

# The Convention on the Future of the EU

## The European Commission and Treaty Reform

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### Abstract

Treaty reform has become an almost constant feature in the European Union. This article challenges the traditional intergovernmentalist assumption that state representatives are the only significant actors in this process by looking in some detail at the role played by the European Commission. The article first sets out the institutional framework within which the Commission participates in the negotiations. It then demonstrates that the Commission's influence – even though limited in the actual decision-making – is evident with respect to agenda-setting and legitimation of treaty reform. Finally, we look at the impact of the convention method on the nature of treaty reform.

### 1. Introduction

An article on the Commission's role in EU Treaty reform may require some justification. Treaty reform, most commonly pursued through Intergovernmental Conferences, is perceived to be *intergovernmental*, the preserve of Member State representatives. The Commission, itself the creation of the EU's founding treaties, is working within an institutional framework that changes with every instance of Treaty reform. As such it is generally regarded as the *object*, not the *subject* of Treaty reform.

There is, however, much more to the Commission and Treaty reform, as this article seeks to demonstrate. The Commission lacks formal powers to play a full role in IGCs – it is clearly *nota* 16<sup>th</sup> Member State – but that does not mean that it is absent from these proceedings. Proper analysis of Treaty reform requires a focus on supranational actors, and with it a study of the Commission's activity in this arena.<sup>1</sup>

More importantly for the purposes of this article, studying the Commission's involvement in EU Treaty reform provides us with new insights into the way in which the Commission may extend its prerogatives and participate in an area of EU politics which has tended to be dominated by the projection of Member State interests.

The Commission's practice of extending the limits of its influence in the EU policy-process are now fairly well established. Throughout the history of the EU, the Commission has pursued strategies of policy-entrepreneurship, utilising a variety of unique resources at its proposal, and thus managing to expand the EU's range of competences and thus its own place in the heart of the

Union.<sup>2</sup> While there is ample evidence of such policy-entrepreneurship, it has occurred on the whole in areas of EU politics which privileged the Commission, such as environmental policy, social policy or research policy, where Member States were willing to accept its leadership and ultimately sanctioned the gradual extension of EU competences. There remains a stark contrast between, on the one hand, the Commission's role – and its traditional ability to extend that role – in the EU policy process, and, on the other hand, its involvement in what can be seen as the constitutional politics of EU Treaty reform.

Before going into the details of the Commission's involvement in this area, a preliminary comment on the current phase of integration needs to be made. The Commission is widely regarded as being at a low point in its ability to shape EU politics.<sup>3</sup> Three years of turmoil after the forced resignation of the Santer Commission

have weakened some parts of the Commission, sapped staff morale more generally and distracted the Commission from its traditional role of providing strategic leadership together with the European

Council. Internal reforms, intended to generate efficiency and legitimacy gains in the long run, remain unfinished and have turned out to be more cumbersome and complex than initially anticipated (Metcalf 2001). In the meantime, the ongoing changes have caused as much confusion and disruption as they may have helped the Commission to become more responsive and accountable.

Thus we are witnessing a period in the EU's evolution where neither Treaty reform nor the Commission's activities are following traditional patterns. More than

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ever, the EU and its institutions present moving targets to the analyst. The political scene has changed considerably – even since Nice – and the Commission now struggles to find Member States willing to defend its position in the institutional framework. Former allies such as the Italian and German Governments have taken a more intergovernmentalist position. This article will therefore combine an analysis of past developments in this area with the (re)conceptualisation of the Commission's changing role and an outlook towards the future evolution.

The article starts by discussing the formal and informal arrangements of Treaty reform, with a view to positioning the Commission within a wider institutional structure that provides it with a voice, if not a vote, in the reform process. On the basis of such a re-conceptualisation, which takes issue with some of the general assumptions about the structure of Treaty reform, the subsequent section then address the key questions arising from the Commission's role in this field, such as: how does the Commission organise its internal machinery to manage its participation in Treaty reform, and how effective are these internal arrangements? How does the Commission seek to influence the various stages of EU Treaty reform (agenda-setting, decision-making, ratification/legitimation)? In which ways is the Commission's role in Treaty reform changing as the EU is turning to new modes of reforming the EU such as the Constitutional Convention? Taken together, the answers to these question provide a novel perspective on the evolving role of the Commission in the constitutional politics of the European Union.

## **2. Re-conceptualising Treaty reform:**

### **The role of supranational actors**

As indicated above – indeed, as implied in having a article of this kind in the first place – Treaty reform can and should be seen as more than simply the meeting place of Member State interests and the bargaining among state representatives.

It is worth emphasising that over the past decade Treaty reform has become a constant and key item on the EU's agenda. From rare incidences of reform in the past, Treaty reform has been turned into an almost continuous process, where one stage of reform directly feeds into the next stage, as evidenced by the post-Nice process following on almost seamlessly from the completion of the IGC 2000. Thus, Treaty reform has become a policy-arena, with the appendages of a policy-making community, technical experts, the need for institutional memory

and an element of path-dependency in the deliberations about reform.<sup>4</sup> It remains, of course, the key arena for constitutional choice in the EU, and an area to which Member States attach the highest importance. But it should be noted that it is also an area which has developed in a way that provides new and interesting perspectives for the study of the involvement of supranational actors, and in particular of the Commission and Council Secretariat, in the field of Treaty reform.

The key observation here is that Treaty reform is more than the highly publicised and politicised bargaining of the summit meeting concluding an Intergovernmental Conference (IGC). Any such summit is indeed an important – perhaps even *the* important – event in the course of any IGC. But the IGC is much more than that, comprising of different phases which in turn, as discussed below, provide actors with different opportunities and constraints. IGCs have tended to last at least a year, and the agenda setting, and ratification processes which add

further periods of negotiation before and after that.

To mention agenda-setting and ratification is to raise questions about the way in which the business of an IGC links to other events and decisions surrounding it: how is the IGC agenda set? How is the 'need' for an IGC established? How does the IGC

relate to the 'everyday' business of the EU? How are its results presented to the wider public, and how are these accepted? How are unresolved issues dealt with? The answers to these questions all point to the continuity of EU Treaty reform. The need for EU reform, for example, arises from an assessment of the way in which EU institutions perform, or do not perform, within the current legal framework, especially in the perspective of an ever increasing number of EU Member States. If governments believe that they can improve the effectiveness of the EU through changes in the Treaty provision, a case for an IGC will be made. Battles over the IGC agenda will be fought among both state and non-state actors in the EU, but the past performance of the existing legal framework will inevitably have to be part of this assessment. Treaty reform thus depends on the existing policies and institutions – just as the results of Treaty reform may change the dynamics of policy-making, the policy-process itself informs the decisions made in the course of Treaty reform. IGCs and EU policy-process are closely intertwined.

One of these is the question of the 'institutional memory' of Treaty reform. If IGCs are connected to previous instances of Treaty reform – and indeed linked to the day-to-day policy-process – then it matters whether

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actors are able to provide the memory of how past decisions have been reached, how they were meant to be interpreted, how certain issues may be resolved and which compromise solutions have, in the past, worked, and which have not. This involves both procedural questions and substantive issues that are the subject of IGC negotiations.

Together with the Council Secretariat,<sup>5</sup> the Commission is well-placed to play that role. The Presidency, formally charged with chairing meetings, and expected to act as a broker in the negotiations, is unlikely to have performed the same tasks in a previous IGC, given how rarely Member States occupy this position. And in any Member State, whether holding the Presidency or not, electoral and political changes as well as fluctuation within the diplomatic service is usually much greater than the continuity in personnel terms which both the Commission and Council Secretariat bring to the table of negotiations. Many of those involved in the Commission have been key officials in previous Treaty negotiations.

The Commission also brings a particular kind of 'technical' expertise to the negotiations. Due to its role in implementing, or monitoring the implementation of, Treaty provisions, it has a pivotal role in advising IGC participants on which decisions would constitute workable solutions and which ones would not. While individual Member State delegations have particular interests in specific Treaty provisions, the Commission has over-arching responsibility for the application of EU law, and with this responsibility comes an information advantage vis-à-vis national administrations that provides the Commission with an authority with respect to the technical advice it contributes to the negotiations.

Implicit in this assessment is a recognition of the different levels on which IGC negotiations are being conducted.<sup>6</sup> A distinction can be drawn between the political level – usually sub-divided into ministerial level (the meeting of foreign ministers) and the Heads of State level (the European Council meetings which launch and conclude IGCs) – and the administrative level. The latter is constituted by the regular meetings, and indeed the constant inter-action, of the 'personal representatives' of the Heads of State or Foreign Ministers. It is at this administrative level that much of the technical detail is discussed and issues are being decided. The Commission, with resources such as its institutional memory and its technical expertise, can play an effective part in the negotiations, which may be in contrast to the limelight of the endgame, where the Commission's role is much more limited.

All this points to the recognition that the crucial

factor with respect to the Commission involvement in IGC negotiations is its cooperation with other actors, namely the Presidency and the Council Secretariat. Each of these three roles, acting in the defence of the common interest of the Union, makes a distinctive contribution to the IGC, but their ultimate influence depends on their ability and willingness to co-operate and to pool their resources. Thus, a Presidency that is willing to involve the Council Secretariat and Commission in its search for compromise is more likely to lead the negotiations effectively. In the same vein, a Commission that is prepared to concentrate on the 'low

politics' of detailed legal provisions rather than on the grand political battles is more likely to get its way. And the Council Secretariat and Commission, who have been opposing forces with respect to a number of IGC decisions in the

foreign policy field, can work together on other issues in order to lead the IGC towards supranational rather than intergovernmental solutions.<sup>7</sup>

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#### **3. The Organisation of the Commission's Participation in Treaty Reform Negotiations**

The European Commission is both a political actor and a technical advisor in the context of the IGC process. This means that the contributions of the Commission vary between political contributions adopted by the full College and technical clarifications submitted directly to the conference by the services of the Commission.

The initial contribution of the Commission normally attempts to set the political framework for the IGC and more often than not calls on the IGC to adopt a more ambitious agenda. This paper has tended to come before the formal opinion that the Commission submits to the Conference. These have always been approved by the Commission and have led to extensive debate in Heads of Cabinet and full Commission meetings.

The College also adopts the official opinion submitted by the Commission before the start of the IGC. This has traditionally been a short political text, a good example being the opinion presented before the Single European Act that was issued on 22 July 1985 although this approach was changed for Nice as the Commission felt it should adopt a detailed set of proposals following the limited Presidency reform submitted to the Helsinki European Council in December 1999. During the negotiations, a range of specific contributions are forwarded to the Conference. Each of the main proposals are always approved by the College. These can range from proposals on the hierarchy of norms (1991), the co-decision procedure (1996) to issues such as the European Prosecutor (2000) or a framework for the new provisions on freedom, security and justice (1996).

The dynamics of an IGC with its daily negotiating and intense schedule of meetings mean that the College can only really provide political guidance on the general approach to be taken in the negotiations. It is therefore left to the Commissioner (or in the case of the Convention on the Future of Europe, Commissioners Barnier and Vitorino) to take the political responsibility for the positions taken in the negotiations. As in the present case, this has occasionally led to conflict with other Commissioners who would prefer a different position to be taken. Other parts of the Commission are involved in the process with the appointment of special correspondents in each Directorate General, but these are normally limited in their influence on proceedings as they are only consulted on their specific area of competence.

For the most recent Intergovernmental Conferences, a special Steering Group has been convened to oversee the work of the IGC team and ensure that the Commission negotiators take an agreed line at each meeting. The Steering Group is normally composed of the key actors on institutional affairs in the Commission. The vast majority of contributions, non-papers and background notes that are submitted by the IGC negotiators of the Commission are approved by the Steering Group under the political authority of the respective Commissioner. The proposed briefing for IGC meetings is prepared by the IGC team and submitted to the Steering Group which normally meets a couple of days before an IGC meeting. The line to take is rarely altered, but it is an important opportunity for strategic decisions and a choice of options to be taken. As the negotiations reach their conclusion, the Steering Group tends to take on more significance.

The IGC negotiating team of the Commission has become a complex animal to analyse. The reality is that, as with all delegations, it rarely acts as a single entity. It is not unusual to have a situation whereby slightly different emphasis is placed on an individual point by each of those present at the negotiating table, or in the seats at the back of the negotiating room.

Over time, the problem of internal co-ordination has become acute for the Commission. With the steady increase in the number of Commissioners, institutional reform, which was once the preserve of the President, has now also become the responsibility of a specific Commissioner. In the case of the preparations for IGC 2004, President Prodi and Commissioners Barnier and Vitorino are involved while there is also a formal role for the Secretary General and Director of the institutional affairs team. At the negotiating table, in addition to the President and Commissioners, the Commission normally

has space for 4-5 officials.

This situation ensures there is quite a complex structure of reporting for the IGC team. The Head of the IGC Task Force or unit normally falls under the administrative responsibility of the Secretary General. However, the main day-to-day political authority is exercised by the Cabinets of the President and the Commissioner(s). This is actually relatively simple in terms of structure, but not always as easy when it comes to coordinating a series of competing viewpoints. The IGC team has always been one of the most sought after

and dynamic posts within the Commission. The team is normally hand-picked, and the majority of those chosen are senior officials with a wealth of previous experience on institutional affairs. There is always an emphasis placed on continuity. Since the Single European Act,

the choice of members for the team has always ensured that experience of the previous IGC is present. The size (and name) of the team has varied. For the Single European Act, Maastricht and Nice the team was extremely small with a select group of 3-4 officials, most of which were already members of the institutional team in the General Secretariat. For Amsterdam and the preparation for IGC 2004, the institutional team of the General Secretariat has been reinforced into a Task Force of 8-10 officials. As with the Council Secretariat, but unlike Member State delegations, this experience ensures the institutional memory of the Conference. Of the vast array of issues being debated by the Convention, nearly all have been debated previously by the Commission and the IGC team has prepared extensive briefing papers and through the assistance of the Commission's Legal Service, legal advice on each of the options.

#### **4. The Commission's Role in the Treaty Reform Process**

For these reasons it is impossible to look at the Commission as one single entity in the negotiations. It is also incorrect to portray the influence of the Commission within one set of negotiations based on the assessment of the Commission's political leadership alone. An example of this is the focus on the weakness of President Santer at Amsterdam and President Prodi at Nice which has coloured the actual analysis of the role and influence of the Commission in these negotiations. The reality is that each set of negotiations is unique in terms of their own dynamics, circumstances and personalities. The same is true of the amount of influence that the Commission can exercise on the negotiations. A better way of assessing the role of the Commission is

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to look at the different stages of the negotiations and compare the differences in each with the recent sets of negotiations.

#### **4.1 The agenda-setting phase**

The Commission normally has three opportunities to influence the agenda-setting phase. First, as do all delegations, the Commission regularly tries to define the agenda of the next stage of Treaty reform during the final phase of negotiations of the Treaty. Second, the Commission has always been present in the preparatory or reflection groups that have been convened to discuss the IGC agenda. This has been either in the context of representatives or in the Secretariat of the group in question. And, third, the Commission seeks to influence the debate through its official opinion to the IGC in accordance with Article 48 TEU.

Towards the end of an IGC negotiation, attention tends to turn towards whether further Treaty changes are necessary and more importantly whether a next “rendezvous” should be stated in the Treaty. In Maastricht (Article N(2)), Amsterdam (Protocol 7 on the institutions with the prospect of enlargement and declaration N° 32 of Belgium, France and Italy), and Nice (Protocol on the institutions in the perspective of enlargement) a rough agenda was already envisaged. The Treaties of Maastricht and Nice even fixed a specific date for the next negotiations. The Commission has always supported these calls, partly because of its viewpoint that Maastricht, Amsterdam and Nice have not met the requirements of an enlarged Union. The Commission has also sought, and often succeeded in influencing the drafting of these clauses.

During the lead-up to the Single European Act, the Commission had both a member on the Dooge Committee and an official placed in the Secretariat. Before Maastricht, Jacques Delors chaired the ‘Wise Group’ on Monetary Union but the political union element was not covered by a preparatory group. For Amsterdam, the Reflection Group chaired by Carlos Westendorp set much of the agenda for the IGC and Commissioner Oreja had very good links with his Spanish counterparts even if his influence within the Group was more limited. During the preparation for the Treaty of Nice, the Commission struggled to influence the debate during the German and Finnish Presidencies, partly because the preparation was undertaken by an extension of Coreper 2 (EC Ambassadors). The Commission even resorted to the establishment of a Group of Wise Men headed by Jean-Luc Dehaene in an attempt to raise a number of

issues it felt it could not itself propose. For the Convention on the Future of Europe, the Commission has been able to appoint two Commissioners and both sit on the Praesidium which does the bulk of the preparation for the meetings of the Convention. However, the strong leadership of Valéry Giscard d’Estaing, the personalities involved and the general shift of positions by a number of key Member States has meant that the Commission has struggled to gain a foothold in these negotiations.

The only formal right that the Commission has in the IGC process is to submit an opinion before an IGC is convened (Article 48 TEU). That said, an interesting legal question exists on whether an IGC could begin without a Commission – or for that matter European Parliament – opinion being received. The Commission has tended to vary its approach to this opportunity in recent years. For the Single European Act the Commission issued a short political opinion (22 July 1985) setting out the key political lines for the institutional frame-

work for adoption by the forthcoming IGC. For Maastricht the Commission issued an extremely detailed opinion (21 August 1990) which set out the framework for the Treaty provisions on economic and monetary union and then followed this up with a formal opinion on the establishment of a political union (21 October 1990). For

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Amsterdam, the Commission adopted a detailed report on the operation of the European Union (10 May 1995) and then adopted a short political text as its formal opinion (28 February 1996). At Nice, the Commission did the reverse, adopting a short political statement on 10 November 1999 and then a detailed technical formal opinion on 26 January 2000. These reports and opinions have varied in quality and in influence on the process. The Commission has always defended the need for an ambitious approach to Treaty reform. In the Dooge, Delors, Westendorp, IGC 2000 representatives group and the Convention on the future of Europe, the representatives of the Commission have tended to call for the IGC agenda to be widened and the level of ambition to be increased. This in essence is the role of the Commission and inevitably the final result tends to be less than what the Commission has demanded.

#### **4.2 The decision-making phase**

It is difficult to describe accurately the decision-making process in an Intergovernmental Conference. Indeed, it is rare for participants to even pinpoint exactly when a specific decision was decided or finally agreed. This is in part due to the reality that in the negotiations “nothing is agreed until everything is agreed”. The opaque nature

of negotiations and the multiple layers of decision-making also add to the difficulty in explaining how decisions were taken. Each delegation produces a different set of minutes and different nuances and interpretations of what was discussed and agreed.

Trying to analyse the influence of any one delegation must be set against this background. Even ignoring the limits of confidentiality imposed on those involved in the negotiations, tracing an individual proposal from formation to inclusion in the final Treaty demonstrates that it is extremely rare for a Member State or the Commission's proposal to be adopted without debate or amendment. The one exception being the declarations submitted by delegations at the end of the Conference which are often annexed to the Treaty.

The Commission has achieved varying degrees of success when it has presented proposals or sought to influence the decision-making process. This has very much depended on the specific dynamics of the different negotiations, the personalities involved and the policy area being discussed. As an Intergovernmental Conference normally meets at four levels: Heads of State and Government, Foreign Ministers, Personal Representatives and "Friends of the Presidency" the influence of the Commission is also different.

The Commission has been most effective when the discussions have concentrated on the Community area of policies as in the Single European Act, Maastricht (IGConEMU) or Amsterdam (employment, environment, social policy, public health, consumer protection). The Commission has tended to struggle to influence debates on common foreign and security policy, not least because it is not able to use previous experience in the area to justify change. However, the proposals of the Commission at Amsterdam on the transfer of sections of the Justice and Home Affairs pillar to the Community area do demonstrate that the Commission can still exercise influence on classical *intergovernmental* matters.

On the issues of power such as the size of the Commission, the number of votes in the Council and number of members of the European Parliament, the Commission cannot claim to have seriously affected the final outcome of negotiations. In particular this has been the case at Maastricht and Nice and in the debates of the Constitutional Convention. However, the Commission has still had a notable impact on general institutional questions like the rationale behind the extension of the co-decision procedure (Amsterdam) and the framework and justification for the extension of qualified majority voting (all recent IGCs).

When the negotiations have taken place at the level of the Personal Representatives or the various Friends of the Presidency groups on specific issues (e.g. Court of Justice during the negotiations at Nice) or indeed in the working groups of the Convention on the Future of Europe, the Commission has tended to be more effective. This is partly due to its knowledge of the issues and the ability of its representatives to provide the technical detail on the development of policies and how decisions have been taken.

In recent years, the Foreign Ministers level of the IGC proceedings has been unable to exercise effective influence over the negotiations. This is in part due to its undefined role between the Personal representatives and Heads of State and Government levels. At these meetings the Commission is normally represented by the President and Commissioner(s) responsible for the IGC negotiations.

The role of the Commission President in the European Council (and Commissioners) receives the most focus in the different assessments of the influence of the Commission on Treaty reform. This is in part due to the controversy that has surrounded the role of President Delors in the negotiations for the Single European Act and the Maastricht Treaty. The relative decline in influence of the President of the Commission in the European Council is most clearly demonstrated by the lack of impact on the Amsterdam and Nice negotiations in the final European Council. However, this picture is still too simplistic. It is not possible to gauge the influence of the Commission at the final European Council as many of its proposals are also supported by other delegations. It is often collective pressure that provokes the final compromise and all delegations have varying degrees of impact on the final text. It should also be noted that although it is argued that the Commission is at its weakest in an IGC context in the final European Council, the Commission is the only delegation apart from the Council Secretariat which is entitled to have officials present in the negotiating room. This leads to a reporting position and to the dependence of other delegations, which in itself can have an influence on the nuances of the final compromise texts.

#### **4.3 Ratification and legitimation**

The Commission has no formal role during the ratification of a Treaty stemming from an Intergovernmental Conference. However, it has become almost expected that the Commission will support the outcome of the negotiations and make public pronouncements in support of ratification. This can leave the Commission in a difficult position in a number of ways.

Firstly, the Commission is expected to support the final compromise even though it does not have a final vote on its content. Within an hour after the end of negotiations, the Commission together with the Presidency then gives a press conference at the end of the European Council. The President of the Commission must, after quickly consulting with his advisors, make an immediate comment on the final text and the prognosis of the Commission in terms of ratification. This does not cause significant difficulties if the new Treaty is perceived to have further increased integration, but this is not always as clear-cut. The situation was particularly difficult for the Commission at the Nice European Council where only two hours previously the Commission had seriously considered rejecting the compromise on the negotiating table. The outcome of the Convention seems to put the Commission President in a similarly awkward position.

If on the other hand, the Commission is too fulsome in its praise for the Treaty and its ratification, it can lead to accusations of attempting to influence the ratification process. Criticism was made of President Delors during the ratification of the Maastricht Treaty and President Prodi during the ratification of Nice. In addition, during the ratification of the Treaty of Amsterdam, the Commission was threatened with legal proceedings by the “no campaign” in Ireland due to the distribution of a brochure on the Treaty.

In fact, the Commission has a responsibility to publish material on the working of the European Union and the changes made when the founded treaties are amended. This ensures that the Commission must be involved in a small way in the general information provided during a ratification process. However, the onus must be on the Member States to explain the Treaty to their citizens and justify their actions during the negotiations, not least to ensure that the new Treaty is not seen as being imposed by Brussels. Unfortunately, much still remains to be done on this final point.

Finally, it is worth noting that the Commission also has an influence – whether inadvertently or not – over the fate of the ratification of a Treaty revision through controversial decisions it may take (or decide not to take) in the policy-process, or even more statements made in other contexts. A case in point was the negative assessment made by the Commission of Irish economic policy in the context of the EMU stability pact, and the impact that this is considered to have had on the initial ‘no’ vote in the first referendum on the Nice Treaty in Ireland. To the extent to which the Commission will want to ensure a safe passage of ratification instruments, it will be well advised – and presumably is under much pressure – to avoid ‘rocking the boat’ during such a sensitive period. Thus, the positive influence of the Commission on ratification may by definition not be visible to the outside observer.

##### **5. IGC 2004 and beyond: the changing nature of Treaty reform**

At the Nice European Council in December 2000, the Member States not only agreed on changing the EU’s Treaty base, but also agreed a ‘post-Nice process’ which was to lay the foundation for further, and more far-reaching, Treaty changes in the foreseeable future. The most important innovation in this respect has been the creation of a European Convention charged with preparing the work of the subsequent IGC. This new ‘convention approach’ to Treaty reform has led to a much wider public debate in the media, a debate that crucially has taken place *before* the IGC itself has commenced. In other words, the position of national governments on EU reform are now exposed to public

scrutiny before decisions are made and a new Treaty is signed, rather than leaving such scrutiny and debate to the aftermath and the ratification of an already agreed Treaty.

The wider significance of the Convention method remains to be seen. However, based on the experience so far, some valuable observations with regard to its impact on the role of the Commission in the process can already be made. First a more detailed look at the Commission’s involvement in the Convention is required. Among the 102 members of the Convention were two Commission representatives (which may not seem to be a strong representation in such a deliberative forum), but these two Commissioners were also members of the 12-strong Praesidium, which is where most of the key decisions affecting the work of the Convention have been made. Furthermore, the Convention Secretariat, which has had an influential role behind the scenes in assisting the Convention President, Valéry Giscard d’Estaing, to prepare meeting agendas and draft articles of the proposed Draft Treaty for a Constitution, was staffed with Commission and European Parliament as well as Council Secretariat officials – in contrast to the practice

of recent IGCs where the Council Secretariat had been solely responsible for assisting the Presidency.

The Commission, like Member State representatives, did not have a strong role within the plenary of

the Convention as it was not able to coordinate and influence the debate in the same way that the European Parliament nominees were able to do. In this context, the Commission’s reliance on its technical expertise is of little use in a forum that has opted for far-reaching strategic bargaining over substantive outcomes rather than limit itself to more technical preparations for the IGC. In such a politicised context the Commission had a difficulty in overcoming the self-imposed limitations resulting from internal divisions within the College, and its lack of resources in the political game of Treaty reform.

Within the Praesidium the Commission should have been a major force – not least in that on paper the majority of members of the Praesidium indicated their preference for a strengthening of the Community method. This was not borne out in practice. The President of the Convention and the Convention Secretariat attempted to isolate the Commission. This was relatively successful, partly due to the lack of support from other members of the Praesidium who were themselves undermined by the approach of the President of the Convention. The negotiating style of Giscard d’Estaing meant that the Praesidium members were, on various occasions, not able to amend texts which they were then forced to defend as the common position of the Praesidium. This left the two Commissioners in a difficult

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situation, not least with the rest of the Commission College. Towards the end of the Convention discussions some within the Commission negotiating team even indicated that they would rather have some of the sensitive issues dealt with by the IGC rather than the Convention due to the attempts to marginalise the Commission on institutional and external relations issues.

The Convention therefore causes a broader dilemma for the Commission representatives: should they provide support for the more abstract idea of the Convention format or should they concentrate on the parochial representation of specific Commission interests. The Commission must decide whether to support the final text of the Convention as it is generally acknowledged that only with broad support will the Convention text have a chance of adoption by the IGC. However, to do so may mean to set aside particular interests of the Commission on specific issues under discussion. The Commission may well decide in its opinion and negotiating positions in the IGC to attempt to re-open the outcome of the Convention on articles which attempt to undermine its institutional role and policy objectives.

There has been little influence of the Commission in the Convention as a result, both in the debates in the plenary and in the work of the Praesidium. In addition, there has been only a limited opportunity for influencing the proceedings of the working groups set up to prepare specific aspects of the Treaty. Given that the Commission lacked representation in many of these working groups, it was unable to participate in negotiations across the board of the agenda. This in turn hampered its ability for issue-linkage – a capacity that had traditionally been a major asset in the Commission's conduct of the negotiations.

While the influence of the Commission has waned, the role of the European Parliament and national Parliaments has increased. They have partly taken over the role of the Commission as the source of accountability from a European standpoint for the Treaty negotiations. The Commission will need to reconsider its role within the Convention and particularly its position in the secretariat, the plenary, the Praesidium and a number of working groups. It may in the future have to decide whether it seeks to portray itself more as the technical advisor or more the political impetus behind the Convention approach as such.

Obviously it is early days for the Convention method, and an ultimate judgement will depend on the outcome of the IGC and the further evolution of the Convention format beyond 2004. But on current evidence, it appears that the Convention method does not particularly favour the Commission: the greater degree of politicisation diminishes its ability to rely on technical expertise in influencing the course of negotiations; the greater openness of the forum towards non-state actors and parliamentarians detracts from its traditional role of representing the European interest in Treaty reform; and the explicit focus on constitutional issues makes it more difficult to link Treaty reform to the EU policy-process in which the Commission has such a pivotal role.

Such a development, if borne out by the evolution of the Convention, may spell a further stage in the Commission's decline as an actor in the treaty reform process. It mirrors the broader development in the EU where the Commission has lost much influence in the wake of the fall of the Santer Commission and the shift of leadership in the Union to key Member States. The days in which the Commission, led by Jacques Delors, could determine the direction of Treaty change are surely distant history

at this point. Then again, the prospect of a new Treaty establishing a constitution enshrining the Community method, the rule of law and the role of the supranational institutions in the EU doubtlessly

constitutes a victory for the Commission and its desire to strengthen the supranational element in the European Union.

In conclusion, it must be recognised that the Convention method, assuming that it is here to stay, has fundamentally changed the business of treaty reform. It does provide more openings for non-state actors to influence the outcome of Treaty reform, and also has potential for the Commission to play a more effective role in this respect in the future. On the other hand, the size and the dynamics of the Convention places greater emphasis on agency, and individual actors such as the Convention President have significant scope for influencing the outcome and, in the process, side-lining the Commission both as a participant in, and an object of, Treaty reform negotiations. Future instances of Treaty reform following the Convention model will show whether the Commission can adapt to these changed circumstances and play a more effective role in Treaty reform than it has done recently.

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## NOTES

- <sup>1</sup> See Christiansen (2002) for a more detailed argument of this point.
- <sup>2</sup> There is ample literature on his subject. See for example Cram (1993, 1994), Hooghe (1996) or Mazey and Richardson (1996).
- <sup>3</sup> See Peterson (2003) for a discussion of the uncertain prospects facing the Commission.
- <sup>4</sup> See the detailed arguments and empirical evidence provided in the contributions to the 2002 special issue 'Theorising Treaty Reform' of the *Journal of European Public Policy*, edited by Gerda Falkner.
- <sup>5</sup> See Christiansen (2003) and Beach (2003) for discussions of the role of the Council Secretariat in Treaty reform negotiations.
- <sup>6</sup> The different levels of IGC negotiation are discussed in Gray and Stubb (2001).
- <sup>7</sup> See Christiansen (2001) for an examination of Commission-Council Secretariat relations, including the running of IGC negotiations. □