

CONV 424/02

WG IX 13

REPORT

from : Chairman of the Working Group IX on Simplification
to : Members of the Convention

Subject : Final report of Working Group IX on Simplification

INTRODUCTION

When the Working Group began its deliberations, one thing was certain: nothing is more complicated than simplification. The simplification of the Union's instruments and procedures, as sought by the Convention, is an operation with considerable repercussions and a direct bearing on the level of democracy of our Institutions.

The Union's system as we know it is not very clear or comprehensible to its citizens. However, ability to criticise the system is a key factor of democracy. Citizens must be able to understand the system so that they can identify its problems, criticise it, and ultimately control it.

To simplify therefore firstly means "to make comprehensible", but also to provide a guarantee that acts with the same legal/political force have the same foundation in terms of democratic legitimacy. The democratic legitimacy of the Union is founded on its States and peoples, and consequently an act of a legislative nature must always come from the bodies which represent those States and peoples, namely the Council and the Parliament. Procedures must therefore be reviewed to ensure that they respect this simple principle: acts which have the same nature and the same legal effect must be produced by the same democratic procedure.

This brings us directly to a clearer hierarchy of legislation, which is the consequence of a better separation of powers. This is not with the aim of paying tribute to Montesquieu, but out of concern for democracy.

The arduous task of the Working Group has been to translate such principles into concrete proposals; before beginning discussion of its recommendations to the Convention, the Group questioned experts who have a very thorough knowledge of Community practice regarding instruments and procedures ¹.

The Group's report addresses separately the simplification of instruments, including the hierarchy of legislation, and the simplification of legislative and budgetary procedures.

The report presents recommendations which have achieved broad support within the Group. A brief summary of the other proposals heard appears in Annex II.

During its discussions, the Group addressed a number of issues which did not come within its terms of reference. Annex III sets out those which the Group believes need to be passed on to the Convention plenary.

¹ A list of the experts heard by the Group will be found in Annex I.

Part I

SIMPLIFICATION AND RANKING OF UNION ACTS

I. SIMPLIFICATION OF UNION ACTS

(A) Simplification of the number of Union instruments

At present the Union has 15 different legal instruments. Some of these instruments, although bearing different names, have similar effects. The Working Group considers that the number of legal instruments available to the Union's Institutions should be significantly reduced, with the aim of reinforcing the democratic foundations of the Union's legal system by improving the comprehensibility of the system. However, this reduction must not compromise the flexibility and efficiency of those instruments. Nor must it prevent the introduction of particular specifications regarding the use of a given instrument in a given area. The Group proposes limiting the instruments of the Union to the following:

1. Binding instruments

- (a) **Regulation** (it is proposed that these should be called "European Union laws" – "EU laws" – in future)¹

This would be an act of general application, binding in its entirety and directly applicable in all Member States. Its definition would correspond to that currently existing in Article 249 TEC.

- (b) **Directive** (it is proposed that these should be called "European Union framework laws" – "EU framework laws" – in future)

¹ The "law" would also cover certain matters currently the subject of *sui generis* decisions ("Beschluss" in German) which do not have addressees and which are currently used, amongst other things, for the adoption of financial programmes or action programmes in the context of complementary competences.

The directive would be an act which is binding, as to the result to be achieved, upon Member States but which leaves to national authorities the choice of form and methods. Its definition would correspond to that of the directive referred to in Article 249 of the Treaty.

(c) **Decision**

The decision would be an act which was binding in its entirety. It might or might not designate specific addressees. If it had addressees, it would be binding upon them. The definition of the decision would therefore be broader than that currently set out in Article 249 of the Treaty, which stipulates that the decision is always specifically addressed¹. It is not a legislative act.

2. **Non-binding instruments**

(d) **Recommendation**: would be defined as an act without binding force (the same definition as that given in Article 249 TEC).

(e) **Opinion**: would also be defined as an act without binding force (so no change compared with the current Article 249).

The Group suggests that Part One of the constitutional treaty should contain an article listing and defining these five types of Union instrument. To these should be added regulations as defined below (see point C).

(B) The scope of the Union's legal instruments

The Group suggests applying the new typology of instruments defined under (A) both to the areas currently covered by the EC Treaty and to the area currently covered by Title VI of the Treaty on European Union (judicial and police cooperation in criminal matters).

¹ This decision as redefined could be especially useful for the CFSP, as explained under (B) below. It would be a flexible instrument which could be applied in numerous cases, e.g. for appointments, certain competition measures or State aids, etc.

The "framework decisions" and "decisions" provided for in Title VI would thus respectively become "directives" ("framework laws") and "regulations" ("laws").

The only difference between the two types of act is that, at present, the former have no direct effect. Working Group X is to examine whether this type of act should have direct effect when adopted under Title VI. Nevertheless, the Group considers that it would always be possible to make provision in the new treaty for instruments adopted in the area of judicial and police cooperation in criminal matters to be characterised as not having direct effect, if that were to be the case.

With regard to the conventions under Title VI of the TEU (Article 34(2)(d)), they would be abolished and replaced by one of the instruments mentioned under (A), in most cases by regulations ("laws"). There are a number of reasons why they should be abolished: the convention is an instrument which has rarely been used since the Treaty of Amsterdam entered into force, most conventions have never entered into force and most have been replaced by regulations.

With regard to Title V of the Treaty on European Union, the Group is agreed on the need to retain the specific characteristics of the instruments in this field. However, a majority of the Group considers that it is not necessary to retain a specific name for these instruments (i.e. "common strategies", "joint actions" and "common positions").

The Group recommends that all three instruments should be replaced by a "CFSP decision" as defined under (A) above, on condition that the content of decisions be further specified.

The Group recommends retaining the current mechanism whereby the Council adopts by qualified majority "joint actions" and "common positions" which implement a "common strategy", as well as

any "decision" implementing a "joint action" or a "common position" (Article 23(2) of the TEU). Provision should therefore be made in the Treaty for what may be defined as "CFSP implementing decisions" for a "CFSP decision" adopted by the European Council or by the Council by unanimity to be adopted by the Council by a qualified majority ¹.

(C) Change of name

The Group suggests changing the name of the two legislative instruments par excellence, i.e. replacing "regulation" by "European Union law" ("EU laws") and "directive" by "European Union framework law" ("EU framework law"). If the Group's suggestion that a hierarchy of legislation be introduced were to be adopted (see point II below), the name "regulation" could be reserved for the adoption of "delegated" ² acts and implementing acts, i.e. generally for acts of a normative nature which are not legislative. The term "decision" would also be reserved for non-legislative acts.

(D) Non-standard acts

With regard to acts used by the Institutions but not provided for in the Treaty and in principle devoid of any binding legal force (resolutions, conclusions, declarations, etc.), the Group considered that any simplification should be effected with caution in order to safeguard the flexibility required in the use of such acts.

The Group suggests including in the Treaty a rule whereby the legislator (Parliament/Council) should abstain from adopting non-standard acts on a subject when legislative proposals or initiatives

¹ In any case, the Group stresses that the Working Groups on External Action and on Freedom, Justice and Security will need to consider the application of these principles to areas covered by Titles V and VI of EU Treaty.

² The effects of the regulation could be different, depending on whether it were adopted on the basis of a "law" or a "framework law".

on the same subject have been submitted to it. The use of non-standard acts in legislative areas may give the erroneous impression that the Union legislates through the adoption of non-standard instruments.

(E) Harmonisation and standardisation in the wording of Treaty articles conferring powers of action on the Institutions

The Group suggests standardising and clarifying the terminology of the legal bases set out in the Treaty, for example by avoiding using the same term with different meanings, by only using the term "measure" where the choice of instrument to be adopted is to be left to the Institutions, and by abolishing the generic uses of "decision " or "directive". The Group recommends that the Convention agree that the necessary technical adjustments be made in the legal bases of the Treaty in order to standardise and clarify linguistically the terminology used. However, the Group considers that this work of standardisation and clarification should be effected with caution, on a case-by-case basis, and without affecting the institutional balance resulting from the political choices made by the Convention.

(F) The open method of coordination

Constitutional status should be assigned to the open method of coordination, which involves concerted action by the Member States outside the competences attributed to the Union by the treaties. It should be emphasised that this should not be confused with the coordination competences conferred upon the Union by various legal bases, notably in the economic and employment fields.

II. HIERARCHY OF UNION LEGISLATION

Taking account of the special features of the Union's institutional system, it is difficult to make a crystal-clear distinction, as is done in national systems, between matters falling to the legislative arm and those falling to the executive. The Group thought that it was still, however, possible to make a clearer distinction than at present, based on the principles set out in the introduction above.

The Group proposes to clarify the hierarchy of Community legislation adopted on the basis of the Treaty by demarcating, as far as possible, matters falling within the legislative area and by adding a new category of legislation: delegated acts.

The excessive detail in Community legislation has often been criticised within the Convention. This excessive detail has been considered inappropriate, in particular in certain economic areas in which an ability to adapt to a changing environment is very important. The Community legislator is thus confronted with a dual requirement: that of producing legislation whose democratic legitimacy is beyond dispute, something which can only be guaranteed by legislative procedures, and that of responding rapidly and effectively to the challenges and demands of the real world and therefore retaining a degree of flexibility.

At present there is no mechanism which enables the legislator to delegate the technical aspects or details of legislation whilst retaining control over such delegation. As things stand, the legislator is obliged either to go into minute detail in the provisions it adopts, or to entrust to the Commission the more technical or detailed aspects of the legislation as if they were implementing measures, subject to the control of the Member States, in accordance with the provisions of Article 202 TEC.

To remedy this situation, the Group proposes a new type of "delegated" act which, accompanied by strong control mechanisms, could encourage the legislator to look solely to the essential elements of an act and to delegate the more technical aspects to the executive, provided that it had the guarantee that it would be able to retrieve, as it were, its power to legislate.

The Group thus proposes to consider three levels with regard to the adoption of acts within the framework of the European Union:

1. Legislative acts: acts adopted on the basis of the Treaty and containing essential elements in a given field.
2. "Delegated" acts: these acts would flesh out the detail or amend certain elements of a legislative act, under some form of authorisation defined by the legislator. This would be in cases where the legislator felt that essential elements in an area, as defined by it, necessitated legislative development which could be delegated, although such delegation would be subject to limits and to a control mechanism to be determined by the legislator itself in the legislative act.
3. Implementing acts: acts implementing legislative acts, "delegated" acts or acts provided for in the treaty itself. With delegated acts, it would be for the legislator to determine whether and to what extent it was necessary to adopt at Union level acts implementing legislative acts and/or delegated acts, and, where appropriate, the committee procedure mechanism (Article 202 TEC) which should accompany the adoption of such acts.

It is the legislative act – and therefore the legislator – which would determine on a case-by-case basis whether and to what extent it was necessary to have recourse to "delegated" acts and/or to implementing acts and what their scope would be.

(A) Legislative acts

- (a) Definition: legislative acts are adopted directly on the basis of the Treaty and contain the essential elements and the fundamental policy choices in a certain field. The scope of such a concept is to be determined on a case-by-case basis by the legislator.

It is consequently for the legislator to determine the degree of detail of a legislative act in a given field and whether and to what extent certain elements of the act should be delegated by way of "delegated" acts.

- (b) Adoption procedure: codecision should be the general rule for the adoption of legislative acts. Once this principle has been incorporated in the first part of the constitutional treaty, the legal bases of the second part should be reviewed accordingly, of course with the possibility of providing for exceptions ¹.
- (c) Type of act: "laws" and "framework laws".

(B) "Delegated" acts

- (a) Definition: legislative acts may provide for delegating to the Commission the power to adopt delegated acts. The powers delegated may range from rules on the technical and detailed elements which develop a legislative act, to the subsequent amendment of certain aspects of the legislative act itself.

The legislative act itself – and therefore the legislator – determines whether or not recourse should be had to a delegated act. It also formally lays down the objectives, content and scope of the delegated powers and establishes the control mechanisms at the legislator's disposal.

¹ See section II(B)(d) below.

- (b) Control mechanisms: through delegated acts the legislator delegates a power which is intrinsic to its own role. It must therefore be sure of being able to monitor its use. Effective control mechanisms must be made available to the legislator by the Treaty.

Examples of such mechanisms could be as follows:

- right of call-back: the ability to retrieve the power to legislate on the subject, should the delegated powers be exceeded (*ultra vires*), or where the issues are of major political sensitivity or have major financial implications;
- period of tacit approval: the provisions would enter into force if, after a certain period, the legislator had not expressed any objections.
- sunset clause: the provisions of the delegated act would have a limited duration; once this deadline has passed, the delegation of powers would have to be renewed by the legislator.

In any case, the Court of Justice would remain competent on the basis of Article 230 TEC to deal with any violation of the conditions established in the decision to delegate.

- (c) Adoption procedure: by the Commission as a general rule and in particular and duly justified cases by the Council acting by a qualified majority.
- (d) Type of act: delegated regulations ¹.

(C) Implementing acts

- (a) Definition: acts implementing legislative acts, "delegated" acts, or acts provided for in the Treaty itself.

¹ The regulation could be adopted on the basis of a "law", or "framework law".

- (b) Procedure: at present the basic principle of the Treaty is that it is for Member States to adopt implementing acts (Article 10 TEC). Where implementation by the Union is necessary, in accordance with the principle of subsidiarity, the procedure would remain the following: adoption by the Commission (the rule), with or without a mechanism for monitoring by Member States (committee procedure) or by the Council (the exception) in cases where it exercises executive functions. The Group broached the idea of introducing into the Treaty the possibility of assigning regulatory authorities the task of adopting certain implementing acts.

However, the Group thought that, if it were decided to create the new category of delegated acts, it might be possible to simplify certain committee procedures¹. This being said, it must be pointed out that any change would not come under the Treaty directly but under secondary legislation, in this case the Decision laying down the procedures for the exercise of implementing powers conferred on the Commission, adopted on the basis of Article 202 TEC. This issue therefore goes beyond the Working Group's terms of reference².

- (c) Type of act: implementing regulation or implementing decision.

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Finally, the Group would draw attention to the fact that in certain cases the Institutions adopt directly on the basis of the Treaty acts which are not legislative acts. These include:

¹ It would, in particular, need to be examined whether the procedure of regulatory committees, which involves call-back, should to be amended or abolished.

² Article 202, together with Articles 10 and 211, raises the question of the exercise of executive functions at Union level; this issue lies beyond the Working Group's terms of reference and should be addressed by the Convention in the debate on the Institutions. (See Annex III).

- internal organisation measures, for example the rules of procedure of the Institutions or the setting of the salaries, allowances and pensions of Members of the Commission and the Court of Justice or setting the conditions of employment, salaries, allowances and pensions of the Members of the Court of Auditors, etc.
- appointments, such as for example the appointment of members of the Economic and Social Committee and the Committee of the Regions
- cases where the Institutions act as technical authorities, for example measures adopted by the Commission in the area of competition and control of aids granted by States or certain tasks entrusted to the ECB
- cases where the Institutions exercise executive functions and develop in detail the policy choices already expressed in the Treaty in a particular area.

The Group suggests that acts adopted on this basis by the Institutions should be in the form of decisions or regulations.

Part II

SIMPLIFICATION OF PROCEDURES

(A) Introduction

The Group noted that the large number of different procedures in the Treaty (about 30) was explained by the variety of procedures for consulting various Institutions or bodies (Economic and

Social Committee, Committee of the Regions, ECB, etc.), and by the two main voting methods in the Council (unanimity or qualified majority). If these factors are left out of account and only the respective roles of the European Parliament and the Council are considered, there are basically five decision-making procedures: codecision, cooperation, simple opinion and assent by the Parliament, and decision-making by the Council alone. The Group concentrated its attention on these five procedures.

The Group recommends that the decision-making procedures should be listed and their key elements outlined in the first part of the constitutional treaty, and a detailed description of the way they operate should be given in the second part.

(B) Codecision procedure (Article 251 TEC):

The Working Group considers that codecision works well in general. However, it feels that certain improvements are possible and therefore recommends:

- (a) Generalising qualified-majority voting in the Council to all cases where the codecision procedure applies

Apart from three cases the Council acts by a qualified majority during the codecision procedure. The Group agrees that the logic of the codecision procedure requires qualified-majority voting in the Council in all cases.

- (b) Making the composition of the Conciliation Committee more flexible

The composition of the Conciliation Committee is currently laid down by the Treaty (Article 251(4)): it is composed of "the members of the Council or their representatives and an equal number of representatives of the European Parliament". In an enlarged Union, the Conciliation Committee will grow from 30 to 50 members.

A large majority of the Group proposes that the composition of the Conciliation Committee should be made more flexible. The Treaty must enable the Council and the Parliament to decide on the number of their representatives on the Committee, whilst still preserving the principle of parity between the two Institutions.

(c) Changes of wording

As the "codecision" procedure is the principal legislative procedure, it is suggested to retain the designation "legislative procedure" in the constitutional treaty. This designation might also replace the references in the Treaty to Article 251. Nevertheless, certain members of the Group stated their preference for the designation "codecision procedure".

Furthermore, some forms of words in the Treaty give the impression that the European Parliament and the Council are not on an equal footing. This is so in all cases where it is stated that it is the Council, acting in accordance with the procedure referred to in Article 251, which adopts the act in question. Article 251 itself, describing the procedure, implies that it is the Council which adopts acts.

The Group recommends amending the wording of Article 251 and of the various legal bases which refer to codecision to make clear the parity between the Parliament and the Council as legislators in the context of that procedure.

(d) Generalising codecision

In the light of the general principle set out in section II(A)(b), codecision should become the general rule for the adoption of legislative acts. Exceptions to this rule would remain in areas where the special nature of the Union requires autonomous decision-making, or in areas of great political sensitivity for the Member States.

(C) Cooperation procedure (Article 252 TEC)

A broad consensus has emerged, both during the debates in plenary session and in the Working Group, to abolish the cooperation procedure and replace it either by the codecision procedure or by the consultation procedure (simple opinion of the European Parliament). The cooperation procedure still exists at present in four cases, all in the area of Economic and Monetary Union.

The Group suggests shifting to the codecision procedure the provisions:

- for adopting the detailed rules for the multilateral surveillance system referred to in Article 99(3) and (4) TEC in the context of the coordination of economic policies (Article 99(5));
- to adopt measures to harmonise the denominations and technical specifications of all coins (Article 106(2)).

And, owing to its eminently technical nature, to use the consultation procedure (simple opinion), for provisions:

- specifying definitions for the application of the principle of prohibition of privileged access by Community and national public authorities to financial institutions (Article 102(2));
- specifying definitions for the application of the principle that central banks are prohibited from granting overdraft facilities or any other type of credit facility to Community and national public authorities, and the principle that the Community and its Member States are prohibited from being liable for or assuming commitments contracted by those public authorities (Article 103(2)).

(D) Assent procedure

The Treaty requires the assent of the European Parliament in certain cases ¹.

A large majority of the members of the Working Group proposes that the assent procedure should be limited to the ratification of international agreements ², an area in which it should become the general rule when the agreement has repercussions for domestic legislation. Given their major political significance, most of the Group's members recommend a change to the codecision procedure with qualified-majority voting in the Council for the other cases which are currently subject to the assent procedure, viz.:

- rules for the Structural Funds and the Cohesion Fund (Article 161);
- amendment of certain articles of the Protocol on the Statutes of the ESCB and of the ECB (Article 107(5));
- conferring of specific tasks on the ECB relating to the prudential supervision of credit institutions and other financial institutions (Article 105(6)).

As regards the uniform electoral procedure for the European Parliament, the Group takes note that this is a special procedure which also calls for ratification by national parliaments (Article 190(4)) ³.

(E) Simple opinion

Those legal bases which stipulate the simple opinion of the Parliament as the procedure for adoption should also be reviewed in the light of the general principle set out in II(A)(b) above.

¹ The Parliament gives its assent, according to the general rule, acting by an absolute majority of votes cast (Article 198 TEC). There is only one exception to this rule: the decision on the uniform electoral procedure, which requires a majority of the members of the Parliament.

² This is already the case at present for certain international agreements, viz. association agreements, agreements establishing a specific institutional framework, agreements having important budgetary implications and agreements entailing amendment of an act adopted by the codecision procedure (second subparagraph of Article 300(3) TEC).

³ The present Article 190(4) TEC lays down, apart from the assent procedure, that the Council must recommend provisions relating to the electoral procedure to Member States for adoption "in accordance with their respective constitutional requirements". The adoption of the financial perspective would constitute another special case (see under (G) B5 below).

(F) Proposals common to all procedures

In a desire for transparency, the Group recommends that a rule should be established whereby legislative proposals for which the adoption procedures have not been completed within a time to be determined should be considered to have lapsed, unless reconfirmed by the Commission at the end of that period.

Articles 192 and 208, which respectively provide the European Parliament and the Council with the possibility of asking the Commission to present proposals for acts to them, should be strengthened. In particular, the Commission should have to substantiate a refusal in relation to any request supported by majorities to be determined by either Institution.

Moreover, the role of the European Parliament and of the Council with regard to legislative initiative can also be strengthened through their involvement in legislative planning.

(G) Budgetary procedure

In its examination of questions linked to simplification of the budgetary procedure, the Group noted that practice had rendered null and void the articles of the EC Treaty devoted to the budgetary procedure. It also took note of the fact that the distinction between compulsory and non-compulsory expenditure, which is one of the principal causes of the complexity of the budgetary procedure, no longer reflects a real difference in nature. Finally, the Group noted that the interinstitutional agreements on budgetary discipline and improvement of the budgetary procedure, including the financial perspective, have guaranteed budgetary peace and stability in the Union since 1989.

Taking these observations into account, the Group recommends:

- A. That a separate article in the constitutional part of the treaty ¹ should clearly enshrine the principles governing the budgetary provisions, particularly the principle of balance between revenue and expenditure (third paragraph of Article 268 TEC), the principle of the unity of the budget (first paragraph of Article 268 TEC), the principle of budgetary discipline (Article 270 TEC), the principle of necessary means (Article 6(4) TEU), the principle of an annual budget (Article 271 TEC), the principle by which the budget is wholly financed from own resources (first paragraph of Article 269 TEC) and the principle of the prior adoption of a basic act (as set out in paragraph 5 below).
- B. Simplifying and updating the budgetary procedure on the basis of the following principles:
1. There must continue to be a dual budgetary authority: European Parliament and Council. Subject to the Council having the final say over resources and over the financial perspective ceilings, the European Parliament could have the final say on expenditure in the context of cooperation already consolidated by practice. The annual procedure would therefore take place within a framework of the financial perspective given legal force by the Treaty ².
 2. The Council must maintain its dominant role as regards the definition of the regime for the Union's resources, which must subsequently be adopted by Member States ³.
 3. A single and unique procedure must be applied to both compulsory and non-compulsory expenditure. Both will be arranged within the various headings of the financial perspective which the annual budgetary procedure must in any case respect.
 4. The annual budgetary procedure could consist of a simplified codecision procedure, on the basis of the following outline:

¹ See Articles 38, 39 and 40 of the preliminary draft constitutional treaty.

² Naturally, the following text merely provides a broad outline of the budgetary procedures. Subsequent clarification will undoubtedly be required. Moreover, certain adjustments might also be useful to take account of substantive questions yet to be decided by the Convention in another context, for example the financing of the CFSP, the inclusion of the EDF in the budget etc.

³ See Article 269 TEC.

- Initiative of the Commission, which submits a preliminary draft budget, first reading by the EP, which adopts a draft budget, position of the Council, which proposes amendments to the draft budget, and second reading by the European Parliament, which definitively adopts the budget (the positions of the Institutions must of necessity respect the expenditure ceilings laid down in the decision on the financial perspective – see below).
 - Conciliation meetings should be provided for between the first reading by the Parliament and the adoption of the Council's position, and between then and the second reading by the Parliament. The rules concerning the Conciliation Committee would apply.
 - The majorities should be those laid down at present for non-compulsory expenditure: majority of members of the EP for the first reading, qualified majority of the Council for adoption of its position. If the Council does not propose amendments within a certain deadline, the budget is deemed adopted; if the Parliament accepts all the amendments proposed by the Council, the budget could be adopted by a majority of votes. On the other hand, a majority of the members of the European Parliament and three-fifths of the votes cast in the Parliament would be required to amend or reject the Council's amendments¹.
 - The timetable consolidated by the practice of the Institutions should be incorporated into the treaty.
5. A new legal basis should be included in the Treaty so as to insert a medium-term financial planning mechanism which would incorporate the general principles of the agreements on budgetary discipline and improvement of the budgetary procedure, including the financial perspective, as follows:
- The planning mechanism would be adopted on the Commission's initiative by the two arms of the budgetary authority in accordance with the procedure involving adoption by the Council following the assent of the European Parliament.

¹ The outcome of the codecision procedure depends on agreement being obtained between the Parliament and the Council. Unlike legislative procedures, the budgetary procedure needs a definite outcome. This proposal guarantees that a decision will be taken at the end of the procedure by giving the Parliament the last word (as is already the case now for non-compulsory expenditure). The interplay of majorities should be able to guarantee institutional balance.

If the option of giving the Parliament the last word is rejected, and the procedure is to be concluded by agreement between the two arms of the budgetary authority, provisional remedies should be stipulated for use if the procedure fails: for example, by a readjusted system of provisional twelfths or by the application of the Commission's proposal.

- The duration of the financial planning mechanism should coincide with the term of office of the European Parliament and of the Commission.
 - The planning mechanism would include a global resources ceiling and annual expenditure ceilings per heading. A procedure could be laid down to safeguard a margin of flexibility.
 - It should constitute a binding framework for the annual budget.
6. The Treaty should also regulate the links between legislation and the budgetary procedure more fully. Article 270 should be amended to include the provision established by the Interinstitutional Agreement of 1998 that the entry of appropriations in the budget for any Community action requires the prior adoption of a basic act, understood as an act of secondary legislation which provides a legal basis for the Community action and for the implementation of the corresponding expenditure entered in the budget. It could take the form of a "law", a "framework law", a "decision" or a "regulation".

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Transparency

The Group believes that, as already stated in the introduction, simplification should be seen as a factor promoting democracy. The Group has therefore at all times been concerned with clarity. Citizens must be able easily to understand not only the scope of an act, but also its legitimacy. *In fine*, they must know who does what within the Union.

It is indispensable, to guarantee democracy, that they should be able to distinguish the responsibilities of the different Institutions and of the various players on the European scene.

To reinforce clarity, it is not sufficient to simplify procedures or instruments; the Institutions must sit in public when they are exercising legislative functions, i.e. when they are defining the fundamental policy choices of the Union's action.

The Group recommends that the Convention should look very closely at how to guarantee the transparency of the legislative procedure, when it examines institutional questions.

Quality of legislation

During the Group's discussions, several questions were raised in this context which go beyond even the amendment of the Treaties, and which are addressed to the Institutions which participate in legislative tasks. The Group would draw the Convention's attention to the following questions in particular:

- The need to intensify consultation with interested circles, throughout the legislative process, including regional and local authorities, and the importance of the role of associations and organisations representing those circles as an "interface" between citizens and political players. The role of the Economic and Social Committee and the Committee of the Regions should be highlighted.
- Legislative proposals should be accompanied by an impact assessment sheet, mentioning, inter alia, consultation with the sectors affected.

- The need to have more frequent recourse to "self-regulation" by the sectors concerned themselves, or to "co-regulation" by cooperation between those sectors and public authorities, always in compliance with the law, so as to streamline the decision-making process in some areas.
- The need to intensify efforts to recast and codify Community law.
- The need to improve the drafting of legislation, in the sense of clarity of language and consistency with existing legislation.

Hearing of experts

Codecision – The experience of the Institutions (meeting held on 2 October 2002)

- Mr Dimitrakopoulos, Vice President of the European Parliament, with responsibility for conciliation
- Mr Jacqué, Director of the codecision unit in the Council

Budgetary procedure: How to simplify it? (meeting held on 2 October 2002)

- Mr Wynn, Chairman of the Committee on Budgets of the European Parliament
- Mr Romero-Requena, Director-General (Budget) at the Commission

Instruments: How to simplify them (meeting held on 17 October 2002)

- Mr Michel Petite, Director-General, Commission Legal Service;
 - Mr Koenraad Lenaerts, Judge, Court of First Instance;
 - Mr Jean-Claude Piris, Legal Adviser and Director-General, Council Legal Service.
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A number of proposals were made at the meetings of the Working Group. As they failed to receive sufficient support within the Group, they are not included in the recommendations of this report.

The proposals are as follows:

- One member suggested changing the type of majority expressed in the European Parliament during the codecision procedure. Instead of an absolute majority of its Members, the Parliament should be able to act on a majority of votes cast.
- Some members called for setting mandatory deadlines during the first reading of the codecision procedure, or a reference in the treaties to the informal meetings between the institutions ("trilogues"). These proposals did not win sufficient support as the Group considered that the first reading constituted an essential phase for aligning positions and that, as a result, such deadlines could cause a number of procedures to fail prematurely. The effectiveness of the institutional "trilogues" lay in their flexibility and informal nature. They should therefore not be formalised in the treaty.
- Several members of the Group expressed their concern about the level of Member States representation in the Conciliation Committee. They wanted the Conciliation Committee to be composed of elected politicians and not officials.
- Some members of the Group would like majority voting in the Council to be applied without exception throughout the codecision procedure, including in cases where the Council adopts a position on Parliament amendments on which the Commission has expressed a negative opinion.

- Some members proposed supplementing the provisions on subsidiarity in order to allow national or regional authorities responsible for implementing a Community measure sufficient leeway to ensure that objectives were attained taking account of local circumstances.
- Several members of the Group, including the European Commission, proposed applying the codecision procedure to the adoption of the financial perspective.
- Two members of the Working Group expressed the view that some of the suggestions on the legislative and budgetary proceedings included in the majority report would lead to a substantial power shift from the Council to the European Parliament.

During the discussion on the simplification of procedures and instruments, a number of institutional matters were raised which went beyond the mandate given to the Group. These matters are as follows.

- A large number of members proposed simplifying the formulation of qualified majority voting in the Council by introducing a double-majority system (majority of States, majority of populations).
- Several members stressed the importance of matters linked to the Union's financing, including the procedure for adopting the Decision on own resources.
- A large majority of the Group's members were of the view that the Convention should address matters relating to the implementation of Community acts (Articles 10, 202 and 211) in the context of the institutional debate. In particular, it was proposed that Article 202 be adjusted to take account of the Parliament's actual legislative powers (it would be the Council or the Council and the Parliament that would confer...). Some Group members would like a change of procedure (codecision) for adopting the arrangements for monitoring implementing acts under that Article.
- As regards the procedure for revising the constitutional Treaty, one member of the Group supported the idea that "organic law" could be applied to the provisions in the second part of the constitutional treaty, thus lightening the revision procedure. Moreover, some members proposed adding to the outline put forward in Part I of the report the instrument of "organic laws" which, adopted by a super-qualified majority in the Council, should cover certain provisions where the current Treaties provide for autonomous procedures. These would concern provisions of considerable political or institutional sensitivity: the decision on own resources, the decisions to increase the number of Advocates-General or Judges at the Court of Justice, the decision to change the number of Members of the Commission, etc.
