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## **THE EUROPEAN COMMISSION AND THE FUTURE OF EUROPE<sup>1</sup>**

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### **Abstract:**

This article examines the Commission's preferences and preference formation in relation to the Convention and the negotiation of the Constitutional Treaty. Opposing approaches in the literature, which discuss Commission action in terms of the tendency of bureaucratic actors to seek to maximise power, status and opportunities, it argues that the Commission is better

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1 We are indebted to the ten senior European Commission officials who kindly granted unattributable interviews on the topic addressed in this article. We should like to thank participants of workshops on 'Preference formation and EU Treaty Reform', Birkbeck, University of London, 14-15 November 2003, 'Leadership in EU constitutional negotiations,' Goodenough College, 27-28 January 2005, organised by Derek Beach and Colette Mazzucelli, 'Political Agency in EU Constitutional Negotiations', ECPR, Granada, 14-19 April 2005, convened by Derek Beach and Thomas Christiansen, and 'Preferences on Europe's Future', CERI, Paris in 14 October 2005, organised by Nicolas Jabko, as well as the editors and an anonymous referee, for their useful comments. We gratefully acknowledge the ESRC for the award of a grant under the 'Future Governance' programme and the British Academy (award BCG-35160), which enabled us to host the aforementioned workshop at Birkbeck, while Dionyssis G. Dimitrakopoulos would like to express his gratitude to the Faculty of Arts at Birkbeck for the award of a College research grant.

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conceptualised as an internally differentiated arena, from which preferences emerge as a result of complex interactions that entail the use of power, institutionalised myths and routines. It contends that the Commission was an ineffective performer in the debate on the future of Europe. As well as committing tactical and strategic mistakes, the Commission was disadvantaged by the explicitly political nature of the exercise and the opportunity structure of the Convention as compared to an IGC in its traditional form. A third argument is that the ratification and post-ratification process reveal the current limitations on the Commission's ability to influence debates about the future of the Union. Its historic vocation as the engine of integration implies one course of action, while the exigencies of the current debate suggest another.

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## **INTRODUCTION**

Although its influence at Intergovernmental Conferences (IGCs) has varied and, has arguably declined since the Maastricht IGCs (Kassim and Menon, 2004), the Commission has, contrary to the claim that it is an ineffectual supranational entrepreneur (Moravcsik, 1999; see Christiansen *et al.*, 2002 and Kassim and Dimitrakopoulos, 2007, for critical treatments), been a consistently important player in EU treaty reform.<sup>2</sup> Its influence has been felt in many ways. It has been an important voice in making the case for treaty reform. It has shaped the reform agenda, set down important markers against which other participants have situated themselves, contributed technical expertise to deliberations involving governments, and supplied information and advice to key actors, notably, the Council Presidency and the Council Secretariat. Moreover, its ideas and its proposals have often found a place in the final settlement. The Commission has also been a central actor in the post-ratification process -- a crucial stage of EU constitutional change often been overlooked in accounts of treaty reform. Its experience of the most recent round of treaty reform was, however, far from positive. It was largely ineffective at the Convention on the Future of Europe, 'missing in action'

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<sup>2</sup> Claims on the part of liberal intergovernmentalists (Moravcsik 1993, 1998; Moravcsik and Nicolaïdes 1998, 1999) that the Commission has exerted no independent influence at IGCs are contested on theoretical grounds by proponents of a 'supranationalist agency' perspective (see Christiansen and Jorgensen, 1998; Christiansen, 2002; Christiansen *et al.*, 2002) and by research on several rounds of treaty reform (see, e.g., Endo, 1999; Noël, 1992; Gray and Stubb, 2001; Christiansen, 2002; Gray, 2002; Dinan, 1997b). See Kassim and Dimitrakopoulos (2006) for a critical discussion of both perspectives.

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(Norman, 2003, 265-8) at critical phases,<sup>3</sup> while its involvement in the post-Convention phases was extremely limited.

This article examines the Commission's approach to the Convention and the IGC, and its action during the ratification process and after. It examines the internal processes of preference formation and explores the reasons for its poor performance. It argues first that, although the Commission petitioned, at least in its two formal submissions to the Convention, as well as the (in)famous 'Penelope document', for a future Union in which it would play a leading role, it would be misleading to construe this as confirmation of the view of the Commission as a self-interested bureaucracy familiar from some rationalist accounts of bureaucratic behaviour, motivated only by the desire to extend its own powers. Rather, an institutionalist perspective is advanced, which suggests that the Commission is best viewed 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. An historical review of preference formation at past IGCs shows that the personal preferences of the Commission's President, his leadership style and pattern of interaction with other members of the College are important determinants of the view that the Commission articulates. The second argument is that, although the Commission was a supporter of the new method of constitutional reform, it was an ineffective actor at the Convention. Poor leadership and tactical misjudgements played an important part, but beyond these errors the Commission was disadvantaged by both the institutional setting of the Convention, which confronted the Commission with a less favourable structure of opportunity

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3 Though some long-standing ambitions were fulfilled, such as the end to the three-pillar structure, this was less the result of the Commission's own efforts than those of others.

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than an IGC, and, more importantly, the very nature of the debate on the future of Europe.

The Convention method highlighted a serious mismatch between the original conception of the Commission as an *administration de mission* (Pisani, 1956) and the demands of an explicitly political, as opposed to a technocratic, exercise. Third, the Commission was no more effective in the post-Convention phase. It was not at all influential at the IGC, its involvement in the ratification process was steeped in difficulty, and its attempts to intervene in debates since the Dutch referendum have been problematic.

The discussion below is organised into three sections. The first part briefly surveys research on Commission preference formation at previous rounds of treaty reform, highlighting the importance of internal interactions and the key role of the Commission President therein. Romano Prodi's conception of the Commission, and Commission preferences and preference formation with respect to the future of Europe before, during, and after the Convention are discussed in the second. The third section looks at the Commission's inability to influence developments after the Convention, particularly during ratification. The conclusion considers the sources of the Commission's ineffectiveness and describes the apparently intractable position in which it finds itself in a new era of treaty reform.

## **THE COMMISSION AND TREATY REFORM IN HISTORICAL PERSPECTIVE: PREFERENCES AND PREFERENCE FORMATION**

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The view that the Commission is a self-interested bureaucracy, concerned only to expand its own powers,<sup>4</sup> or a monolith whose preferences or interests can be deduced, inferred or simply ‘read off’,<sup>5</sup> is widespread in EU scholarship.<sup>6</sup> Not only are there major reservations about the theoretical underpinnings of both approaches, but empirical investigation of the positions adopted by the Commission at successive rounds of treaty reform challenge these assumptions.

### **Commission preferences: the dominant view**

A key premise of this approach is that the bargaining positions adopted by actors in international negotiations are shaped by underlying preferences, from which they need to be carefully distinguished. These preferences are not directly observable, but can be deduced (Frieden, 1999, p. 45).<sup>7</sup> This article departs from this viewpoint. While respecting the distinction between preferences over outcomes and preferences over strategies (see Frieden, 1999), it does not subscribe to the view that the former are unobservable, fixed or given. Rather, it proceeds from the assumption that actors may explicitly articulate preferences about

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4 This view draws on an older rationalist literature on bureaucratic behaviour (Niskanen, 1971).

5 This is a view familiar from a particular perspective in international relations scholarship (see, e.g. Frieden, 1999).

6 See, e.g. Hix (1999, 2004); also Cini (1996), Cram (1994), Georgakakis (2002), Hooghe (2001, 166), Pollack (2003), Egeberg (2002) and Smith (2004) for more nuanced treatments.

7 Attempts have been made to elaborate how preferences are formed in the case of national governments, most notably by Andrew Moravcsik (1998), but no such effort has made in regard to institutions, such as the European Commission.

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the outcome of any particular set of negotiations before bargaining begins.<sup>8</sup> In the case of the

Commission, these preferences are usually expressed in the form of an official opinion submitted before the opening of negotiations or official communications once an IGC has begun. In any organisation, moreover, these preferences will represent the aggregate of a wider or narrower subset of individual preferences, although the method of aggregation may change over time. Preference formation is the process by which these preferences over outcomes emerge and are adopted as the agent's official position. Both preferences over outcomes and preference formation are in principle empirically identifiable.

The dominant image of the European Commission as an agent seeking to maximise its own power is inspired by rationalist analyses of bureaucratic actors that are now somewhat dated.<sup>9</sup> From this perspective, the Commission is driven by an 'institutional commitment to deeper integration' (Dinan, 1997a, 261), which leads it continuously to champion an ever more supranational Europe, where its own powers are ever more far-reaching. However, this conception is more an expression of a methodological choice than it is an understanding based on systematic empirical research. Studies of Commission preferences at successive rounds of treaty reform reveal a more complex picture. Although the Commission has often been an advocate of further integration, it has not repeatedly sought to extend its own prerogatives at

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<sup>8</sup> Space constraints make it impossible to undertake a more detailed discussion here. Although this understanding differs from the standard international relations usage, it is somewhat less mystical.

<sup>9</sup> See *supra* fn. 8.



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each negotiation. Indeed, at Amsterdam and again at Nice<sup>10</sup>, it chose explicitly not to seek new competencies or responsibilities. In theoretical terms, moreover, the power-aggrandising conception does not assist in explaining why at any one time the Commission prefers one set of outcomes to another. Since the issues under discussion during any one episode of treaty reform are complex,<sup>11</sup> the assumption that the Commission is power hungry is not a good predictor of its preferences, nor does it shed any light on the process from which these preferences emerge.

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

That the preferences in respect of its favoured outcome articulated by the Commission have varied from IGC to IGC between 1985 and 2000 suggest not only that its preferences are not expressive of an inherent imperative and so cannot simply be inferred from, for example, the Commission's mission or its character as a bureaucracy. Rather, there are significant differences between rounds of treaty reform in the processes by which its preferences are formed. In addition, research on the Commission and treaty reform belies the monolithic image presented by much of the literature.<sup>12</sup> It finds rather that, Commission preferences emerge from interaction within the College, the input from officials at various levels of the administration, and the internal mechanisms put in place to manage the Commission's

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10 Romano Prodi explicitly rejected the idea of adding new tasks and responsibilities to the already over-burdened Commission without endowing it with the capacity to carry them out.

11 Also, the political and economic environment and the leaders involved may (indeed do) differ.

12 For the 1985 IGC, see Endo (1999, 129-51), Ross (1995, 29-45); for the 1991 IGCs, Endo (1991, 152-90); for Amsterdam, Gray (2002).

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preparations for the IGC, and that the pattern of these interactions varies over time. Earlier studies emphasise the importance of the President's convictions concerning the development of the Union and his leadership style. Though there are some constants with respect to internal organizational arrangements, notably, the involvement of the Secretariat General and the Legal Services, the particular configuration has varied from negotiation to negotiation. Delors was supported by an *ad hoc* Institutional Group, headed by François Lamoureux, which worked to him personally in advance of the 1985 IGC, but since Maastricht a Task Force has been set up in advance of each IGC. Its size (ten officials for the 1996 IGC, four for 2000) and composition have fluctuated according to the breadth of the IGC's agenda, while its relationship to the Commission President and the Commissioner for Institutional Affairs has also varied across IGCs.

More precisely, the interaction between the President and other members of the College – a key factor in the determination of the Commission's preferences -- has varied considerably. Delors took personal charge for deciding the Commission's preferred outcome from the IGC on EMU, operating in such isolation that other Commissioners saw the draft treaty for the first time when the IGC opened in December 1990 (1999, 153),<sup>13</sup> but his colleagues refused to allow him the same independence in relation to the IGC on Political Union, insisting that proposals prepared by the Institutional Group (again headed by Lamoureux) should pass through routine Commission decision making procedures. 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

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13 Delors again relied on an *ad hoc* group and a legal team, neither of which had much interaction with the College or services (Ross, 1995, 81).

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became a fixed agenda item at the weekly meeting of the College. For the 1996 IGC, a Task Force was created to lead preparations and negotiations, which worked in liaison with the Commission President, the *cabinet* of Commissioner Oreja, responsible for institutional affairs, and consulted other *cabinets*, while a Steering Group, headed by Oreja, issued political orientations (Gray, 2002, 384). In the run-up to Nice, however, there was a reversion to a more presidential style with Prodi taking personal charge, even though institutional affairs fell within Michel Barnier's remit.<sup>14</sup> Thus, the role taken by Commission Presidents, even the same individual, has not been invariant (Endo, 1999, 94). Even though it is tempting to periodise preference formation since the 1985 IGC as presidential unilateralism (1985-1991), followed by a spell of constrained presidentialism (1991-1995), then a phase of collegiality (1995-1999) with a reversion to presidentialism in 2000, such a summary would not be entirely accurate (Dimitrakopoulos and Kassim 2005).

A final consideration is that, although the process of preference formation is endogenous, it is important to remember that 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. Moreover, the composition, as well as the capabilities, views and political 'weight' of individual members, of the College vary over time. As constructivists, and before them 'garbage can' theorists, have contended, actors and institutions do not always formulate preferences prior to, or independently of, the context in which they seek to advance them. Actor preferences are formed at least in part in relation to

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<sup>14</sup> Commissioner Antonio Vitorino enjoyed considerable discretion as the Commission's representative at the Convention that negotiated the Charter of Fundamental Rights.

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the prevailing discussions and debates, and specific items on the reform agenda, a process that may take place during negotiations rather than in advance. They are likely to be revised as part of routine bargaining and may well be amended as in the approach to the endgame.

## **THE PRODI COMMISSION AND THE FUTURE OF EUROPE: PREFERENCES AND PREFERENCE FORMATION**

Its preferences on the eve of the Convention reflected the Commission President's vision of the Commission as a European government-in-waiting, firmly at the centre of European Union decision making – a view that Romano Prodi had articulated consistently since his nomination in April 1999. The formation of its preferences, meanwhile, was shaped by the principles of presidentialism and ministerialism that informed the operation of the Prodi Commission, as well as Prodi's strategic decision to invoke the Commission's *principe existentiel*.

### **Prodi's conception of the Commission's role**

Prodi assumed office with strong convictions about the role of the Commission and its operation. In contrast to his predecessor's more modest ambitions for the institution, Prodi underlined the Commission's centrality to the European project and his vision of the Commission as a putative government. His conception of the Commission led him to organise its structures on governmental lines, as illustrated by his decision to locate Commissioners and their *cabinets* in the same buildings as their services. His conception of the Commission combined elements of both presidentialism and ministerialism (see Peterson 2004). Presidentialism informed Prodi's decision not to take on a portfolio responsibility, which enabled him 'to present himself as the political figurehead at the top of the Commission' (Peterson 2004: 17), and left him free to concentrate on major issues and take

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up important projects.<sup>15</sup> Ministerialism, by contrast, was reflected in the appointment of a team of political 'heavyweights', who were given relatively free rein in their areas of responsibility.

The Commission President held firm ideas about how the challenges that confronted the Union should be addressed. On taking office, he had argued that urgent reform of EU decision making was necessary in the face of citizen disillusionment and with an historic enlargement imminent. At the beginning of 2000, the Commission launched a major initiative designed to improve European governance and democracy.<sup>16</sup> Adopted as one of the Commission's four strategic priorities, the exercise began with a 'Dialogue on Europe' involving citizens and representatives of civil society.<sup>17</sup> The issues raised were taken up by a governance team led initially by Jérôme Vignon, formerly Head of the Forward Studies Unit, but which later moved to the Secretariat General, whence it reported directly to the President. Its prescriptions formed the basis of the Commission's White Paper on Governance and the inspiration for a series of initiatives.<sup>18</sup>

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15 Santer, by contrast, had been responsible for EMU and external relations.

16 See Sloat (2003, 2004) for an insider's perspective.

17 The timing appeared to be appropriate not least because Joschka Fischer's speech at Humboldt University in Berlin had raised the stakes.

18 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)).

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The governance team had been instructed to produce recommendations on the assumption that there would be no revision of the treaties, but Prodi also pursued a second track. He pressed Heads of State and Government to address a broader set of questions, which were necessary in his view to remedy the EU's institutional shortcomings and to close the gap between Brussels and European citizens, that would require treaty reform. When the Cologne European Council in June 1999 decided that the IGC 2000 agenda would be restricted to the institutional issues that the Amsterdam IGC had failed to resolve, Prodi stepped up his campaign by creating a group of wise men, chaired by Jean-Luc Dehaene, aimed at expanding the headings to be addressed by identifying areas where action was needed. He sustained this campaign throughout 2000 up to and after the Nice European Council. With the failure of the 2000 IGC not only to prepare (in terms of institutional reforms) the Union for enlargement, but also as a process, Prodi supported calls for a new method of treaty reform. He welcomed the commitment to a wide-ranging reform agenda and a more inclusive and transparent process that were enshrined in the Laeken Declaration of December 2001.

Prodi also offered a prescription for solving the problems that faced the Union. Somewhat against the post-Maastricht grain, he called for a return to Commission-centred policy making. The indispensability of the Community method, with the role of Commission as initiator and executive, were recurrent themes in Commission texts and speeches. Restoring the Commission's centrality was a leading theme of the White Paper, where it was presented as the key to better governance, though this may have reflected a wish to boost morale *within* an institution that had suffered as a result of the events that led to the resignation of the Santer Commission. The Commission's opinion delivered to the 2000 IGC repeated the argument,

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emphasizing its importance to secure the Union's achievements,<sup>19</sup> and it was aired further in the run-up to the Laeken European Council.<sup>20</sup>

### **The Commission at the Convention**

The Commission put in place systems at both political and administrative level to manage its input into the Convention. The College established a Task Force on the Future of the EU, headed by a veteran institutional expert and senior official in the Secretariat General, and including five officials from the services,<sup>21</sup> a senior official from the 2000 IGC Task Force and an official from the Legal Service. The Task Force provided administrative support for the Commission participation's in the Convention. It drafted documents and prepared speeches. It also acted as an informal in-house think-tank, offering advice that reflected the expertise, as well as the convictions, of its senior members.<sup>22</sup> It kept the network of Convention correspondents in the services abreast of developments and informed Commission staff of the Convention's proceedings via the Commission intranet. Although initially the Task Force supported the President, its responsibilities were gradually extended to the College as a whole. Internal consultation was geared mainly towards the diffusion of

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19 See the Commission opinion to Nice European Council, COM (2000) 34, 26 January 2000

20 Commission, 'Renewing the Community method', COM (2001) 727, 5 December 2001.

21 The five came from DGs Competition, Justice and Home Affairs, Trade and Internal Market, and the Press office.

22 For example, the Task Force is credited with the proposal that the President should become a *voting* member of the European Council (interview, 18 March 2003).

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information among *cabinets*, and not complemented by spontaneous internal debates at the administrative level.<sup>23</sup>

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. He set down a number of the main orientations, 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 sought explicitly to avoid debate on issues such as the weighting of votes in the Council, which he believed the Commission could not influence. He gave speeches to various audiences, 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 appeal to the '*principe existentiel*' of the Commission, and made extensive use of bilateral meetings with other members of the Commission, a context that was more amenable to the exercise of his authority as Commission President and that alerted him to concerns that were likely to be raised in the College.

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23 One exception was a document on aspects of the Union's foreign policy priorities, produced by a group of senior Commission officials at the initiative of Eneko Landaburu, Director-General of DG Enlargement, the content of which did not differ from the views expressed in the Commission's May 2002 communication (European Commission, 2002a).



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Inside the Convention, two Commissioners, Antonio Vitorino, and Michel Barnier

represented the Commission. Though they enjoyed some freedom, they had to be confident that the College and its President would support any positions they struck. Vitorino and Barnier were active participants in Convention proceedings. They were members of the Presidium, contributed actively to plenary debates, and attended the informal meetings that brought together ‘movers and shakers’ within the Convention (Norman, 2003, 52). Vitorino, in particular, earned a positive reputation, emerging as ‘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.

While Commission preferences largely reflected the Commission President’s agenda, its intervention in the Convention was shaped by three factors: the novelty of the exercise, the Commission’s inexperience, and the presidential and ministerial logics that permeated the Commission. Although Prodi welcomed the new method of treaty reform, it was not obvious that the Convention would be advantageous for the Commission. Despite its status as one of the *composantes* of the Convention, the presence of a sympathetic majority within the Presidium,<sup>24</sup> and wide support on the Convention floor, the organisation and structure of the Convention did not offer to the Commission the kind of privileged access that it normally enjoyed in IGCs. Unlike IGCs, where it could look to the Council Secretariat, Council Presidency or individual member states to provide a conduit for its ideas or to push its agenda among representatives, the Convention presented the Commission with few equivalent possibilities. Moreover, the President of the Convention, Valéry Giscard d’Estaing, showed a

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24 Norman (2003, 161) puts the figure at eight of the twelve.

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general hostility towards the Commission from the outset and particular disdain for Prodi's

stated ambition that it should become the government of Europe (Norman, 2003, 29).

Furthermore, it was not at all clear that the Commission as an essentially technocratic organization could perform effectively in respect of an explicitly political task or comfortably in an open forum, even when it had called for a Convention on the grounds that it would make the treaty reform process more transparent and invest it with greater legitimacy by involving a wider circle of participants than the traditional IGC method (see below). The future of Europe debate was a far cry from the IGCs of 1985 or 1991, where under the leadership of Delors the Commission had been able to assume a leading role in the re-launch of integration: framing and drafting legislation, providing advice, brokering compromise, and mobilising winning coalitions. In an IGC, the Commission had to persuade and win the confidence of national governments. It did not have to espouse a vision of Europe or rhapsodise about the values that underpinned it, but could win the day by advancing technical solutions to national problems.

That strengthening and updating the 'Community method' would best serve the EU was the message that the Commission President sought to put across in speeches inside and outside the Convention. Prodi knew, however, that his views were not universally supported within the College, which made him reluctant to debate strategy there. Yet their daily involvement in the Convention gave Barnier and Vitorino's a clearer idea of what was negotiable.

However, it was the Commission President's viewpoint that prevailed in the three main documents presented to the Commission. While the first two could be considered to set forth the Commission's preferences, the third was Prodi's personal project (see table 1). None of the texts had an impact on Convention proceedings. In fact, they underlined its

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ineffectiveness. Their timing was poor, their content problematic and, in the case of the second and third, their presentation disastrous. Even its supporters considered that the Commission's proposals were overly ambitious and out of step with the discussions in the Convention. The knowledge that the College was divided not only on key issues concerning the future of the Union, such as how foreign policy should be managed, but also on internal matters such as its own size and composition, further ensured its marginalization.

The first text, 'A Project for the European Union', the Commission's first major intervention was submitted to the Convention in the spring of 2002 (European Commission, 2002a). It focused on three policy areas (economic and social development, freedom, security and justice, and foreign policy), but also addressed broader constitutional issues, such as the form the treaty should take, how the EU should exercise its powers, and respect for principles of subsidiarity and proportionality. In their discussion of the draft, Commissioners had divided along ideological lines on the provisions relating to economic and social development, while on foreign policy a significant minority, including the member of the Commission most directly concerned, had opposed the proposal to merge the functions of High Representative and Commissioner for External Relations.<sup>25</sup> The result was a text, which, as one Task Force

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<sup>25</sup> 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, on the basis of the impact of the report of the working group chaired by Jean-Luc Dehaene, that the idea had gained broad support in the Convention. It was also believed that neither Aznar nor Blair would oppose the proposal in the endgame (interview, 18 March 2003).

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member admitted, 'was not very good'.<sup>26</sup> The Commission presented its second paper in

December 2002 (European Commission, 2002b; 2002c). Again, it was known that the

College was divided, though this time along national lines, turning the College into

'something of an IGC'.<sup>27</sup> The proposal, originating from Commissioners Lamy and Barnier,

and supported by Prodi, that the Commission President be elected by the European

Parliament, proved particularly divisive during the brainstorming session that took place in

late September 2002. This was the main expression of ministerialism in the College, but one

that was focused on objections to Prodi's preferred vision.

Whereas its first two interventions were official Commission communications, discussed and

adopted by the College, the third – the so-called 'Penelope' document -- was personally

identified with the Commission President (European Commission, 2002d). The hope had

been that, by producing a full draft Constitution as the Convention moved into its drafting

phase, the Commission could steer proceedings in a favourable direction. Prodi calculated

that if the Commission could mobilise sufficient support among the *conventionnels* for its

draft, it would become difficult for the member states to disregard it. Thus, during the

Convention's 'listening phase', Prodi convened a small group of trusted officials, meeting in

secret over a five-week period, to draw up a full text.<sup>28</sup> The 'Penelope' project illustrated

Prodi's unwillingness to share a key task with his colleagues, particularly in view of his

earlier experience of trying to persuade the College to support his preferred vision.

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26 Interview with Task Force member, 18 March 2003.

27 Interview with Task Force member, 18 September 2003.

28 However, the group kept in touch with the Task Force, and Barnier and Vitorino knew of its existence

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Ultimately, though, it proved a double embarrassment for the Commission President. While the very existence of the draft infuriated Giscard, several Commissioners, informed about the document on the eve of its presentation in December 2002, made little attempt to conceal their anger that the College had been kept in the dark.<sup>29</sup> Moreover, a copy of the text had been leaked to *Le Monde* and newspapers in Germany, Italy and Spain only hours before the formal adoption by the College of its official communication. The near-simultaneous appearance of two different texts was seriously damaging to the Commission, and the sheer incompetence of the Penelope episode seriously undermined its credibility.

Despite its failure to influence debate with either of its December texts, the Commission continued its efforts into the drafting stage and was especially vociferous with respect to institutional reform. It was particularly exercised by three issues: the creation of permanent Presidencies for the European Council and other Council formations; the *locus* and powers of the EU Foreign Minister; and the composition of the College.<sup>30</sup> Yet, it was precisely during the closing stages of the Convention that the Commission was most out-of-touch with

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29 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). The same official described the reaction of Prodi's colleagues as an exhibition of 'betrayed husband syndrome'.

30 See, e.g. CEC Press release, IP/03/563, 23 April 2003.

Early version of Kassim, Hussein, and Dionyssis G. Dimitrakopoulos. 2007. The European Commission and the future of Europe. *Journal of European Public Policy* 14 (8, special issue on Political agency in the constitutional politics of the European Union edited by Derek Beach and Thomas Christiansen):1249-70. discussions on the floor and inside the Presidium.<sup>31</sup> The text of the draft constitutional treaty, adopted at the European Council in Thessaloniki, underlined the extent to which the Commission had been unable to mobilise support for its positions (see Dimitrakopoulos and Kassim, 2005).

### **From the Convention to the IGC**

Although praising the achievements of the Convention and welcoming the many improvements made by the draft Constitutional Treaty over the existing treaties,<sup>32</sup> Prodi declared himself 'happy, but not enthusiastic' about the outcome. In fact, there was a long list of provisions with which he expressed dissatisfaction. This included: the survival of the unanimity rule in the Council for several policy areas; the composition of the Commission, comprising one Commissioner per member state, but divided into fifteen voting members

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<sup>31</sup> Task Force officials expressed despair at the emergence of two chains of command – one from the Commission President, the other from the two Commission *conventionnels* – which prevented the Commission from speaking with one voice (interview, 31 March 2004). One observer commented 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.

<sup>32</sup> These included the incorporation of the Charter, the development of a single legal personality, the generalisation of co-decision, the introduction of the Community method in the area of freedom, security and justice, the creation of a EU foreign minister, and an increased military capacity.

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selected on the basis of simple rotation between the member states and a non-voting member from each of the other member countries appointed by the Commission President; the impact of a permanent President of the European Council on the EU's institutional balance; failure to extend the Community method into economic governance; and the non-inclusion of a clause that would enable the Constitution to be adopted by a simultaneous single majority vote rather than varying and non-synchronised national methods.

Prodi continued to express reservations about the draft treaty throughout the Italian Presidency in the second semester of 2003. He urged, for example, that the creation of a EU foreign minister should not be used as a cover to 'intergovernmentalise' external action and argued that any External Action Service created to support the EU Foreign Minister should not be separate from existing institutions. He questioned why the policy-related provisions of the founding treaties had not been revised, despite the fact that some had been superseded and were effectively redundant. More generally, he warned the Heads of States and Governments to avoid, on the one hand, treating the Convention proposals as sacrosanct and, on the other, allowing everything to be re-negotiated. However, as Table 1 shows, there was little movement in the direction favoured by the Commission during this period. Although Prodi applauded the Irish Presidency's success in securing agreement on a text in July 2004, the final draft of the Constitutional Treaty at best gave only partial satisfaction to the Commission.

## **THE EUROPEAN COMMISSION, RATIFICATION AND AFTER**

Though it lacks a formal role, the Commission is not completely detached from treaty ratification. It monitors the process from the signing of the Treaty to the final decision on its

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implementation – a function performed by the Institutional Affairs division of the Secretariat

General. The Commission observes the progress of ratification closely, even re-scheduling business when it fears that discussion produce adverse effects in a particular member state.

The College's decision to delay presentation of the second (and main) Commission communication to the Convention was motivated, for example, by a concern to avoid any negative effect on the second Irish referendum on the Treaty of Nice.

Moreover, in the climate of heightened national sensitivity that surrounds ratification, action by the Commission or by leading Commissioners may become a factor in domestic debates.

Almost any pronouncement relating to the fate of the Union on the Commission's part will be construed in some quarter at the national level as unwelcome interference. During the ill-fated ratification of the Constitutional Treaty, for example, the Barroso Commission found itself featuring in the referendum debate in France. A public TV channel, France 2, had invited the newly appointed Commission President to appear on its flagship programme, '100 minutes pour convaincre', but, according to the French press, the interview was cancelled following the intervention of the Hôtel Matignon acting on behalf of the Elysée Palace.<sup>33</sup> The French President, who according to reports had been irritated by the Commission's insistence only months before the French referendum on pursuing the Bolkestein draft directive on the freedom of services -- a deeply unpopular proposal in France -- was apparently fearful of the consequences of a media appearance by a neo-liberal Commission President, particularly when the 'no' camp had made opposition to the Anglo-Saxon model of capitalism a central plank of its campaign.

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33 See *Libération*, 1 April, 2005, p. 33; *Libération*, 14 April, 2005, p. 36; *L'Express*, 4 April 2005, p. 51; *La Croix*, 1 April, 2005, p. 2.



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Whatever Barroso's personal political beliefs, the episode reveals the difficulties that the Commission faces in trying to participate in a broader political debate that concerns it directly. The Commission's predicament is further illustrated by an episode that followed in the wake of the negative referendum results. When Barroso stated publicly that the process of ratification should continue because, as he put it in an interview with the BBC, the French and the Dutch did not have the right to decide the fate of the constitutional treaty on behalf of other member states, it was read in some quarters as further evidence of the gulf between the citizens of Europe and 'Brussels'. Yet his comments are better interpreted as a call for reflection in line with other statements, where he has urged 'caution'.<sup>34</sup> Moreover, it seems that the (in)famous 'plan B', invoked by 'No' campaigners in the run-up to national referenda, either has never existed, at least within the Commission, or if it did exist, was so unsuited to the political climate, that the Commission did not dare to out it.

National political leaders, meanwhile, were distinctly less ambivalent. Some argued that the ratification process should continue, others pronounced the last rites.<sup>35</sup> The Commission's reticence underlines the extent to which the organisation not only has foregone the leadership role to which it once aspired, but also reveals an awareness of its own lack of authority.<sup>36</sup> Its

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34 See *Financial Times*, 'Barroso appeals for calm as EU agonises over treaty', 1 June 2005.

35 Schröder, for example, has advocated its continuation, while Blair has been distinctly more reticent (see *Financial Times*, 'Blair and Schröder at odds on EU treaty', 3 June 2005).

36 Reports of the meeting of the College on the day of the Dutch referendum suggest that a number of Commissioners warned of the damage that would be done if the ratification

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mission and the way that it has come to be perceived, it would seem, has deprived the

Commission of the legitimacy to participate openly in a debate that calls explicitly for value judgments. In the case of the Barroso Commission, which is characterised by a level of ideological coherence, which is unprecedented, this has been especially noticeable. From its earliest days when it clashed with the newly elected EP, the Barroso Commission has been continuously involved in ideological skirmishes. Its very partisanship arguably reduced its ability to participate in ratification-related debate.

### **After the referenda: a procedural response to a substantive issue?**

Faced with the crisis created by the outcome of the French and Dutch referenda, the Commission sought to provide a procedural response to the substantive issues raised by the post-2000 constitutional process. The key point made in its 'Plan D' was that 'the period of reflection should, in a first stage, be used for a broad and intensive debate on European policies. Any vision of the future of Europe needs to build on a clear view on citizen's needs and expectations' (Commission of the European Communities 2005, p. 2). Acknowledging that any debate during the period of reflection period would inevitably have local and national characteristics, the Commission highlighted three important themes of common interest that might feature: economic and social development in Europe; 'feeling towards Europe and the Union's tasks', in essence, the distribution of responsibilities between the Union and its constituent parts; and Europe's borders and its role in the world (Commission of the European Communities 2005, pp. 5-6).

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process was allowed to continue (see *Financial Times*, 'Blair and Schröder at odds on EU treaty', 2 June 2005).

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In addition, the Commission put forward its own ideas, which included strengthening links between national parliaments and individual Commissioners, and creating a 'European roundtable for democracy'. This is noteworthy, because, while it showed that the Commission remained attached to the notion that its responsibility is to provide a procedural response to a substantive issue, it revealed that it has at least begun to understand that the post-2000 debate is much more about values and ideas than it is about technocratic 'fixes'. The reference to economic and social development, 'globalisation' and its implications, unemployment, social protection, the borders and the Union's role in world affairs (Commission of the European Communities 2006) directly addressed the question of the *kind* of Europe, and indeed, what kind of wider world, that Europeans may want to live in rather than with a response to the question, apparently outdated, of whether more or less integration was desirable. Moreover, the Commission's explicit recognition, even if somewhat timidly expressed, that the Union operated in a climate of public dissatisfaction with, and hostility to, politics is noteworthy. It revealed that the crisis of confidence afflicting European political elites in the early twenty-first century extended to the Commission itself. In other words, though it wanted to move the constitutional process forward, the Commission recognised that it is part of the problem to which it must propose a solution.

## **CONCLUSION**

The Commission was not an influential player at the Convention, in the negotiation of the Constitutional Treaty or in the ratification process, but was its lack of impact evidence of a secular decline, had it simply failed to respond to the challenge of a new method of treaty reform, or was it forced to pay the price of strategic mistakes? All three factors contributed to the Commission's ineffectiveness. The Prodi Commission undoubtedly confronted a more difficult environment than either the first or second Delors Commission, not least because,

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since Maastricht, member states have sought determinedly to limit the Commission's power, to strengthen the European Parliament, to enhance the role of intergovernmental institutions and, while not abandoning the Community method, to circumvent the Commission (and, where possible, the European Court of Justice), by developing alternative modes of decision making (Kassim and Menon 2004). The challenge to its historic centrality was only compounded by the humiliation that surrounded the resignation of the Santer Commission. Furthermore, 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 was strongly disadvantaged by the Convention setting, despite the many friends it had in the Presidium and on the Convention floor. The Commission found it difficult to engage in open, political debate or to operate as effectively as national or parliamentary representatives.

Despite these disadvantages, the Commission's difficulties at the Convention derived mainly from poor strategic choices, divisions within the College, and organizational incoherence. In other words, its ineffectiveness was due to contingent factors associated with leadership in this particular episode of reform and should not be interpreted as either evidence of a general inability to influence treaty reform, *contra* Moravcsik (1999), or of structural weakness or secular decline. Presidentialism and ministerialism can co-exist at the level of normal policy making, but tend to lead to incoherence when 'high politics' are at stake. The Commission was crucially weakened by tactical errors, both large (the 'Penelope' debacle) and small (for example, the decision to back small states on the size of the Commission and strengthening of the EU presidency rather than to broker a compromise between large and small states (Norman, 2003, 266)), as well as poor co-ordination, which resulted in the sending of mixed,

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and sometimes conflicting, messages, and inconsistency.<sup>37</sup> The Commission also failed to cultivate good relations with the larger member states – a mistake that is unlikely Delors would have made.<sup>38</sup> Most serious, however, was a lack of imagination and an inability to be flexible, exemplified by the decision to respond to the novel setting of the Convention by recourse to its institutionalised myth, ‘the Community method’. Appeal to the Commission’s founding idea may have strengthened the Commission President’s hand in preference formation and created consistency across Commission preferences, but, as a strategy for participation in a debate on the future of Europe, it condemned the Commission to the sidelines.

The Commission’s lack of effectiveness after the Convention is less attributable to strategic errors on the part of the leadership, however. The transition from the Convention to the IGC 2003-2004 and the organisation of the latter deprived the Commission of its usual channels of influence. Similarly, once the ratification process had begun, the ability of the Commission to influence proceedings was seriously diminished. Rightly or wrongly, ratification is regarded as a strictly domestic process. The danger for the Commission is that national political actors may interpret any pronouncements that are made by its members during ratification as unwelcome or illegitimate. Arguably, the stalled ratification process made the Commission’s position even more precarious. In a period of indifference and even hostility to the European

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37 One example concerned the size of the College, where the Commission’s initial preference for a small Commission gave way to support for the principle of one Commissioner per member state

38 See Endo 1999, 153-66.

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project, the Commission found itself in a near-impossible position. On the one hand, its mission is to build Europe. This is the role given to it in the founding treaties. Its responsibility is to bring forward proposals to advance integration. On the other, when the negative results of the French and Dutch referenda were interpreted as a veto on the further development of the Union, it ran the risk that any intervention on its part would be condemned. The difficulty faced by the Commission is that, even though under the Presidency of Jose Manuel Barroso it has grasped that the debate about the future of Europe is essentially political, it is seen as part of the problem and is therefore discounted as a possible source of solutions to the Union's impasse.

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