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BRIEFING
ON

THE IGC AND THE DEMOCRATIC NATURE OF THE UNION

The Briefings have been drafted by the Parliament Secretariat Task Force on the Intergovernmental Conference. Their purpose is to gather together, in an organized, summary form, the proposals and suggestions which the authorities in the Member States, the Union's institutions and specialist commentators have put forward on the issues likely to be on the IGC/96 agenda.

Briefings will be updated as negotiations proceed.

Already out:

1. The Court of Justice
2. The Commission
3. The Court of Auditors, ESC and COR
4. Differentiated integration
5. The common foreign and security policy
6. The role of the national parliaments
7. The hierarchy of Community acts
8. Codecision procedure
9. CJHA
10. European citizenship
11. WEU, security and defence
12. Public services
13. Social policy
14. The European Parliament
15. The European Council
16. The Council of the European Union
17. The budget and the IGC
18. The IGC and transparency
19. Subsidiarity and the allocation of powers
20. The Union's legal personality and external representation
21. Commitology
22. Fundamental rights
23. The IGC and the democratic nature of the Union

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**BRIEFING
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I. SUMMARY

More democracy, or 'the democratization' of Community acts, is the requirement set out in all the texts of the Institutions of the Union and the governments of the Member States concerned with the 1996 IGC. This demand is closely linked to the request to improve the transparency¹ and the efficiency of the Union, essential objectives of a revision of the Maastricht Treaty.

Although there is unanimity on the need to eliminate the Union's democratic deficit, there are differences of opinion as to the areas in which democracy is inadequate as well as to the means that must be used to reduce the lack of democracy. Accordingly, the degree and intensity with which this objective is pursued are entirely different.

For example, the United Kingdom seeks greater representativeness in the voting in the Council of Ministers and greater participation by national parliaments in the Union's legislative process. On the other hand, according to the opinion of the British Government, an extension of the EP's powers is unlikely to strengthen democracy.

This view seems to be shared, at least partially, by France. The French Government is more likely to stress the strengthening of the Council of Ministers and the participation of national parliaments in the Union's legislative process rather than on any extension of the EP's powers.

On the other hand, most of the other countries, particularly Germany, Austria and Italy, call not only for an improvement in the decision-making procedures in the Council, e.g. majority voting, but also a strengthening of the EP, above all by improving the codecision procedure and its extension, for example, to the third pillar of the TEU. The Netherlands advocate more scrutiny by the EP, with particular regard to the budget. Germany, Denmark and Sweden are even prepared to grant the EP a genuine right to propose legislation. A minority of Member States, such as Denmark and the Netherlands, call for the EP to be given the power to dismiss one or more Commissioners without causing the entire Commission to resign.

As far as the Reflection Group is concerned, strengthening democracy is bound up with the challenge to bring the Union closer to the European citizen and to ensure respect for fundamental rights.

At institutional level, in its progress report, the Reflection Group comes out in favour of simplifying and reducing the number of legislative procedures. Accordingly, monitoring of their governments by national parliaments must be

¹ See Briefing No 18: the IGC and transparency of 25 September 1995.

strengthened and forms of cooperation with Community institutions developed for subjects falling within the remit of the Union.

II. THE AGENDA FOR THE CONFERENCE

The 'democratization' of the European Union is one of the fundamentals of the agenda for the 1996 IGC. Article 189b(8) of the Treaty establishing the European Community lays down that 'the scope of the [codecision] procedure ... may be widened on the basis of a report to be submitted to the Council by the Commission by 1996 at the latest'.

Accordingly, the Corfu European Council of June 1994 mandated the Reflection Group to consider and draw up ideas concerning the provisions of the TEU scheduled for revision as well as other possible improvements in a spirit of democracy and openness.

This mandate was confirmed and spelt out in detail by the European Council Summit in Cannes (26 and 27 July 1995) which laid down certain priorities to be dealt with by the Reflection Group, including the need to strengthen the efficiency, the democratic nature and the transparency of the Institutions.

More democracy, together with greater transparency and efficiency of the Union, therefore appear as major demands which will determine the programme for the 1996 IGC.

III. SOURCES

A. INSTITUTIONS OF THE UNION

1. EUROPEAN PARLIAMENT

REPORT ON THE FUNCTIONING OF THE TEU (17 May 1995) (A4-0102/95):

'The European Parliament,

- B. whereas at the 1996 Intergovernmental Conference the European Union will have to face up to a three-fold institutional challenge:
 - the need to tackle a democratic deficit that a growing number of European Union citizens find unacceptable, ...
- C. whereas the major deficiencies under the Treaty on European Union are:
 - the lack of openness and full democratic accountability of the Council, notably when deciding in legislative matters, ...

Adopts the following guidelines:

I. Objectives and policies of the Union ...

- 3.(iv) Democratic accountability for matters which do not form part of the first pillar must be shared between the European Parliament and the national parliaments. ...

Stronger and more democratic Union Institutions

23. Democratic control of EU matters would be best achieved by partnership between the European Parliament and the national parliaments. ...
31. ... and the democratic role of the European Parliament before, during and after the negotiating process [concerning international agreements] should be reinforced ...

V. Follow-up measures ...

- 40.(ii) In order to ensure that the process of revision in 1996 is more transparent and democratic, the representatives of Parliament in the Reflection Group should stress the need of a decisive change in the method of the Treaty revision and of the full involvement of Parliament both in the negotiating phase as well as in the ratification process; ...'

2. COMMISSION

REPORT ON THE OPERATION OF THE TEU (10 May 1995) (SEC(95)731 final)

Preface

Stresses that '... the Union must act democratically, transparently and in a way people can understand; ...

The Commission is delighted that the Union's democratic legitimacy has been strengthened. ... In addition to democratic control at the level of the Union, we need to find a way to involve national parliaments more directly and visibly ...'

Part one:

DEMOCRACY AND TRANSPARENCY IN THE UNION

... 'Consequently, the Treaty has to be assessed primarily in terms of the concept of democratic legitimacy ...'

With regard to justice and home affairs, the Commission supports greater control by the European Parliament. 'Since questions in the area of justice and home affairs are likely to have a direct effect on individuals' basic rights and public freedoms, they actually warrant a greater degree of parliamentary control ...' (30)

The Commission continues:

... 'Any assessment of the institutional response to the requirement for legitimacy has therefore to be positive. However, there has also to be a reservation concerning the weakness, not to say the absence, of democratic control at Union level in the fields of activity where the intergovernmental process still holds sway'. (39)

... 'The Union has functioned more democratically, mainly because of the enhanced role played by the European Parliament. Its approval of the Commission strengthens the Commission's legitimacy. The new codecision procedure has proved operational and effective ... It contains the principal ingredients of a balanced legislative regime'. (171)

3. COUNCIL

COUNCIL REPORT ON THE FUNCTIONING OF THE TEU
(5082/1/95 rev.1(7) of 6 April 1995)

A. Democracy and efficiency

16. The Council notes that 'the changes made by the TEU reflect the desire to reinforce the democratic legitimacy of the institutional system ...

The new provisions introduced by the TEU, especially those on increasing the powers of the European Parliament, sought to establish a firmer basis for the Union's democratic character. The European Parliament's role in this context is an essential one; but democratic legitimacy must be the expression of the Union's institutional system as a whole'. (16)

Further on it states:

'The Council also helps to ensure respect for the democratic functioning of the system, insofar as each of its members is politically responsible to the national parliament before which he answers for the positions adopted at Union level'. (18)

4. COURT OF JUSTICE

REPORT OF THE COURT OF JUSTICE ON CERTAIN ASPECTS OF THE APPLICATION OF THE TEU
(May 1995)

The report of the Court restricts itself to considerations concerning the functioning of the Union at the legal level.

As regards democratization, it is interesting to note that the Court of Justice sees no technical objection to the amendment of Article 173 of the TEU so that the European Parliament might bring actions for annulment without having to establish an interest. Furthermore, the Court does not oppose the granting to the European Parliament of the right to request the opinion of the Court of Justice, pursuant to Article 228(6), on the compatibility of an envisaged international agreement with the TEU.

The Court doubts, however, whether it would be appropriate to remove to the judicial arena disputes which could be settled at a political level.

5. COMMITTEE OF THE REGIONS

OPINION OF THE COMMITTEE OF THE REGIONS ON THE REVISION OF THE MAASTRICHT TREATY
(CdR 136/95 of 20 April 1995)

The Committee of the Regions 'which is a central pillar of democratic legitimacy' is committed to safeguarding and strengthening the principle of subsidiarity.

'Subsidiarity in general ... strengthens democratic legitimacy in as much as it avoids the creation of an excessively centralized European power disconnected from the problems of ordinary citizens; ...'

'Furthermore, the committee ... considers ... that the revision of the Treaty should be seen as an opportunity for deepening Community cooperation in the fields of justice and home affairs ... as well as for developing the concept of European citizenship, by incorporating a list of fundamental citizens' rights' in the Treaty.

6. ECONOMIC AND SOCIAL COMMITTEE

THE 1996 IGC AND THE ROLE OF THE ECONOMIC AND SOCIAL COMMITTEE
(CES 273/95 fin. of 26 April 1995)

According to the opinion of the Economic and Social Committee, the programme for the 1996 IGC should have as its objective:

- 'the decision-making close to the citizens ... involving them and allowing them to monitor the implementation of policies ... (5.1)
- 'a more democratic structuring of the existing Institutions, which implies ...:
 - . increased legislative power for the EP through an extension of the codecision procedure;
 - . development of the Commission's role as an executive organ of Community interest by introducing procedures which underpin its democratic legitimacy ...' (5.3);
- 'democratization of the process of economic and monetary union through the wider involvement ... of democratic and social professional representative bodies (EP and EJC respectively) ...' (5.5);
- '... extending qualified majority voting in social matters' (5.7);
- 'the definition of a legal framework establishing genuine EU citizenship, capable of answering European citizens' needs for identity and democratic participation'. (5.8);
- 'Giving the Community responsibility for justice and home affairs policies which are too important ... to be confined to intergovernmental sphere, without democratic checks ...' (5.9).

7. INTERINSTITUTIONAL DECLARATION ON DEMOCRACY, TRANSPARENCY AND SUBSIDIARITY

The agreements adopted on 25 October 1993 by the Council, Commission and European Parliament are aimed at implementing the Treaty on European Union 'and strengthening the democratic' transparent nature of the EU'.

Amongst other things, they provide for the Council to open some of its debates to the public, the publication of the outcome of debates and the common positions adopted within Council, broader consultations by the Commission, through recourse to Green Papers and White Papers, the publication of its work and legislative programme in the Official Journal, and improving information of the public and contacts between the Commission and individual citizens.

Given that the agreements 'may be added to or amended ... at the initiative of any of the three Institutions', we must regard the declaration as dynamic and evolutionary in nature with a view to the revision of the TEU.

8. PROGRESS REPORT FROM THE CHAIRMAN OF THE REFLECTION GROUP ON THE 1996 IGC (SN 509/1/95 rev. 1 (Reflex 10))

In the progress report published by the chairman of the Reflection Group on the 1996 IGC on 1 September 1995, the desire to make European integration an undertaking for citizens is deemed to be one of the Union's major challenges. 'Ways must be found of improving citizens' confidence in the European institutions, the reform of which must be subjected to the test of more democracy, more efficiency, more solidarity and more transparency ...' (page 7).

The Group takes the view that there is an urgent need to ensure full observance of fundamental rights, both in relations between the Union and its Member States and between states and individuals. It takes the view that an article should be inserted into the Treaty 'providing for the suspension of its rights or even the expulsion of a Member State' which infringes fundamental human rights or basic democratic principles.

As regards the role of the European Parliament, there are fairly substantial differences of opinion. Although most of the Group would like to see legislative procedure simplified and restricted to three, i.e. consultation, codecision and assent, there is no agreement on the field of application of the codecision procedure.

In the area of the Union's external action, the majority view is that the EP cannot play the same role as for Community legislation. Although some members of the Group take the view that the EP must be involved more closely 'in determining the broad lines of the CFSP and in handling the Union's external affairs', there are others who hesitate to give to the EP powers which even national parliaments do not enjoy in this area.

On the other hand, there is agreement on the need to strengthen the control of national parliaments over their governments in areas covered by the powers of the Union, which implies developing forms of cooperation with the Community institutions.

The issue of democracy also arises for the Reflection Group as regards the number of Commissioners and the membership of the Commission. The Group sees two solutions without specifying which option it prefers:

- retaining the current system: at least one Commissioner per Member State, two Commissioners for the larger countries;
- reducing the number of Commissioners, corresponding to the number of really necessary portfolios (between 12 and 15).

As regards voting in Council, there is a consensus within the Group that unanimity should be retained for the amendment of primary legislation requiring ratification by national parliaments and, in some cases, the assent of the European Parliament.

As regards secondary legislation, most members are in favour of an extension or even the generalization of qualified majority voting to prevent the paralysis of the enlarged Union when taking decisions.

B. GOVERNMENTS OF THE MEMBER STATES

1. GERMANY

In the government declaration made by Chancellor Kohl¹ in November 1994, safeguarding democratic legitimacy was referred to as one of the four objectives of institutional development and of the 1996 IGC.

Similarly, Mr Klaus Kinkel, Foreign Minister, said on 21 February 1995² that the IGC must be based on the principle of the proximity of European decisions to individual citizens, transparency of procedures and democratic control.

According to a note from the Foreign Ministry on the initial reflections concerning the positions of the Federal Government dated 24 April 1995, at the 1996 IGC Germany will try to attain as one of its major objectives significant improvements in the field of the democratic legitimacy, efficiency and transparency of the European Union. With this in mind, Germany will support greater participation by the European Parliament in the decision-making process, in particular through an extension of the codecision procedure.

Furthermore, all the political groups in the government coalition agree that the democratic nature of the Union must be strengthened. Accordingly, in a basic document entitled 'Towards progressive integration of Europe, positions of the FDP Group in the Bundestag on European policy', the FDP proposes as regards the democratization of the EU:

- a commitment to introduce a European constitution setting out a list of fundamental rights and the definition of the powers of the Union on the one hand and of the nations and the regions on the other;
- strengthening of the European Parliament by the right to propose legislation and codecision in all legislative and budgetary procedures of the Union;
- elections to the EP by proportional representation;
- improved cooperation with the national parliaments through joint committees;
- appointment of the President of the Commission and nomination of the Commissioners by the European Parliament.

The CDU, too, is in favour of enhancing the role of the EP. According to guidelines which will be submitted for approval to the Party Congress in October 1995, the EP should play the role of a legislative chamber with the same rights

¹ Bulletin of the Federal Government Press and Information Office No 108, 14 November 1994, pp. 990 and 991.

² Agence Europe, 20 February 1995.

as the Council. In this context, the document comes out in favour of the simplification of legislative procedures, particularly the codecision procedure, and for greater EP involvement in the fields of intergovernmental cooperation.

2. AUSTRIA

In the guidelines concerning the probable topics for the 1996 IGC, the Austrian Government comes out in favour of strengthening the democratic legitimacy of the European Union. To that end, it supports cooperation with national parliaments and the extension of the European Parliament's rights of codecision and scrutiny.

3. BELGIUM

The policy from the Government to Parliament concerning the 1996 IGC, approved by the Council of Ministers on 28 July 1995, sets out several elements designed to strengthen the democratic nature of the Union: e.g. the general application of the European Parliament's right of codecision by the extension of its scope to all instances where decisions are taken by qualified majority. At all events, the Government will ensure that democratic scrutiny by the European Parliament is strengthened, since that constitutes the best method of eliminating the democratic deficit.

4. DENMARK

To date, no official document has been published on the positions of the Danish Government. However, the 1996 IGC is the subject of a debate within the political groups and the Folketing.

As regards institutional reforms, most political forces are in favour of the extension of qualified majority voting in Council. The European Parliament should be granted the right to propose legislation at least in those areas where the Council acts by a qualified majority. The European Parliament should also be granted the right to pass a vote of no confidence in Commissioners on an individual basis. Finally, the political groups hope that collaboration between the European Parliament and national parliaments will be strengthened.

5. SPAIN

The document entitled 'The 1996 Intergovernmental Conference, basis for reflection', published in March 1995, reflects very clearly the will of the Spanish Government to endow the European Union with more democracy, transparency and efficiency and to submit these demands to the 1996 IGC. The 1996 reform will not properly fulfil its task if ordinary citizens are not involved in the process and if no measures are taken to remedy inadequate democracy, the absence of transparency, and complexity, faults which are blamed on the current Treaty.

The Spanish Government favours cooperation between the European Parliament and the parliaments of the Member States in the fields covered by the second and third pillars and advocates the creation of joint committees by institutionalizing existing informal contacts.

6. FINLAND

On 14 February 1995, the government submitted to the Finnish Parliament its report on the guidelines concerning Finland's European policy. As regards the Community institutions, it wants to maintain the current system, i.e. that the Council acts on a proposal from the Commission.

With respect to the second and third pillars, Finland wishes to pursue intergovernmental cooperation. However, it is prepared to grant the Union supplementary powers and to support improvements in decision-making procedures, provided that the interests of the smaller countries are respected.

According to the opinion of the Finnish Government, the European Parliament is the body which must approve Community decisions, but it cannot replace national parliaments in their legislative functions.

7. FRANCE

After the presidential elections, the new government has not yet published its official position on the 1996 IGC. According to declarations made during the election campaign, we may expect the French Government to support a strengthening of the power of the Council of Ministers and closer association of the national parliaments in the drawing up of the Union's legal acts.

8. GREECE

In an initial document entitled 'Towards a Europe of citizens - democracy and development, memorandum for the 1996 IGC', submitted in January 1995, the Greek Government sees three challenges which justify the revision of the Treaty:

- strengthening the democratic nature of the Union;
- strengthening democratic legitimacy in the decision-making process at Community level;
- and the forthcoming enlargement of the Union.

As regards the objective of improving democratic control, the Greek Government supports the extension of the powers of the Committee of the Regions, of the Economic and Social Committee and of the Ombudsman. According to the Greek Government, the European Parliament should be granted an extension of its remit and its political powers to ensure better scrutiny of the Commission and the other institutions.

At institutional level, according to the conclusions of its interministerial committee of 7 June 1995, the Greek Government supports equal participation by all the Member States. To emphasize the democratic nature of the Union, on the one hand the role of the EP and the national parliaments must be strengthened, and on the other hand, cooperation must be improved in the field of home affairs and justice.

9. IRELAND

No official Irish position concerning its views on the 1996 IGC has been published to date. The Irish Government is currently drawing up a White Paper on that country's external policy, emphasizing in particular the 1996 IGC.

According to statements by the Foreign Minister, Mr Spring, and the Minister for European Affairs, Mr Mitchell, it seems that Ireland will support an increased role for the EP, which would imply the extension of codecision to new areas of application.

10. ITALY

The Italian Government has published three notes concerning the 1996 IGC:

- a memorandum by the Foreign Minister, Antonio Martino, of 12 October 1994,
- a communication of 23 February 1995 on the guidelines for its external policy,
- a communication of 23 May 1995 on the IGC and the revision of the Treaty of Maastricht.

In the documents, the Italian Government comes out in favour of general application of majority voting, on condition that the weighting of votes within the Council is amended. To ensure greater democratic legitimacy, it proposes voting by double majority, of the Member States and of their population.

Democracy for the Italian Government, means above all granting greater legislative powers to the European Parliament by simplifying procedures through a hierarchy of acts. Acts of a legislative nature should be adopted in the Council by majority vote and should be the subject of codecision of the European Parliament.

Democracy also signifies, according to the opinion of the Italian Government, better involvement of the national parliaments in Community policy by more frequent contacts and exchanges of information with the European Parliament.

Finally, the Italian Government recommends that the work of the 1996 IGC should continue in permanent contact with citizens and organs representing them.

In a joint declaration of 15 July 1995, the Foreign Ministers of Italy and Germany confirm their objective of granting the EP the right of codecision in all legislative areas and simplifying the decision-making procedures. The EP should also be granted a more significant role in the Union's external and security policy.

11. LUXEMBOURG

On 30 June 1995 the Luxembourg Government published its memorandum on the 1996 IGC. A more integrated, more mutually supportive and more democratic Europe is the objective of the Luxembourg Government's approach at the 1996 IGC. In this connection, the government declares itself determined to explore all avenues so

as to ensure greater involvement of the Luxembourg Parliament in the European decision-making process.

According to the Luxembourg Government, the institutional balance has proved its worth. It must be maintained overall, subject to a number of adjustments made to ensure efficiency and democracy.

As regards the European Parliament, the Luxembourg Government envisages a two-fold reform: simplification of procedures, especially the codecision procedure, and reduction of the number of procedures to three: codecision, assent and consultation. The government is also prepared to extend the scope of the codecision procedure to all areas where the Council currently acts by a qualified majority.

12. NETHERLANDS

The Netherlands Government has submitted four memorandums with a view to the 1996 IGC, viz.:

- on the enlargement of the Union, possibilities and obstacles (14 November 1994),
- on cooperation in the field of external policy, security and defence (30 March 1995),
- on cooperation in the field of justice and home affairs (23 May 1995),
- on the institutional reform of the European Union (12 July 1995).

According to the Netherlands Government, most decisions emerging from European cooperation in the area of justice and home affairs directly affect the individual rights of citizens. That is why democratic control of such decisions is required. The authors of the note criticize the fact that such control is impossible, or at least incomplete, if access to administrative information is not guaranteed. To improve the lack of information and involve the European Parliament more in the decision-making process, the note proposes that the Treaty be supplemented by a provision whereby any legislative proposal of a binding nature for Member States should be submitted to the European Parliament.

In the fourth memorandum concerning the institutional reform of the Union, there are two chapters which are devoted more specifically to democracy (3.2) and to the European Parliament (4.3). According to the Netherlands Government, there is still a democratic deficit, although it has been considerably reduced by the TEU, in particular by the right of codecision granted to the European Parliament. To eliminate this deficit, the Netherlands Government supports greater influence of the national parliaments on decisions of the Union and greater scrutiny of their implementation. The Netherlands Government advocates further that the European Parliament should be given the right to be consulted even on draft decisions requiring a unanimous vote.

As regards legislation within the first pillar, involving the European Community, the Netherlands Government would like to see an extension of the codecision procedure to replace the cooperation procedure which is deemed to be less satisfactory from the democratic point of view. Accordingly, it calls for the strengthening of the European Parliament's rights of control, with

particular regard to the justification and efficiency of expenditure within the framework of the European funds. The Netherlands Government will continue to demand that the European Parliament be granted powers to request the resignation of individual Commissioners, or several Commissioners, without that necessarily involving the resignation of the entire Commission.

13. PORTUGAL

The Portuguese Government has not yet officially published its reflections concerning the 1996 IGC. It is interesting to note what the Foreign Minister, Mr Durao Barroso, declared in October 1994 on the subject of the institutional reform of the European Union. According to him, it would not be acceptable for the European Parliament to be solely responsible for European legislation and, to confer democratic legitimacy on the European Union, the role of the national parliaments should be strengthened.

On 4 June 1995 in the 'Publico' newspaper, the Prime Minister, Mr Cavaco Silva, said that the revision of the TEU should imply simplification and rationalization of the codecision procedure and the extension of the powers of the European Parliament to cover drafts where the Council acts by a majority vote. The national parliaments should also play a more active role.

14. UNITED KINGDOM

To date, the British Government has only published one official document dated 2 March 1995. Although this document only refers in essence to issues concerning European security at the 1996 IGC, we may draw some conclusions from it which reflect the British position vis-à-vis the democratization of the Union.

As regards security policy, the British Government is in favour of a clearer and more efficient decision-making procedure, but stresses that decisions are and will be taken exclusively at intergovernmental level by consensus between sovereign states without any involvement of the European Parliament or the Commission.

In a speech given on 7 September 1994 at the University of Leyden (Netherlands), the Prime Minister, Mr John Major, came out in favour of a revision of the system of voting in the Council to take greater account of the contributions and populations of the Member States and so as to strengthen the democratic authority of the Council. Greater involvement of the national parliaments in the legislative process through new mechanisms would be another way of supporting the democratization of the Union. On the other hand, the European Parliament should be satisfied with its current powers; the extension of its powers would not be likely to eliminate the democratic deficit.

15. SWEDEN

Sweden has not yet published an official opinion concerning the 1996 IGC, and, according to Mr Helström, Foreign Minister, it is unlikely that the Swedish Government would adopt an official stance before the end of 1995. According to the declarations made by senior political figures, we may expect Sweden to attach great importance to transparency, including public access to official documents for ordinary citizens, which is at the basis of any democratic

control. Furthermore, as part of the legislative framework, the European Parliament should be given the right to propose legislation in all areas covered by supranational cooperation, which would strengthen democratic control within the European Union.

* * *

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