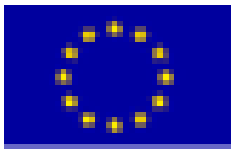
From the Convention to the IGC:
Mapping Cross-National Views
towards an EU-30



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"Reforming the EU Institutions - Challenges for the Council"

Strategy paper

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A. General introduction to the topic and link to the state of the art of the Convention

The ongoing debate on the institutional reform of the European Union was brought to an all-time high by the imminent Eastern Enlargement. Since the mid 1990s (at the latest) the EU has been confronted with the practical need to redesign its institutional architecture and decision-making procedures in order to assure efficient functioning of the Union encompassing 25, even 28 – 30 member states. The IGC 2000, which produced the Treaty of Nice, formally provided the basis for enlargement, but many observers and analysts found that it insufficiently addressed the fundamental needs of the Union, namely a truly efficient institutional framework other basic questions such as strengthening the link between the Union on the one hand and its citizens on the other (just to name one example).

The Heads of State and Government thus identified at their summit meeting in Laeken in December 2001 a plethora of questions that are to be resolved before the process of enlargement.

To address the three big challenges identified - reaching from democratising the EU, organising the policies and politics of the enlarged EU to developing the EU's voice in the world - for the first time in the history of European integration a Convention was convoked to propose ways of adapting and renovating Europe's institutional and political framework. Instead of the method of decision-making behind closed doors prevalent at Intergovernmental Conferences, this time the negotiations were opened to a broader public: government representatives, national and European parliamentarians and representatives of the European Commission. Fora were also installed for members of the civil society and citizens to express their opinion.

As outlined above, one of the central and most sensitive issues on the agenda of the Convention is the topic of institutional reform. A specific aspect within this broader theme is the subject of Council reform. As currently, it is still the central decision-maker within the institutional conglomerate of the EU, it is important to examine its possible reform patterns and more generally its future role in the institutional system of the EU.

To this end, a workshop devoted to the topic of "***Reforming the EU institutions – Challenges for the Council***" was convened on the 6th June 2003 at the University of Maastricht, Netherlands. The proceedings of the Conference outlined the different scenarios both in the field of internal reform of the Council and in the process of ist interaction with other institutions. In this quest the general objective of this strategy paper is to provide an insight into and to analyse the different proposals on Council reform coming from the Convention as regards to issues such as:

- efficiency and effectiveness,
- transparency,
- democratic legitimacy, etc.

A.1. Introduction (the need for reform with regard to the Council)

The Council represents the central link between the Member States and the European institutions (Maurer, 2003 a., p.13). This combined with its role of most important legislator, and essential actor in the executive functions of the Union (Blom, 2003, p.6) places this institution in the core of the debate on the institutional reform.

According to Vanhoonacker and Schout (2003, p.2) throughout the 1990s the increasingly wide scope of European responsibilities and the prospect of further enlargement raised concerns that the Council would soon be reaching the limits of its capacity. In addition there was a growing criticism on the functioning of the European Council, the General Affairs Council (GAC) and the presidency. Instead of giving guidelines and direction, the European Council was increasingly absorbed by addressing detailed problems and failed to address the "core business". This was partly the result of the malfunctioning of the General Affairs Council failing to fulfil its function of co-ordinating the various

Council formations increasingly transferring problems to the European Council. The Presidency on the other hand was primarily criticised for the "amateurish" role assumed by some of the Member States, the lack of continuity, and too heavy a workload for individual countries[1] (Vanhoonacker and Schout, 2003).

Thus, the fundamental issues in the debate of the reform of the Council can be summarised as follows[2]:

1. The scope of application of qualified majority voting (QMV) in the Council (given the unprecedented enlargement and the prospect of decision blockades in a Union XXL);
2. Enhancing the co-ordination system between separated, specialised Council formations, in order to ensure for more efficient policy making and to establish a transparent separation between the legislative and the executive functions of the Council;
3. Improving the role of chair within the Council and in the European Council in order to establish more consistency and coherency within the Council, and to visualise EU politics (i.e. the general question on the "philosophy" behind the rotation principle).
4. The visibility and effectiveness of the Council in CFSP and the general consistency of the external action of the Union (i.e. the relationship between pillars).
5. The question of how to introduce greater transparency and legitimacy within Council activities.

All of the above-mentioned issues of reform played a central role within the proceedings of the Convention and a series of proposals regarding Council reform were circulated by the Presidium. The proposal, which served as a basis for discussion and analysis for the Seminar held at the University of Maastricht, was Convention document CONV 770/03[3] of June 2nd 2003 (see at http://register.consilium.eu.int/pdf/en/03/cv00/cv00770en03.pdf).

On 12 June 2003 (6 days after the Seminar) the Presidium forwarded the final draft of the Constitutional Treaty[4] which *inter alia* introduced changes to Volume I, Part I, Title IV (Institutions) and which is going to be presented to the Thessalonica European Council. The current strategy paper will concentrate on analysing the proposal of 2nd June 2003. Nevertheless, an attempt is done to, wherever possible, highlight the amendments that were introduced by the final draft of the Constitutional Treaty.

A.1.1. Scope of application and definition of QMV

A very pertinent but yet basic aspect of the QMV is its basic definition. The Convention's proposal[5] reads as follows:

Article I-24 : Qualified majority

1. When the European Council or the Council take decisions by qualified majority, such a majority shall consist of the majority of Member States, representing at least three fifths of the population of the Union.

1 Commission President Prodi f.e. criticised the presidency as 'ineffective political tourism'. See 'Prodi attacks EU' s Rotating Presidency' , *BBC News*, 9 January, 2001. According to de Boissieu, Deputy Secretary General of the Council, it is at the basis of inefficiency and ever changing priorities. See 'Top official attacks the way governments conduct EU business', *European Voice*, 6-12 April 2001.

2 Based on Maurer, 2003 a., p. 13

3 CONV 770/03, Draft Constitution, Part One, Title IV (Institutions) – revised text, The Secretariat of the European Convention, Brussels, 2 June 2003; at: http://register.consilium.eu.int/pdf/en/03/cv00/cv00770en03.pdf

4 CONV 797/1/03, REV 1, from 12 June 2003, the Secretariat of the European Convention, Brussels

5 CONV 770/03, 2 June 2003, p. 9

2. Within the European Council, its President and the President of the Commission do not vote. "

The Convention's proposal from 12 June 2003[6] introduced 3 new points (point 2-4), thus refining the definition:

Article I-24 : Qualified majority

"1. When the European Council or the Council takes decisions by qualified majority, such a majority shall consist of the majority of Member States, representing at least three fifths of the population of the Union.

2. When the Constitution does not require the European Council or the Council of Ministers to act on the basis of a proposal of the Commission, or when the European Council or the Council of Ministers does not act on the initiative of the Foreign Minister, the required qualified majority shall consist of two-thirds of the Member States, representing at least three fifths of the population.[7]

4. Where the Constitution provides in Part III for laws and framework laws to be adopted by the Council according to a special legislative procedure, the European Council can adopt, on its own initiative and by unanimity, after a period of consideration of six months, a decision allowing for the adoption of such laws or framework laws according to the ordinary legislative procedure. The European Council shall act after consulting the European Parliament and informing the National Parliaments.

Where the Constitution provides in Part III for the Council to act unanimously in a given area, the European Council can adopt, on its own initiative and by unanimity, a decision allowing the Council to act by qualified majority in that area. Any initiative taken by the European Council under this article shall be sent to National Parliaments no less than four months before any decision is taken on it.

5. Within the European Council, its President and the President of the Commission do not vote."

When examining the four parts of the Constitution submitted by the Convention the following provisions for QMV/unanimity become apparent[9]:

1. In total there are 68 areas where the Constitution foresees that the Council and European Council take decisions by unanimity. In 32 of these cases the European Parliament will not be involved, in 24 areas it will be consulted, and in 9 cases the so-called "assent" procedure will be applied.

2. In total there are 173 areas where the Council and the European Council are to take decisions by qualified majority. In 51 of these cases the European Parliament will not be involved, in 19 areas it will be consulted; in 78 areas the Co-decision procedure will be applied; in 10 cases the assent procedure will be applied; and in 6 cases the Council s to approve the decisions of the EP.

3. In 80 areas the EP will exercise its legislative powers together with the Council (Co-decision).

4. The "consultation" procedure will be applied in 46 cases; the assent of the EP will be needed in 21 areas.

5. There will be 90 areas where the Council will be enabled to take decisions without involving the EP in any form.

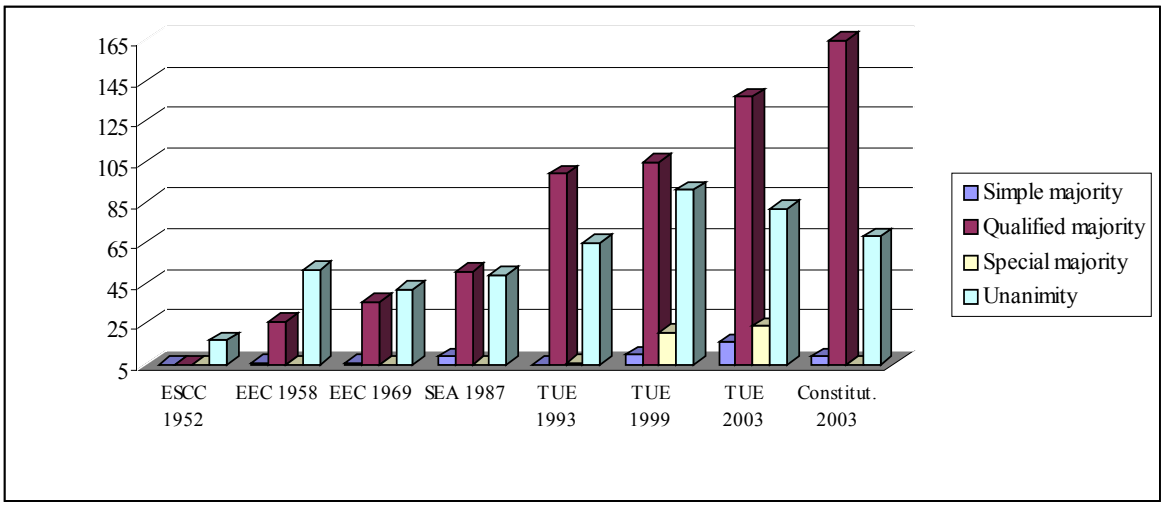
6 CONV 797/1/03, from 12 June 2003, p. 20 and 21

7 3. The provisions of paragraphs 1 and 2 will take effect on 1 November 2009, after the European Parliament elections have taken place. according to the provisions of article I-19.

8 CONV 797/1/03

9 From Maurer, 2003 b., p. 1 and 2

Figure 1 – Evolution of the modes of decision-making in the Council of the EU



Source: Maurer, 2003 b., p. 2

Thus, an overall conclusion could be made insofar that the scope of QMV will be significantly extended (it will be applied almost 3 times as much as unanimity) and will be **the** prevalent mode of decision-making in the Council (see Fig.1). As this measure is to provide for greater flexibility it is to increase the efficiency of the decision-making procedures in the Council.

Nevertheless, from a more general political point of view, the extension of QMV contributes to rendering the Council less legitimate. Blom (2003 b., p. 6) argues that since the Dutch electorate (to give just one example) never voted for the Dutch Ministers to represent their interests in the Council, this institution is not fully legitimate. Furthermore, the system of QMV is one step in the direction of aggravating the "democratic deficit": the Dutch Minister may be outvoted in the Council, and the other Ministers delegated by the other Member States could be seen as even less legitimate in the eyes of the population of the Netherlands. Moreover, QMV is sometimes used by the national governments as the convenient way to "blame it all on Europe". Once (formally) outvoted in Brussels, the government officials may "sell" unpopular policy decisions as "European" back home (Bandilla, 2003, p. 17). Hence, the extension of QMV in the Council could be seen as a trade-off between efficiency and legitimacy.

It is important to note at this point, however, that the final draft constitution stipulates, as mentioned above, that QMV is explicitly to be linked to representing the majority of the EU citizens (i.e. three fifths of the population of the Union).

The criticism of "aggravating the democratic deficit" acquires even greater weight when the involvement of the EP (the only directly elected institution of the EU) is examined. Despite the overall domination of the Co-decision procedure, there will be 90 areas of decision-making where the EP will not be involved in any manner.

A.1.2. Council formations

The issue of the increasing number of Council formations and the need to establish better means of co-ordination was addressed by the Convention proposal of 2nd June 2003 (CONV 770/03, p. 8) in the following form:

"Article I-23 : Council formations

*1. The General Affairs Council shall ensure **consistency** in the work of the Council of Ministers. With the participation of the Commission, it shall prepare meetings of the European Council.*

*2. The **Legislative Council** shall consider and, **jointly** with the European **Parliament**, enact European laws and European framework laws, in accordance with the provisions of the Constitution. Each Member State's representation on the Legislative Council shall be ensured by a ministerial representative and one or two representatives at the same level with relevant expertise, reflecting the business on the Council agenda.*

*3. The **Foreign Affairs Council shall, on the basis of strategic guidelines** laid down by the European Council, flesh out the Union's external policies, and ensure that its actions are consistent. It shall be chaired by the **Union's Foreign Minister**.*

4. The Council shall also meet in the configuration of an Economic and Financial Affairs Council, and a Council on Justice and Security.

5. The Council, in its General Affairs formation, may decide on further formations."[10]

The important novelty of this proposal is that a distinction is made between the legislative role of the Council of Ministers – acting in co-decision with the Parliament – and its executive-operational responsibilities. Moreover, the division between the Council formations of Foreign Affairs and the General Affairs Council could be seen as a major improvement (Greco, 2003, p. 14). The tendency for separation between the Councils with competences in the field of co-ordination and foreign affairs, which was "hanging in the air after Seville", finally was laid down and clearly spelled as a proposal. Furthermore, the number of Council formations is explicitly aiming not to exceed:

- one coordinational / operative Council format – General Affairs Council (GAC);
- three "executive" Council formats: CFSP, JHA, ECOFIN;
- one legislative format – the Legislative Council.

Naturally, a door for flexibility is left open by allowing decisions on other formats in the future (the decision will be taken by the GAC).

The introduction of such a clear-cut distinction between the legislative and executive functions of the Council corresponds to a German claim and tries to address the aim of making the operation of the EU more transparent (Maurer, 2003 a., p. 17). The principle behind this proposal could be subsumed under the federal visions of the future construction of the Union, and could be regarded as a first step and precondition for the evolution of the Legislative Council into a EU Second Chamber. Alongside with its long-term goal, the proposal may have very practical implications. Ideally, it will lead to the creation of a "European minister" within the national administrative systems of the Member States, who would be a kind of overarching authority to ensure co-ordination and consistency between the different policy issues (Maurer, 2003a, p. 8). Such a measure may bring about improved national co-ordination between the sectoral ministries (the lack of which is a persistent problem in many Member States).

Nevertheless, the Convention seems to have boasted divergent views on the above proposal, because in its final text from 12th June 2003[11], the provision has been amended in ist entirety (specifically with regard to the division between the Legislative Council and GAC):

"Article I-23: Council formations

1. The General Affairs and Legislative Council shall ensure consistency in the work of the Council of Ministers.

10 Emphasis added by the authors.
11 CONV 797/1/03, from 12 June 2003, p. 19

When it acts in its General Affairs function, it shall, in liaison with the Commission, prepare and ensure follow-up to, meetings of the European Council.

When it acts in its legislative function, the Council shall consider and, jointly with the European Parliament, enact European laws and European framework laws, in accordance with the provisions of the Constitution. In this function, each Member State's representation shall include one or two representatives at ministerial level with relevant expertise, reflecting the business on the Council agenda.

2. The Foreign Affairs Council shall, on the basis of strategic guidelines laid down by the European Council, flesh out the Union's external policies, and ensure that its actions are consistent. It shall be chaired by the Union's Foreign Minister.

3. The European Council shall decide on further formations."

The new proposal not only abolishes the division between the Legislative Council and the GAC, but furthermore defines only one executive Council formation – that of the Foreign Affairs Council, leaving the decision for further formations to the European Council and not as proposed previously to the GAC. This decision is thus not left anymore to the Ministers but "brought up one level"; the Heads of State and Government.

Analysing the final proposal from 12th June 2003, a conclusion could be drawn that the final decision upon the Council formations is left for the IGC.

A.1.3. A Permanent Chair for the European Council

One of the proposals that has dominated the debate in the Convention is that of a full-time and elected president of the European Council. According to Vanhoonacker and Schout (2003, p.2) the creation of this figure could have important implications for the institutional balance between the Council and the Commission. This proposal addresses one of the dimensions of the future shape of the Presidency, namely that of chairmanship at the highest level of the heads of state and government (Vanhoonacker and Schout, 2003, p. 16).

The provision of June 2nd, 2003 reads as follows[13]:

*"1. The European Council shall elect its President, **by qualified majority**, for a term of two and a half years, renewable once. In cases of serious malpractice, the European Council can end his mandate according to the same procedure.*

*2. The President of the European Council shall chair it and drive forward its work, ensuring proper preparation and continuity. He shall endeavour to facilitate cohesion and consensus within the European Council. He shall present a **report** to the European **Parliament** after **each** of its meetings.*

The President of the European Council shall in that capacity ensure, at his level, the external representation of the Union, without prejudice to the responsibilities of the President of the Commission and the Minister for Foreign Affairs.

3. The European Council may decide to create a board consisting of three of its members chosen according to a system of equitable rotation.

4. The President of the European Council may not be a member of another European institution or hold a national mandate."

12 In the previous proposal (from 2 June 2003) the decision upon other Council formations was in the sphere of competence of GAC.

13 Article I-21: The European Council Chair

The final draft of the Constitution of 12 June 2003[14], introduces a stipulation referring to the relationship between the Chair and the President of the Commission:

"1. The European Council shall elect its President, by qualified majority, for a term of two and a half years, renewable once. In cases of serious malpractice, the European Council can end his mandate according to the same procedure.

2. The President of the European Council shall chair it and drive forward its work. In cooperation with the President of the Commission, and on the basis of the work of the General Affairs Council, he shall ensure proper preparation and continuity. He shall endeavour to facilitate cohesion and consensus within the European Council. He shall present a report to the European Parliament after each of its meetings.

The President of the European Council shall in that capacity ensure, at his level, the external representation of the Union on issues concerning its Common Foreign and Security Policy, without prejudice to the responsibilities of the Minister for Foreign Affairs.

3. The President of the European Council may not hold a national mandate."

The figure of an elected chair of the European Council, seems to be one of the institutional innovations, which was (is to be) accepted[15] both by the Convention and the IGC that will follow. Nevertheless, according to Vanhoonacker and Schout it has been one of the central themes to polarise the debate in the Convention between "camps" of intergovernmentalists and supranationalists. Those in favour of strengthening the supranational institutions in the EU fear that a so-called dual presidency will lead to fierce competition between the Commission and the European Council and that it will lead to a further weakening of the former (Vanhoonacker and Schout, 2003, p. 17). This new institutional provision, as could be argued by those advocating a supranationalist approach, is not a step in direction of enhancing the democratic legitimacy of the European construction, especially given the fact that as the proposal stands currently this permanent chair is not going to be accountable to the EP. Hence, this could be interpreted as a step in the direction of strengthening the intergovernmental character of the EU (Vanhoonacker, 2003, p. 11).

On the other hand one could also argue that the President of the European Council will not representing a state anymore, but a PERSON (Bandilla, 2003, p. 11). Hence, after 6 months in office he will be part of the process of "Europeanisation", as was illustrated by a majority of the European functionaries sent by the Member States so far (COREPER for example). Hence, it is not at all a given that the European Council President would strengthen the intergovernmentalist approach.

Overall, the proposal of a permanent chair of the European Council may bring about the following advantages/ disadvantages[16] for the institutional architecture and functioning of the EU:

Advantages

- The European Council is in the first place a political body. Because of poor preparation and an overburdened agenda, it has been performing its role as political leader rather poorly. A strong personality might positively affect the leadership role of the European Council. The same person

14 CONV 797/1/03, p. 18

15 *Motivated by the desire to have more continuity as well as to give a face to the EU at the highest level, the British and Spanish prime ministers Blair and Aznar first launched the proposal. Giscard d'Estaing, included the idea of an elected president of the European Council in the draft constitution of October 2002. The proposal was also supported by the French President Chirac and it became one of the corner stones of the Franco-German proposal to the Convention in January 2003. The initially reluctant German chancellor Schröder accepted that the heads of state and government would elect amongst their peers a full-time president of the European Council. Also some of the smaller member states such as Denmark and Sweden have been arguing in favour of the formula of an elected European Council president* (Vanhoonacker and Schout, 2003, p.16).

16 Based on Vanhoonacker and Schout, 2003, p. 17

would chair the meetings for 2,5 to possibly 5 years providing continuity and increasing the chances to steer the Union in a particular direction.
- A long term elected Presidency, both in European Council and Council of Ministers, could assure for the adherence to a true multi-annual legislative cycle for the Union. This, in its turn would make a real difference in terms of a "single face" (to be associated with the EU) and increased legitimacy and efficiency in the EU (Bandilla, 2003, p. 12).

Disadvantages

- The nomination of a full-time President risks to further reinforce the trend to turn away the European Council from its original objectives of a body for strategic guidance and make it the ultimate arbitrator whenever decisions at Council level are politically sensitive or difficult.
- Unless the presidents of the European Council and the Commission join forces and succeed to pull in the same direction, the system of a dual presidency risks to increase rivalry between both institutions, creating a kind of "Solana-Patten" competition.

The last criticism raises specific concern. The prospect of threatened institutional balance between the Commission and Council is also examined by Maurer (2003). The inherent risk of institutional conflict is seen to lie in the adherence of the approach of bicephalism. Maurer finds it conceivable that both Presidents [of the Commission and the European Council] will be embroiled in a constant conflict of **who** will exert influence, especially at the outset when one will have to define the roles of the two actors in practice. The institutions which aim at representing the European executive's centre of gravity will raise the question of who actually exercises political leadership in the EU? After the setting up of a President of the European Council and the strengthening of its weight in the institutional system of the EU, a development of the EU into a purely federal direction, with the Commission taking up the executive and governmental duty, seems not conceivable at this stage. The proposal has, however, the advantage of clarity vis-à-vis the EU elites by institutionalising the constitutive tension of the European Union between two sources of its legitimacy: the European states and the citizens. Moreover, the Bicephalism brings the formula of the "Federation of nation states" back into the political discourse (Maurer, 2003 a., p. 16).

A.1.4. The Presidency of the Council

The setting up of a permanent President may improve consistency, continuity and the visibility of the work of the European Council. But this is only one of the aspects of the broader discussion of the Presidency of the European Union (Maurer, 2003 a., p. 16). The second issue to be solved by the Convention and the IGC is the reform of the Presidency of the Council of Ministers. The discussion on the reform of the Council's Presidency in the Convention very much debates the possibility of abolishing the system of rotation (currently the Presidency is assumed by a different Member State every six months). The deliberations are centred along sensitive issues such as whether the new Member States will be able to assume the role of Council Chair. Alongside with the option to adhere to the current system alternatives as: "team Presidency", "institutional Presidency", or modifications, such as "Sevilla Plus" are being ventilated (Vanhoonacker, 2003, p. 7).

The Convention formulated its proposal regarding the reform of the Presidency on the 2 June 2003 as follows:

6. "The European Council may decide by consensus that the Presidency of a Council formation, other than that of Foreign Affairs, should be undertaken by a Member State for a period of at least a year, taking into account European political and geographical balance and the diversity of all Member States."[17]

17 Article I-23 : Council formations, CONV 770/03, p. 8

The proposal[18] of 12th June 2003 introduces the notion of "equal rotation":

4. "The Presidency of a Council formation, other than that of Foreign Affairs, shall be held by Member State representatives within the Council on the basis of equal rotation, for periods of at least a year. The European Council shall establish the rules of such rotation, taking into account European political and geographical balance and the diversity of Member States."[19]

Both texts reflect the proposal of a Team Presidency, which enjoyed broad support in the Convention as a "beautiful compromise", but no one seems to take the enormous problems that it may bring about into account (Vanhoonacker, 2003, p. 7). Generally, the debate focuses on the institutional dimension (see Blom, p.3) i.e. the balance of power between the institutions. According to Vanhoonacker and Schout (2003) the daily work and the actual functions performed by the Presidency is thus far neglected in the (political) debate. Vanhoonacker and Schout find it striking that the debates in the Convention and the European Council took place without the availability of an in-depth study of the revealing the strengths and weaknesses of the current system. Especially in the Convention delegations seemed to launch very general proposals without reflecting on the implications for the day-to-day functioning of the Union (Vanhoonacker and Schout, 2003, p. 2). Nevertheless, before drafting proposals for reform, and weighting the pros- and cons of each alternative, it is important to examine the actual tasks performed by the Presidency (Vanhoonacker, 2003, p. 7)[20].

Table 1 – Functions (roles) of the Presidency of the EU

	Organiser (task oriented)	Broker (group oriented)	Political leadership (transformational)	National Dimension
Tasks	• Organising meetings; • planning; preparing rooms and documents; • drafting agendas; • chairing	• Serving the group process; • Creating a good atmosphere; • identifying bargains; • formulating compromises	• Put discussion in long term perspective on EU challenges; • convince delegations to give up short terms interests; • steer debate in direction "good for Europe"	• Include national preferences/ • Positioning in negotiations

Source: Vanhoonacker and Schout, 2003

As one of the primary functions, Vanhoonacker and Schout identify the role of organiser, in which the Presidency is assisted by the General Secretariat of the Council.

Apart from the Presidency other actors that perform the role of a "broker" are some delegations of the Member States, the Commission (since the Commission is the initiator and the "defender" of the legislative proposal, the idea of brokering, and, as some voices propose, even chairing the Council meetings is probably not the most effective option).

The Presidency is to push the "European" approach, rather than advocate the national interests of its respective Member State. Nevertheless, the practice has shown that the Presidency is the channel to include the national preferences within the arena of intergovernmental negotiations (if by nothing else, at least by setting the agenda). Thus, there is a definite national dimension in the role of the Presidency. But, it is arguable, that namely this possibility to chair (and thus steer) the EU for six

18 CONV 797/1/03, p. 19
19 Article I-23 : Council formations.
20 Vanhoonacker examines the role of the Presidency in the first pillar of the EU.

months enhances the legitimacy of the national government back home in the field of the European public affairs, which otherwise receive a quite limited echo within the national arena (Vanhoonacker and Schout, 2003).

The strengths and the weaknesses of the current system are listed below:

Table 2 – Strengths and weaknesses of rotating Presidency of the Council

	Strengths	Weaknesses
Organiser	Pedagogic dimension	Increasing workload
Broker	• Every 6 months new impulses • Pedagogic dimension • Networking dimension • Makes a country more understanding for role chair	• Lack of continuity • Pushing through of immature dossiers
Political Leader	Countries give Europe shape in different ways	• Broker • National hobbyhorses
National dimension	• Brings Europe closer to its citizens; • Stimulates the domestic debate on the EU • Gives a national "colouring" to the EU • Stimulus to get "one's house in order" • Symbol of equality	Exploitation of position in chair to push national interest or hobby horses (ex. Ex-colonies, etc.)

Source: Vanhoonacker, 2003, p. 8

Part of the criticism voiced as regards to the current system of the rotating Presidency is that particular Member States did not "perform" well enough, and not to the fallacy of the system itself (Vanhoonacker, 2003, p.7) For example, a Presidency of 6 months should (if it aims to perform well) begin preparations at least 2 years in advance. Failing to adequately fulfil the stage of preparation most often leads to failing to perform well as a Presidency. Furthermore, there is a need of close co-ordination internally within the national administration. This often fails to be done, and the most common manifestation is a failure to perform the role of political leadership, due to lack of instruction from the respective Member State.

Three remarks with regard to the criticism of the lack of continuity under the current system can be made:

- The legislative initiative comes from the Commission, which is in office for five years, hence there is a proper multi-annual legislative cycle.
- The element of continuity is reinforced by the Secretariat of the Council, which is also permanent.
- Given that Presidencies have to begin preparations 2 years in advance, the Presidency actually takes much more than just 6 months (Vanhoonacker, 2003, p. 7-9).

An important advantage of the current system is, of course, the equality that it promotes between the different member states. That is why smaller Member States such as the BENELUX countries or Austria are against the popular proposal of Team Presidency, which will inevitably produce a split between the smaller and the bigger states (Maurer, 2003 a., p. 16).

Hence, according to Vanhoonacker (2003) the current system alongside with some disadvantages has definite advantages and these should be taken into account and if possibly preserved by the new reform model that is to be implemented (Vanhoonacker, 2003, p. 8)

Thus, the debate on the reform poses two important questions:

- Which are the alternative models?
- Would an alternative improve the situation i.e. would the "cure really be better than the disease"?

Vanhoonacker and Schout (2003, p. 12-16) identify the following alternatives:

1) **Further strengthening the co-operation between the rotating Presidencies ("Sevilla plus" model)**

In an attempt to address the increasing criticism on the lack of continuity amongst Presidencies, the European Council of Sevilla introduced the adoption of annual and multi-annual programmes elaborated by groups of respectively two and six presidencies. The proposal focuses on improving the co-operation between the Presidencies i.e. these who are about to take over the Presidency to work closely on a common agenda. This proposal would preserve the benefits of the current system and in the same time address the problem of continuity.

Co-operation amongst presidencies is attractive from the point of view of continuity and workload, however it is not the *deus ex machina* that will solve all problems. One can wonder whether an enhanced co-operation amongst succeeding presidencies goes far enough to be an adequate response to the many criticisms on role of chair. So far the results of Sevilla seem rather meagre. This has more to do with the minimalist interpretation by the Member States rather than with the proposals itself. In order for the co-operation between Member States to make a difference, the countries involved will have to invest time and resources to make it work. It might be necessary to set up structures for co-ordination. Being an element of continuity, the General Secretariat might play a role in it.

2) **Team Presidencies**

In a system of team presidencies, a group of countries simultaneously holds the chair for a specific period and shares the workload (i.e. the different Councils) amongst each other according to a pre-established fixed scheme. A strong advocate of such approach would be the United Kingdom. The British Foreign Secretary Straw proposes to limit the number of Council formations to 10 and to have a different national chairperson chairing each of the various specialist Councils. The period in office could be extended to 2,5 years and co-ordination would take place within the framework of a steering group. While the team presidency proposed by Straw would consist of ten countries, the "Solana report" refers to blocks of 5 to 6 member states to perform the presidency collectively and simultaneously.

Several variants of the system are possible: a renewal of the entire team at the end of the mandate or a "rolling team" whereby new members would come in at regular intervals. Some propose to combine this approach with the maintenance of the principle of rotation for certain central co-ordinating bodies such as the General Affairs component of the GAERC (General Affairs and External Relations Council) and COREPER. There are also several possible criteria as regards to the composition of the teams. While some plead for a combination of small and larger Member States and countries from different geographical areas, others think in terms of groups who have already a tradition of co-operation such as the Nordic countries or the Benelux States. On one point all proposals however agree: representation has to be based on respecting the principle of equality amongst the Member States.

Being a drastic proposal for reform, the team presidency will have important implications for the fulfilment of the different functions performed by the chair. Working in a group of countries may represent certain advantages from the point of view of continuity and workload; however, from perspective of ensuring co-ordination it will constitute a tremendous challenge. Nevertheless, this is

the proposal that seemed to enjoy greatest support in the Convention, and is most likely to be adopted by the IGC. That is why it is important to take a closer look at its main advantages and disadvantages:

Main advantages

- The team presidency divides the increasingly heavy workload over different countries. Besides the ministries of foreign affairs who will be key because of their co-ordinating role, it will be primarily the ministries who will provide the chairperson for one of the specialist Councils that will be involved. As they will chair over a longer period, the burden for those involved will however increase substantially.

- As members of the team presidency, the new Member States would be not have to carry the full burden of being in the chair. They could profit from the experience and help of the other members of the team. Thus, the big advantage of this system is that it reconciles the dilemma between more continuity, and yet equal participation at the lead of the Union. Thus, the new Member States would be able to fulfil the role of Presidency.

- A longer period at the helm gives member states more time to work on long-term objectives and to steer a particular policy area in a certain direction. This supposes that a country has a vision and knows "where it wants to go". It also presumes that the Presidency wants to invest sufficient human resources in preparation and managing the process. Unfortunately this is not always the case. When having a 'bad' presidency, contenting itself with the lowest common denominator, two and a half years is a long time.

- A team presidency respects the principle of equal rotation. The advantage of the presidency as an instrument to contribute to the legitimacy of the EU is preserved.

Weaknesses

- The division of tasks amongst the members of the team is likely to lead to harsh fights for the most prestigious policy areas and raise such question as: Will the presidency of the External Relations component of the GAERC automatically go to a big country? Will Scandinavian countries demand to chair environmental dossiers? The Belgian presidency (second half of 2001) can to some extent already be considered as a group presidency *avant la lettre*. The Regions and Communities who were in charge of chairing the Council formations for which they have exclusive competencies first had to divide amongst each other the various Council formations for which they were responsible.[21] This led to very difficult negotiations, leading to delays in the preparations. Such clashes are also to be expected in the case of group presidencies and arbitration can be expected to be much more difficult than within one country.

- In principle, being part of a team presidency will be less work than under the current system. At the same time, one should not underestimate the risk for double work, internal skirmishes and delays. It is highly probable that a country will not limit itself to the policy domain for which it is responsible but that it will also try to exert control upon what is happening in other areas – as was the case under the Belgian presidency for example. Rather than distributing the work, there might be a tendency to co-author presidency position and monitor negotiations in the various formations of the Council.

- A group presidency will be prone to serious co-ordination problems. When only one country is at the helm, co-ordination is already problematic. But there is at least the Prime Minister or Cabinet office who can take decisions in case of disagreements. With a group of five countries with

21 See Steensels, C., 2001, 'Vlaamse inbreng tijdens Belgisch voorzitterschap van de EU' , *Internationale Spectator*, vol. 55, nr. 6, June, pp. 313-318.

different political interests, languages, political and administrative cultures, such co-ordination will become even more of a challenge. A further question is who would be responsible for the process of co-ordination. Straw proposes the creation of a steering committee composed by representatives of the Member States making up the team presidency. This will be indispensable but at this moment many questions remain as to the chairmanship of this committee, its decision-making procedures, and its relationship with the General Affairs Council and the European Commission.

- The team presidency also raises questions with regard to the role of COREPER. At this moment the chairs of the working group, COREPER and the Council all have the same nationality and report to the same capital. Within a team presidency, the chair of the working groups and the specialist Councils will for a big number of dossiers be of a different nationality than that of COREPER. This problem is not dramatic but it will require more co-ordination and could lead to communication problems. Having to work with up to 4 or 5 different nationalities will further add to the already extremely heavy workload of the chair of COREPER. A further effect might be that member states, especially the country chairing the Council tries to postpone solutions that could be reached in COREPER to the Council level.

- The involvement of various countries also raises the question of overall leadership and supervision. At this moment the definition of priorities is primarily a matter of the Presidency in co-operation with the European Commission. The European Council of Sevilla has introduced a yearly programme (two presidencies) and a multi-annual programmes of 2,5 years. A team presidency has the potential to further strengthen longer-term approaches to presidency objectives. The chances for such approach to be successful will to a large extent depend on the capacity of the steering group to agree on certain political principles and to respect these agreements.

Although the team presidency may be attractive from the point of view of workload and continuity, it has a number of pitfalls particularly when it comes to the questions of co-ordination (given that each MS has a specific administrative legacy, language, system of national co-ordination, etc.) Much more detailed proposals have to be worked out as to how such a Presidency would work in practice. A simultaneous chairmanship of different countries will add to the complexity and unless the necessary structures are developed to keep the different players together, the team presidency might create more problems than it solves.

Table 3 – Main advantages and disadvantages of "Sevilla +" and Team Presidencies as alternatives to the current rotation system in the Council of Ministers

	Advantages	**Disadvantages**
Sevilla +	• Shared workload (incl. New Member States) • More continuity • Preserves advantages current system	• who takes lead • need for more co-ordination
Team Presidencies	• More continuity • Reduced workload (?) • Advantages for new Member States • Increased Legitimacy	• How to divide tasks • Co-ordination nightmare • Stuck with bad chair for 2,5 years • Overall leadership?

3) "Institutional" Presidency

This proposal accommodates the idea of a "merger" between the co-ordinating bodies, COREPER and the Council's Secretariat. This approach could be combined with a continuation of the rotating presidency for the specialist Councils or with a system of chairs elected by their peers both at the

Council as well as at working group level. Such a combination aspires to be an improvement vis-à-vis the current system in two respects: it tries to strengthen the co-ordination capacities of the Council; secondly, it aims to bring more continuity in the system. Again the questions arises as to the implications of such system for the various functions of the Presidency.

Advantages/Disadvantages

- Although a longer-term chair of the General Affairs component of the GAERC (General Affairs and External Relations Council) could be an asset for the continuity of its work and even if elected chairs of the specialist Councils might lead to more expertise and proficiency, it is very much the question whether these advantages weigh up against the many flaws;

- It is an illusion to assume that a change in chairmanship will solve the many problems related to the General Affairs Council. The weakness of this co-ordinating body is in the first place the result of the lack of commitment of its members who tend to be more interested in external relations than in co-ordinating EU policies. Secondly, the co-ordination problems in the General Affairs component of the GAERC, are linked to the European co-ordination problems at national level. Ministries of foreign affairs are often too weak to fulfil their co-ordinating role at the national level. The appointment of an institutional president will not solve this predicament.

- COREPER and its chair fulfil a crucial role in the European decision making process. It not only prepares Council decisions, it also often reaches agreements which are then rubberstamped by the ministers. Being a body that makes political choices, the ambassadors or deputy ambassadors get their instructions from their respective ministers. It is questionable whether such a political function should be entrusted to a high level official of the General Secretariat. Already at this moment COREPER is being accused of contributing to the aggravation of the democratic deficit;

- Already at present there is a tendency to blame 'Brussels' for anything that goes wrong at the national level. There is a lot less reasoning for this argument as long as agreements are brokered by national politicians and the preparations are in the hands of the Member States. Chairmanship by 'bureaucrats from Brussels' would negatively affect the feeling of shared responsibility for EU decisions. It would also reduce the empathy for the chair. The prospect of being in the chair coerces delegations to adopt a more constructive attitude towards the presidency.

- If the role of the Secretary General and Deputy Secretary General is considerably increased the question of accountability arises: Should they also become answerable to the European Parliament? What happens in case of malfunctioning?

- Given that chairs of the specialised Councils and working groups would be elected, this would imply that the number of different nationalities involved in chairmanship would increase tremendously. This would represent an enormous challenge from the point of view of co-ordination. In the current system the national co-ordination system of the country at the helm fulfils an important function. With elected chairs, co-ordination at the European level would have to be strengthened considerably. It is the question whether the appointment of institutional chairs in the GAERC and COREPER can compensate for this.

- With chairs elected for a longer period, the pressure to conclude deals on dossiers that are not yet "ripe" will decrease. At the same time there might be a greater tendency to spread out problems over time. At present a chair who is not performing well demises after half a year. An ineffective longer-term chair could, however, obstruct decision-making for quite some time.

- The socialisation of national officials and politicians will be much less significant. The experience of being the chair and the responsibility for ensuring co-operation in the EU will be limited to a smaller group.

- In a more heterogeneous setting, the danger exists that elections of chairmen will look somewhat like the Eurovision Song contest: countries vote for their neighbours and members who share the same values and problems. It may be that in homogenous groups the peers are more oriented towards those who reflect best the common values that are deemed as being essential by the group. More diversified groups may lean towards polarisation.

When analysing the three main proposals on the table (Sevilla Plus, Team Presidencies, Institutional Presidency) from the point of view of carrying out the function of Presidency it becomes apparent that none of the proposed options excels. They all boast a number of advantages, especially when it comes to increasing continuity, but they also reflect serious weaknesses. They pose problems as regards to questions of co-ordination and legitimacy for example, or threaten the institutional balance between Commission and Council. In addition, the analysis of the current system has exposed an important number of advantages as regards the rotating Presidency of the Union. It is therefore worthwhile to further explore whether changes in the current system are a viable option for the future (Vanhoonacker and Schout, 2003, p. 12-16).

What seems to be a reasonable, practical solution addressing all the issues (advantages and disadvantages of the rotating system) is the proposal of Seville Plus. A reform of the Presidency in line with this proposal would assure greater continuity (two countries would be involved), better preparation by the Member States in the chair and the advantages of legitimate participation and ensuring positive learning effects (Vanhoonacker, 2003, p 11).

A.1.5. A Foreign Minister of the EU and the need for consistency in the external action of the Union

Throughout the 1990s the EU was criticised for exposing weaknesses with respect to the field of external affairs. Most recently, the case of Iraq revealed the fallacies of common decision-making. This has intensified the debate and has steered it towards the issue of building an efficient institutional framework that would assure more of a common response as regards to similar situations in the future.

According to the provisions for Common Foreign and Security Policy (CFSP) in the Treaty Establishing the European Union (TEU) each Member State has the double obligation:
- to apply the common decisions;
- to provide information to the Union about the actions planned on the national level. CFSP is neither an area of shared competence, nor an area of support action.

According to Ettore Greco (2003), the deliberations of the Convention aimed to provide for better enforcement of these obligations of co-ordination and information provision. Since the ECJ is not active in the second pillar, there is a need for an alternative mechanism, which will assure the desired outcomes.

Moreover, Greco identified two main questions that lie at the core of the reforms with respect to the external action of the Union:
- How to assure greater consistency in the external action of the EU?
- What should be the institutional balance that provides for this consistency?

The solution found by the Convention is, in the first place, the figure of a Foreign Minister of the EU (a "merger figure" between the Commissioner for External Relations and the High Representative of CFSP). His role is expected to be that of a co-ordinator and broker, hence increasing the efficiency and the consistency of the Union's external action (Greco, 2003). The proposals put forward by the Convention in this respect provide for the following:

Article I-27 : The Foreign Minister:

*"1. The **European Council**, deciding by qualified majority, with the agreement of the President of the Commission, shall appoint the **Union's Foreign Minister**. He shall conduct the Union's common foreign and security policy. The European Council may end his tenure by the same procedure.*

*2. The Foreign Minister shall contribute by his proposals to the development of the **common foreign policy**, which he shall carry out as mandated by the Council. The same shall apply to the common security and defense policy.*

*3. The Foreign Minister shall be one of the **Vice-Presidents of the Commission**. He shall be responsible there for handling external relations and for coordinating other aspects of the Union's external action. In exercising these responsibilities within the Commission, and only for these responsibilities, the Foreign Minister shall be bound by Commission procedures.* "[22]

The second new provision is to be found in the field of the decision-making procedures (Greco, 2003). Unanimity remains the main mode of decision-making, nevertheless, there is an extension of QMV. Combined with the (already existing) possibility of constructive abstention this provides for greater flexibility when taking decisions within CFSP.

Thirdly, the right of initiative has been significantly reformed. The most important novelty is the attribution of right of initiative to the foreign ministers.

Fourthly, the provision for enhanced co-operation (which already exists in the second pillar) in the areas of CFSP is proposed to be subjected to the same conditions as in the first pillar. Nevertheless, it is doubtful whether this new legal possibility will be applied to its full extent. The real novelty is the Convention's proposal for enhanced co-operation in the area of defence: the Member States may bring together common armed forces (a first step in that direction being laid in Amsterdam) until one is organised on the European level.

Furthermore, the right of the Foreign Minster to chair the Foreign Affairs Council is seen as a step in the right direction, yet there is certain risk of work overload for the figure for the Foreign Minister. As the proposal stands currently (s)he will have to:

- act as a representative of the Union in the world;
- assure the co-ordination and the consistency between the different elements of the Union's external actions;
- chair the Foreign Affairs Council;
- inform the EP about the decisions met in the CFSP;
- co-ordinate the enhanced co-operation (if any);
- inform the EP and the Council of the developments in the enhanced co-operation;
- formulate policy actions in crisis situations.

A question arises as regards to how a single person could perform all these functions efficiently. A further issue is that of the institutional balance – apart from the significant powers in the field of CFSP, the Foreign Minister will be a Vice-President of the Commission. Clearly, he will be a very influential figure, and yet (at least on paper) be subordinate to the President of the Commission in some of its areas of competence. The co-operation between the two will be crucial for the successful execution of the tasks, but the potential tensions are inherent in the current design of the division and allocation of powers[23] (Greco, 2003, p. 13-15).

22 CONV 770/03, p. 13 and CONV 797/1/03, p. 23-24. Emphasis added.

23 Maurer (2003 a., p. 18) outlines several areas of potential bureaucratic tensions between the Foreign Minister and: the President of the Commission; the President of the European Council; the members of the Commission with responsibilities in external business (trade, development co-operation, external facets of the internal policies); the Foreign Ministers of the MSs; the Secretary General of the Council.

Moreover, the question comes up, whether in the (very) long run, the external action of the Union will pertain to the field of the Council or of the Commission (Maurer, 2003 a., p. 18). Furthermore, the legitimacy of the Foreign Minister is not clear: (s)he will be appointed by the European Council by a qualified majority in agreement with the President of the Commission, but the provisions are mute, on the other hand, as regards to the approval by the EP and his/her responsibility as a Commissioner (Maurer, 2003 a., p. 18).

The choice of **who** would perform this function would be a very important factor of success. Other factors, would be the efficient use of the right of initiative, the ability to co-ordinate and to fulfil the role of broker between the different parties and the skill to find a common ground between diverging views (Greco, 2003, p. 15). A further factor for success would be that the Foreign Minister would be the chair of the Foreign Affairs Council (Bandilla, 2003, p.16). Previously the Chair/Presidency and Solana were undertaking the same missions (e.g. within the Balkans) hence contributing to lack of consistency and overlap. Now the Foreign Minister is designed to incorporate both, hence there should be no potential for conflict (Bandilla, 2003, p.16).

Despite the questions that arise as regards to the practical implementation of the provisions, the figure of the Foreign Minister is considered as an attempt to streamline the decision-making procedures within the Council and is thus expected to bring about substantial changes in of direction efficiency[24] and consistency in the formation of the Union's CFSP (Greco, 2003, p. 15). Moreover, the proposal enjoys broad support in the Convention (the same is expected in the IGC).

A.1.6. More legitimacy and transparency – the need for thinking configurationally

The reform proposals examined so far exclusively propose remedies for some isolated elements of the Council and the European Council. Each theoretical school/ author focuses only on parts of the Council's system. Thus, different theoretical conceptions of the Union lead to different perceptions of its actors, and moreover the solutions found refer to a particular context (Maurer, 2003 a., p. 1).

In this context, what seems to be lacking from the debate is configurational thinking (Vanhoonacker, 2003, p. 18): The question of how a decision in one reform area predetermines the choices in the others fields is somewhat neglected. In the new proposals advocated by the Convention, one can find examples for both institutional overlap and overload. As discussed above, for example, the creation of a permanent elected chair of the European Council raises the question of a growing bureaucracy, which may coincide in its operations with that of the Commission and the Council Secretariat. On the other hand as the proposals stand today, the institutional figure of the Foreign Minister will be over-burdened. Reflections on how the whole system will stand the test of internal and external consistency seem to lacking. The approach currently advocated rather searches for the "magical compromise formula" that has greater chances to "pass" the test of an IGC, which naturally leads to unstable and incoherent solutions.

A more holistic approach to the European construction, and respectively to the institutional reform, is adopted by Tannelie Blom (2003, p. 2-5). Blom examines the fundamental dimensions of the process of political reform within the EU especially when it comes to enhancing democratic legitimacy in the revised institutional design.

Blom suggests that the general approaches i.e. the patterns of possible choices to accomplish the institutional reform may be structured along three dimensions (institutional, normative and

24 The Foreign Minister may push for vote, he will definitely improve the co-ordination, under his initiative the consultations prior to the decisions may be very fruitful, this will also assure better enforcement (compliance) later. The crucial novelty in this respect is that the Foreign Minister is responsible in front of the Council for the implementation of the decision (Greco, 2003, p.15).

methodical), each of which suggests a dilemma between two alternative options according to which the reform could be realised.

1. **The institutional dimension** – is linked to the question: How to allocate the competences within the EU as a multilevel system of governance[25]?

Here the dilemma would be, whether to allocate the competences between the national and the European level of governance via the pattern of:

a. Sharing – when both levels would be sharing legislative competences (a model which would resemble the German federal system); or
b. Splitting – when a clear-cut division of legislative competences exists between the two levels (a model applied by the American federal system).

These would be the two extremes of the institutional dilemma. Currently the EU is far from these "pure" forms of allocation of legislative competences.

Features of the EU system:

- the general pattern of competence allocation is "sharing" although examples of splitting do exist (monetary policy, external tariffs);
- intertwinement of legislative and executive functions (one example being the role of the Council in the system of Comitology);
- the central position of the executive bodies;
- a strong inclination to decide by consent, despite the application of QMV in many cases (given the previous characteristics this feature seems to be quite a natural follow-up process).

The dominance of politics by consent is the down-side of what Scharpf (1988) has coined as the 'Politikverflechtungsfalle', the 'joint decision trap' that also haunts the multi-level system of the EU. Inherent to a system of jointly shared competencies within a multi-level polity is the enduring danger of a blockade of the decision-making process, in particular when the political programmes and attitudes of the 'higher' and 'lower' levels are too divergent. The possible remedy is the reinforcement of the principle of subsidiarity; i.e. a clear and strict distribution of political competencies between the lower and higher levels of the European polity as a remedy against an ongoing excavation of the sovereignty of the member states.

Other proponents would emphasise the democratic gains of a partition of well-defined competencies among territorial delimited jurisdictions. The idea being that this approach would bring politics closer to the citizen and augment his or her chances for "self-government", albeit in a restricted number of policy areas.

Despite the obvious advantages, the option of "splitting" generates several powerful arguments against this approach:

- an established, incontestable distribution of policy areas among territorial delimited jurisdictions would run contrary to the necessary flexibility of scope and the (territorial) applicability of political decisions (environmental policy being just one example);
- as this process of de-nationalisation - triggered by the process of globalisation - intensifies, the need of more variability and flexibility will only increase, without any certainty, however, as regards to which problems demand which level of decision-making;
- strengthening the supranational competences may provoke a tendency to strengthen the position of the Member States by restoring their sovereignty in a number of policy domains.

25 Blom departs from the assumption that the EU as a political system is a multi-level system of governance.

2. The Normative dimension – encompasses the question: *Which criteria does the European democratic system have to fulfil in order to make its policy outcomes justifiably binding decisions, which can and ought to be enforced by the Member States (i.e. how to address the problem of the "democratic deficit[26]")?*

There are two main remedies for solving the problem of the democratic deficit: the majoritarian versus functional option:

a. Majoritarian option: to strengthen the only directly elected institution of the EU i.e. accept the European Parliament as the most important source of legitimacy in the EU. This first option would increase the source of "input legitimacy".
b. Functional option: to assure that representatives from various kinds of civil society organisations take part in the decision-making process in the respective policy fields that are of immediate interest. This option could be distilled from the White Book on Governance, presented by the Commission in 2001. The functional approach would increase the phenomenon of output legitimacy.

The system of functional representation shows the following main advantages:

- this alternative provides more adequate solutions than the system of territorial representation because only the interested parties with specialised knowledge of the problem would act within the decision-making process and consensus would be achieved more easily;
- the functional option overcomes the criticisms against the majoritarian approach (ex. the "no-demos" thesis).

The functional approach in its turn is also greatly criticised, in particular for its ambiguous practical implementation (see the neo-corporatism debate).

3. The methodological dimension – poses the question: "*How should the reform be brought about? Which should be the starting point?"*

Again the options are two: policy- driven reform versus constitutional reform.

a. Policy driven reform – takes as a point of departure the interests of the citizen i.e. this is a bottom-up approach, which searches to address the real-life, current problems and by providing valuable, concrete answers to these problems inevitably re-considers and reforms the institutional structure of the polity. This approach is advocated by Joshua van Aartsen - former Foreign Minister of the Netherlands – for example.
b. Constitutional (or 'blueprint') reform - "the attempt to develop a coherent order according to general principles of political organisation and governance" (Olsen, 2001, p.7). This approach would be propagated by Joschka Fischer to give one example.

The second option of a "grand design" has the inherent risk of rigidity i.e. the fallacy of technocratic decisions to provide a perfect simulation of reality, and to foresee future demands/pressures on the political design. To summarise, Blom constructs a three-dimensional matrix, which may serve, as a possible framework of interpretation of the different proposals for reform of the European polity, and subsequently as an means of evaluation for a specific set of reform choices in terms of their coherence and political thrust. Although the three dimensions form a 'loosely coupled structure', there is a certain trans-dimensional coherence. That means that the choice for a specific option (or lemma) within a certain dimension will constrict the set of possible choices in the other dimensions. Hence the need for configurational thinking.

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26 One of the most striking manifestations of the democratic deficit within the European Union is that the elections do not perform the same role as those acting within the framework of the nation-state. A further example could be that decisions in the Council (the main legislative body in the EU) are taken by the indirectly elected governments of the member states.

One might have the impression that this methodical dilemma is already solved in favour of a constitutional approach by the very installation of the Convention on the Future of Europe. This might be a somewhat rushed conclusion, however (Blom, 2003 a.). At the Laeken Summit the Heads of State and Government did not vow – explicitly not – to endorse the outcomes of the Convention. Even more important is the question what kind of outcome will pass as constituting constitutional reform. According to Blom, a mere systematisation and simplification of the 'constitutional arrangement' that is implied by the Treaties and the jurisprudence of the Court does not suffice. For reasons of symbolic politics this might of course be desirable but by all practical standards it does not constitute a major change (Blom, 2003 a.).

Moreover, Blom stipulates that a Constitution is to be a document by which a sovereign people determines how it will be governed. It is that reference to the authentic will of a sovereign people that lends a Constitution its special aura of legitimacy. Its clauses apply as a kind of pre-political law that puts everyday politics in its place. Practically speaking, a European Constitution seems to demand a Europe-wide referendum. Treaties, on the contrary, are not authorised by the people but by governments who already tomorrow may be exchanged for new ones. That is not to say that therefore Treaties are not valid. What is of importance, however, is that given that the outcome of the Convention is a Constitutional Treaty, the EU will have confirmed itself in a fundamental respect. A Constitutional Treaty would confirm the mixture of federal and con-federal principles that are typical for the EU as the competences to allocate competencies would rest with the governments of the Member States (Blom, 2003 a., p. 16-18).

B. Concluding Remarks: Where do we go from here?

A link between the end of the Convention's work and the forthcoming IGC

Remaining in the realm of the general reform approach, Andreas Maurer (2003 a.) attempts to forecast the final proposal of the Convention and the outcome of the IGC that will follow. He argues that the two extreme solutions/ approaches to the institutional design of the EU, illustrated by two standard scenarios: a 'federal' and an 'intergovernmental' one that depict the traditional view and backdrop for the step initiated by the "motor"-countries of the EU – Germany and France (Maurer, 2003 a., p. 18).

Thus, the knowledge of the extremes may help to forecast the possible outcome of the Convention: a more Presidential system which will be compensated by the set up of a truly Legislative Council, which seems to be the case, as it has been shown by the state of art of the Convention. The current proposal on institutional reforms coming from the Convention is seen as largely based on the Franco-German contribution on institutional architecture form 15 January 2003, which according to Maurer is a 'compromise by addition' i.e. is a hybrid political system, half way between the federal model and the traditional confederal solutions (Maurer, 2003 a., p. 1- 21).

This approach described by Mauritius and Quermonne (1999) as "intergovernmental federalism" searches to give to the European political system double – multi-level- legitimacy, inter-state and parliamentary (Maurer, 2003 a., p. 21). As stated earlier in the same context (Blom, 2003 p. 20) a constitutional Treaty would confirm the mixture of federal and con-federal principles that is typical for the EU, as the competence to allocate competencies would rest with the governments of the Member-States.

It seems that this option, located half-way between the traditional positions of France and Germany, is the only visible outcome of the Convention at the moment (due to the "path-dependency" treated by Blom, 2003, p. 18). This would mean that on the forthcoming IGC, both governments [of Germany and France] and those hiding behind would be forced to real concessions, the first [France] giving up the vision that foreign policy remains in the hands of national governments, the second [Germany]

ceasing with the ideal of parliamentary federalism as the alpha and the omega of the EU's construction (Maurer, 2003, p. 22).

Maurer (2003 a) finds that the Franco-German text defines an unstable balance. The paradox is that this unstable balance is probably the corridor of a possible Compromise between the various projects in the Convention. This instability – inherent in the Franco-German proposals – is only the reflection of the European Union and its politico-institutional system, which itself is subject to a permanent search for constitution-building in the absence of clarity regarding its "finalité" (Maurer, 2003 a., p. 22).

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