



# THE EUROPEAN POLICY CENTRE

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## INTEGRATION AND ENLARGEMENT

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## FOREWORD

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I am pleased to introduce the following three papers: "*Towards a Constitution for European Citizens*" written by Giovanni Grevi for the EPC; "*Building a Larger Europe*" written by Jean Nestor for Notre Europe; and "*Beyond Enlargement*" written by Guillaume Durand for EPC and Notre Europe

The papers were first discussed in a closed debate by leading figures invited by EPC and Notre Europe: this debate was chaired by Jacques Delors and Etienne Davignon. The second and third papers were then discussed at a conference chaired by Jean Nestor and myself, addressed by Jacques Delors and concluded by Etienne Davignon. The meetings took place in Brussels on 1-2 October 2003 at the Société Générale de Belgique.

The Convention was seen as an effective method, and one that helps to bring Europe at least a little closer to its citizens. However, a treaty, even if beautifully drafted, will not win their hearts and minds: the key to a successful enlargement and to making the Union a credible internal and external political actor is to bring Europe to the centre of the political debate.

Enlargement involves, not just the expansion of the Union to 25 members, but the creation of a new continent and of a project to drive integration forward. The three objectives assigned to Greater Europe were: a common framework for sustainable development, the creation of an area of shared values and a region of peace and stability. At the same time, however, a Europe of 25 will be radically different from the current one and will require the Member States to rethink what they want and are prepared to do together, as well as to identify those areas where Europe needs to make progress so as to meet the wishes of its people. If this cannot be done with all Member States on board, then it will have to be effected through smaller groups. Differentiation has always been central to European integration. If necessary to meet its principal objectives, an *avant-garde* will have to be created.

***Stanley Crossick is Director & Founding Chairman of the European Policy Centre***

## GENERAL INTRODUCTION

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The Intergovernmental Conference that opened on 4th October 2003 is the next stage in a process that has rapidly evolved from an "in depth discussion" that began at the Nice Summit in December 2000 into a procedure that aims to give the European Union its first Constitution, at the same time as the Union is set to grow from 15 to 25 members as of 1st May 2004. The key step in this process was the European Convention which, between March 2002 and July 2003, established a consensus on a clear and ambitious project, in discussions that renewed the form of European democratic debate by combining the national and European components of the institutions. The Convention was open to representatives of the acceding countries from the outset, enabling them to participate in the drafting of the Constitution and, as such, it marked the first stage in their integration into the European Union.

European opinion primarily expects the Intergovernmental Conference to adhere to the deadline of the end of 2004, so the Constitution can be ratified shortly after the Enlargement Treaty and be used to underpin the European Parliament election campaign. This will only be possible if the IGC respects the balance achieved by the Convention. As such, 2004 will be a year of key political milestones in Europe, with the ratification of the Enlargement Treaty in a number of countries, elections to the European Parliament and the approval of a Constitution for an enlarged European Union. This electoral process will move the European debate out of the corridors of power and into the public arena, with the risks that this implies. In fact, regardless of the issue under consideration - enlargement, European Parliament elections, ratification of the Constitution - opinions will focus on the form of European integration put forward.

To ensure the success of this debate, which we hope will be as open as possible, all the political dimensions of the European project must be placed on the table. Regardless of the merits of the Constitution, it alone will not embody the project put forward to voters, no more than a marriage contract reflects an intention to start a family. We hope that



all the implications of political integration related to the enlarged Europe will be presented to the people of Europe by way of explanation of the aims of the text that will be up for debate. In this respect, it seems essential to:

- Establish the methods adopted by the Convention as being normal constitutional practice. The balance achieved during the Convention in 2003 should evolve in line with European opinion and the status quo brought about by integration.
- Put the plans for European integration into perspective in terms of their place in history: the enlarged Europe that will result from the current enlargement process is not simply an addition of new members, but the creation of a new political union that spans the entire continent.
- Recognise that those who wish so should be able to explore future options for further integration, as has been the case with all progress made in the past. Differentiation is the driving force behind this progress and should not be masked, but should be presented to the people of Europe as a key component of the Union's very existence.

These three requirements seem crucial for the transparency of the public constitutional debate that will be held throughout the Union in 2004, on different occasions and in different forms.

*Jean Nestor is Vice-President of Notre Europe*

# TOWARDS A CONSTITUTION FOR EUROPEAN CITIZENS

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The Convention has been an unprecedented innovation in the process of reforming the European Union. It has delivered the most significant set of political and institutional innovations since the Treaty of Maastricht. Most importantly, the Convention was endowed with the democratic legitimacy and the political credibility to publicly address and discuss the fundamentals of European integration (missions, values, and objectives) to radically simplify the system and to strike a new institutional balance aimed at bringing the Union closer to its citizens.

The "*democratic challenge*" was central to the Laeken Declaration, which set the mandate for the Convention. Citizens' support for the aims of European integration was impaired by the obscurity of decision-making, the complexity of the system, and an unclear division of tasks. That is why national leaders felt that "*the European institutions must be brought closer to its citizens.*" At the same time, with the Nice failure still a fresh memory, Heads of State and Government agreed that a new Intergovernmental Conference (IGC), where national diplomats and ministers meet behind closed doors to negotiate and maximise their specific interests, would be an inadequate instrument for achieving such an ambitious end. A process of open debate, involving not only policy-makers but also civil society at large, was established to prepare the IGC and to deal with those issues that governments repeatedly had failed to address. National leaders rightly felt that a more legitimate and democratic outcome depended on a more representative and accountable process.

Bridging the gap between the Union and its citizens is of vital importance to face the major challenges that the EU is confronted with. Enlargement will strain the institutional framework at a time when sensitive political issues are coming to the forefront of the European debate. Citizens expect the Union to guarantee internal and external security, operate as a stabilising force in the world, enhance growth and employment and guarantee economic and social cohesion across a larger and more diverse Europe. Highly political questions, however, cannot be effectively addressed in the absence of a healthy, public,



political debate. The negative outcome of the Swedish referendum on the adoption of the Euro shows that public perceptions matter, and that the image projected by Europe is one of a project detached from everyday life.

The best way to address mounting scepticism is to openly inject a serious reflection on the future perspectives for European integration into national debates. European institutions have to connect with citizens because the decisions ahead will be of strategic importance for their lives. The Union needs more trust, more transparency, a more inclusive decision-making process and, above all, political accountability for those in charge. All that, as was clear at Laeken, could not be achieved by a secretive process of intergovernmental negotiation. This is why the Convention was set up in the first place: new ideas and new protagonists were needed to unlock the blockages that had constrained European integration for at least a decade.

## 1. The Process

### The composition of the Convention

The composition of the Convention has been the basis of its success. Like its predecessor, which prepared the Charter of Fundamental Rights, the Convention drew its constituents not only from governments but also from directly elected Parliamentarians (national and European) as well as the Commission. In this sense the Convention resembled a "constituent assembly" and consequently had a broader and more reinforced democratic legitimacy.

On the whole, the different component parts of the Convention developed a constructive pattern of mutual understanding and cooperation. Of course, not all constituencies sang from the same hymn sheet at all times. The two representatives of the Commission played a useful role, warning against the risk of minimum common denominator compromises. They helped to achieve important innovations by leading the Working Groups on the EU Charter of Fundamental Rights and on European Security and Defence. Overall, they benefited from the opportunity to publicly address the plenary of the Convention and they accumulated a considerable amount of credibility. As a result, the Commission played a more effective role

during the Convention than had been the case throughout the difficult negotiations leading to the Treaty of Nice.

Experienced members of the European Parliament (MEPs) came to the Convention with a clear agenda and proved to be a powerful force in driving the debate by submitting significant proposals aimed at furthering European integration. In particular, MEPs were among the most active participants in the European political groupings in which MEPs, national parliamentarians and government representatives came together. In fact, two MEPs led the Christian Democrats and the Liberal Democrats. It was the first time that European parties regularly mobilised and their members met in separate groups – the so-called ‘caucuses’ – to discuss matters of treaty reform. While not always effective, they became an important channel of communication for bridging divisions between different constituencies or different countries. Most importantly, this was a remarkable sign of vitality of the democratic life of the Union.

Most representatives of national parliaments (MPs) were less familiar with the European institutional framework. They went through a learning period before shaping a clear vision of their interests, and eventually overcame initial differences with their European colleagues. The synergy between national and European parliamentarians in promoting an ambitious agenda for reform is one of the most remarkable achievements of the Convention. As a result, MPs often distanced themselves from their own governments.

Representatives of national governments took some time before realising the political relevance of the Convention and opting for full involvement. However, while some governments were particularly reluctant to legitimise the process by playing a fully-fledged role in it, it has to be stated that the Convention succeeded where at least two intergovernmental conferences failed. National governments became, with different degrees of enthusiasm, part of a deliberative process – a real debate and not merely negotiations. National positions on different issues evolved and alliances changed over time. Positions had to be taken in public and reasons had to be given to justify them. During the second half of the Convention, a growing number of foreign ministers confirmed through their direct participation the growing political relevance of this process. Most notably, when it came to the sensitive institutional debate in the final stages of the Convention, with vested



interests and serious divisions threatening to prevent a consensus, no government tried to rock the boat, and a real effort was made on all sides to find a compromise. This was not, however, an easy exercise, and many felt that an intergovernmental mode of negotiation had taken over the Convention debate, preventing in-depth reflection and ambitious solutions. While the scope for agreement inevitably shrank because of differences between countries on a number of subjects, the Convention had become too important to be boycotted. This is, in itself, a very significant achievement compared to the exclusive predominance of national interests in previous intergovernmental conferences.

For the first time, representatives from 28 countries came together to discuss common priorities and outline a shared vision of the future, and the means for achieving it. The Convention has been a formative experience for the representatives of accession countries, whose only previous contact with the Union had consisted of the painful negotiations for accession. The representatives of candidate countries did not act as a block but progressively entered the debate adopting different positions from one another, and taking sides with current Member States on a pragmatic basis. Common to all candidate countries was, however, a somewhat contradictory approach to institutional reform. Their confidence in the Community Method, and in the supranational institutions at the core of it, did not prevent the accession countries from supporting the preservation of the inadequate Nice compromise. In particular, they advocated their individual representation in every EU institution, thereby endangering the sustainability of the whole framework. Although the implications of this approach to reform deserve serious scrutiny, it can be argued that the candidate countries had a softer introduction to the politics of EU reform than it would have been the case in an IGC. The Convention method broadens opportunities for agreement through dialogue and minimizes, while not possibly excluding, sterile contraposition.

Three channels of communication were opened in order to involve citizens and civil society organisations in the work of the Convention. First, the Convention launched a new web site containing all the documents produced by the Secretariat or submitted by its members. At the same time, the Commission made a web site available to publish the contributions of observers and organisations. Second, the debate on the future of Europe, launched in 2001, continued across the Union

with hundreds of conferences and seminars where Convention-related issues were debated in public. Third, one plenary session of the Convention was entirely dedicated to hearing the positions of representatives of civil society, and a separate plenary session was flanked by a Youth Convention involving 210 young Europeans in an innovative process of debate with final recommendations. Overall, it is difficult to question the transparency of the Convention proceedings with respect to civil society. Citizens, however, were not mobilized in the millions by this exercise. This is hardly surprising. Public opinion tends to ignore, largely because of inadequate information, the European debate and the functioning of the Union. Moreover institutional reform, which the Convention largely revolved around, is a highly technical issue. This is not the case, of course, for some of the key political questions addressed by the Convention, from economic governance to foreign policy. The Convention, however, was not mandated with fundamental policy choices, but with the identification of broad objectives, and the preparation of the instruments and procedures to take effective decisions. In other words, it was for the Convention to enable the Union to engage in a real political debate that would inform future choices and policy guidelines. Only at that stage, with more transparent and accountable institutions, could citizens become involved in the European debate on concrete issues. This, of course, does not detract from the merits of the Convention as an open process of EU reform: a democratic body cannot be reformed away from the public eye, and citizens must have the opportunity to inform themselves about EU reform if they so wish.

### **The functioning of the Convention**

The Convention has been mainly about debate and building confidence, and only marginally about trading concessions to overcome stumbling blocks. Democracy and dialogue have prevailed over diplomacy and negotiation. The Convention has imposed itself as an essential part of any new initiative at substantial reform of the European Constitution.

The early months of the Convention were dedicated to a wide-ranging, sometimes visionary discussion, allowing all members to express their ideas, and sketch out the main guidelines of European integration for the coming years. Valéry Giscard d'Estaing encouraged Convention members to envisage a Constitution for the next 50 years, and to resist



maximising short-term advantages. This change of gear in the style and substance of debate proved to be successful. Citizens' expectations were held as a primary frame of reference in identifying Europe's missions and objectives, and the values underpinning them.

Arguably, this initial phase of discussion could have been better organised in order to channel the flow of individual interventions and to plan more coherent and productive thematic sessions. On the other hand, the experience of the first sessions set the tone for the rest of the proceedings, and laid the basis of the 'Convention spirit' that inspired and animated the many months of work that followed. It should be stressed that the fundamental decision to produce one, coherent, constitutional text and not merely a range of options (a choice that the Laeken mandate left open) was taken at a very early stage and became the driving force of the Convention.

The Convention entered a second, major phase of work when the Praesidium decided to set up, progressively, a number of working groups to address the institutional and political questions at the core of the Laeken mandate. The six working groups, set up before summer 2002, mainly focused on systemic questions, touching on the very nature of the Union as an autonomous legal and political entity, and its relationship with the Member States. The mandates of these groups covered the legal personality of the Union, the place and the legal value of the EU Charter of Fundamental Rights, the implementation and monitoring of the principle of subsidiarity, and the category of complementary competences, primarily belonging to Member States. The role of national parliaments was the subject of a separate working group, as well as the broad question of economic governance.

A second generation of four working groups was launched after the summer break. With the exception of the very important group charged with the simplification of the instruments and procedures available to the Union, these groups revolved around key policy areas: external action, defence, and freedom, security and justice. Finally, following repeated requests from the Convention plenary, the Praesidium agreed to create a working group on 'social Europe' towards the end of 2002.

The working groups proved successful, although to different degrees depending on the subject matter. Working groups have become a

defining feature of the Convention model. Smaller, more focused meetings played an essential role in building consensus around innovative solutions – from the inclusion of the Charter in the Treaty to the attribution of the legal personality to the Union – and functioned as an essential building block to in facilitating comprehensive agreement on the final package. With a Convention of 210, including substitutes, smaller meetings were essential to oil the wheels of the larger body and to identify windows of opportunity. Overall, working groups were complementary to plenary sessions and contributed to the dynamism of the entire process. At the same time, however, the recommendations of the working groups did not escape thorough scrutiny in plenary, where conclusions were sometimes severely criticised. Where working groups fell short of fulfilling their mandate, there was a clear signal that the Union was not ready for closer integration.

Regrettably, no working group was set up to anticipate confrontation on the crucial question of the inter-institutional balance, and the powers, responsibilities and composition of each EU institution. One or more working groups would have been helpful in softening preconceived positions, blurring national ‘red lines’ and excluding extreme options in a constructive spirit. Reflection in working groups would have prepared the ground for plenary debates and could have channelled discussions in plenary along largely accepted guidelines. The relative lack of preparation, and the absence of shared parameters to delimit the scope of the debate, together with the deliberate decision to leave the institutional chapter for last, largely explain the difficulty that the Convention met in the final phase of its proceedings.

As argued above, it would be an exaggeration to say that, when dealing with institutional reform *stricto sensu*, the Convention abandoned its distinctive working methods and operated like a proto-IGC, with national governments leading the game and other constituent parts deprived of real clout. In particular, this would not do justice to the determination showed by its members to oppose external interferences and pressures. The role played by the Praesidium at this delicate stage of the Convention debate proved decisive, with both positive and negative implications. The Praesidium presented Conventioneers with pre-cooked proposals for compromise, as opposed to leaving the definition of the priorities to the plenary. At the same time, however, the clever policy of ‘selective engagement’ of different constituent parts



of the Convention implemented by the Praesidium, depending on whose support was needed on what subject, allowed the Convention to maintain its autonomy, and move forward. If not always entirely fair, this practice turned out to be effective in curbing the arrogance of national governments and boosting the influence of the parliamentary component of the Convention.

It would be unrealistic to maintain that the Convention should have been sealed off from politics outside plenary sessions. In fact, such an artificial separation would have been counterproductive, and would have undermined the credibility of the outcome. The real challenge consisted in walking the tightrope between preserving the political autonomy and the dynamics of the Convention on the one hand, and weighting the interests of various national actors on the other hand, against the looming perspective of the IGC. The Convention and its Praesidium succeeded in this attempt. A number of government representatives stated at the last session that, while the content of the Constitutional Treaty was not fully satisfactory, it nevertheless represented a success because each of them had agreed to make concessions on sensitive points, in order to achieve overall agreement.

### **From the Convention to the IGC: the process has changed**

The IGC has the legal power to make whatever changes it wishes to the draft Constitutional Treaty. From a political standpoint, however, its room for manoeuvre is questionable. The central point is that the IGC and the Convention are processes of a different kind. The Convention is a process of reform that is *distinctive of* the Union, not a gathering of national officials and politicians to talk *about* the Union and take decisions on its behalf. The Convention therefore represents the political nature of the Union as a separate entity from its Member States. The Convention embodies authority and legitimacy that are distinct from those of Member States, but not excluding them. On the contrary, it includes national governments, parliaments and EU institutions, and it produces a synthesis that reflects the essence of European integration: the participation of all parties, the predominance of none. Ultimately, the autonomy of the Convention as a method of reform mirrors the growing autonomy of the EU as a political actor. A shift from treaty-like rules towards constitution-like politics is now underway.

Whether such an evolution was intended or not, the fact is that the Convention took on a life of its own. Members of the Convention from national parliaments (the vast majority), from the European Parliament, and even from some national governments presented the Convention process and its work as a turning point in European integration. The message was that the Convention would achieve a set of qualitative innovations that met citizens' expectations. These innovations would be achieved through democratic political debate and not through deals behind closed doors. Today, it would be paradoxical, and surely politically unsustainable, if hundreds of statements of European politicians, in the context of the public debate on the future of Europe, were ignored by the IGC.

The yawning gap in comprehension and popular support among citizens for the current system of EU governance, highlighted by the failure of the Swedish leadership to convince citizens to accept the Euro, must be narrowed not widened. Any decision to undermine the Convention would have this effect. More seriously, it would hand a major propaganda tool to the euro-sceptics in the coming battle for the hearts and minds of the European public. In practice, the Convention cannot simply be neglected by the IGC.

## 2. The Outcome

The draft Constitutional Treaty produced by the Convention is not a fully-fledged Constitution, but it represents a decisive step in that direction. As already argued concerning the process of EU reform, the output of the Convention represents a point of no return in terms of endowing the Union with stronger democratic legitimacy. The Constitutional Treaty is, furthermore, a political pre-condition for enlargement. The European Union will change forever: widening must go hand in hand with enhancing popular allegiance to European integration, and equipping the Union with the instruments it needs to act effectively. The draft Treaty "*establishing a Constitution for Europe*" is a work in progress. Progress will, however, stop, if that work is unravelled by the forthcoming IGC.

It is no secret that the stalemate of EU reform in parallel to enlargement equals regression and potentially implosion, not simply business as usual. This is all the more true when considering the need to bring



Europe closer to its citizens, rightly indicated by the Laeken declaration as the primary objective. The Constitutional Treaty makes important progress from this standpoint. Transparency, democracy and European citizenship are boosted in the new text, and new channels of democratic legitimacy are built to reinforce the foundations of a growing Union.

## Transparency

The basic requirement, in order to strengthen the democratic legitimacy of the EU political and institutional framework, is to make it understandable for citizens. The overriding objective of the work of the Convention was simplification, and considerable success has been achieved. First of all, a single Constitutional Treaty repeals all the previous Treaties, that have accumulated over decades. Reading the 460 articles belonging to the four parts that make up the new text is still a daunting task. Part I, however, outlining how the Union works, the division of competences and the basis of major EU policies, amounts to only 59 articles, and is therefore quite readable. The same is true for Part II – the Charter of Fundamental Rights of the Union – containing 54 provisions of special relevance for citizens.

The more readable the text of the Constitutional Treaty, the more transparent the functioning of the Union. This is the case for the division of competences between the Union and Member States, in response to the key question ‘Who does what?’ The Constitutional Treaty divides competences into three separate lists, covering respectively the exclusive competences of the Union, shared competences and supporting actions (where EU intervention falls short of harmonisation of national law). Although this broad presentation helps citizens to acquire a better picture of the distribution of powers, over-simplification is misleading. First, important spheres of action, such as foreign and security policy or the coordination of economic policies, are included in separate articles since they do not belong to any of the above categories. Second, the exercise of powers is actually shared between different levels of government and citizens will not always be able to identify which authority is actually responsible.

Major, and perhaps more significant, progress has been achieved in simplifying the instruments and procedures through which the Union acts in the areas where competences are conferred. The 15 instruments

envisaged by the previous treaties are replaced by six, and a clear hierarchy of norms is finally enshrined in the Constitutional Treaty. Definitions are also much clearer. European laws and European framework laws are acts of a legislative nature. It is now clear to citizens that the EU enacts legislation and that these acts, according to a new explicit provision, have primacy over the law of Member States. European regulations and European decisions are binding acts of an executive nature. Recommendations and opinions are not binding. The procedure for adopting legislative acts is now called the "*ordinary legislative procedure*" and the scope of its application is doubled. This procedure simply requires the involvement of both the European Parliament and the Council of Ministers on an equal footing. The decision-making system develops features that are very familiar to European citizens, who are used to laws being enacted by parliaments (be they monocameral or bicameral). The extension of the ordinary legislative procedure goes hand in hand with the opening up of the Council proceedings to the public when acting in its legislative capacity, thus enabling citizens to be aware of the position of different countries. Finally, a new provision states specifically that EU institutions, bodies and agencies shall work as openly as possible and that their documents shall be accessible to any citizen.

## **Citizenship**

The Charter of Fundamental Rights of the Union, now part of the Constitutional Treaty with binding legal force, defines the nature of European citizenship. The inclusion of the Charter is not only a powerful symbolic recognition of common roots and of a destiny based on shared values, but has practical implications for citizens. In any democratic country, independent courts protect citizens from the abuse of public authorities, on the basis of a clear definition of rights and freedoms. The Union has now established the same framework with a binding Charter granting EU citizens a broad set of rights. European citizens can take EU institutions, or their own national authorities implementing EU law, to court when their rights are threatened. The European Court of Justice becomes a real Constitutional Court, adjudicating on the application and interpretation of a set of fundamental rights that embodies the values of the Union as a distinctive political actor.



This adds a new, essential dimension to the relationship between the Union and its citizens. European citizenship, while flanking and not replacing national citizenship, delivers additional protection to the nationals of Member States.

European citizenship, however, is not only about protection but also about opportunities, such as the existing freedom of establishment in all Member States or the right to vote in local and European elections. In this spirit, a new title "*The democratic life of the Union*" has been introduced into the Constitutional Treaty, partly grouping existing provisions, and partly adding new perspectives to citizens' involvement in EU politics. In particular, it recognises that citizens can be part of the democratic life of the Union through both representative and participatory channels. As to the former, citizens are represented in the European Parliament, and national governments in the Council are accountable to their parliaments, elected by citizens. The principles of openness and subsidiarity are restated, together with a reference to the key role of European political parties to "*contribute to forming European political awareness and to expressing the will of Union citizens.*" Turning to forms of participatory democracy, the new text reflects some of the guidelines launched by the Commission in its White Paper on European Governance in July 2001. First, the EU is entrusted with enhancing the European public sphere, by giving citizens and representative associations the opportunity to voice and exchange their views. Second, EU institutions should encourage inclusive policy-making by establishing an open dialogue with civil society at large. Third, consultation between the Commission and relevant parties is deemed necessary to ensure the coherence and transparency of EU action.

Finally, a new instrument is introduced enabling a minimum of one million citizens, from different Member States, to invite the Commission to submit a proposal for action by the Union. This new form of popular initiative, while not binding on European institutions, opens interesting perspectives for interaction between citizens across Europe and EU institutions, thus helping to overcome a perceived divide between the two, and to build new forms of transnational democracy.

## Democratic decision-making

The Constitutional Treaty envisages that European institutions function in a more democratic way and establishes important links between national parliaments, directly representing the peoples of Europe, and EU decision-making. This is consistent with enhancing the transparency of the overall framework and with strengthening European citizenship. It is widely recognised that the European Parliament, elected by the citizens of Europe, is the number one winner in the reform of EU institutions elaborated by the Convention. As described above, its powers are boosted through the extension of the ordinary legislative procedure and qualified majority voting. The setting up of a Legislative Council formation operating in public takes the Union a step further towards a bicameral system with the two pillars of the Union's legitimacy – the peoples and the states – equally represented. Unfortunately, the Convention has not gone as far as to fully separate the Legislative Affairs Council from the General Affairs Council. This deals a blow to simplification, as a clear division of powers has not been established.

While the legislative role of the European Parliament has been greatly strengthened, the Convention has been less ambitious in establishing a direct link between the election of the European Parliament and the election of the President of the European Commission. This procedure would have reflected the familiar model of parliamentary investiture of the executive on the basis of electoral results, with final confirmation by the 'Head of State' – the European Council. Most importantly, it would have boosted European public debate around the candidates nominated by European political parties to become President of the Commission. A majority in the Convention felt that time was not ripe for such a step, while others feared that the independence of the Commission would be undermined to the advantage of partisan political affiliations.

The new Constitutional Treaty opens new, albeit limited, opportunities for enhancing the democratic character of the appointment of the President of the Commission, and therefore the President's legitimacy in the eyes of European public opinion. It is in fact envisaged that the European Council, "*Taking into account the elections to the European Parliament and after appropriate consultations*" put its proposed candidate to the European Parliament, which will elect or reject the



nominee. The new wording opens the door to the nomination of their preferred candidates by European political parties during European elections, and to an electoral campaign built around a programme and a candidate. European political parties could then ask to be consulted by the European Council before it makes its choice. This process would boost the quality of democratic debate about Europe, would focus media attention and would provide a major incentive for European political parties, on which to mobilise.

Two protocols attached to the Constitutional Treaty ensure that national parliaments are more closely involved in EU proceedings through better information and new powers to monitor the application of the principle of subsidiarity. In particular, national parliaments can send reasoned opinions to EU institutions when they feel that the principle of subsidiarity is not complied with. More interaction between the two levels of governance is to be welcomed, as it helps to dismiss mutual suspicions and to facilitate a culture of cooperation to fulfil shared objectives. Also, it puts the burden of proof on national authorities when it comes to the proper application of the principle of subsidiarity: it will be more difficult to denounce the abuse of EU powers once the means are given to national representatives to scrutinise the work of the Union. If the Commission decides to maintain a proposal that is challenged by national parliaments, the latter can ultimately bring an action before the European Court of Justice, through their respective governments, on the grounds that the principle of subsidiarity has been infringed.

### 3. Towards a Constitution for European Citizens

On the basis of the ground that has been prepared by the Convention, the IGC should make definitive progress towards a Constitution for European citizens, and lead to a real political debate at the European level. Unfortunately, some national governments and other observers argue that substantial amendments should be introduced in the Constitutional Treaty, and explicitly voice their intention to challenge key elements of the new framework. This position is to be rejected. While, from a legal standpoint, national governments are fully entitled to replace the Convention compromise with alternative solutions, their political room for manoeuvre is questionable. On the contrary, it should be stressed that national governments have an excellent

opportunity to show that they are up to the task of leading an enlarged Union through the internal and external challenges of globalisation.

Following many failed attempts at far-reaching reform, the Convention presented the best possible compromise that could be achieved. At the same time, it is safe to predict that the years ahead will be difficult for the Union. Regardless of new voting formulas, it will be harder to find agreement to launch new major political initiatives, and strategic political leadership will be in high demand. Procedural improvements cannot hide the challenge of numbers and of growing heterogeneity. The weakest link in the new institutional framework is the absence of coordination between the Commission and the Council in providing the 'government' of the Union.

But the Constitutional Treaty cannot be substantially altered on these grounds. First, there is no perspective of doing any better. Second, more fundamentally, the outcome of the Convention portrays the Union of today: all Member States share the basic values, as well as some core objectives. All countries accept the advantages of the community method but not all of them are ready to extend it to the government of the economy and to foreign affairs and security. Ambiguous wording and specific, restrictive provisions define grey areas where the expansion of EU competences is contested. This, again, shows regrettable divisions and lack of clarity, but it is not a good enough reason for reversing the achievements of the Constitutional Treaty, thereby undermining the credibility of the Convention.

Two central questions should be asked at this stage, at the beginning of the negotiations, to determine the course of the IGC and the priorities that Heads of State and Government should focus upon.

**Has the Convention proven its worth? If so, should it become the essential *locus* for taking key decisions on future constitutional reform?**

In the light of the considerable achievements described above, the Convention has surely performed effectively as an instrument of EU reform. The process brought together a range of disparate actors, who were able to agree on a constructive, albeit imperfect, compromise. Dismissing the Convention would send the wrong signal as to the ability of a Union of 25 or more countries to adopt meaningful



decisions in a transparent way.

The Convention work was also the subject of unprecedented media coverage. Convention members, together with EU and national institutions, made a real effort to reach out to citizens. Although the Union is still far from the hearts and minds of most Europeans, it would be inconsiderate to frustrate the hopes and expectations of the many who have been involved in the debate on the future of Europe. This is particularly true with a view to European elections next year, if voters are to be convinced that their voice matters in Europe.

Moreover, although governments' legitimacy as the ultimate decision-takers cannot be questioned, the Convention draws its legitimacy from the active participation in its proceedings of all institutions relevant to the political life of the Union. The Convention embodies, therefore, a different kind of legitimacy from individual Member States' governments. That is neither stronger nor weaker. It is simply the democratic legitimacy of the Union as such, as a growing political subject including Member States, but not solely defined by them. In other words, the Union is more than the sum of its component parts. It has a distinctive European value. It is time that this major political transformation, dating back to the early years of European integration, but fully reflected today by the Convention, is converted in legal terms at the Constitutional level.

The Convention is central to the new political dynamics of EU reform, and this is recognised in Article IV-7 where the European Council is mandated to convene a Convention to amend the Constitutional Treaty. On the other hand, it is contradictory to invest so much political capital in the Convention, and at the same time preserve the unsustainable rule of unanimity among Member States for adopting its recommendations. In a more political Union, unanimous decisions on constitutional reform would be undemocratic, because obstacles in one country would determine continental stalemate. In an enlarged Union, unanimity on constitutional amendments would be self-defeating: the world is changing at an increasing pace, and the Union would condemn itself to paralysis in the foreseeable future.

European leaders cannot avoid this crucial issue, and cannot abandon their responsibility for ensuring the development of the Union. If they are to live up to the expectations raised by the Convention, they should

be ambitious and use the IGC to establish a formula of super-qualified majority for adopting future constitutional amendments.

### **Is the Union better equipped to cope with enlargement with or without the innovations of the Constitutional Treaty?**

The new text is essential to streamline decision-making and to make the Union more transparent for its citizens. While some aspects of reform raise legitimate concerns – notably the appointment of a new President of the European Council – much will depend on personalities and it would be unreasonable to jeopardise what has been achieved because of what might happen. Inadequate institutional provisions on the size and composition of the Commission can be the subject of a separate Convention and *ad hoc* IGC before they enter into force in 2009. In that event, majority voting could also be extended to other policy areas.

It is widely acknowledged that re-opening negotiations on some of the sensitive issues affecting the institutional balance would upset the equilibrium that has been achieved. The result might be either a full-scale crisis over EU reform or a weaker and inadequate set of agreements. This would, in turn, endanger the perspectives for ratification of the Constitutional Treaty, in particular in those countries where referenda are to be held. The main point of campaigners for the ratification of the Treaty is that voters will have a strong, coherent and transparent institutional framework. Citizens should be convinced that Europe is able to carry out the tasks it has been entrusted with, and fulfil their aspirations. As demonstrated above, the Convention has delivered a set of innovations that make it easier to adopt decisions by majority voting and bring institutions closer to the citizens. This is the basis that should be built upon.

However, this is not sufficient in itself. Although the Union has been provided with a better set of institutions and procedures, its ability to act is ultimately determined by political will. What seems to be missing, at this stage, is a shared vision of what Member States want to do together. What is the Union for? This is the issue that the forthcoming IGC should address as a matter of priority. Heads of State and Government have the chance to engage in real political debate, as opposed to enter endless institutional disputes that have already been thoroughly addressed by the Convention.



This is not only necessary in order to instil a new sense of dynamism in the enlarged Union, but also to open a real public debate in Member States and provide political content to the electoral campaign in 2004 for the election of the European Parliament. Moreover, this election is likely to coincide in some Member States with the referenda on the Constitutional Treaty. Following the resounding ‘no’ to Monetary Union in Sweden, the risks that this delicate electoral season entails are obvious. The future of European integration would be endangered by the rejection of the Constitutional Treaty by even one of the Member States in a referendum. That is why European leaders should show that they mean what they say when they call for a more democratic Union. European democracy cannot exist in the absence of a lively political debate, and the sequence of events over the next 10 months offers a unique opportunity to develop one.

Governments in the IGC have the opportunity to kick off this essential reflection, and at least provide basic guidelines and serious alternatives to the peoples of Europe, if not a coherent vision. It is high time that political leaders seized this opportunity, assessed and acted on their convergence and divergence on central issues.

The Italian Presidency’s proposal to hold meetings at the highest political level and, if necessary, to organise an extraordinary summit in November should be supported. The substance of discussions among political leaders should, however, be different from the technical character of residual negotiations at the level of Foreign Ministers. Discussion between Heads of State and Government would offer vital clues as to the degree of consensus at 25, and the different speeds at which Member States are prepared to move forward. Let the debate begin, and may citizens make up their mind and express their will in 2004.

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# BUILDING A LARGER EUROPE

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## 1. A project for the 21st century

The Accession Treaty under which 10 new members will join the European Union was officially signed in Athens on 16th April 2003. The Treaty is now subject to ratification in the 25 countries concerned, and the enlargement should take effect as of 1st May 2004. A roadmap provides for the accession of Bulgaria and Romania in 2007, while Turkey's application will be re-examined at the end of 2004. The current discussions as to the boundaries of a united Europe have raised the issue of the former Yugoslavian states, of which Slovenia is the only country to figure in the current enlargement process.

Political Europe has thus embarked upon the largest expansion in its history, and it will soon have a population of more than half a billion people. The implications of this enlargement are considerable and diverse: indeed it has been referred to as a *reunification* of a continent that has never before been unified peacefully or over such a large area. Enlargement is the major political event structuring the future of the Union and is the reason for the discussions under way to establish a Constitution and determine the financial framework for 2007-2013.

Since the Treaty of Rome was signed in 1957, the European Community, now the European Union, has expanded on four occasions, growing from 6 to 15 Member States. No previous *enlargement* was limited to a mere increase in the number of members; each marked a step forward in the European project under the pressure of political change. The Europe that was extended to include the United Kingdom, Denmark and Ireland ceased to be the club of the 6 founding members, and the subsequent accession of Spain and Portugal gave it new depth, in all senses of the word. At each turning point, Europe put all its cards on the table, and took the risk of reinventing its adventure. The sheer extent of the current enlargement process has upped the stakes and requires more ambitious progress than on previous occasions: Europe with 25 or 30 members is not a simple extension of the current 15-member Union, it marks the birth of a new political Union that needs to be created. In this early part of the 21st century, the people of Europe need to be informed of how this project can be successfully completed.



## 2. The 'larger Europe' project

The new Europe of the future is the corollary of an exceptional geopolitical event, namely the fall of the Berlin Wall, which marked the end of the division of the world into two hostile blocks. The European dream of a political community in which nations cease fighting over their differences and instead channel these differences into a project that benefits all is now being shared across the whole continent. In spite of the lengthy processes and frustrations inherent in the negotiation period, the support of the people of the candidate countries for their accession to the European Union reflects the attractiveness of the European project. An enlarged Europe is neither an inevitable historical process nor a moral obligation, but rather a result of the historic events of 1989 and the appeal of the semi-secular project for European unification. Yet the structure of the union needs to be viewed as a framework for stability and shared prosperity if it is to overcome fears of ever closer *political* union. This implies that the people and leaders of all the countries concerned, be they old or new members, must join forces to build a political structure which reflects the aim of achieving a union that respects differences.

The project will require lucidity and determination from all those involved, such is the extent of the challenges to be met. The challenges include the number of members, which will transform the small European club of the early days into a grouping with a more formal structure. But in particular, the challenges lie in the differences: the Union will span populations with considerable economic and social inequalities, but also different histories which have marked them deeply. No law states that Europe must succeed in its meetings with history; the outcome of the Congress of Europe in the Hague in 1948 and the failure of the European Defence Community in 1954 are excellent examples of the obstacles that lie in the path of a political Europe. Recognising that the Union may lose its way along the road to an enlarged Europe simply reflects the requisite degree of realism, determination and generosity.

But lucidity does not imply defeatism, as affirmed by the success of the European project since the creation of the European Coal and Steel Community in 1951. As it grew from 6 to 15 Member States, Europe managed to consolidate the market economy and become the world's largest grouping while developing a solidarity that enabled

convergence between the most disparate situations. It maintained a high degree of social protection in all countries and laid the foundations for dialogue between social partners at Union level. The single European currency - a major project that has become a reality for most of its citizens - marked the completion of an original economic grouping and is a strong symbol of the political integration it represents.

The developments that have occurred since the Treaty of Maastricht in terms of foreign policy and in the management of a trans-national area of freedom, security and justice show that the Union is prepared to tackle head on the difficult issues that accompany political integration. The extent of the enlargement under way demonstrates that this progress, albeit chaotic at times, has not undermined the attraction of the European project. There is no doubt that the Union is capable of successfully bringing about change and building an open, united, continent-wide grouping, provided it draws inspiration from what it has successfully achieved so far, which is essentially the result of the realism of the objectives and an original political method.

This realism is reflected in the acceptance that "Europe can only do one thing well at a time" and in the fact that it has limited itself to objectives on which states can reach consensus in spite of their disagreements. This realism, which applies to all areas, does not rule out an acceptance of "differentiation", which enables the most determined states to examine methods of integration and then recommend them to others. As for the originality of Europe's political methods, this lies in the Union's successful transition from simply ensuring cooperation between sovereign states to placing trust in common supranational institutions to move the Union forward and resolve difficulties.

Drawing inspiration from this experience in the construction of a larger Europe is not a matter of cultivating nostalgia or immobility: the construction will require a considerable pooling of imagination, resources and skills beyond the scope of economic integration. All of this will alter the way in which the Union functions, but should not give rise to nonsense in the name of innovation: simple common sense should show that it means drawing inspiration from what has worked in order to face the challenges of the future. The challenge for the Constitution submitted for ratification will be to reconcile the existing balance between the institutions with the need for change to



accompany an enlarged Europe. But the first condition that needs to be met to ensure its success is to identify realistic objectives, i.e. those which are within reach of all members.

### 3. The objectives of an enlarged Europe

First, an enlarged Europe will have to successfully integrate States and people separated by major economic and social disparities as well as political and cultural traditions that stem from their different experiences. At a time when governments are tempted to refocus on the dilemma of competition versus cooperation, Europe must bear in mind that its very structure is based upon solidarity and that *convergence* is the watchword.

Second, for Europeans to join forces and nurture an original "desire to live together" they need to learn about each other and trust each other. This requires tackling differences in order to build on an area of shared values that can bring about active citizenship on which European democracy can be based.

Third, an enlarged Europe cannot content itself with having an inward-looking structure: the security it owes its citizens, its relations with its neighbours and the responsibilities that stem from its history and size require it to be open to the world and to promote the message of tolerance and understanding that is embodied in its own past.

#### **A framework for sustainable development**

The single market cannot function where there are excessive discrepancies in terms of development, which generate protectionist tension and which ultimately, under the pressure of public opinion, could result in internal borders being re-established. Narrowing such gaps to make them compatible with free movement supposes the use of structural funds, which the 15-member Union has successfully used to integrate slower economies. These funds should be adapted to the specificities of the new underdeveloped regions and the absence of intermediate structures and bodies in these transition economies and societies. But it would be wrong to reduce them to a marginal role or to minimise the financial effort that will be required to ensure cohesion within an enlarged Europe.

Throughout this adventure, it will be necessary to enlist the support of Europe's citizens, who need to be reassured as to the Union's capacity to promote prosperity and economic growth, ensure high employment and social protection, maintain acceptable working conditions and respect the environment and quality of life. All of these objectives will doubtless be included in the future Constitution - they are in the current Treaties - but they will not be tangible or credible unless common policies are established. The enlarged Union will be called upon to remedy the current shortcomings in terms of economic coordination in order to restore growth, as well as to underpin research and innovation as defined in the Lisbon Strategy and provide finance for the major European infrastructure networks that will facilitate and accelerate trade, while minimising the obstacles that frequently accompany such projects. Even though the differences between members and the difficulties of achieving a consensus between 25 or 30 members will probably prevent the Union from making great progress in terms of internal regulations, it should at least ensure the minimum necessary to sustain an area of free movement.

In order to achieve this, there is a great temptation for Member States to look for a fine balance between competition and cooperation, which would have the advantage of limiting both the scope of the Union and the corresponding financial efforts with respect to solidarity. Giving in to this temptation would be tantamount to renouncing the original European way of reconciling the dynamism of the market economy with the search for cohesion and social justice; public opinion would view such a renunciation as being a step backwards.

The three-pronged competition/cooperation/solidarity pillar has resulted in the successful integration of the slower countries among the 15-member Union, by giving all Europeans the feeling they were forming a political community. Ignoring the solidarity pillar and the financial effort that this implies would weaken the Union by aggravating centrifugal trends. Solidarity implies common policies and the common institutions, in particular the European Commission, should have the necessary scope, power and resources therein. While simple intergovernmental cooperation can be justified in some areas, it is not appropriate for managing areas such as the single market and the single currency or the social cohesion of European citizens.



## An area of shared values

The initial meetings between the political leaders of the enlarged Union and the experience of the Convention itself confirm that one of the major risks for a larger Europe is incomprehension, which can rapidly lead to bitterness. Much divides the different members: language, tradition, recent or ancient history, regional alliances, etc. Until now, the European Union was happy to manage its differences with tolerance vis-à-vis national or local specificities, though this sometimes bordered on indifference. It is unlikely that it will be able to sustain such an attitude in the future.

It will need common ground on which to tackle new issues, such as the treatment of minorities, cross-border relations, sovereignty or the specific fears of smaller countries for their security and integrity. It will not simply be a case of unifying cultures. On the contrary, we expect Europe to shield its citizens against the risk of cultural paring down that comes with globalisation, while paradoxically giving rise to a consolidation of difference. This is what most Europeans mean when they call for greater exchange between professions, local authorities and cultural groupings as a means to take better advantage of the rich source of potential that the Union offers.

Dialogue and the cultivation of differences are not spontaneous. They require a policy that encourages exchange and cultural development, underpins the spread of knowledge and research and supports the creation of networks that respect the diversity of cultures while structuring ways for them to resist standardisation.

This should generate a kind of European citizenship that is derived at source from multi-culturalism and exchange, both of which are a living testament to European heritage. Respect for differences drives Europeans' willingness to work together and is the core pillar in the project for political union that brings them together in an enlarged Europe. It is on this basis that the democracy required to further the Union's actions can prosper and neutralise the democratic disillusionment that is afflicting its Member States.

The building of a multicultural area of shared values will remind Europeans of their tradition of universalism, by recalling what is behind the cultures of this land of passage, whose founding myth,

Europa, was an immigrant from across the Mediterranean. Better informed to understand each other better, Europeans will also be better placed to understand the rest of the world.

### **A region of peace and security**

Despite its inevitable preoccupation with internal cohesion, a larger Europe cannot limit itself to an inward-looking project.

First, because it is duty-bound to guarantee the security of its citizens when this exceeds the scope of national States or is compromised by the effects of building Europe. The challenges of the fight against international crime and terrorism, the protection of the environment and quality of life and the battle against discrimination and social exclusion are not specific to the Union, but require an international effort from it, with respect to both its immediate neighbours and the broader international community. Moreover, the Union has other interests to protect: those which affect its internal market and foreign trade, the international status of its currency, the promotion of its cultures, the development of its activities, the results of its research and creativity.

Second, because it has inherited commitments from its past: aiding development, which must be further consolidated in view of the fears raised by its enlargement eastwards, and transatlantic solidarity, which remains essential but is often a bone of contention between member states.

Third, because its immediate neighbours are poor and the Union cannot be perceived as being a haven of prosperity protected by a new "Wall", which in any case would not be sufficient to ensure its security.

Last, because an enlarged Europe will account for a quarter of the world's GDP, which means it cannot ignore the international arena. On the contrary, the success of a political union based on peace, mutual respect and dialogue between cultures will raise hopes which will merely gain momentum as the project of an enlarged Europe advances.

These external realities are inevitable. They create a duty for the Union to succeed with respect to both its citizens and neighbours. But Europe will not be strong externally if it remains divided internally. In contrast,



the success of its integration will require it to be equally efficient vis-à-vis its neighbouring countries. It cannot limit itself to intergovernmental cooperation to ensure internal cohesion: it will inevitably have to limit unanimous decision-making and develop trust in the ability of the common institutions to defend the common interest. More specifically, this is neither a matter of a common foreign policy nor a common defence policy, both of which are areas to be decided upon autonomously. The mechanisms specific to these two policies do not apply to the external relations of the enlarged Europe, which are the outer reflection of its internal integration.

#### 4. An exemplary project

The project for an enlarged Europe described above can bring together all Europeans. It will require recognition that there is a minimum to be pooled, and that if this minimum is not met, political Europe will be turning its back on its commitments, even if the content of this "minimum" is debatable and can evolve. It must in any case guarantee the long-term future of the European model - a synthesis of economic and social integration that encourages dialogue between cultures, promotes democracy and recognition of the international duties that arise from its internal development. The implications of this project are considerable - even when envisaged with cautious realism - and will require the pooling of every ounce of commitment, intelligence and generosity that Europeans are capable of.

There will be no lack of criticism as to its lack of ambition. The project for an enlarged Europe may be seen as an interruption or even a break with the great plans of the Treaty of Maastricht, many of which have remained as ideas to this day. The sacrifice of "European power" in favour of a "European area", the absence of a true "economic government", the "European social deficit" and many other things will be lamented. All of this criticism is valid and the shortcomings behind it must be remedied. But the "when" and "how" of this pose a serious methodological problem. We have learnt that the best is the enemy of the good and that Europe's citizens become disillusioned when objectives are announced but not followed up, and this could be fatal for the European idea. If the Union, faced with unprecedented differences, democratic disillusionment in all Member States and the deterioration of the willingness to work together can offer no more

than a headlong rush into the unknown, it risks losing the basic democratic credibility that it has acquired so far.

But if it is able to set realistic objectives that are valid for all, it will achieve an exemplary success in two respects:

- vis-à-vis the rest of the world, which, in the current international climate, will inevitably see hope in the progress made by the enlarged Europe,
- vis-à-vis the European people, who will see that they have nothing to fear from others and that continued integration will be beneficial for all.

Yet bringing about "continued integration" assumes that the means of achieving it have already been explored when all countries are ready. It means raising the question of what will *drive* European construction beyond the minimum degree of regulation needed to ensure cohesion. And it also requires that the differentiation in terms of the degree of commitment of the various Member States be put in perspective, so that those who so wish can explore ways of preparing the future for all.

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## BEYOND ENLARGEMENT

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The long and difficult road to European integration has been marked by a succession of impressive achievements. The final destination, however, is unknown, not for want of ambition or thought but because there is no agreement as to where it should be. From the very beginning, some have been working towards a "United States of Europe". Others, more attached to the nation state, view this project as unacceptable. Nevertheless, these two opposing views and all those in between with their varying mixtures of federal and national ideas can be found among the ambitious projects that have defined the history of the European Community and later the Union.

European integration means bringing Europeans together in ways that are clearly visible: first the common market; then the customs union, the common agricultural policy, the single market, free movement of people and the introduction of the euro. Joining the European Union does not mean being swallowed up by a bureaucratic machine. Joining means becoming a member of a community that democratically decides certain essential policies.

The text of the Convention, assuming that the Intergovernmental Conference (IGC) which opened in October, leaves it mostly intact, provides a basis for the enlarged Europe, a democratic contract that can, from next year, unite the people of 25 countries and will, in the course of the next decade open up membership to others. Thus, the dream of a unified, peaceful and democratic Europe is in the process of becoming a reality.

With the birth of the enlarged Europe, however, one should also recognize that it will not be able to satisfy all the expectations that Europeans have when confronted with globalisation. For some time to come, the enlarged Europe will be incapable of pursuing strong and coherent common policies in economic, fiscal and social affairs: individual situations within the continent are far too different for that to happen. Even so, the enlarged Europe will play a role at the global level, but it will not be able to agree an effective common foreign policy in the foreseeable future. What 15 states failed to achieve has little chance of succeeding when 25 are involved. The same applies to defence. Those who wish to integrate further should be able to do so.

The process of European integration has moved forward because those who wanted to could advance. With the notable exception of countries still dominated by communism or dictatorship, those states that chose not to board the European train at the beginning were able to jump aboard later. With an the enlarging Union it is obvious that not all Member States wish to move at the same pace and so a number of flexible formulas have been created.

One of the main successes of the past, differentiated integration, will continue to be a useful tool for the future. One cannot ignore the fact that not all Member States are currently ready to take an additional step on the road to integration. Whatever reasons countries may have, they need to be taken seriously. But it is difficult to accept how this justifies stopping those who want to push ahead and open up the new paths that, in the end, all may follow.

## **1. Differentiation: the key to the success of European integration**

### **Differentiation in the common interest**

Differentiation or differentiated integration describes the different models used by the Member States for their relations with successive European supranational bodies from the European Coal and Steel Community (ECSC) to the European Union of today.

While these expressions have come to represent ever more diverse and complex situations in the course of European development, their use is not without negative connotations. Generally speaking, the use of the word differentiation is most likely to offend in countries where there is reluctance to accept differences between Member States. This particularly applies to the countries of Central and Eastern Europe that will join the EU next year. Any new integrationist step that is perceived as potentially excluding them is very badly received. They invoke the image of a two speed Europe, with a first class reserved for the rich countries and a second class to accommodate the less desirable. One could even, with some exaggeration, speak of a new iron curtain dividing a barely reunited Europe.



All that being said, one should not, because of the poorly understood principle of "equality for all Member States,"<sup>1</sup> block all attempts at differentiation by interpreting such moves as breaking this principle. One must not allow the view that differentiation is a form of segregation or exclusion to stultify the debate. But at the same time one must take into account the reasons for these fears if one is to continue with the differentiation process without arousing harmful reactions. Having failed to take such fears into account, the 1994 proposal by Karl Lamers and Wolfgang Schäuble for major advances in integration, united opponents against the concept of a "central core."

Alternatively accused of being divisive or leading to domination, the mechanisms of differentiated integration have always been at the heart of European integration and have been a decisive factor in its success.

### **The thread of history**

There is no need here to recall the successive steps on the path to European integration, but a quick survey of recent history demonstrates that Europe has always moved ahead thanks to the efforts of certain pioneers. At each stage, European countries, in so far as they were free to do so, have had to choose whether to participate or not – or sometimes join but with special conditions. The United Kingdom, that from the time of the Messina Conference has always been invited to participate in the grand design of Europe, is the best example. The European Economic Community formed the avant-garde of a Western Europe that had already been organised on a broader and less integrated basis under the auspices of the OEEC/OECD for economic affairs and the Western European Union for defence.

The single market was the last great project in which all participated. The Schengen area allowing free cross border movement and the historic implementation of the single currency were not projects supported by all Member States but were promoted by a group of pioneers. More recently, somewhat limited progress in the sensitive area of defence has also been made by a small number of Member States. Today it is becoming ever clearer that all 25 members of the enlarged Europe will not support progress, especially in the areas of economic policy, international relations and defence.

## 2. Differentiation - a form of subsidiarity?

Differentiation is an essential and dynamic element in European integration and it should be viewed as the only way to reconcile the desire of some to move ahead with the wish of others to preserve national sovereignty. It is obvious that each Member State's most precious right is to reject any additional integrationist step, all the more so if it touches on sensitive areas of national public opinion.

It is therefore unreasonable to try to impose the euro on a Member State whose citizens have rejected it. A currency is, above all, a question of confidence. To ignore this central element would be politically unacceptable as well as dangerous for the stability of the euro zone. It would also be equally thoughtless to try and construct a foreign policy against the wishes of the general public. Opinion polls show with remarkable consistency that Member States are quite prepared to abandon what is left of their national sovereignty in the area of foreign policy. For all that, this attitude is far from being one shared by all Member States, and the British, for example, reject it consistently. Between the difficult road of reconstructing at the European level those areas of sovereignty lost by the Member States and the management of what room for manoeuvre still remains, the choice is clear but the solutions cannot be imposed.

For an example of how differentiation is the key to balancing integration and sovereignty one can look at the Swiss relationship with the EU, which includes no political integration. In a certain number of areas, Switzerland has chosen integration. In practice, it is largely integrated into the single market and its regulations. But Switzerland has decided that the costs of supranationality outweigh the advantages and has retained its sovereignty in currency, agriculture and immigration. The price is high, since Switzerland has no voice in the decision making process that *de facto* affects it, but the question of EU membership has been debated on numerous occasions and the Swiss people decided to stay outside the EU. The possibility of joining the Union remains, and will remain, open.



### 3. Differentiation – a concept for the future

The current round of enlargement is the fulfilment of a powerful expectation: the reunification of a continent long divided. The Convention has given this enlargement a solid institutional basis by reinforcing the Union's democratic mechanisms. There is, however, no reason to think that a Europe of 25 as envisaged in the draft Constitutional Treaty marks the end of the European project – just the contrary. There is absolutely no reason to think that the differentiation necessary in the past to keep Europe moving forward will become obsolete in a Europe that is both much larger and more diverse. It will be just the opposite.

No one can deny that an enlarged Europe, which from 2004 will have 25 Member States,<sup>2</sup> encompasses extremely diverse situations. But beyond this, it is not unreasonable to expect that the 25 states will have different ambitions – and different views about the timing of further integration. This has always been the case throughout the EU's history and the European Defence Community (EDC) provides a good illustration of this. The EDC was, at the beginning of the 1950s, regarded as a realistic option by Germany, Italy and the Benelux but was unacceptable to France, who foiled the attempt. Fifty years later, virtually no Member State shares the sort of enthusiasm that heralded the EDC and it has been via a series of small steps that Europe has once more taken the road to military integration. Generally speaking, the people of the different Member States react to the very idea of further integration in very different ways, depending on whether they are from old or new Member States of the Union. It would be too simplistic, however, to assume that older members are more integrationist than the more recent ones.

More fundamentally, each state has entered the Union with its own vision for future evolution. It is indisputable that France has constantly attempted to use Europe as a vehicle to regain its lost influence on the international stage. There is, for all that, no reason why Europe should develop according to the wishes or demands of any one Member State – even France. By definition Europe has to be the result of a common vision. But integration is progressing, with the most widely accepted ideas having been or about to be implemented. The ones that are still debated – economic and social policy, external policy and defence, home affairs – go right to the heart of history and the social cohesion

of Member States. Hence, it is not surprising that when there is discussion as to the next step in integration that differences appear to be more visible. Even if such an exercise will certainly prove more problematic in a Europe of 25, it is important to try and give recognition to these differences so as to defuse the situation, avoid difficulties if possible and accept the consequences when this is not possible.

It would be a mistake to assume that an enlarged Europe marks the end of the continent's history. It is undeniably one of its major milestones, allowing, the emergence of a genuine common undertaking at the level of the whole continent for the first time ever. But it does not meet all of Europe's needs nor the desires that are evident in a number of areas. Europeans want a Europe that is able to rekindle economic growth and tackle unemployment and social exclusion. Most Europeans want Europe to present a united front so that its voice can be heard on the international stage. This pleasing unanimity, however, should not obscure the radical differences of opinion there are as to how this should be achieved – whether it concerns the nature of the economic and social model, or what kind of international order the Union should promote. Nevertheless, in those areas where public expectations are high, the Union should make progress. This means breaking with two opposing rationales that are also something of a dead end: on the one hand the supposed necessity of always advancing together at the same pace, which is synonymous with a powerless and immobile Union and frustrating for the public; on the other hand following a highly defined and exclusive blueprint risks creating tension at the heart of the Union and threatens unity. Therefore those who wish to respond to the aspirations of Europe's people without endangering what has been so carefully constructed over the last decades need to choose a method that is flexible, ambitious and open.

#### **4. Flexibility: an embarrassment of choice**

The Convention chose a middle way. It would have been difficult not to have done so in an assembly that represented the current 15 Member States, the 10 states that will join the Union next year as well as Bulgaria, Romania and Turkey whose prospects of EU membership lie some way off in the future. The draft Constitutional Treaty proposed by the Convention therefore represents more or less the maximum it is



possible to achieve in a Europe of 25. In order to reach a somewhat fragile consensus everyone had to make concessions. Those less in favour of integration therefore blocked the reforms demanded by those wanting to move further ahead. Progress was made, but was rarely as ambitious as many would have wanted. Foreign policy is a case in point: the Franco-German position in favour of a general use of qualified majority voting (QMV), that was also supported by the European Commission, a number of Member States and many national and European parliamentarians, was clearly the majority view of the Convention. This, however, was not sufficient to provide the necessary wide-ranging consensus and the idea was therefore dropped.

The Convention responded positively to those wanting more flexibility and impetus to move forward, by both maintaining and reinforcing the existing mechanisms for differentiated integration and creating others. Thus those Member States who want to continue through differentiated integration what they were unable to achieve in a forum of 25, now have a wider than ever choice of possibilities. Here is a brief and non-exhaustive list of what is available in the new Constitutional Treaty:

Ad hoc differentiated integration within the Treaties: opt-ins and opt-outs. They proved to be useful temporary solutions in the past but their increased use will create an impossible situation in the Union with everyone only undertaking what is in their own interest, thus destroying the founders' original purpose of creating a real Community of states and peoples.

Reinforced cooperation: the draft Constitutional Treaty contains some improvements to the existing situation, making it less restrictive. Nevertheless there are still numerous constraints and while the possibilities of using reinforced cooperation are real enough, they are often confined to very specific areas. Will this form of cooperation, often seen as a weapon of dissuasion, remain unused or does it offer a real chance for progress?

New instruments in the defence field: 'structured cooperation'; the solidarity (in the case of terrorist attack) and mutual defence clauses. These offer a number of useful possibilities as they put defence questions within the Constitutional Treaty but they remain meaningless as long as there is no foreign policy.

New economic tools: the eurozone and its external representation. An ambiguous solution to deal with internal cooperation is proposed and the proposal put forward to deal with the question of European representation in international financial institutions remains insufficient.

There are also a number of forms of differentiated integration possible outside the Constitutional Treaty. Some have already been used and others remain hypothetical. The corresponding institutional structures are varied, ranging from simple intergovernmental cooperation between EU Member States to the creation of a fully-fledged federation.

Intergovernmental cooperation outside the Treaties: this was the form used for the Schengen Treaty and it has shown that it can provide dynamism for the whole of the Union by means of the spill-over effect. It could, however, harbour the risk of damaging the unity of the Union.

Privileged relationships (with two or three partners): this is usually seen as a form of reinforced intergovernmental cooperation inside the Union with informal structures. As a general rule, they are only used on specific occasions (the Franco-British defence initiative "Saint-Malo") or are largely symbolic, as with the Weimar triangle bringing together Germany, Poland and France. More recently, there have been numerous calls for proper cooperation on foreign policy between the United Kingdom, France and Germany as the only way to advance the Union's foreign policy. These calls have resulted in negative reactions by other Member States who fear that they will be excluded from the process. The concept is based on the idea that nothing is possible in the area of defence and foreign policy in Europe without the participation of the United Kingdom – a notion that should perhaps be questioned.

The Franco-German relationship: the founding bilateral relationship of the European Community was fruitful in the past but has recently experienced rather mixed fortunes. With the Franco-German motor running out of steam as it tries to haul the weight of an enlarged Europe and the important joint initiatives proposed at the Convention, does cooperation *à deux* have any real future? Should there be a move to more effective cooperation (a series of small, concrete steps by the two partners) or to the more ambitious view expressed last January by Pascal Lamy and Günter Verheugen of a "Franco-German Union"? How can one ensure that such a potential Franco-German breakthrough



would be in the interests of the whole Union – and perceived as such rather than viewed as the desire of two of Europe’s heavyweights to rid themselves of their community obligations?<sup>3</sup>

Finally it is difficult to avoid mentioning the enduring minority idea of a full federal model that would imply a classical federal structure bringing together a limited number of the enlarged Europe’s Member States.

This list shows that it is not a lack of instruments that is at fault, but rather a lack of political will that is holding back European integration. If such a will did emerge, there would be no shortage of means or legal instruments that could be used.

## 5. Achieving a genuine ‘political Europe’

Faced with such a plethora of possible instruments, one must first single out the conditions that are needed to provide effective differentiated integration that utilises the energies of a few in the interests of the Union as a whole. There are two vital conditions:

Work in step with the enlarged Europe. The enlarged Europe cannot do everything. It is already a considerable challenge to deal with the functioning of a vast single market that goes beyond economics to include democratic cooperation and the provision of a united front on the international scene for those areas where it has competence. The enlarged Europe provides a framework that, on the one hand, encompasses legal issues and political principles and, on the other, a mutual obligation of loyalty to the Union as a whole and each Member State in particular. There is a need for permanent dialogue, with each partner, so desiring, able to participate in any project for advancement. In the case of non-participation, there should at least be acceptance of the legitimacy of such projects.

Meet the demands of the public. Public opinion cannot be ignored. It is important to grasp that ignoring the desires of Europe’s citizens could turn out to have dangerous repercussions for the European Union as a whole. If an enlarged Europe is unable or unwilling to act, this should not hold back those wanting to promote further integration. Failing to act could well arouse dangerous public frustration. On the other hand,

a country should never participate in a project of reinforced cooperation if there is no strong public support, particularly when it concerns important symbolic or sovereignty issues.

It is therefore vital to make progress in those areas where the enlarged Europe is powerless or where the majority of Europeans demand some kind of common action. Without going into the details of other possibilities, three areas of action, fitting this bill, would seem to merit closer inspection:

A European social and economic model: based on a European knowledge society and extending to a common budgetary, economic and social policy, this project should go well beyond the minimum required in an enlarged Europe. The natural connections between these areas on the one hand and the single market and the Union's common policies on the other, are an additional guarantee that this project will have a positive effect on the Union and that other partners will be able to join if and when they want.

A European foreign and security policy: Because of historical reasons, national sensitivities and differing ambitions, defence and foreign policy will not, for the foreseeable future, constitute a separate policy for an enlarged Europe. Some Member States have shown that they are prepared to pool their resources in this area and they are strongly supported by their public opinions. They should be able to do this providing no potential member is excluded and that reassurance is given that their objectives are compatible with the Union's main goals.

Effective home affairs policy: with the EU's open internal borders and the consequences of globalisation, Europeans are now demanding better protection: measures against crime but also maritime security, civil and environmental protection and food safety. Europe is frequently the best level at which to tackle these challenges; it is in its best interests to do so effectively as any failure would bring into question the idea of a free European area. But these issues go to the heart of one of the main functions of the nation state, namely the protection of citizens. Not all countries are ready to give up this prerogative but those who are should be allowed to pool resources in order to achieve this end.



What the people of Europe most want are things that the enlarged Union is unable to provide at the level required. These areas are fortunately linked. Europe can provide a shield against the effects of globalisation but it is unable to guarantee either a new, ambitious social and economic model or a coherent voice in world affairs. Integrating these desires would create a real avant-garde able to carry the integrationist torch into the Europe of tomorrow – the "ever closer union of its people" as outlined in the Treaty of Rome.

This would have the advantage of simplicity: enlarged Europe as the common foundation, the pioneers forging a 'political Europe'. Nevertheless, it still leaves a number of questions open – in particular the sensitive issue of the size, composition and ambitions of the pioneer group. It also implies that it might well be the same countries wanting to be involved in both re-launching the economic and social model and in pooling defence capabilities. Even though one could consider that these issues are just different sides of the same coin, this is far from being convincing evidence for all. In addition there are a number of elements that are difficult to place: is the euro, for example, an immediate factor for the stability of Europe or more a springboard for advanced economic integration?

Finally, the elegant simplicity of the proposed scheme is relative, once one begins to look at the institutional implications. It is important that the people of Europe know who, in the Union or any possible avant-garde group, is responsible for which policy areas and that they fully understand the control mechanisms and democratic choices. These premises, however, are neither sufficient to create an institutional framework nor even make it possible to select a particular model of differentiated integration. They do not even provide an answer to the key question: should the enlarged Europe and the avant-garde group share the same institutions? If yes, which ones and how can one maintain the democratic legitimacy and transparency of the system? If no, what new type of structures will be needed for the avant-garde – and how can one guarantee overall unity?

The Convention, while establishing a solid base for an enlarged Union, has clearly demonstrated that, today, in Europe there is strong support for further integration. It has shown just as clearly that a desire for further integration is not shared by all. Now that our continent has at last been reunited, the question once more arises as to the political

nature of the Union. This could encompass a two-pronged approach: the establishment of economic government and the creation of a Europe able to advance on the world stage. History has shown that the Union has always ended up rallying around projects that had initially been launched by just a few. Taking the chance that it will be the same in the future, we should commit those who want to move ahead to starting immediately – charging them with reassuring and convincing their partners that they will be working for the common good.

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<sup>1</sup> See Max Kohnstamm and Guillaume Durand: Common nonsense- Defusing the escalating "Big versus Small" row, EPC convention Commentary (12 May 2003). Available on the European Policy Centre website: [www.theepc.net](http://www.theepc.net) (The Europe We Need/Convention/Commentary).

<sup>2</sup> Latvia ratified its accession in a referendum 20 September 2003. The ratification process will continue and barring something totally unforeseen, enlargement is already a reality.

<sup>3</sup> For a useful discussion of these questions see the conclusions of the reflection group "France et Allemagne en Europe: le leadership se mérite." Available on the Europartenaies website <http://europartenaies.info-europe.fr>





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