could last for as long as the voter turnouts for national elections are higher than the turnout for European elections.

2. Which law should prevail, national or EU?

What would happen if a national parliament voted against a European law in an area where EU law can be carried by qualified majority vote?

In the answer to that question we will find out whether EU is truly a Federal State or an international co-operation.

If the EU is a Federation, it is clear that the Federal law will prevail and the national parliament would have to abide by it.

Even then the majority in the national parliament could write in a Declaration of Vote that they accept the law because they feel bound to do so, but that they will still ask their national Minister or government to work for another text.

They could simply state that they accept being voted down in that case because they gain the right to vote down others on other issues.

It would be a type of bargain. They defend the result, and they vote for a long list of laws carried by a qualified majority vote in the Council of Ministers since they are in favour of qualified majority vote and even want that method extended to other areas.

That would seem to be fair enough. It would be transparent. National voters could show what they thought either by voting them out at the next election or by re-electing them.

3. Legislators should be public persons

It is not fair if laws are made behind closed doors and no one takes visible responsibility for the result.

In some situations you could even be brought to believe that an EU law has been rejected, according to the comments in the press room where most ministers attack what they has just passed!

We need to know who produces our laws and how we can change laws indirectly by voting differently at next polling day.

That is the basic demand of democracy. It should unite both Federalists and Euro-sceptics/realists.

This way the Federalists can work for the day when a European People develops over time and can produce a higher turnout for European elections than happens at present national elections.

Federalists can argue that most nation states went through a similar development when small states and local communities united into nation states. When national democracies were born, the turnouts were also very low.

Euro-realists can argue that that day will probably never come since there is no common language like in the US and nothing to develop the necessary "we"-feeling among Europeans.

This disagreement is a fruitful democratic battle, which can go on.

In the Convention, the Federalists and the Euro-sceptics/realists should unite in a common attack on the existing lack of transparency, decentralisation and democracy in the EU.

G. A possibility of vetoes on vital questions

The former close collaborator with Jean Monnet, *Georges Berthoin*, has proposed that Member States get the right to veto on vital questions inscribed in the Treaties.

Mr. Berthoin is not a leading Euro-sceptic. He is a leading European civil servant, having earned his credentials serving the best-known Federalist leaders of the European Communities.

He proposes that if a nation state uses the right to veto it should be prepared to defend its choice in the European Council. This could be a way of burying formally the so-called Luxembourg compromise.

1. The Luxembourg compromise

In 1965 the late French President, Charles de Gaulle let his ministers boycott all meetings in the Council until a compromise was reached - the so-called *Luxembourg Compromise.*

This allows every Member State to block any law for *vital* national reasons. Every nation decides on its own what is a vital question. The Luxembourg compromise paralysed EU decision-making process for 20 years but has not been used since the mid-80s.

It is an open question whether the compromise exists or is dead. Since a lot of decisions still demand unanimity a nation always has the possibility of vetoing a proposal made by other countries in order to exact a special concession from them.

It is better to regulate formally the possibility of national vetoes in areas where the Union has a possibility, under the current Treaties, of taking decisions by qualified majority vote.

Why not take on Berthoin's proposal and demand that Member States using their right to veto also defend their block of decision openly at the next meeting of the Council of Ministers?

And why not add that the use of a national veto has do be defended publicly by the government in question at the next session of its own national parliament?

2. Shifting the veto power

Such a step would shift the threat of vetoes from the minister with responsibility for a certain area to the Prime Minister and the majority in the relevant national parliament.

A Prime Minister would never want to have a big basket of vetoes to defend in to the face of his colleagues. Such a step would make EU law-making more flexible since Member States could be willing to accept more qualified majority votes if they had a guarantee that they could always use this fall-back position suggested by M.Berthoin. Berthoin's alarm.

This could also have avoided many difficult situations in the past, which produced "No" votes in Danish referendums and destroyed the honest reputation of many Danish politicians dealing with European affairs over the years.

3. The example of the environmental clause

In Denmark there has been a big battle over the years about the so-called environmental clause in Article 100a part 4, now Article 95, of the EU Treaty.

The Danes were told that this Article would protect Denmark's higher standards for food safety and the environment when the EU started making Internal Market decisions by means of qualified majority voting in 1987.

To ensure a "Yes" in the referendum on the Single European Act, the Danes were also assured that the Luxembourg Compromise would continue to guarantee Denmark the right to veto any unwanted decision.

These two guarantees were heavily advertised and they were the reason for the small "Yes" majority in the referendum in 1986.

Without those two guarantees there would not have been a "Yes" vote and the plans for the EU internal market would have been blocked.

4. The vanished guarantees

Both guarantees have now disappeared.

The Luxembourg Compromise has not been used since that Referendum. The environmental clause was radically changed by the EU Court on 17 May 1994, when it ruled against the Danish interpretation of the clause.

In the Amsterdam Treaty the clause was formally amended to include some of the Danish hesitations. Again, this was a convenient, short-sighted half-truth to convince the Danes to vote "Yes".

Later, people were upset when the European Commission outlawed a unanimous decision from the Danish Parliament about food safety. The politicians who had made the famous

guarantees lost some credibility.

Few Danes will believe a Danish politician talking about the EU, even if he or she speaks the truth. They are used to half-truths. This might well be the major reason for the Danish "No" to the Maastricht Treaty in 1992 and to the Euro in 2000.

The politicians felt they had no alternative but to show only one side of the coin. The politicians calculated – rightly – that they would have lost the referendum in 1986 if they had told the truth.

A change to more qualified majority voting is not possible to sell as a decision-making method in Denmark – unless it is combined with certain guarantees. This is a fact of life.

But it is not only wrong in principle but also very short sighted to hide things from the people ahead of referendums. People remember. Sometimes they punish the responsible politicians. Sometimes they punish others. Sometimes they react with apathy.

It is wrong anyway, and there are only two acceptable possibilities. We accept that the necessary guarantees are kept or we accept that the Treaties cannot be amended since it demands unanimity.

Why not try the first option.? Allow an honest open national veto for a few vital issues and adopt a real environmental clause allowing Member States to increase the level of food safety and environmental protection above the general EU level if they wish.

H. Flexibility and enlargement

When the Swedes voted on EU membership they were told a lot of half-truths as well. Gradually, promises proved to be empty, and the Swedes reacted by turning their backs on the EU.

For several years after the Referendum there was a majority of Swedes in favour of leaving the Union. They were simply disappointed because politicians they normally believed in had to hide and deny things in order to sell EU membership.

In Finland the politicians did not use the same doubtful arguments as in Sweden. The major argument in Finland was geopolitical: The stated aim was to reorient Finland away from the old Soviet Union towards a safe haven in the European Union.

The Finnish Government did not attempt to sell an almost meaningless environmental clause to the Finns. The Finnish politicians accepted the rules of the game and presented it more honestly to the Finns. They thus succeeded in placing Finland in the centre of the European debate.

1. Telling the truth

The difference between Denmark, Sweden and Finland is striking. Those who hide things today, limit their own room for manoeuvring tomorrow.

Politicians in the EU applicant countries should learn from the Nordic experience as regards telling truths and half-truths. They should stick to the truth ahead of their referendums and explain both the good and the less good sides of the EU.

Hopefully, they should never have to defend the current lack of democracy in the EU. Otherwise they can risk "No"-majorities in their national referendums. The truth cannot be hidden from their electorates indefinitely anyway. There are strong Euro-realist and Euro-sceptical movements in Europe which will tell people in the applicant countries the negative arguments regarding the EU as well.

2. Being frank about the shortcomings

From that perspective it is fairer to do what Verhofstadt did - admit that the Euro-sceptics are right in their analysis but wrong in their proposed solutions.

This way people in the applicant countries could discuss what should be their country's position as regards the European future.

By admitting EU's shortcomings they can strengthen their position. By denying the shortcomings they will weaken that position for their accession negotiations, and possibly eventually lose the referendums and destroy their credibility in the way which some Danish politicians have done for over three decades.

We, in the current Member States, could also help the politicians in the applicant countries avoid the temptation to deceive their peoples simply by offering the applicant countries better membership conditions than we are doing now.

I. <u>No real negotiations for the Applicants</u>

It is a major misunderstanding that there are *negotiations* about EU membership for the applicant countries.

There is not one single law from in an applicant country that would have the slightest chance to prevail legally against Community law.

The so-called accession negotiations are solely about the timetable for the introduction of Community law in the applicant country in question.

The Commission's screening reports explain how far the applicant countries are from having accepted the *acquis communautaire* and how prepared they are to administer it.

Those reports are kept secret, even from the European Parliament which has to give a final "Yes" to the accession treaties before enlargement.

1. Secrecy helps the "No" side

Secrecy is another way of helping the "No" side to win the forthcoming referendums on membership in the applicant countries. The content of these secret reports will certainly be leaked at an inconvenient time.

Perhaps the reports contain dangerous news from the "Yes" side's point of view. They cannot be hidden forever.

There is only one fair way of preparing for referendums on such crucial matters: Tell the truth. Give the public all information.

If the screening reports on the applicant countries show problems, it is far better to discuss those problems publicly and find solutions beforehand.

2. Agricultural land and second homes

Why can't we be more flexible in offering solutions to sensitive problems such as the right to sell agricultural land and space for second homes in the applicant countries?

There are no demonstrations in our cities calling for EU members to have the right to buy cheap land in the applicant countries. It is not a real issue for us, in the current EU countries. Insisting on this is only a matter of blindly following EU dogma: The *acquis* and nothing but the *acquis*.

Why not accept long transition periods of up to 20 years before such rules come into force? We have already waited for 12 years since the Berlin Wall came down, which gave us the historic chance to unite Europe in a peaceful way.

Why not accept conditional transition periods where, for example, the sale of land is only completely free from the year when the applicant country in question reaches the average level of income in the EU?

3. Let the applicants decide themselves

Applicant countries could then decide on their own when the time is ripe to move to the next stage

in their liberalisation process without being forced to do so by EU civil servants in the enlargement "negotiations".

Then such questions could be part of the normal political conflicts in society and be solved when there is a majority for the particular aspect of the EU *acquis* in the national parliament.

Why not give existing laws in the applicant countries at least a chance to prevail over Community law on occasion?

Is it completely unthinkable that at least one of the applicant countries should have at least one law which is better than ours in the EU?

Why not discuss such a matter publicly in the EU as well, instead of forcing all applicant countries to copy all the estimated 85,000 pages of the *acquis communautaire* from us instead of using every piece of legislation from their own free national parliaments?

J. Planning for problems

All the EU institutions are now planning to incorporate 10 new countries from 2004.

The way we negotiate the Accession Treaties and the way the EU has failed to prepare its own negotiation mandates in the difficult areas of Agriculture, Structural Fund spending and the EU Budget may produce major crises instead of a smooth enlargement.

The way we have already forced applicant countries to accept inflexible conditions may give problems in the referendums when their national politicians have to persuade the Czechs that no Germans will use their new EU right to buy secondary housing and agricultural land in the old Sudetenland - where the price for land is only 10% of the price in the neighboring Germany.

We can already expect a long series of half-truths from the governments in the applicant countries when they explain to their populations that to double certain prices is not a problem; when they promise that social welfare pensions will increase as well and that European funding will solve all their problems.

1. The EU is not a Paradise

The EU should not be presented as a Paradise but as the battlefield it is, with all its fraud, secrecy and other shortcomings.

This is the first condition for confidence between the electorates and the elected. We should not assist in overselling the product. If a product cannot be sold it should be withdrawn

from the market or improved - never oversold.

That is the necessary condition for democratic governance in all countries.

2. More flexible conditions

The Convention could assist the applicant countries by proposing more flexible conditions for all the newcomers. This would open possibilities for Romania, Bulgaria, Turkey - when their human rights problems are solved - and the countries from the Ukraine to the Balkans to prepare for early EU membership in a much freer and more flexible European co-operation.

3. Query existing EU legislation

The Commissioner for Enlargement, Günter Verheugen, has informed MEPs that there are *over 20.000 EU rules.*

He and other EU representatives have refused to inform us of the exact numbers of rules. This means that we do not know how big the *acquis communautaire* actually is.

The EU demands from farmers that they count every sheep and lamb, hen and egg, cow and calf and sort the tomatoes in five different sizes before they get their subsidy for destroying these items.

Neither the Commission nor the Council are able to produce a simple statistic for aggregate legal production of food and they have refused information to the European Parliament as regards a full copy that has been proposed for acceptance to the applicant countries.

The Convention should demand full statistics on all legislation so that we can assess how the *acquis* has developed over time and in different areas. My office has made our own private estimate over the years but we have never been able to get our figures verified.

K. <u>Consolidation of laws</u>

The EU has a very complicated way of initiating and passing laws. Both Federalists, Euro-sceptics and other normal human beings have a common interest in making law-making straightforward and simple to understand.

Today EU laws are amended by adding a new law to the existing laws with its own separate number.

To read a regulation on fisheries, you might need to find over 70 different Articles in several Official Journals.

Even specialised lawyers have difficulty in compiling the existing *acquis* for their clients.

From now on, we should demand that no EU law can be amended unless the Commission proposes a consolidated version of the full *acquis* for the given area.

We should also introduce *sunset clauses* for all existing laws so that they are automatiucally repealed unless the laws are formally confirmed and consolidated. All existing EU laws should be re-numbered as well.

Instead of more than 20.000 laws and amendments we might get down to much fewer and more legible laws, just as every Member State has Consolidated Law books for different policy areas such as Housing, Banking etc.

Professional law and lobbying companies in Brussels can make a good business from the lack of transparency in EU law-making, but laws are not made for that purpose. They are supposed to be produced to serve the peoples.

All EU laws could be compiled on CD-roms and be circulated free of charge through libraries, giving all interested citizens cheap and easy access to the existing *acquis*.

It is difficult already to *read* EU law books. Why make it more difficult than necessary?

1. Should the existing *acquis* be reduced?

In one sentence the Laeken Declaration defends the existing 20,000 EU laws and legal amendments. In others, it asks whether they can be reduced.

SOS Democracy has proposed a general review of the full existing *acquis* with the intention of reducing it to the necessary minimum.

The first exercise should have the purpose of returning all rules that have no cross-border effect to the Member States.

If it is possible for a decision to be taken by a national parliament then that decision should be taken by that Parliament. This is simply democracy.

2. Children's work

Politically, people may think it is a good idea to have common rules for distribution of newspapers in the morning by children.

The relevant question is not whether it is a good idea or not. The relevant question is,

"Can this question *only* be answered from Brussels?"

If the answer is that children's work destroys the common market, there might be a cross-border issue to solve at the level of Brussels.

If it is mainly a matter for local markets, which has no seriously disturbing effects on EU trade, why then decide on this matter at the level of Brussels?

Why not limit the effects of all EU rules to genuine problems and leave it to national parliaments - and parents - to decide whether children should be allowed to distribute newspapers in the morning or not?

The directive on children's work is one example where Brussels is not the right level for lawmaking.

3. Education

We need a very time-consuming case-by-case analysis because you cannot just return every directive to the Member States, for example, in the area of Education.

Is it not a good idea to have common rules for the mutual recognition of exams so that young people can mix their education from different high schools, technical schools and universities in different countries?

Is it not a good idea to keep the common programmes for student exchange across the EU?

Education is a state competence in Federal states and not the competence on Federal level. This is the case in Germany. But still, there are a few cross-border issues in which all countries can benefit from mutual co-operation.

Where we have an area where no EU regulations or laws should be allowed. In education it should be enough to have co-ordination through non-directly-binding frames, together with recommendations.

L. <u>Can we find a lower level?</u>

When we have been through the cross-border analysis of EU laws, the remaining part of the *acquis* should be assessed by means of the question: "Can we find a lower level of decision-making than EU regulations?"

Can we use minimum harmonisation directives instead of total harmonisation?

Can we leave it to mutual recognition of standards in different countries, instead of

having completely the same standards in all countries?

Can we change compulsory rules to non-compulsory rules, which are only put into force when companes decide to use them in their trade?

1. Regulation of strawberries

Let us take an example from the numerous detailed regulations for the sale of fruit in the EU.

According to an EU Regulation, a strawberry has to be more than 23 mm. in diameter before it can be sold.

Smaller strawberries are illegal to sell unless they are sold for jam-making. It is illegal to sell strawberries of a smaller size anywhere in the EU.

In the Northern part of the Nordic countries, God has arranged it so that strawberries are not the same size as in the countries in the centre of the EU.

It is not a very big problem for the international trade in strawberries. Lapland does not destroy the Belgian market for strawberries.

Why not change this regulation into a non-compulsory standard so that a grocer in Athens can offer his strawberries according to the common fruit rules to a grocer who wants to buy the strawberries according to the same rules?

If strawberries are just sold in the local markets we could simply forget the common rules and leave it to God, the producer and consumer to decide their size and weight.

2. Not forbidden to sell EU cucumbers

The British Press in particular has laughed at the detailed EU rules for the curvature of cucumbers.

Here the regulation is right since it is not forbidden to sell curved cucumbers. It is only illegal to sell a class III cucumber as a class II cucumber.

No one should mislead his or her customers. But honestly, is it a matter for Brussels whether the wrong sale takes place in a local market in London?

Why not decide that detailed rules for the sale of fruit only apply in cross-border trade?

At the end of the day the result of such critical analysis of all EU directives and regulations would be more freedom and less bureaucracy.

M. <u>Transparency more important in Brussels</u>

Tansparency is of even greater importance in Brussels than in the nation states.

Within the nation state there is a healthy competition between different media to discover secret goings-on. There are many more journalists working in the Danish Parliament than there are journalists working in Brussels altogether.

Scotland, which is the same size as Denmark, has only two permanent press correspondent in Brussels.

There are only 800 correspondents in Brussels and they are busy covering day-to-day affairs in the Council of Ministers.

The main sources for their stories are the spokespersons of the Commission, who have to keep secret whatever information it is not in the interest of the Commission to reveal.

The competing sources of news are the specialised civil servants of the national permanent representations, whose function it is to spin to the press the version their Ministers prefer to see in the newspapers.

1. Insufficient investigative journalism

There is very little time for investigative journalism in Brussels and there is a very limited co-operation between the different media.

The so-called independent news agencies are mainly subsidised by the EU budget. The EU information departments buy articles for their different magazines from the correspondents in Brussels, making them economically dependent.

To bring critical and independent journalists to Brussels and make them compete in disclosing the fraud, waste and mismanagement which occurs there is imperative if the common institutions are to survive the current crisis where very few have confidence in the EU.

Every institution needs healthy criticism to develop and improve its functions and services. It is not only in the interest of the public but also in the interests of the EU institutions, themselves, to make radical changes in their information policy.

2. 'Openness' should be the rule

In the Commission and the Council the prevailing rule is still 'secrecy', unless a competent body has decided to disclose a document.

As proposed by the European Parliament, this rule should be changed so that all information and documentation is deemed to be public unless a competent body has decided to

keep a document secret for specific legal reasons.

There has been a lot of practical progress in the last decade regarding openness. Many EU services have good web-sites which deliver much information to the public. But it is always the information that they, themselves, want to be public, that is published.

Transparency rules should also safeguard the public interest in facilitating citizens' access to the documents that the services are less keen to publish on their own.

3. Propose new rules for information access

Here the Convention should review the existing rules regarding information in the EU and propose changes.

Firstly, the specialised organs of the Union should have full access to whatever they need in order properly to fulfil their controlling functions.

Today the European Ombudsman, the Court of Auditors and the European Parliament's Budgetary Control Committee do not have access to all necessary documents from the Commission.

It is still the Commission which decides on its own what it wishes to hand over for inspection.

4. Necessary confidentiality

There are internal deliberations in every organisation which need to be protected by a certain level of confidentiality.

If a Commission Department prepares a new EU law it should be permitted to have all possible ideas on the table without being forced to reveal the different suggestions to the public.

But when the Commission has finalised the draft or made a decision, there should be general access to the relevant document.

Today, many Commission documents are released, usually by means of friendly journalists, to ensure positive coverage of a new draft initiative.

It is not in the general interest that these drafts should only be covered from one point of view. It is for the good of the public that it be left to a pluralistic press to describe the good and the bad sides of any draft EU law or proposal.

5. Publish the full documents

Proper public debate requires access to the full document if a part of it is disclosed. Therefore it should be a general rule that the public has access to the full document if part of it is published one way or another.

Such a rule would still protect the internal deliberations of the Commission since drafts could be kept secret as long as they are in-house.

If the Commission delivers an internal draft to the agricultual producers in COPA, it should also be obliged to deliver the draft to the consumers and enviromental organisations and vice versa.

If a Commissioner passes on a secret document to a political friend in the European Parliament, he should also be obliged to deliver the document to other MEPs.

The principle of equality should also be applied to information policy.

When the European Commission delivers a document to a working group in the Council, it should also be obliged to deliver the document to the European Parliament and the national parliaments.

Formally, the Commission has now accepted a commitment to do this under the framework agreement between the European Parliament and the Commission.

6. Members of Parliament don't know

Today a major part of the legislative progress under the so-called *Common Decision-making procedure* is controlled by the Commission and the Council.

The European Parliament, the national parliaments and the public are kept in the dark. Many lobbyists have access to the internal documents.

Elected members do not have access to internal documents unless they happen to work also as lobbyists or journalists. They very seldom get the relevant information as elected Members of Parliament.

When a draft is discussed in a committee, an unacceptable discrimination takes place between First Class and Second Class members in the room. The young civil servants from the Permanent Representations have the relevant documents on their desks or in their laps. The civil servants from the Commission and the Council secretariat have the relevant documents as well.

Ironically, all the so-called honourable Members of Parliament do not have the actual updated versions on their table. Instead, they have the original Commission drafts that have been changed

several times in the working groups of the Council.

There might be a few MEPs who are updated by their friends in the Commission or national governments - or the lobbyists.

There might be a rapporteur who gets the documents in a corridor from a friendly civil servant.

But even the rapporteur has no legal right to receive the actual documents that are relevant to this preparatory phase of EU law-making.

It is normal that Members of the European Parliament receive documents from lobbyists or have no access at all to the more comprehensive and up-to-date date texts lying on the table behind them.

It is rather humiliating and is making fun of democracy.

7. Secret lists of committees

The Commission even denies the European Parliament access to the complete lists of its 1500 working groups and their participants.

They are able to pay travel allowances for the 50,000 or so civil servants and experts who travel to Brussels every year. Still they say they have no aggregate information on those to whom they pay the travel and daily attendance allowances.

The Budgetary Control Committee cannot even control travel allowances.

Some documents from the officially established Working Groups are available to the European Parliament - but not all of them.

8. New promises on openness

When Commission President *Jacques Santer* was forced to resign in March 1999 because wise men had found that not one single person was acting responsibly in the Commission, the new Commission was eager to have good contacts with the European Parliament.

For the first time in 45 years, they promised to publish their agendas and minutes of Commission meetings to signal 'openness'.

Commission President *Romano Prodi* repeated this promise in the European Parliament Chamber. Immediately afterwards the Commission services invented a new type of agenda with only some of the discussion points listed and a new type of 2-3 page minutes instead of the original 25 page minutes. When the new type of minutes were shown to President Prodi,

he was shocked to find that his instructions had not been carried out and he promised to correct the fault.

In March 2002, the Commission published their full agendas and minutes of decisions taken for the first time. But we still cannot see who said what and how people voted in the Commission since the verbatim statements are still kept secret.

Now every EU citizen will at last be able to see what the Commission will discuss at its next meeting and what it has decided at previous meetings.

N. The Convention should discuss transparency

Experienced European Parliament Members can often find relevant information one way or the other, but seldom officially. Perhaps they get it in a meeting or in a corridor with the whispered message: "I did not give you this document!"

Even the highest-ranking EU officials are not able to deliver documents, officially, to the elected Members of Parliament.

The European Parliament is presented as the embodiment of the democratic legitimacy of the EU and it cannot even get the most simple information from the Commission, even though the same information can easily be delivered to a four-month intern at the Permanent Representations or the Commission itself.

This really shows the lack of transparency and uneven distribution of information in the EU today.

The good news is that part of the Laeken Declaration states that the rules can be reviewed: *"With a view to greater transparency, should the meetings of the Council, at least in its legislative capacity, be public?",* the Prime Ministers ask.

O. Should the Commission be a Government?

The Laeken Declaration also raises the question of who should control the European Commission. Should it be the European Council, as at present, or should the President of the Commission be elected in direct elections? Or should it be left to the European Parliament to elect the President?

In other words, the Convention should consider whether we want a directly elected president as in the US, a parliamentary democracy at European level as we find it in the Member States at national level, or should we continue with today's mixture.

According to the Amsterdam Treaty, the President of the Commission is elected by

unanimity among the 15 Prime Ministers in the European Council. The Nice Treaty changes this unanimity requirement to a qualified majority vote.

When he or she is appointed, the President should then be presented to the EU Parliament which will vote "Yes" or "No" to the proposed President. Later, the European Parliament will hold an election to sanction the the whole Commission. All Commissioners can be appointed by qualified majority vote among the Prime Miniters if the Nice Treaty is ratified.

1. The little nuclear bomb

The European Parliament cannot sack a particular Commissioner. It can express its lack of confidence in the Commission as a whole by a two-thirds majority and at least 314 votes.

This Article has never been used. The Santer Commission survived such a vote of no-confidence but was forced to resign on its own. Commission President Santer had explained that he would leave office if there was a simple majority of votes against him.

At the time, this was seen as a step towards European parliamentary democracy.

2. The Lex Prodi

Commission President Prodi forced his Commissioners to promise that they would resign if he asked them to.

With the Nice Treaty he gets this right formally, the only modification being that a resignation should be approved by the College of Commissioners as a whole, which means 11 of the 20 votes in the Commission.

The European Parliament wants to have the possibility of sacking a particular Commissioner if he or she is opposed to the will of the Parliament.

To sack the whole Commission is a difficult task. Should the Commission resign if it does not have the support of a majority in the European Parliament?

The European Parliament wants the political families of the various European parties to put forward candidates for the post of President of the Commission in the European elections and then have elections in European constituencies.

As a first step, 10 % of the seats in the Parliament could be reserved for such union-wide parties and their candidates.

3. EU Political Party candidates

For example, the socialist PSE party could then propose their Chair, *Enrique Baron* for the post of President of the Commission and try to get more votes than the President of the Christian Democrats, *Hans-Gert Pöttering*.

The new Green Chair, the leader of the French student revolt in 1968, *Danny Cohn-Bendit*, has already offered himself as the Green candidate for the post of next President of the Commission.

The political parties could also put forward well-known national politicians.

The liberals might propose the Belgian Prime Minister, *Guy Verhofstadt*.

The Socialists could come forward with the former Dutch Prime Minister, *Wim Kok* or, at a later date, *Tony Blair*.

The Christian Democrats could propose the Spanish Prime Minister, *Jose Maria Aznar*, who is now the leader of the Christian Democrat and Conservative World Movement and who has said he will step down as Prime Minister in 2004.

The former French President *Valéry Giscard d'Estaing* has proposed direct elections of the President of the Commission to give the EU a European "Bill Clinton" or "George W. Bush".

In a new book, “Linking National Politics to Europe”, *Simon Hix* proposes that the Commission President should be elected by the national parliaments.

Which procedure would you prefer?

P. Elected from the national parliaments

The Euro-realists in SOS Democracy have put forward a different proposal.

They want the EU Commissioners to be appointed by, and meet regularly in, the European Committee in their national parliament, with a view to changing fundamentally the character of the Commission.

Instead of being a European Government it would become a Secretariat for the national parliaments.

Every nation would then have one seat on the Commission also after the enlargement of the EU, whereas the Treaty of Nice foresees a rotation between Member States from the date that there are 27 members of the EU.

Another proposal is to make the Commission a Secretariat of the Council and eventually merge it with the existing Council secretariat.

1. Spokesman for the European Union

The Laeken Declaration mentions the desirability of synergy between the different foreign policy functions in the EU and raises the question of developing a more genuine common foreign policy.

The spokesman of the Union, the former Spanish Foreign Minister *Javier Solana,* threatened to leave his job when he first saw the draft of the Laeken Declaration.

He later seemed satisfied, signed the final text and presented it in the Belgian-funded full-page advertisement that was carried in 32 major European newspapers.

His name and the name of Commission President Prodi were co-signatories of the Declaration with the 15 Prime Ministers, as though they were themselves heads of a European State. They are not. Or they are not yet.

Many Federalists and the vast majority in the European Parliament want to get rid of the existing confusion where the EU's foreign policy is represented abroad by the rotating functionaries: The President of the Council and his Foreign Minister, the President of the Commission, the Foreign Policy Commissioner, *Chris Patten*, and the special so-called *High Representative of the Common Foreign and Security Policy (CFSP),* Javier Solana.

2. One Foreign Minister for the Union

Solana combines his CFSP post with that of Secretary-General of the Council, a job which is in reality run by his Deputy Secretary-General.

Finally, Solana is Secretary-General of the WEU, bringing Defence into the Union.

The Federalists want the Commission to be a genuine EU government and they therefore want to merge the jobs of Solana and Patten into that of a *Foreign Minister of the Union.*

There should be one - and only one -EU foreign minister to co-operate and negotiate with other foreign ministers from big States like Japan, Russia and the US.

3. The veto in vital foreign policy

Today the EU Foreign Policy matters can be decided by qualified majority vote but every country has a possibility to veto a decision.

This has nothing do with the Luxembourg compromise, but is a Treaty article allowing a veto when vital national foreign policy interests are at stake.

If a decision is blocked, a qualified majority vote in the Council can raise the issue at

the next European summit, where the Prime Minister in question should be ready do defend his veto. This puts strong pressure on the countries to unite on common positions.

During the war against the Taliban regime in Afghanistan, the real co-ordination was between the US, the UK, Germany and France.

The biggest EU countries were criticised for establishing a *directorate* where a few countries would effectively run foreign affairs for the others.

Do you want a genuine European foreign policy to compete with the US, Russia and the other great powers of the world?

Do you prefer the nation states to represent their foreign policy with different voices in the UN and then a looser co-operation between the EU countries based on unanimity, as most Euro-sceptics wish?

4. From Petersberg tasks to defence

At the summit in Laeken, the Prime Ministers and Presidents declared their EU Rapid Reaction Force to be almost operational.

60,000 soldiers should soon be able to operate 6000 kilometers from the EU in the Middle East, Africa and the border regions of Russia.

The UN Secretary General has welcomed this force as being able to carry out peace-keeping actions for the UN.

These first European Defence Forces are not limited to fighting only on the basis of a UN mandate.

They can operate after a decision made by the EU alone in relation to all the matters described as Petersberg-tasks, so called after the hill outside Bonn, Germany, where the meeting occurred which decided on this matter. It includes peace*making*, which requires going to war with existing belligerents to being about a peace.

The Belgian Prime Minister Verhofstadt was keen to expand the Petersberg tasks to other Defence issues, and he succeeded in having this mentioned as a point to be discussed in the Convention.

5. Independent of NATO?

Verhofstadt's wish is close to the French desire to have a genuine European Defence and military arm which can operate independently of NATO.

The British have accepted the formation of a European pillar within NATO but have not yet agreed that it should be able to operate independently if it is in disagreement with the US.

Turkey has been invited to take part in the Convention to get Turkish acceptance that NATO assets can be used by the EU.

If Turkey accepts the loan of NATO assets to the EU there will soon be the possibility to of enlarging the Petersberg tasks as proposed by Belgium.

However, there is an important limitation in the existing Union Treaty that will not be changed by the Nice Treaty. Military actions will still demand unanimity. No country can be forced to send its troops to EU-decided wars.

In January 2002, *The Financial Times* published rumours of a British proposal to establish a special leadership directorate for the EU, including Germany, France and the UK, with rotating representation for the smaller Member States.

The rumours about the "directorate" were denied at the time but can still be heard in the corridors.

The UK and France possess nuclear weapons and a veto right in the Security Council of the United Nations. They are not prepared to share their Great Power status on an equal footing with the smaller states in the EU.

In May 2002 France and the UK blocked a compromise which would bring more information about foreign policy before the European Parliament.

6.

Q. <u>Should the Treaties be divided in two parts?</u>

Today, the EU's juridical foundation consists of four different Treaties. Added to these Treaties are a large amount of Protocols and Declarations.

The protocols are legally binding in the same way as the Treaties. In contrast to this, Declarations are not legally binding.

It is often difficult to make sense of the EU Treaties or find where the head or tail of a particular article is. They are often expressed in incomprehensible legalese.

The texts do not seem to resemble a Constitution although the EU Court of Justice perceives the Treaties to be the basis of an EU Constitution.

The European Parliament has suggested writing a relatively accessible Constitution stating the EU's objectives, rules of the game and fundamental rights.

In addition, the more specific decisions on particular policy areas should be written

into an independent Treaty as an appendix to the Constitution.

The idea behind the division of the Treaties into two different texts makes sense for both Federalists and Euro-realists, even if the Euro-realists would never accept a Constitution.

The Euro-realists also warn against the dangers in the idea of the Federalists who want a simple procedure to amend the accompanying Treaty.

This question is now put down for official deliberation in the Laeken Declaration: *"Could this lead to a distinction between the amendment and ratification procedures for the basic Treaty and for the other Treaty provisions?"***,** the Prime Ministers ask.

1. Easy way to majority votes

The idea is that the proposed EU Constitution should describe, for example, the rules for qualified majority voting and unanimity. Then the accompanying text should state in what policy areas there should be qualified majority voting and where there should be unanimity.

When the time is ripe, it would then be possible to go from unanimity to qualified majority voting by means of a simple decision in the Council of Ministers, which would not need to go through difficult ratification processes at national level involving possible referendums.

The Federalists propose that we make the Constitution now, and that it will endure as it will not need alteration to make important decisions in taking further steps towards deeper European integration.

The European University Institute in Florence has already completed an exercise dividing the existing EU Treaties into two parts for the purpose as illustration of this, but they have not produced a reader-friendly edition of their text.

R. <u>The EU Charter of Fundamental Rights</u>

The EU Charter of Fundamental Rights, which came from the special Convention that was established to draw it up, was formally ratified by the Presidents and Prime Ministers at Nice on 8th December 2000 as a *politicial declaration*. The declaration has two levels.

On the first level, the rights and duties of the citizens are explained by the use of ordinary words.

In an accompanying text, lawyers can see the more precise interpretations. This is a very good way of doing it.

A draft Euro-realist European Treaty which can be found at the *Bonde.com* website is set out in this way.

For example an article mentions that the European institutions are bound by the European Human Rights**.**

In the accompanying text you can then see a reference to the European Human Rights Convention from 1951 as amended and used by the Human Rights Commission and Court of Human Rights in Strasbourg.

On the first level, it is enough to state the human rights so that citizens can easily grasp them. For experts, one also needs to write whether the verdicts from the Court in Strasbourg are included or not**.**

The same type of lay-out can be used for the Draft European Constitution or Treaty. The result will be that ordinary citizens have a chance to understand what the Treaty says European co-operation is about.

And legal experts will have their special edition as well.

1. Should the Charter of Fundamental Rights be legally binding?

Today, the Charter is not legally binding but it is already clear that it will be part of the next Treaty or Constitution. Most opponents amongst the 15 governments have given up and accepted the idea.

Even the Danish government has officially said it is prepared to accept the Charter as a part of the next Treaty. There is more than one way of doing it.

The next Treaty can simply repeat the articles from the Charter in the first part of what would then be seen as an EU Constitution.

The other possibility is to refer to the Charter in the Treaty and state that the articles with the accompanying text are a part of the *acquis*. This could be underlined by giving the Charter official status as a Treaty Protocol. The third possibility is to leave it to the European Court of Justice to decide what part of the Charter of Fundamental Rights should be legally binding.

The European Court of Justice has already used the Charter for interpretative purposes in court cases several times. During the debates in the Convention that drafted the Charter, the European Court of Justice indicated that it was prepared to use the Charter even if it was not made legally binding in the Treaties.

2. The Charter as a limitation or a Constitution?

It is fair enough that the Court uses the Charter as a limitation *t*o what the European institutions can do.

The Charter has been agreed unanimously by all the EU governments with the formal support of the Commission and the European Parliament.

And there is something missing today, as all Member States have agreed to be bound by the European Convention on Human Rights, but the European institutions are not really bound and can in theory break free. Such breaches cannot be controlled by the Court of Human Rights in Strasbourg.

Now, the EU institutions have decided that they want to be bound in the same way. This is a signal to the EU Court in Luxembourg.

3. EU Accession to the Human Rights Convention

It would be a better solution if the EU institutions became partners to the Human Rights Convention which would oblige all European institutions – and the EU Court – to accept the common interpretations of the human rights as they are, and will be, developed by the Strasbourg Court of Human Rights.

This possible solution was included in the Laeken Declaration following a Finnish proposal. It is the best solution since it will avoid having two possible classes of human rights in Europe based on the judgements of two different courts .

That could guarantee that the specialist Court of Human Rights makes consistent interpretations for all European nations and institutions.

S. <u>Possible constitutional conflicts</u>

If the EU Charter of Fundamental Rights is seen as a part of the EU Treaty, it raises possibilities of conflict between the Court of Human Rights in Strasbourg and the European Court of Justice in Luxembourg.

Thus the European Court of Justice could interpret the right of freedom of speech in a more limited way than freedom of speech according to the Strasbourg court of Human Rights.

Bernard Connolly was a civil servant in the Commission who was sacked for having published a book critical of the EMU.

If the EU was signatory to the Human Rights Convention, a sacked civil servant

would have the possibility of appealing his case in Strasbourg.

If the EU is not a part of the Human Rights Convention it becomes the prerogative of the Luxembourg Court to decide whether a civil servant may be limited in his or her freedom of speech or not.

This example shows that it could be a big mistake to include the Charter in the EU Treaty without clear limitations being set down.

The argument for its inclusion is that it would strengthen human rights in the EU, but the result in practice could easily be the opposite, reducing for instance the rights of civil servants under both national law and the Human Rights Convention.

If the Charter is included, it should be explicitly stated that no rights deriving from national constitutions or the European Human Rights Convention could be limited by the decisions of the EU Court in Luxembourg.

Even such a statement would leave the final decision as to human rights competence to the Court in Luxembourg, for its judgements are able to overrule both national high courts and the Court of Human Rights in Strasbourg.

Some possible conflicts in interpretation of human rights could be highly sensitive and explosive.

1. Irish rules on abortion

In Ireland, rules on abortion have been implemented by referendum. Ireland gained a special Protocol in the Maastricht Treaty permitting it to have its own rules on abortion.

There could be a major conflict if the Court in Luxembourg outlawed Irish laws on abortion by reference to the EU Charter of Fundamental Rights.

2. A State Church

In Denmark and other Scandinavian countries, the National Constitution grants certain privileges to the Protestant Church as a State Church. These could be seen as a form of discrimination and could be outlawed by the Court in Luxembourg under the EU Charter of Fundamental Rights.

It may be fair enough to change the rules of the Danish State Church to adapt to modern times, with their emphasis on religious pluralism, but it would raise a lot of tensions if such a change were to be adopted overnight as a result of a decision by unknown judges in Luxembourg.

The State Church is a part of the Danish popular Constitution, *Grundloven*. This Constitution can only be altered by referendum.

It would not be an easy task to convince the Danes that they should abolish their own Constitution for the benefit of a common EU Constitution with common fundamental rights which would overrule corresponding rights under the national Constitution.

T. Three pillars of the EU Treaties

Today, four basic Treaties and many different Protocols make up what is in effect the Constitution of the EU. The Treaty of Rome has been amended many times. The last series of amendments are called the Amsterdam Treaty. The Nice Treaty may come into being if the Irish voters will adopt it in a second referendum.

The principal Treaty, the original Treaty of Rome, now has three so-called *pillars*, or basic divisions. The first pillar is the amended Treaty of Rome covering the single market. In that Treaty, the EU operates as the *European Community.* The abbreviation for that is *EC.*

In the first pillar every decision can be made as a *supranational decision.* The European Commission has a monopoly in initating laws. The EC Court in Luxembourg has the last word in any dispute with the Member States.

The second pillar covers *intergovernmental* co-operation in Foreign Policy, Security and Defence. Here the Commission has no monopoly in initiating laws, and the Court in Luxembourg has no right to overrule decisions made by the Member States.

The third pillar covers intergovernmental co-operation in legal affairs and police co-operation. Here, the Court in Luxembourg can only overrule Member States that have declared their willingness to accept verdicts from the Court in this field.

Parts of the original third-pillar issues have been moved to the first supranational pillar and there are plans and draft treaty articles that foresee the removal of further policy competencies from the intergovernmental to the supranational pillar.

The Federalists propose getting rid of the complicated division of powers between the three pillars by having only one *supranational* pillar. That way the European Court would become a real *EU Court* and have the last word in any dispute, unless the concrete article explicitly sets out to limit it.

The Euro-realists propose to confine the area of supranational decision-making to cross-border issues in the European *Community* that revolve around the internal market.

In their vision of wider European *Co-operation* there is no supranational decision-making at all, since laws only become valid legal instruments after adoption in the national parliaments.

Both the Federalist and the Eurorealist approaches are more simple than the existing complicated division into three pillars.

1. Flexible co-operation?

Today, there are many different types of international agreements between the EU and other European nations.

The *European Agreements* have been made with all the applicant countries. They foresee EU membership. The purpose is to import all EU legislation into the applicant countries, with no exceptions at all. Only temporary, *intermediate derogations*, will be allowed.

Some applicant countries can, for example, continue with restrictions on foreigners buying land for 5 or 7 years. Permanent derogations are not allowed when the European agreements are turned into EU membership.

The *European Economic Area (EEA)* is a closer co-operation between the EU and Norway, Iceland and Liechtenstein, but in a limited number of areas. The EU effectively decides the economic legislation for the whole EEA common internal market.

Norway, Iceland and Liechtenstein have been turned into a form of rich *colonies* for the EU. Now Norway and Iceland are also part of the so-called Schengen Agreement, which makes these countries interior to the EU's external frontiers.

Consequently, they photocopy a good part of the legal co-operation in the EU as well, and apply what they copy in their domestic law.

Norway has also decided to contribute 1000 soldiers to the EU Rapid Reaction Force from which Denmark has a derogation, so that it only sends police.

2. Partnership-agreements

Instead of forcing neighbouring countries to copy our laws without their having significant influence upon them, we could offer all European countries more flexible *partnership-agreements*, as proposed for example by Dr. Alfred Sant, who leads the Labour Party in Malta.

Partnership-agreements could cover areas of mutual interest and allow both sides to have influence when decisions are made and amended.

To facilitate that an article could be inserted in the next Treaty on the following lines:

"The Union can enter into partnership agreements of mutual interest with other nations and groups of nations.

The Union respects the parliamentary democracy of their partners and allows the partners to influence law-making in the areas covered by partnership agreements.

When the Union enters free trade agreements with poorer countries the agreements are to be followed by a financial protocol offering economic aid to these countries."

U. More power to the large states

In January 2002, *The Financial Times* carried reported rumours of a British proposal for a *directorate* composed of the three strongest Member States: France, Germany and UK.

The ruours were denied by Prime Minister Tony Blair's office but the rumours kept going. In February 2002, British Foreign Secretary, Jack Straw proposed major reforms in the interest of the larger Member States.

The largest Member States are not satisfied with their influence in EU decision-making. France, Germany and the UK do not just want to be one of 27 countries. They want more say in accordance with their larger populations.

During the summit in Nice, the larger Member States gained a better representation compared to the smaller countries. The four biggest countries went from 10 to 29 votes each in the Council. They increased their votes three-fold.

Smaller countries like Denmark, Finland and Ireland only increased their votes approximately two-fold from 3 to 7 votes.

On the other hand, the five biggest countries will give up their right to have a second member of the European Commission. The relatively larger States say that their bigger votes in the Council can be seen as a compensation for that and that this is the price to be paid for securing enlargement with many smaller Member States.

The new system of voting is impossible to explain to the public and difficult to remember even for experts.

Why not give every Member State one vote each and then lay down that every EU law must also represent votes cast from countries that together have a majority of EU citizens?

That was the second option considered during the summit in Amsterdam. With this so-called “double majority” the bigger countries could then have their population size into account

to prevent the possibility of their being overruled.

1. Leadership in the Council of Ministers

In his speech in the Hague, in February 2002, Jack Straw proposed scrapping the six-month rotating EU Presidency and forming a strong government in Brussels made up of senior ministers.

The 16 different EU councils of today would be replaced by 10 councils, each led by an appointed minister for twoand a half years.

With no clear rules for rotation it is clear that the bigger countries would then take over the major part of the EU Council presidencies, just as the biggest countries have the major part of all senior posts in the Commission.

Powers would be moved from the Commission and the smaller countries and the EU might in reality be lead by a "directorate" of the three strongest Member States, Germany, France and the UK.

Many people fear the Federalist approach, with its aim of moving more powers from the nation states to common EU institutions.

Many people see the major conflict in the European construction to be between Federalists and Inter-governmentalists.

It might still be hard for some people to grasp that it is also possible to make a construction that is intergovernmental as between the major countries and supranational in relation to the smaller countries.

There is a risk that a compromise might take the worse aspects of both methods and combine the secrecy of the intergovernmental method with the supremacy of the centre over the smaller States.

Perhaps the next major conflict will not be between Federalists and Euro-realists but between smaller and bigger nations?

2. The rotating EU presidencies

The criticism of the rotating Presidency sounds reasonable. Today with 15 Member States, a country waits seven years to chair the meetings between one period and another. With 27 EU members they will have to wait 13 years.

The rotating EU Presidency is the most powerful sign showing the public in the various countries that the EU is still a co-operation between different Nation States.

There have also been proposals about forming group leaderships where 4-5 countries would share the Presidency for a year.

If such groupings of countries were to be formed with three or four small nations around one bigger country, the reality could make this a directorate of the bigger nation states.

Only if the big and small countries share things on a clear rotation basis would we be able to maintain equality between nations.

One argument is that the smaller states are not capable of organising a Presidency.

History teaches us differently. The EU's smallest country, Luxembourg, with less than half a million citizens, has delivered some of the best Presidencies. Perhaps this was because they had no national ambitions to overshadow the task of furthering the general interest?.

If resources are insufficient for a small country it would always be easy for it to be aided by the outgoing and incoming Presidency and the Council Secretariat. There is no objective need to abolish the democratic principle of rotating EU Presidencies if the concept of the EU as a partnership is to be preserved**.**

V. The rules of the EU Convention

The great majority of the Convention's members are *elected* representatives. They do not favour negotiations behind closed doors like those that led to the Nice Treaty.

In their first meetings both the delegation from the European Parliament and the delegation from the national parliaments protested against ideas from the President of the Convention, Giscard d`Estaing, about power being based in the Convention's closed Praesidium.

The people around Giscard had drafted a secret proposal for regulations giving the real powers to the President. Giscard, for example, would be the only person to convene the Convention meetings and set the agenda.

He and the Praesidium would decide the items to be discussed. Members would only have the right to send their proposals to the Praesidium. Only the President could decide what written contributions should be translated. Members would have no rights on their own to bring forward proposals and have them translated, distributed, discussed and/or decided on.

Giscard's original idea was to have the real deliberations in the closed Praesidium and then have three-hour meetings once a month in the Convention.

At the first meeting of the European Parliament delegation, this idea was unanimously rejected. The MEPs asked for two two-day meetings every month instead of a single

three-hour one to rubber-stamp the ideas emanating from the Praesidium.

The MEPs also called for a clear regulation which would allow every member to speak, make proposals and vote.

1. EP representatives: De Vigo and Hänsch

The European Parliament elected the Spanish Christian Democrat, *Inigo Mendez de Vigo,* as President of the Parliament delegation, with the former President of the European Parliament, *Klaus Hänsch,* from the SPD in Germany, as First Vice-President.

De Vigo and Hänsch represent the European Parliament in the Praesidium. In the internal deliberations in the EU they have the Liberal constitutional expert, *Andrew Duff* as Second Vice-President.

Duff was the choice of the smaller groups who felt they risked being marginalised by the two biggest groups, the PPE and PES, who often share responsibilities between them.

2. National Parliaments representatives: Bruton and Stuart

On 22 February 2002, the Spanish Presidency invited the Convention members from the national parliaments to meet in the European Parliament to elect their two members of the Praesidium.

Again, EPP members and PSE members shared the two posts.

The Christian Democratic EPP political family chose the former Irish Prime Minister, *John Bruton,* Fine Gael. The Social Democratic PES family chose *Gisela Stuart* from British Labour. Members outside these two major political families had no chance of being represented in the Praesidium.

Most members speaking protested that the Spanish Presidency held this meeting without inviting the members from the applicant countries. The Laeken Declaration gave the latter full rights except for the possibility of blocking a possible consensus between the representatives of the 15 Member States in the Convention.

Now, they were not even being asked if they had proposals for the Praesidium. Among the 12 members of the Praesidium there was not one single member from the 12 applicant countries and Turkey. This is despite the fact that practically all members of the Convention support the enlargement of the EU. Different members proposed that the applicant countries would be offered two observers in the Praesidium. President Giscard did not allow this proposal to be put to a vote in the first or second meeting of the Convention. Instead the Praesidium decided to invite

one guest from the applicant countries to their meetings.

The national MPs agreed unanimously that they should ask to hold all meetings on Mondays and Tuesdays, since this suits the calendar of their national parliaments.

Many parliaments have European Affairs Committee meetings on Fridays to discuss the EU ministerial meetings of the next week.

The national MPs were not prepared to accept the proposal from Giscard and the European Parliament that they should meet on Thursdays and Fridays instead.

The national MPs are the majority of the members in the Convention and they insisted on putting the question to a vote in Plenary if they did not get their way in the Praesidium. But they gave in and adopted a different calender.

They also insisted on clear rules giving the final power of decision to the Convention itself. The Spanish President, *Borrel*, at the meeting of the national Parliaments was not at all satisfied with the situation where a secret draft regulation was circulated between a few delegations without having been handed to himself.

The mood in the two delegations of elected representatives was rather promising. The majority seemed to be prepared to fight against hidden agendas and moves behind the scenes, when those moves are clearly being taken by ministers or their appointed Chair and Vice-Chairs, Giscard d'Estaing, Jean-Luc Dehaene and Giulio Amato.

But before the second meeting of the Convention the members of the two big political families, PSE and PPE, had accepted a compromise regarding the rules.

Now the members have a right to propose, but no right to have the proposals translated, distributed or put on the agenda unless they can be seen as a "*significant*" number. Giscard and the Praesidium decides what a *"significant"* number is.

3. No Euro-realists represented

The three Governments holding the EU Presidency are represented in the Praesidium by two MEPs and one former Commissioner, the Dane *Henning Christophersen*, who was a member of the Commission from 1985 to 1995.

Christophersen has lived in Brussels ever since and is now a partner in the Swedish lobby company, *KREAB*. He is the former leader of the Danish Liberal Party, *Venstre*, and is the only Praesidium member from the European Liberal family.

The Spanish Presidency has asked the elder sister of the Commission Vice-President Loyola

de Palacio, *Ana Palacio*, to represent them in the Praesidium. She is a very active MEP, who currently chairs the important Civil Liberties Committee in the European Parliament. She is elected from the Partido Popular (PP) party of Prime Minister Aznar.

The Greek Presidency, starting in January 2003, is represented by *Giorgos Katiforis*, Member of the European Parliament for the Greek socialist party, *Pasok.*

The European Commission is represented in the Praesidium by *Michel Barnier*, who is a French Christian Democrat from the EPP family, and *Antonio Vitorino*, who is a leading Portuguese Socialist.

4. Only 3 political parties represented

In the Praesidium there are now two women and 11 men. The political affiliations of all the Praesidium members are confined to the three biggest of the seven political families represented in the European Parliament.

Four political groups from the European Parliament and the European Regionalists, who are part of the Green group but have there own multinational party, *The European Fredom Alliance (EFA),* are *not* represented in the Praesidium.

The EPP has come out best with seven of the 13 places, followed by PSE with five and one Liberal. Giscard d`Estaing is a former President of the Liberal Group in the European Parliament, but his UDF party now works with the EPP.

All Praesidium members are strongly in favour of more European integration. The vast majority, if not all, are supporters of the European Movement.

President Giscard d`Estaing headed the international European Movement from 1989 to 1997.

Not one of the 13 members would have voted "No" in the Irish Referendum on the Nice Treaty, the Danish Referendum on the Euro or the Referendums in France, Ireland and Denmark on the Maastricht Treaty.

Not one of them belongs to the majority in Europe who would not regret the dissolution of the existing EU.

When they have discussions in the Convention Praesidium, there will be no voice from the Euro-sceptical or Euro-realist side.

When Giscard prepares the meetings with his 16 staff there will not be one staff member who represents the views of at least the majority of the electorates in most EU Member States.

When the European Parliament decides on its participation the situation is the same. Among

23 representatives in the new assistants Task Force of the European Parliament, no Euro-realists have been appointed.

The European Movement will probably have a majority of members at every level of preparation and discussion.

Why are they afraid to offer a post in the staff or the Praesidium to people with opposing views?

That may well be the central weakness of the Convention: The lack of true representation. Few young people, less than 20 % women and less than 10 % Euro-realists, are among the more than 200 members and substitute members who will take part in the Convention's work.

The Convention and particularly its "Politbureau", the Praesidium, has not been composed for purposes of dialogue and compromise.

Around 20 Euro-realists and Euro-sceptics in the Convention have formed a "Democracy-Forum" to initiate different debates.

Their work can be followed at

The Convention has an official website to be found at the Commission website: www.Europe.eu.int

5. A Civil Forum with handpicked supporters

The contacts with so-called *Civil Society* are to be organised by the former Belgian Prime Minister, Jean-Luc Dehaene. He is a strong federalist who was vetoed as Commission President by *John Major's* Conservative British government. But he is also personally prepared to discuss things with his political opponents. He has taken part in conferences arranged by the SOS Democracy Intergroup in the European Parliament. In December 2001, he participated in one such conference with *David Trimble*, the First Minister of Northern Ireland, who advocates reform of the EU.

In the European Parliament, the responsibility for organising the Civil Forum has been given to *Pier Virgilio Dastoli*, the outgoing Secretary General of the international European Movement.

Dastoli was a close collaborator of *Altiero Spinelli*, who drafted the first European Constitution in 1984. Dastoli has arranged several Civil Fora alongside European summits and is certainly qualified for the job.

But even if the responsible persons are personally prepared for open discussion it would be far better if the dialogue between upholders of different European visions was organised in common between representatives of those visions.

Why not allow representatives from the Euro-realist and Euro-sceptical organisations to take part in the preparations on equal terms?

At the moment, it looks very one-sided.

6. A Civil Forum of EU supporters

The first proposals for the organisations to be invited for the Civil Forum exclude most Euro-realist and Euro-sceptical organisations.

The European Movement and organisations with similar views are included, their opponents excluded.

The lists of invitees have been prepared by the Information Offices of the European Parliament in the Member States.

From Denmark they propose that trade unions be represented from the Danish Federation of Industry and the Metal Workers` Union, both known for their financing of the "Yes" campaigns in Danish referendums.

Among “European” organisations they have chosen the European Movement and “New Europe” - both committed to a European Constitution but no one from the different Euro-sceptical organisations.

From Ireland they exclude the National Platform and other organisations which ran the campaign for a "No" in the Referendum on the Nice Treaty of 7 June 2001, and from Britain - the country with the greatest number of Euro-sceptical organisations, they have not included any critical organisations.

W. Open discussion, dialogue and referendums

What is now needed is open discussion, dialogue and referendums. Open invitations where all interested parties can take part in the discussions.

The citizens of Europe deserve to be taken seriously and ought to have a clear promise of having the last say.

It is we, the citizens, who should decide whether we prefer the existing EU co-operation, the Federalist vision of a European Constitution or the Euro-realist vision of a new basic treaty for a slimmer European co-operation.

The discussions among citizens will only start when they are offered a referendum. When people know they have to take a stand they will start looking for facts and different views and make

up their own minds.

Until then most discussion on the future of Europe will be among a European elite far removed from the citizens.

We Europeans deserve better. It is *our* Europe which is being enlarged and reconstructed. It is *our* home and the place for our kids.

We may like it, hate it or ignore it. The European institutions are already now deciding most of our laws and they also decide important laws for the European countries outside the EU.

Europe rules us!

The time has come when we – the citizens, the electorates - should rule Europe. One way or the other, the peoples must decide.

Jens-Peter Bonde
Brussels, May 20, 2002

IV. Supplement

A. Members and substitutes in the Convention

1. Chairman:

Valéry GISCARD d'ESTAING

2. Vice-Chairmen:

Mr Giuliano AMATO
Mr Jean-Luc DEHAENE

3. Representatives of the Heads of State or Government of the Member States

COUNTRIES	MEMBERS	ALTERNATES
België/Belgique	Mr Louis MICHEL	Mr Pierre CHEVALIER
Danmark	Mr Henning CHRISTOPHERSEN	Mr Poul SCHLUTER
Deutschland	Mr Peter GLOTZ	Mr Gunter PLEUGER
Ellas	Mr Georges KATIFORIS	Mr Panayotis IOAKIMIDIS
España	Ms Ana PALACIO	Mr Carlos BASTARRECHE

France	Mr Pierre MOSCOVICI	Mr Pierre VIMONT
Ireland	Mr Ray McSHARRY	Mr Bobby McDONAGH
Italia	Mr Gianfranco FINI	Mr Francesco E. SPERONI
Luxembourg	Mr Jacques SANTER	Mr Nicolas SCHMIT
Nederland	Mr Hans van MIERLO	Mr Thom de BRUIJN
Österreich	Mr Hannes FARNLEITNER	Mr Gerhard TUSEK
Portugal	Mr Ernâni LOPES	Mr Manuel Lobo ANTUNES
Suomi/Finland	Ms Teija TIILIKAINEN	Mr Antti PELTOMÄKI
Sverige	Ms Lena HJELM-WALLÉN	Ms Lena HALLENGREN
United Kingdom	Mr Peter HAIN	Baronesse Scotland of Asthal

4. **Representatives of the National Parliaments**

COUNTRIES	MEMBERS	ALTERNATES
België/Belgique	Mr Karel DE GUCHT Mr Elio DI RUPO	Mr Danny PIETERS Ms Marie NAGY
Danmark	Mr Peter SKAARUP Mr Henrik Dam KRISTENSEN	Mr Per DALGAARD Mr Niels Helveg PETERSEN
Deutschland	Mr Jürgen MEYER Mr Erwin TEUFEL	Mr Peter ALTMAIER Mr Wolfgang SENFF
Ellas	Mr Paraskevas AVGERINOS Ms Marietta YANNAKOU-KOUTSIKOU	Mr Nikolaos CONSTANTOPOULOS Mr Evripidis STILIANIDIS
España	Mr Josep BORRELL FONTELLES Mr Gabriel CISNEROS	Mr Diego LÓPEZ GARRIDO Mr Alejandro MUÑOZ ALONSO

	LABORDA	
France	Mr Alain BARRAU Mr Hubert HAENEL	Ms Anne-Marie IDRAC Mr Robert BADINTER
Ireland	Mr John BRUTON Mr Proinsias DE ROSSA	Mr Martin CULLEN Mr John GORMLEY
Italia	Mr Marco FOLLINI Mr Lamberto DINI	Mr Valdo SPINI Mr Filadelfio BASILE
Luxembourg	Mr Paul HELMINGER Mr Ben FAYOT	Mr Gaston GIBERYEN Ms Renée WAGENER
Nederland	Mr René van der LINDEN Mr Frans TIMMERMANS	Mr Wim VAN EEKELEN Mr Hans VAN BAALEN
Österreich	Mr Caspar EINEM Mr Reinhard Eugen BÖSCH	Ms Evelin LICHTENBERGER Mr Gerhard KURZMANN
Portugal	Mr Alberto COSTA Ms Eduarda AZEVEDO	Mr Osvaldo de CASTRO Mr António NAZARÉ PEREIRA
Suomi/Finland	Mr Kimmo KILJUNEN Mr Matti VANHANEN	Ms Riitta KORHONEN Mr Esko HELLE
Sverige	Mr Sören LEKBERG Mr Göran LENNMARKER	Mr Kenneth KVIST Mr Ingvar SVENSSON
United Kingdom	Ms Gisela STUART	Lord TOMLINSON

	Mr David HEATHCOAT-AMORY	Lord MACLENNAN OF ROGART

5. **Representatives of the European Parliament**

MEMBERS	ALTERNATES
Mr Elmar BROK (D)	Ms Teresa ALMEIDA GARRETT (P)
Mr Timothy KIRKHOPE (UK)	Mr John WALLS CUSHNAHAN (IRL)
Mr Alain LAMASSOURE (F)	Ms Piia-Noora KAUPPI (FI)
Ms Hanja MAIJ-WEGGEN (NL)	Mr Reinhard RACK (ÖS)
Mr Íñigo MÉNDEZ DE VIGO (ES)	The Earl of STOCKTON (UK)
Mr Antonio TAJANI (IT)	Mr Joachim WUERMELING (D)
Mr Klaus HÄNSCH (D)	Ms Pervenche BERÈS (F)
Mr Olivier DUHAMEL (F)	Ms Maria BERGER (ÖS)
Mr Luís MARINHO (P)	Mr Carlos CARNERO GONZÁLEZ (ES)
Ms Linda McAVAN (UK)	Ms Elena Ornella PACIOTTI (IT)
Ms Anne VAN LANCKER (B)	Ms Helle THORNING-SCHMIDT (DK)
Mr Andrew Nicholas DUFF (UK)	Ms Lone DYBKJAER (DK)
Mr Johannes VOGGENHUBER (ÖS)	Mr Neil MacCORMICK (UK)
Ms Sylvia-Yvonne KAUFMANN (D)	Mr Esko Olavi SEPPÄNEN (FI)
Ms Cristiana MUSCARDINI (IT)	Mr Luís QUEIRÓ (P)
Mr Jens-Peter BONDE (DK)	Mr William ABITBOL (F)

6. **Representatives of the European Commission**

MEMBERS	ALTERNATES
Mr Michel BARNIER	Mr David O'Sullivan
Mr António VITORINO	Mr Paolo Ponzano

7. Representatives of the Governments of the accession candidate countries

COUNTRIES	MEMBERS	ALTERNATES
Κύπρος (Cyprus)	Mr Michael ATTALIDES	Mr Theophilos V. THEOPHILOU
Malta	Mr Peter SERRACINO-INGLOTT	Mr John INGUANEZ
Magyarorszàg (Hungary)	Mr János MARTONYI	Mr Péter GOTTFRIED
Polska (Poland)	Ms Danuta HÜBNER	Mr Janusz TRZCIŃSKI
România (Romania)	Ms Hildegard Carola PUWAK	Mr Ion JINGA
Slovensko (Slovakia)	Mr Ján FIGEL	Mr Juraj MIGAŠ
Latvija (Latvia)	Mr Roberts ZILE	Mr Gundars KRASTS
Eesti (Estonia)	Mr Lennart MERI	Mr Henrik HOLOLEI
Lietuva (Lithuania)	Mr Rytis MARTIKONIS	Mr Oskaras JUSYS
България (Bulgaria)	Ms Meglena KUNEVA	Ms Neli KUTSKOVA
Česká Republika (Czech Republic)	Mr Jan KAVAN	Mr Jan KOHOUT
Slovenija (Slovenia)	Mr Matjaž NAHTIGAL	Mr Janez LENARČIČ
Türqíye (Turkey)	Mr Mesut YILMAZ	Mr Nihat AKYOL

8. **Representatives of the National Parliaments of the accession candidate countries**

COUNTRIES	MEMBERS	ALTERNATES
Κύπρος (Cyprus)	Ms Eleni MAVROU	Mr Marios MATSAKIS
	Mr Panayiotis DEMETRIOU	Ms Androula VASSILIOU
MALTA	Mr Michael FRENDO	Ms Dolores CRISTINA
	Mr Alfred SANT	Mr George VELLA
Magyarorszàg	Mr József SZÁJER	Mr András KELEMEN

(Hungary)	Mr Pál VASTAGH	Mr István SZENT-IVÁNYI
Polska (Poland)	Mr Jozef OLEKSY	Ms Marta FOGLER
	Mr Edmund WITTBRODT	Ms Genowefa GRABOWSKA
România (Romania)	Mr Liviu MAIOR	Mr Péter ECKSTEIN-KOVACS
	Mr Puiu HASOTTI	Mr Adrian SEVERIN
Slovensko (Slovakia)	Mr Pavol HAMZIK	Mr Frantisek ŠEBEJ
	Ms Irena BELOHORSKÁ	Ms Olga KELTOŠOVÁ
Latvija (Latvia)	Mr Rihards PIKS;	Mr Maris SPRINDŽUKS
	Mr Edvins INKENS	Ms Inese BIRZNIECE
Eesti (Estonia)	Mr Tunne KELAM	
	Mr Peeter KREITZBERG	
Lietuva (Lithuania)	Mr Vytenis ANDRIUKAITIS	Mr Rolandas PAVILIONIS
	Mr Alvydas MEDALINSKAS	Ms Dalia KUTRAITE-GIEDRAITIENE
България (Bulgaria)	Mr Daniel VALTCHEV	Mr Alexander ARABADJIEV
	Mr Nikolai MLADENOV	Mr Nesrin UZUN
Česká Republika (Czech Republic)	Mr Jan ZAHRADIL	Mr Petr NEČAS
	Mr Josef ZIELENIEC	Mr František KROUPA
Slovenija (Slovenia)	Mr Slavko GABER	Ms Danica SIMŠIČ
	Mr Alojz PETERLE;	Mr Mihael BREJC
Türqíye (Turkey)	Mr Ali TEKIN	Mr Kürşat ESER
	Ms Ayfer YILMAZ	Mr A. Emre KOCAOĞLU

9. **Observers**

Committee of the Regions
Mr Josef CHABERT
Mr Manfred DAMMEYER
Mr Patrick DEWAEL
Ms Claude DU GRANRUT
Mr Claudio MARTINI

Mr Eduardo ZAPLANA
Economic and Social Committee
Mr Göke Daniel FRERICHS
Mr Roger BRIESCH
Ms Anne-Maria SIGMUND
European Social Partners
Mr Emilio GABAGLIO
Mr João CRAVINHO
Mr Georges JACOBS
European Ombudsman
Mr Jacob SÖDERMAN

B. The Convention Secretariat

SECRETARIAT	
Sir John KERR *Secretary-General*	Tel. +32-2-285 5071 / 5072 (secr.) Email: john.kerr@consilium.eu.int Fax: +32-2-285 5073
Annalisa GIANELLAE:\Jens-Peter Bonde\Bondes samlede, sorterede dokumenter\Forfatningen\CONVENTION\CONV documents\static.asp?lang=EN&Content=Gia *Deputy Secretary General*	Tel. +32-2-285 8044/8045 (secr.) Email: annalisa.giannella@consilium.eu.int Fax: +32-2-285 8155
Nikolaus Meyer LandrutE:\Jens-Peter Bonde\Bondes samlede, sorterede	Tel. +32-2-285 5044/7105(secr.) Email: convention.presse@consilium.eu.int Fax:+32-2-285 5060

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Chairman's Private Office	
Walpurga SPECKBACHERE:\Jens-Peter Bonde\Bondes samlede, sorterede dokumenter\Forfatningen\CONVENTION\CONV documents\static.asp?lang=EN&Content=Speckbacher *Head of Private Office*	Tel. +32-2-285 5240 Email: walpurga.speckbacher@consilium.eu.int Fax: +32-2-285 7565
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Members of the Secretariat	
Drafters	
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Anne WALTERE:\Jens-	Tel. +32-2-285 6348

Peter Bonde\Bondes samlede, sorterede dokumenter\Forfatningen\CONVENTION\CONV documents\static.asp?lang=EN&Content=Walter	Email: anne.walter@consilium.eu.int Fax:+32-2-285 5060

Address :

Secretariat of the European convention
Rue de la Loi, 175
B-1048 BRUSSELS
BELGIUM

C. The regulations for the Convention

Note on working methods of the European Convention (CONV 9/02)

Article 1

Notice of meetings

The Convention shall be convened by its Chairman with the agreement of the Praesidium or following a written request by a significant number of members of the Convention.

Article 2

Calendar and Agenda

The Praesidium shall draw up the provisional calendar and agendas for meetings of the Convention and shall submit them to the Convention for approval. Any member of the Convention may ask the Praesidium in writing to add agenda points to the draft agenda of a Convention session. The Praesidium shall in any case add a subject to the draft agenda when the request is made by writing one week before the scheduled session of the Convention by a significant number of members. At the beginning of a meeting, the Convention may decide by consensus on a proposal of its Praesidium to add other items to the agenda.

Article 3

Forwarding of documents to members of the Convention

The notice of meeting and provisional agenda for a meeting, and any other documents relating to that meeting, shall be sent to the members, alternates, and observers of the Convention by the Secretariat on behalf of the Chairman, at the latest four working days before the date of the meeting. In order to facilitate the preparation of the sessions, the documents shall be sent by e-mail by the Secretariat, whenever possible.

Article 4

Written contributions

1. Any member (full or alternate), and observer of the Convention may address a written contribution to the Praesidium. The contributions may be individual or collective. 2. Such written contributions shall be forwarded to the members (full and alternate), and observers of the Convention by the Secretariat, and shall be available on the Convention web site.

Article 5

Alternates

1. Those members of the Convention who are prevented from attending a meeting, or part of a meeting, may be represented by their alternate in accordance with the arrangements set out in paragraph 2.

2. Without prejudice to paragraph 3, an alternate may take the floor in a meeting of the Convention when the member whom he replaces will be absent for a full day and when advance notice (before 9 a.m. on the day in question) has been given to the Secretariat by the full member. When taking the floor, the alternate announces that he replaces the full member.

3. The alternates may be present during any meeting of the Convention.

Article 6

Conduct of meetings

1. Meetings of the Convention shall be chaired by the Chairman of the Convention or in his absence by one of the two Vice-Chairmen.

2. The meetings of the Convention shall be held in the eleven languages of the European Union with simultaneous interpretation.

3. The representatives of the candidate States shall participate fully in the work and deliberations of the Convention.
4. The recommendations of the Convention shall be adopted by consensus, without the representatives of candidate States being able to prevent it. When the deliberations of the Convention result in several different options, the support obtained by each option may be indicated.

5. Any procedural questions relating to the conduct of meetings may be referred to the Praesidium; it will make a decision under the conditions which it has determined in accordance with paragraph 8.

6. The Secretariat shall draw up the list of (full and alternate) members and observers present at each meeting of the Convention.

7. Taking account of views expressed by members of the Convention, the Chairman shall ensure the proper conduct of discussions, including by arranging as far as possible that the diversity of the Convention's views is reflected in the debates. He may propose to limit interventions in the interest of the efficient conduct of debates. He shall be assisted by the Vice-Chairmen and the Secretariat.

8. The meetings of the Praesidium shall be chaired by the Chairman or in his absence by one of the two Vice-Chairmen. The Praesidium shall decide on its working methods, acting on a proposal from the Chairman.

Article 7

Hearings of Presidents of Institutions and organs of the EU

The Praesidium may invite the Presidents of the Court of Justice, the Court of Auditors and the European Central Bank to address the Convention.

Article 8

Consultations with experts

Any member (full or alternate) may propose that staff of the institutions or other experts be consulted by the Convention. The Praesidium will decide whom to invite.

Article 9

Forum

1. Under the authority of the Praesidium, and under arrangements which the Praesidium shall determine, the Secretariat will:

– set up the Forum's internet site, with the Commission responsible for its technical support;

– be responsible for the organisation and operation of other activities of the Forum, particularly hearings, in co-operation, as necessary, with the Commission and with other Union institutions and organs, ensuring a large representation of the civil society.

2. The conditions under which the Forum's contributions will be forwarded to the Convention, and the conditions under which participants in the Forum may be heard shall be determined by the Praesidium.

3. The Forum's internet site shall include a list of all members of the Convention with their contact details, including e-mail addresses, and links to their internet sites so that members of the public have the opportunity to make contact with the Convention as a whole.

Article 10

Location of meetings

The Convention will meet in the premises of the European Parliament in Brussels.

Article 11

Secretariat

The Convention Secretariat shall be directed by a Secretary-General. He shall take all necessary steps to ensure the proper functioning of the Convention.

Article 12

Notes and verbatim records of meetings

A summary note shall be circulated to members (full and alternate) and observers of the Convention by the Secretariat after each meeting. A verbatim record of the interventions made during the meeting in their original languages will also be made available.

Article 13

Translation of documents

1. The Secretariat shall provide to the members (full and alternate) and observers of the Convention, in the eleven languages of the Union, the following documents:

(i) documents issued by the Chairman or the Praesidium;
(ii) written proposals for modification to the final texts from full and alternate members;
(iii) summary notes of meetings of the Convention.

2. The Secretariat shall forward to members (full and alternate), and observers of the Convention, and post on the website, in the languages in which they were sent to the Praesidium, documents from:

(i) members (full and alternate) of the Convention;
(ii) institutions and organs of the Union; and
(iii) observers.

3. The Chairman may exceptionally ask for the translation of documents for the Convention other than those listed in paragraph 1.

Article 14

Publicity for proceedings

The Convention's discussions and all its documents listed in Article 13 shall be public. All the records and written contributions shall be freely available on the Convention web site and can be freely reproduced.

Article 15

Working groups

In the light of views expressed in the Convention, the Chairman or a significant number of the members of the Convention may recommend that the Praesidium set up Convention Working Groups. The Praesidium will determine their mandate, working arrangements and composition, taking into account the specific expertise of members, alternates and observers in relation to the subject under discussion. Every member of the Convention may attend all such meetings. The Secretariat establishes a summary note after each meeting of the working groups.

Article 16

Revisions

The provisions of this Note may be amended or expanded by the Convention on a written proposal from the Praesidium or by a written request from a significant number of members.

Article 17

Correspondence

Correspondence addressed to the Convention shall be sent to the Council, marked for the attention of the Convention Secretariat,

– by post: 175 rue de la Loi, B-1048 Brussels,

– by fax: number + 32 2 285 8155 or

– by email: anne.walter@consilium.eu.int

D. The budget for the Convention

Taken from Report A5-0056/2002 on supplementary estimates of revenue and expenditure 1/2002 of the European Parliament for the financial year 2002 (2002/2039(BUD)):

"the probable costs are of the order of € 10.5 million for the 10 months of 2002. Of that total, € 6.5 million can be covered, directly or indirectly, by the participants and the European institutions (Parliament, Commission, Council). Each government and each national Parliament (including those of the candidate States), each observer and each institution will finance the travelling and accommodation expenses of its own participants in plenary meetings, while the institutions will supply the convention with infrastructure and staff which it requires to function smoothly. (...). The balance of € 4 million, forming the Convention's own budget, could be financed by contributions from the three institutions, amounting to 0.1% of their administrative budget."

REVENUE			
Title Chapter	Heading		Appropriations 2002
9	REVENUE		
90	CONTRIBUTIONS FROM THE INSTITUTIONS		4 000 000 €
	European Commission	2 600 000€	
	European Parliament	1 000 000€	
	Council of the European Union	400 000€	
99	MISCELLANEOUS REVENUE		p.m.
	Title 9-Total		4 000 000 €
	GRAND TOTAL		4 000 000 €

EXPENDITURE General summary of appropriations

Title Chapter	Heading	Appropriation 2002
1	EXPENDITURE RELATING TO THE MEMBERS AND STAFF OF THE CONVENTION	
11	DUTY TRAVEL OF THE CHAIRMAN AND VICE-CHAIRMEN	67 500 €
12	ACCOMMODATION AND SUBSISTENCE ALLOWANCES	271 250 €
13	REMUNERATION AND OTHER ALLOWANCES	375 000 €
14	MISSION EXPENSES	95 000 €
15	REPRESENTATION EXPENSES	150 000 €
	Title 1-Total	958 750 €
2	MICELLANEOUS OPERATING EXPENDITURE	
21	TRANSLATIONS	1 721 250 €
22	BROCHURES AND PUBLICATIONS	400 000 €
23	STUDIE, HEARINGS AND FORUM	350 000 €
24	INFRASTRUCTURE AND MISCELLANEOUS	200 000 €
	Title 2 - Total	2 671 250 €
10	OTHER EXPENDITURE	
100	CONTINGENCY RESEVE	370 000 €
	Titel 10 - Total	370 000 €
	GRAND TOTAL	4 000 000 €

Remarks:

CHAPTER 11 —DUTY TRAVEL OF THE CHAIRMAN AND DEPUTY CHAIRMEN

This appropriation is intended to cover the expenses incurred by the Chairman and Deputy Chairmen when travelling to their place of work in the Institutions for Praesidium and Convention meetings.

CHAPTER 12 —ACCOMMODATION AND SUBSISTENCE ALLOWANCES

This appropriation is intended to cover the expenditure incurred by the Chairman and Deputy Chairmen during Praesidium and Convention meetings.

CHAPTER 13 —REMUNERATIONS AND OTHER ALLOWANCES

This appropriation is intended to defray the costs incurred by the Secretary-General and the remuneration of Secretariat members not belonging to a Community institution.

CHAPTER 14 —MISSION EXPENSES

This appropriation is intended to cover the travel and subsistence expenses of the Chairman and the Deputy Chairmen and of Secretariat members not belonging to a Community institution.

CHAPTER 15 —REPRESENTATION EXPENSES

This appropriation is intended to cover representation expenses incurred in particular by Praesidium members in the performance of their duties.

CHAPTER 21 —TRANSLATIONS

This appropriation is intended to cover the translation of documents addressed to or issued by Convention members, which it would not be possible to translate in-house.

CHAPTER 22 —BROCHURES AND PUBLICATIONS

This appropriation is intended to cover the production of publications for large-scale distribution,which it would not be possible to produce in-house.

CHAPTER 23 —STUDIES,HEARINGS AND FORUM

This appropriation is intended to cover the cost of expert studies commissioned by the Convention and to defray the expenses of prominent figures consulted by the Convention.

CHAPTER 24 —INFRASTRUCTURE AND MISCELLANEOUS

This appropriation is intended to cover all expenditure other than the above which is not chargeable to an Institution,in particular expenditure incurred away from the Institutions (e.g.hire of cars,rooms,equipment).

E. The Laeken Declaration

The Laeken declaration was decided at the European summit in Laeken/Brussels on December 15, 2001. The editor of this book has put important passages from the Daclaration in bold for ease of reading:

The Future of the EU: Declaration of Laeken
Category: Press Releases by the Belgian EU Presidency
Description: THE FUTURE OF THE EUROPEAN UNION
LAEKEN DECLARATION

1. I. EUROPE AT A CROSSROADS

For centuries, peoples and states have taken up arms and waged war to win control of the European continent. The debilitating effects of two bloody wars and the weakening of Europe's position in the world brought a growing realisation that only peace and concerted action could make the dream of a strong, unified Europe come true. In order to banish once and for all the demons of the past, a start was made with a coal and steel community. Other economic activities, such as agriculture, were subsequently added in. A genuine single market was eventually established for goods, persons, services and capital, and a single currency was added in 1999. On 1 January 2002 the euro is to become a day-to-day reality for 300 million European citizens.

The European Union has thus gradually come into being. In the beginning, it was more of an economic and technical collaboration. Twenty years ago, with the first direct elections to the European Parliament, the Community's democratic legitimacy, which until then had lain with the Council alone, was considerably strengthened. Over the last ten years, construction of a political union has begun and cooperation been established on social policy, employment, asylum, immigration, police, justice, foreign policy and a common security and defence policy.

The European Union is a success story. For over half a century now, Europe has been at peace. Along with North America and Japan, the Union forms one of the three most prosperous parts of the

world. As a result of mutual solidarity and fair distribution of the benefits of economic development, moreover, the standard of living in the Union's weaker regions has increased enormously and they have made good much of the disadvantage they were at.

Fifty years on, however, the Union stands at a crossroads, a defining moment in its existence. The unification of Europe is near. The Union is about to expand to bring in more than ten new Member States, predominantly Central and Eastern European, thereby finally closing one of the darkest chapters in European history: the Second World War and the ensuing artificial division of Europe. At long last, Europe is on its way to becoming one big family, without bloodshed, a real transformation clearly calling for a different approach from fifty years ago, when six countries first took the lead.

a) The democratic challenge facing Europe

At the same time, the Union faces twin challenges, one within and the other beyond its borders.

Within the Union, the European institutions must be brought closer to its citizens. Citizens undoubtedly support the Union's broad aims, but they do not always see a connection between those goals and the Union's everyday action. **They want the European institutions to be less unwieldy and rigid and, above all, more efficient and open. Many also feel that the Union should involve itself more with their particular concerns, instead of intervening, in every detail, in matters by their nature better left to Member States' and regions' elected representatives.** This is even perceived by some as a threat to their identity. More importantly, however, they feel that deals are all too often cut out of their sight and they want better democratic scrutiny.

b) Europe's new role in a globalised world

Beyond its borders, in turn, the European Union is confronted with a fast-changing, globalised world. Following the fall of the Berlin Wall, it looked briefly as though we would for a long while be living in a stable world order, free from conflict, founded upon human rights. Just a few years later, however, there is no such certainty. The eleventh of September has brought a rude awakening. The opposing forces have not gone away: religious fanaticism, ethnic nationalism, racism and terrorism are on the increase, and regional conflicts, poverty and underdevelopment still provide a

constant seedbed for them.

What is Europe's role in this changed world? Does Europe not, now that is finally unified, have a leading role to play in a new world order, that of a power able both to play a stabilising role worldwide and to point the way ahead for many countries and peoples? Europe as the continent of humane values, the Magna Carta, the Bill of Rights, the French Revolution and the fall of the Berlin Wall; the continent of liberty, solidarity and above all diversity, meaning respect for others' languages, cultures and traditions. The European Union's one boundary is democracy and human rights. The Union is open only to countries which uphold basic values such as free elections, respect for minorities and respect for the rule of law.

Now that the Cold War is over and we are living in a globalised, yet also highly fragmented world, Europe needs to shoulder its responsibilities in the governance of globalisation. The role it has to play is that of a power resolutely doing battle against all violence, all terror and all fanaticism, but which also does not turn a blind eye to the world's heartrending injustices. In short, a power wanting to change the course of world affairs in such a way as to benefit not just the rich countries but also the poorest. A power seeking to set globalisation within a moral framework, in other words to anchor it in solidarity and sustainable development.

c) The expectations of Europe's citizens

The image of a democratic and globally engaged Europe admirably matches citizens' wishes. There have been frequent public calls for a greater EU role in justice and security, action against cross border crime, control of migration flows and reception of asylum seekers and refugees from far flung war zones. Citizens also want results in the fields of employment and combating poverty and social exclusion, as well as in the field of economic and social cohesion. They want a common approach on environmental pollution, climate change and food safety, in short, all trans-national issues which they instinctively sense can only be tackled by working together. Just as they also want to see Europe more involved in foreign affairs, security and defence, in other words, greater and better co-ordinated action to deal with trouble spots in and around Europe and in the rest of the world.

At the same time,**citizens also feel that the Union is behaving too bureaucratically in numerous other areas**. In coordinating the economic, financial and fiscal environment, the basic issue should continue to be proper operation of the internal market and the single currency, without this jeopardising Member States' individuality. National and regional differences frequently stem from history or tradition. They can be enriching. In other words, what citizens understand by "good governance" is opening up fresh opportunities, not imposing further red tape. **What they expect is more results, better responses to practical issues and not a European superstate or European institutions inveigling their way into every nook and cranny of life.**

In short, citizens are calling for **a clear, open, effective, democratically controlled Community** approach, developing a Europe which points the way ahead for the world. An approach that provides concrete results in terms of more jobs, better quality of life, less crime, decent education and better health care. There can be no doubt that this will require Europe to undergo renewal and reform.

2. II. CHALLENGES AND REFORMS IN A RENEWED UNION

The Union needs to become **more democratic, more transparent** and more efficient. It also has to resolve three basic challenges: how to bring citizens, and primarily the young, closer to the European design and the European institutions, how to organise politics and the European political area in an enlarged Union and how to develop the Union into a stabilising factor and a model in the new, multipolar world. In order to address them a number of specific questions need to be put.

a) A better division and definition of competence in the European Union

Citizens often hold expectations of the European Union that are not always fulfilled. And vice versa - they sometimes have the impression that the Union takes on too much in areas where its involvement is not always essential. Thus the important thing is to clarify, simplify and adjust the division of competence between the Union and the Member States in the light of the new challenges facing the Union. This can lead both to restoring tasks to the Member States and to assigning new missions to the Union, or to the extension of existing powers, while constantly bearing in mind the equality of the Member States and their mutual solidarity.

A first series of questions that needs to be put concerns how the division of competence can be made more transparent. Can we thus make a clearer distinction between three types of competence: the exclusive competence of the Union, the competence of the Member States and the shared competence of the Union and the Member States? At what level is competence exercised in the most efficient way? How is the principle of subsidiarity to be applied here? And should we not make it clear that any powers not assigned by the Treaties to the Union fall within the exclusive sphere of competence of the Member States? And what would be the consequences of this?

The next series of questions should aim, within this new framework and while respecting the "acquis communautaire", to determine whether there needs to be any reorganisation of competence. How can citizens' expectations be taken as a guide here? What missions would this produce for the Union? And, vice versa, what tasks could better be left to the Member States? What amendments should be made to the Treaty on the various policies? How, for example, should a more coherent common foreign policy and defence policy be developed? Should the Petersberg tasks be updated? Do we want to adopt a more integrated approach to police and criminal law cooperation? How can economic-policy coordination be stepped up? How can we intensify cooperation in the field of social inclusion, the environment, health and food safety? But then, should not the day-to-day administration and implementation of the Union's policy be left more emphatically to the Member States and, where their constitutions so provide, to the regions? Should they not be provided with guarantees that their spheres of competence will not be affected?

Lastly, there is the question of how to ensure that a redefined division of competence does not lead to a creeping expansion of the competence of the Union or to encroachment upon the exclusive areas of competence of the Member States and, where there is provision for this, regions. How are we to ensure at the same time that the European dynamic does not come to a halt? In the future as well the Union must continue to be able to react to fresh challenges and developments and must be able to explore new policy areas. Should Articles 95 and 308 of the Treaty be reviewed for this purpose in the light of the "acquis jurisprudentiel"?

b) Simplification of the Union's instruments

Who does what is not the only important question; the nature of the Union's action and what instruments it should use are equally important. Successive amendments to the Treaty have on each occasion resulted in a proliferation of instruments, and directives have gradually evolved towards more and more detailed legislation. The key question is therefore whether the Union's various instruments should not be better defined and whether their number should not be reduced.

In other words, should a distinction be introduced between legislative and executive measures? Should the number of legislative instruments be reduced: directly applicable rules, framework legislation and non-enforceable instruments (opinions, recommendations, open coordination)? Is it or is it not desirable to have more frequent recourse to framework legislation, which affords the Member States more room for manoeuvre in achieving policy objectives? For which areas of competence are open coordination and mutual recognition the most appropriate instruments? Is the principle of proportionality to remain the point of departure?

c) More democracy, transparency and efficiency in the European Union

The European Union derives its legitimacy from the democratic values it projects, the aims it pursues and the powers and instruments it possesses. However, the European project also derives its legitimacy from democratic, transparent and efficient institutions. The national parliaments also contribute towards the legitimacy of the European project. The Declaration on the future of the Union, annexed to the Treaty of Nice, stressed the need to examine their role in European integration. More generally, the question arises as to what initiatives we can take to develop a European public area.

The first question is thus how we can increase the democratic legitimacy and transparency of the present institutions, a question which is valid for the three institutions.

How can the authority and efficiency of the European Commission be enhanced? How should the President of the Commission be appointed: by the European Council, by the European Parliament or should he be directly elected by the citizens? Should the role of the European Parliament be strengthened? Should we extend the right of co-decision or not? Should the way in which we elect the members of the European Parliament be reviewed? Should a European electoral constituency be created, or should constituencies continue to be determined nationally? Can the two systems be

combined? Should the role of the Council be strengthened? Should the Council act in the same manner in its legislative and its executive capacities? With a view to greater transparency, should the meetings of the Council, at least in its legislative capacity, be public? Should citizens have more access to Council documents? How, finally, should the balance and reciprocal control between the institutions be ensured?

A second question, which also relates to democratic legitimacy, involves the role of national parliaments. Should they be represented in a new institution, alongside the Council and the European Parliament? Should they have a role in areas of European action in which the European Parliament has no competence? Should they focus on the division of competence between Union and Member States, for example through preliminary checking of compliance with the principle of subsidiarity?

The third question concerns how we can improve the efficiency of decision-making and the workings of the institutions in a Union of some thirty Member States. How could the Union set its objectives and priorities more effectively and ensure better implementation? Is there a need for more decisions by a qualified majority? How is the co-decision procedure between the Council and the European Parliament to be simplified and speeded up? What of the six monthly rotation of the Presidency of the Union? What is the future role of the European Parliament? What of the future role and structure of the various Council formations? How should the coherence of European foreign policy be enhanced? How is synergy between the High Representative and the competent Commissioner to be reinforced? Should the external representation of the Union in international fora be extended further?

d) Towards a Constitution for European citizens

The European Union currently has four Treaties. The objectives, powers and policy instruments of the Union are currently spread across those Treaties. If we are to have greater transparency, simplification is essential.

Four sets of questions arise in this connection. The first concerns simplifying the existing Treaties without changing their content. Should the distinction between the Union and the Communities be

reviewed? What of the division into three pillars?

Questions then arise as to the possible reorganisation of the Treaties. Should a distinction be made between a basic Treaty and the other Treaty provisions? Should this distinction involve separating the texts? Could this lead to a distinction between the amendment and ratification procedures for the basic Treaty and for the other Treaty provisions?

Thought would also have to be given to whether **the Charter of Fundamental Rights should be included in the basic Treaty** and to whether the European Community should **accede to the European Convention on Human Rights.**

The question ultimately arises as to whether this simplification and reorganisation might not lead in the long run to the adoption of a constitutional text in the Union. What might the basic features of such a constitution be? The values which the Union cherishes, the fundamental rights and obligations of its citizens, the relationship between Member States in the Union?

3. III. CONVENING OF A CONVENTION ON THE FUTURE OF EUROPE

In order to pave the way for the next Intergovernmental Conference as broadly and openly as possible, the European Council has decided to convene a Convention composed of the main parties involved in the debate on the future of the Union. In the light of the foregoing, it will be the task of that Convention to consider the key issues arising for the Union's future development and try to identify the various possible responses.

The European Council has appointed Mr V. Giscard d'Estaing as Chairman of the Convention and Mr G. Amato and Mr J.L. Dehaene as Vice-Chairmen.

a) Composition

In addition to its Chairman and Vice-Chairmen, the Convention will be composed of 15 representatives of the Heads of State or Government of the Member States (one from each Member State), 30 members of national parliaments (two from each Member State), 16 members of the European Parliament and two Commission representatives. The accession candidate countries will

be fully involved in the Convention's proceedings. They will be represented in the same way as the current Member States (one government representative and two national parliament members) and will be able to take part in the proceedings without, however, being able to prevent any consensus which may emerge among the Member States.

The members of the Convention may only be replaced by alternate members if they are not present. The alternate members will be designated in the same way as full members.

The Praesidium of the Convention will be composed of the Convention Chairman and Vice Chairmen and nine members drawn from the Convention (the representatives of all the governments holding the Council Presidency during the Convention, two national parliament representatives, two European Parliament representatives and two Commission representatives).

Three representatives of the Economic and Social Committee with three representatives of the European social partners; from the Committee of the Regions: six representatives (to be appointed by the Committee of the Regions from the regions, cities and regions with legislative powers), and the European Ombudsman will be invited to attend as observers. The Presidents of the Court of Justice and of the Court of Auditors may be invited by the Praesidium to address the Convention.

b) Length of proceedings

The Convention will hold its inaugural meeting on 1 March 2002, when it will appoint its Praesidium and adopt its rules of procedure. Proceedings will be completed after a year, that is to say in time for the Chairman of the Convention to present its outcome to the European Council.

c) Working methods

The Chairman will pave the way for the opening of the Convention's proceedings by drawing conclusions from the public debate. The Praesidium will serve to lend impetus and will provide the Convention with an initial working basis.

The Praesidium may consult Commission officials and experts of its choice on any technical aspect which it sees fit to look into. It may set up ad hoc working parties.

The Council will be kept informed of the progress of the Convention's proceedings. The Convention Chairman will give an oral progress report at each European Council meeting, thus enabling Heads of State or Government to give their views at the same time.

The Convention will meet in Brussels. The Convention's discussions and all official documents will be in the public domain. The Convention will work in the Union's eleven working languages.

d) Final document

The Convention will consider the various issues. It will draw up a final document which may comprise either different options, indicating the degree of support which they received, or recommendations if consensus is achieved.

Together with the outcome of national debates on the future of the Union, the final document will provide a starting point for discussions in the Intergovernmental Conference, which will take the ultimate decisions.

e) Forum

In order for the debate to be broadly based and involve all citizens, a Forum will be opened for organisations representing civil society (the social partners, the business world, non-governmental organisations, academia, etc.). It will take the form of a structured network of organisations receiving regular information on the Convention's proceedings. Their contributions will serve as input into the debate. Such organisations may be heard or consulted on specific topics in accordance with arrangements to be established by the Praesidium.

f) Secretariat

The Praesidium will be assisted by a Convention Secretariat, to be provided by the General Secretariat of the Council, which may incorporate Commission and European Parliament experts.

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