DEVELOPMENT OF THE EUROPEAN PARLIAMENT'S POWERS: AN INCOMPLETE AGENDA?

BY FRANCIS B. JACOBS[1]

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[1] *Head of Division,*
European Parliament's Committee on the Environment Public Health and Consumer Policy.
These views are made in a strictly personal capacity, and only engage the author

Introduction

Development of the European Parliament's powers; an incomplete agenda?

From the Single European Act to the Amsterdam Treaty, successive IGCs led to a continuous increase in the European Parliament's (EP's) powers. In the Nice Treaty, little further progress was made for the Parliament. Have the EP's powers now reached a high water mark, or is there still a substantial agenda to complete?

This paper looks briefly at the development of the European Parliament's powers, and then at the gaps that still remain (notably the need for an extension of codecision, a reform in the comitology system, budgetary equality, a strengthened role in EU nominations, and reinforced EP powers in the field of international trade, and as regards other international agreements). The paper argues that it is important that these gaps be filled in the current negotiations stemming from the Convention, but that it will then be time for the EP to move on to a new era, away from a primary emphasis on an institutional agenda and towards a new emphasis on more thorough-going and systematic use of its newly-won powers and influence.

Evolution of the European Parliament's powers

Along with an exponential increase in its size from the 198 members in the pre-1979 nominated Parliament to the 626 members today (and the new figure of 732 laid down in the Nice Treaty), the European Parliament has also seen a great increase in its powers. The pre-1979 Parliament mainly adopted non-binding resolutions, but was given substantial new budgetary powers in the 1970s, which have since enabled it to play a real, if uneven, role as regards EC budgetary expenditure and also in the field of budgetary control (where it has a power of "discharge").

Since direct elections, the European Parliament has also steadily evolved into a body with proper legislative powers, firstly with the introduction of the two reading cooperation procedure in the Single European Act, then with the introduction of the co-decision procedure in the Maastricht Treaty and subsequently with its streamlining and further extension in the Amsterdam Treaty. With the widespread (but still by no means universal)

spread of co-decision and the increased number of areas in which EU legislation is adopted, the EP now plays a central role as regards primary legislation, and can both amend and repeal much of it. As regards implementing measures ("comitology"), the EP still plays a lesser role, but even here it is now kept much better informed than in the past and has a limited power of scrutiny ("droit de regard") on certain measures.

The European Parliament's powers are much weaker as regards international agreements, but it now has to give its assent for certain important agreements, and gives its opinion on many others. It has also been given the important power, particularly relevant at the current juncture, of formal assent to the accession of new EU Member States.

A further area where the European Parliament's powers have steadily grown is that over nominations to certain EU positions. For a long time these were exclusively a matter of concern for the individual Member States, but the EP now has to approve both the nominee to be President of the European Commission and the European Commission as a whole, and is consulted on membership of the European Court of Auditors and on the President and other members of the Board of the European Central Bank. The EP itself chooses the European Ombudsman. The EP also chooses two members of the Management Board for certain decentralised EU agencies and has been given a more direct, if still non-binding, role in the selection of both the Management Board and the Executive Director of the newly established European Food Safety Authority (EFSA). Besides all this, the EP has always had the power to censure the Commission as a whole.

The European Parliament has thus developed very substantive, if still uneven powers in the first or Community "pillar". The EP's powers have inevitably been more limited in the more intergovernmental second and third pillars. In the latter area, however, especially in those fields where the action taken is more akin to classic EU legislation, the EP's role has developed greatly in recent years. Its role is still more limited in foreign policy and security matters, but even here it is better informed and more involved than it used to be. There are thus relatively few areas of EU activity where the EP does not enjoy a mix of formal and informal powers. Vis-à-vis the Commission, in particular, but even as regards the Council, the EP is now far more powerful than it was.

Was the Nice Treaty a turning point in this process?

Three successive Intergovernmental Conferences that concluded in the Single European Act (1986), the Maastricht Treaty (1992) and the Amsterdam Treaty (1997) each resulted in major increases in the power of the European Parliament. The Nice Treaty (2001), on the other hand, only saw a very marginal increase in its powers. Does this mean that a turning point has been reached, either because the EP has few new powers to win or because there is no longer sufficient political will to grant it significant new powers?

The simple answer to the first question is clearly no. The increase in the European Parliament's powers, while an impressive one, has been very uneven in nature, and has left significant gaps in the Parliament's powers, even within the first or Community pillar, notably the lack of codecision in agriculture, the artificial distinction between so-called "compulsory" and "non-compulsory" expenditure in the budget and the lack of any role at all for the EP as regards Article 133 trade agreements. Moreover, the continuing evolution of the European Union's role, powers and structure means that the position of the EP within the overall system cannot be a static one but must constantly be re-evaluated.

The European Parliament itself, while conscious that an increase in its own powers should not be seen to be at the centre of its own preoccupations, has continued to emphasise some of the areas where its powers need to be completed, notably in its resolutions of 31 May 2001 on the Treaty of Nice, of 29 November 2001 on the future of the European Union, of 17 December 2003 on the typology of acts and hierarchy of legislation in the European Union, and of 11 March 2003 on reform of the budgetary procedure: possible options in view of the revision of the Treaties.

The issue of the European Parliament's roles and powers was also explicitly raised by the European Council in the Laeken Declaration on the Future of the European Union on 15 December 2001. In its section, in particular, on "more democracy, transparency and efficiency in the European Union", the Declaration posed a number of questions. "How should the President of the Commission be appointed: by the European Council, by the European Parliament, or should he be directly elected by the citizens? Should the role of the European Parliament be strengthened? Should we extend the right of codecision or

not? ...". "What is the future role of the European Parliament" and "how should the balance and reciprocal control between the institutions be ensured?".

The Laeken Declaration also prepared the way for the establishment of the European Convention, which has been working for over a year, and is now approaching the decisive phase of its deliberations. The powers of the European Parliament have not, of course, been the central focus of this work. As the Convention's secretariat has stated[1]: "The Convention's approach has been to treat institutional questions as a function of substantive issues. Competences, instruments and procedures have been addressed on their merits. Key criteria in Convention debates have been simplicity, efficacity and democratic legitimacy, not concern for particular institutional interests".

In the course of the Convention's work, however, questions related to the European Parliament's powers and its relations with national parliaments and the other European Union institutions have emerged again and again, in the various papers put forward by the Convention secretariat, in the various working group reports, in the specific Treaty articles now being examined by the Convention, and in the large number of submissions that have been made to the Convention from all sides. From all this it is clear that a far wider range of questions are being asked about the Parliament and its powers than were posed during the much narrower Nice Treaty process, and that the agenda of the development of the EP's powers is still an incomplete one.

All this does not mean, however, that the European Parliament will necessarily be a major beneficiary of the Convention process and its aftermath. It is only when the Convention and the subsequent IGC starts to look at detailed proposals and when package deals need to be struck that the picture will become clearer. Only then will it become easier to give an answer to the second question posed at the beginning of this section, the extent to which there is political will to give new powers to the Parliament, issue-by-issue.

The next section of the paper first looks at some of the general criteria and issues that have emerged during the Convention debates, and secondly at the specific issues related to the

[1] *Reflection paper of 10 January 2003 on the functioning of the Institutions prepared by the Convention secretariat and approved by the Presidium.*

powers of the Parliament. At present, of course, this is only work-in-progress, but it still gives a good indication of the issues that are going to have to be tackled.

General considerations

As pointed out above, some of the features of the Convention method have led to a greater emphasis on the role and powers of the Parliament than in the Nice IGC at least. The fact that there is a substantial European Parliament component in the Convention, that the EP is represented in the Convention Presidium, that MEPs have chaired some of the individual Convention working groups and that the Convention method generally ensures a much greater presence of parliamentarians vis-à-vis civil servants and government representatives, are clearly all important contributory factors.

A second key factor has been the Convention's emphasis on the establishment of a clearer constitutional structure for the European Union, and on simplification and clarification of EU structures and procedures. Traditional IGCs with their intergovernmental bargaining and issue-by-issue deals have led to piecemeal results and "ad hoc" structures, on which the European Parliament has gained greatly in many respects, but where all kinds of exceptions and special procedures have been allowed to develop. Giving the EU a single legal personality, trying to get rid of the pillar structure, emphasising general priorities (QMV and codecision), removing illogical exceptions (the EP's weaker role on agriculture, Article 133 trade agreements, the EURATOM Treaty, etc.) could all lead to substantial gains for the EP, even if increasing its powers is not an explicitly stated agenda item.

A further factor is the widespread concern about ensuring a more permanent and stable EU framework than has been the case in the past, and one that is not tinkered with every few years. This might lead to a one-off increase in the powers of the European Parliament, but limits would then have been set, and the question of the Parliament's powers would then not have to be re-opened every four or five years.

Another key contributory factor has been the continuing emphasis on the need for greater democracy and openness within the European Union. Both those in favour of deeper European integration and many Eurosceptics would agree on these as underlying

objectives, and on the need for greater accountability of EU decision-making to parliaments and to citizens as a whole. Here, of course, emphasis differs, with Eurosceptics and intergovernmentalists putting greater accent on the need to reinforce the role of national parliaments rather than the European Parliament. The large national parliament presence in the Convention also means that the national parliament role is being extensively discussed at the Convention, and has been the subject of one dedicated working group and also the "leitmotif" of a second working group (that on "subsidiarity"). In theory, however, the emphasis on greater parliamentary accountability could lead to gains, for both the national parliaments and the European Parliament have complementary roles to play, the former in controlling the EU actions of their own national governments and perhaps also in calling them to account in more intergovernmental areas of policy, the latter in monitoring the activities of the other EU institutions and in areas (such as those where QMV has been conceded) where individual national governments can be over-ruled.

Another of the general themes that is on the table, that of ensuring greater efficiency for the European Union, especially in view of the current enlargement, is a more problematic one as regards its implications for the development of the powers of the European Parliament. This debate is taking place both within the Convention and also in the context of the debate on EU governance, and on possible new policy instruments. The suggested distinction between framework laws, non-legislative implementing acts and delegated acts supplementing or creating certain "non-essential" elements of legislative acts, greater recourse to the "open method of coordination" or to voluntary agreements, all these and others may help to streamline EU decision-making but also pose some fundamental questions about the role of the EP. If codecision is restricted to a few framework laws on "essential" matters and if speed and efficiency become the watchword for other instruments and yet if the old cliché is right that "the devil is in the detail", how will the EP be able to ensure that it retains a meaningful role in politically and commercially sensitive matters and also ensure that its hard-won powers of codecision are not undercut in the future?

Finally, of course, the outcome for the European Parliament will not be dependent just on the forthcoming outcome of the Convention, but on the extent to which the Convention's recommendations will be followed in the more traditional IGC which is to follow. How

will the Convention's current emphasis on the need to maintain inter-institutional balance be reflected in reality? To what extent can a clearer constitutional framework be established for the European Union and, if established, will this try essentially to co… the status quo or lead, instead, to further deepening of European integration? Perhaps most fundamentally of all, to what extent will general principles be undercut by the survival of old, or the creation of new exceptions, and will the final outcome survive the ratification process in up to 25 Member States?

The possible extension of European Parliament powers in specific areas

The next section of the paper examines the debate that has been taking place in and around the Convention as regards issues of European Parliament powers in specific areas. It begins with the issue on which there has been the greatest attention, the possible EP role in the choice of the President of the Commission, and then looks at the much lower profile but related question of the EP role in other nominations. The paper then examines the key issues of the European Parliament role in the legislative process (including comitology), as regards all aspects of the EU budget, on international trade and other agreements and finally as regards future "flexibility" arrangements.

There is then a brief discussion of the possible European Parliament role in individual policy areas (Justice and Home Affairs, Foreign Policy and Defence, the EURATOM Treaty), as well as on Treaty change. The section then concludes with a look at the respective roles of the European Parliament and of national parliaments.

The possible European Parliament role in the choice of the President of the Commission

This issue was, as pointed out above, directly referred to in the Laeken Declaration, and has been the subject of considerable discussion at the Convention. The European Parliament's resolution on the future of the Union called, in its paragraph 4(h) for "election of the Commission President by the European Parliament", and this idea has won considerable support among participants at the Convention, including the Commission. European Parliament strength of feeling on this issue is shown by the declaration that it adopted on 16 January 2003 on the election of the President of the Commission, where it

called "on the European Convention to include in the European Constitution the principle that the President of the Commission must be elected by the European Parliament". This declaration was signed by over half the members of the EP.

There are a number of variants of this idea. The whole process of candidate selection and final vote could be internal to the European Parliament, the EP could elect the President on the basis of a name or names submitted by the European Council (possibly in the light of the results of the EP elections) or the EP could put forward and elect the President but he or she would then have to be finally confirmed by the European Council. The necessary majorities can also vary. Should the Parliament vote by simple majority, absolute majority of its members or by some kind of high reinforced majority? The Lamoureaux paper for the Commission[2], for example, suggested that the Commission President be elected by the EP with a required majority of two-thirds of its members, and with this having to be confirmed by the European Council by reinforced QMV.

The supporters of the European Parliament directly electing the Commission President often make a link with the need to liven up EP election campaigns. If the respective political groups went into such campaigns with their prospective candidates to be Commission President this, it is argued, would heighten public interest in the campaign and thus raise the declining turnout. Others, however, are more wary of tying the President of the European Commission to a majority within the EP, which might be different to that within the Council. In their view, the inter-institutional balance might be harmed by such an arrangement. One possibility to reduce this risk would be to insist on a two-thirds or other reinforced majority within the EP, but this would mean a return to a consensus choice rather than close competition between rival group candidates.

A further option that has also been put forward (by the Irish government representative, but supported by Danish and one or two other representatives) is election of the Commission President by some form of electoral college, comprising members both of the European Parliament and of national parliaments. This, it is argued, would provide wider democratic legitimacy and would reduce the risk of the Commission President being tied too closely either to the EP or to a particular governing coalition.

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[2] *Contribution to preliminary draft Constitution of the European Union - working document of 4.12.02.*

Dissolution of the European Parliament

At present the European Parliament has a fixed five-year term. One issue that has been mooted by some representatives in the Convention is the possibility for the EP to be dissolved before the end of its term of office, for example if it successfully censured the Commission, if it failed to adopt the budget or was in disagreement with the Council over a major policy proposal.

The European Parliament and other nominations

The idea of the European Parliament's role being extended as regards EU nominations has been put forward by the Parliament in past IGCs (notably during the Amsterdam Treaty negotiations) but has not figured very highly in the current discussions. One partial exception concerns the EP role in the appointment of the European Court of Justice, which is currently non-existent. The EP resolution on the future of the Union suggested, in this context, in its paragraph 4(i), appointment of the members of the Court of Justice and the Court of First Instance by means of a QMV vote and with the EP's assent. Mr Brok's[3] proposal for a Constitution of the European Union (CONV 325/02 of 8 October 2002) also calls for EP assent for appointments of Judges and Advocates-General of the European Court of Justice and for Judges of the Court of First Instance. Mr Duff's[4] contribution "A Model Constitution for a Federal Union of Europe" (CONV 234/02 of 3 September 2002) also calls for a strong role for the EP in nominations to the European Court, "with appointment by the Council and the Parliament, acting by a majority of its members".

Mr Duff's paper also calls for European Parliament assent for the appointment of the President and Directors of the European Central Bank and for appointment of members of the Court of Auditors. The EP is currently only consulted in both cases.

A final issue as regards nominations is whether the European Parliament will gain a bigger role in appointments to the decentralised EU agencies and bodies. The EP's role is

[3] *MEP, member of the Convention and one of two European Parliament representatives in both the Amsterdam and Nice IGC.*

generally limited to having a couple of its representatives on the Management Board of an agency (and even this is not universally the case), but the EP has succeeded in obtaining a stronger consultative role for itself as regards Chair of the Management Board and Executive Director of the European Food Safety Authority. The EP may seek to extend this to other agencies (and is already attempting this as regards the European Agency for the Evaluation of Medicinal Products (EMEA)), but this is more likely to be achieved through individual legislative acts rather than through the Treaty changes required for the appointments mentioned earlier.

The European Parliament role in the legislative process

The emphasis on simplification in the course of the Convention, and in the working group on the same subject, has meant that the nature of the EU legislative process has been at the centre of recent attention. In theory, the role of the European Parliament in this process should end up being strengthened to a greater or lesser degree, but it will not be possible to see the true extent of this until after the negotiations on the specific articles (and hence possible exceptions to general rules) in part 2 of the Treaty. Moreover, the balance between framework laws and other instruments, and the EP's role on the latter, will also be of critical importance in judging the final outcome.

The European Parliament has made this subject one of its main concerns in its various resolutions in the run-up to the Convention. In its resolution on the Nice Treaty it regretted that codecision had not been extended to certain legal bases where there was QMV in the Council. Both in this resolution and in the subsequent one on the future of the EU, the EP thus called for the general principle in legislative matters to be QMV in Council and codecision involving the EP. It later went into this issue in more detail in its resolution on typology of acts and hierarchy of legislation in the EU, in which it not only repeated the need for the QMV/codecision link for EU legislation, but made a further distinction between laws, framework laws and institutional laws. The latter would require a special enhanced majority in the EP.

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[4] *MEP, member of the Convention and Liberal Coordinator on the European Parliament's Constitutional Affairs Committee*

The final report of the Convention's working group on simplification went a considerable way towards meeting the European Parliament's demands. It made a strong case for the QMV/codecision link, and advocated getting rid of the three exceptions where codecision is currently combined with unanimous voting in the Council. The report called for abolition of the residual cooperation procedure and recommended that two of the four surviving cases should be changed to codecision and two to the simple consultation procedure.

The report also suggested that codecision should be introduced for those current legal bases where the European Parliament is involved through assent on matters of an essentially legislative nature (the rules for the structural funds and cohesion funds).

The report made a number of other useful proposals, such as that the Commission should be asked to substantiate a refusal in relation to an own initiative request from the Council or European Parliament. In an important symbolic move it also proposed that the wording of the codecision procedure reflect the formal equality between EP and Council rather than the current wording of "the Council, acting in accordance with the Article 251 procedure".

In a hint, however, of battles to come over part II of the Treaty, the working group report referred to "the possibility of providing for exceptions", notably in "areas where the special nature of the Union requires autonomous decision-making, or in areas of great political sensitivity for Member States".

These issues are now also touched upon in the Presidium's draft of Articles 24 to 33 of the Constitutional Treaty (CONV 571/03 of 26 February 2003). This proposes that codecision should itself be renamed as the "legislative procedure", "a name which is more fitting for its new status as the general rule for the adoption of legislation, and more comprehensible for citizens". The principle of legislative policy between the European Parliament and Council would thus be expressly laid down as a key principle in part I of the Constitutional Treaty. European laws and framework laws would be adopted jointly by the EP and Council. If the two institutions cannot reach agreement on an act it shall not be adopted.

The text also concerns a reference to exceptions to this general rule with a general phrase "in the specific cases provided for by the Constitution, European laws and European framework laws shall be adopted by the Council". There is an explicit reference to specific provisions applying "in the cases referred to in Article 2 (ex-third pillar), on the assumption that the third pillar of home affairs and justice will be subsumed within the new structure. Special articles are also introduced (but with no details on decision-making procedures) on common foreign and security policy, Community defence policy and police and criminal justice policy. All these, and the other exceptions to the general rule (such as extending codecision to agriculture) will be the subject of subsequent and obviously difficult negotiations.

The Presidium's text also follows the proposals in the working group report and introduces an important new category of delegated act, which would "supplement or amend certain non-essential elements of legislative acts". The aim, reflecting the wider debate on EU governance, would be "to encourage the legislator to concentrate on the fundamental aspects, preventing laws and framework laws from being over-detailed". As mentioned above, this is a highly sensitive issue for the European Parliament, not least since the difficult debate on its role in the so-called Lamfalussy procedure on financial services, and which has again come up in the EP's discussions on the Commission's White Paper on Governance.

The Presidium's text (Article 27 on delegated regulations) does thus respond to some key European Parliament concerns. Any delegation may not cover the "essential elements" of an area (although the concept of "essential" is often very hard to define!), and "the objectives, concerns, scope and duration of the delegation" shall be explicitly defined case-by-case by the EP and Council. A number of key safeguards are also built into the proposed system, with three possibilities being provided for, a "call-back clause" (i.e. the EP and Council may decide to revoke the delegation), a cooling-off period (i.e. the delegated regulation only enters into force if the EP or Council have not objected to it within a set time-limit) and a "sunset clause" (i.e. the provisions of the delegated regulation automatically lapse after a set time limit, although they may then be extended by the European Parliament and the Council).

Whether these proposals on delegated legislation survive the Convention and the subsequent IGC or not, an important new debate has clearly been launched with considerable implications for the future work of the European Parliament.

The final issue which should be mentioned under this heading is that of "implementing acts" (comitology). These have been a long-standing source of inter-institutional dispute, since the European Parliament's rights with regard to such implementing acts have not matched those that the EP has obtained as regards primary legislation. While it is now better informed on implementing acts than it once was, the EP still has only a limited right of scrutiny ("droit de regard") on whether an act is "ultra vires", even when it has codecision on the original legislative act. The EP's main demand in this area, therefore, is to obtain formal equality with the Council in scrutinising implementing acts, so that, if a matter is considered sufficiently sensitive by the Council that it should retain the right to block or call for modifications to the Commission proposal, the EP should also be given the same rights. The EP should also be able to react to the substance and not just on "ultra vires" questions.

The Commission has now put forward proposals to this effect, a pragmatic stance since meeting the European Parliament's institutional demands would greatly reduce conflicts over comitology in legislative proposals while probably only having a minor impact on the Commission's powers of manoeuvre on implementing acts. The Presidium's text for Articles 24-33 of the Constitutional Treaty makes a step in this direction but still appears to leave the matter vague when it states (28.3): "Implementing acts of the Union may be subject to control mechanisms which shall be consonant with principles and rules laid down by the European Parliament and Council in accordance with the legislative procedure".

The European Parliament role in the budgetary process

The European Parliament's role in the EU budgetary process has been a very mixed one, with a powerful position on the expenditure side (but an uneven one, with a strong role on "non-compulsory expenditure" and a weaker one on "compulsory expenditure" such as agriculture) and with no real powers over the "own resources" or revenue side. Moreover,

the development, outside the Treaty, of medium-term financial "perspectives" has helped to undercut the EP's powers in the annual budgetary exercise.

These issues have, of course, been raised in past IGCs and the European Parliament has always called for the abolition of the artificial distinction between compulsory and non-compulsory expenditure and also for the incorporation of the European Development Fund within the main EU budget. In practice, however, relatively little attention has been paid to these issues in past IGCs. The emphasis of the present Convention on simplification of procedures and on a more coherent constitutional framework has meant not only that these issues have been more extensively examined than in the past, but that the inter-connections between the annual budgetary exercise, the medium-term financial perspectives and the system of own resources have been explored in a much more explicit way.

The European Parliament's specific demands were first put forward in the Bourlanges resolution on the typology of acts and then in even more detail in the Wynn resolution of 10 March 2003 on "reform of the budgetary procedure: possible options in view of the revision of the Treaty". Budgetary issues have also been extensively discussed in the Convention's working group on simplification, and in many of the individual contributions to the Convention.

There now appears to be a clear recognition of the need to find a coherent overall solution for the related procedures for annual and medium-term budgetary planning. There seems to be widespread support for eliminating the distinction between compulsory and non-compulsory expenditure (with the latter now representing, anyway, 58% of the budget - up from 8% in the 1970s), for reforming and simplifying the resulting unified annual budgetary procedure, for integrating the European Development Fund within the overall EU budget, and for formally incorporating a medium-term financial planning mechanism within the Treaty provisions (perhaps on a 5-year basis to correspond with the length of the European Parliament parliamentary term and the term of office of the Commission[5].

[5] *Idea supported in the Convention Working Group, and also in the Wynn resolution.*

As for legislative reform, however, there is disagreement over the detail, notably over the role of the European Parliament in adoption of the medium-term financial perspective, where the EP is calling for codecision, others (the Lamoureaux group, some in the Convention working group) would prefer to involve the EP through assent, and others again would prefer simple consultation of the EP. Peter Hain, for example, the British government representative at the Convention, has expressed willingness for the EP to get a stronger role on the annual budget with codecision on all expenditure (and hence elimination of the existing distinction between compulsory and non-compulsory expenditure), as long as the financial perspective is then incorporated in the Treaty, with the EP only being consulted. Moreover, there will be strong objections even to eliminating the distinction between compulsory and non-compulsory, especially from the defenders of a continuing special regime for agriculture, as the Irish government representative to the Convention has made clear in one of his contributions to the Convention.

The other big issue is that of the future of the own resources system, on which the European Parliament has had no direct role in the past. The EP (in the Bourlanges resolution and again in the Wynn resolution) has called for itself to be given codecision on own resources decisions but has recognised the special sensitivity of this matter by considering this to be an "institutional law" requiring a specially reinforced majority within the EP. The Commission's representative on the simplification working group of the Convention has cautiously acknowledged "that it could be envisaged to associate the EP more closely to the process of adoption of own resources decisions". The Lamoureaux group went further, and was prepared to support EP involvement through codecision, but again through a specially reinforced majority. Further progress, however, on this sensitive issue will be very hard to achieve.

The European Parliament role in international trade and other agreements

The European Parliament's role in this area has been highly unsatisfactory, in spite of the fact that the common commercial policy has been a core Community competence. The EP is given no role (not even consultation) on Article 133 trade agreements and while it is involved through consultation on some other agreements and even full assent on others, the relevant articles are scattered in a confusing and untransparent way throughout the

Treaties, and the criteria used for deciding when assent should apply are by no means obvious. The EU's fisheries agreement with Morocco was considered by the European Court of Justice to have significant financial consequences (and assent would thus apply), whereas that with Mauritania was not (and the EP was thus left with simple consultation).

These issues have come up regularly in successive IGCs but to no avail from the Parliament point of view. In criticising this aspect of the outcome of the Nice Treaty the European Parliament stated (paragraph 28) that it should be "more closely involved - as a factor for democratic participation and scrutiny - in the common trade and external economic relations policy, as regards both the framing of policy and the negotiation and conclusion of agreements; takes the view that its involvement is essential now that the national parliaments no longer have any powers in the sphere of trade policy". The subsequent resolution on the typology of acts was more specific in its paragraph 19: "International agreements concluded by the Union….. should be adopted by QMV in Council after European Parliament assent. Negotiations should be conducted by the Commission on the basis of a mandate issued by Council after consulting the European Parliament".

These issues have been discussed in a couple of the Convention's working groups, including that on the single legal personality for the European Union. The case for a stronger role for the European Parliament has extensive support, notably the introduction of EP consultation on all Article 133 trade agreements (supported by a large majority of the working group). Achieving EP assent on such agreements will be more difficult, although this has had some support within the Convention.

The European Parliament and the use of flexibility clauses

The Convention debate over EU flexibility arrangements has two main elements, what to do with Article 308 (the ex-Article 235) for use when the Treaty has not conveyed specific powers on the Union, and what to do in cases of enhanced forms of cooperation between groups of Member States.

The issue of whether Article 308 should exist at all has been extensively debated in the Convention, and a majority believe that it is useful to maintain it, as long as its scope is

carefully delimited. If it is retained, the issue of the involvement of the European Parliament becomes of considerable importance. The present institutional rules provide for Council unanimity and EP consultation. The Lamoureaux report from the Commission advocated the Council taking a decision on the basis of assent in the EP, and with specially reinforced majorities in both the EP and Council. In the Amato working group in the Convention there was support for EP codecision, but the Presidium's draft Article 16 prefers EP assent, which would be combined, however, with a continuing need for unanimity in the Council.

The European Parliament role in the enhanced cooperation arrangements introduced at Maastricht and Nice have been less extensively discussed. The EP has called for it to be given a stronger position in the authorisation of such arrangements. Paragraph 33 of its Nice resolution considered "the role assigned to it to be insufficient and undemocratic where authorisation of enhanced cooperation is concerned, especially in vital areas in the first pillar where unanimity is retained in the Council". The EP resolution on the future of the Union has called (in its paragraph 4(g)) for "full involvement of the European Parliament in the implementation and development of enhanced forms of cooperation":

The European Parliament role in specific policy areas

The Convention has looked at EU powers and procedures in a number of specific policy areas, notably in its working groups on foreign policy, on defence, on justice and internal affairs, on economic governance and on social policy. The future of the EURATOM Treaty has also come up in the context of a single constitutional framework for the Union. The European Parliament's role has not been at the centre of these discussions but has inevitably emerged, to a greater or lesser extent, in a number of contexts.

The working groups on foreign policy and on defence have hardly touched on the role of the European Parliament. On the other hand, this has been extensively discussed in the working party on justice and internal affairs, notably in the context of merging the existing first and third pillars. The Convention working group appeared to support this option, with a further extension of the Community method of QMV and European Parliament codecision in some areas of policy, while retaining special provisions within the unified framework for certain particularly sensitive areas of policy. In these the existing EP role

might also be extended, but to a lesser degree. The issue of the democratic accountability of EUROPOL, and a possible role for the EP, has also been raised.

An interesting debate has also opened up on the future of the EURATOM Treaty, and on whether it should retain a separate existence (modified or not), or be incorporated (modified or not) within the overall EU Treaty framework, or be dropped in favour of a more general energy policy chapter. Whatever the final outcome of this debate, it has helped to focus attention on the extraordinarily weak role for the European Parliament within this Treaty, with no codecision and not even EP consultation on some important points[6].

The European Parliament's role has also been raised in the working group on economic governance, in such contexts as how it should be involved in the establishment of the broad economic policy guidelines and in the open method of coordination and also on the nature of its relations with the European Central Bank.

The European Parliament and Treaty change

The European Parliament has slowly carved out a greater role for itself in the course of successive IGCs, culminating with two full EP representatives in the negotiating group that helped to prepare the Nice Treaty. Its preferred option of a Convention rather than Intergovernmental Working Group has now been adopted to prepare the new round of Treaty change, and there is a substantial EP delegation to this Convention. The EP's role in ratifying the outcome of IGCs, however, has not evolved, and compares starkly to the need for assent of the individual national parliaments.

The European Parliament has long argued that it should also be given the right of assent to the outcome of IGCs. Some of the contributions to the Convention (for example that by Mr Brok on the Constitution of the European Union) have again raised this idea, as well as on the wide issue of the ways in which any EU Constitution might be revised. Will the EP have a right of initiative as regards any changes? Will the Convention method become the norm? These are some of the issues that will have to be discussed in this context.

[6] *In one curious provision, the European Parliament is not even consulted until after the Economic and Social Committee has given its opinion.*

The European Parliament and national parliaments

Any discussion on new powers for the European Parliament has to be placed into the wider perspective of possible new powers for the national parliaments. This has been an important theme at the Convention, and as mentioned above has been the subject of a specific working group and been discussed in other contexts as well, notably control of subsidiarity.

One significant outcome of the discussions so far is that there is little will to set up yet another parliamentary body, consisting of nominated national parliamentarians, and acting as some kind of second chamber or upper House of the European Parliament. This is seen as impracticable, and as complicating rather than simplifying the structures of the Union, even if such a body had limited functions, such as the control of subsidiarity.

There are still some ideas of a new forum or congress that could be established that would involve both the European Parliament and the national parliaments, and would have no legislative competences but would be able to hold periodic general discussions on the overall political agenda and strategy of the EU. The structure of the preliminary draft Constitutional Treaty submitted by the Presidium on 28 October 2002 (CONV 369/02) thus included an Article 19 entitled "Congress of the Peoples of Europe". The Convention working group has, however, been divided on this point. The less controversial idea of reinforcing COSAC (the existing coordinating mechanism for the European Affairs Committees of the national parliaments) enjoys much broader support.

There is also strong support for the introduction of an explicit "early warning system" for control of subsidiarity. National parliaments would have six weeks to react after a legislative proposal had been issued by the Commission, and if a minimum number of national parliaments reacted in the same way (one third has been the preferred threshold), the Commission would be forced to reconsider its proposal. National parliaments would also be given such rights at the common position/European Parliament second reading stage, and would be able to appeal "ex post" to the European Court of Justice.

Other proposals that have been made would be less far-reaching in nature, mainly involving reinforcing existing national scrutiny systems, a better exchange of information between the European Parliament and national parliaments, etc. One open question is whether the national parliaments would be given additional rights in residual intergovernmental areas where the EP is in a weaker position[7].

There are thus a number of open questions. What is becoming clearer, however, is that there is little will to create new institutions, and that gains for national parliaments are seen as complementary to possible gains for the European Parliament rather than being at its expense.

Final remarks

The above analysis has shown that the issue of the European Parliament's powers is still an open one at the present Convention, and indeed that the Convention method has led to a greater emphasis on some of the outstanding problems than had been the case in the Nice Treaty. At the moment of writing the actual outcome of course, is very much up in the air. The detailed articles in part II of the proposed Treaty will lead to extensive discussion on exceptions to the general principles proposed in part I. Even if the Convention proposes satisfactory solutions, they could be whittled away in the subsequent IGC. The resulting Treaty will then have to go through a difficult ratification process.

The extent to which the European Parliament will be a winner in all this process is thus still very unclear. If, however, a more stable EU constitutional framework is established, and especially if the EP's legislative and budgetary roles are reinforced within this framework, it will be time for the EP to begin to move away from its focus on institutional change, and towards a new emphasis on making better use of its powers and influence. EP powers on new legislation will have to be complemented by reinforced European Parliament scrutiny and oversight of the Commission and of EU administrations in general. These are likely to prove harder and less glamorous tasks than some of the

[7] *For example, the draft Presidium articles on "the area of freedom, security and justice" of 14 March 2003 suggest that "national parliaments may participate" in the relevant "evaluation mechanisms" and "shall be involved in the political monitoring of Europol activities".*

institutional battles of the past, but they will have to be done if the EP is to consolidate its position within the EU institutional framework.