

EUROPEAN PARLIAMENT



Intergovernmental Conference Task-force

WHITE PAPER
ON THE 1996
INTERGOVERNMENTAL CONFERENCE

VOLUME I (ANNEX)
OFFICIAL TEXTS
OF THE EUROPEAN UNION INSTITUTIONS

PE: 41 L

34/125

THIS PUBLICATION IS AVAILABLE IN ALL THE OFFICIAL LANGUAGES OF THE EUROPEAN UNION.

POLITICAL SERIES: W-18

THIS COMPILATION WAS DRAWN UP IN JANUARY 1996 BY THE EUROPEAN PARLIAMENT'S DIRECTORATE-GENERAL FOR RESEARCH, UNDER THE GUIDANCE AND SUPERVISION OF MR J. JAVIER FERNÁNDEZ FERNÁNDEZ, SECRETARY OF THE SECRETARIAT'S WORKING PARTY ON THE INTERGOVERNMENTAL CONFERENCE TASK-FORCE, WITH THE ASSISTANCE OF MR BENJAMIN DEMAGNY AND MR NORBERT HERTRICH, STAGIAIRES IN THE EUROPEAN PARLIAMENT.

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MANUSCRIPT COMPLETED IN SEPTEMBER 1996

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EUROPEAN PARLIAMENT



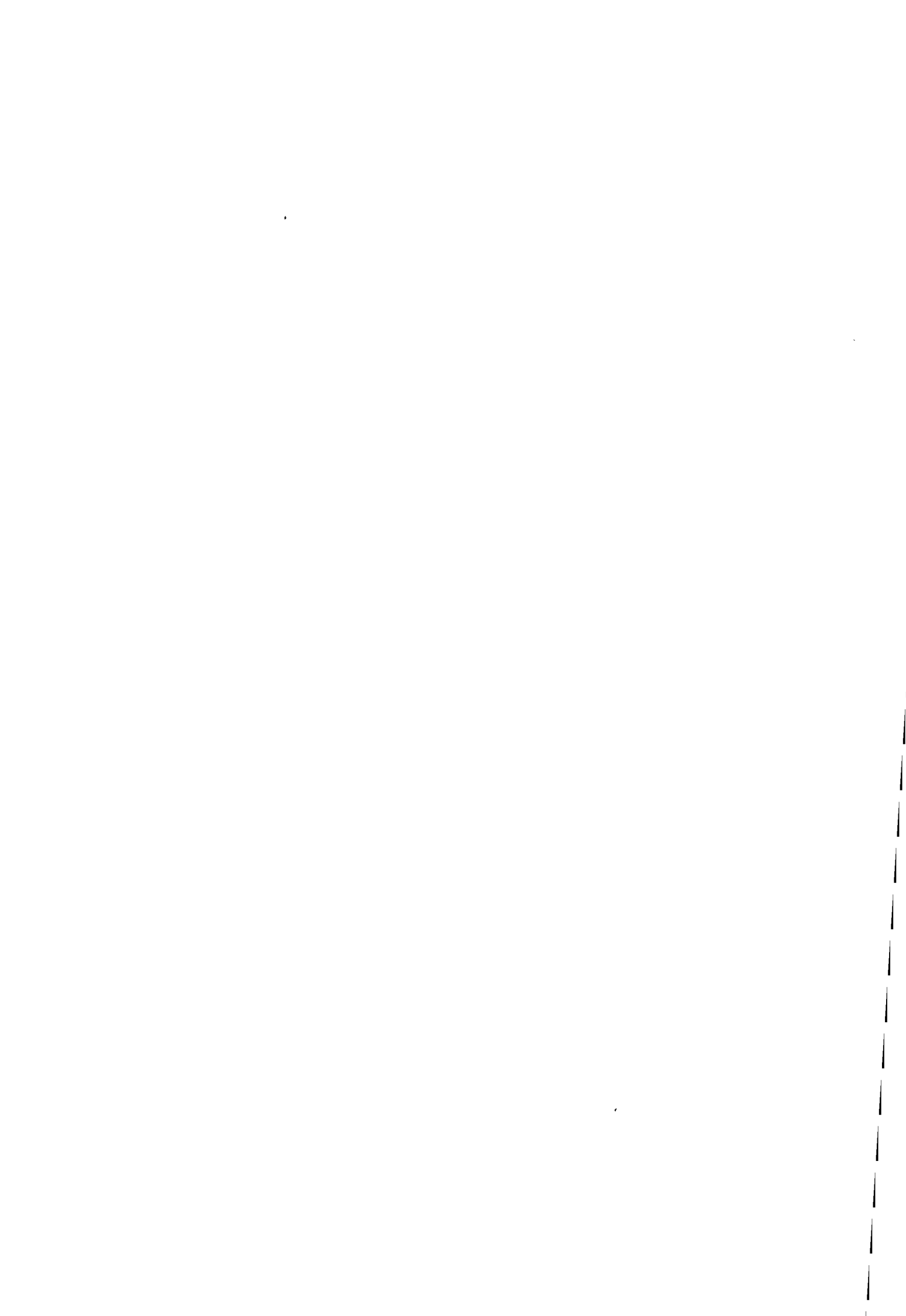
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PREFACE

In February 1995 the European Parliament Secretariat's set up a working party to monitor all the preparatory stages of the Intergovernmental Conference (1996 IGC Task Force).

The task force reports directly to the Secretary-General and, ultimately, to the President of Parliament, Klaus Hänsch; it is administrative in nature and its role is basically to coordinate the work of the various departments within Parliament most directly concerned with the Intergovernmental Conference; its other tasks are to locate, gather, analyse and summarize all IGC-related proposals and studies, not just from the various Community institutions and the official bodies of the Member States but also, and most importantly from civil society.

So far the Task Force has concentrated its efforts on drawing up a whole series of **documents** on the Intergovernmental Conference. These include a comprehensive memo on the positions of the various Member States and another on the state of considerations in the national parliaments; the production of over 30 briefing papers on the major topics to be dealt with at the Conference; the drawing up of an IGC-related bibliography by source and by topic; the preparation of a selection of bibliographic references to periodicals and a compilation of summaries on the same topic, and the coordination of a single periodical containing press reports relating to the IGC (Info CIG/96). All these documents are regularly updated and the Working Party has also commissioned and supervised a series of studies produced outside Parliament (simplification of the Treaties, European citizenship, position of the national political parties, division of powers and responsibilities between the Union and the Member States, etc.). It has ensured that this constant flow of valuable information is **widely distributed**, both within the Union institutions and within the Member States and public organizations and associations. In particular a constant supply of information on computer has been provided since mid-1995 by means of the **OVIDE** system and will soon be available on the **Internet**.

To provide more systematic information on the IGC, the Task Force has decided to compile a White Paper on the Intergovernmental Conference in three volumes. The first volume contains the most important official positions so far adopted by the institutions and bodies of the European Union; the second volume brings together and summarizes the Member States' positions and viewpoints and the third volume is a collection of the briefings prepared by the Secretariat's Task Force on the main topics that will be on the agenda for the Intergovernmental Conference.

There is no doubt that 1996 IGC will be a defining moment for the future of European integration. This review cannot and must not take place without the active involvement of European citizens, who will be the main players in shaping the destiny of the Community.

The European Parliament is fully aware of this and its position as the directly elected representative of the people of Europe gives it the confidence to assume a central role in encouraging ever wider participation and greater understanding of the negotiating process and of the very real challenges facing the Intergovernmental Conference.

In Parliament's opinion, the Community must emerge from the review of the Treaty as a more democratic, fairer, more interdependent, more prosperous and more equal Europe. If the White Paper helps to bring about a better understanding of the Community, and even contributes only minimally to the achievement of these objectives, the work which has gone into preparing it will not have been in vain.

Enrico VINCI
The Secretary-General

Luxembourg, January 1996

1.A

**TURIN EUROPEAN COUNCIL
29 MARCH 1996**

PRESIDENCY CONCLUSIONS

REF : SN 100/96

The European Council began its proceedings by exchanging ideas with Mr Klaus Hänsch, President of the European Parliament, on the main subjects for discussion at this meeting.

I -INTERGOVERNMENTAL CONFERENCE

An Agenda for the Intergovernmental Conference

The European Council has defined in Madrid the agenda of the Union for the end of the century. The convening of the Intergovernmental Conference which will today begin its examination of the revision of the Treaties with the purpose of creating an ever closer union among the peoples of Europe, constitutes the first step in this direction. We welcome it.

In a Union firmly committed to the full implementation of the Treaties, including its provisions on economic and monetary union, the Conference will provide the opportunity for dealing more effectively with the internal and external challenges of the coming years.

These challenges stem in particular from : changes in the international situation; globalization of the economy and its consequences for employment, competitiveness and job creation within the Union; terrorism, drug trafficking and international crime; migratory pressure; ecological imbalances.

Moreover, future enlargement, which represents a historic mission and a great opportunity for Europe, is also a challenge for the Union in all its dimensions. In this perspective, institutions, as well as their functioning, and procedures have to be improved in order to preserve its capacity for action, while maintaining the "acquis communautaire" and developing it and also respecting the balance between the institutions. It is essential to sustain the very nature of European construction, which has to preserve and develop its features of democracy, efficiency, solidarity, cohesion, transparency and subsidiarity.

The Heads of State or Government consider that the Conference should, in the light of the Reflection Group's Report and without prejudice to other questions which might be raised during the Conference, mainly focus its work on the areas described hereafter.

1. A Union closer to its citizens

The European Council asks the IGC to base its work on the fact that the citizens are at the core of the European construction : the Union has the imperative duty to respond concretely to their needs and concerns.

As Member States are committed to respect human rights, democratic values, equality and non discrimination, and as the Union is a community of shared values, the IGC should consider whether and how far it will be possible to strengthen these fundamental rights and improve the safeguarding of them.

European citizens pay growing attention to justice and home affairs. In an area of free movement for people, goods, capital and services such as the Union, the exercise of these rights according to the Treaty provisions must be accompanied by adequate protection. A strengthened control of the Union's external frontiers shall contribute to it. In this context, the Conference is called upon to produce adequate results mainly on the following issues :

- within the framework of defined objectives, better methods and instruments;
- ensuring better protection of the Union's citizens against international crime, in particular, terrorism and drug trafficking;
- developing coherent and effective asylum, immigration and visa policies.
- clearing divergent views on jurisdictional and parliamentary control of EU decisions in the field of justice and home affairs.

For the Union and the Member States the fight against unemployment is the priority task. Promoting employment makes national economic and structural policies a matter of common concern. Obtaining better employment opportunities requires a stability oriented economic policy, greater competitiveness and sound growth, i.e. through the completion of the single market and the implementation of the convergence criteria for the achievement of the economic and monetary union. However, supplementary coordinated action is necessary. Therefore in order to fulfil the objective of a high level of employment while ensuring the social

protection, the IGC should examine how the Union could provide the basis for a better cooperation and coordination in order to strengthen national policies. The IGC should moreover examine whether and how the efforts of our governments as well as of the social partners could be made more effective and better coordinated by the Treaty.

The IGC could also address the question of the compatibility between competition and the principles of universal access to essential services in the citizen's interest.

Furthermore, the IGC should examine the status of outermost regions. It should also examine the status of overseas territories. It should examine as well the question of the island regions of the Union.

A healthy and sustainable environment is also of great concern to our citizens. Ensuring a better environment is a fundamental challenge for the Union. The IGC will have to consider how to make environmental protection more effective and coherent at the level of the Union, with a view to a sustainable development.

The IGC must ensure a better application and enforcing of the principle of subsidiarity, to provide transparency and openness in the Union's work, and to consider whether it would be possible to simplify and consolidate the Treaties.

2. The institutions in a more democratic and efficient Union

In order to improve the European Union's institutions, and also in view of preparing the future enlargement, the Heads of State or Government stress the need to look for the best means to ensure that they function with greater efficiency, coherence and legitimacy. The Conference will have to examine:

- the most effective means of simplifying legislative procedures and making them clearer and more transparent ;
- the possibility of widening the scope of codecision in truly legislative matters;
- the question of the role of the European Parliament besides its legislative powers, as well as its composition and the uniform procedure for its election.

The IGC should equally examine how and to what extent national parliaments could, also collectively, better contribute to the Union's tasks.

As regards the Council, whose functioning must be improved, the IGC should address the questions of the extent of majority voting, the weighting of votes and the threshold for qualified majority decisions.

The Conference will have to examine how the Commission can fulfil its fundamental functions with greater efficiency, having regard also to its composition and taking into account its representativity.

The Conference should examine whether and how to improve the role and functioning of the European Court of Justice and Court of Auditors. It should also examine how to achieve greater clearness and quality of legislation and ways and means of a more effective fight against fraud.

The Heads of State or Government ask the Conference to examine whether and how to introduce rules either of a general nature or in specific areas in order to enable a certain number of Member States to develop a strengthened cooperation, open to all, compatible with Union's objectives, while preserving the *acquis communautaire*, avoiding discrimination and distortions of competition and respecting the single institutional framework.

3. A strengthened capacity for external action of the Union

The international situation increases the responsibilities of the Union and the need to strengthen its identity on the international scene with the aim of promoting peace and stability. The Union's political weight must be commensurate with its economic strength. At the same time the consistency and the unity of all dimensions in the Union's external action needs to be reinforced, while fully respecting the Commission's role.

The EU has set itself the objective of implementing a common foreign and security policy, including the eventual framing of a common defence policy, which might in time lead to a common defence.

The accomplishment of this objective requires a greater capacity to :

- identify the principles and the areas of common foreign policy;
- define the actions needed to promote the Union's interests in these areas and according to those principles;
- set up procedures and structures designed to allow decisions to be taken in a more effective and timely manner, in a spirit of loyalty and mutual solidarity;
- agree on suitable budgetary provisions.

Having in mind those aims, the Conference should also study whether and how the provision for a new specific function could give the possibility to the Union of expressing itself in a more visible and coherent way and with a more perceptible face and voice.

Moreover, the IGC will have to examine how to better assert the European identity in matters of security and defence. It will therefore have to address the question of a clearer definition of the relationship with the Western European Union, which is an integral part for the development of the European Union, taking into account in particular the deadline of the Brussels Treaty in 1998. The objective shall also include the improvement of the operational capability available to the Union, with specific reference to the area covered by the Western European Union's Petersberg's tasks and in conformity with the United Nations Charter. The Conference might also examine if and to what extent a closer cooperation in the area of armaments should be promoted by the Treaty.

Finally, the European Council invites the Conference, which should finalize its work in about one year, to adopt a general and consistent vision throughout its work : its aim is to meet the needs and expectations of our citizens, while advancing the process of European construction and preparing the Union for its future enlargement.

*

* *

The Heads of State or Government have confirmed the agreement reached between the Ministers of Foreign Affairs on 26 March 1996 regarding the association of the European Parliament with the work of the IGC (see below).

**Association of the European Parliament with
the work of the Intergovernmental Conference**

In view of the experience of the Reflection Group and in accordance with the conclusions of the Madrid European Council on 15 and 16 December 1995, the European Parliament will be closely associated with the work of the Conference to enable it to have regular and detailed information on the progress of discussions and to make known its point of view on any matter discussed whenever it feels this to be necessary.

To ensure that association in compliance with the provisions applicable to the revision of the Treaties the Ministers for Foreign Affairs have agreed on the following arrangements:

1. The meetings of the European Council dealing with the IGC will begin, as usual, with an exchange of views with the President of the European Parliament on the subjects on the agenda.
2. Ministerial meetings of the IGC will also be preceded by an exchange of views with the President of the European Parliament, assisted by the representatives of the European Parliament, on the items on the agenda.
3. Once a month and whenever the Ministers' representatives deem it necessary by common accord, the Presidency will hold a working meeting, on the occasion of meetings of the Ministers' representatives, for the purpose of holding a detailed exchange of views with the representatives of the European Parliament.
4. The Presidency will regularly provide oral or written information to the European Parliament. It will also, as agreed, provide information to the national Parliaments through the Conference of bodies concerned with Community affairs (COSAC).

5. The European Parliament's association will begin with an invitation to the President of the European Parliament and two representatives of the European Parliament to the opening of the IGC in Turin on 29 March 1996.

6. The Presidency will ensure the smooth organization of the IGC and the European Parliament's association with it, bearing in mind the intergovernmental nature of the Conference, the competences of each party and the need for close cooperation marked by mutual trust between the Institutions.

1.B

FLORENCE EUROPEAN COUNCIL

21 AND 22 JUNE 1996

PRESIDENCY CONCLUSIONS

REF : SN 300/96

INTRODUCTION

At its meeting in Florence on 21 and 22 June 1996 the European Council, after beginning its proceedings with an exchange of views with the President of the European Parliament, Mr Klaus Hänsch, agreed on strategic guidelines on employment, growth and competitiveness, took further decisions on the preparation for the transition to Monetary Union, agreed on a number of issues in the fields of justice and home affairs and external relations and gave a fresh impetus to the Intergovernmental Conference.

The European Council considered that, in order to keep up the momentum and in view of the range of issues facing the Union in the coming period, it would be desirable to hold a special meeting of the European Council in October, and it welcomed the readiness of the incoming Irish Presidency to organise and host such a meeting.

It also took note of the important progress made in a number of fields such as culture and audiovisual matters, education and training, health, social policy and environment.

V. THE INTERGOVERNMENTAL CONFERENCE

The European Council notes that proceedings to date in the Conference, on the basis of the Turin guidelines, have served to bring into focus the main issues at stake. The Conference proceedings in this initial stage are reflected in the report drawn up on the Presidency's authority, which, without pre-empting negotiations, assesses the situation for the incoming Presidency in preparation for further work.

The analysis of the issues is at present sufficiently advanced. The Conference can turn now to seeking balanced solutions to the main political issues raised. The European Council expects at its meeting in Dublin to mark decisive progress towards the respect of the timetable set in Turin, which implies completing the Conference by mid-1997.

In this perspective, the European Council asks that a general outline for a draft revision of the Treaties, be prepared by the Irish Presidency for the Dublin meeting, addressing in particular the following aims :

1. bringing the Union closer to its citizens in particular by :
 - = living up to their expectations as regards the fulfilment of the objective of a high level of employment while ensuring social protection, examining how to provide the Union with the basis for a better cooperation and coordination in order to strengthen national policies; it should also be examined how the efforts of the governments as well as the social partners could be made more effective and better coordinated by the Treaty;
 - = making environmental protection more effective and coherent at the level of the Union in order to secure sustainable development;
 - = providing transparency and openness in the Union's work;
 - = strengthening European citizenship, without replacing national citizenship and while respecting the national identity and traditions of the Member States;
 - = respecting their fundamental rights;
 - = meeting their need for security, which implies improving substantially the means and the instruments against terrorism, organized crime and drug trafficking, as well as the policies on all aspects of asylum, on visas and on immigration with a view to a common judicial area in this context;

2. strengthening and enlarging the scope of the Union's common foreign and security policy, which means in particular addressing, with the purpose of a greater consistency and efficiency:
 - = the most effective interplay of the various actors, in accordance with the role assigned to them by the Treaty, in preparing and implementing the Union's external action (European Council, Council, Commission, Presidency, Member States and, if appropriate, a new function in CFSP ;
 - = better coherence between a reformed CFSP and a strengthened external economic action;
 - = decision-making procedures and conditions, including the possibility of whether the unanimity rule can be relaxed;
 - = means of ensuring swift and certain funding for the action decided on;
 - = the Union's security and defence dimension, and in particular the possibility of including in the Treaty objectives corresponding to the Petersberg tasks;

- = closer links between the European Union and the WEU, also with a view to defining the question of their future relations following the results of the June NATO meeting in Berlin;
 - = a possible political solidarity clause;
3. and, finally, assuring, also in view of enlargement, the good functioning of Institutions while respecting their balance, and the efficiency of the decision-making process, which means in particular addressing the following points:
- = for the Council: the scope of qualified-majority voting, the weighting of votes and the threshold for qualified-majority decision-making;
 - = for the Commission: the manner of appointing it and its composition;
 - = for the European Parliament: the procedures under which it participates in the legislative process and its political and watchdog role;
 - = for the European Court of Justice: improving its role and functioning;
 - = for the Union as a whole: means of ensuring proper application of the principle of subsidiarity; the question of adequacy of resources; further consideration of the scope and conditions for strengthened cooperation; and the question of the contribution by the national parliaments, either individually or collectively, to European integration.

Lastly, the European Council calls on the IGC to seek all possible ways of simplifying the Treaties so as to make the Union's goals and operation easier for the public to understand.

1.C

**REPORT AND ADDENDUM TO REPORT
FROM PRESIDENCY
TO EUROPEAN COUNCIL
17-18.06.96**

**PROGRESS REPORT ON THE INTERGOVERNMENTAL
CONFERENCE**

**REF : CONF:3860:96 REV.1
CAB**

1.C.a)

**REPORT
FROM PRESIDENCY
TO EUROPEAN COUNCIL
17.06.96**

**PROGRESS REPORT ON THE INTERGOVERNMENTAL
CONFERENCE**

Delegations will find attached the Presidency's progress report on the Intergovernmental Conference.

The report, drawn up on the responsibility of the Italian Presidency and mainly intended for the incoming Presidency, seeks to provide an overview of proceedings to date, so that an assessment can be made of the major political questions on which the next phase of the Conference will focus and possible answers to them.

This report does not claim to be exhaustive and its content does not commit delegations as to the future discussions. Its aim is to clarify matters and indicate the trends which in the Presidency's view seem to be emerging at this stage, without attempting to work out compromises, as these would be premature.

An addendum to the report contains the draft texts drawn up by the Presidency to illustrate some of the options presented to the Conference.

It will be remembered that the President and two Members of the European Parliament have been associated with the work of the Conference under the arrangements defined by the Turin European Council.

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CHAPTER I

A Union closer to its citizens

I. FUNDAMENTAL RIGHTS

1. General principles underlying the Union

In the view of the Presidency, the initial discussions have established that the clauses to cover this aspect could be organized around the following points:

- (a) the Union is to respect the national identities of its Member States, whose systems of government are founded on the principles of democracy; it is to respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, as general principles of Community law (principles at present contained in Article F of the TEU);
- (b) as the Union is composed of States whose systems of government are founded on the principles of freedom, democracy, respect for human rights and the rule of law, the accession of any new State should be conditional on it being established that that State complies with these principles (building on the principle at present contained in Article F(1) of the TEU);
- (c) the rights attaching to membership of the Union should be linked to States' compliance with these principles; in the event of a serious, persistent breach of these principles by a Member State, the European Council, acting under a procedure to be determined (which could involve the Court of Justice establishing that a breach had taken place and the State concerned being given the opportunity to submit observations), could order measures to be taken to suspend those rights in part (the implications of such measures for nationals and/or businesses of the State concerned need to be looked into in more detail).

2. Non-discrimination clauses

The Presidency considers the following to be the main points emerging from the discussions:

- (a) whether non-discrimination should be extended to race and sex, or whether it should also apply to other factors: religion, beliefs and opinions, disability, sexual orientation, age, ...;
- (b) the need to examine further the legal, economic and financial implications of a general non-discrimination clause which would not have direct effect, provision being made for the adoption of specific measures to give effect to the clause;
- (c) whether there should be a specific legal basis for adopting measures against racism and xenophobia, and what its scope should be (EC Treaty and/or Title VI of the TEU);
- (d) whether the scope of the principle of equal treatment for men and women as stated in the social provisions of the TEC should be broadened (strengthening of Article 119); it has been suggested that this principle should be given more general application, extending beyond the social provisions; the possibility of provision for "positive measures" has also been mentioned (see Article 6(3) of the Agreement annexed to the Protocol on social policy).

3. Accession to the European Convention on Human Rights

The political and legal implications of accession by the Union (or the Community) to the European Convention on Human Rights require further consideration.

Such accession would in fact mean extending the powers of the Community/Union, indirectly incorporating into the Treaty (TEU or TEC) a pre-established set of rights and making observance of those rights subject to an external system of judicial control. If the idea of accession is rejected, it will be necessary to consider other ways of improving judicial control of the Union institutions' respect for fundamental rights.

4. Judicial control of respect for fundamental rights

Accession to the European Convention on Human Rights would mean that judicial control of respect for fundamental rights by European Union institutions would be carried out by the European Court of Human Rights.

If there is no such accession, the Presidency has the impression from the discussions that there are basically three options still open (with the third attracting little support):

- (a) keeping the status quo: Article F(2) refers to respect for fundamental rights, as guaranteed by the European Convention on Human Rights, and the Court of Justice already oversees that respect, although there is no Treaty requirement for it to do so;
- (b) bringing Article F(2) explicitly within the jurisdiction of the Court of Justice; this could be done by adjusting Article L of the TEU while continuing to exclude CFSP (and JHA?) provisions from the Court's jurisdiction;
- (c) extending the scope for bringing actions before the Court of Justice by enabling individuals to bring actions directly before the Court of Justice for violation of a fundamental right.

5. Listing of rights in the Treaty

It transpires from the initial discussions that to draw up a list, whether or not exhaustive, of rights specific to the Union would involve a fair number of difficulties.

II. CITIZENSHIP OF THE UNION

1. Clarification of the concept

The Presidency considers it to be generally accepted that the Treaty should clarify the nature of the relationship between Union citizenship and national citizenship, making it clear that Union citizenship is additional to and not a substitute for national citizenship.

2. Enhancement of the content of citizenship

Suggestions have been put forward for enhancing the content of citizenship by adding certain rights to those at present contained in Part Two of the TEC; mention has been made of:

- certain civic/political/administrative rights, in particular the right of free expression, freedom of association and the right to establish European political parties;
- certain socio-economic rights, in particular the right to a healthy environment, the right to health protection, the right to equal opportunities, the right to work and to organize, and more generally the rights embodied in the European Social Charter;
- the right to cultural diversity;
- recognition of the role of religious values;
- the right to information from the public authorities;
- the right of access to universal services or public service utilities (principles which have already been established by the Court of Justice and can therefore be included without calling into question the foundations of the Treaty).

In the light of the discussions, the Presidency believes that, when considering whether these rights should be made inherent in citizenship of the Union, attention should be paid to:

- their nature: these are fundamental, universally applicable human rights; some of them are not confinable to citizens of the Union;
- the political, economic and financial consequences that could ensue in practice if they were implemented.

Attention has also been drawn to the question of political asylum within the Union, and a proposal has been promised on the introduction of a voluntary European humanitarian service.

3. Future developments clause

In the Presidency's view, the initial discussions suggest that the procedure in the second paragraph of Article 8e of the TEC for adding to citizenship rights should be maintained.

III. TRANSPARENCY

1. Definition of the principle in the Treaty

The following viewpoints emerged from the discussions:

- (a) the workings of the Union should be made more accessible and more intelligible to its citizens; to that end, the concept of the "transparency" of the Union's decision-making process could be incorporated in the Treaty in an appropriate form;
- (b) application of the concept of transparency should comply with the equally important requirements of effectiveness in the negotiating and decision-making process and the confidentiality necessary in certain Union activities;
- (c) transparency must apply to all Union institutions.

On this basis, if the idea of including the concept of "transparency" in the Treaty were to be accepted, two questions would require further consideration:

- where in the Treaty the concept should appear (preamble or enacting terms, TEC or TEU);
- the terms in which it should be expressed; it has been suggested that the concept should not have direct effect but that provision should be made for the adoption of implementing provisions ensuring, inter alia, compliance with the requirements referred to in (b) and (c) above.

2. Access to information

The discussions have made clear that there are various ways of approaching this question.

One possibility would be to regard the right of access to information (including access to documents) as implicit in incorporation of the general principle of transparency in the Treaty. In this case, implementation of the right of access could be achieved;

- either by means of a legislative act to be adopted by the Council under a procedure yet to be determined;
- or through the Rules of Procedure of each of the institutions concerned.

Another possibility would be to consider that the right of access to information (including access to documents) should be explicitly laid down in the Treaty itself, together with a procedure for adopting provisions to implement it.

3. Openness of Council business

This matter should in any case be considered further. Greater openness in some areas could be decided on by the Council itself, without any need to amend the Treaty.

4. Simplification and consolidation of the Treaties

In accordance with the European Council's instructions, the matter of simplifying and consolidating the Treaties has been given an initial examination on the basis of a Conference Secretariat Note pinpointing three basic questions (consolidation, restructuring and simplification of the Treaties). A second interim report will be submitted before 31 July 1996 and will serve as a basis for further discussions.

IV. SUBSIDIARITY

1. Definition of the principle

It is fairly generally accepted that the wording of the subsidiarity principle contained in the second paragraph of Article 3b of the TEC should not be changed and that there should be no systematic mention of the principle in other Treaty Articles.

2. Application of the principle

Should agreement be reached on the principle of incorporating provisions on the application of the subsidiarity principle in the Treaty, incorporation could be in the form of a **Protocol** or a **Declaration in the Final Act**. Such provisions could be based on the existing Interinstitutional Agreement, and, if appropriate, the Edinburgh and Birmingham Declarations. It has also been suggested in this connection that the "means necessary" principle in Article F(3) should also be specifically developed in the new Treaty.

3. Control of compliance with the principle

Judicial control

It is generally accepted that judicial control of compliance with the principle of subsidiarity should continue to be carried out under the arrangements currently laid down for controlling the legality of Community acts. A number of suggestions have been made that would involve broadening the conditions for referral to the Court of Justice (e.g. referral by the Committee of the Regions).

Political control

The importance of "external" political control has been pointed out, because of the constitutional aspect of the subsidiarity principle. It has accordingly been suggested that national parliaments should be given a role in supervising its application, according to procedures to be decided (e.g. creation of a High-level Parliamentary Advisory Committee or strengthening of COSAC).

V. EMPLOYMENT

1. Starting point

The Presidency has noted general agreement that:

- unemployment is one of the most serious problems currently facing the Union and the Member States;
- solving this problem is principally a matter for the Member States and for business;
- any measure that might be envisaged at Community level should under no circumstances influence or reopen the timetable or the criteria for EMU, nor should it have any consequences that would be incompatible with budgetary discipline;
- in the IGC context there can be no question of operational measures (such as those which will be tackled at the European Council in Florence), solely of institutional or procedural provisions that might be included in the Treaty.

Starting from these premises, two approaches have been proposed.

2. A cautious approach

Three considerations have been adduced in support of this approach:

- the risk of contradiction entailed in drawing up over-ambitious provisions at Community level when everyone is agreed that fundamental responsibility must remain with the Member States;
- the risk of indirectly affecting EMU, in that any amendment to Article 2 of the TEC that involves fleshing out employment objectives would have indirect repercussions on Articles 103 and 105 (which refer back to the objectives in Article 2);

- the risk of raising unrealistic public expectations by abstract provisions without any real effect, when it would be better to exploit the job-creating potential of EMU and other Community policies.

In these circumstances, it is generally accepted that the only way for the Conference to make any progress on employment – the importance of which cannot be ignored – would be to incorporate the Protocol on social policy "à 14" into the Treaty. Some feel that this could be an opportunity to supplement the Protocol on social policy "à 14" by establishing, at Community level, a common employment strategy based on concertation, together with suitable monitoring structures.

3. A more ambitious approach

This would involve responding to public expectation by indicating clearly in the Treaty that there is a political will to tackle unemployment at all levels – including the Community level. With this in mind, the EC, which is a comprehensive economic entity, could provide **added value** in the fight against unemployment by organizing the coordination of national policies on employment and the labour market, without this necessarily entailing any transfer of powers.

In addition to incorporating the Protocol on social policy "à 14" into the Treaty, this approach would revolve around:

- (1) **a precise definition of Community objectives:** various suggestions have been put forward: a high level of employment and of protection; full employment; adding the concept of combating social exclusion; in this context, the idea of stipulating that the employment aspect should be taken into account in the Community's sectoral policies has also been mooted.
- (2) **reflecting these objectives in a separate Title/Chapter** of the Treaty, which would involve the following:
 - introducing the coordination of national policies around a common strategy defined by the Council in accordance with Treaty objectives;

- the establishment of multiannual "guidelines" for the employment and labour-market policies of the Member States and the regular preparation by the Member States of multiannual programmes consistent with those "guidelines";
- the organization of a monitoring procedure with the assistance of a specialist ad hoc committee;
- the fleshing out of the social dialogue.
- enabling the Council to adopt recommendations addressed to Member States.

Employment policy could also be seen as an integral part of economic policy; accordingly, the **broad guidelines** referred to in Article 103(2) of the TEC would also have to cover employment policy.

VI. ENVIRONMENT

1. Objectives

Should there be agreement on the need to make the Community's environmental policy objectives more specific, the Presidency notes from initial discussions that this could be done:

- in general terms, by inserting the concept of "sustainable development" into Article 2 of the TEC;
- as regards environmental policy itself, by making certain additions to the objectives stated in Article 130r of the TEC;
- as regards other sectoral policies (agriculture, transport, networks), by inserting a provision giving a reminder of the need for these policies to be compatible with general environmental-policy objectives.

2. Decision-making procedure

Two main issues have still to be looked at in greater detail:

- the extension of qualified-majority voting to some aspects of environmental policy which currently require unanimity (under Article 130s(2)), i.e. provisions primarily of a fiscal nature, measures concerning town and country planning, land use and management of water resources, and measures affecting Member States' energy supply;
- extension of the co-decision procedure both to the areas at present covered by qualified-majority voting and to those which might in future become so.

3. Clarification of the division of competence between the Community and the Member States

Article 100a(4) of the TEC allows Member States, under certain conditions, to introduce national measures which are stricter than the Community ones on grounds of the needs referred to in Article 36 of the TEC or needs relating to protection of the environment or the working environment.

On this matter the Presidency has noted from the discussions that there are two possible stances, with a clear preference for the first:

- (1) maintaining the status quo, on account of the risks involved in re-opening discussion on a provision which reflects a very delicate balance between conflicting interests which involved extremely difficult negotiations;
- (2) clarification of this provision to remove any procedural ambiguities as to the circumstances and conditions in which Member States may have recourse to national measures.

In this context, it has also been suggested that environmental protection might be added to the list of exceptions from the principle of the free movement of goods (Article 36 of the TEC).

VII. OTHER POLICIES

1. Energy, tourism, and civil protection

It has been suggested that a specific legal basis might be introduced into the Treaty for energy policy, in particular in connection with completion of the internal market and the prospect of Treaty consolidation. The question of a new legal basis also arises in respect of tourism and civil protection.

2. Other topics

It has been suggested that new Treaty provisions could be introduced, or existing ones fleshed out, in the following areas:

- the fight against drugs;
- social exclusion;
- the outermost regions;
- island regions;
- animal welfare and protection;
- the application of competition rules to agriculture (Article 42);
- reform of the common fisheries policy;
- sport;
- consumer protection;
- creation of a European office for restrictive practices;
- the possibility that the Community might support privately-financed projects of common interest in the context of trans-European networks (Article 129c);
- the situation of Churches in the Union.

3. Article 235 of the TEC

There seems to be a consensus in favour of keeping this Article in the Treaty. It has also been generally accepted that the present procedure (unanimity and consultation of the European Parliament) should continue.

VIII. JUSTICE AND HOME AFFAIRS

There is broad acceptance that Union action on justice and home affairs needs to be made more effective.

1. Objectives and scope of JHA

Initial discussions show that there are two complementary avenues which might be explored more thoroughly:

- **clarification of the objectives** assigned to JHA (these are not defined by the Treaty at present), enabling the question of working methods (see below) to be tackled on a clearer basis; in this connection, the idea of providing for multiannual programmes for achieving these objectives has been mooted;
- an **extension of scope** by adding new areas to the list of "matters of common interest" currently referred to in Article K.1: in particular, mention has been made of approximation of policies to combat crime, approximation of rules on conflict of laws, the fight against racism and xenophobia and action to combat corruption on an international scale.

2. Methods of action

In the Presidency's view, existing methods of action could be adjusted as follows:

- (a) **partial incorporation into the Community sphere**: it is generally felt that not all the areas currently covered by JHA could be brought within the Community sphere; it appears to the Presidency, on the basis of the discussions, that the most suitable areas would be: visas, asylum and immigration; gradual incorporation into the Community sphere might also facilitate the process;
- (b) **the use of certain Community methods and mechanisms** (a non-exclusive right of initiative for the Commission; majority voting, possibly with the introduction of a super-qualified majority; role of the Court of Justice; closer involvement of the European Parliament, which, in the view of some, could extend to mandatory consultation); this approach, called creation of a "new third

pillar", should be supplemented, in the view of some, by giving a more important role to national parliaments.

- (c) **strengthening the cooperation arrangements** provided for in Title VI of the TEU, without fundamentally changing their nature or scope.

3. Decision-making process and instruments

- (a) The ideas put forward for improving the process of preparing decisions involve the removal of one or both of the preparatory levels peculiar to Title VI which do not exist in the Community system: the three Steering Committees and the K.4 Committee. Some also favour changes to the K.4 Committee: members permanently in Brussels, increased frequency of meetings, reformed working methods.
- (b) The legal instruments provided for in Title VI have been modelled on those of Title V (CFSP). They are not well suited to the essentially legislative nature of JHA action. The idea of creating a new legal instrument (which might be called a "common measure") has been generally welcomed. A "common measure", like a Community Directive, would commit Member States to achieving certain results, leaving it to national authorities to decide on ways and means. In addition, questions have been raised about the co-existence, as they currently stand, of joint positions and joint actions, two scarcely used instruments whose legal implications are subject to differing interpretations.
- (c) It has also been emphasized that any progress on JHA depends on giving a direct role to national parliaments, who alone are capable of giving Union action the legitimacy required in such politically sensitive areas. It has been mooted that COSAC might be given an enhanced role or that a parliamentary "High Consultative Council" might be set up to give advisory opinions within time limits set in such a way as not to make the decision-making process any more cumbersome.

4 Judicial control

In the Presidency's opinion, initial discussions show that the Court of Justice should retain compulsory jurisdiction – according to detailed rules still to be defined – for ruling on disputes concerning the application of conventions and for interpreting their provisions, as well as in respect of legislative acts adopted under Title VI.

The idea of a case-by-case approach, both for conventions and for other legislative acts, has also been mooted.

5. International cooperation

The desirability of a specific provision on this point is linked to the debate on the Union's legal capacity.

6. Closer cooperation

The advantages of undertaking closer cooperation, whilst preserving the consistency of the Union's action, have been particularly highlighted in the JHA context. Without prejudice to the general discussion on flexibility, various forms of enhanced cooperation have been considered, in particular:

- (a) an **enabling clause** opening the door to closer cooperation between Member States, the object and procedures of which would be defined at a later date, on the understanding that it would always be open to any Member State to join in the closer cooperation;
- (b) **incorporation of the "Schengen" system** into the TEU institutional system.

CHAPTER II

The institutions of a more democratic and more effective Union

I. EUROPEAN PARLIAMENT AND NATIONAL PARLIAMENTS

A. European Parliament

1. Composition and electoral procedure

It is generally accepted that, assuming a ceiling is placed on the number of Members of the European Parliament, a figure of around 700 could be envisaged.

The allocation of seats should continue to take appropriate account of relative population size, with a guarantee of sufficient representation for the less populated Member States.

The idea of amending the provisions on drawing up a **uniform electoral procedure** has not received any significant support, either as regards the setting of a deadline for adopting a decision or as regards relaxation of the procedure referred to in Article 138(3) of the TEC. But a number of ideas have been put forward for overcoming the disadvantages of the status quo:

- the joint establishment of certain principles that ought to underlie each national system (prohibition of a dual national and European mandate, for example);
- the establishment of a timetable for the gradual introduction of a uniform electoral procedure;
- the possibility of a differentiated solution should a procedure obtain the support of a minimum number of Member States.

2. Legislative function

There is a trend in favour of reducing the number of legislative procedures to three – consultation, co-decision and assent – but keeping the cooperation procedure for EMU and the Protocol on social policy.

Extension of the **scope of the co-decision procedure** will be examined in the light of the report which the Commission is to draw up under the terms of the Treaty, and of the interest shown by some in working towards a hierarchy of norms. There is no common approach on the criterion for such extension (all legislative acts? all acts currently covered by the cooperation procedure? all acts subject to a qualified majority in the Council?). There is some support for a case-by-case approach.

As regards the **scope of the assent procedure**, it has been suggested that it should cover certain international agreements, accession treaties and decisions on own resources (excluding legislative acts). It has also been suggested that the assent procedure should be extended to Article 235 of the TEC and to revision of the Treaties.

The **principle of simplifying the co-decision procedure** (Article 189b) has met with a broadly favourable response, although no consensus has yet been reached on the details of such simplification: abolition of the first reading; abolition of the European Parliament's intended rejection; abolition of the "minor conciliation procedure"; abolition of the third reading.

3. Non-legislative functions

(a) **Political control:**

On the assumption that the powers of the European Parliament should be increased, there is a trend in favour of the idea that, after being nominated by the governments of the Member States, the President of the Commission should be approved by the Parliament; there is limited support for the idea of a formal election on the basis of a list of names drawn up by the European Council.

(b) Budgetary function:

- As regards the regular Community budget, there is broad support for preserving the status quo. The CE/NCE distinction has been raised, and a number of suggestions for clarifying or even abolishing it could be studied in more depth. The idea of budgetary co-decision – the details of which have not yet been discussed – has been put forward. It has been suggested that the financial perspective should be incorporated in the Treaty with the stipulation that it applies to all the institutions.

- Action decided on under Titles V and VI of the TEU (CFSP and JHA) should as a rule be funded from the Community budget in accordance with special procedures to be laid down by the Treaty, although the possibility of national funding should be maintained.

(c) Control of the implementation of legislative acts

It would seem from the discussions that the current balance, based on the Council Decision of 13 July 1987 (committee procedure) plus the modus vivendi on the implementation of acts adopted by the co-decision procedure, is a balance that would be hard to change. However, some interest has been shown in the idea of reducing the number of procedures.

B. NATIONAL PARLIAMENTS

The role played by national parliaments in the process of European integration is primarily a matter for the particular constitutional organization of each Member State. It is generally accepted that any enhancement of this role should be complementary to the role of the European Parliament, whose powers ought not to be affected, even indirectly.

This role should primarily be performed at national level, where it could be assisted by better organization of the Community institutions' work to allow a sufficient minimum period of time for the examination of texts, by a more rapid distribution of documents in each official language and by having important legislative proposals from the Commission presented orally by Commissioners to national parliamentary committees.

As to the possibility of expanding the role of national parliaments in the institutional system of the Union, there was considerable emphasis on the need to avoid hampering or overburdening the Union's decision-making process, and reservations were expressed about setting up a new body whose operations would complicate existing procedures still further.

According to another view, it is essential to allow national parliaments to speak collectively on matters that are of prime concern to them, such as JHA or subsidiarity, and this can be done without complicating the legislative process unduly, either by adjusting existing structures (COSAC) or by creating a streamlined ad hoc structure (high-level parliamentary committee) which would play an advisory role in advance of the procedure, in very precisely defined areas and within appropriate time limits.

II. COUNCIL

1. Qualified-majority voting and unanimity

- (a) The Presidency concludes from the discussions that the **extension of qualified-majority voting** is seen as making for greater efficiency in the decision-making process of an enlarged Union, although it has been emphasized that other considerations – such as the acceptability of Union decisions – have to be taken into account.

At this stage it would seem that none of the **criteria** envisaged for such an extension (en bloc approach; consistency between voting rules applicable to the internal market and to certain policies closely linked to it, exceptions limited to constitutional or quasi-constitutional areas) can be accepted unanimously, and there is some support for the idea that an extension can only be achieved on a **case-by-case** basis. It has also been noted that the introduction of a **super-qualified majority** (as an intermediate arrangement between unanimity and the present qualified majority) might be helpful in finding agreement.

- (b) It is fairly generally accepted that, owing to their "constitutional" implications, the political sensitivity attaching to them, or the economic importance of the matters involved, certain areas should in any case be subject to **unanimity**.
- (c) Initial discussions indicate that **revision of the Treaties** should continue to require common accord, at least as regards the adoption of texts that have to be ratified. However, some believe that the question of the rules for the entry into force of amendments to the Treaties should be given further consideration.

2. Qualified-majority threshold and weighting of votes

- (a) It is fairly generally felt that the **threshold** for qualified-majority voting should stay as it is (62 votes out of 87). Mention has been made of the need to maintain the Ioannina Compromise.
- (b) The possible adjustment of the current system of **weighting** – which appears in the mandate explicitly given to the Intergovernmental Conference by the European Council – has generated two schools of thought:
- those who believe that the current weighting should be maintained and extrapolated – as such – when enlargements take place; this position is based mainly on the fact that the distortions alleged by some between population and number of votes have not been proven, and the Council's method of taking decisions cannot ignore the principle of equality between Member States (the European Parliament being responsible for representing the people) and that there is not in reality any "bloc" of less populated States, as can be seen from Council practice; and
 - those who believe that, in the interests of valid representation, and in order to ensure that the Union's action is acceptable to the people, it is necessary to ensure that the Union's decisions are backed by a significant proportion of the population. This may be achieved:
 - = either by altering the current weighting to ensure a better balance between number of votes and population;
 - = or by introducing a system of dual majority (either in terms of votes and population, or in terms of number of States – e.g. two-thirds – and population).

In this connection, it has been suggested that the current weighting could be adjusted solely with the aim of maintaining, after enlargement, the ratio that exists today in terms of votes between the more populated Member States and the less populated Member States.

3. Presidency

The question of the arrangements for the holding of the Presidency (including the idea of a joint Presidency) has been raised but has not been discussed in detail at this stage. See also Chapter III (External action).

4. Functioning of the Council

The suggestions concerning the preparation and conduct of Council proceedings which do not necessarily involve a revision of the Treaty need to be discussed in more detail with the aim of finding practical solutions as soon as possible without waiting for the end of the Intergovernmental Conference.

III. COMMISSION

1. Composition

- (a) The debate on the **number of members** of the Commission has revealed two main trends at this stage: on the one hand it has been emphasized that the legitimacy of the institution and the "acceptability" of the Union make it essential to maintain the rule whereby the Commission must include at least one national of each Member State; on the other hand it has been remarked that if the current system were extrapolated the Commission would be unable to continue playing its role with the same efficiency in an enlarged Union and that it should be reduced to a limited number of members (ten, fifteen or twenty) corresponding to a rational distribution of responsibilities within the college.

In the search for a middle course, it has been suggested that the principle of one Commissioner per Member State should be adopted and that the need for efficiency should be met by adjusting the structure of the Commission; the following points have been raised in this connection: the number of Vice-Presidents (which was six before the TEU), the idea of a restricted college of Commissioners, the possibility of appointing Deputy Commissioners, Commissioners without portfolio and Commissioners with special responsibilities, and the strengthening of the President's role.

- (b) It is generally considered that the broad lines of the **appointment procedure** should be preserved; however, the idea of strengthening the role of the President-designate (who is currently consulted) regarding the selection of Members (and, subsequently, regarding the college) has been favourably received; in the same context, there is some support for the idea of the European Parliament approving the choice of Commission President. It has also been suggested that the Commission should be made accountable to the European Council.

2. Powers

- (a) The general view is that the Commission should retain its current exclusive **right of initiative** in the Community sphere, this being crucial to institutional balance. However, mention was made of the possibility of strengthening Article 152 of the TEC by stipulating that the Commission would be required to submit a proposal if the Council expressly requested it to do so.

There was not a great deal of support for the idea of including a clause in the Treaty to the effect that the Commission's proposals would lapse at the end of its term or if there was no Council decision after a given period. The same applies to the idea of reviewing the principle whereby the Council cannot adopt an act constituting an amendment to a Commission proposal except on the basis of unanimity (Article 189a of the TEC).

- (b) It is generally felt that the Commission's role as guardian of the Treaty should be maintained. This role could be strengthened by giving the Commission specific powers to combat fraud against the Community budget; on the other hand, no amendment to Article 171 of the TEC is thought to be necessary.

IV. COURT OF JUSTICE AND OTHER INSTITUTIONS AND BODIES

A. COURT OF JUSTICE

1. Composition

- (a) While the need to reflect the individual Member States' legal cultures could justify retaining the principle that the Court must have at least one judge from each Member State, the fear was expressed that in an enlarged Union this could be detrimental to the Court's efficiency. The idea that the Advocates-General should also be taken into account in this context did not attract much support. The suggestion was made that, if the number of members increased significantly, two separate chambers could be created within the Court of Justice, provided that the indivisibility of case-law was not called into question.
- (b) The number of Judges at the Court of First Instance could be higher than the number of Member States, in view of the large number of cases likely to be referred to it and of the fact that, as a general rule, the CFI does not sit in plenary.
- (c) The Court of Justice's own suggestion that Advocates-General should be allowed to take part in the appointment of the President of the Court received some measure of support.
- (d) The question whether the term of office of Judges and Advocates-General should be longer, perhaps combined with a non-renewable term of office, remains undecided.

2. Powers

- (a) The possibility of broadening the scope for individuals to apply directly to the Court received only limited support, although the point was made that direct application would be useful in the event of violation of a fundamental right.
- (b) It has been suggested that the European Parliament's right to bring action within the meaning of Article 173 of the TEC should be extended beyond that already laid down in that provision. The idea that the Court of Auditors should be entitled to bring proceedings before the Court of Justice in order to safeguard its prerogatives was received with interest. This tends not to be favoured, however, for the Economic and Social Committee or for the Committee of the Regions; it has been mooted that the latter should also be able to bring proceedings in connection with compliance with the principle of subsidiarity.
- (c) It has been suggested both that the Treaty should explicitly establish the power of the Court of Justice to limit the retroactive effects of its judgments, especially where retroactivity is likely to have significant financial consequences for the Member States, and that there should be recognition of the Court's power in certain circumstances to limit Member States' liability in cases of infringement of Community law. These ideas, which prompted reservations, require further discussion.

3. Functioning

- (a) The discussions showed that amendments to the Treaty could be considered in order to enlarge the Council's scope to amend the provisions of the Court's Statute at the Court's request (currently limited to the provisions of Title III of the Statute), and to widen the margin of independence enjoyed by the Court of Justice in drawing up its Rules of Procedure.
- (b) The idea was mooted of establishing a system of internal appeal at the Court (with no new body being created), but support was lukewarm. The same was true for the suggestion that judgments should mention dissenting opinions.

B. OTHER INSTITUTIONS AND BODIES

The discussions established that the composition and status of the Court of Auditors, Economic and Social Committee and Committee of the Regions should remain unchanged in broad outline, but that the Committee of the Regions should be allowed more administrative autonomy. The idea that the Economic and Social Committee and Committee of the Regions should be made into institutions was mentioned.

The suggestion that the Court of Auditors' supervisory powers should be extended to cover all bodies or agencies managing revenue/expenditure on behalf of the Community or the Union was quite well received. Views differed on any increase in the advisory powers of the Economic and Social Committee and the Committee of the Regions, as they did on the idea of the latter being consulted by the European Parliament.

V. CLOSER COOPERATION – FLEXIBILITY

The value of forms of closer cooperation in certain areas, particularly from the point of view of enlargement, is fairly generally acknowledged, even if there are some who will not give their final views on the subject until the conditions and procedures for this approach have been defined.

Possible Treaty provisions on the subject should in any event be in line with those already incorporated in the TEC and TEU and be designed to:

- add value to the process of European integration by maintaining the Union's capacity for action to further common objectives and interests (preventing deadlock);
- preserve the unity and cohesion of the Union, by safeguarding the main features of integration and the singleness of the common endeavour.

1. Overall conception of flexibility in the Treaty

It was clear from the discussions that the following points needed to be discussed further:

(a) **General clause or a clause for each pillar**

The introduction of a **general clause** has been suggested, enabling Member States that are willing and able to develop closer cooperation amongst themselves in the single institutional framework of the Union. Another view prefers a **specific clause for each pillar** to reflect the desirability and feasibility of closer cooperation, aspects which vary according to area (the need is far more keenly felt in the CFSP and JHA domains, for example, than in relation to the TEC, where there are quite tight constraints on differentiation, linked for example to preservation of the single internal market).

(b) Enabling or cooperation clauses with varying degrees of predefinition as to purpose and procedures

Within a single "pillar" the closer cooperation provisions could take a variety of forms:

- an enabling clause applying to a given sector in the pillar but not specifying the purpose or the procedures of closer cooperation;
- an enabling clause with purpose and procedures spelt out;
- enacting terms complete with purpose and procedures (e.g. a Protocol) and operational as soon as the Treaty entered into force.

(c) Trigger: unanimity or a majority (to be defined)

This question does not arise if all aspects of closer cooperation are defined in the Treaty.

Where enabling clauses are concerned, views are divided between unanimity and majority, depending on whether the emphasis is on the joint nature of the activity or on the need not to thwart the wish of a core of Member States to move ahead, subject to compliance with certain conditions (see below).

2. Principles and conditions

The Presidency finds that there is consensus that any recourse to closer cooperation, whatever its form, should be subject to compliance with pre-defined principles and conditions.

(a) **The principles** which should appear in the Treaty should ensure:

- conformity with the objectives defined by the Treaty;
- compliance with the single institutional framework;
- compliance with the "acquis communautaire" (in particular that constituted by the single market and related policies) and an absence of distortions in the functioning of the Union;
- that the idea of a common endeavour predominates, through recognition of the principle of non-interference ensuring that closer cooperation proceeds smoothly, at the same time as safeguarding the interests of non-participant Member States;
- openness to all Member States wishing to participate and fulfilling the conditions for participation.

(b) A number of **conditions** for setting up closer cooperation were considered; these conditions elicited differing opinions and need to be discussed further. They chiefly regard:

- recourse as a last resort;
- duration of closer cooperation: the question was raised as to whether it ought to be temporary;
- the minimum quorum of participant Member States, so as to preclude the risk of "competing circles" developing or loss of the Union's true identity.

3. Detailed operating rules

Closer cooperation would entail working out certain aspects beforehand, in order to ensure that the system operated coherently, effectively and transparently in practice.

These aspects include:

- (a) **at institutional level:** clarifying any implications that closer cooperation might have for the operation of the institutions, in particular :
- whether the Commission would retain all its responsibilities in the event of closer cooperation in Community areas?
 - whether MEPs who were nationals of Member States not participating in closer cooperation would retain all their responsibilities in relation to that activity?
 - whether Council members representing States which were not participating in closer cooperation would be entitled to vote in that connection?
- (b) any necessary adjustment to **budgetary rules** ⁽¹⁾;
- (c) **at Member States' level:** relations between the participants and non-participants in closer cooperation need to be considered.
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<p style="text-align: center;">CHAPTER III</p> <p style="text-align: center;">Greater capacity for external action</p>
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I. LEGAL PERSONALITY FOR THE UNION

1. The Treaty on European Union does not explicitly acknowledge the European Union to have legal personality. Despite the lack of any such explicit acknowledgement, it has been pointed out by some that under international law the European Union probably does already have such personality. Nevertheless, in the Presidency's view, the present state of affairs has considerably hampered both the Union's aim to "assert its identity on the international scene" (Article B of the TEU) and the effectiveness of its external action, particularly as a result of failure to find unanimity in the Council in order to authorize the Union to conclude international agreements.
2. It transpires from initial discussions that two avenues could be explored:
 - (a) the **first** would be to **endow the Union explicitly with full-fledged legal personality**, without thereby affecting the Union's three-pillared structure or enabling the Union to act in any area it liked. This option could take a number of alternative forms: either adding a fourth legal personality – that of the Union – to the existing three legal personalities of the European Communities, or combining the four legal personalities into one, or again combining the two legal personalities of the Union and the European Community, while leaving separate those of the ECSC and Euratom. In any event, neither the powers of the EC nor its institutional and decision-making system should be changed (upholding the *acquis communautaire*);
 - (b) the **second** would be, without endowing the Union with full legal personality, to **provide it with capacity to conclude certain international agreements** in some of the areas covered by Titles V and VI; encouragement has been given for further consideration of this idea, particularly if the limits to such capacity could be clearly drawn.

3. In the Presidency's view, should the first option above be ruled out, it would be essential for Member States to be able to make **use of a simplified, fast-track procedure** enabling them simultaneously to conclude international agreements in the CFSP and JHA fields "on behalf of the Union", in order to make up for the Union's inability to do so. That possibility could also be looked into under the second option, for areas in which the Union did not have legal capacity to act. This approach met with some reservations inasmuch as it would involve amending constitutional procedures in some Member States.

II. EXTERNAL ECONOMIC RELATIONS

1. In the Presidency's view, recent developments in international economic relations bring out increasingly clearly the value of the European Union (i.e. the Community and the Member States) being able to act as one in the field of external economic relations, particularly as regards services and industrial and intellectual property.

Initial discussions have brought out two possible ways of improving the situation (they are not mutually exclusive):

- giving the **Community sole powers** in some of the subject areas (to be determined) coming within the fields of services and industrial and intellectual property;
- where **powers** continue to be **shared**, establishing procedures under which the Community and the Member States could speak with one voice in international fora, in accordance with the duty pointed out by the Court of Justice (1). Such procedures could take the form of:
 - = a Treaty provision laying down the manner in which the Council is to determine the positions to be stated in international fora;
 - = a code of conduct.

2. Some suggestions have been considered for adjustments to the procedures in Article 228 of the EC Treaty, without calling into question the institutional balance, particularly as regards:

- the possibility of swiftly giving effect to international agreements;
- suspension of the application of such agreements;
- the procedure for establishing the Community position within joint bodies set up by such agreements.

(1) Opinions 2/91 (ILO) and 1/94 (WTO).

Those suggestions could be considered further, particularly as regards the scope of any clause suspending the application of agreements (general in scope or confined to human rights violations?).

3. Lastly, the idea has been mooted of establishing a new legal basis in the Treaty for the conclusion of more general agreements (being neither association agreements nor development cooperation agreements).

III. COMMON FOREIGN POLICY

Possible ways of improving the working of the CFSP have been considered from the point of view of preparation for and implementation of decisions as well as from that of the decision-making process itself.

1. Preparation for and implementation of decisions

Improvements in the way in which CFSP decisions are prepared for and implemented are necessary in order to ensure greater consistency, greater continuity and a higher profile for Union foreign policy. The main means of doing so put forward are as follows:

- clarification of the respective roles of the various parties involved in devising and implementing the Union's external action (European Council, Council, Presidency, Commission and Member States);
- better coordination of the different roles by means, among other ideas, of improved facilities centred on the Presidency, while maintaining the present balance of the institutional system;
- the establishment of a new position within the existing institutional system.

Discussions have brought out a number of ways of putting those ideas into practice (they are not mutually exclusive):

- there is a consensus in favour of establishing a stronger policy planning and early warning system capable, in any situation, of putting forward a range of reasoned options to Council bodies. The unit in question should be staffed by personnel from the General Secretariat of the Council, the Member States, the Commission and possibly the WEU and it should have access to diplomatic information. In order to retain a close link with the departments at present responsible for day-to-day running of the CFSP, the idea of locating that unit within the General Secretariat of the Council has found some support;
- the idea has been put forward of appointing a CFSP High Representative, acting on the authority of the European Council or the Council, with the task of ensuring that joint action is implemented and monitored, harnessing all the national and Community resources available to the Union. In the view of those taking this line,

the CFSP High Representative should be served by the policy planning unit, be involved with proceedings in Council bodies and in other institutions and watch over all-round compliance with commitments given by the European Council. Discussions have highlighted the need to give closer consideration to the relationship between this position and those of the Presidency and the Commission within the existing institutional system. The idea of combining the post of CFSP High Representative, answerable to the Council and acting in close liaison with the Presidency, with that of Secretary-General of the Council has been mooted; it has similarly been suggested that a CFSP Secretary-General should be appointed, who would be accountable to the Council;

- the possibility has been raised of entrusting the Presidency/Commission duo with special responsibilities in the implementation of the CFSP and the Union's external representation; this possibility does not preclude a greater role for the Presidency and the General Secretariat of the Council at the same time;
- the make-up of the Troika could be adjusted to confine it to the current Presidency plus the following Presidency with the close involvement of the Commission and the CFSP High Representative; the idea has also been put forward of formally making provision in the Treaty for the use, in some special situations, of special envoys given assignments by the Council;
- without calling into question the present relationship between the Political Committee and Coreper, the need to improve monitoring of policy implementation is generally acknowledged. It has been suggested that the Political Committee meet more regularly and/or that a standing body of deputies for the Political Directors deal with day-to-day running of the CFSP;
- lastly, experience (with Mostar in particular) has shown that there should be some procedure whereby the Council can, under certain conditions, assign the Presidency, the Troika, the CFSP High Representative or the Commission special responsibility in implementing joint action.

2. Manner of decision-making

(i) Determining of major policy guidelines

In the interests of consistency and credibility, a point has been made of the value of arranging for top-level adoption, by the European Council, of policy guidelines to govern the Union in its external action and in particular the main aspects of joint action.

This would not detract in any way from the very important role which should continue to be played by the General Affairs Council as a policy-making and coordinating body for the implementation of all of the Union's external action.

(ii) Instruments

There is a fairly general desire to clarify the scope of CFSP instruments, particularly joint actions and common positions.

(iii) Procedures

In the Presidency's view, the general requirement of unanimity under the CFSP is often regarded as a factor causing rigidity and even paralysis in the decision-making process. A number of possible ways of remedying this state of affairs have been considered:

- (a) application of majority voting for the determining of joint action by the Council within the general policy framework set by the European Council (subject to certain exceptions, e.g. in the security and defence field);
- (b) systematic application of majority voting for measures in implementation of joint action (subject to certain exceptions, e.g. in the security and defence field).

This extension of qualified-majority voting, in either case, might be made easier by the use of a **super-qualified majority** arrangement. Mention has also been made of the idea of linking the introduction of qualified-majority voting to the explicit recognition in the Treaty of a Member State's right to invoke an **essential national interest** in order to oppose majority voting. An alternative would be to stipulate that, where a Member State requested that a decision normally to be taken by a qualified majority should exceptionally be taken unanimously, its request could be rejected only by a qualified majority. In both cases, the idea has been mooted that the right to invoke an essential national interest should be exercisable only in the European Council;

- (c) relaxation of the unanimity rule by introducing a **constructive abstention clause** under which a Member State making use of it could opt out of participating directly in implementation, while continuing to show political – and possibly financial – solidarity with action. The idea has also been raised of stipulating clearly in the Treaty that abstention does not prevent unanimity;
- (d) lastly, use of arrangements for closer cooperation in particular fields (see Chapter 2, pages 32 to 35).

3. Financing of the CFSP

There is a generally shared wish that funds should be made available quickly when action is decided on by the Council under the CFSP. This means that operational expenditure should in principle be charged to the Community budget, provided that:

- it is in any case possible to resort to financing by the Member States in some exceptional cases;
- a solution is found under the budget procedure to ensure that, in accordance with its policy-making prerogatives for the CFSP, the Council has the final say in budgetary decisions;
- financing out of the Community budget is subject to compliance with the financial perspective.

4. Role of the European Parliament

The general wish is to maintain the existing balance between the Council and Parliament in CFSP matters. There is, however, a degree of readiness to consider practical measures in order to ensure that Parliament is more fully informed and consulted. The view has been taken by some that such consultation should not cover specific action.

IV. SECURITY AND DEFENCE

The security and defence debate is to be seen in the broader context of discussions under way in other fora (in particular the shaping of a European security and defence identity within NATO) and of the changes planned by some Member States to the way in which they organize their defence. The debate also encompasses the future of the European arms industry.

1. Objectives, content and instruments for an EU security and defence policy

In the Presidency's view, there is a widely shared desire for the European Union, with a view to a more credible foreign and security policy, to be empowered in practice to implement political decisions involving the use of military resources and capabilities, without the European Union itself embarking upon military operations. More thorough consideration needs to be given here to the implications of the conclusions of NATO's North Atlantic Council meeting on 3 June 1996, which set the **objective of developing a European security and defence identity within the Alliance**, an important feature of which is the possibility of operations including NATO resources but led by the WEU. It has been pointed out that the Conference should provide an opportunity to look into ways of fleshing out that European security and defence identity.

With regard to the "**Petersberg tasks**" (humanitarian missions, peace-keeping missions and combat force missions for crisis management), considerable interest has been shown in their explicit inclusion in the Treaty. In the view of supporters of their inclusion, which is not endorsed by all, a sufficiently clear distinction can be drawn between Petersberg-type tasks and the application of a collective defence clause.

With regard to the "**framing of a common defence policy**", the principle of henceforward including it in the CFSP has found some support (this would mean dropping the word "eventual" from Article J.4(1)); the same applies to the replacement of the **possibility** of a common defence by the **objective** of a common defence. The idea has also been put forward of adding to the CFSP objectives a reference to maintaining the integrity of Member States' territory and of common external frontiers.

Some interest has also been shown in the insertion in the Treaty of a clause stating that membership of the Union creates between Member States a security relationship entailing close, practical solidarity, without constituting a commitment to an alliance.

The need to strengthen links between the EU and the WEU in order to provide the Union with an effective operational capability in the security and defence field is very broadly accepted. Many regard that approach as also involving the inclusion in the Treaty of the prospect of future incorporation of the WEU into the Union. Some do not consider it possible to prejudge the issue at this stage. Should the principle of a merger between the Union and the WEU be included in the Treaty, the advisability of setting a timetable has been mentioned.

At all events, there seems to be a need to spell out the precise nature of the institutional link between the two organizations (general guidelines from the European Council, EU instructions to the WEU and/or a legally binding link between the EU and the WEU).

More generally speaking, the possibility of greater coordination between EU and WEU bodies has been raised: joint meetings of working parties and senior officials and attendance by the WEU Secretary-General and Defence Ministers, where appropriate, at General Affairs Council meetings.

2. Other amendments to be made to Article J.4

As regards other possible amendments to Article J.4, it has emerged that:

- there is little interest in engaging in discussion of the idea of the "specific character" of the security and defence policy of certain Member States (Article J.4(4));
- views are divided as to whether or not to specify that the clause concerning the possibility of closer cooperation between two or more Member States, in the framework of the WEU and the Atlantic Alliance, applies only to defence policy (see Article J.4(5));
- it is agreed that the unanimity rule should apply in security and defence matters, although it has been stated that the rule should not, where appropriate, stand in the way of coalitions of volunteers. There is a school of thought in favour of confining the exception in Article J.4(3) to voting rules in order to remove any ambiguity as regards the possibility of resorting to joint action in the defence field.

3. The arms issue

There is broad agreement on the advisability of having a framework under the CFSP for the development of Europe's defence industries, by encouraging increased cooperation in this field, without there being any need to amend Article 223 of the EC Treaty.

Mention has also been made of the importance of a Europe-wide arms export control policy.

1.C.b)

ADDENDUM TO REPORT

18.06.96

DRAFT TEXTS

Delegations will find attached examples of possible amendments to the Treaty drawn up by the Presidency to illustrate the options put forward during the first stage of the Intergovernmental Conference.

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1. FUNDAMENTAL RIGHTS

(a) General principles underlying the Union

Article A

1. Membership of the Union shall be linked to observance of the principles of freedom, democracy, respect for human rights and fundamental freedoms and the rule of law.
2. In the event of serious, persistent breaches of these principles by a Member State, the Council, meeting at the level of Heads of State or Government [procedure to be determined] may take steps to suspend in part or in whole the rights ensuing from that Member State's membership of the Union. The Council shall act without the participation of the Member State concerned.

Article B

The Union shall respect the national identities of its Member States. It shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

(b) Non-discrimination clause

Draft Article [6a] of the TEC ⁽²⁾

Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, the Council, acting unanimously on a proposal from the Commission and after obtaining the Opinion of the European Parliament, shall take the necessary measures to prohibit any discrimination on grounds of race ⁽³⁾, sex ⁽⁴⁾[, ...].

(c) Judicial control of respect for fundamental rights

- The present Article L of the TEU would need to be adjusted to bring Article B above within the Court's jurisdiction as regards Community areas (and Title VI).
- Article 173 of the TEC: Referral to the Court of Justice by an individual

Replace the 3rd paragraph by the following:

"The Court shall have jurisdiction under the same conditions in actions brought by the European Parliament and by the ECB for the purpose of protecting their prerogatives, and in actions brought by any natural or legal person against acts of an institution on grounds that they infringe one of his fundamental rights protected by Community law."

²⁾ Article 6 of the TEC remains unchanged.

³⁾ **NB:** Legal basis for adopting measures against racism and xenophobia: in TEC or Title VI of the TEU.

⁴⁾ **NB:** Equal treatment for men and women: in the social provisions of the TEC (strengthening of Article 119) and/or elsewhere in the Treaty (more general application beyond the social provisions).

2. **CITIZENSHIP OF THE UNION**

Clarification of the concept

Article 8 of the TEC

Read paragraph 1 as follows:

Citizenship of the Union is hereby established; every person holding the nationality of a Member State shall be a citizen of the Union.

Citizenship of the Union shall be additional to and shall not take the place of national citizenship.

3. **TRANSPARENCY**

As regards the general principle

Article A (second paragraph)

"This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen and in compliance with the principle of transparency of the decision-making process."

As regards the Council

Option 1

Article 151(3)

3. The Council shall adopt its Rules of Procedure, acting by a qualified majority.

The Council shall define in its Rules of Procedure the cases in which it is to be regarded as acting in its legislative capacity for the purposes of implementing this paragraph. In its Rules of Procedure, it shall adopt appropriate rules to ensure that the public has better knowledge of the development of the legislative procedure and better access to documents submitted to the Council in the course of that procedure.

Option 2

Article 151(3)

3. The Council shall adopt its Rules of Procedure, acting by a qualified majority.

New Article 151a

1. The Council shall define in its Rules of Procedure the cases in which it is to be regarded as acting in its legislative capacity for the purposes of implementing this Article.

2. Where the Council acts in its legislative capacity:

- (a) it shall publish the results of votes and explanations of vote, as well as statements in the minutes;
- (b) in general, it shall take all appropriate measures to promote better knowledge of the development of the legislative procedure.

4. SUBSIDIARITY

Draft Protocol/Declaration
on the application of the principle of subsidiarity ⁽⁵⁾

The HIGH CONTRACTING PARTIES,

WISHING to establish the conditions for application of the principle of subsidiarity laid down by Article 3b of the Treaty establishing the European Community,

HAVE AGREED on the following provisions, which are hereby annexed to that Treaty:

1. The principle of subsidiarity does not relate to and cannot call into question the powers conferred on the European Community by the Treaty, as interpreted by the Court of Justice; it provides a guide as to how those powers are to be exercised at Community level. The application of the principle must respect the general provisions of the Treaty on European Union, particularly as regards maintaining in full the *acquis communautaire*.
2. Where the application of the principle of subsidiarity leads to no action being taken by the Community, Member States are still required in their action to comply with the general rules laid down in Article 5 of the Treaty, by taking all appropriate measures to ensure fulfilment of their obligations under the Treaty and by abstaining from any measure which could jeopardize the attainment of the objectives of the Treaty.
3. In exercising the powers conferred on it, each institution is to ensure that the principle of subsidiarity is complied with.
4. Without prejudice to its right of initiative, the Commission is to:
 - consult widely before proposing legislation and, wherever appropriate, publish consultation documents;

⁵⁾ Draft to be supplemented in the light of the Edinburgh conclusions and the Interinstitutional Agreement.

- justify each of its proposals with regard to the principle of subsidiarity; whenever necessary, the explanatory memorandum accompanying the proposal is to give further details in this respect;
- submit an annual report to the Council and the European Parliament on compliance with the principle of subsidiarity.

5. While fully observing the procedures applicable, the Council is to consider systematically the consistency of any prospective act or measure with Article 3b of the Treaty, whether for an original Commission proposal or for amendments which the Council envisages making to it.

6. In the course of the procedures referred to in Articles 189b and 189c, the European Parliament is to be informed of the Council's position on the application of Article 3b, in the statement of the Council's reasons. The Council is to inform the European Parliament of its reasons if it rejects a Commission proposal in whole or in part on the grounds that it is inconsistent with Article 3b of the Treaty.

5. JUSTICE AND HOME AFFAIRS

(a) Objectives

Drafting suggestions

- Fourth indent of the first paragraph of **Article B** to read as follows:

"
to promote an area of freedom, security and justice in the Union, in accordance with the principles of the rule of law, by developing close cooperation and common policies on justice and home affairs;"

- **Article K:**

"Union action in the fields of justice and home affairs shall have as its objective to:

- consolidate the area of freedom and security without internal frontiers while controlling unwanted immigration flows;
- provide more effective guarantees of internal security by working to combat international crime, drugs and terrorism;
- allow of close cooperation between the civil and criminal justice authorities of the Member States for the benefit of the citizens of the Union."

[Each of these objectives could be expanded upon.]

b) Scope

Article K.1

The list of "matters of common interest" ⁽⁶⁾ to be extended as follows:

- (1) asylum policy;
- (2) rules governing the crossing by persons of the external borders of the Member States and the exercise of controls thereon;
- (3) immigration policy and policy regarding nationals of third countries:
 - (a) conditions of entry and movement by nationals of third countries on the territory of Member States;
 - (b) conditions of residence by nationals of third countries on the territory of Member States, including family reunion and access to employment;
 - (c) combating unauthorized immigration, residence and work by nationals of third countries on the territory of Member States;
- (4) combating drug addiction (-);
- (5) combating fraud and corruption on an international scale (-);
- (6) judicial cooperation in civil matters;
- (7) judicial cooperation in criminal matters;
- (8) customs cooperation;
- (9) police cooperation, in particular for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime, including, if necessary (-) in connection with certain aspects of customs cooperation, (-) the organization of a Union-wide system for exchanging information within a European Police office (Europol);
- (10) the approximation of crime-fighting policies;
- (11) the approximation of rules on conflict of law and jurisdiction;
- (12) combating racism and xenophobia.

⁶⁾ Subject to certain areas (asylum, immigration, ...) being brought within the Community sphere.

c) Multiannual work programmes

Article K.1

Addition of a second paragraph, reading as follows:

The Council, acting by a qualified majority, shall adopt multiannual work programmes; these programmes shall lay down the action to be carried out, the priorities for it, the measures, instruments and deadlines planned for carrying it out and the arrangements for funding it.

d) Instruments

Article K.3(2)

'The Council shall take any measure contributing to the pursuit of the objectives of the Union.

To that end, it may, on the initiative of any Member State or of the Commission:

- (a) acting by a qualified majority, adopt recommendations and resolutions and, acting by a majority of its members, adopt any procedural decision; recommendations and resolutions shall have no binding force;
- (b) adopt joint positions ⁽⁷⁾, whether for the purposes referred to in Article K.5 or for purposes of guidance or of establishing a joint standpoint; joint positions shall be binding upon the institutions of the Union and the governments of the Member States. Joint positions may stipulate that the Court of Justice shall have jurisdiction to interpret their provisions; [flexibility] ⁽⁸⁾
- (c) adopt joint action ⁽¹⁾ insofar as the objectives of the Union can be attained better by joint action than by the Member States acting individually on account of the scale or effects of the action envisaged; any measures implementing a joint action shall be adopted by a qualified majority; joint actions and measures implementing them shall be binding upon the institutions of the Union and the Member States. Joint actions

⁷⁾ Unless these two instruments are merged, or even eliminated.

⁸⁾ Any provision on flexibility to be tailored to each of the different instruments.

may stipulate that the Court of Justice shall have jurisdiction to interpret their provisions; [flexibility] (*)

- (d) adopt joint measures (*); these measures shall be binding upon the Member States as to the result to be achieved but shall leave to the national authorities the choice of form and methods. The Court of Justice shall have jurisdiction to interpret the provisions of joint measures; [flexibility] (*)
- (e) draw up conventions which it shall recommend be subject, within a time-limit which it shall set, to the procedures applicable with a view to adoption by the Member States in accordance with their respective constitutional requirements; such conventions may provide for their entry into force after adoption by the number of Member States which they shall determine. Measures implementing such conventions shall be adopted within the Council by a majority of two thirds of the High Contracting Parties.

Such conventions may stipulate that the Court of Justice shall have jurisdiction, upon their entry into force, to interpret their provisions and those of the measures implementing them and to rule on any disputes regarding their application, in accordance with such arrangements as they lay down. In the case of conventions and implementing measures which contain provisions making an explicit or implicit reference to concepts of Community law, it shall be mandatory to confer jurisdiction on the Court of Justice to interpret such provisions by way of preliminary rulings."

e) **International cooperation**

[See below, point 7. Legal personality for the Union].

(*) Or any other name decided on.

f) Closer cooperation

l) Status quo with adjustments

Article K.7

"The provisions of this Title shall not prevent the establishment or development of closer cooperation between two or more Member States insofar as such cooperation does not conflict with, or impede, **the action provided for in this Title. The Council may authorize those Member States to have recourse to the institutions, procedures and mechanisms of this Treaty.**"

(ii) Incorporation of the Schengen system into the TEU institutional set-up

Outline draft "Schengen" Protocol

The High Contracting Parties,

Noting that [x] Member States, that is to say (all except ...), wish to establish, within the European Union, conditions guaranteeing freedom of movement for persons through the abolition of all checks on persons at their internal borders; whereas the 1985 Schengen Agreement on the gradual abolition of checks at common borders, and more particularly the 1990 Convention applying the said Schengen Agreement, are in line with that objective; whereas they wish to incorporate these instruments into the European Union framework, along with the institutions created by them, insofar as they are not replaced by instruments of Community law or by conventions concluded between all Member States of the European Union:

- (1) Agree to authorize those [x] Member States to incorporate, as far as they are concerned, the instruments constituting the Schengen "acquis" into the European Union framework and to have recourse to the institutions, procedures and mechanisms of the Treaty on European Union, without prejudice to the competence of the European Community, for the purpose of adopting among themselves and applying the acts and decisions required for giving effect to the abovementioned Agreements.

- (2) [.....] shall not take part in the deliberations on and the adoption of acts or decisions adopted on the basis of this Protocol and the abovementioned Agreements.
- (3) Rule on the establishment of a qualified majority and unanimity.
- (4) Rule on giving jurisdiction to the Court of Justice.
- (5) Rule on the financial consequences of the measures adopted, including perhaps giving powers of audit to the Court of Auditors.
- (6) Rule on the option of and procedures for concluding agreements with third countries on the abolition of checks at common borders with those countries and for the creation of specific institutional frameworks.
- (7) Possibility for "non-Schengen" Member States to open, simply by making a declaration, negotiations enabling them to join the system.
- (8) This Protocol to be annexed to the TEU.

The Schengen Agreements (Agreement, Convention applying the Agreement + Annexes, accession protocols and relevant decisions of the Executive Committee) should be reproduced in full in an Annex to this Protocol.

- (iii) Enabling clause opening the way for closer cooperation between Member States

Article K.3a

1. The Council, acting unanimously on the initiative of the Commission or of any Member State, may decide that, for a period to be determined, the acts it adopts in one or more of the areas referred to in Article K.1 shall be binding only on those Member States which have declared their wish to participate in putting action in that area or areas into effect, provided that at least [two thirds of the] Member States have given notification of that wish.
2. Acts decided on under this Article shall be adopted by the Council, acting [unanimously] [by a qualified majority], without the participation of the Member States which have not

given the abovementioned notification. The measures implementing those acts shall be adopted by the Council by a two-thirds majority of the members which have given that notification. ()

3. Any Member State which has not given the abovementioned notification may, at any time, make a simple declaration indicating whether it accepts the acts adopted on the basis of paragraph 2.
4. 1st option: no paragraph 4. [This means that even Member States which have not given the abovementioned notification will be jointly liable in budgetary terms and thus bear the financial consequences of the acts involved along with the others.]

2nd option:

The financial consequences, other than administrative costs, of acts adopted on the basis of paragraph 2 shall be borne by the Member States which have given the abovementioned notification or which have accepted the said acts in accordance with paragraph 3.

- (iv) Solidarity clause committing those States not bound by a JHA act

Article K.3b

"Where a Member State is not bound by one of the acts adopted by the Council in accordance with Article K.3(2), it shall nevertheless refrain from any action likely to conflict with or impede Union action based on the act in question."

*Conversely, all the members of the European Parliament, the Commission and the Court of Justice will continue to take part in discussions in their respective institutions, as with the Protocol on social policy.

6. LEGISLATIVE PROCEDURES. ARTICLE 189b OF THE TEC

Suggested rewording

1. Where reference is made in this Treaty to this Article for the adoption of an act, the following procedure shall apply.

2. The Commission shall submit a proposal to the European Parliament and the Council.

The Council, acting by a qualified majority after obtaining the opinion of the European Parliament, shall adopt a common position. The common position shall be communicated to the European Parliament. The Council shall inform the European Parliament fully of the reasons which led it to adopt its common position. The Commission shall inform the European Parliament fully of its position.

If, within three months of such communication, the European Parliament:

- (a) approves the common position, or has not taken a decision, the act in question shall be deemed to have been adopted in accordance with that common position;
- (b) proposes amendments to the common position by an absolute majority of its component members, the amended text shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.

3. If, within three months of the matter being referred to it, the Council, acting by a qualified majority, approves all the amendments of the European Parliament, it shall amend its position accordingly and adopt the act in question. If the Council does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament, shall forthwith convene a meeting of the Conciliation Committee.

4. The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of representatives of the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the representatives of the European Parliament. The Commission shall take part in the Conciliation Committee's

proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council.

5. If, within six weeks of its being convened, the Conciliation Committee approves a joint text, the act shall be deemed to have been adopted in accordance with the joint text.

If the Conciliation Committee does not reach agreement on a joint text, the proposed act shall be deemed not to have been adopted.

6. The periods of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council.

[NB: Article 189a would have to be amended if these suggestions were adopted.]

7. LEGAL PERSONALITY FOR THE UNION

(a) Endowing the Union with full legal personality

Draft Article for the TEU

- "1. The European Union shall have legal personality.

2. In each of the Member States, the Union shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. To this end, the Union shall be represented by the Commission.

3. In international relations, the Union shall enjoy legal capacity to the extent necessary for the exercise of its functions and the fulfilment of its purposes. To this end, the Union shall be represented by the Presidency of the Council.

4. Where the Council intends to conclude an agreement on behalf of the Union, it shall authorize the Presidency, assisted by the Commission if appropriate, to open the necessary negotiations. The Presidency may seek the assistance of the Troika. The negotiations shall be conducted within the framework of the directives issued by the Council, acting unanimously.

5. Agreements shall be concluded on behalf of the Union by the Council, acting unanimously on a recommendation from the Presidency [and after consulting the European Parliament. The European Parliament shall deliver its Opinion within a time-limit which the Council may lay down according to the urgency of the matter. In the absence of an Opinion within that time-limit, the Council may act].

6. The Union shall not be empowered to conclude any agreements providing for the use of military means.

7. No provision of this Article shall affect the Treaties establishing the European Communities or the subsequent Treaties and Acts amending or supplementing them.

8. Agreements concluded under the conditions set out in this Article shall be binding on the institutions of the Union and the Member States."

(b) Capacity for the Union to conclude international agreements in certain fields

Draft Article for the TEU

"1. Where this proves desirable for the achievement of the Union's objectives, the Council may authorize the Presidency, assisted by the Commission if appropriate, to open the necessary negotiations for the conclusion of international agreements between the Union and one or more States or international organizations in the fields covered by Titles V and VI:

-
-
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The Presidency may seek the assistance of the Troika.

2. The negotiations shall be conducted within the framework of the directives issued by the Council, acting unanimously.
3. The agreements negotiated in this way shall be concluded by the Council, acting unanimously on a recommendation from the Presidency [and after consulting the European Parliament. The European Parliament shall deliver its Opinion within a time-limit which the Council may lay down according to the urgency of the matter; in the absence of the Opinion within that time-limit, the Council may act].
4. The Union shall not be empowered to conclude any agreements providing for the use of military means.
5. No provision of this Article shall affect the Treaties establishing the European Communities or the subsequent Treaties and Acts amending or supplementing them.
6. Agreements concluded under the conditions set out in this Article shall be binding on the institutions of the Union and the Member States."

(c) No capacity for the Union to conclude international agreements

Draft Article for the TEU

1. Where this proves desirable for the achievement of the Union's objectives, the Council may authorize the Presidency, acting on behalf of the Member States, to open negotiations for the conclusion of an agreement between all the Member States and one or more States or international organizations in the fields [...].
2. [Same as paragraph 2 of option (b).]
3. The agreements negotiated in this way shall enter into force after the completion by each Member State of the internal procedures required for their conclusion. Member States shall introduce a streamlined, fast-track procedure for this purpose.
4. In particularly urgent cases, the Member States, meeting within the Council, may decide by common accord, acting on a recommendation from the Presidency, to apply an agreement provisionally, pending its conclusion.
5. [Same as paragraph 4 of option (b).]
6. [Same as paragraph 5 of option (b).]
7. [Same as paragraph 6 of option (b).]"

8. EXTERNAL ECONOMIC RELATIONS

(a) Common positions in international fora

Draft Article (new)

The Community and the Member States shall speak with one voice in international organizations and at international conferences in all areas of external economic relations, particularly the fields of services, industrial property and intellectual property. The position to be adopted to that end shall be defined by the Council, acting unanimously on a proposal from the Commission.

(b) International agreements

Article 228(2) (with addition)

"2. Subject to the powers vested in the Commission in this field, *the signing, which may be accompanied by a decision on provisional application before entry into force, and the conclusion of the agreements shall be decided on by the Council, acting by a qualified majority on a proposal from the Commission. The Council shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of internal rules and for the agreements referred to in Article 238.*

By way of derogation from the rules laid down in paragraph 3, the same procedure shall be followed for the purpose of deciding to suspend the application of an international agreement, and for the purpose of establishing the position to be adopted on behalf of the Community in a body set up by an agreement, when that body is called upon to adopt decisions having legal effects, with the exception of decisions supplementing or amending the institutional framework of the agreement."

(C) Legal basis for the conclusion of "horizontal" agreements

Article 238a (new)

"The Community may also conclude with one or more States or international organizations cooperation agreements which, while not establishing associations, create reciprocal rights and obligations in various fields falling within the Community's sphere of competence. These agreements shall be concluded by the Council acting [by a qualified majority] [unanimously] on a proposal from the Commission and after consulting the European Parliament."

9. COMMON FOREIGN AND SECURITY POLICY

(a) Implementation

Example of a possible amendment to Article J.5 of the TEU

- (a) Redraft the beginning of paragraph 2 as follows:

"The Presidency shall be responsible, within the framework of the provisions in the following paragraphs, for the implementation ..." (remainder unchanged).

- (b) Add the following new paragraph 3a between paragraphs 3 and 4:

"3a. In the acts which it adopts, the Council may confer powers on the Presidency to implement the rules which it establishes; it may make exercise of those powers subject to certain arrangements. It may also confer implementing powers on either the Troika or the Commission, making exercise of those powers subject to certain arrangements. Lastly, it may reserve the right to exercise implementing powers directly itself. In all cases, those responsible for exercising implementing powers shall receive the administrative and technical support of the General Secretariat of the Council."

(b) Financing

Example of a possible amendment to Article J.11(2) of the TEU

"(a) Administrative expenditure which the provisions relating to the areas referred to in this Title entail for the institutions shall be charged to the budget of the European Communities.

- (b) Operational expenditure to which the implementation of those provisions gives rise shall also be charged to the budget of the European Communities, save where the Council decides otherwise by a qualified majority calculated in accordance with the second subparagraph of Article J.3(2). In that case, expenditure shall be charged to the Member States in accordance with a scale to be determined by the Council acting by [a super-qualified] a qualified majority on a recommendation from the

Commission; this procedure shall at all times be applicable to operational expenditure on defence matters (use of military means).

- (c) The budgetary procedure laid down in the Treaty establishing the European Community shall apply to the administrative expenditure referred to in (a) and the operational expenditure referred to in (b) where it is charged to the budget of the European Communities. The expenditure in question shall be deemed to be expenditure necessarily resulting from the Treaty within the meaning of Article 203 of the Treaty establishing the European Community."

CORRIGENDUM TO ADDENDUM TO REPORT

Page 16 Legislative procedures, Article 189b, suggested rewording

- **Paragraph 2, second subparagraph, to read as follows:**

"The Council, acting by a qualified majority after obtaining the Opinion of the European Parliament, shall adopt a common position. If the Council approves all the amendments contained in the European Parliament's Opinion, it shall adopt the act concerned. If not, it shall forward the common position to the European Parliament. The Council shall inform the European Parliament fully of the reasons which led it to adopt its common position. The Commission shall inform the European Parliament fully of its position."

- **Paragraph 5, first subparagraph, to read as follows:**

"If, within six weeks of its being convened, the Conciliation Committee approves a joint text, the European Parliament, acting by an absolute majority of the votes cast, and the Council, acting by a qualified majority, shall have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text."

2.A

EUROPEAN PARLIAMENT

13.03.96

RESOLUTION ON THE EUROPEAN COUNCIL IN TURIN

REF : A4-0068/96

Resolution embodying (i) Parliament's opinion on the convening of the Intergovernmental Conference, and (ii) an evaluation of the work of the Reflection Group and a definition of the political priorities of the European Parliament with a view to the Intergovernmental Conference

The European Parliament,

- having regard to its resolutions of 17 May 1995^(*) on the functioning of the Treaty on European Union with a view to the 1996 Intergovernmental Conference - Implementation and Development of the Union, and 14 December 1995^(**) on the agenda for the 1996 Intergovernmental Conference with a view to the Madrid European Council, and the report of the Reflection Group,
- having regard to the public hearings that it held in October 1995 and February 1996,
- having regard to the letter from the Council (C4-0026/96), consulting it pursuant to Article N(1) of the Treaty on European Union, on the convening of the Intergovernmental Conference (IGC) to consider amendments to the Treaties on which the European Union is founded,
- having regard to the opinion of the Commission of 29 February 1996 entitled "Reinforcing political union and preparing for enlargement (COM(96)0090 - C4-0151/96),
- having regard to the report of its Committee on Institutional Affairs and the opinions of the Committees on Foreign Affairs, Security and Defence Policy; Agriculture and Rural Development; Budgets; Economic and Monetary Affairs and Industrial Policy; Research, Technological Development and Energy; External Economic Relations; Legal Affairs and Citizens' Rights; Social Affairs and Employment; Regional Policy; Transport and Tourism; Environment, Public Health and Consumer Protection; Culture, Youth, Education and the Media; Development and Cooperation; Civil

^(*) OJ C 151, 19.6.1995, p. 56

^(**) Minutes of that sitting, Part II, Item 1(c).

Liberties and Internal Affairs; Budgetary Control; Fisheries; Rules of Procedure, the Verification of Credentials and Immunities; and Women's Rights (A4-0068/96),

- A. whereas in the period since the Second World War the European Community and the European Union have been synonymous with peace, political stability and harmonious economic and social development in Europe, and whereas the Union must have the same significance also for the future, particularly for countries wishing to accede to it,
- B. whereas enlargement constitutes an extraordinary opportunity for the political unification of Europe and whereas the IGC should reform the Union in order to prepare it for future enlargement and, at the same time, deepen the integration process,
- C. whereas it is absolutely vital for the IGC to meet the demands of citizens for a Europe with a better balance in its common policies, a comprehensive definition of European citizenship, an effective internal security policy, a visible foreign policy serving the interests of peace, greater openness and transparency in the Union, more democratic and effective rules and procedures and transparent financial management that guards against fraud,
- D. whereas the Union's own founding principles require a reform of the Treaties with a view to achieving a more suitable balance between the European institutions and policies, consolidating the importance of cohesion, solidarity and the common foreign and security policy, enhancing the democratic legitimacy of the European institutions and making them open and transparent,
- E. whereas the "strengthening of social and economic cohesion" and the "introduction of a citizenship of the Union", as provided for in Article B of the Common Provisions of the EU Treaty, cannot be achieved without strengthening the cultural dimension of the Union; whereas culture is a driving force behind development and whereas all sustainable development must take into account the impact of policies as a whole on heritage and the environment,

- F. whereas the strengthening of existing policies which is needed will not be possible except in the context of merging the three pillars in a single institutional and legal framework and with due respect for the principles of subsidiarity and solidarity,
- G. whereas these are reason enough to produce in-depth reforms but whereas the forthcoming enlargement of the Union to include Malta and Cyprus and countries of Central and Eastern Europe will provide a strong additional argument for adapting the Union's institutions and functioning to meet the needs of an enlarged Union,
- H. whereas there is also a formal requirement for an evaluation and reform of the Treaty on European Union as set out in Article N(2) of that Treaty, but restricting the review to the points indicated in the Treaty is insufficient to prepare the Union for future enlargement,
- I. whereas it is essential for the Union to define, on the basis of the *acquis communautaire* which must be retained in full, clear and precise aims and objectives which are shared by all the Member States and which cannot be challenged under any circumstances,
- J. whereas, in addition to the IGC, the next few years will also see important decisions taken concerning monetary union, the renegotiation of the own-resources system and the financial perspectives, and the accession negotiations, and whereas all these decisions will be decisive for the shape of the European Union in the year 2000,
- K. whereas the report of the Reflection Group constitutes a good point of departure for the IGC negotiations; whereas, however, the report contains a number of positive options but also some shortcomings and negative options and no unanimous agreement on the major issues for the IGC; whereas it is essential, therefore, that Parliament makes its position and its priorities clear before the IGC starts,
- L. whereas the European Parliament must be closely associated with the IGC negotiations and should be able to give its assent to the final outcome, before the national parliaments give their assent,

- M. whereas European citizens need to be kept fully informed of the IGC process to ensure that the IGC decision-makers do not lose touch with public opinion and that ratification can take place with broad public support,

I -OPINION OF PARLIAMENT ON THE CONVENING OF THE IGC

1. Expresses its support for the convening of the Intergovernmental Conference with a view to proceeding to the necessary improvements and revisions of the Treaties, and thus progressing towards a genuine political union;

II -THE KEY PRIORITIES FOR THE FUTURE OF EUROPE

2. Reaffirms and reiterates its aforementioned resolution of 17 May 1995 as the basis of its position on the IGC; considers that there are a number of key priorities which need to be successfully tackled at the IGC if the outcome is to be worth ratifying:
- I. **an improved definition of European citizenship and enhanced respect for human rights** through extension of specific rights for European citizens within the Treaty, the strengthening of fundamental human rights and the principles of equal treatment and non-discrimination, and consolidation of those rights concerning citizens which are currently dispersed throughout the Treaty within a single Treaty chapter on European citizenship, and finally through the creation of a full guarantee of legal protection by the European Court of Justice for the bodies of the Union, Member States and citizens. Strengthening the cultural dimension and exchange opportunities in the Union will have a powerful impact on its democratic legitimacy;
 - II. **a more effective response to the concerns of the public over internal security, by**
 - giving a Community dimension to the external aspects of policy on justice and home affairs (visa, asylum and immigration policy, rules on crossing external

- frontiers), as well as measures to combat drug trafficking and to promote judicial cooperation in civil matters;
- greater recourse to Community institutions and procedures in respect of police, naval and customs cooperation and cooperation between the courts on criminal matters;
- III. **development of the social and ecological dimension and of employment policy within the internal market, and the strengthening of economic and social cohesion as a fundamental goal of the Union and an integral part of the Community patrimony by making appropriate amendments to the Treaty, by defining more clearly and coordinating Community policies in these fields, and by making them more democratic;**
- IV. **reinforcing the European Union's external role, notably in safeguarding peace and security, by developing a fully operational common foreign and security policy particularly through greater use of qualified majority voting, the establishment of a Common Analysis and Planning Unit under Commission auspices and the gradual integration of the WEU in the EU Treaty;**
- V. **a positive response to the public's desire for greater openness and transparency by means of a reduction in EU decision-making procedures, the introduction of the basic principle of openness within the Treaty, guaranteed access to EU documents, and opening up Council meetings on legislative matters, and guaranteeing publication of Council decisions and documents relating to legislation;**
- VI. **decisive progress towards a more democratic and more efficient Europe, based on the concept of statutory equality of states, thereby guaranteeing that all Member States are on an equal footing in terms of participation in the institutions of the Union; progress must be achieved in particular by introducing majority voting and a simplified codecision procedure as the general EU procedure on legislative matters, and by reinforcing the role of the European Parliament;**

VII. **greater credibility for the European Union, to be achieved via effective action against the fraudulent use of Community financial resources at all levels, which presupposes:**

- a democratic procedure to establish all the Community regulations required to protect the financial interests of the European Communities;
- greater monitoring by the Court of Auditors;
- the constraining nature of Parliament's remarks attached to the decision on discharge.

VIII. **a simplified, codified and more comprehensible Treaty;**

3. Considers that, by 1999, an adequate system of own resources should be established in accordance with the principles of solidarity between the Member States, subsidiarity, the relative prosperity of the Member States and economic and social cohesion, so as to guarantee the autonomy of the Union and the effectiveness of its action; such a system should not involve any extra financial burden for the citizens;

III -A STRATEGY, AN INSTITUTIONAL DYNAMIC AND INSTRUMENTS IN THE SERVICE OF THESE KEY PRIORITIES

4. **Improved definition of European citizenship and enhanced respect for human rights**

- 4.1 European citizenship should have precise legal substance; the rights and obligations affecting European citizenship should be consolidated in the first chapter of the Treaty under the heading "Declaration of basic rights and provisions governing the exercise of the rights of European citizens and residents" and such on the basis of the Declaration of fundamental rights and freedoms adopted by the European Parliament on 12 April 1989^(****); this new chapter in the Treaty should make it clear that European

^(****) OJ C 120, 16.5.1989, p. 52.

citizenship gives the citizen new rights and obligations towards the Union, and does not replace national citizenship but complements it;

- 4.2 The European Union should accede to the European Convention on Human Rights and Fundamental Freedoms so that human rights laid down in the Convention not only have legal applicability at European Union level, but can also be capable of review by the European Court of Human Rights;
- 4.3 The Treaty should make it incumbent on the Member States to protect fundamental and human rights;
- 4.4 The Treaty should include a list of fundamental rights relating to the transposition and application of the law of the Union and of the Communities. This should take account of the cross-border aspect of protection of fundamental rights (e.g. protection of the freedom of association and protection of the family);
- 4.5 The European Union should include in this special chapter the principle of equal treatment and non-discrimination regardless, in particular, of race, gender, sexual orientation, age, religion or handicap;
- 4.6 In this same chapter specific reference should be made to the abolition of capital punishment and to the punishment of all acts of racial or anti-semitic violence, harassment and abuse;
- 4.7 Equal treatment of women and men should be recognized as a fundamental right in the revised Treaty; the substance of Article 119 of the Treaty should be maintained but should be extended to all aspects of equal opportunities in all areas, notably economic, social and family life, with explicit reference being made to affirmative action;
- 4.8 Economic and social rights with transnational scope should be defined clearly in this chapter, especially the individual and collective rights of employees;
- 4.9 The list of fundamental rights should contain a section on European political rights which should cover, in particular, the adoption of a uniform electoral system with a

deadline for implementation, a single statute for Members of the European Parliament and the development of political parties at European Union level;

- 4.10 The traditional position of social groups in the Member States should be respected and not impaired by Community legislation, having due regard to the *acquis communautaire*;
- 4.11 The Union should promote the development of common policies in the sphere of youth;
- 4.12 To encourage a feeling of belonging to the Union and of solidarity between the Member States, in particular amongst young people, a Voluntary European Peace Corps should be set up, for example for humanitarian missions within and beyond the European Union;
- 4.13 The European Union should support the recognition of cultural and linguistic diversity and protection of traditional national minorities and their languages by the Member States and, in the context of human rights, democracy and the rule of law, provide express recognition, protection and support for its minority languages and cultures;
- 4.14 Account should be taken of the specific nature of the cultural dimension and the need to guarantee pluralism in the measures and policies implemented in all sectors of activity; the Union should take the joint measures necessary to promote cultural and linguistic understanding both within and outside the Union, exchanges and networks of institutions and experiences, the protection of cultural assets, the harmonization of legislation on copyright, and support for the translation, free circulation and dissemination of cultural works and information;
- 4.15 European citizens must under no circumstances be treated as foreigners within the European Union;
- 4.16 Third-country nationals legally resident in the Union should be given guarantees regarding respect for human rights, equality of treatment and non-discrimination with regard to social, economic and cultural rights and the right to vote in local elections, in accordance with the Council of Europe's Convention;

4.17 Comprehensive legal protection should be guaranteed within the scope of the European Union (including Europol) by the national courts, the Court of First Instance and the European Court of Justice;

4.18 Sport must be included in the Treaty, in the context of education, training and employment policy, as well as cultural policy. The Union should encourage in particular transnational initiatives, while respecting national sporting identities;

5. A more effective response to the concerns of the public over internal security

5.1 Subjects related to the following should be dealt with by means of Community procedures and institutions:

- asylum policy (Article K.1(1));
- the rules governing the crossing of the external borders (Article K.1(2));
- the rules governing immigration policy and policy towards third-country nationals (Article K.1(3));
- action to combat drug-trafficking (Article K.1(9)), together with the inclusion of an explicit reference in that article to the traffic in human beings, especially minors and women;
- action to combat international fraud and organized crime (Article K.1(5));
- also, subjects related to judicial cooperation in civil matters (Article K.1(6)) where they are related to the exercise of the free movement of persons;

5.2 The other subjects included in Title VI of the EU Treaty should be dealt with through greater recourse to Community procedures and institutions and revised to incorporate the following:

- strengthening of the powers of the Commission (right of initiative) and the European Parliament (codecision), in order to improve the level of democratic control;
 - recognition of the competence of the Court of Justice, particularly its jurisdiction over disputes concerning the interpretation of the text of conventions;
 - reinforced protection of human rights;
 - greater use of qualified majority voting;
 - transparency (in particular, publication of Council proposals and acts in the Official Journal);
 - ending of the frequent use of legal instruments not provided for in the Treaty on European Union (resolutions, recommendations and conventions), so as to allow democratic control to be exercised;
- 5.3 A 'passerelle' should be maintained for giving a Community dimension to these matters: the conditions for application of Article K.9 of the Treaty should be made more flexible using qualified majority voting in Council, with the need for such decisions to be ratified by the Member States having to take account of their constitutional provisions;
- 5.4 The commitment of democracies to combating terrorism should be strengthened; the Member States must undertake through a specific Treaty obligation to withdraw the reservations they have lodged in this connection in accordance with Article 13 of the European Convention on the Suppression of Terrorism;
- 6. Development of the social and ecological dimension and of employment policy within the internal market, and of economic and social cohesion**
- 6.1 A single market, sustainable development, and economic and social cohesion require the capacity to adopt the common policies needed in the following areas: the social

spheres, employment, certain aspects of taxation, and the environment. In these areas, qualified voting and the codecision procedure must become the general rule;

- 6.2 Transparency and democratic accountability should be strengthened in respect of the taking of decisions on the Union's economic policy, particularly those concerning the adoption of economic guidelines and the excessive deficit procedure;

7. A far-reaching social union

- 7.1 The agreement on social policy will be incorporated in the Treaty and should be improved;

- 7.2 The essential principles of the Community charter of fundamental social rights should be incorporated in the body of the Treaty, especially those concerning equality between women and men and transnational rights of organization, collective bargaining and industrial action (including the right to strike);

- 7.3 The Treaty should include an obligation on the Commission to submit a set of measures, accompanied by a schedule, which are needed if there is to be a social union;

- 7.4 The Treaty should provide a clear obligation on the part of the Union to develop a policy to overcome social injustice, exclusion, discrimination, and poverty, and give the Commission the necessary powers to implement it;

8. A pro-active policy for employment

- 8.1 Employment must be the focus of all European policies, particularly those conducted within the framework of economic policy. This is in no way intended to unbalance economic and monetary union but to take into account the three imperatives of competitiveness, growth and employment and to facilitate its achievement by paving the way for sustainable development;

- 8.2 The Treaty shall be supplemented by a new chapter establishing a 'Union for Employment'. This chapter shall specify the common objectives and the procedures followed in this area and shall mark the contracting parties' commitment to certain basic principles relating to employment policy;
- 8.3 Article 2 of the Treaty should specify the Community's social function of 'promoting a high level of employment and of social protection for women and men';
- 8.4 The objective of a high level of employment should be set out in Article 3a(3) of the Treaty among the 'guiding principles' of the action of the Member States and the Union with a view to economic and monetary union. It should also be referred to in the other relevant articles of the Treaty. The Treaty should instruct the European Council to adopt the main guidelines for economic and employment policy in order to establish the necessary balance between these two closely linked areas of action;
- 8.5 A Committee on Employment which will have a similar status to the Monetary Committee shall be set up in order to promote the coordination of the Member States' and the Community's employment policies and to contribute to the preparation of the work of the Council regarding economic and employment policy, in consultation with the social partners;
- 8.6 The IGC should incorporate in Article 1 of the Agreement on social policy the principle of 'harmonization while... improvement is being maintained' which is referred to in the first paragraph of Article 117 of the Treaty;
9. **Fiscal policy and the internal market**
- 9.1 The development of the internal market and the promotion of economic and social cohesion require the harmonization of certain forms of taxation;

10 Information

10.1 The Union shall encourage all forms of exchanges of information and facilitate citizens' access to information by removing obstacles. It shall protect pluralism in the media and the arts;

10.2 The Union shall encourage cooperation between radio and television companies, and the development of the multimedia sector, in particular through the production of programmes conceived at European level;

11. Public service obligations: A European Union which promotes the general interest

11.1 The Community's action is not only directed towards the establishment of a competition regime within the single market: it is also at the service of the general interest, and therefore has functions relating to the strengthening of economic and social cohesion and the protection of consumers and service users;

11.2 Article B of the EU Treaty and Articles 90(3) and 100a of the EC Treaty should be amended to include a reference to services of general interest;

11.3 The fundamental principles of public service, i.e. accessibility, universality, equality, continuity, quality, transparency and participation within the framework of the single market, and with respect to the principle of subsidiarity, should be written into the Treaty;

12. The strengthening of social and economic cohesion as a basic task of the Union and an integral part of the '*acquis communautaire*'

12.1 Social and economic cohesion constitutes solidarity between the Member States and regions and takes the form, as far as possible, of balanced, sustainable development, the narrowing of structural gaps between countries and regions and the promotion of genuine equal opportunities for people and the regions in the single market;

12.2 Progress in the European Union's political project and the prospect of enlargement to include less-developed countries call for a central role to be given to the principle of social and economic cohesion as a basis for all Union actions and policies;

12.3 The Treaty should also include provision for different, specific treatment for extremely remote regions on account of their particular geographical situation, the fragmentation of their island markets and their shortage of capital and natural resources;

13. **Environment**

13.1 In line with the Reflection Group's wishes and to include the environment as a genuine objective of the Union in the Treaty, the Union Treaty should have a separate clause on sustainability and the environment in its preamble, and protection of the environment should be included in Article 3;

13.2 Protection of the environment should be explicitly taken into account in the implementation of the common policies of the Union, in particular by modifying Articles 130u(1), 130a and 130b;

13.3 All Community policies and measures must be compatible with the objective of providing the greatest possible protection of the environment. Environment policy must therefore be an integrated feature of all policy areas of the Union which affect the environment, for example industrial policy, agricultural and fisheries policy, transport policy, policy on trans-European networks, energy and research policy, regional and structural policy or commercial and economic policy. The relevant articles should be amended or supplemented accordingly;

13.4 Member States must be able, if so desired, to lay down more stringent environmental standards than those of the European Union in accordance with Article 100a(4);

13.5 The importance of environmental impact reports as a means of strengthening the environmental aspect in the Treaties must be enhanced by amending Article 130r(2);

13.6 Given the enormous interest shown by European citizens, the question of animal welfare should be given greater prominence and included as a new Title XVI B/Article 130t in the EC Treaty;

14. Youth

14.1 The Union should promote cooperation between Member States to encourage the development of transversal policies in the field of youth;

15. Energy

15.1 In order to achieve sustainable development, it is essential to establish the competence of the European Union in the field of energy by creating a new chapter on energy in the Treaty, where the energy policy aspects of the ECSC and Euratom Treaties and other energy policy considerations should be integrated within a common energy policy framework, helping to ensure overall cooperation with regard to security of supply and environmental protection within the internal market framework;

16. Tourism

16.1 The Community and international aspects of tourism as an essential objective of the European Union should be incorporated in the Treaty as an individual and separate field of common policy within the context of the internal market;

17. Fisheries

17.1 A separate fisheries title should be included in the Treaty;

17.2 The assent procedure should be applied to all international fisheries agreements;

18. Strengthening the external role of the European Union by developing an effective common foreign and security policy

18.1. The strengthening of the Union's ability to act externally, which is urgently needed, can only be achieved if the Union and the Member States act in a spirit of solidarity, consistently and efficiently, more so than in the past, in the case of external developments or threats or challenges at the external frontiers;

18.2. Parliament agrees with the majority of members of the Reflection Group who feel that the fact that the European Union has no legal personality is a source of confusion to the outside world and tends to hamper and minimize the external role of the Union. The Union should be given international legal personality;

18.3. The Union shall guarantee its territorial integrity and the security of its external frontiers;

18.4. The provisions on the various aspects of external policy, i.e. the common commercial policy, development policy (including the EDF - European Development Fund), humanitarian aid, the CFSP, including human rights policy and the future defence policy, should be gathered into one chapter of the Treaty;

18.5. The procedures relating to external economic policy should be simplified, in particular by:

- introducing codecision, especially for Article 113 (common commercial policy);
- extending assent to all international agreements and to measures to be taken in the area of economic sanctions (Article 228a);

18.6. The EDF should be included in European development cooperation policy and should also have a Community character;

18.7. The Council and Commission should be assisted by a central unit for making policy studies and submitting proposals, whose task would be to identify common interests of the Union and its Member States, and which should, inter alia, facilitate the use of

active preventive diplomacy. It would be run by the Commission in close cooperation with the Secretary-General of the Council. It would consist of staff from the Commission and the Council;

- 18.8 In every aspect of external policy, including the CFSP, decisions should be taken by a qualified majority. Any Member State which is not in agreement with a common position or joint action of a military nature in the areas covered by the CFSP should have a dispensation facility, but should not be able to veto the common position or joint action;
- 18.9 The Member of the Commission with responsibility for foreign policy should represent the Union in the CFSP in close cooperation with the Council Presidency. The Member could be appointed in accordance with the procedure applying to the President of the Commission. Parliament rejects, therefore, the idea of some in the Reflection Group that there should be a "High Representative" for the CFSP;
- 18.10 In order to provide a preliminary solution to the issue of the Union's representation in third countries, the necessary steps should be taken to have a diplomatic representation of the Union established in third countries where fewer than four Member States have diplomatic representation;
- 18.11 The CFSP should be financed on a Community basis. Member States which make use of the dispensation clause may not withdraw from Community financing;
- 18.12 Parliamentary monitoring of the CFSP should be the responsibility of the European Parliament, where appropriate in cooperation with the national parliaments (for example, in respect of humanitarian aid and peacekeeping). Financing should be provided through the EC budget. The European Parliament must be consulted in respect of common positions and joint actions;

19. **Security and defence policy**

- 19.1 With due regard for the sensitivity of certain traditionally neutral and non-aligned Member States, the WEU will be gradually merged into the EU. To this end, all the

- tasks of the WEU including the objectives of the Petersberg tasks but excluding Article V of the WEU Treaty shall be taken over and shall be binding on all EU Member States;
- 19.2 In the event of military action (with the exception of Article V of the WEU Treaty), no Member State may be obliged to take part nor - notwithstanding the requisite political and financial solidarity - may it prevent a majority of Member States from carrying out such action;
- 19.3 An integrated WEU should act as the European pillar of NATO but the traditionally neutral and non-aligned Member States need not join in its establishment, even if they participate, with a special status, in the decision-making process;
- 19.4 The financing of WEU operations should be on a Community basis once integration in the EU is complete;
- 19.5 Article 223 of the EC Treaty which obstructs the monitoring of arms sales to third countries and prevents the establishment of a genuine common policy on armaments for the Member States must be deleted;
20. **A positive response to popular demands for more openness and transparency**
- 20.1 The Reflection Group report has shown considerable shortcomings as regards the issues of openness and transparency;
- 20.2 The principle of openness of the European institutions should be written into the EU Treaty;
- 20.3 A general rule of access to EU documents should be established in the EU Treaty;
- All documents and amendments to documents which concern legislation or EU decisions must be published, and made accessible to the European Parliament, the national parliaments and ordinary citizens as early as possible and in any event immediately after adoption by the institution concerned;

The documents of the Union must be readable. Treaties must be summarised, restructured, simplified and edited, and the continuing process of codifying Community law should be made an integral part of the Treaty as a joint task of the Commission, Parliament and the Council. Declarations in the form of protocols on the adoption of legal instruments are no longer acceptable;

20.4 Meetings of the Council should be open to the public when it takes decisions on legislation. The proceedings of the debates and the votes should also be made public;

Special remarks by, and reservations of, Member States to Union legislation should also be made public;

21. **Decisive progress towards a more democratic and more efficient Europe**

21.1 **Extension of qualified majority voting**

Qualified majority voting should become the general procedure within the Union, and this should be one of the central objectives of the IGC. The IGC should concentrate on identifying a very limited number of well-defined exceptions where unanimity should still be required. For certain particularly sensitive sectors, i.e. changes to the Treaty, "constitutional decisions" (enlargement, own resources and Article 235) unanimity should always be required;

21.2 **The re-weighting of votes**

- Before any decisions are taken on alternatives to the present system, these need to be explored in much greater depth than they were in the Reflection Group, since they pose highly sensitive political questions of the balance between large and small Member States; the Intergovernmental Conference should at least lay down the basic rules to be applied to the weighting of votes for future accessions;
- Without prejudice to those fields where normal qualified majority voting is already used, the idea of a new super-qualified majority with a higher threshold than a normal qualified majority should be explored in the IGC, to facilitate the passage from unanimity on certain sensitive issues;

21.3 Composition and appointment of the Commission

- At the present stage of the Union's development, it is essential to maintain the principle of at least one Commissioner per Member State. The option put forward by the Reflection Group of reducing the size of the Commission to below the number of Member States should not be followed;
- Not enough attention has been given by the Reflection Group to the system of appointing the Commission. This has to be reformed so that the President of the Commission is directly elected by the European Parliament on the basis of names provided by the European Council;

21.4 Independence and role of the Commission

The independence of the Commission must be safeguarded, its right of initiative maintained and its effectiveness strengthened with a view to enlargement;

21.5 The Committee of the Regions

The Committee of the Regions should have the right to adopt its own rules of procedure, and should be independent of the Economic and Social Committee in administrative and budgetary terms;

21.6 Improved legislative procedures

- EU legislative procedures need to be reformed at the IGC for the sake of both democracy and accountability and of simplifying and changing the legislative process;
- There should one general procedure for legislation, namely codecision;
- Codecision should be extended to all legislation. Legislation should be dealt with by a qualified majority in the Council. Annexes shall be explicitly considered as coming under codecision. The codecision procedure should be simplified, in particular by dropping the phase of intention to reject and by ending the

procedure either when there is **agreement** between the Council and Parliament (even at first reading stage) or when there is **no agreement** between the Council and Parliament in a conciliation committee;

- Parliament should be required to give its assent to all Article 235 cases, own resources decisions and in all cases of reform of the Treaty and to international agreements;
- The IGC should simplify the existing maze of comitology procedures by transferring overall responsibility for implementing measures to the Commission (which can enlist the help of an advisory committee in devising such measures but not type 2 and 3 committees, which should be abolished). The Council and Parliament should be notified of the measures proposed and should each have the option of rejecting the Commission proposal and calling for new implementing measures or the initiation of a full legislative procedure;
- Legal sources should be clarified by a hierarchy of acts;

21.7 Improved budgetary procedures

- As a result of differences of opinion within the Reflection Group, their final report did not give enough emphasis to the need for a reform of the existing budgetary procedures;
- The distinction between compulsory and non-compulsory expenditure should be removed, the budget should be unified and budgetary procedures should be simplified. Parliament should have as much responsibility for compulsory expenditure as it currently has for non-compulsory expenditure;
- The Conference is invited to undertake a genuine reform of the own resources system, which should be concluded, at the latest, when the financial perspective in the Interinstitutional Agreement, as modified, lapses in 1999; in view of the time needed for this reform, the Conference should begin to formulate proposals now, so that the reformed system, which takes account of the Union's development, can be introduced on the expiry of these aspects of the IIA in 1999;

21.8 European Union appointments

- The issue of the European Parliament's role in the various appointments poses an important question in the context of the democratic control of EU institutions, but was not fully treated in the Reflection Group;
- The European Parliament should be given a reinforced role, with assent as regards appointments to the Court of Auditors and the Court of Justice;

22. Greater credibility for the European Union, to be achieved via effective action against the fraudulent use of Community funds at all levels

22.1 The IGC should strive to enhance the Union's credibility with the public, by equipping it with means of protecting its financial interests with all due rigour, including the enacting of sanctions at Community level in accordance with a democratic procedure (codecision, qualified majority);

22.2 Article 209a of the Treaty should therefore be revised so as to:

- establish an obligation on Member States to impose effective and proportionate penalties having a deterrent value in cases of fraud against the Community's financial interests;
- create the necessary and sufficient legal basis for establishing Community rules and for the harmonization of Member State legislation, inter alia with a view to adopting uniform criminal penalties;

22.3 The provisions concerning the power of the Court of Auditors should be revised so as to:

- create an obligation on the part of national administrations and audit offices to cooperate with the Court of Auditors, particularly with regard to the statement of assurance;

- extend its powers of control to include the EDF, which should be budgetized, and all bodies administering funds on the Community's behalf and expenditure involved in the CFSP and policy on justice and home affairs;
 - endow it with judicial powers, including powers of initiative, subject to appeal to the Court of Justice, with a view to punishing Member States and Community bodies implicated in breaches of Community law affecting the Community's financial interests;
- 22.4 Article 206 of the Treaty should be modified to make it explicit that the Commission is obliged to follow up the remarks accompanying the discharge;
23. **A simplified and more comprehensible Treaty**
- 23.1 Simplification of the Treaty calls for:
- the rewording of certain constitutional provisions so as to make them clearer and more motivating for the public;
 - the removal from the Treaty of provisions that have lapsed or become obsolete;
 - the merger of the three Community treaties and the other provisions of the Treaty on European Union into a single unified treaty;
 - the reorganization of the contents of the unified Treaty, grouping all the constitutional provisions in one part and the provisions concerning specific policies in another;
- 23.2 Simplification of the Treaty should not have the effect of undermining the *acquis communautaire*;
- 23.3 A review of the whole field of Community law should be initiated, with the aim of making it more manageable and easier to understand;

IV -TRANSPARENCY IN THE PROCESS OF REVISING THE TREATY

Involvement of the public

24. Considers that it is essential that European citizens and their elected representatives at both national and Union level are directly informed of the progress and substance of the IGC; requests the Council to outline how it plans to ensure this objective in the course of the forthcoming IGC;
25. Believes that its public hearings in October 1995 and February 1996 constituted useful first steps in involving European citizens (and not just EU institutions) in the debate on the IGC; the summary records of these two hearings are annexed to the report of its committee to act as an initial checklist of citizens' concerns about the issues which need to be faced by the European Union; commits itself to continuing the dialogue with the public begun with these hearings;
26. Considers that the rights of European citizens to found associations across national borders should be explicitly recognized in the Treaty. An appropriate European legal framework should be established to implement this objective and should enable such associations to be informed of, and involved in, EU initiatives and actions;
27. Urges all Member States to stimulate public debate on IGC issues within their countries (on the lines of the initiatives already undertaken in certain Member States);

Involvement of the European Parliament

28. Considers that the IGC cannot open properly until the Council has decided on the arrangements for the participation of Parliament, pursuant to the conclusions of the Madrid European Council and Parliament's aforementioned resolution of 14 December 1995 concerning the participation of observers, the functioning of the interinstitutional conference and the role of the European Parliament in the ratification of the new Treaty;

V -LIMITS TO FLEXIBILITY

29. Welcomes the support in the Reflection Group for the criteria previously outlined by Parliament concerning the limits to flexibility that should be permitted as regards any special arrangements negotiated at the IGC (including the need for them not to lead to an *à la carte* Europe, nor to undermine the key principles of maintenance of the '*acquis communautaire*' and the single institutional framework, solidarity, and economic and social cohesion, and equality of all states and citizens of the Union before the Treaty);

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30. Instructs its President to forward this resolution and the report of its committee to the Council, the Commission, the other EU institutions and bodies, and to the governments and parliaments of the Member States.

2.B

EUROPEAN PARLIAMENT

19.06.1996

**RESOLUTION ON THE FLORENCE EUROPEAN COUNCIL AND
THE INTERGOVERNMENTAL CONFERENCE**

REF : B4-0833/96

Resolution on the Florence European Council and the Intergovernmental Conference

The European Parliament,

- having regard to the conclusions of the Turin European Council of 29 March 1996,
 - having regard to the initial meetings of the Intergovernmental Conference conducted at ministerial level and personal representative level,
 - having regard to its resolutions of 17 May 1995 on the functioning of the Treaty on European Union with a view to the 1996 Intergovernmental Conference - Implementation and development of the Union and 13 March 1996 embodying (i) Parliament's opinion on the convening of the Intergovernmental Conference, and (ii) an evaluation of the work of the Reflection Group and definition of the political priorities of the European Parliament with a view to the Intergovernmental Conference,
- A. whereas the Turin European Council laid down suitable terms of reference for the IGC and established the priority areas to be covered during the proceedings of the Conference,
- B. whereas the Florence European Council will be the first stage in this process at which political guidelines should be laid down and is therefore of significant political importance,
- C. whereas the 'non-cooperation' policy being followed by the UK government proves the need for the IGC to extend the use of qualified majority voting,
1. Notes with satisfaction that the terms of reference laid down by the Turin European Council judiciously cover all the major issues which must be negotiated during the IGC; reaffirms its belief that the IGC should undertake a wide-ranging and ambitious reform aimed at making the operations of the Europe of Fifteen more democratic and effective and preparing the EU for the forthcoming enlargement;

2. Expresses its concern at the visible difficulty in starting on genuine negotiations, and considers it vital to move beyond the stage of preliminary discussions and to give the IGC the necessary political impetus to ensure that it does not lead to stagnation or to only minimal revisions, and to achieve progress in resolving problems and setting out guidelines for the final stage of the IGC;
3. Believes that public concern is focused on all those subjects which are conducive to helping the Union on its way to constructively developing suitable solutions for the key areas of European policy: the institution of a genuine European citizenship, along with progress on subjects falling within the areas of home affairs and justice, such as internal security and action against international crime, employment and social protection, transparency, the democratization and effectiveness of the institutions and the European Union's presence on the world stage;
4. Is aware that the inclusion of a chapter on employment is a central political priority for many Member States, but reiterates its belief that it is necessary to go beyond mere coordination between Member States and equip the Union with sufficient institutional and financial resources for it to implement common policies in this field;
5. Notes that, during the initial discussions, some slight progress was made, almost exclusively on issues relating to internal security and the fight against international crime, especially in relation to drug trafficking; stresses the need for communitarization of substantial parts of the third pillar while avoiding the introduction of new ad hoc decision-making procedures; notes, in particular, that there is a large majority at the IGC in favour of the communitarization of asylum policy, the definition of rules for crossing the external frontiers and immigration policy; considers that an agreement should rapidly be reached on these three points;
6. Regrets that the initial discussions on institutional matters, in particular where the necessary changes in the institutional balance were concerned, were marked by a tendency towards preserving the status quo and opposing change, and stresses that without the strengthening of the Community instruments and procedures and a visible reduction of the democratic deficit in the Union, it will not realistically be possible to go ahead with enlargement, even in the cases where accession is already expected and being planned; regrets, in particular, that there is still marked resistance to the

extension of codecision to all legislative acts and the institution of qualified majority voting as the general rule; believes, moreover, that the Council should conduct its business in a completely open fashion as regards all legislative matters and that the public's access to documents should be guaranteed in the Treaty;

7. Hopes that at the Florence European Council the problems relating to the new institutional order of the Union will be restored to the centre of the IGC agenda, in line with the mandate of the Turin European Council;
8. Requests that the simplification and consolidation of the Treaties be undertaken without delay by a working party in which the Commission and the European Parliament are also involved and that this process be brought to a successful conclusion so that a unified, clearer and simplified Treaty text may be available at the end of the IGC;
9. Hopes that, in the field of the CFSP, the Member States will determine the priority areas of interest for the European Union and will establish effective decision-making procedures which provide the flexibility required for progress to be made; recalls that no Member State should be obliged to take part in a decision taken by majority vote, but, equally, no Member State should be able to block the adoption and implementation of such a decision;
10. Expects the Italian Presidency, the Member States and the Commission to take all necessary steps during the Florence European Council to prevent any stagnation of the process of integration, which would undermine the European project;
11. Calls for any proposals concerning flexibility to respect the *acquis communautaire* and the single institutional framework, alongside a declaration that the Union's objectives will remain based on participation of all the Member States and their legal equality; invites the Member States to propose a clear definition of the areas in which a reinforced cooperation clause could be introduced;
12. Recalls Parliament's position, as expressed in its abovementioned resolutions of 17 May 1995 and 13 March 1996, on the need for Parliament's assent before any modification of the Treaty;

13. Considers it intolerable and contrary to the spirit and letter of the Treaty, and especially Article 5, that the UK should be blocking the workings of the Union;
14. Instructs its President to forward this resolution to the Commission and Council and the Governments and Parliaments of the Member States.

3.A

COMMISSION OPINION

28.02.96

**"REINFORCING POLITICAL UNION AND PREPARING FOR
ENLARGEMENT"**

REF : COM (96) 90 final

The Treaty provides that "a conference of representatives of the governments of the Member States shall be convened in 1996".

With a view thereto, and pursuant to Article N of the Treaty, the Italian Presidency has:

- *submitted to the Council a proposal for the amendment of the Treaties on which the Union is founded; and*
- *requested Parliament and the Commission to deliver opinions on the holding of an intergovernmental conference.*

This document comprises the Commission's Opinion.

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III. Institutions for the enlarged Europe

1. Adapting the institutions
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1. The Intergovernmental Conference is the first stage in a busy timetable, which moreover depends on the Conference for its success: within the next four years, Europe has to have set up a single currency (by 1 January 1999), decided on its guidelines for defence, and particularly the future of WEU, established the Union's new financial framework, and adjusted its policies with a view to enlargement.

2. Since 1993 the Member States have adopted and given effect to a Treaty on European Union which derived from a broad, twofold aspiration:
 - a determination to extract all the positive effects of the internal market by adding to it a single currency and convergence between the Member States' economic policies;
 - a realization of the need to give the Union a genuine political dimension, so that it could make a more effective collective response to its internal requirements and, at the same time, be a forceful presence in the international arena.

These two aspirations are linked: a single currency, as a major integrating factor for those operating in the economy at large and for individual citizens, calls for a strong political and social identity.

3. The Treaty on European Union provided for a new intergovernmental conference to be held in 1996, to consolidate and strengthen the still-emerging Union.

For this purpose, in the first half of 1995 the Union institutions drew up a diagnosis of the functioning of the Treaty on European Union, in which their views converged on many points. The Reflection Group sums it up in a single sentence: the Union does not have the means necessary to achieve its ambitions.

In the Commission's view, this shortfall alone is argument enough for a substantial overhaul of the institutions.

4. The need to adapt the Treaty does not end there, however. In a way which inspires enthusiasm, history gives us an opportunity to bring the peoples of the continent together in an expanded Union.

The principle of enlargement is accepted . Two aspects of it stand out:

- it is no longer some far-off prospect. The 1996 Intergovernmental Conference is probably the last and only opportunity all 15 Member States will have to reflect together about how the Union is to function in a wider framework;
- because of its scope and its diversity, this enlargement will be different from previous ones: an extended Europe is bound to be more heterogenous and therefore more complex.

As the number of Union members increases, it creates a risk of the Union being watered down. As one Head of State put it, we have to avoid the situation where, as the last applicant country arrives, it joins something which no longer exists. Enlargement must be undertaken with safeguards for the achievements of forty years of European integration. These achievements are the basis of the Union's solidarity with the new Member States.

5. That is why the European Union cannot commit itself to this round of enlargement without making sure that changes, sometimes far-reaching ones, are first made in the ways and means of its operation.

Similarly, the commitments undertaken in the Treaty on European Union must be fully respected, most particularly the establishment of economic and monetary union and comprising a single currency on the date fixed.

6. The forthcoming conference will be a crucial one: the deepening and widening of the Union are intertwined. The Commission expects of the Intergovernmental Conference that it strengthen the Union so as to prepare enlargement around a clear political project. The Union must therefore:

- be closer to its citizens;
- make its presence felt in the world;
- adopt an institutional system which will work in an expanded Europe.

Subject to these conditions, the Commission is in favour of holding the Intergovernmental Conference.

I. A people's Europe

7. Ordinary people must feel actively involved. The concept of European citizenship enshrined in the Treaty on European Union complements national citizenship.

This concept of citizenship has many aspects; it should be developed further:

- it is based on a European social model which guarantees that fundamental rights are recognized by all, and whose members are committed to mutual support;
- it provides for freedom of movement and establishment, to be enjoyed with a proper level of security;
- finally, it implies that Europe must be understandable for the individual; successive amendments to the Treaties have made European integration increasingly complex; it must be made simpler and more democratic.

1. Promoting the European social model

8. Europe is built on a set of values shared by all its societies, and combines the characteristics of democracy - human rights and institutions based on the rule of law - with those of an open economy underpinned by market forces, internal solidarity and cohesion. These values include the access for all members of society to universal services or to services of general benefit, thus contributing to solidarity and equal treatment.

The European model finds expression in the Treaty on European Union, through general objectives such as a high level of employment or sustainable development, through specific policies, and through measures aimed at fostering the social dialogue.

As we enter a new political era, support for this model should be strengthened and made more explicit.

Human rights

9. The Member States of the Union are defenders of human rights: all of them are party to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Union itself abides by the Convention in the decisions and action it takes.

However, the Union should signal its espousal of these values even more clearly, either directly in the Treaty or in signing the Convention itself. As the Union grows and diversifies, such a step becomes all the more necessary. An opinion on this matter is expected from the Court of Justice.

The Conference should also incorporate in the Treaty provisions banning discrimination of any kind - particularly on the basis of sex, thereby extending the provisions on equal pay - and condemning racism and xenophobia.

A Union based on the rule of law

10. To consolidate the rule of law as the basis of the Union, the proper implementation and enforcement of Community law has to be assured, a task which falls primarily to the national authorities. This will be even more vital in an enlarged Community encompassing a wide diversity of national legal and administrative systems.

The Commission therefore believes that:

- the means available to it to enforce Community law should be made more effective, notably as regards the internal market;
 - there should be a stronger role for the Court of Justice, particularly as regards compliance with its judgments.
11. Fraud against the Community's financial interests must be combatted effectively. This cannot be done without a firm commitment by the Member States as well as the institutions.

The Commission proposes that the Union give itself an appropriate legal basis.

The social dimension

12. Each Member State strives to secure social goals for all its people, through government policies or legislation -with the participation of trade unions, employers and civil society in general- in the context of an open economy.

The Member States, industry, trade unions and employers are those mainly concerned, but the Union should also take part in pursuing these goals. Ordinary people must be able to see that the Union is helping to ensure that they can exercise certain fundamental social rights.

The social dimension should be one of the central themes at the Conference. Above all there has to be a common base of social rights for all Union citizens. The Commission believes that to achieve this, the Social Protocol must be integrated into the Treaty, and clearer provisions laid down concerning cooperation between Member States on matters of social policy, such as the fight against marginalization or against poverty. Better ways must also be found of involving those sections of civil society capable of developing initiatives and new forms of solidarity.

Employment

13. Unemployment is undermining the foundations of our societies, affecting nearly twenty million people, many of them young. While not overlooking the role of appropriate macroeconomic policies, cutting unemployment depends mainly on those directly involved in the economy.

In its 1993 White Paper on Growth, Competitiveness and Employment, the Commission proposed a series of measures aimed at mobilizing all sections of society. This strategy is still relevant today: growth, competitiveness, and employment go hand in hand. Only a competitive economy can create lasting jobs.

Structured and coherent action by the Union has to contribute to restoring a high level of employment, which is already a Treaty objective.

To this end, the Commission proposes that specific provisions on employment be written into the Treaty. They would be grounded in experience accumulated by the Community and treat employment as a matter of common interest; they would aim at:

- establishing the conditions for a common strategy for employment;
- stimulating cooperation between the interested parties;
- consolidating the arrangements for multilateral surveillance of Member States' multiannual programmes;
- taking employment into account in all Community policies.

Sustainable development

14. An environment benefitting from a high level of protection is one of the major concerns of citizens in the Union.

The Commission considers that the provisions of the Treaty directed at sustainable development and at a healthy environment should be reinforced in two ways:

- the right to a healthy environment, and the duty to ensure it, should be included in those provisions of the Treaty affecting the citizen;
- the environment should be specifically incorporated into the other policies of the Union.

2. Establishing an area of freedom and security

15. The principle of the free movement of persons in the Union is enshrined in the Treaty. Yet its translation into practice is still subject to major restrictions:

- it is not fully applied across the whole Union;
- some Member States have had to resort to an ad hoc agreement (the Schengen Agreement) to achieve progress in this field; this does not however offer the same guarantees as Community law.

For freedom of movement to be applied in practice, solutions must also be found to complex problems such as asylum and immigration, crime, drugs and terrorism. These problems have become international in scale; none of them stops at national borders.

Hitherto, the Union has been tackling these problems with outdated methods and resources.

The Commission proposes that the shortcomings of the Treaty in the fields of justice and home affairs - notably its ineffectiveness and the absence of democratic and judicial review - be remedied by setting clear objectives and providing for appropriate instruments and methods.

16. The general objective is to apply and reinforce the principle of freedom of movement and residence, already enshrined in the Treaty, in a context of ensuring security for all.

The specific objectives should cover four main themes:

- the establishment of common rules on the entry, residence and status of nationals from non-member countries in the Union;
- the effective mutual recognition of judgments by national courts;
- the adoption of measures to combat all forms of crime and fraud;
- the stimulation of effective cooperation between government departments of the Member States.

17. In addition, the following instruments and methods should be adopted:

Decision-making

The unanimity rule generally applied at present either paralyses the Council or reduces decisions to the lowest common denominator. The Commission believes it should as a general rule be replaced by qualified majority voting.

Parliament must be more closely involved, especially in fields which can affect the individual rights of citizens.

Finally, the Commission should have the power of initiative in all the fields concerned.

Legal instruments

The legal status of the joint action and the common position is obscure, while the entry into force of traditional international agreements may be delayed or uncertain: neither technique is suitable. The Union must have more effective legal instruments in this field.

Review by the Court

Decisions taken should be subject to review by the Court of Justice, if only to guarantee the uniform interpretation of texts.

Working methods

The present working structures in the Council operate at several levels and are ineffective. They should be simplified.

18. The Commission believes that the best way of attaining all these objectives would be to transfer justice and home affairs to the Community framework, with the exception of judicial cooperation in criminal matters and police cooperation. The transfer of jurisdiction is particularly necessary in the fields most closely associated with the movement of individuals, such as rules on crossing borders, fighting drugs, immigration, policy on nationals from non-member countries, and asylum.

Following the same logic, the content of the Schengen Agreement should be incorporated in the Treaty.

3. Simplifying and democratizing Europe

19. What the Union does has to be understandable: democracy depends on this. Openness is thus a commitment incumbent on all the institutions: the Union's activities must be accessible and comprehensible, so that those affected are in a position to obtain all the information they require.

The role played by the European Parliament is obviously crucial, and must be developed.

Openness on the one hand and democratic overview on the other will only be fully assured if national parliaments are more closely involved in Union affairs. This means they must have timely access to all the information they need, from the various institutions and bodies of the Union, and from their governments.

Europe must do less, so as to do it better. It has already made a start by giving effect to the subsidiarity principle enshrined in the Treaty. The Member States and the institutions must continue to advance along this road. This is the only way Europe will find the most effective level - Community, national or regional - at which to act.

Simplifying Europe means above all reviewing the institutional arrangements. The aim must therefore be to:

- simplify and consolidate the Treaties; and
- simplify the decision-making process and make it more democratic.

1. Simplifying and consolidating the Treaties

20. As years have gone by the Treaties establishing the Union and the Communities have grown progressively more complex and progressively less understandable.

The existence of a dozen or so treaties and other basic texts, with a combined total of more than 700 articles - some fundamental, some technical - and the survival of a plethora of obsolete provisions make the European Union's primary legislation singularly inaccessible.

Moreover, the coexistence of three legally separate Communities and of a Union encompassing them all but not enjoying its own legal personality does not make for easy public understanding of the European integration process.

And the whole edifice is all the more complicated as a result of the methods of intergovernmental cooperation, applied to foreign policy and to justice and home affairs.

The task of simplifying and consolidating the Treaties should be pursued to the utmost extent.

2. Simplifying and democratizing decision-making

21. The proliferation and complexity of both legislative and implementation procedures have made the Union's decision-making system unwieldy and opaque. The provisions governing budgetary procedure seriously need simplifying and the accumulated set of interinstitutional agreements should be consolidated.

It is vital for openness and democracy that the Intergovernmental Conference should put order into this system, and simplify it.

22. The Commission has four remedies to propose:

Decision-making procedures

There should be three types only - decisions adopted on Parliament's opinion, those adopted with its assent, and the codecision procedure involving Parliament and the Council.

The codecision procedure

The procedure should be applied more widely, and also made more simple. It constitutes a great step forward in the maturing of Parliament's legislative function. The Commission, acting in accordance with the Treaty, will present the Council with a report on extending the scope of the procedure.

The Commission's view is that the procedure has -by and large- worked well. But it could be quicker and more effective if it were simplified, notably by determining time-limits for first readings, by dropping the announcement of the intention to reject a proposal at the second-reading stage, and by dropping the third reading.

As for the scope of the codecision procedure, the Commission's view is that it should apply to the adoption of all acts of a legislative nature. This would entail clarification of what actually constitutes a legislative instrument. The codecision procedure should in any event be adopted for all decisions currently taken by the cooperation procedure, which should be abolished.

The assent procedure

The scope of this procedure should be amplified and clarified. Parliament's assent should always be required for decisions on "constitutional" matters (Treaty amendments, own resources).

The procedure should not, on the other hand, be applicable to legislative decisions or for Community action programmes, where codecision should be the norm.

The scope of assent procedure as regards international agreements should be clarified; the role played by national parliaments could serve as inspiration here.

Implementing measures

The provisions governing implementing measures are complex and opaque.

Decision-making procedures for implementing measures need to be changed to reflect the roles of the institutions more fully. This means that the Commission must exercise fully its function as the executive body, subject to review by the legislative authority. And the role of Parliament needs to be taken into account where the basic instrument has been enacted by codecision. Here, there should be a procedure whereby Parliament or the Council can object to a draft measure proposed by the Commission; in this case it would then be adopted by the codecision procedure itself.

In addition, the number of implementing procedures need to be reduced, so as to avoid the frequent and sterile debates between the institutions about the procedures to be followed, and so as to reflect better the nature of the decisions to be taken. The Commission's proposal is that there should be at most three types of committee and procedure - the advisory committee, the management committee and the legislation committee - and that all the variants be dropped.

II. A clear identity on the world scene

23. The Treaty on European Union calls on the Union to "assert its identity on the international scene". In practice, however, the additional influence that the Member States were to have achieved by acting together has eluded them. Their efforts have often been poorly focused and are liable to be even more so after enlargement.

The Conference should have a clear and simple aim: to empower the Union to act rather than react, the better to defend the interests of its people.

In some areas, such as trade policy, economic assistance, development aid and humanitarian action, there is already a coherent single policy towards the outside world, though to varying degrees. Other areas, such as the common foreign and security policy, are still at an early stage in their development.

The prime objectives of the Conference should therefore be as follows:

- to bring together the various strands comprising foreign relations into a single effective whole, with structures and procedures designed to enhance consistency and continuity;
- to improve the common foreign and security policy at all stages of its operation;
- to establish a proper European identity with regard to security and defence, as an integral part of the common foreign and security policy.

1. Greater consistency in foreign policy

24. The Union must be able to present a united front. Its foreign policy as a whole will not be effective until there is proper coordination between its various components, for which responsibility is shared among different institutions.

The Treaty already requires the Council and the Commission to pursue a consistent foreign policy. But this has not happened under the Treaty as it stands, and the institutions' duties in this respect should be reinforced.

The Council Presidency and the Commission should ensure effective cooperation between the two institutions which are responsible for various aspects of foreign policy. This would considerably enhance the continuity and efficacy of the Union's foreign policy.

2. More effective Community action

There are three areas which need to be examined.

Trade policy

25. The Treaty should be updated to take account of the radical changes in the structure of the world economy, in which services, intellectual property and direct foreign investment play an increasingly important role. These developments are reflected in the increased responsibilities given to the World Trade Organization.

The Community's powers in these areas are poorly defined, leading to needless procedural wrangles. This detracts from the Community's ability to defend the interests of the Member States and their businesses.

The Commission believes that the common commercial policy should be clarified accordingly.

The Union's role in international organizations

26. Under the present Treaty, the Union is ill-equipped to conduct negotiations in international organizations and take part in their activities, as it is increasingly called upon to do. Difficulties arise when responsibility for the various aspects is split between the Community and the individual Member States. Attempts to coordinate the Member States' positions are made more complicated and, as a result, less successful; the Union's negotiating position is weakened in many cases.

The Commission considers that the Treaty should include provisions explicitly designed to enable the Union to speak with one voice and thus defend all the relevant interests more effectively.

Coordination between Member States' policies and that of the Community

27. Generally speaking, in fields where responsibility is shared, such as development, transport and the environment, the Member States' policies should be better integrated -by means of appropriate mechanisms- with that of the Community.

3. A firmer basis for the common foreign and security policy

28. It needs first of all to be emphasized that the common foreign and security policy cannot develop without real political resolve on the part of the Member States, together with clearly-defined objectives.

The Presidency and the Commission should together ensure the visibility of the common foreign and security policy. In any event, this requires a series of improvements, from the preparation of decisions through to their adoption and implementation. During the whole process, it is vital that the Presidency-Commission tandem operate coherently and efficiently. Within this overall context, the Commission, for its part, will strengthen its internal organization with this in mind. The Conference should consider ways and means of strengthening the Presidency, with support from the Council Secretariat.

Preparation of decisions

29. The quality of analysis on which decisions are based must be improved. It is also important that all Member States share the same analysis.

To this end, a "joint analysis unit" should be set up, composed of experts from the Member States and the Commission. It would be a joint service, possibly with a contribution from the Western European Union. Its analyses would be useful for the Presidency and the Commission when drawing up and making more consistent their proposals. The location of this unit is less important.

The formulation of foreign policy would be facilitated by the incorporation of a permanent Political Committee into the Council's existing machinery for preparing decisions in Brussels.

Adoption of decisions

30. The Treaty introduced the concepts of "common position" and "joint action" in connection with the common foreign and security policy. In practice, the distinction between these two instruments has become blurred, and a source of contention.

The Commission considers that clarification of their respective functions is necessary.

31. The need for unanimity makes decision-making difficult, regardless of which instrument is used.

The Commission takes the view that qualified-majority voting should be the norm for the common foreign and security policy. Specific rules would apply for decisions involving military matters.

There are also times when some, but not all, of the Member States wish to take action on a specific matter. It should be possible for such initiatives to have the status of Union measures, as long as they are not against the general interests of the Union, and provided that the latter is duly represented.

Implementation of decisions

32. Representing the Union abroad and implementing its decisions involves many diverse tasks, because of the role of Member States and the various elements of foreign policy. The only constant is the single institutional framework: whatever the field, whether it be a matter for the Community or for intergovernmental cooperation, the decisions are taken by the Council.

Primary responsibility for implementation should lie with the Presidency and the Commission. But this clearly should not prevent certain tasks being allocated to specific personalities designated on an ad hoc basis.

33. The current procedure for common foreign and security policy decisions involving expenditure is both opaque and inefficient; separate negotiations have to be held for each decision.

The Commission proposes that expenditure incurred in implementing the common foreign and security policy be included in the Community budget, unless an express decision to the contrary is taken.

4. A European identity for security and defence

34. The Union's foreign policy suffers from its inability to project credible military force. Events in recent years have made this abundantly clear. A genuine European identity in the security and defence field is indispensable. It requires clear political will on the part of Member States.

NATO remains at the centre of Europe's defence arrangements, and a European pillar should be developed in it. In this context, the WEU plays a key role as already set out in the Treaty. As matters stand, Member States do not however have the same defence commitments in relation to NATO and the WEU.

The Commission believes that a proper common foreign and security policy has to extend to common defence.

35. Accordingly, the Conference should:

- allow Union commitments to missions aimed at restoring or keeping peace to be written into the Treaty ("Petersberg" missions);
- reinforce the Union's security capability by providing for Defence Ministers to play an appropriate role in the Council;
- review the role of the Western European Union with a view to incorporating it into the Union according to a settled timetable.

In this context, the Commission would recall that the security and defence of the Union are dependent on the existence of a solid industrial base performing credibly. This requires better integration of the armaments industry into the general Treaty rules, greater solidarity and cooperation including the establishment of an armaments agency, and a consistent approach to foreign trade.

III. Institutions for the enlarged Europe

36. The aim of the proposals set out above is to facilitate both the internal and the external development of the European Union. They are at all events indispensable since they are intended to endow Europe with the means of achieving its ends. They are also the prerequisites for a successful enlargement.

37. This enlargement also raises its own specific questions.

The Commission considers that the Conference will have to address three issues:

- the institutional implications of the increased number of Member States;
- the need to eschew unanimous voting;
- the incorporation of a system of flexibility, enabling the Union to move ahead without being held back by its slowest members.

1. Adapting the institutions

38. The substantial increase in the number of Member States of the Union will have repercussions on the operation of the institutions. No one doubts that the difficulty of working together will increase with the number of participants: more languages, longer and less interactive meetings. There will be a host of practical problems and they cannot be ignored.

However, enlargement will also have genuine consequences for the institutions which makes it all the more important to maintain the overall balance between them.

The European Parliament

39. The number of seats assigned to each Member State in the European Parliament has so far allowed a balance to be struck between demographic reality on the one hand, and its compensation by an over-representation of the less populated Member States on the other. This has ensured that the main political groupings in all the Member States can be represented.

This principle should be maintained in an enlarged Union. However, to prevent the European Parliament from becoming disproportionately large, there will have to be a limit on the number of its members, however many Member States there are in the Union.

Parliament has itself proposed limiting its membership to 700. The Commission agrees.

One effect of this reduction is that the electoral base of each Member of Parliament will rise, to over a million in the most highly populated Member States. The Commission considers that this further intensifies the need for a common electoral procedure so as to ensure, as is moreover laid down in the Treaty, that the members are as representative as possible.

The Council

40. The increase in the number of Member States will also make itself felt in the Council, in three main respects.
- It is true that the existing half-yearly rotation of the Presidency means that Member States will occupy the Presidency less frequently. But the Commission sees the Presidency as a service and a task which each Member State assumes on behalf of the Union, and which helps to engender public support for Europe in the state concerned. The Conference should however examine various ways of extending the scope of the Presidency's powers of action, and the order of rotation of the half-yearly periods.
 - The weighting of votes between the Member States: qualified majority voting is an essential mechanism for decision-making by the Council. The weighting of the Member States' votes is a corollary, introduced as a compromise between Member States equal in law, but of different demographic sizes. Thus, the current weighting of votes reflects a generally accepted bias towards the less-populated states of the Union.

However, it is also a fact that almost all the countries concerned by enlargement have relatively small populations. Thus by retaining the current weighting, the relative weight of the smaller states would be increased.

The Commission therefore considers that in order to maintain the existing balance, there is justification, when enlargement comes, for either adapting the weighting of votes or introducing a new system which makes a reference both to a majority of the Member States and a majority of the Union's population.

- The threshold for a qualified majority: enlargement is bound to make decision-making more complicated. The Commission therefore considers that no adaptation should have the effect of making decision-making more difficult. The normal threshold for a qualified majority, which has been set at around 71% since the inception of the Community, should therefore not be raised in any circumstances.

There is also a perceived need to restorate to the General Affairs Council its role of coordination and arbitration in the various areas covered by the Treaty.

The Commission

41. The prospect of a substantial increase in the number of Member States engenders a need to preserve the legitimacy, the collective responsibility and the effectiveness of an institution whose vocation is the completely-impartial representation of the general interest.

This means first of all securing its right of initiative, its executive powers, and its function as guardian of the Treaties.

The Commission considers that its President should be designated by the European Council and approved by Parliament. The President should play a decisive part in the choice of the Commission's Members, the better to ensure collegiality. In this regard, its members should be designated by common agreement between the President and the respective governments of the Member States.

42. The Commission takes the view that, in the context of enlargement, the number of its Members should be reduced to one per Member State.

The Commission is aware that its composition and structure will have to be reexamined, above a certain number of Member States. The Conference should fix an appropriate procedure for doing this.

The Court of Justice

43. The Court of Justice will also be confronted with the problem of numbers. The prospect of seeing some sixty judges at the Court of Justice and the Court of First Instance is a good ground for examining the consequences.

In its report to the Reflection Group, the Court stressed how important it is for all the various national legal systems to be represented. However, it also pointed out that "any significant increase in the number of Judges might mean that the plenary session of the Court would cross the invisible boundary between a collegiate court and a deliberative assembly. Moreover, as the great majority of cases would be heard by chambers, this increase could pose a threat to the consistency of the case-law".

The Commission similarly agrees with the Court when it indicates that the judges' term of office could be extended, while becoming non-renewable. Such a reform would reinforce even more firmly the judges' independence.

2. Making majority voting the general rule

44. In an enlarged Union, adherence to unanimity would often result in stalemate. Indeed, the difficulty of arriving at unanimous agreement rises exponentially as the number of members increases.

The Commission accordingly proposes that qualified majority voting become the general rule.

Two additional observations are then warranted:

- Unanimity need not necessarily be replaced by qualified majority voting as defined at present. In particularly sensitive fields, decisions could be taken by "super-qualified" majority voting, for example.
- What holds true for Community legislation also holds true for the Treaty itself and amendments to it: if in future the Treaty could, as at present, be amended only by unanimity, it would be in danger of stagnating in the state in which the 1996 conference left it, making future progress in the direction of European integration an unlikely prospect.

In this respect, it should be borne in mind that the Treaties currently contain provisions of various types, some of which certainly are of a genuinely fundamental nature (preamble, fundamental principles, objectives of the Union, operation of the institutions) while others are not (Union policies). The consolidation of the Treaties referred to earlier should make it possible to establish a clear distinction between these two types of provision.

The Commission considers that in future it should be possible to amend at least provisions that are not of a constitutional nature by a procedure which imposes fewer constraints than the one currently in force.

3. Organizing flexibility

45. The European Union must not be for ever bound to advance at the speed of its slowest members.

This is even more true in an enlarged Community.

The Union has long practised certain forms of flexibility. Exceptions or exemptions, normally of a limited and temporary nature, are provided for in Community law. No one doubts that in the context of the accession of new Member States recourse will be had to this practice, until such time as they come to participate fully in all the common policies.

The Commission observes that, already, organized flexibility is the route sometimes to be followed for deepening the Union, as the example of economic and monetary union shows.

On the other hand, the Commission firmly rejects any idea of a "pick-and-choose Europe" (e.g. the Social Protocol) which flies in the face of the common European project and the links and bonds which it engenders.

46. The Commission takes the view, however, that the European Union must make it possible to have forms of cooperation or integration between those of its members wishing to progress faster and further in the attainment of the Treaty's objectives. This should be envisaged only after exhaustion of all other possible forms of action involving all the Member States under the Treaty.

The requisite flexibility will have to be guided by the following principles, so as to guarantee the unity of the Union:

- compatibility with the objectives of the Union;
- consistency with the institutional framework of the Union;
- opportunity for other Member States which are willing and able to join at any time;
- safeguarding of the single market and the policies accompanying it.

The Commission, subject to review by the Court, will have to ensure that the principles set out above are respected.

CONCLUSION

What the Commission would like to see is an Intergovernmental Conference with real ambitions. It is the opportunity for a genuine debate on Europe, on what Europe is about, on what course it is to take in the years ahead, and on everyone's role in this Europe. This debate must be opened up at once, in order to give the negotiators their bearings. At the ratification stage it will be too late.

In this debate the Commission intends to state some simple truths. First of all, the obvious - but sometimes forgotten - fact that the most striking success of the European venture has been the peace and prosperity it has generated. This incomparable heritage must now be developed, and extended to the other countries of a continent that has been divided for too long.

Second, there is the usefulness of the Community method. This novel approach -based on unprecedented institutions, the rule of law, and solidarity- has made Europe what it is today. But while the values must be preserved, the methods must at the same time be adapted to the new context: the shift to a more genuinely political Union and a Union soon to be made up of more than the current fifteen members. This is what underlies the reforms advocated by the Commission.

Finally, there is the overriding requirement of political will. Setting clear objectives and providing the necessary tools is a *sine qua non*. The Union must equip itself with the means to match its ambitions. But none of this will lead anywhere unless it is founded on real political will. It is obvious that the problem of unemployment will not be resolved simply by inserting a chapter on employment in the Treaty. Just as it will take more than a form of words to create a foreign policy. But anchoring provisions in the Treaty means that the problems have to be tackled by acting together.

Recognising the difficulties does not mean giving in to them. The Conference should be the occasion to mobilize energy and resolve; to convey a message of confidence and determination to the people of Europe and the rest of the world. To demonstrate that the Union has clear objectives and the instruments to achieve them; that Europe -united in its diversity- is prepared to uphold and develop its model of society and to make growth and competitiveness work for a social and a cultural ideal; that Europe, by harnessing the strength of its institutions and the efforts of its Member States, will assume its responsibilities in the global arena. To make clear that Europe, far from being an aggregate of self-interest, is the sum of all the wealth of this continent.

3.B

**COMMISSION REPORT
UNDER ARTICLE 189b(8)
OF THE TREATY**

SCOPE OF THE CODECISION PROCEDURE

03.07.96

REF : SEC (96) 1225 final

The Treaty makes specific provision for including the question of widening the scope of the codecision procedure() on the agenda for the 1996 intergovernmental conference.*

Article 189b(8) of the Treaty reads: "The scope of the procedure under this Article may be widened, in accordance with the procedure provided for in Article N(2) of the Treaty on European Union, on the basis of a report to be submitted to the Council by the Commission by 1996 at the latest."

This document is the Commission's report.

INTRODUCTION

I. REVIEW OF THE SCOPE OF THE CODECISION PROCEDURE

1. The codecision procedure was the product of extensive discussions at the time of the negotiation of the Treaty on European Union. It reflects the Member States' wish to enhance the democratic nature of the institutions and their operations by conferring real co-legislative powers on the European Parliament.
2. The codecision procedure entails two readings between Parliament and the Council, a conciliation procedure in the event of disagreement between the partners and the possibility of ultimate rejection by Parliament. The procedure is described in detail in Annex I.
3. The Council and the Commission attempted an evaluation of the codecision procedure in the reports on the operation of the Treaty on European Union, presented to the Reflection Group in the first quarter of 1995:
 - the Council observed that, although there had been certain difficulties, especially in the initial phase, "under this new procedure some 20 legislative acts have been adopted within reasonable periods of time, laid down by the Treaty as from the second reading." (Report of 10 April 1995);
 - the Commission considered that "contrary to certain fears resulting from its complexity and its length, the codecision procedure has worked well so far. Decisions have been taken fairly quickly as a result of a good working relationship between the institutions. This has included an interinstitutional agreement on the operation of the Conciliation Committee, signed on 21 October 1993." (Report of 10 May 1995).

4. In the light of the experience gained since the above reports were compiled, a number of facts update and support the favourable evaluation of the codecision procedure:
- 49 instruments have been adopted under the procedure; 47 have already been published in the Official Journal and two are being finalized;
 - of the 20 cases where conciliation was needed after amendment by Parliament, agreement was reached in 19 cases. When agreement was not reached in the conciliation process, the Council confirmed its initial common position subject to inclusion of certain amendments proposed by Parliament. The instrument was finally rejected by the European Parliament on 21 July 1994.
 - in one case agreement was reached in the Conciliation Committee but was not confirmed by the European Parliament;****)
 - on average the procedure takes 18 to 24 months.

Despite this generally favourable picture of the situation, the codecision procedure remains undeniably cumbersome and merits simplification. The extension of the scope of the codecision procedure would make such simplification all the more necessary. In its opinion of 27 February, the Commission stated that the codecision procedure "could be quicker and more effective if it were simplified, notably by determining time-limits for first readings, by dropping the announcement of the intention to reject a proposal at the second reading stage, and by dropping third reading".

One final point: the combination of the codecision procedure with unanimity in the Council will substantially increase the risk of legislative procedures being blocked.

**** Proposal for a Directive on the legal protection of biotechnological inventions. Parliament voted against the proposal on 1 March 1995. The Commission subsequently presented a new proposal.

II FRAMEWORK OF THE DEBATE

1. The Presidency conclusions adopted at the Turin European Council on 29 March 1996 noted that "in order to improve the European Union's institutions, and also in view of preparing the future enlargement, the Heads of State or Government stress the need to look for the best means to ensure that they function with greater efficiency, coherence and legitimacy. The Conference will have to examine ... the possibility of widening the scope of codecision in truly legislative matters ..."
2. The Reflection Group's report noted with respect to codecision that "a large majority is in favour of extending it. Most would extend it to all legislation adopted by the Council by qualified majority. Another view would focus attention on matters currently dealt with by the cooperation procedure, whereas others suggest a case by case approach. One member, in principle, opposes any extension."
3. In their opinions on the Intergovernmental Conference, the Commission and European Parliament also supported extending the scope of codecision:
 - "As for the scope of the codecision procedure, the Commission's view is that it should apply to the adoption of all acts of a legislative nature. This would entail clarification of what actually constitutes a legislative instrument. The codecision procedure should in any event be adopted for all decisions currently taken by the cooperation procedure, which should be abolished." (Opinion of 28 February 1996);
 - Parliament considers that "there should be only one general procedure for legislation, namely codecision." (Opinion of 13 March 1996).
4. Extending the scope of codecision would achieve a twofold objective:
 - it would bring Parliament closer to full legislative capacity ;
 - it would contribute to the general goal of simplifying the decision-making process, especially by doing away with the cooperation procedure.

I. SCOPE OF CODECISION

I FROM THE SINGLE ACT TO THE TREATY ON EUROPEAN UNION

The current scope of codecision (see Annex 2) has emerged from a case-by-case approach. This situation was determined by three factors:

1. Increasing powers of the European Parliament

The first stage in this process was brought about by the Single European Act, which set up the cooperation procedure: the final decision remained with the Council, but for the first time in the legislative field there was a dialogue - albeit at a distance - between the European Parliament and the Council (it had existed in the budgetary field since the 1970s).

The cooperation procedure was regarded both as the first genuine step forward in the European Parliament's legislative powers since the Treaty came into force and as a testing ground -which has yielded positive results - for subsequent extension of its powers.

Next, with the Treaty on European Union, certain important areas such as the common transport policy, were transferred from the ambit of the consultation procedure to the cooperation procedure, though other equally important areas, such as the common agriculture policy, were left under the consultation procedure.

The assent procedure, hitherto confined to certain international treaties and acts of accession, was extended to legislative areas such as citizenship or the basic instruments concerning the Structural and Cohesion Funds.

European Parliament's participation in the legislative process has been steadily evolving and has been extended to a variety of fields, but without following a consistent pattern.

2. Distribution of areas where codecision applies

This is to some extent the result of the transfer of areas from the cooperation procedure to the codecision procedure by the Treaty on European Union.

Consequently, the main measures relating to the internal market have been adopted by the codecision procedures whereas, while certain areas supporting the internal market, such as framework research programmes and guidelines on networks, are covered by that procedure, others, for example the Structural Funds, the Cohesion Fund and taxation, are not.

Similarly, codecision applies to certain policies with a societal impact, for example on education, health, consumer protection and culture, whereas others, such as social policy, vocational training and the environment, are subject, though sometimes only in part, to the consultation or cooperation procedure.

The distribution of areas under codecision is, therefore, fragmentary and arbitrary.

3. Differentiation between different types of instruments in certain areas

In three areas research, the environment and trans-European networks, the idea was to confine codecision to general instruments incorporating the main lines of action.

This was followed logically in the case of research: (the framework programme is adopted by the codecision procedure and specific programmes by the consultation procedure). On the other hand, in the case of networks, and still more the environment, other procedures are used, (in particular the cooperation procedure), which tend to blur the outlines of the initial plan. With respect to the environment in particular, three procedures are applicable: codecision, cooperation and consultation. Only general action programmes are codecision matters; the directives which form the basis of environment law are cooperation or consultation matters.

The European Parliament's degree of involvement then varies, but not according to any identifiable criteria.

In short, as matters stand the application of the codecision procedure is founded neither on a logical structure nor on precise criteria.

This situation has arisen as a result of the different ways of involving the European Parliament, the piecemeal allocation of areas to the codecision procedure, and haphazard differentiation of types of instrument in certain areas.

The resulting structure is complex and heterogeneous: the Treaty is something of a maze and the exact role of each institution is far from obvious. The situation was bound to generate conflicts regarding the legal base and experience has confirmed this.

II SUGGESTED APPROACHES

During the negotiations for the Treaty on European Union and again during the preparatory work on the forthcoming Intergovernmental Conference, four possible ways of extending the scope of codecision were considered.

1. Case by case

This is the approach which has brought about the present unsatisfactory situation. The exceptions requested by one or other Member State are added to each other, and the outcome is minimal.

Moreover, the case-by-case approach is necessarily piecemeal: every conference undertakes to broaden the scope of codecision at the risk of becoming bogged down in long discussions leading to clumsy compromises, as there is no generally coherent picture.

Pursuing this approach is likely to render the Treaty yet more illogical and confusing.

2. General definition of the "Law" in the Treaty

During the negotiations on the Treaty on European Union certain Member States, the European Parliament and the Commission proposed establishing a hierarchy of norms whereby the "Law", ranking below the Treaty but above national and Community implementing measures, would determine the fundamental principles, general guidelines and basic implementing rules of the Treaty.

This idea was rejected partly on account of the lack of familiarity of most legal systems with such an abstract *a priori* distinction and partly on account of legal uncertainty with respect to the distinction between the "Law" and implementing measures.

Nevertheless the question of a hierarchy of norms should be re-examined by the Conference.^(****) To judge by experience and recent discussions in the Reflection Group, it seems unlikely, however, that there will be a general clause on the hierarchy of norms applicable to all areas in the Treaty.

3. Codecision applied to all instruments currently enacted by the cooperation procedure

This technique was pioneered in the Treaty on European Union, and it should certainly be one of the bases defining the new scope of codecision. But it cannot be the sole approach, since it would go both too far and not far enough:

- too far, in that it would cover areas that are not strictly legislative, such as certain aspects of Economic and Monetary Union;
- not far enough, since it would not cover such important areas as citizenship, agriculture policy or certain aspects of environment.

^{****} Declaration 16 annexed to the Treaty on European Union reads: "The Conference agrees that the Intergovernmental Conference to be convened in 1996 will examine to what extent it might be possible to review the classification of Community acts with a view to establishing an appropriate hierarchy between the different categories of act."

4. Codecision applied to all instruments adopted by the Council by qualified majority

This approach has the merit of simplicity, but it would have the effect of making the scope of codecision dependent on a procedural criterion applied by a single institution: the voting method in the Council. Further, it would again go too far and not far enough:

- too far, since codecision would apply to certain instruments which are definitely matters of implementation, (e.g. certain decisions concerning agriculture policy or commercial policy);
- not far enough, since certain legislative areas would not be covered by codecision, if the unanimity rule remained applicable to them.

There are merits to each approach, but none, on its own would seem to provide a satisfactory response to the question of how best to extend the scope of codecision.

II. PROPOSED APPROACH

A. The process

1. The extension of codecision is a natural step in the process of enhancing the democratic legitimacy of the Union, a constant of European integration.

The Community, the most complete part of the Union, has achieved a stage of development and maturity which now implies full democratic control. The peoples of Europe need to know they are participating in decision-making. (*****)

The Commission considers that in the present stage of Community affairs proper, maintaining the European Parliament's diminished role is contrary to democratic principles. Its participation in enacting legislation by codecision with the Council should become the rule. This would establish the twofold legitimacy on which the Community is founded: its States and its peoples.

2. On purely democratic grounds, codecision should be extended to all the Community's legislative activity. But how should that be defined?

Giving a legal definition of a legislative instrument would in practice entail moving towards a hierarchy of norms.

On the other hand, the Commission considers that the criteria commonly used to define what constitutes a legislative instrument could be used as a guideline; it would have no legal effect and would not be formalized in the Treaty, but it would make it possible to determine which of the various areas in the Treaty should come under codecision and which should not.

*****In this connection, the German Constitutional Court recalled that the democratic legitimacy represented by the European Parliament was an element which made the Treaty compatible with German Basic Law (judgment given on 12 October 1993).

In short, to meet these criteria legislative instruments would have to meet the following description:

- be directly based on the Treaty;
- be binding;
- determine essential elements of Community action in a given area; and
- be general in scope.

3. There are two considerations which must be borne in mind:

- the Union's legislative activities are governed by the respect of the of subsidiarity, whereby, in the areas where it has competence to act, the Union concentrates on the most essential activities;
- it is customary for instruments in all areas of activity to "delegate" powers to take implementing measures, which the codecision procedure is not used for.

4. The Commission feels that applying the criteria listed in paragraph 2 to each of the Community's areas of activities would enable the codecision procedure to be used for legislation across the board without the need for a general hierarchy of norms to be established in the Treaty.

5. This approach would also bring the Union closer to one of the conference's major objectives - simplifying decision-making procedures – by abolishing the cooperation procedure and thereby reducing the number of procedures to three.

B. The result

1. This approach would mean using the codecision procedure in the following areas:(^{*****})

- regulations prohibiting discrimination (currently cooperation procedure);

^{*****} A list of Treaty provisions (references and content) is given in Annex 3.

- citizenship (currently assent procedure, e.g. right to move and reside in other Member States, or consultation, e.g. right to take part in municipal elections and elections to the European Parliament), on the contrary the possible new rights; (Article 8e) would remain subject to the consultation procedure;
- aspects of the internal market not yet covered by the codecision procedure (social security for migrant workers, the right of establishment, services, capital movements, approximation of Member States' regulations);
- the common transport policy (currently cooperation procedure);
- harmonization of legislation on indirect taxes (currently consultation of the European Parliament);
- the minimum rules required to help achieve harmonization in the field of social policy (currently cooperation or consultation at the European Parliament, except agreements between the social partners, on which Parliament need not be consulted);
- measures to help achieve general vocational-training objectives (currently cooperation procedure);
- decisions relating to the Structural Funds, the Cohesion Fund or specific initiatives to promote economic and social cohesion (currently assent, cooperation or consultation procedure);
- environmental measures (currently cooperation or consultation procedure);
- legislation concerning development cooperation, excluding international agreements (currently cooperation procedure);
- measures implementing acts adopted by the codecision procedure (currently consultation at the European Parliament);
- financial measures (currently consultation at European Parliament); and
- Staff Regulations (currently consultation at European Parliament).

2. The codecision procedure would not be used, however, in the following areas:(^{*****})

- visa policy, unsuitable by nature (currently consultation at European Parliament);
- industrial policy – the Community adopts only specific measures to support Member States' activities (currently consultation at European Parliament);

^{*****} list of Treaty provisions is given in Annex 4.

- trans-European networks – technical measures (currently cooperation procedure);
 - implementation of the research framework programme (currently consultation or cooperation procedure);
 - international agreements, unsuitable by nature (currently three different procedures are used: no opinion at the European Parliament, consultation and assent);
 - association arrangements for overseas countries and territories (currently consultation at the European Parliament) – closely linked to the Lomé Convention, for which the assent procedure is used;
 - agreements between social partners (currently no consultation of the European Parliament and no grounds for amendment by the legislative authority).
3. Lastly, the above criteria for distinguishing between legislative and non-legislative areas cannot really be applied to the common agricultural policy, the common commercial policy or economic and monetary union because of the complexity and diversity of the measures adopted in these three areas.

(a) Common agricultural and fisheries policies

At present, consultation at the European Parliament is used for all measures based on Article 43 of the Treaty.

The vast majority of agricultural measures are strictly administrative in scope and do not qualify as legislation, so there is no need to use the codecision procedure for them.

It should, however, be used for fundamental acts of a general political nature concerning agricultural policy conception and orientation. The relevant areas, listed below, should be referred to specifically in the Treaty:

- certain aspects of the common market organizations referred to in Article 40(3): a specific procedural solution will have to be found with Parliament in instruments adopted by the codecision procedure in cases where there is an urgent need for the Council to amend an act;

- application of the competition rules to production of agricultural products and trade in these products;
- the setting up of one or more Agricultural Guidance and Guarantee Funds provided for by Article 40(4);
- common rules on public health, animal and plant health, animal welfare, animal feed and seeds;
- structural policy in agriculture and fisheries;
- policy on product quality.

(b) Common commercial policy

Article 113 as currently drafted does not provide for consultation of the European Parliament.

The common commercial policy is, by nature, essentially concerned with international agreements to be negotiated, concluded and implemented with non-member countries and international organizations and then administered. These do not entail legislative measures, and the codecision procedure is not appropriate.

That procedure should, however, be used for measures of a typically legislative nature such as basic anti-dumping and anti-subsidy rules, rules on defense against barriers to commerce and regulations laying down general import and export rules.

(c) Economic and monetary union

Measures relating to EMU are by and large of the type traditionally seen as a government prerogative. In most cases, the Treaty accordingly leaves the Council to make decisions, sometimes requiring it to consult or inform the European Parliament.

However, the Treaty stipulates that the cooperation procedure be used for:

- detailed rules for the multilateral surveillance procedure (Article 103(5));
- definitions for the application of the prohibition on privileged access (Article 104a(2));

- definitions for the application of the prohibition on purchasing debt instruments and granting overdrafts (Article 104b(2));
- measures to harmonize the denominations and technical specifications of all coins intended for circulation (Article 105a(2)).

The harmonization measures concerning coins intended for circulation are certainly not of a legislative nature. The consultation procedure is therefore most appropriate.

The three other cases could be seen as possessing certain characteristics of "legislative" acts. In particular, they determine certain major aspects of Community activity in the relevant areas or prohibit certain activities.

However, these characteristics do not seem to have been clearly established, and the acts in question are part of EMU, which is essentially the reserve of the national governments.

In view of this, the Commission feels that, if the cooperation procedure is to be abolished, it is preferable for decisions in these four areas to be taken by the Council after consultation of the European Parliament.

CONCLUSION

The Commission feels that the approach outlined above would enable extension of the codecision procedure to be used consistently for all Community legislation.

The approach is consistent with the Commission's position as set out in its opinion for the intergovernmental conference: codecision should be used for legislation only, the assent procedure for "constitutional" areas and international agreements and the consultation procedure for other areas.

The cooperation procedure could be abolished. In most cases it would be replaced by codecision, though the consultation procedure would be used for some, non-legislative instruments currently adopted by the cooperation procedure.

Finally, the Commission would point out that extending the scope of the codecision procedure is also dependent on simplification. This point should also be examined by the Conference.

ANNEX 3

New areas for codecision

Non-discrimination

Rules aimed at prohibiting discrimination - Article 6(2)

Citizenship

Measures to facilitate the right to move and reside freely - Article 8a(2).

The right at every citizen of the Union to vote and stand at municipal elections in the Member State in which he resides - Article 8b(1).

Common agricultural and fisheries policies

The codecision procedure should be used for a variety of acts (to be specified in the Treaty) with general significance for the conception and orientation of the common agricultural policy - Article 43:

- certain aspects of the common market organizations referred to in Article 40(3);
- application of the competition rules to production of agricultural products and commerce in these products;
- the creation of one or more agricultural guidance and guarantee fund provided for by Article 40(4);
- common rules on public health, animal or plant health, animal welfare, animal feed and seeds;
- structural policy in agriculture and fisheries;
- policy on product quality.

Internal market

Rules on social security for Community immigrant workers - Article 51.

Measures on the exercise of publish authority with respect to the right of establishment -Article 55.

Principles governing the professions with respect to training and conditions of access for physical persons - Article 57(2).

Extension of freedom to provide services to service-providers from non-member countries established in the Community Article 59.

Measures relating to the movement of capital to or from third countries - Article 73c.

Approximation of laws - Article 100.

Transport

Measures to implement a common transport policy - Articles 75 and 84, and in particular:

- common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States;
- the conditions under which non-resident carriers may operate transport services within a Member State;
- measures to improve transport safety.

Taxation

Harmonization of legislation concerning indirect taxation - Article 99.

Common commercial policy

The codecision procedure should be applicable for measures of a typically legislative nature such as anti-dumping and anti-subsidy rules, rules on defence against barriers to commerce and regulations laying down general import and export rules - Article 113.

Social

Adoption of minimum requirements for gradual harmonization - Article 118a(2), Protocol 14, Article 2(2) and Protocol 14, Article 2(3)

Implementing decisions relating to the Social Fund - Article 125

Vocational training

Measures to contribute to the achievement of the objectives referred to in this Article - Article 127(4).

Economic and social cohesion

Structural Funds, Cohesion Fund and specific initiatives - Articles 130d(1) and (2), 130e(1) and 130b

- definition of the tasks, priority objectives and the organization of the Structural Funds and the Cohesion Fund;
- general rules applicable to the Funds;
- provisions necessary to ensure their effectiveness and the coordination of the Funds with one another and with the other existing financial instruments;
- implementing decisions relating to the European Regional Development Fund.
- specific initiatives except for the Funds.

Environment

Community measures to be adopted to achieve the objectives set down in Article 130r:

- provisions primarily of a fiscal nature;
- measures concerning town and country planning;
- measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.

Measures needed to implement general action programmes setting out priority objectives to be attained (Articles 130s(1), (2) and (3) (second subparagraph)).

Development cooperation

Measures needed to attain the objectives set out in Article 130u, which may take the form of multiannual programmes - Article 130w(1).

Procedures for acts adopted by the codecision procedure

It would be necessary to adapt Article 145 to enable Parliament and the Council to adopt implementing rules for instruments adopted by the codecision procedure.

Financial provisions

- financial regulations specifying in particular the procedure for establishing and implementing the budget and for presenting and auditing accounts;
- methods and procedure whereby the budget revenue provided is made available to the Commission, and the measures to be applied, if need be, to meet cash requirements;
- rules concerning the liability of financial controllers, authorizing officers and accounting officers and appropriate arrangements for inspection - Article 209.

Staff Regulations

This legislative act should be adopted by codecision while observing the requirement to consult the other institutions as provided at present - Article 212.

ANNEX 4

Areas for which the codecision procedure is inappropriate

Citizenship

New rights of a constitutional nature, which are, incidentally, subject to ratification by national Parliaments (Article 8e)

Common agricultural policy

All areas not listed in Annex 3.

Visas

This area, by its very nature, is not a suitable candidate for the codecision procedure (Article 100c(1) and (3)).

EMU

Technical areas usually considered as being a government prerogative are not appropriate for the codecision procedure (a group of provisions)

Common commercial policy

All areas not listed in Annex 3.

Industry

The codecision procedure is not appropriate for individual measures designed to support projects in the Member States (Article 130).

Trans-European networks

The guidelines adopted in this area cover the objectives, priorities and the main thrust of planned projects, as well as projects of common interest. They are adopted by the codecision procedure.

The other measures referred to in Article 129d, currently adopted by the cooperation procedure, concern harmonization of technical standards to ensure the interoperability of networks and financial support for Member States. The codecision procedure is not suitable for technical measures (Article 129d and Article 129c(1)).

Research

The framework programme is implemented through specific programmes developed within each activity. Thus, the codecision procedure is used for measures concerning implementation and administration of the framework programme. It should also be borne in mind that, since the Treaty on European Union came into force, the specific programmes have been adopted by qualified majority after consultation of Parliament whereas the cooperation procedure was used previously (Article 130l(3)).

Three other cases concern measures implementing the framework programme. The codecision procedure should not be used for these (Article 130 j and Articles 130k and 130l).

Overseas countries and territories

These acts are closely linked to the ACP Convention and, like it, should be adopted by the assent procedure (Article 136).

International agreements

International agreements cannot be amended by legislation (Article 228).

Agreements between the social partners

Agreements between the social partners may be implemented by a Council decision, if the two parties so desire, but they cannot be amended, so codecision cannot be used. The assent procedure could be used (Protocol 14, Article 4(2)).

