

**INSIDE THE EUROPEAN COMMISSION:  
PREFERENCE FORMATION AND THE CONVENTION ON THE  
FUTURE OF EUROPE**

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# INSIDE THE EUROPEAN COMMISSION: PREFERENCE FORMATION AND THE CONVENTION ON THE FUTURE OF EUROPE<sup>1</sup>

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**Abstract:** How did the European Commission define its preferences with regards to the Convention on the Future of Europe? Is it the monolithic self-interested *actor*, propelled by a commitment to ever closer union and bent on aggrandising its own power, as portrayed in much of the academic literature and in political debate, a purposive actor, whose outlook is conditioned by the structure of delegation configured by the member states, or is it an internally differentiated *arena*, from which preferences emerge as a result of complex interactions that entail the use of power, institutionalised myths and routines? We seek to demonstrate that in the case of the Convention on the Future of Europe the preferences of the Commission emerged from a *process* that displays a strong pattern of presidentialism which was conditioned by both internal and external challenges reflecting the environment in which Romano Prodi's Commission had to operate.

**Keywords:** European Commission; Convention; Constitutional Treaty; preference formation; Treaty reform; IGC; institutionalism

## INTRODUCTION

Although its influence has varied between Intergovernmental Conferences (IGCs) -- and, arguably, over the past fifteen years, it has shown evidence of decline -- the Commission has, historically, been an important player in EU treaty reform. It has helped define the reform agenda (Christiansen and Jorgensen, 1998; Christiansen, 2002; Christiansen *et al.*, 2002), set down important markers against which other participants situate themselves, contributed technical expertise to deliberations (Gray and Stubb, 2001), supplied key actors, particularly the Council Presidency and the Council Secretariat, with information and advice (Endo, 1999), and otherwise contributed to the content of the final settlement (Endo, 1999, 141; Noël, 1992; Christiansen, 2002, 41; Gray, 2002, 389; Dinan, 1997b), as well as to the process of post-ratification implementation (Hix, 2002). Yet, despite its sometimes pivotal role, the processes by means of which the Commission formulates its preferences have not received the same attention as those of the member states. Indeed, its influence, and, therefore, its relevance as an object of research, is contested by liberal intergovernmentalism (LI), one of main theoretical perspectives in EU scholarship (Moravcsik, 1993, 1998; Moravcsik and Nicolaïdis, 1998; 1999). This has particular significance since the dominant theory of preference formation is an integral part of the LI framework and that the terms in which it explains that process -- the communication of their interests to state executives by domestic actors -- are formulated with national processes in mind and are not readily transferable to analyses of a bureaucratic body, such as the Commission. This neglect is unfortunate, since preference formation within an international organisation, particularly one as important as the Commission, merits

attention, not only because of that institution's influence in European integration, but also because existing treatments tend to neglect the theoretical dimension of how the Commission arrives at the position that it defends in treaty negotiations.

This article attempts to take a step towards correcting this oversight. It proceeds from the assumption that the Commission can have an influence on the manner and substance of treaty reform,<sup>2</sup> and that how it defines its preferences is, therefore, a worthy subject of study. In particular, it examines the Commission's engagement with the Convention on the Future of Europe. Focusing principally on preference formation within the Commission, specifically on where in the organisation its vision of Europe originates and how it decides on the proposals that it submits for discussion, it also considers the preferences articulated by the organisation and assesses its influence over the Convention's outcome. A particular interest concerns the impact of the new method of treaty reform on the Commission, which requires that the Commission's engagement in the Convention is treated in historical perspective.

The article makes two main arguments. The first is that preference formation in the Commission is essentially an elite process, dominated by the Commission President with the support of a small number of officials in the Secretariat General. This challenges the view of the Commission as a monolithic bureaucracy and the assumption that Commission preferences can simply be 'read off' or inferred from the mission of the organisation, and argues rather that the Commission is best seen as an internally differentiated *arena*, from which preferences emerge as a result of complex interactions that entail the use of power, institutionalised myths (Meyer and Rowan, 1977) and routines. The second is that, paradoxically, the Commission, though a supporter of the Convention method, can be numbered among the 'losers' of the exercise for reasons that are both internal – ineffective and indecisive leadership in a complex and internally differentiated arena – and external – the structure of opportunity presented by the Convention, which deprived the Commission of channels of influence typically afforded by IGCs, and a broader climate, which is questioning of supranational integration. Even more significant, is how the Convention highlighted a mismatch between the Commission as an *administration de mission*, and the demands of a political Convention.

The discussion below is organised into three sections. The first looks at the Commission's involvement in earlier rounds of treaty reform; namely, the five IGCs held between 1985 and 2000, and the Convention on the Charter of Fundamental Rights. This section provides the historical background against which the Commission's engagement with the Convention on the Future of Europe can be compared. The second section examines Commission preferences and preference formation before, during, and after the Convention. It begins with a discussion of Romano Prodi's European governance initiative, discusses the Commission's advocacy of a Convention, and considers the preferences expressed by the Commission through the three phases of the Convention. The third considers the determinants of the Commission's poor performance at the Convention and assesses the extent to which this can be attributed to contextual or internal factors.

## THE COMMISSION AND INTERGOVERNMENTAL CONFERENCES

To put the Commission and the Convention on the Future of Europe in historical context, requires a response to the following questions: What preferences did the Commission articulate in previous rounds of treaty reform? Is there a discernible pattern or trend? Are preferences enduring? How has the Commission formulated its preferences at successive IGCs? Who are the key actors, and where in the organisation do its visions of Europe originate? To what extent do the same structures, mechanisms and personnel remain from one round of treaty reform to the next? What influence, if any, has the Commission exerted on negotiations and the resulting treaty? What are the determinants of its influence?

### Commission Preferences

The dominant image of the European Commission (Hix, 1999, 52),<sup>3</sup> borrowed from rational choice analyses of bureaucratic actors (see, e.g., Niskanen, 1971), is that of a classic bureaucracy, seeking always to extend its own powers and expand its empire. Power-hungry and permeated by an 'institutional commitment to deeper integration' (Dinan, 1997a, 261), it single-mindedly pursues the integration of Europe along 'supranational' or federalist lines. This view, however, is more an expression of theoretical and methodological choices than it is an understanding based on systematic empirical research. Studies of Commission preferences at successive rounds of treaty reform in fact reveal a more complex picture.<sup>4</sup> First, although the Commission has often been an advocate of integrationist solutions, it has not consistently pursued goals likely to increase its resources or elevate its status. At the Amsterdam IGC (Gray 2001, 383), as well as at Nice, for example, it made no claim for new competencies. Second, the College has frequently been divided, sometimes deeply, over treaty reform. Even under the first Delors' Commission, there were often sharp differences between Commissioners over what position the Commission should adopt (Endo, 1999; Ross, 1995). These findings – that the Commission has not consistently adopted a maximalist position and that unanimity among Commissioners cannot be assumed -- not only contradict the assumption that the Commission's preferences can simply be inferred, but suggest that its preferences are not ready-formed and that they are the product of internal *processes* within a differentiated (i.e. non-monolithic) institution.

Two further points are relevant. Even though they are the outcome of internal processes, preferences emerge within a wider context in response to the requirements of a specific historical context and a particular stage of integration (Closa, 2002; 2004). Each episode of treaty reform poses different questions, raises different issues and calls for different responses. In addition, as constructivists (Wendt, 1992), and 'garbage can' theorists (Cohen, March and Olsen 1972) before them, have argued, actors and institutions do not necessarily formulate their preferences independently of the context in which the latter are articulated. Actor preferences are formed at least in part in relation to the reform agenda and sometimes during, rather than in advance of, negotiations. They are revised during the course of negotiations and are particularly likely to change in the run up to the endgame. The second observation is that the conception of the Commission as a

maximalist does not help explain why it should choose one option rather than another. Since the issues under discussion are complex, the assumption that the Commission is power hungry is not a good predictor of the positions that it will adopt.

In short, a survey of the positions it has advanced at past IGCs reveals that Commission preferences have not been enduring. There has been important variation between rounds of treaty reform, highlighting the importance of internal processes and external context.

### **Preference formation and the Commission**

The view that preferences emerge from within the Commission as a result of complex interactions within a differentiated institution is confirmed by studies of how the Commission decided its positions in previous rounds of treaty reform. These findings emphasise the role of the Commission President -- the importance of his convictions concerning how the Union should develop<sup>5</sup> -- especially his conception of how the Commission as an institution should operate. Accounts of the SEA emphasise, for example, the strongly personalised leadership of Jacques Delors. Delors himself decided the Commission's position and conducted negotiations on the Commission's behalf. Bypassing the Commissioner for Institutional Affairs and the College (Endo, 1999, 149), Delors took charge of the process, supported by an *ad hoc* body, the Institutional Group, which not only provided the Commission President with day-to-day assistance, but ultimately drafted a significant part of the final text of the Single European Act. This fitted with Delors' conception of the role of the Commission President, as well as his ideas about how to work effectively. He was looking for ideas that would push integration forward, and did not believe in collegiality; rather, he thought options through carefully and ultimately decided on his own (Ross, 1995, 37, 64; Endo, 1999, 114). The primary role of his powerful *cabinet* was to protect him 'from an inundation of paper and appointments' and to make room for him to think, on the one hand, and to act as in-house discussant of his ideas (Ross, 1995, 64). This image of centralisation is completed by Delors' reliance on a small number of strategically-placed officials -- a 'Delorist clique' in Dinan's terms (1997a, 253) -- whose role was instrumental primarily in giving legal form to the President's ideas.<sup>6</sup> Jacques Santer, by contrast, had a much more modest conception of the Commission's aims, as illustrated by his slogan that it should 'do less, better'. He was more collegially inclined and far more prepared to delegate to colleagues than his predecessor (Gray, 2002, 384).

Studies of the Commission also highlight how, as well as the interaction between the Commission President and his colleagues, Commission preferences are shaped (if to a lesser degree) by the role of officials at various levels of the administration, and relations between the College and the services, and show that the terms of these interactions vary over time. The administrative arrangements put in place have varied between IGCs, even if the Secretariat General and the Legal Services have always had a role to play (interview, 4 June 2003), while Unit B1 in the former always takes responsibility for monitoring the post-ratification implementation of the treaty (Gray, 2002). Whereas Delors was assisted by an *ad hoc* Institutional Group, a Task Force has been set up for each IGC since Maastricht. The size -- ten officials for the 1996 IGC, four in 2000 -- and composition of the latter has varied according to the scope of the reform agenda, though certain individuals continue to be 'recycled', as has its interaction with the Commission

President and the Commissioner for Institutional Affairs. Though responsible to the Commission President, the Task Force worked directly to Commissioner Oreja during the Amsterdam IGC and to Commission Barnier during the 2000 IGC.

More significantly, the pattern of interaction between the Commission President and other members of the College varies considerably. Although Delors assumed personal control over the Commission's input to the Maastricht IGC on EMU as he had done with the 1985 IGC and operated in such complete isolation from the other Commissioners that his colleagues saw the draft treaty on monetary union for the first time only at the opening of the IGC in December 1990 (1999, 153),<sup>7</sup> his colleagues refused him the same independence with respect to the IGC on Political Union. They insisted that the proposals prepared by the Institutional Group (again headed by François Lamoureux) should pass through the normal College machinery, to be discussed by the *chefs de cabinet* and then the College. The trend towards greater collegiality was confirmed by arrangements put in place for the Amsterdam IGC, which were presided over by Jacques Santer. Correspondents were established in each DG and the IGC became over two years a fixed agenda item at the weekly meeting of the College. A 1996 IGC Task Force, which worked in liaison with the Commission President, the cabinet of Commissioner Oreja, responsible for institutional affairs, and consulted other *cabinets*, was created to lead preparations and negotiations, while a Steering Group, headed by Commissioner Oreja, issued political orientations (Gray, 2002, 384). However, there was a reversion to a more presidential style when, in the run-up to Nice, Prodi took personal charge – Michel Barnier was the Commissioner for Institutional Affairs -- though Commissioner Antonio Vitorino was charged with representing the Commission at the Convention on the Charter of Fundamental Rights. Thus, the control exercised by Commission Presidents, and even by the same individual, over the College of Commissioners has changed over time (Endo, 1999, 94). Preference formation over the past two decades could be summarised as follows: presidential unilateralism (1985-1991); constrained presidentialism (1991-1995); collegiality (1995-1999); with a reversion to presidentialism in 2000.

In short, studies of the processes by which the Commission has defined its preferences in relation to past IGCs underline the disaggregated nature of Commission decision making, show that preference formulation entails interactions within and between the College and the services, and emphasise how these dynamics, particularly within the College, change over time.

### **The influence of the Commission**

As well as the empirical investigation of its preferences and preference formation, the past decade has seen an increasingly intense theoretical debate about the Commission's role and influence in treaty reform. Liberal intergovernmentalism contended that European integration should be seen as a series of inter-state bargains, in which supranational institutions played an entirely subsidiary role (Moravcsik, 1993; 1998; Moravcsik and Nicolaïdis, 1998; 1999). National governments and national governments alone determined the moment and the content of these agreements. The Commission and the European Court of Justice figured only in so far as the member states needed to make their (i.e. national governments') commitments credible.

In recent years, this view has been challenged on theoretical and empirical grounds. With respect to the former, four arguments have been made from a perspective that asserts the importance of ‘supranational agency’ (Christiansen *et al.*, 2002; Christiansen, 2002; Christiansen and Jørgensen, 1998). The first is that IGCs form part of a broader process of reform that begins with calls for changes to the existing treaties and the convening of an IGC and that ends, not with the conclusion of formal negotiations, but with a period of post-ratification implementation. Advocates of this view argue that the supranational institutions, in particular the Commission, are influential in the pre- and post-IGC phases. The second argument is that negotiations at IGCs are multi-dimensional (Forster, 1998, Gray, 2002) and that, though scholarly attention is typically focused on summits, meetings at ministerial and official level may be less visible, but they can be important in terms of the final outcome of negotiations. Its input at technical level, they argue, is an important source of the Commission’s influence (though see Gray and Stubb, 2001). The supranational agency perspective also highlights the role of actors neglected by LI – a third argument – whose role can be decisive (see also, Budden, 2002; Falkner, 2002). The Council Presidency is important, because it manages the reform process, drafts the texts, calls meetings, and crafts compromises, while the Council Secretariat General offers institutional memory and legal advice. Though there have been exceptions,<sup>8</sup> either one or usually both, formally or informally, will at some time call on the Commission for technical and sometimes political advice. Such interactions offer the Commission the opportunity to exercise a vicarious influence on negotiations. Finally, the image of IGCs as an arena for ‘hard bargaining’ between states is contested by an alternative conceptualisation, offered by the supranational agency view, which construes treaty reform as a process governed by norms, where the actions of participants, including national governments, are constrained by rules and conventions (Closa, 2002, 2004, Sverdrup, 2002). Key examples are the Commission’s rights, based on precedent, to participate in IGCs and to present proposals for consideration by national governments. To these arguments a fifth can be added. The Commission’s perceived ambitions and stated positions affect discussion and debate before and during the treaty reform process, by setting down markers against which other participants situate themselves and establishing a point of reference in relation to which governments define their own positions. The terms of negotiations, contra LI, are not determined solely by national preferences.

The LI’s assertion that ‘supranational intervention ... is generally late, redundant [and] futile’ (Moravcsik, 1999, 269-70) has, meanwhile, been challenged on empirical grounds. Studies have revealed important instances where the Commission has exerted a significant influence on the treaty reform process. The 1985 IGC and the 1991 IGC on EMU provide the most striking examples of how the Commission can decisively shape the final outcome (Grant, 1994; Ross, 1995; Noël, 1992; Christiansen, 2002, 41; Gray, 2002, 389).<sup>9</sup> Indeed, the role of the Commission in the first case has been conceded by proponents of LI (see Moravcsik, 1999, 299). In each case, the Commission influenced the decision to convene an IGC, but, in addition, much of the full draft treaty prepared by the Commission at the request of the Council Presidency found its way into the final text of the SEA agreed by governments (Endo, 1999, 141), while Delors, as chair of the

committee established by the Hanover European Council in June 1988, was charged with writing the report that informed the EMU sections of the TEU (see Endo, 1999, 153-66).

Endo takes the debate about Commission influence further by identifying the conditions under which Delors was able to achieve its success in 1991 (Endo, 1999, 153-66). They include: external factors, such as the opportunity afforded by the ambitions of two of the larger member states (namely, France and Italy); internal factors, such as Delors' ability to mobilise the support of Commission officials; and personal factors, such as Delors' technical expertise, his ability to contribute to discussion in the European Council, and high-level contacts with François Mitterrand and Helmut Kohl.

## **THE COMMISSION AND THE CONVENTION ON THE FUTURE OF EUROPE**

Commission preferences and preference formation in relation to the Convention are examined below. The discussion begins with a consideration of Prodi's conception of how the Commission should operate and his ideas about the challenges that the Union confronted at the end of the twentieth and at the beginning of the twenty-first century.

### **Prodi as Commission President**

Prodi assumed office with strong convictions about the role of the Commission and its operation. He made clear his belief, in contrast to Santer's more introspective inclinations, in the Commission's mission within and centrality to the European project, elaborating his vision of the Commission as a putative government at a time when faith in the institution had been seriously eroded. He was, in addition, not only the first former Prime Minister of a large country to be appointed Commission President, but the first incumbent to enjoy the enhanced powers granted to the office as part of the reforms introduced under the Amsterdam Treaty. Moreover, he enjoyed the authority that flowed from a personal mandate, granted by the EU's political leaders, to reform and restore confidence in the organisation following the resignation of the Santer Commission.

Prodi's conception of the Commission led him to organise its structures on governmental lines. An early example was his decision to remove Commissioners and their *cabinets* from the Breydel HQ – thereto the collective seat of the College -- and to locate them in the same buildings as the DGs for which they were responsible. His view of how the Commission should operate combined elements of both presidentialism and ministerialism (see Peterson, 2004). Presidentialism informed Prodi's decision not to retain a portfolio for himself, which enabled him 'to present himself as the political figurehead at the top of the Commission' (Peterson, 2004, 17),<sup>10</sup> and left him free to concentrate on major issues and take up important projects.<sup>11</sup> Indeed, one member of his *cabinet* asserted that 'Prodi's Commission is as presidential as it can be under the current Treaty' (interview, 17 March 2003a). Ministerialism, meanwhile, was reflected in Prodi's appointment of an outstanding team of political 'heavyweights', reflecting the need to revitalise the Commission as a political actor after the 1999 *débâcle*, who were given relatively free rein in their areas of responsibility, as well as in the aforementioned decision to house 'ministers' in their 'departments'. According to one senior official



ministerialism, construed as an expression of the assertiveness of individual Commissioners, was stronger than ever before by Commission standards (interview, 17 March 2003b).

The Commission President also had firm ideas (Prodi, 2000) about the tasks that confronted the Union and the role of the Commission in finding solutions to pressing problems and in improving the functioning of the EU. On taking office, he argued that urgent reform of EU decision making was necessary in the face of future enlargement and citizen disillusionment with the Union, and at the beginning of 2000, launched a major initiative to improve European governance and democracy.<sup>12</sup> Adopted as one of the Commission's four strategic priorities, the exercise began with a 'Dialogue on Europe', involving discussions with citizens and representatives of civil society. The issues raised were taken up by a governance team led by Jérôme Vignon, formerly Head of the Forward Studies Unit, but now located in the Secretariat General whence it reported directly to the Commission President, and formed the basis of the Commission's White Paper on Governance, as well as the inspiration for a series of initiatives.<sup>13</sup>

Recognizing, however, that what the Commission alone could achieve would be limited – the governance team were instructed to produce their recommendations on the assumption that there would be no revision of the treaties – Prodi also pursued a second track, pressing the Heads of State and Government to address a wide-ranging set of questions, some of which would require treaty reform. When the June 1999 Cologne European Council determined that the 2000 IGC agenda would be restricted to the institutional issues that the Amsterdam IGC had failed to resolve, Prodi created a group of wise men, chaired by former Belgian Prime Minister Jean-Luc Dehaene, in an effort to broaden its scope (Gray and Stubb, 2001, 8). He sustained this campaign throughout 2000 up to the Nice European Council and, after the latter's perceived failure both as a process and as a way of preparing the EU for enlargement, called for a new method of treaty reform and a more comprehensive effort to confront the EU's problems.<sup>14</sup> When Heads of State and Government adopted the Laeken Declaration in December 2001, Prodi welcomed its commitment to a more inclusive discussion of the Union's future and the reform agenda, but was also realistic, recognizing that the final say would rest in the hands of national governments.<sup>15</sup>

Finally, Prodi believed strongly in the centrality of the Commission. The indispensability of the Community method, with the role of Commission as initiator and executive, was a constant in the Commission President's thinking and a recurrent theme in Commission texts and speeches.<sup>16</sup> It was emphasised in the White Paper as the key to better governance and the future of the Union, and in the Commission's opinion delivered in advance of the 2000 IGC as the guarantee to secure the EU's achievements.<sup>17</sup>

### **The Commission at the Convention: Preferences and Preference Formation**

Although Prodi welcomed the new method of treaty reform, which responded to his demands to broaden the circle of decision making, it was not at all clear that the Convention would be advantageous for the Commission or that the new challenge had been understood within the Commission (interview, 19 September 2003). Despite the

presence of two *conventionnels* (see below),<sup>18</sup> its status as one of the *composantes* of the Convention (European Council, 2001), and a sympathetic majority in the Praesidium,<sup>19</sup> the Convention's executive and drafting body, the Commission did not have access to familiar channels. Whereas at an IGC, it could be assured that its opinion or any proposals it submitted would be taken notice of, the opportunities and constraints afforded by the Convention were of a completely different order. Moreover, it could not look to the Council Secretariat or Council Presidency to provide a conduit for ideas it wanted to advance. Indeed, Valéry Giscard d'Estaing, the chair of the Praesidium, made clear at an early stage his lack of sympathy for the Commission and for its President's ambition that it should become the government of Europe, suggesting that it had served purpose in establishing the single market (Norman, 2003, 29).<sup>20</sup>

A more fundamental problem, however, concerned the Commission's suitability for the task of debating the EU's constitutional future. The Commission was originally created as a small *administration de mission*. It was designed as a technocratic body to propose solutions to policy problems, broker deals and upgrade the common European interest in sectoral politics, not to participate in constitutional debates. The nature of the discussion launched by Joschka Fischer's call (2000) to define the *finalité politique* of integration underlined the distance travelled between the needs of a recently devastated, insecure and newly divided continent and the prosperous and united Europe of today. The debate, unlike previous treaty reforms, called for grand schemes, not technocratic fixes. The Commission could choose to mount a defence of its institutionalised myth, 'the Community method', which placed the institution at the heart of Europe, or it could articulate an alternative vision, more suited to the twenty-first century. It had, of course, successfully negotiated the Convention on the EU's Charter of Fundamental Rights, but this had been a tightly focused and low profile exercise in codification, whereas the Convention on the Future of Europe was designed to be open and wide ranging. The approach of the Prodi Commission reflected three factors: the novelty of the exercise, the Commission's inexperience, and the increasingly presidential as well as ministerial logics that permeated the Commission.

#### *Preference formation*

Systems were put in place by the Commission at both political and administrative levels. At the latter, the College established a Task Force on the Future of the EU and appointed Paolo Ponzano, a senior official in the Secretariat General and veteran institutional expert at its head, indicating the need to maintain continuity with past arrangements, as well as the importance attached to the institutional dimension of the debate.<sup>21</sup> The Task Force also included five Commission officials from 'technical' DGs,<sup>22</sup> a senior Commission official from the 2000 IGC Task Force and an official from the Commission's Legal Service. It was organised into three units. The first was to handle the substance of the Convention, and the second relations with NGOs. The institutional unit of the SG formed the third.

Among the Task Force's first tasks was the production of a draft document on new responsibilities -- CFSP, JHA and economic governance -- which was circulated to relevant DGs for comment. A second draft was presented to the College in April 2002

and adopted with minimal changes a month later. However, for most of the time, the Task Force provided a support structure, producing speaking notes for Commissioners, provided background notes on specific issues and maintaining contact with the Council Secretariat General for the purposes of drafting documents (interview, 4 June 2003). It also acted as an informal in-house substantive thinktank (interview, 3 June 2003), reflecting the expertise as well as the convictions of its senior members,<sup>23</sup> kept the network of Convention correspondents in the services informed about developments, whom they also asked for advice when necessary, and maintained a Convention intranet service for staff.

The operation of the Task Force changed over time as a result of the dynamics of the Convention and demands from other Commissioners (interview, 19 September 2003). Although it initially focused on supporting the President, its responsibilities gradually extended to the College as a whole. Internal consultation was geared mainly towards the diffusion of information among *cabinets*, and not complemented by spontaneous internal debates at the administrative level.<sup>24</sup> *Cabinets* remained involved throughout (interview, 19 September 2003).

Arrangements at political level reflected the demands of the Convention, as well as presidentialism within the Commission. The Commission President took overall responsibility for the Commission's input into the Convention. He set down a number of the main orientations to be defended by the Commission, such as the need to restore a clear division of labour between EU institutions and a refusal to take on new competencies, often carrying over ideas, such as the defence of the Community method, familiar from the European Governance exercise and the Commission's contribution to Nice. He explicitly sought to avoid becoming involved in parts of the broader debate, such as the weighting of votes in the Council, which he believed that the Commission could not influence (interview, 19 September 2003). He gave speeches to various audiences, including the European Parliament, where he set out the Commission's position, spoke at the Convention, held bilateral meetings with Giscard d'Estaing, and discussed the Convention at meetings of the European Council. Within the Commission, Prodi sought to affirm his presidential authority, particularly through the tactical use of the '*principe existentiel*' of the Commission -- this was facilitated by some of the proposals that were submitted by national governments, even before the beginning of the Convention, which foresaw a reduced role for the Commission -- and he made extensive use of bilaterals, which provided a context that was more amenable to the exercise of his authority as Commission President, as well as allowing him to get a sense of the points that individual Commissioners were likely to raise in the College.

The Commission was also represented at the Convention by two Commissioners: Antonio Vitorino, who had represented the Commission in the Convention on the Charter of Fundamental Rights, and Michel Barnier, who had been the Commissioner for Institutional Affairs at the 2000 IGC. Allowed a measure of discretion, they were constrained by the need to ensure that the positions that they adopted in the Convention would command the support of the College and President. They were active participants in Convention proceedings, members of the Praesidium, keen contributors to plenary

debates, and attended the Hilton dinners that brought together ‘movers and shakers’ of the Convention (Norman, 2003, 52).<sup>25</sup> Vitorino, in particular, was an impressive figure, and ‘one of Convention’s key problem solvers’ (Norman, 2003, 31). Cooperation between the two Commissioners and their *cabinets*, based on a clear division of labour, was close and well-coordinated.

The College was also involved, particularly in decisions concerning the submission of major texts to the Convention. The Convention featured as a permanent item at the weekly meetings of the College, though initially not all members of the Commission appreciated that the Convention would be more than a mere ‘a talking shop’ (interview, 3 June 2003). In addition, meetings of the institutional experts of each *cabinet* received a weekly briefing from a member of the Prodi *cabinet* on developments in the Convention (interview, 17 March 2003; interview, 3 June 2003).

#### *Preference formation in action*

Though Barnier and Vitorino were busily engaged in the Convention from the outset, participating in plenary debates and chairing working groups (on defence and the Charter respectively), and Prodi had expressed his views in a series of speeches, the Commission did not present a formal communication until May 2002 (European Commission, 2002a). The May paper was followed by a second communication in December 2002 (European Commission 2002b). Both were the subject to an internal debate and reflect the Commission’s institutional characteristics, as well as the political context in which they were drafted. A third document – the so-called ‘Penelope’ document (European Commission, 2002c) -- was prepared in a quite different way, which underlined the presidentialism of preference formation in the Commission (see table 1, below).

Although in his opening speech to the Convention, Prodi had promised that the Commission would ‘make a full and enthusiastic contribution, drawing on all its own experience and its expertise’,<sup>26</sup> the Commission’s first major intervention arrived in the spring of 2002 (European Commission, 2002a). Entitled, ‘A Project for the European Union’, it was intended to present the Commission’s vision of the EU. Covering three policy areas (economic and social development, freedom, security and justice, and foreign policy), it also addressed three institutional issues: establishing a constitutional treaty; clarifying how the EU exercises and implements its powers; and respecting subsidiarity and proportionality. It was prepared according to routine procedure: the initial draft was drafted by the Task Force, examined by Prodi, Barnier, Vitorino and their *cabinets*, with parts of the text then sent out to the relevant services (interviews, 13 February 2003, 4 June 2003). The draft text was then considered by the College, where it encountered more difficulties than expected (interview, 18 March 2003). Commissioners were divided along ideological lines on the economic and social development chapter (interviews, 18 and 19 September 2003), while a significant minority, including the holder of the office concerned, opposed the proposal to merge the functions of High Representative and Commissioner for External Relations.<sup>27</sup> The result was a text, which, in the words of a Task Force member, ‘was not very good’ (interview, 18 March 2003). It made little impact on discussions in the Convention.

**Table 1: Commission Positions: May 2002, December 2002, ‘Penelope’ Document**

<i>Document</i> <i>Issue</i>	May 2002 COM (2002) 247 final	December 2002 COM (2002) 728 final	‘Penelope’ Document
Constitution & EU legal personality	Yes. Need for ‘in-depth simplification of the treaties’; each institution to focus on its core functions	Yes. Simplification of treaties; each institution to focus on its core functions	Yes. Constitution possible; each institution to focus on its core functions
Vertical distribution of power	Subsidiarity; proportionality – external controls thereof possible at end of legislative process	Subsidiarity monitored politically <i>ex ante</i> ; Commission not obliged to issue opinion under the early-warning mechanism	Subsidiarity; distinction between ‘principal policies’, ‘accompanying policies’, ‘complementary actions’ and ‘external relations’
‘Community method’	Must be ‘applied fully’ with ‘single source of legislative initiative’, generalised use of co-decision procedure, QMV and checks by the ECJ;	Commission to have exclusive right of initiative, generalised use of co-decision and QMV; Institutional balance to be preserved	Generalised use of Community method
Role of the Commission	Commission to have initiative and responsibility for external policy cohesion and remain ‘as Europe’s founding fathers wanted [...] independent’ and the promoter of ‘the general interest’; Implementing measures entrusted to Commission ‘under the control of the legislator’; Enhanced role in economic policy	Commission to reflect vision of Europe’s founding fathers by remaining ‘independent’ and ‘responsible for setting out the general interests of the Union’; Commission to ‘assert its governmental role’ Implementing measures entrusted to Commission under the control of the legislator; Enhanced role in economic policy	To become the EU’s executive
Size & composition of the Commission		One Commissioner per member state	One Commissioner per member state (including the President and the Secretary of the Union) but number reduced by Council’s reinforced QMV when EU27 (equal rotation);
Appointment of the Commission		President appointed by EP and approved by European Council; Secretary of the Union appointed by the European Council in agreement with Commission President; Designation of other Commissioners by European Council (QMV) in agreement with Commission President; Full College approved by the EP	President designated by EP (reinforced majority) and designation approved by European Council (reinforced QMV) Secretary of the Union appointed by the European Council in agreement with Commission President; Designation of other Commissioners by European Council in agreement with Commission President; Full College approved by the

			EP and appointment confirmed by European Council
External representation of the Union	Posts of High Representative for CFSP and External Relations Commissioner to be merged	High Representative for CFSP and External Relations Commissioner posts to be merged into single post of Secretary of the EU (and Commission Vice-President)	Secretary of EU to be Commission Vice-President
Decision making in Council	QMV as the 'single procedural rule'	QMV defined as combination of simple majority of the member states with majority of total EU population; elimination of unanimity requirement but enhanced majority possible	QMV defined as combination of simple majority of member states with majority of total EU population
Council Chair		Rotating presidency maintained for European Council and General Affairs Council, but election of chair by peers for one year in other Council formations	Rotating presidency maintained; European Affairs Ministers as General Affairs Council
Scope of integration	EU's foreign policy to have 'decision-making capacity with regard to security and defence'; 'genuine' common asylum and immigration policies	Need to strengthen EU 'decision-making capacity' on security and defence; encourage development of European arms industry; EU to exercise in the international arena its internal powers	
Treaty reform		Convention to examine possibility of the entry into force of Constitutional Treaty prior to ratification by all member states	Convention method leading to recommendation adopted by 3/5 majority of each <i>composante</i> ; on the basis of that Recommendation, the Commission shall lay before the European Council which will decide (by 3/4 of its members & 3/4 of EU population); entry into force when ratification by 3/4 of member states – slightly different process for adoption of Charter of Fundamental Rights

The decision to make a second contribution -- on institutions – later in the year was Prodi's. Although the paper might have had more of an impact in the debate on institutions initiated by Aznar, Blair and Chirac on the eve of the Convention if it had been produced in October 2002, and could even have filled the vacuum created by Giscard d'Estaing's decision to leave discussion of the Union's institutional architecture until the Convention had dealt with policies, the Commission President decided that it should appear after the summer so as not to interfere with the Irish referendum on the Nice Treaty (interviews, 17 and 18 March 2003, 3 June 2003). Also, Prodi had been

reluctant to go to the College with a second document, since he expected to encounter opposition. In the debate that eventually took place, individual Commissioners ‘were not afraid to defend their national positions’, turning the College into ‘something of an IGC’ (interview, 18 September 2003). The brainstorming session organised in late September 2002 was marked by disagreements on the proposal that the Commission President should be elected by the European Parliament – an idea supported by Prodi, but which originated from Commissioners Lamy and Barnier (interview, 19 September 2003). This was the main expression of ‘ministerialism’ in the College, but one that was mainly focused on objections to Prodi’s proposals and tactical choices that reflected, to a large extent, his federalist tendencies, or at least his support for the classic Community method.<sup>28</sup>

The President’s willingness to put his mark on the Commission’s contribution to the debate was best exemplified, however, by his creation of the so-called ‘Penelope group’, which revealed a determination to shape the agenda within the Commission and to make a decisive contribution at EU level. Though the objective of the Convention was ‘to consider the key issues arising for the Union’s future development and try to identify the various possible responses’ (European Council, 2001), it quickly became apparent that because of its composition and the openness of the process, it would not be easy for the member states to diverge from the outcome of the Convention. Thus by shaping the outcome of the Convention -- essentially a *drafting* exercise -- the content of the new Treaty could be determined. During the ‘listening phase’, he decided in July 2002 to create a small group of senior officials to prepare a draft Constitution in secret (European Commission, 2002c), which would be submitted to the Convention in the beginning of the ‘drafting phase’.

Prodi chose François Lamoureux, Director-General of DG Energy and Transport, to head the group. A ‘safe pair of hands’ – an ‘obvious choice’ as another member of the group put it (interview, 18 March 2003) -- Lamoureux is a lawyer with exceptional expertise in institutional matters. As well as having held a succession of senior positions, he has long experience in the Commission, worked closely with Delors in earlier treaty reforms, he is an ardent federalist, and a ‘leader ... with an immense capacity to deliver’ (interview, 17 March 2003). Other members of the group, handpicked by Lamoureux, included institutional lawyers with experience from previous IGCs and the Legal Service of the Commission.<sup>29</sup> The group met in secret over a five-week period to avoid any pressure from the outside, though Barnier and Vitorino were aware of its existence, and maintained close links with key members of the Task Force.

The ‘Penelope’ project was a clear indication of Prodi’s unwillingness to share this key task with the College, particularly given his experience in attempting to push certain ideas through the College, but reveals both strength and weakness. Ultimately, however, it was a double embarrassment for the Commission President. First, the very existence of the ‘Penelope’ draft infuriated Giscard, who saw it as an attempt to do his job for him, and several Commissioners, who, in the words of one *cabinet* member, suffered ‘betrayed husband syndrome’ (interview, 3 June 2003).<sup>30</sup> Some Commissioners were apparently informed about it the day before its presentation whereas others were presented with a

*fait accompli* on the day of the official presentation of the document (interview, 19 September 2003). Second, the ‘Penelope’ draft was leaked to *Le Monde* and newspapers in Germany, Italy and Spain only hours before the official December document (European Commission, 2002b) was approved by the College (Norman, 2003, 165). The appearance of two texts, virtually simultaneously, seriously undermined the Commission’s credibility, even if there was little difference in their substance.

## **CONCLUSION: THE COMMISSION AND THE CONVENTION – MEETING THE CHALLENGE**

There is little disagreement that, although the Constitutional Treaty that ultimately emerged was not as threatening as it had feared,<sup>31</sup> the Commission was not an influential player at the Convention. Had it simply failed to respond to the challenge of a new method of treaty reform, was it forced to pay the price of strategic mistakes, or was its lack of impact evidence of a secular decline?

The Prodi Commission undoubtedly confronted a more difficult environment than, for example, the first or second Delors Commission. As well as the damage to its reputation that followed the resignation of the Santer Commission, member states since 1991 have sought to limit the Commission’s power, increase that of the European Parliament and assert that of intergovernmental institutions, such as the European Council, and, while not totally abandoning the Community method, they have shown increasing enthusiasm for new methods of decision making and cooperation at EU level (Kassim and Menon, 2004). More specifically, the Convention presented challenges that the Commission found difficult to meet. As an organisation whose legitimacy derives from its technical expertise, and whose influence in treaty reform has mostly been exerted behind-the-scenes, the Commission found it difficult to engage in an essentially political exercise, characterised by its openness. As at more recent IGCs, the Commission at the Convention was more an object than it was a subject of negotiations.

Many of its difficulties, however, sprung from internal factors. Presidentialism and ministerialism can co-exist at the level of normal policy making, but can lead to incoherence when ‘high politics’ are at stake. The Commission was crucially weakened by the ‘Penelope’ débâcle, not least because the credibility of Barnier and Vitorino was crucially undermined. Officials in the Task Force expressed despair at the emergence of two chains of command – one from the Commission President, the other from the two Commission *conventionnels* – which seriously complicated coordination and prevented the Commission from speaking with one voice and acting decisively in the crucial final phase of the Convention (interview, 31 March 2004), where the Commission ‘went missing’ (Norman, 2003, 265-8).<sup>32</sup> A reluctance to trust the two men on the spot was an error, since it effectively played the Commission out of the game and alienated its natural supporters.<sup>33</sup>

There were also a number of tactical errors such as the decision to back the smaller member states on the question of the size of the Commission and the strengthening of the



EU chair rather than to broker a compromise between large and small states (Norman, 2003, 266).<sup>34</sup> The most serious mistakes, however, were strategic. Penelope has already been mentioned, but a further oversight was the failure to cultivate the powerful (the larger member states and Giscard) or to compromise over the big issues, such as the future institutional architecture, which effectively made the Commission easy to ignore. Had the Commission President been less obdurate about a permanent chair for the European Council, for example, it may have been possible to secure in exchange the strengthening of the Commission that France, Germany and the UK claimed they wanted.

Its lack of flexibility stemmed from the Prodi Commission's main method in dealing with the Convention. It responded to a novel situation on the basis of a standing operating procedure and institutional repertoire – in this case, recourse to its institutionalised myth (Meyer and Rowan, 1977), 'the Community method', which places the institution at the heart of Europe and entrusts it with a key leadership role. Appeal to the Commission's founding idea may have strengthened the Commission President's hand in the internal process of preference formation and allowed consistency across Commission preferences to be achieved, but, as a response to the demands of a Convention on the Future of Europe, it condemned the Commission to a position on the sidelines.

The analysis presented in this article has important implications for theorising about the Commission and treaty reform. First, examination of the Commission's preparations for, and input into, the Convention, together with the review of decision making in relation to previous episodes of treaty reform, confirms that the main approach in the existing literature fails to offer a satisfactory account of either Commission preferences or preference formation. The assumption that the Commission is a monolithic self-aggrandising actor is contradicted by the record of its submissions to successive rounds of treaty amendment. More importantly, though, because it holds that all bureaucracies are inherently disposed towards seeking to extend their powers and increase their resources, such a view discounts the significance of internal processes in the formation of preferences and disregards the external context within which preferences are articulated. The foregoing investigation reveals the limitations of this approach on both points. It shows that Commission preferences do not spring forth fully formed, but that they emerge as the outcome of often complex internal interactions between actors within the organisation, and that, rather than the outcome of a process exogenous to treaty reform, they are strongly influenced by the particular stage of integration, the content of the reform agenda, and the dynamics of the negotiations.

Second, regarding the debate about the Commission's influence on treaty reform, while a review of earlier IGCs, particularly those of 1985 and 1991, challenges LI's contention that supranational bodies exert no independent influence in the process, the Commission's experience at the Convention on the Future of Europe suggests that the opposing supranationalist agency approach is not entirely unproblematic. Although it can have an impact on deliberations, negotiations and their outcome, the Commission's influence in treaty amendment varies due to a combination of factors, some of which are within, but others that lie outside, its control. Furthermore, it may be the case that the move to a new method of constitutional reform, if permanent, will make it harder for the

Commission to exercise the influence over the treaty reform process in the future that it has on occasion in the past.

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  - 2 However, we treat the question of Commission influence as an empirical, not a conceptual, issue.
  - 3 Though see, e.g. Cram (1994), Smith (2004), Georgakakis (2002), Hooghe (2001) for alternative perspectives. Hooghe's recent study reveals that 'a fairly strong, and growing, constituency – about half of all officials - supports a humbler [Commission] with fewer tasks, more administration and management, and under tighter political supervision' (2001, 166).
  - 4 For the 1985 IGC, see Endo (1999, 129-51), Ross (1995, 29-45); for the 1991 IGCs, see Endo (1991, 152-90); for Amsterdam, see Gray (2002).
  - 5 See fn 4, *supra*.
  - 6 François Lamoureux, a member of Delors' *cabinet*, drafted the legal texts that embodied Delors' ideas while other top Commission officials, including Klaus-Dieter Ehlermann and Jean-Louis Dewost, advised Delors on the implications of his ideas (Ross, 1995, 81).
  - 7 Again, he relied on an *ad hoc* group, which included Joly Dixon and Jean-Paul Mingasson, and a legal team consisting of François Lamoureux, Jean-Louis Dewost and Klaus-Dieter Ehlermann, which had little interaction with either the College or the services (Ross, 1995, 81).
  - 8 Italy, for example, decided to handle the Council Presidency without any help from the Commission.
  - 9 For other examples of how the Commission has shaped treaty provisions, see Gray and Stubb (2001, 21).
  - 10 Santer, by contrast, took responsibility for EMU and external relations (Peterson, 2004, 17).
  - 11 Other examples include his influence in selecting members of the College (Peterson, 2004, 21), the appointment of close collaborators to senior positions in the

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- Commission (Peterson, 2004, 17), and his insistence on taking office that his colleagues should furnish him with an undated letter of resignation.
- 12 See Sloat (2003, 2004) for analysis and an insider's perspective.
- 13 The White Paper on European Governance (COM (2001) 428) was published on 21 July 2001. Follow-up initiatives addressed: better regulation; comitology; information; better implementation; alternative regulation; access to documents; corporate governance; and corruption. For critical analyses, see Wincott (2001), Joerges (2000), and Joerges *et al.* (2002).
- 14 See the Commission's Communication on the Future of the European Union, entitled, 'Renewing the Community method', COM (2001) 727, 5 December 2001.
- 15 See his interview in the *Süddeutsche Zeitung*, 14 December 2001, p. 12.
- 16 Documents relating to the 2000 IGC can be found at: [http://europa.eu.int/comm/archives/igc2000/offdoc/index\\_en.htm#contributions](http://europa.eu.int/comm/archives/igc2000/offdoc/index_en.htm#contributions)
- 17 See the Commission opinion to Nice European Council, COM (2000) 34, 26 January 2000
- 18 The appointment of a second Commission representative was an afterthought.
- 19 Norman (2003, 161) estimates that eight of the twelve members of the Praesidium were sympathetic to the Commission.
- 20 He appeared to modify his views slightly later, suggesting that the EU needed both Commission and Council with 'perhaps a more original cooperation between them' (Norman, 2003, 29-30) – though this was still scarcely a ringing endorsement.
- 21 Ponzano was the deputy for Vitorino; David O'Sullivan, the Secretary-General of the Commission, for Commissioner Barnier.
- 22 Its five members came from the following DGs: Competition, Press, Justice and Home Affairs, Trade and Internal Market (interview, 17 March 2003).
- 23 For example, it is credited with the proposal that the President become a *voting* member of the European Council (interview, 18 March 2003).
- 24 One exception was the production of a document produced by a group of senior Commission officials at the initiative of Eneko Landaburu, Director-General of DG Enlargement, on aspects of the Union's foreign policy priorities. Its content did not differ from the views expressed in the Commission's May 2002 communication of May 2002 (European Commission, 2002a).
- 25 Speeches and contributions to the Convention are available at [http://europa.eu.int/constitution/futurum/docinstcomm\\_en.htm](http://europa.eu.int/constitution/futurum/docinstcomm_en.htm)
- 26 02/88, 28 February 2002, CONV 4/02.
- 27 Though the Commissioner for External Relations, Chris Patten, wrote to Prodi to express his view that co-ordination could be improved without constitutional reform and that the Commission was not ready to assume responsibility for external affairs, several of his colleagues believed that the idea had gained broad support in the Convention, not least due to the impact of the report of the working group on external relations, chaired by Jean-Luc Dehaene. It was also believed that neither Aznar nor Blair would oppose the proposal in the endgame (interview, 18 March 2003).
- 28 Or 'penchant fédéraliste ou au moins communautaire classique' as one interviewee put it (interview, 19 September 2003)

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- 29 The Legal Service gives legal form, and therefore ‘legitimacy’, to the internal myth of the ‘common European interest’ and the Community method.
- 30 One of Prodi’s collaborators justified the exercise on the grounds that the aim was to help the Convention, that ‘it was never meant to be put to the College’ since it was a merely technical exercise, a feasibility study, and that Delors ‘never put a draft Treaty to the College except EMU and that was a very painful experience (interview, 17 March 2003).
- 31 Although some aspects of the Constitutional Treaty arguably move the EU system towards greater intergovernmentalism with, for example, the introduction of a President of the European Council, other proposals that would have limited or restricted the Commission’s existing powers, such as Giscard’s desire to change the Council decision rule concerning the amendment of a Commission proposal from unanimity to QMV or the ‘red card’ system for the subsidiarity watchdog system involving national parliaments, were lost or diluted (interview, 31 March 2004). The Commission also scored minor victories on, for example, the call for a catalogue of competencies, which it opposed on the basis of the rigidity that such a measure would introduce. As a source of expertise on the operation of the Commission system – for example, on EU finances -- it played an important part.
- 32 One commentator notes that ‘the number of Commission staff working on the Convention was greater than the Convention secretariat [but] they were split into different groups [which] seemed unable to work together’ (Norman, 2003, 267). He refers to the two Commissioners in the Convention, and their *cabinets*, the Commission President and his staff, and the group of policy advisors headed by Ricardo Levi.
- 33 When the Praesidium was drafting the competencies article, for example, Prodi insisted that Barnier and Vitorino followed his instructions, despite the fact that they knew that they were in a minority (Norman, 2003, 265).
- 34 As Norman notes (2003, 268), once the Convention had agreed to the principle of rotation, a fifteen-strong Commission where they might have access to all positions was for the small member states preferable to the idea of one Commissioner per member state in a body where the Commission President, probably from a large member state, would call the shots.