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THE QUESTION OF A EUROPEAN GOVERNMENT

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FOREWORD

Following on from the study on the European Council by Philippe de Schoutheete and Helen Wallace¹, Jean-Louis Quermonne now turns to "the question of a European government". As the framework of the future constitutional treaty has just been made public by the Presidium of the European Convention, the issue could not be more topical. It will require the members of the Convention to become "inventors of simplicity", to use an expression I am fond of.

While the problem of European executive power has already given rise to much debate and inspired many vocations, there is more to it than just appointing a symbolic personality – be it a president, a prime minister or a European secretary. Jean-Louis Quermonne accordingly begins by reminding us that broadening the scope of the European Union's tasks takes us beyond a simple debate on governance and brings out the need for something that is more akin to government. That is to say the need for a body which, in a framework of clear relations with the other Union institutions, is capable of taking and implementing decisions.

I have noted a number of fundamental points in this well-reasoned study. First of all, simple does not mean simplistic. The nature of the European integration process, since it began, has been to reconcile two sources of legitimacy: that of the Member States, reflected in intergovernmental procedures, and that of common institutions based on a direct relationship with European citizens. The question is not, therefore, a choice between the intergovernmental and the supranational approaches but rather, as Convention president Valéry Giscard d'Estaing brilliantly pointed out, how we can draw the best from each practice.

Jean-Louis Quermonne also warns us against the misconception that the Community method amounts to a supranational approach, when in fact it derives from a first synthesis between the supranational and intergovernmental approaches. Likewise, the Commission is all too often perceived as being apolitical – and even technocratic – when in fact both its composition and role make it a political institution whose democratic legitimacy must now be strengthened.

Building on the principle of dual legitimacy underpinning the Union, the author has developed an institutional blueprint based on the concept of "mixed government" – a concept already presented in a publication of the Board of Directors of *Notre Europe*, albeit in the form of an approach rather than a definitive proposal². This "mixed government" would draw on the synergy between the Council of the European Union and the European Commission within the framework of a single presidency. Together, the two institutions would manage the "single institutional framework" so adversely affected by the compartmentalised "pillar" structure.

¹ Philippe de Schoutheete and Helen Wallace, *The European Council*, Research and Policy Paper No. 19, Paris, *Notre Europe*, September 2002.

² *A la recherche d'un gouvernement européen*, *Notre Europe*, September 2002.

At a time when many of the suggestions put forward aim, explicitly or covertly, to sideline or even undermine the European Commission, I would like to underline the findings of Jean-Louis Quermonne's analysis. While the Commission is not an all-powerful institution and cannot expect to govern the Union on its own, it must remain at the heart of this government in a Union of 25 or 30 States. For it is part and parcel of the initial inspiration that has allowed Europe to deliver the irreplaceable added value its States and citizens are enjoying today. Every effective step forward in the European integration process is, to a large extent, attributable to the fact that the Community method played a central role. We are now on the eve of an unprecedented enlargement which will confront the European Union with the challenge of numbers and put considerable pressure on its cohesion and capacity to act. This makes it more than ever necessary to have a body responsible for ensuring the consistency of its action unless – whether knowingly or, worse still, unknowingly – we wish to run the risk of it becoming ineffective.

Jacques Delors

CONTENTS

INTRODUCTION: towards a "single institutional frame work"?	1
I – The Community method as a first synthesis of the supranational and intergovernmental approaches	3
II – From necessary governance to necessary government	5
III – Strengths and weaknesses of the intergovernmental approach	9
IV – The two sources of legitimacy of a European government	12
V – The limits imposed on transparency and simplicity	14
VI – Spotlight on the Presidencies	16
VII – The irreplaceable role of the Commission	22
VIII – Towards a new synthesis of the intergovernmental and supranational approaches	25
IX – "Mixed government" or "fragmented government"?	27
X – A unified institutional framework, open to diversity	30
CONCLUSION: the time has come to consider the question of a European government	32

INTRODUCTION: TOWARDS A "SINGLE INSTITUTIONAL FRAMEWORK"?

An institutional system is not an end in itself. It must fulfil the objectives it was designed for. That is the measure against which its performance will be gauged. And as can be seen from the increasingly rapid pace at which governments are being voted out, performance has become one component of democratic legitimacy in the eyes of the general public.

This is just as true of international organisations as it is of nation states, and now applies to the European Union as well. Of course, we should beware of the risk of extrapolating national phenomena at Union level. But excessive complexity has distanced the Union's institutional system from the European people. If they are to warm to it, they must understand its purpose before they can see its effectiveness and recognise its legitimacy. This means that any European constitution must first set objectives for the Union, along with the necessary powers and resources, before outlining the institutional architecture best suited to implement them.

That is how the Community method successfully operated for almost 50 years. Between 1957 and 1992, its purpose was to establish a customs union among the six founding countries and, in the course of several enlargement exercises, this gradually changed into a common market before becoming, thanks to the Single European Act, a single market. The resulting deregulation and regulation approach¹ worked perfectly well up to the Maastricht treaty. This, however, introduced intergovernmental tasks, governed by separate pillars, among the objectives of European integration – a new development which has blurred the boundaries between the Community and intergovernmental methods and proved to be dysfunctional.

Admittedly, Article C of the Treaty on European Union (now Article 3 TEU) specifies that "the Union shall be served by a single institutional framework which shall ensure the consistency and the continuity of the activities carried out in order to attain its objectives while respecting and building upon the *acquis communautaire*." The second paragraph, now amended by the Amsterdam treaty, adds that "the Union shall in particular ensure the

¹ Thus, the gradual dismantling of customs and tariff barriers between the Member States is an example of deregulation, and the establishment of competition rules in the European Economic Community is an example of regulation.

consistency of its external activities as a whole in the context of its external relations, security, economic and development policies", and makes the Council and Commission responsible for ensuring this consistency. In practice, however, despite the efforts of the institutions involved, this requirement has all too often failed to be met.

This is because the treaty itself, by refraining from establishing the legal personality of the Union, has kept political cooperation beyond the scope of the Community's action and resources. Furthermore, the pillar structure has resulted in compartmentalisation – and even duplication of effort – among the Union's bodies, as reflected in the dual positions of high representative for the CFSP and commissioner for external relations. The effect of this barely disguised heritage of the Fouchet Plan has been to maintain the dichotomy between the Union's declarative diplomacy – based on an intergovernmental approach – and the Community-based management of resources this diplomacy needs to be operational. In other areas, of an economic and social nature, the ingenious "open method of coordination" devised by the European Council at its meeting in Lisbon was an attempt to remedy this shortcoming, but has not yet yielded totally convincing results².

The overriding issue in the quest for a European government is therefore the *implementation of the single institutional framework* the Union has been promised since 1992. The question has arisen, both implicitly and explicitly, in the debates of the European Convention. There seems to be broad consensus on granting legal personality to the European Union, resulting in the merger of the Community and Union treaties. But this measure would have to lead to decompartmentalising the pillars, albeit at the cost of distinct procedures allowing diverse decision-making rules to be established according to the policy areas involved.

Supposing such a step can be taken, the balance between the supranational and intergovernmental approaches in the workings of the single institutional framework would still need to be determined. In the view of the Convention President, this would boil down to keeping the best aspects from both intergovernmental practices and the Community method. In addressing the issue of a possible government for the Union, this study will review the main forms the balance could take, with concern that it be both consistent and realistic.

² Maria João Rodrigues (ed), *The New Knowledge Economy in Europe, A Strategy for international competitiveness and social cohesion*, Northampton (M.A), Edward Elgar, Cheltenham, U.K., USA.

I – THE COMMUNITY METHOD AS A FIRST SYNTHESIS OF THE SUPRANATIONAL AND INTERGOVERNMENTAL APPROACHES

Contrary to what certain comments might suggest, the Community method is not purely supranational. Admittedly, some of the players involved – such as the European Commission and the Court of Justice, more recently joined by the European Parliament – are supranational bodies. But the entity which holds the legislative power – in some cases alone, in others with the European Parliament under the codecision procedure – is the Council of the European Union. This institution plays the most important role, under the increasingly tight rein of the intergovernmental body *par excellence*: the European Council, which brings together the heads of State and government, and also the President of the Commission.

This reminder was necessary to highlight the synthesis achieved by pragmatically developing the Community method during the first years of implementation of the Treaty establishing the European Economic Community (EEC). The earlier institutions of the European Coal and Steel Community left the decision-making power to the High Authority (the special Council of ministers having, at best, only the option to give or withhold its assent). By contrast, the EEC rebalanced the system by injecting more of the intergovernmental approach. And although over the years, once the effects of the Luxembourg compromise had been dispelled, the Council had been enabled to act by a qualified majority, decision-making by consensus is now being given a new lease of life by the increasingly powerful European Council. To such an extent that the balance is now tipping towards the intergovernmental approach.

Even so, these changes in the balance of power have not prevented the EEC from achieving the objectives it was set and, at its peak when Jacques Delors was the Commission President, from introducing a single currency. Nonetheless, while the Community method has proved to be an effective first synthesis of the intergovernmental and supranational approaches, its limitations cannot be ignored. The legislation established by the Community has led to a two-

pronged process of deregulation and regulation, to such an extent that in 1996 one author referred to the European Community as a "regulatory state"³. Such a process is more akin to *governance* than to *government*. Hence a first epistemological debate on the European Community as "an unidentified political object", as Jacques Delors put it. The Community could accept "governance" because it had to restrict its ambition to exercising "civilian power". But, paradoxically, the Maastricht treaty laid the foundations of an entity destined to conduct an internal security policy (curiously referred to as JHA – justice and home affairs), and a foreign and external security policy (called CFSP – common foreign and security policy), without providing it with any form of government whatsoever. And neither the Amsterdam Treaty nor the Nice Treaty have succeeded in correcting this inconsistency.

³ Majone (Giandomenico), *La Communauté européenne : un État régulateur*, Paris, Montchrestien, 1996.

II – FROM NECESSARY GOVERNANCE TO NECESSARY GOVERNMENT

Let us stop for a second to consider the distinction between government and governance, which is not purely semantic. Admittedly, according to leading authors, the concept of governance encompasses and extends beyond that of government⁴. However, far from making government the "hard core" of the governance process, this only serves to make it more inconspicuous – and even dilute it – within a multiplicity of decision-makers of various kinds operating at a variety of geographical levels. Governance therefore seems more suited to meeting a need for deregulation and regulation of a vast free-trade area than a need for close coordination of macro-economic policies, let alone the exercise of political government based on a pooling of sovereign powers.

It is worth pointing out in this respect that the term "governance", as used in political science today, first appeared in World Bank reports, in a context marked at certain times by a decline of the welfare State and at others by the need to curb, at international level, the excesses of globalisation. So attempts to transpose the model into the European Union framework are not always devoid of ulterior motives. By substituting the means for the ends, they aim to restrict the role of the European integration process to that of an organisation merely able to ensure the flexible regulation of a market backed up by a few common policies, and as a corollary to guarantee internal security. President Prodi nevertheless had a study on European governance conducted in 2001. The report assesses its positive aspects, observing that "the Member States do not communicate well about what the Union is doing and what they are doing in the Union. 'Brussels' is too easily blamed by Member States for difficult decisions that they themselves have agreed or even requested."⁵ This raises the vexed issue of synchronising decisions taken at national and at European level, despite the role the treaties have given to the Commission and the Court in ensuring that decisions at the latter level take precedence over those at the former.

⁴ See, for instance, the definition attributed to J. Rosenau by Mario Telò in his excellent study on "Governance and Government in the European Union" in Maria João Rodríguez (ed.), *The New Knowledge Economy in Europe*, Paris, Edward Elgar, 2004, and the definition suggested by Richard Balme and Didier Chabanet in *L'action collective en Europe*, Paris, Presses de Sciences-Po, 2002, p. 108.

⁵ Commission of the European Communities, *European Governance – A White Paper*, Brussels, 25 July 2001, p. 7.

In its heyday, the Community method managed to overcome these difficulties. It therefore remains the best example of "good governance", and presents three of its characteristics:

- to associate many players in the decision-making process, including various representatives of civil society (often organised as networks)
- to operate a system of multilevel governance including the Member States and supranational bodies, and even the regions and local authorities
- to seek optimum performance, by drawing on the system's expertise resources both upstream and downstream from the decision-making process

However, unlike other examples of governance (including Mercosur and other regional organisations), the specific characteristic of the Community method is that the decision-making process has led to the adoption of binding legal instruments whose primacy over national legislation has been acknowledged and enforced by the Court of Justice⁶. This "Community legal order", upheld by case law, is what has given the EEC its unprecedented and unique character. As a consequence, from the very beginnings of the common market, EEC governance had already incorporated institutional factors pertaining to the concept of government.

Jean Monnet himself said as much in his Memoirs, writing that "After a period of trial and error, this method has developed into a regular interchange between a European body responsible for suggesting solutions to common problems and the Governments of member countries which put the national points of view. This is a completely new approach. It does not create a central government. But it does result in Community decisions being taken within the Council of Ministers notably because the proposal of solutions to common difficulties by the independent European body makes it possible, without risk, to give up the unanimity rule."⁷. And this essential body that, for half a century, has spared the Community the need for a real government is none other than the European Commission.

The "governmental" element of the Community method was probably what caused the heads of State and government, meeting in Maastricht in December 1992, to refrain from extending it (even stripped of majority voting) to the fields of JHA and the CFSP. Political cooperation in these areas thus remained within a strictly intergovernmental framework, although – to

⁶ Renaud Dehousse, *La Cour de Justice des Communautés européennes*, Paris, Montchrestien, 2nd ed., 1997.

⁷ Jean Monnet, *Mémoires*, Paris, Fayard, 1976, p. 517.

keep up appearances and at the cost of diminished efficiency – reference was made to a single institutional framework.

This same fear also prompted a restrictive interpretation, for the purposes of implementing the EC treaty's Title VII (on economic cooperation), of the mechanism initially thought up by the Delors Committee: the power given to the European Central Bank (ECB) in monetary matters was to be counterbalanced with the beginnings of "economic governance", but the Eurogroup is woefully inadequate in this respect. The present system's inability to remedy the rigidity of the Stability Pact now shows us – a bit too late – just how disproportionate the ECB's role has become.

Lastly, these reservations about the Community method later induced the European Council, when it endorsed the "knowledge-based Europe" project at its meeting in Lisbon, to keep control of the brand new "open method of coordination". Even though the method involves all three components of the "institutional triangle" – including the Commission –, the European Council is firmly in the driving seat⁸. As a result, despite the innovative character of this initiative, it has not yet produced the results hoped for. The overloaded agenda of the heads of State and government does not allow the European Council to exercise effective control in fields that require expertise and time it simply does not have. As a consequence, in this kind of exercise, the practice of "functional duplication"⁹ – a form of (very) part-time government exercised by players whose primary responsibilities lie at another level – is necessarily doomed.

⁸ On this point, see Mario Telò's analysis in the collective work mentioned above, brilliantly edited by Maria João Rodrigues. See also Paul Magnette and Éric Renacle, *Le nouveau modèle européen*, Vols 1 and 2, Brussels, Éditions de l'ULB, 2000.

⁹ Suggested in the 1920s and 1930s by Professor Georges Scelle, the theory of functional duplication is concerned with the practice whereby an authority responsible for a given level of government also exercises responsibilities at a higher level.

Compared with these failings, the intergovernmental approach – in those areas where it limited its ambitions – at least had the merit of being unambiguous. In the field of political cooperation, it has achieved results such as the agreements of Schengen and Saint-Malo. However, the intergovernmental approach could not serve for more than *ad hoc* coordination and be used for full-time government. And the European Union's objectives in terms of sovereign powers – whether with respect to macro-economic and budgetary cooperation, establishing and maintaining an area of freedom, security and justice or, above all, conducting a common foreign and defence policy – cannot be pursued using an intermittent decision-making process without running the risk of severe malfunction. So much is clear from past experience.

We can therefore see that the schedule set for the Union's Member States by the protocol annexed to the Nice Treaty (and reiterated in the Declaration of Laeken) raises the considerable problem of the emergence of a genuine political power. While not calling into question the governance of the single market, the schedule does directly raise the issue of establishing a European government. We must assess the strengths and weaknesses of the intergovernmental approach in this respect before we can go any further in this direction.

III – STRENGTHS AND WEAKNESSES OF THE INTERGOVERNMENTAL APPROACH

Let us therefore attempt to define the intergovernmental approach as applied up to now, and pinpoint its main characteristics.

Rather than being arbitrary, the true nature of the intergovernmental approach is, in reality, diplomatic. It is primarily based on negotiation, even when exercised in a multilateral setting, and leads directly to compromise. As applied by the European Council, it has yielded effective results since 1974. And, as pointed out by Jacques Delors, "it is a real paradox that this organ, so intergovernmental in its composition that it has aroused deep fears since it was created, should have become the permanent engine for deepening European integration"¹⁰. But there can nonetheless be no doubt (as pointed out by the authors of the study prefaced by the former Commission President) that, burdened by an increasingly large number of members and above all by an overloaded agenda, the European Council is nearing exhaustion and cannot, at the risk of losing its irreplaceable purpose, be hastily converted into a *European government*¹¹. In the 1970s, Jean Monnet did admit the need to involve the heads of State and government more closely in the European integration process. However, he never saw the European Council as anything more than a "provisional government"¹². But in the Community, as in France, "provisional" arrangements can turn out to be lasting. And while the purpose of the European Council is obviously to fulfil a strategic function at the helm of the Union, it cannot be reduced to dealing with everyday business on a permanent basis¹³.

¹⁰ Jacques Delors, foreword to the study *The European Council* by Philippe de Schoutheete and Helen Wallace, Paris, *Notre Europe*, September 2002, which discusses the role and future of the entity bringing together the heads of State and government.

¹¹ Mr Solana wrote, in his report to the Barcelona European Council, that "the European Council has been sidetracked from its original purpose".

¹² We are particularly grateful to Professor Henri Rieben, the chairman of the Jean Monnet Foundation for Europe, established in Dorigny, near Lausanne, for having given us extensive access to the archives under his care, allowing us to confirm this interpretation. On this point, see also M. T. Bitsch's study, "*Jean Monnet et la création du Conseil européen*", in G. Bossuat and A. Wilkens (ed.), *Jean Monnet, l'Europe et les chemins de la paix*, Paris, Publications de la Sorbonne, 1999, pp. 399 *et seq.*

¹³ On this point, see Fabrice Picod, "Le rôle du Conseil européen dans le processus de décision", *Revue de Droit Public* No. 4, 2002, pp. 1187 *et seq.*

We must therefore assess the operational capacity of the Council of the European Union, which comprises ministers of the national governments. Despite the partial application of qualified majority voting, giving it the status of an institution of the Union, it is nonetheless an intergovernmental entity on account of the functional duplication underpinning its composition. And while it remains an essential institution, its capacity to exercise the governmental function alone should be questioned.

On the basis of its experience, let us attempt to draw up the "identikit picture" of an intergovernmental body. It basically has three characteristics:

- First of all, it is a fragmented entity in two respects: it brings together sovereign members whose natural tendency is to seek unanimity; and it calls on various ministers (depending on the issue under discussion) chosen for their technical competence. Hence the proliferation of Council formations since the institution was first established under the Treaty of Rome.
- It also works in an intermittent fashion, both because national ministers cannot sit in Brussels on a permanent basis and because elections frequently change the composition of national governments¹⁴.
- Lastly, like the European Council, the Council of the European Union fulfils a dual role. This explains why its members have difficulty in reconciling their national interest – which it is their primary task to promote – and the general interest of the Union, which often comes lower down their list of priorities.

It would therefore be counterproductive to maintain the intergovernmental approach in all the areas where it is applied, and even more so to take advantage of the single institutional framework to generalise it. Furthermore, involving the European Council in everyday business would undermine the status of that institution. On the other hand, involving ministers in exercising the executive powers together with the Commission fits in perfectly with the rationale of a federation of nation states (as opposed to that of a federal state, where the States are represented by a second legislative chamber within the parliament).

¹⁴ The most spectacular changes occurred on the eve of the adoption of the Treaty of Amsterdam, following successive changes in government in the United Kingdom and France. But it can also happen, as was the case in Italy after the resignation of Renato Ruggiero, that a cabinet reshuffle modifies the composition of a given government during its term of office.

Therefore, in line with the dual legitimacy underpinning the European Union, the solution lies in establishing synergy between the Council of the European Union and the Commission¹⁵ if the everyday intergovernmental approach is to be effective within a single institutional framework and in direct collaboration with the Commission.

¹⁵ As was already suggested in the report of the reflection group of the *Commissariat général du plan*, published by *Documentation française* under the title *L'Union européenne en quête d'institutions légitimes et efficaces*, Paris, January 2000.

IV – THE TWO SOURCES OF LEGITIMACY OF A EUROPEAN GOVERNMENT

In seeking this synergy between the bodies responsible for the intergovernmental and supranational approaches, we must return to the sources of legitimacy.

It is generally agreed within the Union that there are two sources of democratic legitimacy and the president of the European Convention has indeed invoked them, taking his cue from the Community's "founding fathers"¹⁶.

The first source provides the legitimacy essential to nation states, on condition that their governments comply with democratic requirements and the rule of law (as has been explicitly set out in Article 6 of the Treaty on European Union). This legitimacy is reflected in the concept of federation of nation states, which Jacques Delors put forward as early as 1993. Yet it entails ensuring the presence of the Member States in both the legislative and executive entities. The second source of legitimacy of the Union stems from the people's direct democratic access to power at European level, made possible through election of the members of the European Parliament by universal suffrage. It supplements the first source and is further reflected in the appointment of the Commission, since the Commission must now be approved by the Parliament before taking office and is politically accountable to that institution.

Therefore, if we want the European Union institutions that are to govern the workings of the unified Europe after 2004 to faithfully reflect these two sources of legitimacy, we must discard both the model of a confederation of States, which would give too much weight to the first source, and the model of a federal State, which would give too much weight to the second. Hence the need to resort to pragmatic solutions bringing the two together, and leave it

¹⁶ Robert Schuman himself believed that "supranationalism will be built on national foundations" (see *Pour l'Europe, Écrits politiques*, 3rd ed., with a preface by Jacques Delors, Geneva, Nagel et Briquet, 2000, pp. 25-26).

up to the theoreticians to find, eventually, a legal name for them¹⁷. There is therefore scope to be innovative.

But the fact that traditional models cannot be retained – the question being whether the expression "United States of Europe" covers one of them – does not mean that the creators of a possible European constitution can dispense with the need for a consistent approach. This restricts the scope for pragmatism and limits the legitimate ambition to keep things simple and transparent, within a European environment that is highly complex and diverse.

As a consequence, while under no obligation to draw up the constitution on the basis of established law, those called upon to draft it should not attempt to start from scratch. The European integration process has built up a heritage over the past 50 years. Although the time has come to simplify the treaties, it would be counterproductive to neglect the institutional achievements that have given the European Community and Union their unique character.

¹⁷ We are referring here to the idea put forward by Olivier Beaud as part of his work on distinguishing between the concept of federation and the two contrasting models of confederation of States and federal State, and, more modestly, to the concept of "intergovernmental federalism" we put forward with Maurice Croizat in *L'Europe et le fédéralisme*, Paris, Montchrestien, 2nd ed., 1999.

V – THE LIMITS IMPOSED ON TRANSPARENCY AND SIMPLICITY

It is said that, staring at a poster of the draft Constitution of the Year VIII, a woman gave up trying to understand it and exclaimed: "The main thing is that Bonaparte is in it!" But if a Bonaparte were one of the EU heads of State or government, there would be no role provided for him in any future European constitution. The text should therefore be kept relatively simple, to make up for the non-personalisation of power.

Unfortunately, the current reality is complex and even more so at Union than at Member State level. The Philadelphia Convention's approach of drafting a constitution comprising seven Articles and leaving the Bill of Rights to be adopted under an amendment procedure is no longer valid. Nor is Bonaparte's supposed comment that a good constitution should be short and obscure (possibly the best praise of ambiguity ever proffered...).

We must therefore endeavour to strike a balance between the hundreds of pages of provisions incorporated into the treaties over the years and the need to keep the constitution down to a few dozen articles.

Yet even on that scale, the task is far from easy. Certain authors have accordingly suggested a two-step process. A first text – which should be "set in stone" – would contain, in addition to the Charter of Fundamental Rights, if not a catalogue sharing out powers between the States and the Union, at least a list of objectives set for the latter, followed by the architecture for the institutions. A second text, which could be drafted later, and for which a more flexible review procedure would be provided, would specify the purpose of the common policies, making distinctions where appropriate between those coming under the exclusive, the concurrent and the complementary powers of the Union. There have even been proposals that this second document could simply form the basis for "organic laws"¹⁸, and one recent idea was to attach a third part to the constitutional text, relating to implementation and review.

¹⁸ On this point, see Robert Badinter's proposal: *Une Constitution pour l'Europe*, Paris, Fayard, 2002, and the paper by Professor Jean Touscoz in *La Constitution européenne*, Brussels, Bruylant, 2002, both based on the research by the Robert Schuman Centre of the European University Institute in Florence, published in May 2000 under the title "*Un traité fondamental pour l'Union européenne sur la réorganisation des traités*".

The Convention would be wise to move in this direction. In addition to the fact that such a division would make the constitution itself more readable, it would probably avoid the Convention and the ensuing intergovernmental conference getting caught up in the intricate web of conflicting national interests relating to the common agricultural policy, the scope of social policy and the "economic government" of the Union. Solving these problems would require more time than is left until the 2004 deadline and could therefore be postponed until a second part of the text is drafted, and take the simpler form of organic laws.

But, whatever the approach chosen, the constitutional text itself will inevitably be somewhat technical. In order for it to be ratified by national parliaments – not to mention the general public in referendums – elected representatives will need to make great efforts to inform and explain, whatever simplifications are made to the institutional provisions. So much is clear from the two Irish referendums. And it would be incomprehensible if national governments were to put less effort into the adoption of a European constitution than they did into introducing the euro.

VI – SPOTLIGHT ON THE PRESIDENCIES

Although these are no longer the days of the "founding fathers", the proposal encapsulated in the initials "ABC" has already made its mark throughout Europe... and has escaped the control of those who gave it its name¹⁹. Beyond any question of particular individuals, it has the merit of underlining that the time has come for the EU to relinquish the formula of a six-monthly presidency which, in a Union of 25 countries, would mean that each member's turn comes round only once in twelve and a half years. It should also be commended for attempting to overcome the obstacle of an abstract presidency embodied not in an individual but in a State – a somewhat intangible entity in the eyes of the general public.

Therefore, even if biased, this debate is welcome if it can shed timely light on the implications of the various solutions put forward to settle the presidency problem. The first question at issue is whether there should be one, two or three simultaneous presidencies, or whether they should be merged. For if we set aside the presidency of the European Parliament, for which a solution has been found, there are three positions to be filled: the presidency of the European Council (often assimilated to that of the Union), that of the Council of the European Union (and its various formations) and that of the Commission. We could therefore legitimately imagine merging either all three presidencies or just two of them (implying a further two options). But these various possibilities are reviving disputes, hitherto thought to have been overcome, between advocates of a supranational approach and those favouring an intergovernmental one. We must take care not to exacerbate them...

If we accept that the notion of three distinct presidencies seems unlikely – for it is too close to a *status quo* –, that leaves three possibilities for combining the roles. The first is to merge all three, as suggested by the Chairman of the Delegation for the European Union of France's National Assembly²⁰. This would bring together the presidencies of the European Council (and Union), the Council of the European Union (in its "general affairs" composition) and the European Commission. This option meets an obvious concern for consistency. The holder

¹⁹ José Maria Aznar, Tony Blair and Jacques Chirac.

²⁰ Contribution from Pierre Lequiller to the European Convention, French National Assembly's Delegation for the European Union, 2 October 2002.

would both be the emblematic voice of Europe and control the logistical resources available to the Commission. But this solution would probably require a "superman" and would lead to the European Union adopting a system that was even more presidential than that of the USA. This contribution therefore also provides for a more modest version, bringing together just two mandates, whereby the permanent president of the European Council (the EU President) would also be the effective president of the "General Affairs" Council. This possibility is more realistic and would offer the advantage of ending the rotating presidencies, thus ensuring real continuity in the work of the two intergovernmental authorities. It would, however, leave open the related question of the presidencies of the sectoral Councils. Furthermore, quite apart from the fact that since it would stem directly from the choice of the European Council (albeit ratified by the European Parliament) such a presidency would be even more intergovernmental in nature, it would come up against four types of obstacle, which are as follows

- There is, first of all, a risk that it will appear to the governments of the "small" Member States as expressing the will of a "*directoire*" of the largest States – a feeling that the ABC label will have strengthened.
- Secondly, it runs counter to the parliamentary culture of most of the EU Member States, which is also a part of the Union's identity. Furthermore, it would make it unlikely for the Union President to be held politically accountable, either by the European Council, which that person would be chairing, or by the European Parliament, which would hesitate to "behead" the authority bringing together the heads of State and government.
- Besides, supposing that the Commission continues to exist, there is a risk of this option producing a "cohabitation" situation between the EU President (backed up by intergovernmental legitimacy), and the President of the Commission (approved by the Parliament), whose respective political allegiances may differ...
- Last, but by no means least, the EU President would have no direct control over the Commission's administrative and financial resources, and would therefore be tempted to create his or her "parallel" bureaucracy, resulting in fragmented administrative arrangements.

This possibility is therefore more of a heuristic model than a realistic proposition. In addition, it could have the side-effect of tempting the holder – who would be politically accountable

neither to the European Parliament nor to peers – to exercise a "personal power" that would run counter to the objective sought.

Accordingly, a watered-down option has been suggested, which would involve entrusting the presidency of the Councils to the Secretary-General of the Council. The purpose would be to give a political role to the High Representative for the CFSP, without however conferring the leadership powers that would be enjoyed by a president co-opted by the European Council and approved by the European Parliament. Would this person then be on an equal standing with the Secretary General of NATO or the US Secretary of State? That remains an open question.

A second way to merge two functions would be to combine the presidency of the Council ("General Affairs"), acting as an executive, and that of the European Commission, without inviting the holder to chair the European Council. Whether this is interpreted as giving the presidency of the executive to the president of the Commission, or the other way around, would be of little consequence. But it would offer great advantages by enabling the holder – appointed by the European Council but approved by Parliament – to reconcile the Union's two sources of legitimacy while enjoying a degree of independence from both the heads of State and government (notably from the largest countries) and the European Parliament. Such a solution would not rule out a parallel post of EU president, whose role would be limited to chairing the European Council and acting as Union figurehead (a possible candidate being Vaclav Havel). This approach to merging the posts would be more "functional" than the first, but would involve resorting to a number of arrangements²¹, a few of which are mentioned below.

- Aligning the responsibilities of the sectoral formations of the Council and of the corresponding commissioners, who would be the kingpins of these bodies and could chair them.
- Strengthening the role of the "General Affairs" Council in order to coordinate the sectoral formations²². Following the conclusions of the European Council meeting in

²¹ Already suggested in our publication *L'Union européenne en quête de légitimité*, Presses de Sciences-Po, Paris, *Bibliothèque du citoyen*, 2001, in particular in Chapter VII.

²² "European Union: The Reform of the Council of Ministers", Report on the seminar organised by *Notre Europe* and *Les Amis de l'Europe*, held in Paris on 4 September 2000: *Notre Europe*, Paris, February 2001 (<http://www.notre-europe.asso.fr>).

Seville, however, its division into two formations can be considered irrevocable, with the "external relations and defence" formation being chaired by the High Representative for the CFSP, elevated to Vice-President of the Commission.

- Refocusing the European Commission on its political role. The Commission would feature a "Presidium", composed of vice-presidents and the joint president of the Council of the European Union and the Commission, which would be responsible, with the endorsement of the European Council, for sovereign matters (foreign affairs and defence; interior security and justice; and, in particular, macroeconomic and budgetary coordination)²³.
- And, lastly, achieving a flexible separation of the executive and legislative functions at EU level, so that when the "General Affairs" Council acts jointly with the Parliament under the codecision procedure, it is independent of the executive, operates in an open manner and under a distinct presidency that is compatible with the six-monthly rotation among Member States.

This "mixed" form of government offers two advantages. First, it would give the joint president of the two executive bodies (and the vice-presidents) direct control over the departments of the Commission, without any need to create a bureaucracy specific to the Council's secretariat (which would lead to duplication of effort). Second, it would ensure that the president (and the presidium) are accountable to both the European Parliament and the European Council, thus meeting the need for democratic accountability felt by citizens.

A different, and politically more ambitious, way of merging the presidencies of the Council of the European Union and the Commission was proposed by Robert Badinter, the former president of France's Constitutional Council, in "*Une constitution pour l'Europe*"²⁴. While the European Council could be chaired by a permanent president who would reign but not rule, fulfilling a symbolic function similar to that of the president of

²³ This idea of a praesidium was, in particular, put forward by Robert Toulemon in a communication presented to AFEUR on 8 February 2002 and to the *Amis de la Convention*, under the title "*Schémas constitutionnels pour l'Europe*", on 18 March 2002.

²⁴ Robert Badinter, *Une Constitution européenne*, Fayard, Paris, September 2002. Apart from the provisions mentioned, the author advocates retaining a unicameral parliament provided that, firstly, it is backed up by significant rationalised parliamentary measures providing special prerogatives to the Council of the European Union and, secondly, a council of national parliaments is introduced to monitor compliance with the subsidiarity principle.

Germany, the Union's real governmental power could be entrusted to a "prime minister", suggests Mr Badinter.

The latter would chair the two executive bodies, one comprising the national ministers for European affairs, who would meet in Brussels and have a policy-making role; the other composed of 15 commissioners running the Union's administration and exercising regulatory power on its behalf.

No doubt, these various solutions do not cover all the possibilities. Some leaders of "small" Member States remain in favour of functional duplication between the roles of head of a national government and president of the European Council, provided the tasks are shared among a number of holders who would constitute a collegial body along the lines of the former "troika". Other more federalist²⁵ contributors support the solution that was already implicit in the Spinelli project, whereby the Union's governmental function should ultimately be solely the responsibility of the Commission, whose president would be elected by the European Parliament.

At the end of the day, if combining the chairs of the "General Affairs" Council and the Commission and merging the functions of High Representative and of Commissioner for External Relations were not to prove feasible, a less ambitious form of "mixed" government could form a basis for compromise. It would be based on a permanent EU presidency, appointed by the European Council, which would steer the High Representative's diplomatic activities and coordinate the positions of Member States' heads of government between their meetings. But if the Union is to avoid slipping into an ineffective intergovernmental rut, this option would require as a counterpart not that the Commission be given fewer responsibilities but, on the contrary, that its responsibilities be enhanced in the fields of macroeconomic and budgetary coordination (including within the euro zone) and external representation of the Union *vis-à-vis* international organisations relevant to these two areas. To avoid any risk of fragmentation between the Union's two poles, its President and the President of the Commission should undertake the thankless but necessary task of coordinating their action within a small body, yet to be

²⁵ On federalism, see the study published under the title *The Federal Approach to the European Union or the Quest for an Unprecedented European Federalism*, by Dusan Sidjanski, *Notre Europe*, Paris, July 2001. See also Maurice Croisat, *Le fédéralisme dans les démocraties occidentales*, Montchrestien, Paris, 3rd ed., 1999.

created, that could serve as the European Council's "permanent office". It would also be necessary for the departments of the Commission and the current Secretary-General of the Council to merge and come under the authority of a single Secretary-General reporting to both presidents. However, such a compromise would obviously lack the consistency of a true "mixed" government established by merging the functions of president of the "General Affairs" Council and of the Commission. Also, the problem of precedence between the two presidents would inevitably arise sooner or later.

It should be noted that, owing to the concern to reconcile the Union's two sources of legitimacy – national and democratic – a number of these possibilities are combined with the proposal to have the effective holder of governmental power elected or approved by a Congress bringing together members of the European and national parliaments, in some ratio yet to be decided. This solution seems to have the personal support of President Giscard d'Estaing. It would, in any case, have the advantage of including the two sources of democratic legitimacy in the appointment process.

Whatever the case, if a clear choice is made, the option chosen will be a reliable indicator of the balance between the supranational and intergovernmental orientations of the Convention and ensuing intergovernmental conference. But what role will the European Commission play in such a balance?

VII - THE IRREPLACEABLE ROLE OF THE COMMISSION

Jean Monnet is acclaimed as a genius, at times with a fervour verging on adulation, notably because he invented an institutional order that, for 50 years, has allowed European integration to move forward without need for a government. By advocating the establishment of a body that was to be independent of national governments and would, without replacing them, ensure the consistency of the Community's action throughout the decision-making process, this "inspirer" introduced an innovative feature which made the European system effective.

It is true that the downside to the Commission's independence – long considered to be its strength but now viewed as its main handicap – was its apparently apolitical nature. And this has often been put forward as evidence of the democratic deficit of the Community institutions. However, by aggregating, with an eye to cohesion, the multiplicity of national interests in order to extract a general European interest, the so-called "Brussels Commission" gave the decision-making process an added value that intergovernmental negotiation alone would have been unable to deliver. Moreover, it must be said that the Commission's apolitical nature has always been relative. From the beginning, it comprised both experienced politicians (such as its first president, Walter Hallstein) and people chosen for their particular skills, not to say "technocrats"²⁶. And General de Gaulle's alleged reference to a "stateless Areopagus" did not stop France from frequently concluding objective alliances with the Commission to serve the country's interests, notably in agricultural matters, when they coincided with those of the Community.

In short, compared with the experience of Mercosur and other regional organisations lacking an equivalent authority, the advances made in Europe give the full measure of the Commission's contribution. Conversely, the scant progress made since Maastricht in the fields of justice and internal security or common foreign and security policy – governed by intergovernmental practices – further demonstrates the irreplaceable role played by the

²⁶ See Jean Joana and Andy Smith, *Les commissaires européens, technocrates, diplomates ou politiques?* Presses de Sciences-Po, Paris, 2002, and also the special edition of *Revue française de science politique* (Vol. 46, 3 June 1996) devoted to the European Commission, under the direction of Christian Lequesne.

European Commission. Not to mention the successes it has enabled the Community to achieve with respect to a common commercial policy²⁷.

Admittedly, it would not have been possible to make such progress without another innovative idea, largely attributable to Professor Paul Reuter²⁸: recourse to the rule of law as a fundamental resource of the European integration process. As the Community never had a large budget, the rule of law made up for the lack of means. And the three principles established by the Court of Justice with respect to Community law – direct applicability, primacy over national law, and uniform interpretation by the Court – gave the legislation resulting from the decision-making process an impact that international agreements would never have had²⁹. Witness the limited effect of agreements signed within the framework of the Council of Europe – which in some cases have not even been ratified. In the Union, on the other hand, the legal order – notably through the procedure for failure to fulfil an obligation – gives very real power to the college of commissioners.

There in remains the handicap of the Commission's apolitical nature. In reality, the Commission has never been strictly apolitical because, as we pointed out, it has always had politicians among its members. They are now in the majority, and the last two presidents had previously been prime ministers of their respective countries. What is true, on the other hand, is that the Commission has never reflected a political majority: neither the majority of the time in the European Council nor that resulting from the most recent European Parliament elections. Contrary to what he is sometimes thought to believe, Jacques Delors has therefore never recommended that the Parliament directly elect the President of the Commission. He has only suggested, through the research work of *Notre Europe's* Steering Committee, that the election of a new parliament could be an opportunity for political groupings to put forward a leader for the post of President of the Commission. This would maintain a degree of pluralism within the Commission by confronting different outlooks, ranging from the centre-left to the centre-right, and would thus allow it to be a "catalyst for trust".

²⁷ See Pascal Lamy, "*La politique commerciale commune, un exemple à parfaire*", speech to the Convention's "external policy" working party on 15 October 2002.

²⁸ On the origins of EU construction, notable among the numerous studies deserving mention is the work by Pierre Gerbet, *La Construction de l'Europe*, Imprimerie Nationale, Paris, 3rd ed., 1999.

²⁹ Renaud Dehousse, "Un nouveau constitutionnalisme ?" in *Une Constitution pour l'Europe*, Presses de Sciences-Po, Paris, 2002, pp.19 *et seq.*

While the European Commission will, in the future, have to become more political and more responsive to democratic requirements, this should be perfectly compatible with the need to ensure the institution's independence. It is therefore important for the body to preserve genuine independence from both the European Parliament and the European Council, to which it can and must be politically accountable. It would, however, be counterproductive for a reform of the institutions to result in the Commission – made answerable to a permanent president of the European Council or subordinate to the "assembly government" – losing the room for manoeuvre (*vis-à-vis* authorities which are subject to political ups and downs) that safeguards the Union's cohesion and continuity. This arrangement furthermore allows the Union to place the interests of the "small" Member States on the same footing as those of their "large" counterparts, reassuring the former by making the Commission a "catalyst for trust" for all its partners.

Unless we establish a European federal state or go back towards a confederation of sovereign states, the place and role of the Commission or comparable body in the "institutional triangle" thus remains irreplaceable. It is paradoxical that circumstances should have resulted in its role diminishing since 1992, as the Union steadily enlarged. If we want the enlarged Union to be governed without becoming a super-state, it must on the contrary acquire more weight in the decision-making process as the number of states exceeds 20 and approaches 30. Failing that, Europe, split between divergent interests, will face a constant threat of dilution.

VIII – TOWARDS A NEW SYNTHESIS OF THE INTERGOVERNMENTAL AND SUPRANATIONAL APPROACHES

Warding off any threat of a "theological war" by keeping the best aspects of the supranational and the intergovernmental approaches is the direction that the President of the Convention rightly intends for the body's deliberations. This means looking beyond the Community method itself – but without betraying its spirit – for a new synthesis of the two approaches that will be appropriate for the challenges of a unified Europe.

This orientation is also justified by the need for continuity. We have indicated that no purpose would be served by rebuilding Europe from scratch. Countries which have frequently taken this route, such as France, have not always benefited from it. And it would be paradoxical to do so at a time when, following the Copenhagen Council meeting, the candidate countries are being asked to make enormous efforts to take on board the Community *acquis* in order to enter the EU. Is the main Community *acquis* not the "institutional triangle"?

Yet although the case seems to be clear-cut, there do remain two risks in seeking a single institutional framework. While the first has been averted, since we have discarded the option of a federal super-State, the second is still a possibility: an unwelcome side-effect of appointing a permanent president of the European Council could be to limit the Commission's freedom of action. As a consequence, the European Council could find itself caught up in managing everyday business, thus losing its aura. This institution should remain what it is: the highest authority, responsible for steering the Union's future and identifying its strategies without having to implement them directly itself. This means that it must remain somewhat apart from the "institutional triangle" by keeping as infrequent as possible the occasions when it adds the role of "Council meeting in the composition of heads of State or government" to its primary task³⁰.

Consequently, although the objectives assigned to the Union by its constitutional treaty entail, in line with the course taken in Maastricht, resorting to an institutional system extending

³⁰ On the European Council, readers are referred to the study written by Philippe de Schoutheete and Helen Wallace and published by *Notre Europe – op. cit.*

beyond governance, what the Union needs is a government distinct from the European Council, but politically accountable to it and to the European Parliament. This should raise the revised Community method to a political level and give it the democratic credentials it now requires.

The extent of the undertaking entails a quantum leap in qualitative terms, as can be seen from the ferment of ideas relating to the reform of the institutions. A new synthesis of the supranational and intergovernmental approaches must be found, and cannot merely be based, as was the case in Maastricht, on syncretism³¹. The debate must, on the contrary, focus on the changes required to the Community method in order to achieve its transition from governance to government.

This institutional strategy is directly rooted in the dual sources of legitimacy that are the very foundation of the Union. That is why, for the purposes of clarification, we have referred to it as "mixed government"³².

³¹ See Jean-Louis Quermonne: "Trois lectures du Traité de Maastricht, essai d'analyse comparative", *Revue française de science politique*, Vol. 42, No. 5, October 1992, for a discussion of this syncretism.

³² This expression is borrowed from Mario Telò, who uses it to introduce the works of Norberto Bobbio, published in French under the title *L'État et la démocratie internationale*, Ed. Complexe, Brussels, 1998, p.45.

IX - "MIXED GOVERNMENT" OR "FRAGMENTED GOVERNMENT"?

We have described the architecture of mixed government as regards the executive branch of the Union, and assessed its implications with respect to merging the presidencies. It supposes resorting to closer synergy between the Council of the European Union and the Commission, achieved both by aligning the responsibilities of the Council formations and the commissioners, and establishing a joint presidency of the two executive bodies. We need not therefore review these issues here³³.

But it might be useful to consider the implications of mixed government for the structure of the legislative branch. There are a number of possibilities. The simplest is that chosen by Mr Badinter in his draft constitution³⁴. He suggests a unicameral approach, favouring the European Parliament, balanced by doses of rationalised parliamentary government whereby the Council of the European Union would have a right of legislative initiative and would be able to control the course of parliamentary discussions by means of a suspensive veto. This option would be complemented by the right to dissolve the European Parliament and the establishment of a Council of national parliaments responsible for exercising political supervision over compliance with the principle of subsidiarity.

Other solutions tend to opt for authentic bicameralism. The closest to the *status quo* leans towards retaining the current process of codecision by the European Parliament and the Council of the European Union, and extending it. A distinction would be made between the Council's legislative and executive duties by providing for various procedures, requiring transparency and a special mode of presidency. In this type of exercise, the Council of the European Union in its legislative role would resemble Germany's *Bundesrat*. Another version – that is bolder and closer to federalist conceptions – involves creating a second chamber comprising members from the national parliaments. However, this option would raise the problem of multiple mandates and would further complicate the Community's legislative procedures, which are complex enough as it is.

³³ For further details, readers are referred to paragraph 6 of the study.

³⁴ Robert Badinter, *op. cit.* pp.34 *et seq.*

The "Badinter solution" thus has the advantage of simplicity. It would, however, have to be combined with the establishment of a European Congress, which some members of the Convention have called for. This would continue the experience of the two Conventions by combining, in a proportion to be decided, delegates from the European Parliament and the national parliaments. It remains to be determined how often this Congress would sit. Such a body, though without legislative power, could monitor the application of the subsidiarity principle, ratify the European Council's choice of president in charge of the Union's government and, acting by a superqualified majority, revise the constitutional treaty (or at least its second part, relating to common policies)³⁵.

The mixed government concept would thus govern the composition of the Union's main entities: the government, combining the Council of the European Union and the Commission; the European Parliament, following one or other of the suggested options; and the Congress, called on each year to debate on a "state of the Union" report presented by the European Council.

However, while the worst is never certain, it should not be ruled out: instead of having a "mixed" government, we could end up with a "fragmented" one. By this we mean the option that would involve preserving and even strengthening the separation between the area of Community governance applicable to internal Union policies and that of foreign policy and defence, exercised by an intergovernmental bureaucracy attached to the Council's general secretariat. Under the direct authority of the Union presidency, through a high representative unconnected with the Commission, this bureaucracy would duplicate the Commission's departments.

It has been said often enough that the Community method cannot be applied in its present state to the CFSP and the ESDP. We need not therefore labour the point. But providing the Union with a parallel institutional system, which would "govern" external policy in an independent fashion, and equipping it with departments alongside those of the Commission, could be the thin end of a wedge that, over time, would open up a yawning gap³⁶. There are

³⁵ This would "democratise" use of the current Article 308 TEC (former Article 235).

³⁶ In terms of both the division between Union bodies and the financial shortfall this fragmentation would produce.

enough options, providing for a variety of decision-making processes in line with the nature of the issue, to prevent the Union from falling into this trap.

The scenario is therefore not unavoidable. Imperceptibly, however, introducing a Union presidency distinct from that of the Commission, together with a Secretary of State with his own administration, modelled on the US Secretary of State, could result in a "fragmented government". This would be the final nail in the coffin of the common institutional framework set as an objective in Article 3 of the treaty. Hence the importance of the proviso that any EU Secretary of State would be a fully-fledged commissioner – albeit with a special status – to avoid any duplication of effort. While not being nearly as effective as the "mixed government" option, this approach would at least remove the most serious inconsistencies from the system. It would, however, remain merely a lesser evil.

X – A UNIFIED INSTITUTIONAL FRAMEWORK, OPEN TO DIVERSITY

Given these difficulties, the Convention will have to be careful to safeguard the consistency of the Union. Resorting to a diversified system of decision-making procedures should help. It should make it possible to reconcile, depending on the policy involved, the necessary unity of the Union – which will have to speak with one voice – with the diversity of its components, whose heterogeneity is bound to increase with the forthcoming enlargements. There are two ways of achieving this end.

The first would be to retain, at least in the medium term, a diversity of decision-making procedures for the various policies being handled. It goes without saying, for example, that the Commission's exclusive right of initiative and the Council's qualified majority voting cannot be applied in all areas. There are legal devices available that make diversity possible, whether by sharing the right of initiative, allowing constructive abstention or retaining the requirement of unanimity in the few areas where States display the greatest political sensitivity. Calculating the qualified majority itself, by combining a majority of States and of populations, would already meet this concern, and superqualified majorities could be required in certain areas: for organic laws that relate to common policies, for instance, as suggested by Mr Badinter.

The second method was introduced in the Amsterdam Treaty in the form of "enhanced cooperation"; the provisions have since been made more flexible by the Nice Treaty. Far from providing a legal basis for an avant-garde or pioneer group, which could arouse fears among the new Member States of being relegated to a "second division, if used judiciously these procedures could enable the institutions to operate more flexibly. The procedures have already been tested empirically in the form of the "opting out" provisions introduced both in Maastricht and in Amsterdam at the request of the United Kingdom and Denmark and, more informally, to the benefit of Ireland. They have also been complemented by "opting in" measures: the incorporation into the treaties of the Schengen agreements and the essential provisions of the WEU treaty³⁷.

³⁷ Françoise de la Serre and Helen Wallace, *Flexibility and Enhanced Cooperation in the European Union – Placebo rather than Panacea?*, *Notre Europe*, Paris, Research and Policy Paper No. 2, September 1997.

This broad range of possibilities should enable the single institutional framework obtained by merging the treaties and removing the pillars to come into operation in stages. Yet there are some limitations. Firstly, it is difficult to believe that some countries will remain outside the euro zone for many more years³⁸; the attitude taken by the United Kingdom will play a decisive role regarding this fundamental point. Secondly, financing Union activities by subsidising Member States – which tends to oppose beneficiary States and net contributors – would require an effective return to a mode of financing based on own resources. These should be based on a Union-wide taxation system that would apply in all Member States.

Far from generating uniformity, the "mixed government" solution is consistent with the requirement for diversity as a *quid pro quo* for recognition of the EU's legal personality, merger of the treaties and removal of the pillars. By depending on the participation of both national governments and that of the EU, combined with the diversity of decision-making processes, the solution responds to the need for both consistency and flexibility that will continue to dominate the European integration process for a long time yet. It will thus avoid the risk of the Union experiencing further decades of imbalance as a result of institutionalising a type of divided government in a constitutional treaty.

Unlike a "Greek temple", with separate columns, the Union should therefore, in the future, conform to the image that Jacques Delors sketched out at the time of Maastricht: a tree with a number of branches connected to a single trunk.

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³⁸ The quality of research published by British think tanks such as the Centre for European Reform, directed by Charles Grant, should help inform them and thus encourage them to join!

CONCLUSION: THE TIME HAS COME TO CONSIDER THE QUESTION OF A EUROPEAN GOVERNMENT

From this analysis, which we have endeavoured to base on objective arguments, it emerges that there are answers to the "question of a European government". While the particular form of "governance" reflected in the Community method allowed the European Community to do without a real government for many years, those days are now gone. As a result of both an extension in the Union's tasks, notably in sovereign matters, and of its enlargement to 25 or 30 States, recourse simply to regulation- and deregulation-based governance, as is now desirable worldwide, would reduce the Union's *acquis* to that of a mere free-trade area. Consequently, to become an authentic federation of nation-States and citizens, the European Union will, from the next reform stages, have to step up a gear by equipping itself with a genuine mode of government.

This line of reasoning cannot be accused of seeking to replicate at Union level the model of government practised by nation-states for decades – or centuries in some cases. The concept of "government" is not the preserve of sovereign States. In the case of multinationals, it now extends to corporate "government". Furthermore, the accusation of replication could also be made about the governance concept, which was invented to express a need for regulation which has been observed for 30 years or so in the global context. While the European Union is not a State, nor is it – and perhaps it never was – simply an international organisation. We should therefore legitimate, epistemologically, the use of the term "government" in this connection, in particular if we retain the concept of "mixed government"³⁹.

³⁹ We could go further along these lines by referring to the studies of Jürgen Habermas (see, in particular, *Après l'État nation, une nouvelle constellation politique*, Fayard, Paris, 2000), Jean-Marc Ferry (*La question de l'État européen*, Paris, Gallimard, 2000), and Justine Lacroix ("Patriotisme constitutionnel et identité postnationale chez Jürgen Habermas", in Rainer Rochlitz's *Habermas, politique de la raison, Débats philosophiques 2002*). This, however, would take us beyond the scope of this study.

It is, however, one thing to accept something in theory. It is quite another to know whether the process begun in the Convention, and which will be continued in the intergovernmental conference, will be able to make the concept operational, by providing the Union with custom-designed government authorities. Confirming public opinion polls, the debate on Europe's future, conducted in 2001 at the instigation of the president of France and the French government and which involved nearly 25,000 citizens through regional discussions, interviews and contributions to Internet sites, suggested this would be the case.

Public opinion is demanding political will in this area. In France, as elsewhere, the inertia of national governments confronted with these developments would therefore appear to indicate a wide gulf between the ambitions of the leaders and the expectations – implicit if not explicit – of the population. This division could well be an additional obstacle on the road to democracy, both within individual countries and Europe-wide, at a time when populist movements are re-emerging everywhere to constitute a threat at various levels⁴⁰.

The fight for democracy is now to some extent associated with the search for a political Europe. While democracy was first able to express itself within the limits of city-States, it really flourished from the late 18th century onwards in the context of nation states. For it to now establish itself on the scale of a European federation of nation states and citizens would require the invention of some form of government. The word was not mentioned, but that is what the Laeken Declaration invited the Convention to do. The time has therefore come to consider the question of a "European government". The more distant a power is – reflecting the size of the territory it rules and the number of citizens involved – the greater its legitimacy must be.

To be effective, and with due respect for the principle of subsidiarity, this legitimacy must be embodied in a government.

⁴⁰ As evidenced by the deliberations of the seminar on "Europe and democratic disenchantment" (October 1992), organised by Renaud Dehousse in the context of research by *Notre Europe* and the European University Institute, Florence.

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