

# Will it Last?

## An economic perspective on the Constitutional Treaty\*

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### 1. Introduction

What shall we make of the Constitutional Treaty proposed by the European Convention? Dump it in the garbage bin, as recommended by *The Economist*? Or hail it as a landmark and historical achievement, as hinted in the Presidency Conclusions of the latest Council in Thessaloniki? Only time will tell us the answer. The goal of this note is to offer a preliminary basis for a discussion and an assessment of the Constitutional Treaty (henceforth CT). My perspective is that of economic analysis, and in particular of the economic analysis of institutions.

I will organize my discussion around two questions. i) *What were the main challenges faced by the Convention?* Since the Convention had a very open ended and broad mandate, I will have to be very selective and pick what I consider to be the more relevant challenges. ii) *Have these challenges been fulfilled, and how?* Here I will mainly try to outline the main pros and cons and the normative criteria with which to assess the Convention's proposals; but I will not shy away from providing an assessment when the answer seems clear.

I will address both questions with regard to two aspects of the CT: the allocation of tasks between member states and the European Union (EU); and the EU institutions. Most emphatically, I am not seeking to provide a complete evaluation of the CT. On the contrary, my discussion only focuses on a few but important issues. In particular, I will omit any discussion of competition policy and the single market, of the Charter of fundamental rights, of enhanced cooperations, of the ratification procedure and of procedures for subsequent amendments of the CT.

The outline is as follows. Section 2 discusses the allocation of tasks, and in particular the provisions for having a more active EU role in foreign and security policy. Section 3 discusses the economic agenda of the Convention, and in particular the macroeconomic policy framework and the budget of the Union. Section 4 discusses the EU political institutions. And section 5 summarizes.

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## 2. Task allocation

How should tasks be allocated between the EU and member states? My perspective on this issue is that of the theory of fiscal federalism. Tasks that entail large spillover effects across member states, or large economies of scale, should be centralized to the highest level of government. Conversely, tasks that are evaluated on the basis of heterogeneous preferences or that require the use of local and heterogeneous information should instead be kept largely decentralized.

### 2.1 The challenges

The Convention faced two main challenges here. First, to clarify the criteria for task allocation between member states and the EU, paying due attention to the subsidiarity principle. Second, to facilitate a more effective role of the EU in specific new areas.

I will not discuss the first point (clarification of competences and subsidiarity). Let me just say that art.I.11-I.16 of the CT provide a logically clear and useful distinction between exclusive, shared and supporting competences. The CT also creates a new role for the National Parliaments to help enforce the subsidiarity principle. These are important and helpful innovations. At the same time, however, the detailed list of shared or supporting competences is disappointingly large. Here the Convention did little more than rationalize the *acquis communautaire*, and missed a good opportunity to recommend that the EU actions be scaled back in some areas where they are unnecessary or harmful.

On the second point, one of the main challenges for the Convention was to enable a more effective role of the EU in the provision of some fundamental public goods, such as security (internal and external), foreign policy, defense. These public goods are typically provided by individual nations. But closer European integration with free mobility of people has greatly aligned the economic interests and the moral and political values of EU citizens, irrespective of their nationality. Heterogeneity is now much less of a concern, as revealed by several opinion polls. At the same time, globalization and the ever growing US supremacy have vastly increased the economies of scale and the spillover effects in foreign policy, security and defense. Currently the EU is effectively unable to provide these public goods. One of the main challenges of the Convention was to propose remedies to this situation.

The challenge also contains an important intertemporal dimension. The need and the political feasibility of providing these public goods at the European level is likely to increase over time. Thus, the Convention proposals must be evaluated with an evolutionary perspective. The institutional solutions proposed in the CT should not only be appropriate and politically feasible now. They should also facilitate change in a direction that can already be identified.

Before looking at the proposals in the CT, we should immediately get rid of an illusion: that effective public good provision could be achieved by mere policy coordination among the EU governments. First, when it comes to foreign policy, national governments have strong incentives to differentiate themselves: they want to bring home trophies for their voters, to show that they are really pursuing the national interest. Even when this is not the case, national politicians may be tempted to pursue their own vision or ideology, in the illusion that they can play a role to shape world-wide politics. The events in Iraq are a vivid illustration of this point. The positions taken by individual governments before and during the war were much more differentiated than those of national public opinions as reported by the Eurobarometer polls. Second, in security and defense policy, coordination is difficult to enforce. All member states have an incentive to free ride on the

others. Since public good provision entails discretionary and non-verifiable actions, enforcement of coordination is more difficult than in the case of legislative decisions.

This implies that, to provide European public goods in foreign and security policy, we need to transfer executive powers to a European policymaker, and to endow him with concrete policy instruments, such as control over a bureaucracy, an adequate budget, the ability to represent the EU on a world-wide basis.

## 2.2 Achievements

The Convention made considerable progress to enable effective public good provision by the EU. It created a single “Foreign Minister” who controls a single EU diplomacy, merging the offices and the staff of Chris Patten and Xavier Solana. The EU Foreign minister is likely to emerge as an important political figure, accountable to the Council but also acting as Commission Vice President. He will represent the EU externally and will chair the Council of Foreign Affairs. The Convention also proposed that the EU will have a legal personality. This opens the door to the possibility of creating a single EU representative in some of the international organizations, such as the IMF and the World Bank. The CT also lays out a number of specific provisions for implementing a Common Foreign and Security Policy, and elements of defense policy, on which I will not comment.

Some critics have attacked the CT for preserving unanimity in Council decisions on foreign and defense policy, arguing that this will prevent the EU from ever having a single position on important matters. This criticism is misplaced, for two reasons. First, it is just unrealistic to imagine that countries such as the UK or France are ready to give up their veto rights on these fundamental matters. Second, the criticism fails to appreciate the distinction between legislative decisions and discretionary executive acts. The instruments for transferring executive powers are at least as important as the way in which decisions are taken in the Council. Deciding to have a common foreign policy is meaningless, unless executive power is also effectively delegated to the EU. If they retain a veto right, national governments may be much more willing to accept this transfer of power, first on limited issues, and then, if it proves successful, on more and more important aspects of foreign and security policy. Jumping to qualified majority could have made the Council much more reticent to delegate power to the Foreign Minister.

A potentially more serious problem is the possibility of conflicts between the Council Presidency and the Foreign Minister. Under art. I-21, “The President of the European Council shall in that capacity ensure, at his level, the external representation of the Union on issues concerning its Common Foreign and Security Policy, without prejudice to the responsibilities of the Minister of Foreign Affairs”. Whether indeed the Council President will manage not to prejudice the Foreign Minister remains to be seen.

Nevertheless, on balance and from an evolutionary perspective, the Convention has made considerable progress. The CT should enable the Union to gradually become a much more effective provider of public goods in the areas of internal and external security and foreign policy.

## **3. The Economic Agenda**

The Convention also had a unique opportunity to propose reforms to the institutions governing economic policy formation inside the Union. Here I will limit my discussion to two aspects: the macroeconomic policy framework inherited from Maastricht, and the EU budget process.

### 3.1 The first challenge: the macroeconomic policy framework

It is useful to discuss separately three aspects of the Maastricht framework: monetary policy, fiscal policy, and the question of the Euro Group. Again, I start by identifying some of the main challenges, and then I turn to a tentative assessment.

#### *Monetary Policy*

Three critical aspects of the institutional framework inherited from Maastricht deserved the attention of the Convention.

The first and most obvious is the governance of the ECB. Enlargement poses a difficult challenge, because it increases the number of national governors that can vote in the Governing Council of the ECB. The ECB itself proposed a weird rotating mechanism among national governors. This solution has been sharply criticized by academic economists and other commentators. The criticisms concern the size of the Governing Council, that remains too large to ensure effective decision making (up to 30 non-voting members, and 15 governors with voting rights); the idea of rotation, that enshrines the principle that governors act as representatives of their own country; and the possibility that some of the governors may not be up to the job.<sup>1</sup> The Ecofin Council did not impose upon the ECB a different and better solution. The Convention could have seized this opportunity to propose that the conduct of monetary policy in Europe be delegated to the ECB Executive Board, following the model of the Bank of England and of many other central banks ruled by smaller committees of experts.

The second issue is the priority given to price stability in the Maastricht Treaty, and the choice of monetary policy strategy. Few if any central bank statutes in the world give such a strong emphasis to price stability, only paying lip service to other goals. Such emphasis was probably warranted in the late 1980s and early 1990s, when the danger of high inflation was still recent, and many European central banks lacked credibility. But now, the threats posed by inflation and deflation seem symmetric, and expectations have adapted to the new circumstances. The Maastricht treaty left the ECB free to interpret its mandate to preserve price stability as it deemed fit, and indeed the ECB has adopted an operational strategy in this regard. But is it appropriate to give the ECB so much unchecked discretion in how to interpret its mandate? What if the ECB makes a wrong choice? What if its strategy is too tight and does not leave sufficient room to pursue other goals, such as stabilizing output fluctuations? These are not just rhetorical questions, since indeed the ECB strategy has been sharply criticized by economists in the academia and outside.<sup>2</sup> The problem is not so much the possibility of making mistakes – anybody can, irrespective of who is in charge. The real question is whether the ECB would be able to correct these mistakes quickly enough. In light of the problems surrounding the ECB governance mentioned above, some scepticism is warranted. An alternative option would have been to ask the Ecofin Council to interpret the Maastricht Treaty and periodically assign the ECB and inflation target, again following the model of the Bank of England and of other inflation targeting central banks.

The third and final issue concerns the convergence criteria for entering EMU, and in particular those concerning inflation (within 1.5% of the average inflation of the three countries with lowest inflation inside EMU) and exchange rate stability. The Maastricht convergence criteria were drafted with a different set of countries and of economic circumstances in mind. The small countries of Eastern and Central Europe are less developed, and for them achieving price stability or exchange rate stability might raise peculiar challenges. Looser convergence criteria might be more appropriate.

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<sup>1</sup> See for instance CEPR (2002), Gros (2003).

<sup>2</sup> See Svensson (2002)

### *Fiscal Policy*

The fiscal policy framework inherited from Maastricht also poses several challenges, real or alleged. I will briefly mention two in particular: fiscal policy coordination, and the Stability Pact.

Currently, fiscal policy remains a national prerogative, although subject to the constraints imposed by the Stability and Growth Pact and to some mutual screening. Critics of current arrangements claim fiscal that policy coordination is needed in two areas: stabilization policy (i.e. aggregate demand management in reaction to EU-wide shocks) and tax policy. But neither claim is convincing.

Consider stabilization policy. First, the evidence suggests that the spillover effects across countries in the realm of fiscal stabilization policies are small and unstable: on average, fiscal policy in one country of the Union does not have quantitatively relevant effects in other Member States. The benefits of fiscal coordination are accordingly negligible, even though things might change if economic integration proceeds further. Moreover, the possibility of policy coordination and communication between national governments already exists and could be exploited if necessary. Second, even if the spillover effects were sizable, the benefits of an active and discretionary fiscal policy for stabilization purposes are highly doubtful. Fiscal policy operates with uncertain but considerable lags, and it is very difficult to time fiscal policy appropriately over the business cycle. The ideal arrangement is one in which national governments mainly rely on “automatic stabilizers”, rather than on discretionary policy decisions. Note that, given the large European welfare states, automatic stabilizers are quite large in the Euro area (though they differ across countries).

Next, consider tax policy. Here the advocates of more coordination point to the danger of harmful tax competition when tax policy remains decentralized. The main cost of tax competition is that it shifts the allocation of the tax burden against the immobile factor (labour). Concentrating taxation on a subset of the tax base increases deadweight loss and reduces economic effectiveness. Since labour markets are far from competitive in Europe, high labour-income taxes reinforce other distortions that produce inefficiently high labour costs and high unemployment. Here too, however, there are counter-arguments. Tax competition may offset other distortions. Politically motivated governments may have an incentive to over-spend. And governments lacking credibility may have an incentive to over-tax capital and under-tax labor (the so called capital-levy problem). In both cases, tax competition can actually induce governments to adopt more efficient policies.

If the benefits of policy coordination are negligible, decisions on these matters are better left in the hands of national governments, and there is no need to transfer sovereignty to the center. But the ideas on the need for policy coordination or for tax coordination are widespread, particularly in political circles. Hence here the Convention had room to make some serious mistakes, by proposing more centralization than is really needed or desirable.

Finally, I turn briefly to the Stability and Growth Pact. A lot has been written on this topic. The general conclusion of that debate is that the current formulation of the Stability Pact is defective. I will not attempt to summarize that discussion, since it would take too long and some of the points are well known. Clearly, the Convention had two possible options: either to leave the matter untouched, essentially leaving improvements to the formulation of the Stability Pact to future deliberations in the Council or future proposals by the Commission. Or else, it could have taken the matter in its own hands, and proposed an alternative approach.

### *The Euro Group*<sup>3</sup>

In the previous pages I argued that fiscal policy should remain largely decentralized: there are no strong grounds for transferring powers away from member states towards the Union. This does not rule out some reallocation of tasks between the Ecofin Council and the Euro Group, however. This is the issue I take up next.

When the Maastricht Treaty was signed, the move to EMU was expected to involve all countries. As a result, countries outside the euro area were considered to be a small temporary minority. With enlargement, however, countries outside the euro area will be a majority, 13 against 12. Even if some newcomers could soon join EMU, the number of member states outside the euro area is bound to remain substantial. This could be a reason for formalising the Euro Group.

De facto, already today some decisions are implicitly taken by the Euro Group and formalised the next day at the Ecofin. The decisions concerning the early warning in 2002 and in 2003 and the excessive deficits procedure were managed in the Euro Group. Even the opinions on the Stability Programmes are discussed at the Euro Group and ratified the next day. At present, the peculiarity can be easily dealt with, but this may be more difficult in the future, with more countries being outside the Euro Group.

But what could a more formal Euro Group be doing? That is, which tasks could be reallocated from Ecofin to the the Euro Group? A first issue, related to our previous discussion, is whether the Stability Pact should apply to all countries or just to those inside EMU. According to the Maastricht Treaty, all countries are bound to avoid excessive deficits, although the sanctions envisaged in the Pact can only be imposed on EMU members. This is why the Ecofin is competent for the implementation of the Stability Pact, except when sanctions are at stake. But in reality, given the link between the Stability Pact and EMU, the practical implementation of the Stability Pact is mainly a matter for euro area countries. Moreover, to the extent that loose fiscal deficits and lack of fiscal discipline in one member state impose negative spillovers on others, they do so only or mainly among members of EMU. The Stability Pact has little or no rationale outside of EMU. Hence, the practice of de facto implementing the Stability Pact through decisions of the euro countries makes sense. But the ambiguity over who is bound by the Stability Pact and the contrast between the original formulation of the Stability Pact and the practice of its implementation is damaging to the credibility of the EU institutions.

Clarifying that the Stability Pact only applies to euro countries and giving the Euro Group the formal responsibility of administering the Stability Pact would have several benefits. First, a correspondence between what is actually done and what should be done would increase transparency and foster trust in EU institutions. Second, the Commission would regain the proposal powers that it has in the Ecofin Council but not in the informal Euro Group meetings, so that enforcement of the Stability Pact could become more effective.

Another related issue in front of the Convention was the need to clarify how stability and convergence programmes are assessed. If stability programmes are mainly a competence of euro area countries, who should be in charge of assessing convergence programmes, i.e the programmes of countries outside the euro area? Would it be acceptable that stability programmes are assessed only by euro area countries, while convergence programmes are assessed by all EU countries?

Finally, one last reason for having a formal Euro Group relates to external representation of the euro area. At present, the euro area is represented by the ECB President and by the President of the Euro

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<sup>3</sup> Some of the ideas in this subsection are discussed more extensively in Bini-Smaghi and Tabellini (2003)

Group. This is an informal arrangement, however, with some shortcomings in terms of continuity and effectiveness. Formalizing the Euro Group, with an elected President, could ensure continuity and consistency. The formalisation would also allow to give some role to the Commission, thereby balancing the institutional equilibrium with the Council and possibly the European Parliament.

Against all these benefits of a more formal Eurogroup, lie two important objections. First, the possibility that the Euro Group would act as a “counterweight” to the ECB, undermining its independence or simply leading to unnecessary conflicts. Second, the possibility that euro countries would use their decision making power (in the Euro Group or elsewhere) to hurt in some ways the member states outside of EMU. The Convention had to weight these costs against the alleged benefits of the Euro Group summarized above.

### 3.2 Achievements on the macroeconomic framework

The Convention left the macroeconomic framework almost untouched. No changes were proposed on the ECB governance, on the ECB monetary policy strategy, on the convergence criteria for entering into EMU. Unfortunately, neither the ECB itself nor the Ecofin Council are likely to initiate them. Evidently, the Maastricht treaty was considered to young for the Convention to tinker around with its foundations. This is a source of disappointment, as a good opportunity was missed.

The Euro Group was acknowledged, and it was proposed that it would be chaired by a President elected for two years. But its meetings remain informal. The Commission shall be invited to the meetings, but it will have no agenda setting power. Thus, the regrettable practice of pre-forming a voting coalition of the euro countries in the subsequent Ecofin meetings is likely to continue, depriving the Commission of valuable agenda setting power. More generally, the CT did not clarify what are the prerogatives of the Euro Group, and it conspicuously failed to mention the external representation of the EMU countries or some role of the Euro Group in formulating an exchange rate policy. Probably here the opposition of the Non-EMU countries prevented a more formal and clear recognition of the Euro Group – another disappointment.

The Maastricht provisions on excessive deficits were reaffirmed, and no change was proposed to the Stability and Growth Pact, with only one exception. Now the Commission can directly issue warnings and opinions to member states who are in excessive deficits (or risk having one), without requiring the prior approval of the Ecofin Council. This marginal strengthening of the Commission role as a technical Guardian of the Treaty is welcome, but it does little to remedy the deficiencies of the Stability Pact mentioned above.

Perhaps the main good news in this part of the CT is that it failed to make serious mistakes on policy coordination and on issues of tax policy. The CT is long on words on the need to coordinate economic policy, but short on substance. In particular, unanimity rule was preserved in all matters of tax policy, except when it comes to administrative issues having to do with combating tax fraud. Perhaps this goes too far in retaining veto rights, and decisions under majority rule would have been preferable at least in achieving a common and standardized definition of tax bases (particularly for corporate taxes). But the risk of making mistakes and opting for majority rule in setting tax rates (eg. on corporate tax rates) was considerable. As argued above, this would have deprived the Union of some beneficial incentives to limit taxation in general, and to limit taxation on capital income in particular. The main achievement here is that such a mistake was not made.

### 3.3 Second Challenge: the Budget of the Union

Currently the EU budget is mainly devoted to finance the redistributive programs of the EU. Out of a budget which is just over 1% of the Union GDP, almost half is spent to support agriculture, while another 35% are transfers to poor regions. Marginal revenues take the form of transfers from Member States. Both features give the EU budget a strong redistributive focus. Now the whole discussion on the EU budget only concerns who gains and who loses, and in particular which countries are net beneficiaries or net payers, and by how much. No attention is paid as to whether the money is well spent for the average European tax payer, or whether reallocations across alternative programs are desirable. Enlargement, with the large disparities between rich and poor countries, will make the political debate on the EU budget a nightmare.

It would make much more sense to shift the focus on what is the appropriate level of public good provision, taking into account the cost of raising funds. On the side of outlays, this means spending for the public goods that are currently badly needed: internal and external security, defense, foreign policy. It also means finding ways to link the EU budget to national budgets, to facilitate the transfer of some costly projects from the national to the EU level – Buti and Nava (2003) formulate some specific proposals in this regard. On the contrary, the redistributive programs currently alive should be scrapped, scaled back or isolated in a separate section of the budget.

On the revenue side, these public goods could be financed with the proceeds of a European tax levied for the purpose. For instance, a fraction of the personal income tax base, or of the value added tax base, could be reserved for a specific EU tax. In a way, this would be a return to the past: until 1988 the EU budget was paid for by a small fraction of the VAT tax. The tax rate on the agreed upon tax base could be set by the Council and the European Parliament under some qualified majority provision - see Goulard and Nava (2002) for a more extensive discussion of how this could be done in practice.

The challenges for the Convention did not only concern the structure of the budget, but also the procedure for approving it. Giving the European Parliament more say over the budget, and creating a specific tax over which the European Parliament has some control, could stimulate a European-wide debate on genuine European policy issues: how much are we prepared to spend to have a more effective military capability, or a more efficient border patrol? Now, political debates on these issues are inevitably distorted by a national perspective and by the debate on redistribution across countries. Finally, the current unanimity rule in the Council provides a valuable check against excessive growth in the budget size, but at the same time it reduces the agenda setting role of the Commission and contributes to increase the focus on who are the net beneficiaries.

### 3.4 Achievements on the Budget of the Union

The CT contains some modest steps in the right direction. On the negative side, the redistributive programs and the objectives behind those programs were reaffirmed. This is not unexpected, and of course the Council is always free to scale down or reform redistribution. But it is unlikely that the Council would do that. The incidence of CAP and Structural Funds on the budget of the Union will remain large, and this will limit outlays in other and much more valuable projects.

Second, unanimity was preserved for all Council decisions concerning the limit and the categories of the Union's own resources. This is not a bad thing, since it will check an excessive growth in the size of the EU budget. On the other hand, unanimity will make it more difficult to agree to finance the budget with the proceeds of a specific "European tax" (or a some shares of pre-identified tax bases on which the Union sets the rate).



The main innovation in the CT is to move to qualified majority in setting the expenditures side of the budget. This goes in the right direction, since it creates more flexibility to use the EU budget to pay for European public goods. The European Parliament also acquires a bigger role in this regard, again a positive development since it increases the pan-European perspective on the budget. Nevertheless, these changes would kick in only after the first multiannual (i.e. five year) framework has been approved (after the CT comes into place). Given the long time expected for the ratification process, this could mean a delay of more than a decade from now.

#### 4. Institutions

The main challenges for the Convention clearly concerned the reforms of the EU political institutions. First, enlargement creates the need to enhance the Union's *effectiveness* – i.e. the ability to make swift decisions and to implement them efficiently, so as to reach the Union's goals. Second, according to many critics, the EU suffers from a “democratic deficit”. Collective decisions and actions in the EU are too removed from the citizens. The Convention therefore was supposed to propose reforms that could increase the *accountability* and the *legitimacy* of the Union's institutions.

Like for task allocation, these challenges contained an important intertemporal dimension. The direction of future changes in the EU is predictable, and twenty-thirty years from now the Union is likely to be politically more integrated than now. The Convention's proposals therefore need to be evaluated from an evolutionary stand point. They must be politically feasible now, but they must also allow the Union's institutions to evolve and adapt to a closer form of integration. An important challenge for the Convention was to propose institutions that would easily evolve into a desirable long run arrangement.

To organize my discussion of the institutional reforms proposed in the CT, I will take the perspective of the economic analysis of political institutions. This is a recent line of research that views the constitution like an “incomplete contract”: the constitution cannot prescribe the content of public policies, but it lays out the procedure for making policy decision. Specifically, the constitution provides an answer to three critical questions. i) *Who has control rights over which policies?*. In the context of the EU, this question focuses the attention on the allocation of power between the Commission, the Council and the European Parliament; and within the Council, between the different Council configurations. ii) *How are these control rights acquired and preserved through time?* Here, the open issue is mainly the appointment and termination procedures for the Commission. iii) *How are the control rights over policies exercised?* The main issue in this regard is the decision making procedure in the Council, namely unanimity vs qualified majority, and what type of qualified majority.

In the remainder of this section I will discuss the challenges faced by the Convention on these three institutional aspects, and then I will briefly comment on the proposed solutions.

##### 4.1 Allocation of control rights over policies

###### *The Challenges*

The main challenge here concerned how to allocate power between and within the EU institutions, so as to increase the effectiveness of the EU actions.

With a short run perspective, the main problem was to enable the Council to function more efficiently with 25 (and maybe soon 30) countries represented in it. The most critical need was to streamline the Council Presidency, since the rotating mechanism is clearly inefficient.

With a long run perspective, however, there was another pressing (and more controversial) need: namely to transfer executive power to the Commission, particularly to enable it to provide public goods in the new areas of security and foreign policy. As argued above, here intergovernmental policy coordination would pose difficult enforcement problems. Effective public good provision requires executive actions, and in the long run these would be naturally performed by the Commission. In other words, some had the vision that in the long run the Commission should evolve into a “European government”, with strong executive prerogatives and a broad mandate in a few well delimited areas. The arrangement currently in place for trade policy, where the Commission negotiates with other countries on behalf of member states, is one example of this vision.

Clearly, the short run and the long run goals clashed against each other. A streamlined Council presidency and a more effective Council could diminish the power of the Commission and prevent the desirable long run evolution. A difficult challenge for the Convention was thus to find ways to reconcile these two conflicting goals.

The Convention also faced other challenges to enhance effectiveness. Council meetings are often criticised for having excessive sectoral fragmentation: agricultural ministers are in charge of making legislative decisions on agriculture, transport ministers on transportations, and so on. Clearly, these sectoral Councils fail to internalize the general interest of the Union and are more easily captured by special interests. Reducing this sectoral fragmentation and imposing a unique Council formation for legislative decisions was thus an important (and not particularly difficult) challenge for the Convention.

Yet another challenge, still concerning effectiveness, was to reduce the size of the Commission in light of an enlarged Union. Although intellectually simple, this challenge was politically very controversial, for the obvious reason that smaller countries did not want to miss “their” Commissioner, while the larger countries did not want to be under-represented in the Commission.

Finally, one last challenge for the Convention was to enhance the scope of decisions over which the European Parliament would have a say. Here, the motivation was not so much to enhance effectiveness, but rather to increase the legitimacy of EU decisions.

### *Achievements*

The evaluation of the CT here must be mixed, and the final judgment depends on the priorities one gives to the conflicting challenges described above.

On the plus side, the size of the Commission was reduced to 13 voting Commissioners (plus the President and the Foreign Minister) that rotate among member states (plus other non-voting Commissioners who will have more bureaucratic tasks). Also on the plus side, the co-decision procedure (where the European Parliament has an important role) was extended to many new areas.

Clearly on the minus side, the CT fails to address the sectoral fragmentation of the Council. There is a General Affairs and Legislative Council that is supposed to insure consistency in the work of the Council of Ministers. But Art. I-23 says that, when it acts in its legislative function, “each Member State’s representation (in the Council) shall include one or two representatives at ministerial level with relevant expertise, reflecting the business on the Council agenda”.

The most controversial issue clearly concerned the Presidency of the European Council. From a long run perspective, the ideal arrangement would have been to ask the Commission President to chair the Council (the so called “double hat” proposal). This would have insured that increased

effectiveness in the Council would not come at the expenses of diminished Commission power. But opposition to this idea was too strong, and in the end a compromise was found with a Council President elected for two and a half years, renewable once. On paper the duties of the Council President are minimal (though the risk of clashes with the Foreign Minister over who represents the Union remains). But a strong and ambitious Council President could still undermine the work of the Commission. From an evolutionary perspective, a preferable compromise would have been to envisage that the “double hat” Presidency would start automatically at some known future date.

#### 4.2 The appointment and dismissal of the Commission

##### *The challenges*

It is sometimes said that the Commission lacks accountability because it is not subject to direct or indirect political control. This criticism is not justified. So far the Commission has largely been kept accountable as a bureaucracy: it has well defined missions in specific areas (competition policy, the single market, trade policy, and so on), and it is held accountable by public opinion, the media, the European Parliament, the Council, or the European Court of Justice, for how it performs these missions.

Nevertheless, bureaucratic accountability cannot easily be extended if the Commission evolves into a government-like institution, with a broader mandate on other areas, such as foreign or security policy. As the scope of European actions is expanded, and the Commission acquires new tasks, bureaucratic accountability ought to be gradually replaced with more systematic political accountability. Whereas a bureaucrat can be thought of as an expert who is appointed to fulfil a narrowly defined mission, a politician is an elected policymaker with a broad mandate whose main task is to please the voters.<sup>4</sup>

An important challenge for the Convention was to increase the Commission’s political accountability, while at the same time preserving the Commission’s tradition of a bipartisan institution with valuable technical expertise. Concretely, this means having a more political appointment (and possibly dismissal) procedure for the Commission.

Here it is useful to start from the long run. Modern democracies have found two ways to keep the holders of executive powers politically accountable. One is presidentialism: the executive is directly elected by the citizens, and cannot be voted out of office by the legislative assembly. The other is the parliamentary form of government, with the executive accountable to the legislative assembly. Which of these forms of government can be best adapted to the special features of the EU in the long run?

Both of them have pros and cons. Most if not all European democracies are parliamentary (even in the semi-presidential regimes of France and Finland, the government is accountable to the legislative assembly). The parliamentary tradition is thus more familiar to European citizens and more suitable to its political parties. But a fully fledged parliamentary model would have its downsides too. Given the political heterogeneity of EU member states and the strength of national parties, the European Parliament is unlikely to be ruled by a single party majority. This would make it difficult to avoid the traps of unstable and ineffective coalition governments, while also preserving effective accountability of the Commission to the European Parliament. It is no coincidence that presidentialism is particularly common in large and heterogeneous political communities. Moreover, even in the long run, the power to tax is likely to remain firmly in the hands of member states, while the new prerogatives acquired by the Commission will largely be

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<sup>4</sup> Alesina and Tabellini (2003) analyze and contrast bureaucratic vs political accountability.

executive tasks. Parliamentary oversight of these tasks is not superior to direct elections. On the contrary, having a direct source of legitimacy for the European executive would be a major benefit.<sup>5</sup>

Weighting these pros and cons is difficult, since they all concern a distant long run. But this comparison is necessary to evaluate the final decisions imbedded in the CT. The Convention could choose between two options. One was to give the European Parliament the responsibility of choosing (and possibly dismissing) the Commission President. The other option, also feasible in the short run, was to have the Commission President elected by an electoral college of representatives of national parliaments (and possibly also of the European Parliament).<sup>6</sup> Both options were discussed in the Convention. From a short run perspective, they seem very similar. But their long run properties are not. The first option is likely to evolve into a parliamentary form of government. The second option, instead, is likely to evolve into a presidential form of government, as it eventually did in the US.

### *Achievements*

The parliamentary model was preferred by the Convention. By Art. I-26, The Commission President is elected by the European Parliament, who can also dismiss the Commission with a censure vote. A simple majority rule is sufficient for the election, but two thirds majority is required for dismissal. To avoid an excessively partisan Commission President, the candidate for President is proposed by the Council (who decides by qualified majority), “taking into account the elections to the European Parliament”. If the candidate proposed by the Council does not receive the required majority support in the Parliament, the Council submits a new candidate and the procedure is repeated. The European Parliament also has to approve the whole Commission, which is now formed by the elected president (the Commission President picks among three candidates proposed by the member states whose turn has come to be represented in the Commission). Note that the Council has no say on the choice of Commissioners nor on the lists submitted by member states.

The evaluation of this procedure probably depends on one’s rate of time preference. In the short run, the parliamentary model is likely to be the safest and more natural choice. But in the long run, the presidential regime might have been preferable, because it avoids the risk of government instability, and because it is more likely to foster the participation of European citizens in a genuine European political debate.

The biggest risk of the procedure in CT is the risk of clashes between the EU institutions. One obvious conflict is between the European Parliament and the Commission. The European Parliament may be tempted to flex its muscles with the censure motion, to impose its will on a reluctant Commission. This risk is diminished by the need to garner a bipartisan majority in the Parliament (since the majority threshold for dismissals is two thirds). But it is enhanced by the fact that the European Parliament can never be forced to dissolve itself and have early elections- a threat that instead is always present in any parliamentary regime.

A second possible conflict is between the European Parliament and the Council, over the election of the Commission President. A natural implication of this appointment procedure is that the main political groups in the European Parliament now have strong incentives to pre-empt the Council, and run the parliamentary elections with pre-announced candidates for Commission President (i.e., with the names of individuals their group would elect if it wins a majority in the Parliament). But the Council is not constitutionally bound by these pre-announcements. What if the Council decides to disregard them? Clearly, the outcome would not be a pretty sight.

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<sup>5</sup> Berglof, Eichengreen, Roland, Tabellini and Wyplosz (2003) discuss these points more thoroughly.

<sup>6</sup> This method of appointment was advocated by Hix (2002) and by Berglof, Eichengreen, Roland, Tabellini and Wyplosz (2003), among others.

Pre-announcing the candidate for Commission President at the European elections would increase the relevance of the parliamentary elections – a good thing. But it also increases the partisan connotations of the winning candidate – which might be a problem.

Finally, the procedure for the appointment of the thirteen European Commissioners increases the power of the Commission President, who is the only one responsible for this choice. The Commission President can also force a Commissioner to resign. These prerogatives of the Commission President increase the likely effectiveness of the Commission, and thus ought to be judged positively. But they also increase the cost of having a Commission President that is perceived to be excessively partisan.

#### 4.3 Decision making procedures in the Council

##### *Challenges*

The final constitutional challenge faced by the Convention was to facilitate decision making in the Council, by extending the scope of majority rule, and reducing the threshold for qualified majority.

The Nice Treaty preserved unanimity in several key areas, such as taxation, the budget of the Union, foreign and security policy, as well as in several less important ones, such as trade in intellectual property rights. Unanimity of course makes it more difficult to change the status quo, and reduces the agenda setting power of the Commission. It also forces the Council to rule over packages of issues, so that dissenting members on one issue can be compensated on other policy dimensions. Enlargement to 25 and possibly 30 countries clearly increases the importance of reducing to a minimum decisions taken by unanimity. Nevertheless, unanimity can prevent excessive centralization in areas that should primarily be left to member states, particularly if the status quo is still decentralized.

The Nice Treaty also prescribes a cumbersome formula for Council decisions under qualified majority. Currently three conditions for approval need to be met: a proposal must receive at least 72% of the weighted Council votes; it must be approved by at least half the member states; and it must be approved by member states representing at least 62% of the EU population. Of these three thresholds, only the first one is binding most of the time. Moreover, in a Union of 25 member states it imposes a very demanding approval threshold. Baldwin and Widgren (2003) compute that only 2% of all possible coalitions in the Council would be able to overcome all three criteria. In other words, the qualified majority threshold inherited from Nice is really not very different from unanimity rule.

The main challenge for the Convention was thus to change the formula for qualified majority, so as to increase the probability of approving proposals in the Council. The second challenge was to reduce the scope of unanimous decisions, without hurting the sensitivity of member states. Again, these challenges have an intertemporal dimension, since the demand for easier Council decisions (and less veto rights by member states) is likely to increase over time.

##### *Achievements*

The CT makes considerable progress in this area. The main achievement of the Convention has been to scrap the first requirement altogether (the 72% of weighted Council votes). This results in a huge increase in the probability of approving new legislation. Baldwin and Widgren (2003) compute that, under the rules proposed by the CT and with 27 countries, as much as 22% of all possible Council coalitions overcome the majority thresholds. This takes the Union to a situation comparable to that of the 1960s, when it consisted of only the six founding member states. This

large expansion in the number of possible winning coalitions greatly increases the agenda setting power of the Commission: the Commission now can pick and choose its preferred option from a much larger set of feasible alternatives.

The increase in the probability of approving legislation arises because the largest countries of the Union are represented in many winning coalitions, in combination with a variety of the smaller member states. This change relative to Nice thus also entails a considerable redistribution of power among countries. Some of the countries of intermediate size, such as Spain and Poland, are the main losers, since their vote will now be pivotal in much fewer circumstances. As we have already seen, Spain and Poland have strongly opposed this valuable simplification. Hopefully the IGC will be able to resist their pressures to reject this modification, but this should not be taken for granted.

On unanimity vs majority rule, the CT also makes some progress. The scope for unanimity rule has been diminished, even though it has been preserved in some key areas, such as taxation, foreign policy and defense. As already remarked in the previous pages, it is not at all surprising that member states have retained a veto right in these key areas, and in the case of taxation this is also largely desirable from a long run perspective. Moreover, the CT now enables the Council to switch from unanimity to majority rule, if it so decides (unanimously) at a future date.

Many commentators, including the Commission President Romano Prodi, have sharply criticized the Convention for having preserved unanimity rules to such a degree. These criticisms are misplaced and unjustified. The critics seem oblivious to the much more important achievement of the CT in improving the formula for qualified majority. We ought to be happy that the Convention was able to agree on this improvement, and we should worry that it is not undone in the upcoming IGC.

## **5. Concluding remarks**

The EU institutional problems seemed intractable in the hands of national governments. The Convention had a unique opportunity to exploit its agenda setting powers and propose new and lasting solutions. Has it succeeded? I will not attempt an overall and succinct evaluation. In the CT there are both important improvements and missed opportunities. Even though we are likely to disagree on how we allocate blame and approval, I will summarize here the main tentative and highly selective conclusions reached in the previous pages.

Concerning task allocation between the EU and member states, there is room for some positive assessments. First, the CT introduces some important innovations that could enable the Union to gradually become an effective provider of public goods in the realm of foreign and security policy. Of course, this will only happen if national governments have the will and the vision to do it. But the CT creates some new instruments and institutional provisions that could make this possible. Second, national parliaments will now have a marginal role in policy formation or supervision. This could also strengthen the enforcement of subsidiarity, ex-ante, when the Commission elaborates its proposals, and ex-post, through appeals to the Court of Justice. Third, the CT expands the role of the European Parliament in approving the expenditure side of the budget. This could facilitate the adoption of a much needed pan-European perspective in setting budgetary priorities. Last, but not least, no big mistake was made in abandoning unanimity rule where this could have led to excessive centralization, namely in the areas of taxation and employment or social policies.

Still with regard to task allocation, in the previous pages I have also emphasized a number of disappointments or missed opportunities. The Convention had the opportunity to propose reforms to some of the Union more inefficient and invasive programs. This did not happen, and the CT really

rationalizes the whole *acquis communautaire* as is. As a result, the risk of excessive centralization of tasks remains, particularly in the redistributive and social areas, given the emphasis of the CT on social and solidaristic values. Finally, the CT left the macroeconomic policy framework inherited from Maastricht largely untouched, despite some obvious deficiencies of that framework.

The institutional reforms proposed by the Convention also contain positive improvements and missed opportunities. On the positive side, one of the main achievements of the CT is the redefinition of the formula for qualified majority in the Council. This vastly increases the possibility of approving legislation, at the same time enhancing the agenda setting role of the Commission. Second, the CT largely extends the co-decision procedure, where the European Parliament has an important role. This, together with the important role of the Parliament in the election of the Commission President, could increase the relevance of the elections to the European Parliament and the popular legitimacy of EU decisions. Finally, the Commission President will have more control over the Commission, both through the appointment and dismissals of the Commissioners, and because he will chair a much smaller Commission. This is positive too, because it will increase the effectiveness of the Commission.

On the negative side, the main risk of the institutional reforms proposed by the Convention is that they will lead to clashes between the EU institutions: between the Council Presidency and the Commission, over policy formation; between the European Parliament and the Council, over the appointment of the Commission President; and between the European Parliament and the Commission, through the possibility of censure votes unaccompanied by early elections for the European Parliament. Some of these problems are the result of having opted for the parliamentary model of governance, rather than for a gradual evolution towards presidentialism, through the electoral college method for appointing the Commission President. This choice over the form of government is also unlikely to stir a very lively European political debate. Despite the arguments in the paragraph above, the European policymaking institutions are still likely to be perceived as too removed from the average citizens. Elections to the European Parliament will probably continue to be dominated by national political themes, rather than by a genuine debate of what is appropriate for the Union as a whole. Finally, and quite inexplicably, the CT failed to remedy the sectoral fragmentation in the Council.

The debate on the European Constitution will now return in the more familiar arena of intergovernmental decisions. This creates an opportunity to improve the CT and to correct some mistakes. But there will also be many opportunities for making it worse. Knowing the history of previous IGCs on these issues, the second possibility is much more alarming than the first one. Overall, we should be happy if the CT will be approved as is.

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