



European Communities

EUROPEAN PARLIAMENT**SESSION DOCUMENTS**

English Edition

9 July 1990

SERIES A

DOCUMENT A 3-165/90/Part B

INTERIM REPORT

drawn up on behalf of the Committee on
Institutional Affairson the European Parliament's guidelines for a draft
constitution for the European Union

PART B: EXPLANATORY STATEMENT

Rapporteur: Mr E. COLOMBO

420.4
 P 422.31 - text

DOC_EN\RR\92317

PE 141.140/fin./Part B

A Series: Reports - B Series: Motions for Resolutions, Oral Questions - C Series: Documents received from other Institutions (e.g. Consultations)

*	= Consultation procedure requiring a single reading
---	-----------------------------------------------------

**II	= Cooperation procedure (second reading) which requires the votes of a majority of the current Members of Parliament for rejection or amendment
------	-------------------------------------------------------------------------------------------------------------------------------------------------

**I	= Cooperation procedure (first reading)
-----	-----------------------------------------

***	= Parliamentary assent which requires the votes of a majority of the current Members of Parliament
-----	----------------------------------------------------------------------------------------------------

EXPLANATORY STATEMENTI. Introduction

The Committee on Institutional Affairs hereby submits a draft interim resolution as a basis for the joint consideration which is essential in order gradually to arrive at the final report and the preparation of the text of the draft constitution.

In its resolution of 23 November 1989 Parliament stated that the draft Treaty of 14 February 1984 should be an essential point of reference for the drafting of the constitution¹.

Your draftsman intends to adhere fully to this line. Democracy, effectiveness and subsidiarity continue to be the principles which should underpin the qualitative leap that the Community must make in order to become a Union. In practice, the democratic deficit remains, the Community decision-making process is still totally unsatisfactory, the implementation of Community decisions is subject to too many conditions and the allocation of competencies between the Community and the Member States rarely reflects any assessment of the desirability of decisions being taken at one level or the other.

It is therefore useful to guarantee a degree of continuity in Parliament's constitutional strategy. By making use of all the material that has already been discussed at length in various bodies and of the now established solutions, the aim is to encourage further study and discussion of the modifications to be made in the light of the progress already achieved since 1984 - if only in the form of small steps forward (including the Single European Act) - and of the development in thinking not only in the European Parliament and the national parliaments but also in other political and academic circles.

Discussions so far in the Committee on Institutional Affairs have revealed new aspects and details, some of which are already contained in the motion for a resolution; others will come to light as the various institutions gain experience.

In the resolution of November 1989 the European Parliament decided to begin to prepare the constitutional bases of the European Union and not, as in 1984, to draft a treaty 'in good and due form'. On this occasion Parliament has

1 Paragraph 11 reads: 'Decides to begin immediately to formulate the constitutional bases of the European Union on the basis of the principles of the draft treaty adopted on 14 February 1984 (subsidiarity, effectiveness and democracy) and of the political and legal consequences ensuing if a small minority of Member States did not join the European Union;'

preferred not to stress the means of implementing a constitution, which is admittedly an agreement between states but is also, and I would say, above all, a fundamental agreement between citizens and the political forces representing them.

This means that drafting the constitution should involve proper dialogue with and the widest possible consensus of the institutions and of the European public.

Your rapporteur takes the view that the European ideal, the achievements of economic integration and political cooperation, the decisions already taken and those now being considered for the creation of economic and monetary union, widespread agreement to the creation of a common currency and a common monetary policy and the institutional adaptation of the Treaties to the new realities reflect a deeper conviction among governments, in the Community institutions and among the people that the work must be continued to the end and more important goals attained.

In the meantime the political state of confrontation and diffidence in Europe has changed and the principles of democracy and liberty, on which our Community has always been based, have continued to assert themselves through substantial upheavals. Rather than reducing Community responsibilities, these political occurrences accentuate them because they increase the political role and duties of Europe in the international system and oblige it to play a decisive role in the creation of a new European order.

For these reasons the drafting of a constitution for the European Union is admittedly no easier but certainly becomes more necessary than ever.

II. The principles of the constitution

The constitution will codify the principles which nowadays govern our societies. The basic aim must be to lay down, for the 'associated' partners, a framework of guarantees as regards the competencies of the Union and the objectives it intends to pursue, while respecting the above-mentioned principle of subsidiarity.

The principles to be established in our draft relate to:

- (a) the rights and obligations of citizens, and of the states, vis-à-vis the Union²;
- (b) the fundamental objectives (political, economic, cultural and social) of the Union; hence a framework of the competencies which could be assigned to the Union, on the basis of the system of allocation referred to in (c) below and of the procedures to be laid down subsequently, and indications as to the general objectives to be pursued in the exercise of the various competencies³;

² Preamble and Articles 1, 3 and 4 of the 1984 draft. Declaration of fundamental rights and freedoms (De Gucht resolution of 16 April 1989), adopted pursuant to Article 4 above; see also the Social Charter and the debate thereon.

³ Preamble and Articles 7 and 9 of the 1984 draft

- (c) the system of allocating competencies between the Union and the states while respecting and enhancing the value of their internal structures⁴.

III. The competencies of the Union

- A. The constitution of the Union would certainly not seek, at least in principle, to reduce the level of integration already achieved⁵.

The question immediately arises as to whether it is essential to establish a broad definition of the future competencies of the Union and to set these out in some detail, as was the practice followed with the 1984 draft. Your draftsman believes it is preferable to avoid a similar procedure in a draft constitution, except as regards the content of subsection C of this section of the working document. It is necessary to distinguish, on the basis of a careful analysis of the Community Treaties and also, in this connection, of the 1984 draft Treaty, between constitutional issues and agreements on political action to be pursued. The latter are clearly not comparable with constitutional provisions as far as universality or duration are concerned. The 1984 draft Treaty was right to call for the introduction of new policies and to lay down objectives at a time when the crisis was calling into question the very ability of the Community as such to respond both to the crisis itself and to the new challenges, by strengthening or extending the process of integration: the Single European Act drew heavily, though from a more restricted viewpoint, on the contents of the draft⁶.

Our initiative, on the other hand, comes at a time of rapid change both in technological options and applications, and hence in the resultant remodelling of economic systems and of the market, and in the international political situation, which in all the Community's history has never witnessed such rapid and widespread evolution and revolution. Moreover, it concerns a Community which is in the throes of change, although recent international events and certain inopportune interpretations of those events in relation to the construction of Europe oblige us to reaffirm the reasons for the 'European option' chosen by all the Member States and the factors which make it necessary to accelerate the process of integration.

- B. This requires appropriate thought to be given to ways of assisting this acceleration and of enabling the Union in future to develop its power of initiative while nevertheless assigning to it only those competencies which can be exercised more effectively, or exclusively, at Union level.

There are two dangers which must be avoided: firstly, the danger of blocking the development of the Union in the absence of any means of assigning to it competencies which circumstances render essential; secondly, the danger of seeking at all costs to assign to the Union competencies which could be exercised equally well, or better, at state or regional level.

⁴ Preamble and Article 12 of the 1984 draft

⁵ Articles 4 and 7 of the 1984 draft

⁶ Articles 47-69 of the 1984 draft

In order to maintain the Union's impetus and ability to adapt to the requirements of European development and to the international political situation, the constitution must provide for an effective constitutional mechanism enabling competencies to be assigned to the Union which were not envisaged in the act bringing the constitution into force.

This mechanism will have to provide adequate guarantees and safeguards both in terms of the participation of the institutions of the Union and for the participating States, thereby ensuring that proper account is taken of the principle of subsidiarity⁷.

C. The strategy behind the definition of competencies and the way in which this strategy is to be implemented will have to be clarified for at least two sectors, namely external policy, including external security and internal security, without which the Union cannot be called a political union. These two sectors were in fact covered by all the political decisions involving a commitment to achieving European Union. (This can be seen in the 'plans' in the 1950s and 1960s all of which focused on the issues of external policy and security, the initiatives based on the Tindemans report around 1975, the Stuttgart declaration of 1983, the 1984 draft Treaty and the 1986 Single European Act; it should be borne in mind that in many studies and research papers the term political union is synonymous with cooperation in the area of security and external policy)⁸.

On the question of external relations, the Community already has competencies deriving from the Treaties and from the judgments of the Court of Justice which reveal the existence of an exact parallel between the Community's internal and external powers, for example accession and association agreements, trade, customs and fisheries agreements and agreements with certain international organizations⁹.

Procedures governing these areas are also laid down by the Treaties. The provisions of the Treaties, but more often established practice, have brought about a situation in which the Council takes precedence over Parliament even where there is no justification for this in the Treaties. A balance will have to be restored here, particularly if the Council clearly emerges as the legislative chamber of the Union and the responsibility of the executive becomes an all-important question.

As a result of the practices introduced as a result of various decisions (adoption of the Davignon report in various stages, the 1983 report by Lord Carrington, the Stuttgart declaration) and by Art. 30 of the Single European Act, the Member States have already assumed specific obligations which, in the area of foreign policy, limit the full exercise of national sovereignty, albeit by means of somewhat demanding procedures such as consultation. Article 30 of the Single European Act requires the contracting parties to endeavour jointly to formulate and implement a European external policy. What this really amounts to is the obligation to inform and consult one another and to take full account of the interests of the Community partners in national policy. However, these obligations still do not lead to

⁷ Article 11 of the 1984 Draft Treaty

⁸ For external policy see Articles 63 to 69

⁹ See Article 65(4) of the Draft Treaty and the provisions of Article 237 and 238 of the EEC Treaty and the Aglietta report.

a genuine common foreign policy through which the Union might assert its identity and give Europe the opportunity to take its place among the leading players on the international political stage.

This approach becomes even more necessary at a time like the present when recent international events have highlighted the role and hence the responsibility incumbent upon Europe, which it has failed to measure up to within the Community as a whole, let alone as regards the new wider area opened up by relations with the countries of Central and Eastern Europe.

It is therefore precisely in this sector that the principle of subsidiarity should be applied effectively, making it possible to determine which powers should lie with the Union and which should remain the preserve of the individual States. This can be done either by vesting certain powers in the Union or by laying down a number of general principles, which could subsequently be adjusted, to which the Member States would have to adhere in implementing their own foreign policies. The decision reached by the four powers signatory to the Berlin Agreement, the two Germanies and, subsequently, Poland, emerging from the Ottawa communiqué, which commits this group of states to negotiating security guarantees which also extend to neighbouring states, highlights the relevance today of an external policy for the Community as a whole, enabling all the European states to contribute to and be answerable for such processes and hence for more stable and better balanced relations.

The problem of security must also be seen in this context, bearing in mind however that the countries of the future Union are members of NATO, except for one, which will be neutral. Notwithstanding the need for cooperation within the form of NATO and disarmament negotiations at this stage, there is no disputing the fact that security issues are acquiring such a high profile that not only the countries of Western Europe but also those of Central and Eastern Europe undoubtedly have a joint responsibility. Without wishing in any way to challenge NATO ties or the involvement of the United States in defence policy, the role of Europe is acquiring greater importance and it seems increasingly vital that responsibility should be assumed by the Union.

The total abolition of internal frontiers again raises the issue of internal security, which has already been considered in depth in cooperation between Community Member States. The issues involved here are not only the traditional ones such as drugs, terrorism, organized crime including fraud, and smuggling, to which an adequate joint approach has still not been found, but also the more delicate question of measures in the area of prevention and control and the need for coordination at judicial level.

The problem is not one of harmonizing penal codes or national judicial systems (something which is in any case not attempted by many federal systems), but the Union will undoubtedly have to enact laws providing for coordination and safeguards in this area and, possibly, other administrative structures to oversee such coordination.

It would also be worthwhile considering whether the Court of Justice might have a role to play in resolving disputes between the Member States in this area.

IV. Institutional provisions¹⁰

A. The essence of the constitutional system of the Union is based on the idea of 'dual legitimacy', a principle which can be found in various forms in the bicameralism of federal systems. As stated above, a constitutional agreement creating the European Union involves contracting parties of two types and at two different levels: the States and the citizens.

It is logical that the structure to implement any constitutional blueprint should involve all the contracting parties; hence the need for two decision-making bodies of equal status, one chosen by the States (the Council) to expound and represent the values enshrined in their respective systems, the other elected by the citizens (the Parliament) and representing their interests at the level of the Union.

If such a system is to have a chance of operating effectively it must have an executive which enjoys the confidence of the two bodies and has a considerable degree of stability, efficiency and democracy. Such a government would have to be answerable to the two assemblies, which would generate unparalleled internal momentum from a variety of sources, and yet it should not merely express the majority view.

This blueprint is a conventional one which, in the present circumstances, would appear to provide a possible framework for the institutional system of the Union. It is important to emphasise that the power of co-decision shared by the Council and the European Parliament is designed to create a different and more effective counterweight to the governments of the Member States who, through the Council, are currently laying claim to virtually all the legislative power at European level.

B. Relations with the national parliaments are another matter¹¹. The question of their participation in Community decisions must be addressed. The legitimacy of this need which has emerged particularly since the entry into force of the Single European Act, which widened the competences of the Community and strengthened the powers of the European Parliament, cannot be called into question.

This matter will have to be properly assessed and it will be necessary to find a way of involving the national parliaments so that they can make their specific contribution to the process of integration and to formulating policies through effective measures to monitor the activities of the national executives.

¹⁰ Part three of the draft Treaty; cf de Gucht report on the uniform electoral law now being drawn up; for the role of the executive see Roumeliotis report under consideration in the Committee on Institutional Affairs; for the legislative procedure, see Prag report now being drawn up.

¹¹ See Duverger report

What role can be played within the institutional system by regions which have a well-defined political and cultural identity within the constitutional systems of the individual Member States? The draft constitution cannot ignore the diversity and specific values expressed at regional level in the structure of each State.¹²

C. At present the Economic and Social Committee is the institution representing the interests of the two sides of industry. In the light of the experience hitherto acquired, proper consideration must be given to the institutional arrangements the Union has to make to deal with this sector, which is of such importance to the development of the Community, even if we have not done so in this interim report.

D. The overall political design of the Union will not be complete unless we give proper consideration to the role and powers of the organs responsible for judicial review and auditing. The system laid down by the treaties for judicial review appears in general to be satisfactory and the way in which powers are distributed between national courts and the Court of Justice is quite adequate. However, in certain areas provision needs to be made to extend the Court's supervisory powers, for instance with regard to relations between the institutions, the protection of basic rights, relations between the Member States and, in particular, guarantees as regards the allocation of competences and introducing a power of intervention vis-à-vis national courts in special cases.

As far as auditing is concerned, consideration should be given to the possibility of extending the powers of the Court of Auditors, perhaps by endowing it with the power to impose penalties in cases of defective management, although this would naturally be subject to judicial review.¹³

E. It has become clear as work progresses that the Central Bank will be an important institution of economic and monetary Union. The report by Mr Herman deals with this matter.¹⁴ Your draftsman's view - and that is why he includes the subject here - is that the bank should be an important constitutional organ. This means that emphasis and priority must be given to according the bank autonomy within the framework of a constitutional system where the political organs of the Union are able to lay down general guidelines for economic and monetary policy, so as to balance the bank's autonomy with the interests of the states and their citizens, who are the contracting parties to the Union.

It should be said in passing that the fact that the states have already committed themselves to this development is a clear indication that we need to look again at our whole institutional structure, in order to achieve what we are defining as European Union.

F. We should now turn our attention to the composition of the Court of Justice, the Court of Auditors and the management structure of the Central Bank.¹⁵

¹² See Ferrer report now being drawn up

¹³ Article 79 of the draft Treaty

¹⁴ European Parliament resolution of 16 May 1990, draftman: Mr Herman

¹⁵ See previous footnote, resolution of 23 November 1989, Martin resolution and Articles 30 and 33(1) of the draft Treaty

With this in view, adjustments need to be made to the composition of these organs and the way in which their members are chosen. The current method seems unsatisfactory and in conflict with its purported end. Clearly it is necessary to ensure that these organs adequately represent legal and economic points of view which reflect the cultural diversity of the different Member States, but this requirement must be balanced by the need to ensure that no member considers himself or is considered a representative - albeit with a degree of autonomy - of his own country's government, since this would run counter to the general aim referred to above.

Consequently, the current system for appointing members needs to be reviewed: increased parliamentary control is required, with Parliament giving its full agreement to the appointment of individual members.

G. Finally, consideration must be given to the problem of the European Council.¹⁶

This institution should figure in the Constitution and should be assigned the power to determine the general policy guidelines for the Union.

V. Exercise of powers

A. To enable the organs described above to exercise their powers, it will be necessary in particular to define the nature and status of the instrument of secondary legislation which, with proper distinct safeguards, will have the task of:¹⁷

- determining how specific powers are to be effectively exercised by the Union, determining the level at which these powers should be exercised by the organs of the Union or by which of the states or regions and, possibly, determining the conditions under which these powers should be exercised. These laws offer the most appropriate focus for the application of the principle of subsidiarity and they should be subject to a more binding procedure and thus accorded a superior status to other laws;
- organizing the operation of various organs and services of the Union;
- laying down the rules governing the Union's competence, either in full, where appropriate, or by means of framework laws;
- authorizing the ratification of international treaties concluded by the Union.

B. In accordance with the principle of dual legitimacy, the legislative acts or laws of the Union must be the result of full co-decision by Parliament and the Council, on the basis of a power of initiative enjoyed principally by the executive. With regard to laws governing the effective exercise of powers, provision could be made for specific majorities to be required both in Parliament and the Council, while ruling out any attempt to introduce a right of veto, a concept which is in any case now outdated.

¹⁶ Articles 8 and 31 of the 1984 draft Treaty

¹⁷ See Part Three, Title II, of the 1984 draft Treaty

In addition, the legislative process should comprise deadlines, failure to meet which would not prevent the procedure from continuing.

C. In dealing with the problem of legislation, we cannot overlook the need to draw a distinction between laws and administrative acts.¹⁸ Under the present Community system, this distinction has not been drawn at all, with adverse effects. For example, the legislative process is clogged up with laws and minor provisions which could easily have been covered by an administrative procedure, had proper guidelines been laid down by a framework law. In addition, the way in which the Community system as it has taken shape has failed to define the powers of the various organs, generates confusion between laws and administrative and implementing provisions. Under the Union system, however, the executive or regulatory role of the government should be given full recognition.

VI. Budget

The 1984 draft Treaty offers useful guidelines in this area.¹⁹ For present purposes, it is perhaps sufficient to say that, without prejudice to the Commission's power of initiative, Parliament and the Council must operate on an equal footing as the budgetary authority. With regard to the principles governing the budget system, we should retain both the principle of ensuring an annual balance of current expenditure and the possibility of using the budget as an economic policy tool.

VII. Let us look finally at the problems relating to the approval of the constitution.

Although your draftsman wishes to see progress towards political Union extended to all the Member States, he feels that he must express a reservation and ask whether provision should not be made for the possibility that not all the present members would be ready or willing to join the Union.

The process of determining the guidelines for the constitution will enable the European Parliament, in the course of the approval procedure and by means of a skilled campaign to promote information, debate and a broader consensus, to ensure that its goal, which is also the goal of Europe, is shared by the European public and the institutions responsible for interpreting the wishes of the public in the individual countries. This campaign, and the response which it generates, can provide Parliament with a realistic idea of the procedures through which its project must pass in order to become the European constitution.

¹⁸ Article 28, third indent (1984 draft Treaty)

¹⁹ Articles 70 to 81 of the draft Treaty

