



## METHOD OF THE CONVENTION ON THE FUTURE OF EUROPE

*Policy paper – Europeum - European Policy Forum*

June 2002

At Laeken Summit in December 2001, the decision has been made that the proposals for the left-overs of the Treaty of Nice should be proposed at the Convention on the Future of the European Union – a body labelled also as „the constitutional convention“. Proposal made by the Convention will be the basis of work of the Intergovernmental conference in 2004.

The Convention is focused predominantly on the **four fundamental questions**:

- (1) distribution of competencies between the EU and member states**
- (2) role of the national parliaments in the European Union**
- (3) position of the Charter of Fundamental rights of the EU in the legal framework of the European Union**
- (4) simplification of present treaty system of the EU and, alternatively, preparation of a single constitutional text.**

This policy paper is focused on the debate on the suitability of the convention method for such a purpose and on the most effective structure of the Convention, format of its outcomes and potential incorporation of the Convention into the institutional structure of the European Union.

### 1. Convention versus inter-governmental conference

1.1. The fact that the Convention is a new phenomenon is frequently used by its opponents. The standard method of the amendment (alteration) of the fundamental legal texts of the EU (EU primary law) is a combination of the inter-governmental conference and consequent

European Council (European Summit). However, the history of the European integration gives two examples of the application of the convention method. The first was four day long „common parliamentary preparation“ in the pre-Maastricht era (November 1991 in Rome). The body consisted of members of the national parliaments (two thirds) and members of the European Parliament (one-third). The outcome of its work was a list of potential amendments of the primary law which was then partially incorporated into the Maastricht Treaty by the inter-governmental conference. The second convention in the history of the EU was the Convention for the preparation of the Charter of Fundamental Rights of the EU in 2000. The mandate of the Convention in 2000 was relatively narrowly and precisely formulated – to prepare a legal text incorporating the rights of EU citizens into a single and comprehensive document which could be communicated to the citizens .

**1.2. Current Convention on the Future of Europe combines the element of both preceding conventions. It benefits from sufficient temporal framework while its disadvantage is too long a catalogue of issues and the pressure of responsibility which the participants of the Convention are faced with. The connection the members of the Convention have in the political environment of their member states can give necessary democratic legitimacy to the Convention. However, it can also complicate the concentration on the thematic work and the „socialising“ process of the Convention members with the Convention as a new institutional entity. Politicisation of the Convention is further supported by the fact that the centre of its activity is gradually moving from the Presidency and Secretariat towards the negotiations within three major party-ideological groups (EPP, Socialists, Liberals).**

**1.3. The symbolic role of the Convention** should not be omitted. „Convention“ is a good trade-mark . History provides with many conventions founding a successful constitutional tradition (USA, France).

## 2. Legitimising role of the Convention – position of European polis?

**2.1. Non-governmental organisations participate in the work of the Convention with the intensity unseen in the history of the EU.** The Convention itself has formally invited NGOs to participate in its work and the invitation has been further supported by establishment of the

Forum of independent organisations and continuous publication of the information (e.g. on the Internet). Rationale of this activity (among others) is the legitimisation of the work (and existence) of the Convention by the European civil society representing the European polis and European demos. Every new institution, including the Convention, seeks an independent source of legitimacy for potential conflicts with institutions already established (such as European Council, European Parliament). Further, the Convention combines the legitimacy arising from European demos with the legitimacy derived from the member and candidate states of the European Union.

**2.2. Legitimising the Convention via the European civil society is facing several problems.** The first one are **doubts on the existence of the European civil society**, and the European demos in particular. The European integration has been, and still is, an elite-driven project (which does not imply that the majority of the European population cannot benefit from the project) and the European demos (as one of the sources of European legitimacy) is more an ideological construct than reality.

The second problem is the **internal heterogeneity of the representatives of the civil society participating in the work of the Convention**. The logical consequence is the different treatment of a trade union representing interests of a hundred thousand workers in comparison to a civic association representing its twelve members. The third problem is an **excessive expectation of the significant part of the NGOs**. The rhetoric of the Convention has been very encouraging while the practice does not provide the NGOs with more than a limited consultative role.

**2.3. The participation of the NGOs in the work of the Convention is a praiseworthy activity but its impact should not be exaggerated.** The NGOs participation is more a „training“ for them rather than an activity with significant impact on the outcome of the Convention. **Therefore, the NGOs and interest groups should prepare for a standard way of lobbying at the European level.**

### 3. Outcome of the Convention

The outcome of the Convention can be formulated in a variety of ways.

3.1. The first criterion is the **binding effect** of the outcome. In this issue, the answer seems to be clear. **The outcome of the Convention will be non-binding document.** The legally binding document will be adopted as late as at the European summit in 2004, after the intergovernmental conference. However, the outcome of the Convention can vary significantly in terms of authority which will be contained in the recommendation to the intergovernmental conference and European summit 2004. **The chance that the recommendation of the Convention will be respected by IGC and European Summit 2004 is further increased by the fact that the institutions concerned are partially sharing the personal element.**

3.2. The second criterion is the **level of the details of the outcome.** The Convention can produce a single detailed document of a quasi-legal character which would be a kind of legislative proposal of the future treaty adopted in 2004. This document would be similar to the „Basic Treaty of the European Union“ prepared by the European University Institute in Florence.

However, the Convention can limit its outcome to a **catalogue of recommendations and fundamental principles of the future Treaty.** The details will be left to the IGC and European Summit.

3.3. The third criterion is the **homogeneity of the outcome.** The Convention can produce a document supported by all (or vast majority) of the members of the Convention. The advantage of this document would be higher legitimacy while its disadvantage can be the reduction of the document to the lowest common denominator. In other words, the text produced can be too little ambitious.

The second alternative is a variety of documents representing opinions of different fractions of the Convention. These would be more coherent and are likely to contain clear and ambitious objectives. However, their persuasive value would be reduced significantly. - Firstly by other „competitive“ documents produced by other fraction of the Convention and secondly by the vary fact that the relevant document represents the opinion of only a part of Convention members. Further, the variety of competing documents exclude in principle the possibility of a detailed quasi-legal document and allows the Convention outcome to be only a catalogue of principles and recommendations.

#### 4. The Convention as a standard method of the changes in the future?

4.1. The Convention is an atypical body created ad hoc in order to solve a fundamental structural problem of the European integration. A logical consequence is that the existence of the Convention should expire by the solution of the problem. The proposals for “perpetualisation“ of the Convention have already occurred but its support is relatively low. However, the support could grow – among its members and the Secretariat in particular – as the date of the termination of the Convention will come closer.

**4.2. „Perpetualisation“ of the Convention and/or its frequent repetition would be a sign of the failure of the convention method. The rationale of the Convention is the alteration of the structure of the EU in such a way that the standard institutions (Council, Commission, European Parliament) could effectively solve new problems and challenges which can occur in the future.** If any new problem (e.g. the reform of the Common Agricultural Policy) require a new Convention, this would imply that the current convention does not fulfil its task. Additionally, this could open a question whether the convention method is capable of solving structural problems of the European integration.

4.3. However, the convention method should not be rejected in its complexity by the Inter-Governmental Conference 2004. **The method of the convention should be explicitly included in basic treaties of the EU (EU primary law) as a method of solving the utmost fundamental problems of the EU.**

4.4. The position of the convention method in the future of the EU is significantly dependent on the success of the current Convention. The successful Convention could move the inter-governmental convention into more-or-less formal position while the unsuccessful convention could raise doubts about the suitability of the convention method as such.

#### **5. On the basis of the analyses mentioned above the European Policy Forum came to the following recommendations and conclusions:**

**5.1. The Convention on the Future of the European Union is not such a novelty as interpreted. The current Convention combines features of both conventions from the**

**history of the European integration. The convention can benefit from sufficient time framework but its disadvantage is too many issues to be covered and the pressure of responsibility which its participants are faced with.**

**5.2. The Convention is highly politicised. The work of the Convention is influenced by negotiations within three major party-ideological streams (EPP, Socialist and Liberals) rather than by the Secretariat and the Presidency of the Convention.**

**5.3. The participation of the NGOs in the work of the Convention is praiseworthy activity but its impact should not be exaggerated. The NGOs participation is more a „training“ for them than an activity with a significant impact on the outcome of the Convention. Therefore, the NGOs and interest groups should prepare for standard way of lobbying at the European level.**

**5.4. The outcome of the Convention should be a single coherent document – a proposal of a constitutional convention/treaty, or at least a catalogue of basic principles for the document adopted by the Inter-Governmental Conference in 2004.**

**5.5. The frequent application of the convention method would be a sign of a failure of the present Convention. However, method of the convention should be incorporated in the new Treaty (EU primary law) as a method of solving fundamental structural problems of the European integration.**