



Christine Neuhold
University of Maastricht
European Studies Programme
Postbus 616
6200 MD Maastricht
Tel: 0031 43 388 25 37
Fax: 0031 43 388 49 17
*email: C.Neuhold@PHILOSOPHY.unimaas.nl

Reforming the European Parliament

***Paper prepared for the Panel: "The Reform of the EU Institutions? ", EUSA
Conference, Nashville, Tennessee, March 2002***

FIRST DRAFT

Abstract

Institutional reform is once again one of the main issues on the EU's agenda. It has been a pertinent issue from Maastricht, Amsterdam to Nice.

At its meeting in Laeken in December 2001, the European Council convened a Convention on the future of the European Union. The task of this forum is "to pave the way for the next Intergovernmental Conference as broadly and openly as possible." The Convention is currently at work in Brussels and *inter alia* discussing proposals for institutional reform.

This paper sets out to analyse the perspectives for reform for one of the institutions, the European Parliament (EP), which has come a long way from a deliberative assembly to a full-fledged co-legislator (if not in all legislative fields). In this context the aim of the paper is threefold:

- to sketch the current demands for parliamentary reform;
- to examine the proposals currently ventilated to remedy the mentioned malaise;
- to put these observations into a wider context, by briefly touching upon the issue whether the Convention could be seen as a forum where the notion of deliberative democracy prevails.

1. Introduction

Institutional reform is once again one of the main issues on the EU's agenda. As is well known, the Treaty of Amsterdam left a certain number of 'left-over' issues; amendments to the Treaties arising in connection with the reform of the European institutions. It was admitted that these issues would have to be addressed before enlargement of the Union took place.

At its meeting in Laeken in December 2001, the European Council convened a Convention on the future of the European Union. The task of the Convention is "to pave the way for the next Intergovernmental Conference as broadly and openly as possible." (Declaration of Laeken 2001). The Convention is currently at work in Brussels and *inter alia* discussing the functioning of the institutions and ventilating proposals for institutional reform.

This paper sets out to analyse the perspectives for reform for one of the institutions, the European Parliament (EP), which has come a long way from a deliberative assembly to a full-fledged co-legislator (if not in all legislative fields). In this context the aim of the paper is threefold:

- to sketch the current demands for parliamentary reform before the background of the questions formulated by the European Council at its meeting in Laeken;
- to examine the proposals currently ventilated to remedy the mentioned malaise;
- to put these observations into a wider context, by briefly touching upon the issue whether the Convention could be seen as a forum where the notion of deliberative democracy prevails.

1.1 State of affairs for the European Parliament (EP) prior to the Convention

The fact that the **European Parliament** (EP) is now commonly seen as a co-legislator with the Council is a relatively new development. For more than three decades it did not enjoy any effective rights of participation in the legislative process. It started out as an assembly with only two major powers: the power to pass a motion of censure against the High Authority¹ and the right to be consulted by the Council on selected legislative proposals. The opinions given in this classical consultation procedure were non-binding.

The 1987 Single European Act (SEA) represented a major step forward for the EP. It marked the beginning of a new triangular relationship between the Council, the Commission and the EP by introducing the co-operation procedure, which improved inter-institutional dialogue significantly, giving the EP the first opportunity to "flex its legislative muscles" and to make use of its agenda-setting powers whenever possible.

Building on the positive experiences of the co-operation procedure, the EP's legislative competencies were extended by the Treaty on European Union (TEU), commonly known as

¹ The forerunner of the European Commission.

Maastricht Treaty (1993). Through the introduction of the co-decision procedure the Members of the European Parliament (MEPs) were, for the first time, granted the power of veto in several policy areas.²

The Treaty of Amsterdam (1999) strengthened the EP's role considerably, especially as regards its involvement in the legislative process. The co-decision procedure has been extended from 15 to 38 Treaty areas or types of Community action and now applies to new areas within the fields of transport, environment, energy, development co-operation and certain aspects of social affairs. A significant new element in the Amsterdam Treaty is the streamlining of the co-decision procedure. Most importantly, a legislative act can now be adopted at the first reading if either the EP fails to suggest amendments to the Commission proposal or the Council agrees to the changes suggested by the EP. The Treaty has also extended the scope of application of the assent³ procedure. Another important innovation, which has been very topical, is the fact that after Amsterdam the EP plays a role in the nomination procedure of the Commission President (Westlake 1994, Maurer 1999, Hix 1999, Smith 1999, Peterson; Bomberg 1999, Shackleton 1999, Corbett; Jacobs; Shackleton 2000, Neuhold 2000).

2. The European Parliament at a crossroads: many problems, many choices?

At its meeting in Laeken in December 2001, the European Council posed a number of questions linked to the reform of the European Parliament (EP):

- Should a European electoral constituency be created, or should constituencies continue to be determined nationally? Can both systems be combined?
- How can the authority and efficiency of the European Commission be enhanced? How should the President of the Commission be appointed: by the European Council, by the European Parliament or should he/she be directly elected by the citizens?
- Should the role of the European Parliament be strengthened? Should the right of co-decision be extended or not? (Declaration of Laeken 2001).

This paper wants to treat these questions as general guidelines when discussing the needs and the proposed solutions for parliamentary reform. Other questions will also be examined that are *inter alia* discussed at the Convention such as reconciling representativity and effectiveness (i.e. how can even smaller Member States be represented and the EP still work effectively) and the co-operation of the EP with national parliaments.

2.1. *How to bridge the gap between representativity and effectiveness?*

In the course of successive enlargements the number of Members has continuously increased. Although the legislative, budgetary and political powers of the Parliament have been transformed fundamentally, neither the voting rules nor the representativeness of Members of

² Initially only 15 Treaty items were covered by the procedure: articles falling into the policy fields of the internal market, consumer protection, trans-European networks, cultural policy, public health and education.

³ The Treaty of Amsterdam extends the EP's right of assent to cases where the Council determines a breach of the Union's principles by a Member State (Article Fa TEU).

the European Parliament (MEPs) in terms of ratio of citizens to MEPs have been changed to a great extent (European Convention 2003, p. 3). In fact the composition of the EP is based on a system of degressive proportionality, which in turn leads to an "representation gap" between larger and smaller Member States.⁴ Currently the EP has 626 Members⁵, where a ceiling of 700 Members was enshrined in the Treaty of Amsterdam.

At the Nice Intergovernmental Conference two main options were put forward:

- one based on the extrapolation of the current system and a reduction in a linear fashion to remain within the threshold of 700, with a correction to ensure a minimum level of representation for the States with the smallest populations (put forward by the Portuguese Presidency) (Conference of the Representatives of the Governments of the Member States, 2000, p. 34).
- one, put forward by the EP itself, which proposes allocating each of the Member States a minimum of four seats and distributing the remaining seats according to a scale directly proportional to the population of each Member State (EP 2000b).

The solution that was found at the Nice Intergovernmental Conference (IGC) (went against what the EP had stipulated but) was rather simple: the ceiling of 700 seats in the EP has been breached: with 27 Member States there will now be 732 MEPs.

The allocation of MEPs for the candidate countries breaks with the convention that representation in the Parliament should be broadly proportionate to the size of population. For example, Hungary and the Czech Republic which have a larger population than Portugal or Belgium have fewer seats. Why this should be met with acceptance by the two accession countries is unclear. The new arrangements are supposed to come into force in time for the next elections to the EP in June 2004. New Member States will have had to have signed their accession treaties by 1 January that year in order to participate in the elections. The 2004-09 Parliament will have 732 MEPs, with current Member States having an inflated number of seats should not all of the 12 accession countries have concluded their negotiations (Duff 2001).⁶

The question of the composition of the EP goes beyond mere figures; what is at stake here is here is to ensure that even the smaller Member States are "appropriately" represented in the Parliament, without impeding on the effective working procedures of the EP. The EP has in the 1980s conducted a study where it stipulated how with how many members it would be able to work effectively. The number laid down was about 400. The figure enshrined of 732 now in the Treaty of Nice reflects that the EP is miles away from this "goal".

At the session of the Convention of January 2003, which was devoted to institutional reform, a number of speakers called for the reduction of the size of the EP. One government representative found himself in a minority when warning that reopening the compromise

⁴ A Luxembourg Member currently represents 72.000 citizens, while a German represents 829.000, an Italian 662.000.

⁵ Art. 190(2) TEC.

⁶ In practice, this means that only Poland, the Czech Republic, Hungary, Slovakia and any one other candidate country needs to have signed their accession treaties by 1 January 2004 for the new system to be entirely operational. MEPs from new member states joining between 2004 and 2009 would simply be added to the total of 732 ad interim.

reached at Nice will plunge the Convention "into bitter disputes that seriously distract us from other vital areas of our project." (The European Convention, 2003, p. 7).⁷

The fact that the representatives of the Member States deemed to not to accept the proposals put forward by the EP (for example) shows that although proposals are abundant they are sacrificed within the political power game of the Member States. The perspective for tackling this question at the 2004 IGC is thus rather bleak also due to the fact that this question was linked to a series of other questions of institutional reform and thus one avoids to (re-)tackle this issue for a possible fear of reopening Pandora's box. The call for the reduction of the number of MEPs voiced especially by MEPs themselves is thus most probably not going to fall on fruitful ground.

2.2. A European Parliament, but for whom?

The low turnout in the 1999 election to the EP is a striking reflection of the fact that citizens seem to increasingly lack interest in the European institutions which seem remote from their own interests.

It is also striking that as parliamentary powers have increased over the course of time, the overall turnout has declined at every election since the first 1979 ballot, from 63% in 1979 to 49.4 % in 1999. The results vary greatly from one Member State to another: the turnout ranged from 90% in Belgium, where voting is compulsory, to 24% in the UK. Only in three countries has the percentage of those finding it worth going to the polls risen – in Ireland, Portugal and Spain – by around 5% since the last election.⁸

Thus far the debates within the Convention have scarcely touched upon the issue of organising the future elections to the EP. Apart from some speakers agreeing on the general principle that the system of electing the European Parliament has to be reviewed, the need of smaller constituencies⁹ with the proportional representation system, regional lists and stricter incompatibility rules was stressed. What seems to be very pertinent in this context however, is to decrease the information deficit which seems to prevail as regards to the work of MEP. Citizens need to know *who* represents them in the EP and what progress is being made within the EP. Another issue debated at the Convention was the creation of European constituencies with transnational lists, which is *inter alia* based on the EP resolution on a draft electoral procedure, which stipulates that 10% of the total number of seats in the EP should be filled by means of a trans-national list-based system relating to a single constituency comprising the entire territory of the EU.¹⁰ So far this issue drew marginal attention, however, only one

⁷ See the intervention of Hain (Ch.E/G.-GB) at the debate of the Convention of 20. January 2003.

⁸ One (hypothetical) factor, cited in the literature, to explain this trend is that these three countries receive funding from the Cohesion Fund, which might have the effect of mobilising the electorate (Hrbek 1999, p. 158).

⁹ See for example the intervention of Bruton (Parl.-IE) and at the debate on the Functioning of the Institutions at the session of the Convention 20.-21. January 2003.

¹⁰ The EP has the possibility to present an additional proposal that would only be applied in 2009. <http://www.wdb.europarl.eu.int/oeil/oeil>.

government representative expressed his reservations¹¹ Furthermore it was stated that the electoral procedure, should be revised to allow elections by direct universal suffrage in accordance with the principles laid out in the Council decisions of 25 June and 23 September 2002. Accordingly, inclusion of these principles in the constitutional treaty was regarded as being most appropriate. ¹²

It is noteworthy to mention in this context that Art. 109(4) of the Treaty establishing the European Community (TEC) lays down the legal basis for drawing up a "proposal for elections by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States". It is the latter formula that has inspired the Council Decision of 25 June and of 23 September 2002. The Member States still have to adopt the rules laid down by this Decision in accordance with their constitutional requirements.

The Decision covers the following main aspects:

- proportional type ballot, but leaving some room for manoeuvre for the Member States which may for example foresee balloting for a preferential list,
- Member States should be free to choose the type of constituency without this having an adverse effect on the proportional nature of the vote,
- The membership within one institution or body of the Union and the national parliaments should not be compatible with membership in another institution or body (The European Convention 2003a, p. 5) . It has to be noted, however, that this decision is not binding for the Member States.

The Draft Constitutional Treaty put forward by the Presidency of the Convention refers "to a protocol containing provisions for elections to the European Parliament by a uniform procedure in all Member States." (European Convention 2002a, p. 15) Currently three possible options are under discussion to fill this protocol with life:

- a) to insert the text of the Council Decisions without any amendments;
- b) to stipulate the principles underlying the Decision;
- c) to provide for a true uniform electoral procedure.

At this point in time it is not yet possible to tell in what common denominator the representatives of the Convention will agree on. One has to stress that thus far this issue has not been at the top of the agenda of the Convention.

2..2.1. Electing the European "government"?

Another very important and much discussed proposal in the quest of closing the "legitimacy gap" is the election of the Commission President (possibly) by the EP. The current Commission

¹¹ Hübner (Gouv.-PL).

¹² See for example the interventions of Bruton (Parl.-IE) and Akcam (Parl. – TR) at the debate on the Functioning of the Institutions at the session of the Convention 20.-21. January 2003.

President Romano Prodi proposed in this context that the Commission President should be elected by MEPs by a majority of the votes cast in a secret ballot. The Commission President should then be confirmed by the European Council, which would act by qualified majority, in agreement with the Commission President. The whole Commission would then be approved by the EP. This proposal would make the Commission more a "political animal", but as Prodi was eager to stress not totally "politicised". Another proposal, not directly linked to the reform of the EP, but supposedly as a "measure for more democracy all Presidents of the Council of Ministers (except the General Affairs Council)¹³ should be elected by their peers for a period of one year at a time (Prodi 2002, p. 4).

These concepts go against the idea promoted by the British Prime Minister Tony Blair and Jacques Chirac of creating an EU-President, heading the European Council (Financial Times, 5. December 2002). Another proposal causing heated discussion as regards to the direction of European governance is the Franco-German proposal that the European Union develop a **double Presidency**. The EP would play a significant role in this plan as it would elect the Commission President by qualified majority. He or she would then have to be approved by the European Council, also by qualified majority. In order to ensure stability and visibility especially within an enlarged Union a President of the European Council would be appointed at the same time to represent the EU in external relations as it tries to develop a common foreign policy. He or she would be elected by qualified majority by the members of the European Council for a period of five years or two and a half years (to be renewed) (<http://www.elysee.fr/actus/arch0301/030122/textes/CONTRIB150103.html>). The fact that the leaders of France and Germany chose to come forward with their very own proposals on how Europe should be governed in the future might come somewhat as a surprise, when Members of the European Convention have since months been labouring over the draft for a future constitutional framework of the EU (Wall Street Journal Europe, 16.01.2003).

These proposals leave, however, a number of open questions:

- Will these changes make the EU really more democratically accountable?
- Will they make the EU easier to govern, especially before the background of enlargement?
- Will an elected Commission President or the new Council President help in the quest of delineating the division of competencies between the Member States and the European level?
- Can this proposal lead to more efficiency when carrying out tasks within the EU?

Within the Convention itself the need for the Commission to have strong democratic legitimacy was widely recognised. At the debate on the functioning of the institutions of January 2003, a special focus was put on the procedure for choosing the President of the Commission. In this context it is interesting to note that many speakers underlined that not only the EP but also the Heads of State and Government should have a role to play within this procedure.

¹³ For the Presidency of the European Council, the General Affairs Council and the Committee of Permanent Representatives the six-monthly rotation of the Presidency is to be maintained.

In order to both increase the interest in the EP elections and to reinforce the authority of the Commission a number representatives of the Convention argued in addition to establish a link with the outcome of the EP elections. Some speakers advocating such an approach regarded it as sufficient for the Council to await the outcome of the elections and take the results into account when designating a candidate. A majority of the representatives wanted to go further, however, by suggesting to reverse the order according to which the institutions may intervene. This would imply that first the EP would elect the President and this would then have to be confirmed by the Council.¹⁴

Other inventions went as far as to suggest that the EP should vote on a limited number of candidates put forward by the Council. Yet other proposals foresee that the president should be elected by an electoral college made up of European and national parliamentarians. This would not be a Congress, and it could meet incorporally. The electoral college would give an equal role to national parliaments and to the European Parliament in the task of electing the Commission President.

¹⁴ Such an electoral college is seen by some as enhancing the democratic legitimacy of the Commission presidency. It could furthermore build a bridge between the national parliaments and, through the national parliaments, link up to citizens.¹⁵

Other proposals, which are however only supported by a minority of the representatives of the Convention,¹⁶ go in the direction that the Commission President be elected by the citizens of the Member States. Other representatives advocated a more "conservative" approach by recommending to hold on to the status quo by sticking to the current designation procedure in order to avoid a "politicisation" of the Commission¹⁷ (European Convention 2003b, p. 5 and European Convention 2003c).

The Franco-German proposal of a "double Presidency" was a topic of heated debate, where the opinions were divided on this issue. A majority of the representatives, inter alia from both the EP as well from the national parliaments, tabled their reservations against the proposal.¹⁸ One of the reasons cited was that the super-president of the European Council would be beyond parliamentary control and the fact that three sorts of Presidency of the Council of Ministers would be introduced would make legitimacy, consistency, even more problematic than they are at present.¹⁹ The fact that "two captains would steer one ship" was seen to be very confusing for EU citizens²⁰. Having the President of the Commission elected by Parliament

¹⁴ Some members of the Convention pushed for a 3/5 or a 2/3 majority in the Parliament for such a vote in order to keep the Commission and its President above party rivalry. Others supported an absolute majority, arguing that the requirement for higher thresholds would culminate in an intransparent selection process. See verbatim reports of the debate of the Convention on the Functioning of the institutions of 20.-21.1. 2003 (Convention 2003c).

¹⁵ See for example the intervention of Roche (Ch.E./G.-IE) at the debate of the Functioning of the Institutions of the European Convention, 21.01.2003 or that of Martikonis (Gouv.-LT) and of Carey (Parl.-IE).

¹⁶ For example the Irish MP John Bruton or the French representative of the National Parliament Anne-Marie Idrac.

¹⁷ For example Krasts (Gouv.-LV)

¹⁸ For example Hasotti (Parl.-RO), Duff (PE), Bruton (Parl.-IE), Brok (PE), Heathcoat-Amory (Parl.-GB), Hain (Ch.E./G.-GB) or Majj-Weggen (PE) at the debate of the Functioning of the Institutions of the European Convention, 21.01.2003

¹⁹ Duff (PE)

²⁰ Majj-Weggen (PE).

with a permanent President of the Council working full time in Brussels was also seen as threatening the institutional balance.

Even speakers advocating their general support for the proposal agreed that it still needed to be laid down more concretely and had to be the focus of further deliberation within the Convention.²¹ Joschka Fischer the German Foreign Minister (obviously) spoke out in support for the proposal by saying that the citizen of the European Union would be the real winner of this concept as his voice at the European elections would for the first time influence the choice of the Commission President.²²

It goes without saying that not only within the political, but also within the academic debate various proposals have been made on the road for more democratisation of the EU. It would go beyond the scope of this paper to present a systematic analysis within this context, but one will concentrate on just two proposals identified by Vernon Bogdanor: the first being that the Union should develop into a full parliamentary democracy and the second that it should go more into the direction of a presidential system. The first proposal would go very much go in the direction of the German-French proposal, whereby the Commission would be elected²³ by the EP (Bogdanor 1986). Christopher Lord sees this as making the executive more responsible to the EP and as having a positive effect on accountability as it would increase contestation and European elections would have increasingly be fought on "European" issues (Lord 1998, p. 131).

The second proposal, which is incidentally supported by a minority of representatives of the Convention, is to elect the executive by the European citizens. This could, as Lord advocates, be accompanied by various refinements such as using primaries to adopt a candidate for each of the main transnational parties or having candidates for hearings before their national parliaments (accompanied by media coverage) (Lord 1998, p. 131).

2.3. Towards more visibility: from a two chamber parliament to a Congress of the People's of Europe...

Another proposal put forward in order to improve the visibility and public recognition of the European Parliament is not only to improve the arrangements of co-operation between the EP and the national parliaments on practical level, but to establish a two chamber parliament. One proposal which has received special attention in this context was the speech by the German Foreign Minister Joschka Fischer presented at the Berlin Humboldt University in May 2000. Here he stressed the necessity of an European Parliament with two chambers, where one chamber would be composed of elected members of parliament, that would at the same time be members of the national parliaments. Regarding the second chamber he stated that one will

²¹Oleksy (Parl.-PL), Andriukaitis (Parl.-LT), Meyer (Parl.-DE). -

²² At the debate of the Convention on 21.1.2003.

²³ By simple majority.

have to decide between a senate-model composed of directly elected senators of the Member States or a chamber of states (based on the German model of the Bundesrat) (Fischer 2000a) .

In his speech to the Belgian parliament of November 2000 Fischer narrowed down his proposal by stressing that the first "European" chamber would be elected by the European citizens and the second chamber, would be composed of national parliamentarians and thus be one step on the road to more subsidiarity (Fischer 2000b). The British primeminister advocated a similar proposal, where a second chamber composed of national parliamentarians should be installed that would supervise the implementation of the principle of subsidiarity and the development of CFSP (Blair 2000).

The EP considers in its resolution "on the relations between the EP and national parliaments" put forward before the inauguration of the Convention that the creation of a chamber composed of representatives of the national parliaments would not solve the problems experienced by some parliaments in scrutinising the European policy of their governments in particular. On the contrary they are seen as only to "serve to prolong the Community legislative procedure, to the detriment of democracy and transparency". The principle of dual legitimacy – a Union of States and peoples – is regarded to already find its expression at European level in the legislative sphere through the participation of the Council and the European Parliament. This step is seen to only make the decision-making process more cumbersome or more complicated (European Parliament 2001b, p. 4).

One has to point out that the EP is not united on this issue. The SME Union of the European People's Party in the European Parliament for example stated that indeed a second chamber of the EP should be established. This proposal differs from the one advocated by Joschka Fischer for example as it foresees that the Council should develop into a second Chamber representing the Member States and legislating together with the European Parliament. Its members (two per country) would be directly elected by the electorate of the Member States (SME Union of the European People's Party 2002). This proposal would go in the direction of undermining the democratic legitimacy of the EP as the EP is currently the only directly elected institution at the EU level. The question on which mandate the representatives of the second chamber would be elected remains unclear.

It is interesting to note that the Working Group set up to examine the "role of national parliaments" at the Convention did not explicitly mention this proposal on establishing a two chamber parliament in its final report.²⁴ It was a topic of discussion however at the Convention itself. When analysing the debate of the Convention on the role of national parliaments on 7. June 2002, it is remarkable that a majority of the speakers, MEPs and national parliamentarians alike, spoke out vehemently against the creation of a second chamber. The main reasons cited against this endeavour were:

- that it would be an attempt to "establish a European elite, while at the same time it would

²⁴ Working Group IV.

- cause an unnecessary institutional burden"²⁵ ;
- that it would make the decision-making process much more complicated and bureaucratic;
 - that it would also be confusing to citizens and would be inconsistent with an efficient architectural model of the European Union;
 - that the chamber comprising the members of national parliaments would virtually mean a third chamber with an obvious loss of efficiency. This is due to the fact that the upgrading of the European Parliament to a status of full equality with the Council as co-legislator, would provide both legitimacy and efficiency, where this would lead to a fully fledged, two-pronged legislative authority. (European Convention 2002d).

The fact that national parliamentarians and MEPs were for the most part united in their quest to speak out against the establishment of a second chamber at the deliberations of the Convention is understandable insofar as a second parliamentary chamber would create yet another institution not directly elected by the EU citizens and even if a clear catalogue of competencies were stipulated, there would most probably still be an overlap of competences in the practical political process. A small group of parliamentarians and government representatives did, however, plead for the establishment of a two-chamber system, but so far they were in a minority.²⁶

The idea of the former French Prime Minister Lionel Jospin to install a new body to bring together parliaments such as a Permanent Conference of Parliaments or a **Congress**, foresees possibly a more flexible structure than a two chamber parliament (Jospin 2001). The question remains unanswered, however, what would become of the existing inter-parliamentary bodies such as COSAC (Maurer 2002, p. 32). It has to be noted that the Working Group within the Convention devoted to the role of national parliaments felt that a mechanism for European debate involving both national parliaments and the European Parliament, both representing the voice of the citizens in Europe, might be the most useful format in this context. Some argued that such a forum should not constitute a new institution, but that it would be a mechanism for debate. There was agreement that the competences would still have to be defined more precisely.

There was also widespread agreement that such a forum should not have any legislative role nor any competencies with regard to the delimitation of competencies between the Union and the Member States, and was stressed that it should not disturb the current institutional balance. It was also recognised that the relationship between COSAC and any new forum would need to be explored further to ensure complementarity and avoid overlapping tasks. (European Convention 2002b).

The idea of an annual "Congress of the peoples of Europe" is also vehemently pushed by the President of the European Convention, Valéry Giscard d'Estaing. This forum should be in charge of several main issues such as:

²⁵ See for example the contribution of Oleksy (Parliament Poland).

²⁶ For example the Austrian representatives Eugen Bösch and Gerhard Kurzmann and the German MEP Elmar Brok.

- holding confirmation hearings for main positions within the EU;
- consultation on EU enlargement;
- deciding on extending the powers for EU institutions;
- hearing annual reports by the presidents of the Council and the Commission.

As regards to the proposal ventilated by the President of the European Convention one also has to note that several questions as regards to the composition of this Congress and its legitimacy are unanswered. It is also not clear how the competencies of this new fora should be delimited as regards to the decision on extended powers for the institutions for example i.e. what would happen to the decisions taken within IGCs for example.

This proposal has, apart from the fact that the question what will happen to existing fora of inter-parliamentary co-operation remains unanswered, the strength that its implementation into the practical political process could indeed reinforce inter-parliamentary co-operation. On the one hand one could depart from the assumption that parliaments would have to unite their powers when electing the Commission President for example. When looking at the other side of the coin, one has to state, however, that parliaments might face severe (practical) problems when having to conclude alliances across national boundaries in order to increase the chance of one candidate to be elected. The question is also not solved how a in depth debate on the election of a Commission President should be organised for example.

Another advocate of the idea of installing a Congress would be for example the UK Liberal MEP, Andrew Duff, who himself is Member of the Convention Working Group on the role of national parliaments. According to his proposal a Congress of European and national parliamentarians should be installed in order to:

- ensure that national parliaments are better informed and involved in EU affairs;
- elect the Commission President;
- control the performance of the Ministers in the Council;
- involve policy specialists from national parliaments when dealing with key issues such as enlargement or the reform of the Common Agricultural Policy (CAP) (<http://euractiv.com/ggi-bin/cgint.exe/>).

One has to note that the idea of a "Congress of a People's of Europe is foreseen in article 19 of the Preliminary draft Constitutional Treaty (European Convention 2002c). The EP has no position on the Congress as such, but has consistently adopted a hostile attitude towards any second chamber. The idea of a Congress, at least from the perspective of parliamentarians seems, not to be at the top of the agenda at the Convention itself, but be an idea pushed mainly by the Praesidium. One MEP pinpoints the issue by saying:

"The idea of a Congress is dead, it has been pushed by the President of the Convention and he will push it again, but it has become very clear at the debates of the Convention that a majority of delegates are against it.. National parliaments are national parliaments they should focus on how they can best implement their own powers, on how they can control their Ministers in the Council. One should push for an exchange of best practices of parliamentary control. One can of course involve national

parliamentarians more on the European level, but they are mostly simply not interested."(Interview with MEP, 12.02.2002)

One also has to point out that this point was not an issue at the debate of the European Convention of June 2002 devoted to the role of national parliaments in the structure of Europe.

2.4. A full-fledged co-legislator and budgetary authority?

The EP has since long pressed for co-decision becoming the standard legislative procedure, an issue which was also on the agenda of the Nice IGC. The Commission took the side of the EP in agreeing that the bulk of legislative work, including Common Agricultural Policy, should be subject to co-decision. A majority of the Member States were against an automatic link between the use of co-decision and the use of QMV. At the end of the day the extension of QMV was only matched immediately by the extension of co-decision in six areas thereby defying the demands of the EP.

The EP has now yet again found a prominent ally in Commission President Romano Prodi, who stressed that legislative powers in the Union should be divided between the Council and the EP (as representatives of the national governments and citizens of the EU respectively). Following this line of argument, all EU-legislation should be exclusively be proposed by the Commission for adoption by the Council and the EP acting by co-decision. Member States should not be allowed to have a veto (Prodi 2002, p. 4).

In this context it is important to note that the fear that more parliamentary involvement by way of the co-decision procedure might slow down the legislative procedures in the practical political process, has as the data for the first legislative period of the EP reflects, not come true.²⁷

The Commission also supports the endeavours of the EP to become a full-fledged budgetary authority. Accordingly, the EP should be involved in decisions on funding, which should involve own resources. This would do away with the distinction between compulsory and non-compulsory expenditure (Prodi 2002, p. 4).

When analysing the debates of the Convention one will find that - with the exception of the national parliamentarian David Heathcoat-Amory²⁸ who is pleading to abolish the EP - all those participating in the debate on the functioning of the institutions, be it government representatives, members of the national parliaments or MEPs, - argue in favour of strengthening of the EP. ²⁹ Different proposals are made in this quest, such as giving the EP

²⁷ The co-decision procedures that were concluded between November 1993 and 30 June 1998 lasted 710 days on average. Procedures where no conciliation was necessary were on average concluded after only 634 days, whereas co-decision with conciliation was completed after 815 days (Maurer 1998, p. 216).

²⁸ See: CONV 376/02.

²⁹ The interventions of members of the Convention on the question of institutional reform were analysed up to the 21. of January 2003.

full rights when drawing up the budget³⁰ or when ratifying international agreements. A main focus is, however, put on the role of the EP within the legislative process. All representatives (that voiced in this context) at the Convention such as the German Foreign Minister Joschka Fischer press for an extension of the co-decision procedure. Selected representatives, namely of the national parliaments or governments, only wanted to extend co-decision in those areas where the Council decides with qualified majority. A majority of representatives does, however, favour a general extension of co-decision in the first pillar (Maurer; Schild 2003, p. 79 and Convention 2003c).

This demand would at least at first glance be in line with the view of the Working Group, which has been appointed within the Convention to deal with the question of simplification. The group recommends that co-decision should become the general rule for the adoption of legislative acts and that the Council should decide with qualified majority. Exceptions to this rule would still be possible in fields "where the special nature of the Union requires autonomous decision-making, or in areas of great political sensitivity for the Member States" (European Convention 2002c, p. 14). This stipulation does, however, open the door for a series of exceptions as Member States may easily claim that a certain policy domain is of great political sensitivity.

The question of how the co-decision procedure should be simplified was so far not an issue of great debate. Representatives at the Convention merely stress that EP and Council should start co-operating at an earlier stage of the procedure and deal with the Commission's proposal at the same time and that the second reading or even the conciliation committee be abolished (Maurer; Schild 2003, p. 79 and European Convention 2003c). The Working Group on simplification has merely decided in this context that the composition of the conciliation committee should be made more flexible, whilst still preserving the principle of parity between the Council and the EP (European Convention 2002c). Overall one can say, however, that a majority of the Convention representatives plead for an extension of co-decision.

When examining the contributions put forward at the Convention one will find that a large number of contributions within the Convention are devoted to the issue of the reform of the EP, whereas the issue is only marginally discussed in working groups. When looking at the data on the input of the Praesidium one will find that there is a fundamental difference between the number of contributions devoted to this issue and the number of documents mentioning this issue actually put forward by the Praesidium³¹ (Maurer 2003). From this one might conclude that the Praesidium does not tend to push the issue of reforming the EP.

3. On the way to a "deliberative democracy"?

The fact that the Convention brings together a plethora of actors from both the Member States, accession countries, national parliaments and the European institutions discussing different

³⁰ See for example the contributions of: Voggenhuber (PE) or Kelam (Parl.-EE) or Hänsch (PE) at the debate of the Convention on the Functioning of the Institutions, 20.1.2003.

³¹ About 55 documents mentioning the EP were put forward by the Praesidium until 6. March 2003 as compared to 110 contributions (Maurer 2003).

proposals for reform gives rise to the question whether the notion of "deliberative democracy" prevails. This concept has received increasing attention within the academic literature. It departs from the assumption that voting can not stand on its own, but presupposes discussion as the fuel for decision-making. The model of deliberative democracy goes, however, beyond the mere notion that discussion is needed to reach binding decisions as:

"The claim on behalf of deliberative democracy is stronger than pointing to the way discussion is essential for pooling private information in order to make rational means-end calculations, or for making people more enlightened or self-confident. Many proponents of deliberative democracy contend that public communication is needed in order to legitimize outcomes vis-a-vis the citizenry. Thus, democracy is also an end in itself, not only a means. It is a (or the) way to secure right results – and is, thus, a legitimation principle. Only deliberation can get political results right as it entails the act of justifying the results to the people who are bound by them." (Eriksen 2000, p. 48)

This model can, as Eriksen argues, be applied to the EU. This is due to the fact that the EU is based on rather complex voting and bargaining procedures the one hand and on procedures ensuring both public and institutionalised deliberations on the other (Eriksen 2000). Some might argue, however, that the EU can not count on the support of a European *demos* and see this as a hurdle for the development of a deliberative democracy (Weiler 1995). This is of course true insofar as the evidence of establishing a transnational identity in the near future seems rather bleak due to the lack of binding forces such as transnational parties, media and a shared language.

Against this line of argument I would join Andreas Maurer when saying that the missing "demos" is "not necessarily a prerequisite for the European Union"³² due to the fact that the ethical-political understanding of citizens in a democratic community must not be taken as historical-political point of departure that makes democratic will-formation possible, but as the contents of a process that is generated through the legal institutionalisation of citizens' communication. Departing from the notion that this is how national identities were formed in modern Europe, one could expect that the political institutions created by the European constitution would have an inducing effect. In other words, the *demos* could be constituted by democratic "structures" and "praxis" (Maurer 2003, p. 3).

Turning to the Convention and keeping the main principles of deliberative democracy in mind we will find actors that argue in the quest of obtaining results and having to justify their proposals. The Convention also involves a plethora of actors and a series of networks having to exchange their views within one forum.³³ The fact that the plenary sessions of the Convention are open to the public makes a fundamental difference as it can be seen as one step on the path to achieving "governance by the people". One also has to stress the fact that deliberation at the agenda setting stage eliminates the risk that the final result of the

³² Maurer builds on Habermas' analysis: Habermas, Jürgen (1995): Comment on the Paper by Dieter Grimm: Does Europe need a Constitution?, in: European Law Journal, pp. 303-307.

³³ The Convention also provides for a (limited) participation of civil society by for example holding a session of the Convention devoted to this topic.

Convention becomes a take it or leave it choice inter alia for the Member States and for the national parliaments.

One also must note that the Working Groups set up within the Convention to examine a variety of issues - such as the role of national parliaments for example - provide a unique opportunity for actors with very different backgrounds to pool their knowledge, obtain information from a variety of sources (also from outside the working groups) and exchange arguments. This observation would go the direction of the arguments put forward by Johan Olsen who stipulates principles for reforming European institutions of governance:

"(...)Reform is (to be) understood as an occasion for interpretation and opinion formation as much as decision-making. Finally, comprehensive reform will become more feasible if potential institutional engineers, including the members of the Convention, understand ongoing inter-institutional collisions and learn to use their dynamics intelligently."(Olsen 2002, p. 597)

Substantial reservations remain, however, as we have recently seen that the proposal receiving considerable attention and possibly the most important result of the Convention the principle of a establishing a "double Presidency" does not come from the Convention at all but from two Member States.³⁴

One must also stress that the Convention can not be seen as a "haven for deliberative democracy" as the room for structured argument is very limited. The speakers have to put forward their arguments at the plenary sessions of the Convention within a very limited time-period and often focus on very different aspects of the issue at stake.³⁵ The Presidency of the Convention seems to play a very controversial role when it comes to taking the view of the majority of the Convention representatives into account, chairing or even preparing the sessions.³⁶

One might also argue that as the Convention is reaching its final phase the "Convention method" or deliberative method seems "slowly dying", which is illustrated by the fact that the Presidency put forward a series of draft articles for the future constitution at the end of February 2003, which leave a series of open questions that should be subject for further deliberation, but that the time for putting forward amendments is very limited.

4. Concluding remarks

The reform of the EP is one of the issues leading to heated debate at the Convention on the future of Europe. Pertinent issues were inter alia not solved at the ICG at Nice and are now at stake for the Convention. The fact that it was decided at Nice that the EP should within an

³⁴ See the intervention of Christopher Lord : Legitimation traps, problems and solutions, and the role of the Convention on the Future of Europe, Conference organised by the German Institute for International and Security Affairs, Berlin, 7-8. March 2002.

³⁵ Speakers have around 3 minutes to put forward their arguments at the plenary debates of the Convention.

³⁶ See for example the intervention of Maij-Weggen (PE) at the debate of the Convention on the Functioning of the institutions on 20.1.2002 who claims that the chair does not always listen carefully to the view of the Commission representatives and interview with MEP, 12.2.2002. See also the intervention of Stockton, PE as regards to the chairing capacity of the Presidency within the session of national parliaments, 8.6.2002.

enlarged Union have 732 members might prove to be a major challenge to effective decision-making. At the Convention several representatives have underlined the fact that the size of the EP be reduced. It seems, however, highly unlikely that representatives at the next IGC will take this demand to heart for fear that this might reopen the general compromise reached at Nice as regards to inter-institutional reform.

Before the background that the turnout for EP elections is decreasing some representatives of the Convention see the need of reviewing the system European parliamentary elections. At the Convention concrete proposals are rather scarce so far, but ideas ventilated go in the direction that the electoral procedure, should be revised to allow elections by direct universal suffrage in accordance with the principles laid out in the Council decisions of 25 June and 23 September 2002. It is not clear, however, whether the Council decision is to be modified substantially in order to provide for a true uniform electoral procedure or whether less substantial amendments are to be proposed. Not much attention has been paid to this issue at the Convention so far and it only remains to be seen whether it is going to be the subject of more deliberation.

Another very important and much discussed proposal in the quest of closing the "legitimacy gap" is the election of the Commission President (possibly) by the EP. The current Commission President Romano Prodi advocated in this context that the Commission President should be elected by MEPs by a majority of the votes cast in a secret ballot.

Within the Convention itself the need for the Commission to have strong democratic legitimacy was widely recognised. At the debate on the functioning of the institutions of January 2003, a special focus was put on the procedure for choosing the President of the Commission. In this context it is interesting to note that many speakers underlined that not only the EP but also the Heads of State and Government should have a role to play within this procedure. The Franco-German proposal of a "double Presidency" was a topic of heated debate, where the opinions were very much divided on this issue. It is interesting majority of the representatives, from the EP as well from the national parliaments, united their forces insofar as they tabled their reservations against the proposal. Even representatives speaking out in general support for the proposal agreed that the issue had to be the focus of further deliberation within the Convention.³⁷ Other proposals, which were only supported by a minority of the representatives of the Convention, went into the direction that the Commission President be elected by the citizens of the Member States. It is indeed questionable how this provision should be implemented into the practical political process.

The proposal of establishing a two-chamber parliament met with resistance both of the EP and a majority of the members of the Convention and it is unlikely that this proposal will be taken on board by the Convention. The idea of creating a new forum such a Congress is at this point in time mainly pushed by French MEPs and the President of the Convention, but is met by resistance by a majority of the members of the Convention.

³⁷See for example the contribution of Oleksy (Parl.-PL), Andriukaitis (Parl.-LT), Meyer (Parl.-DE). -

One has to stress that a majority of the representatives of the Convention spoke out in favour of strengthening the role of the EP within the EU system of multi-level governance. One step on this path, advocated by both a majority of the members of the Convention and for example the Commission President was the extension of co-decision. It is interesting that also national parliamentarians and representatives of the national government of both the existing Member States and the accession countries support the extension of co-decision, if only in areas where the Council votes with qualified majority. A majority of representatives are, however, in favour of extending co-decision in the first pillar.

Overall one has to note that proposals go in the direction of strengthening the role EP within the legislative process, but strong reservations exist as regards to creating new fora for co-operation between the EP and national parliaments. It is also highly unlikely that the proposal advocated by France and Germany of creating a double Presidency will be taken on board unchanged by the Convention, if the fact that a majority of the representatives have spoken out against the proposal can be seen as sufficient evidence.

As regards to the question to whether the Convention is a forum where the notion of deliberative democracy prevails; one can say that at the beginning phase of the Convention the actors still had a possibility to exchange arguments, views and justify their proposals. As the Convention is slowly drawing to a close, one will find, however, that proposals receiving the most attention are not produced within the Convention and representatives are confronted with draft articles for the future European constitution, which leave a number of unanswered questions and do not have sufficient time even to put forward amendments. If the Convention proceeds in this vain, this might eventually kill the "Convention method" and might have serious impacts on the credibility of this forum.

Bibliography

Best, Edward; Gray, Mark; Stubb, Alexander (2001): Rethinking the European Union. IGC 2000 and Beyond, European Institute of Public Administration, Maastricht.

Best, Edward (2001): The Treaty of Nice: Not Beautiful but It'll Do, in: EIPASCOPE 2001/1, p. 2-9.

Blair, Tony (2000): Speech at the Warsaw Stockexchange, 6.10.2000, <http://www.fco.gov.uk/news/speechtext.asp>

Bogdanor, Vernon (1986): The Future of the EC: Two Models of Democracy, in: Government and Opposition, 21:2, pp. 161-176.

Conference of the Representatives of the Governments of the Member States (2000): Intergovernmental Conference on Institutional Reform. Presidency Report to the Feira European Council, Brussels, 14. June 2000.

Committee of Independent Experts (1999): First report on Allegations regarding Fraud, Mismanagement and Nepotism in the European Commission, 15.3.1999.

Corbett, Richard; Jacobs, Francis; Shackleton, Michael (2000): The European Parliament, Fourth edition, John Harper Publishing, London

Declaration of Laeken on the Future of the European Union, Annex No. 1 of the Conclusions of the European Council, Laeken, 14. – 15. December 2001.

Duff, Andrew (2001): The Treaty of Nice: from left-overs to hangovers. A briefing on the outcome of the Intergovernmental Conference and European Council of Nice, 7-11 December 2000.

Edwards, Geoffrey; Spence, David (Eds.) (1997): The European Commission, Cartermill Publishing, London.

European Commission (2000): Adapting the institutions to make a success of enlargement. Commission opinion in accordance with Article 48 of the Treaty on European Union on the calling of a Conference of representatives of the governments of the Member States to amend the Treaties.

European Convention, The Secretariat (2002a): Preliminary draft Constitutional Treaty, Brussels, 28. October 2002, CONV 369/02.

European Convention (2002b): Report from Working Group IV - "The role of national parliaments" to: Members of the Convention, Subject: Final report of Working Group IV on the role of national parliaments, Brussels, 22 October 2002, CONV 353/02, WG IV 17

European Convention (2002c): Final report of Working Group IX on Simplification, CONV 424/02.

European Convention, The Secretariat (2003a): The Functioning of the Institutions, Brussels, 10 January 2003, CONV 477/03.

European Convention, The Secretariat (2003b): Summary report on the plenary session, Brussels, 20 and 21 January 2003, CONV 508/03.

European Convention (2003c): Debate on the Functioning of the Institutions, Verbatim reports, Brussels, 20 and 21 January 2003.

- European Parliament (2000a): Report on the European Parliament's proposals for the Intergovernmental Conference (14094/1999 – C5 – 0341/1999 – 1999/0825 (CNS)), Committee on Constitutional Affairs, Rapporteurs: Dimitrakopoulos, Giorgos; Leinen, Jo, PE 232.758/fin./Part1
- European Parliament (2000b): European Parliament resolution on the European Parliament's proposal for the Intergovernmental Conference, A5-0086/2000, 13. April 2000.
- European Parliament (2000c): Resolution on the outcome of the European Council on 7-11 December 2000 in Nice, R5-0579/2000.
- European Parliament (2001a): The Treaty of Nice and the future of the European Union, PE R5-0301/2001, 31 May 2001.
- European Parliament (2001b): Relations between the EP and national parliaments. European Parliament resolution on relations between the European Parliament and the national parliaments in European integration (2001/2023 (INI)).
- Fischer, Joschka (2000a): Vom Staatenverbund zur Föderation – Gedanken über die Finalität der europäischen Integration, 12. Mai 2000, in: *integration*, 3/2000, pp. 149 – 156.
- Fischer, Joschka (2000b): Rede des Bundesministers des Auswärtigen Joschka Fischer im belgischen Parlament in Brüssel am 14. November 2000, <http://www.auswaertiges-amt.de/www/de/infoservice/download/pdf/reden/2000/r001114f.pdf>.
- Galloway, David (2000): The Treaty of Nice and Beyond. Realities and Illusions of Power in the EU, *Contemporary European Studies*, 10, Sheffield Academic Press, Sheffield.
- Grande, Edgar (2000): Interest Groups in the European System of Multi – Level Governance, Paper prepared for the workshop "Instituciones y Políticas Públicas en la Unión Europea", El Colegio de México, Centro de Estudios Internacionales, November 30, 2000, Mexico
- Hix, Simon (1999): The Political System of the European Union, The European Union Series, Macmillan Press; Houndmills, Basingstoke, Hampshire and London
- Hrbek, Rudolf (1999): Europawahl '99: Ein stärker politisiertes EP, in: *integration* 22, Jg. 3/99, p. 158.
- Jospin, Lionel (2001): Rede zur Zukunft des erweiterten Europas, 25.05.2001, <http://www.premier-ministre.gov.fr/de/ - p.cfm?ref = 24934>.
- Kohler-Koch, Beate; Eising, Rainer (eds.) (1999): The Evolution and Transformation of European Governance in the European Union, Routledge, London.
- Lord, Christopher (1998): Democracy in the European Union, UACES, Sheffield, Academic Press.
- Marks, Gary; Liesbet, Hooghe; Blank, Kermit (1996): European Integration from the 1980s: State-Centric v. Multi-Level Governance, in: *Journal of Common Market Studies*, Vol. 34, No. 3, pp. 341-378.
- Maurer, Andreas (1998): "Regieren nach Maastricht: Die Bilanz des Europäischen Parlaments nach fünf Jahren Mitentscheidung", in: *integration* 4/98, p. 218.
- Maurer, Andreas (1999): "(Co-)Governig after Maastricht: The European Parliament's institutional performance 1994 – 1999. Lessons for the implementation of the Treaty of Amsterdam", European Parliament, Directorate General for Research, Political Series, POL 104/rev. EN, 10/99.

Maurer, Andreas (2002): Nationale Parlamente in der Europäischen Union – Herausforderungen für den Konvent, in: *Integration* 25. Jg. 1/2002, p. 20 – 34.

Maurer, Andreas; Schild, Joachim (eds.) (2003): *Der Konvent über die Zukunft der Europäischen Union. Synoptische Darstellungen zur Konventsdebatte*, Deutsches Institut für Internationale Politik und Sicherheit. Stiftung Wissenschaft und Politik, Berlin.

Maurer, Andreas (2003): *Democracy and Accountability in the Enlarged European Union. The Convention, the IGC 2004 and European System development. A Challenge for Parliamentary Democracy*, Deutsches Institut für Internationale Politik und Sicherheit. Stiftung Wissenschaft und Politik, Berlin.

Monar, Jörg (2001): Die Kommission nach dem Vertrag von Nizza ein gestärkter Präsident und ein geschwächtes Organ, in: *integration* 2/01, pp. 114-123.

Netwich, Michael; Falkner, Gerda (1997): "The Treaty of Amsterdam: Towards a New Institutional Balance", *European Integration online Papers (EIoP)* Vol. 1, No. 015; <http://eiop.or.at/eiop/texte/1997-015a.htm>

Neuhold, Christine (2000): Into the new millennium: the evolution of the European Parliament from consultative assembly to co-legislator, in: *EIPASCOPE*, European Institute of Public Administration, No. 2000/1

Nugent, Neill (1995): The leadership capacity of the European Commission, in: *Journal of European Public Policy*, 2.-4. December, S. 603-623.

Olsen, Johan, P. (2002): "Reforming European Institutions of Governance", in: *Journal of Common Market Studies*, Vol. 40, No. 4, pp. 581-602.

Peterson, John; Bomberg, Elisabeth (1999): *Decision-making in the European Union*, The European Union Series, Macmillan Press LTD

Prodi, Romano (2002): *Presenting the Commission Communication to the European Parliament*, Brussels, 5 December 2002, SPEECH/02/617.

Shackleton, Michael (1999): "The Politics of Codecision", in: *Journal of Common Market Studies*, Vol. 38, No. 2, pp. 325-42.

Smith, Julie (1999): *Europe's Elected Parliament*, Contemporary European Studies, 5, Sheffield Academic Press, Sheffield

Westlake, Michael (1994): *A Modern Guide to the European Parliament*, Pinter Publishers, London and New York