

CONFERENCE OF THE REPRESENTATIVES
OF THE GOVERNMENTS
OF THE MEMBER STATES

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LIMITE

THE EUROPEAN UNION TODAY AND TOMORROW

ADAPTING THE EUROPEAN UNION FOR THE BENEFIT
OF ITS PEOPLES
AND PREPARING IT FOR THE FUTURE

A GENERAL OUTLINE FOR A DRAFT REVISION OF THE TREATIES

DUBLIN II

INTRODUCTION TO THE DOCUMENT

The Presidency submits herewith a general outline for a draft revision of the Treaties as requested by the European Council in Florence.

The document addresses the particular aims identified by the European Council. It is submitted on the Presidency's responsibility. It is not binding in its detail on any delegation. Delegations remain free to advocate their own proposals and to press their concerns in further negotiations. Some delegations still favour maintaining the status quo in certain areas.

The Presidency has endeavoured to reflect in a balanced way in the document the discussions which have taken place at the Conference, as well as the clear wish of Heads of State or Government that the Conference should retain an adequate level of ambition. The outline draft Treaty submitted herewith could, in the Presidency's view, be a good basis for further work with a view to seeking final agreement under the Netherlands Presidency at Amsterdam on a Treaty which would equip the Union to address the challenges ahead and to respond to the aspirations of its citizens.

The Presidency wishes to highlight five points in relation to the outline draft Treaty.

First, it is of paramount importance that the negotiations at the Intergovernmental Conference as well as its final outcome should be clear and comprehensible to the public. The Union must not only respond to the concerns of its citizens but must be seen to respond to those concerns. The process of explaining the Intergovernmental Conference is not one to be reserved for the end of the Conference. Accordingly, the presentation chosen for the outline draft Treaty involves both an introductory explanatory memorandum and an explanation at the beginning of each section and chapter of what is proposed. The aim is to explain clearly and precisely, as the Final Act of the Conference will have to do, the challenges which are being addressed and the solutions proposed. The Presidency hopes that this outline draft Treaty will help significantly in the task of explaining to the people of Europe what is at stake.

Second, the Presidency would like to pay tribute to the essential ongoing input which the European Parliament is making to the work of the Conference. The outline draft Treaty reflects that input and the ambitions for Europe which the European Parliament is bringing to bear on the negotiations.

Third, the fact that this document is an outline draft and that the final trade-offs, especially on some of the more sensitive issues, can come only next year means that it is generally agreed that in some areas the Presidency should not submit draft Treaty texts at this stage of the negotiations. In such areas, the Presidency has set out the present state of discussions and, where appropriate, options for further consideration by the Conference.

Fourth, Part B of the document sets out proposals which have been made by one or more delegations on issues not covered by the broad headings in Part A. The Conference is still considering these proposals and will need to decide between now and Amsterdam whether and, if so, how to reflect them in the Treaty.

Fifth, the Florence European Council called on the Intergovernmental Conference to seek all possible ways of simplifying the existing Treaties so as to make the Union's goals and operation easier for the public to understand. This remains a major objective of the Conference and work should, in the Presidency's view, be taken forward on the basis of the report submitted by the Conference Secretariat at the end of November. Treaty simplification is dealt with in Part C of the document.

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EXPLANATORY MEMORANDUM: WHY A REVISION OF THE TREATIES?

The European Union belongs to its citizens. The Treaties establishing the Union should address their most direct concerns.

The Maastricht Treaty provided for the convening in 1996 of an Intergovernmental Conference, which is the formal mechanism for revising the Treaties on which the Union is based.

The scope of the Conference's work has been set out by successive European Councils. The aim is to provide the Union with the means to respond adequately to the challenges which confront it now and in the years ahead. A thorough analysis of these challenges was undertaken in preparation for the Conference by a Reflection Group which submitted a suggested annotated agenda for the Conference to the European Council in Madrid in 1995.

The Conference formally began its work on the occasion of the European Council meeting in Turin on 29 March 1996. The Italian Presidency addressed the task of examining the issues and exploring delegations' positions and priorities. It reported on the outcome of its work to the Florence European Council in June.

At Florence, the European Council indicated that it expected at its meeting in Dublin in December to mark decisive progress towards completing the Intergovernmental Conference by the middle of 1997. To that end it requested the Presidency to prepare for that meeting "a general outline for a draft revision of the Treaties".

The Irish Presidency has organized the work of the Conference with a view to fulfilling that mandate. The Conference has met at Foreign Minister level on a monthly basis. The work of the Foreign Ministers has been prepared by a Group consisting of their Representatives which has met on an almost weekly basis.

The Special Meeting of the European Council in Dublin on 5 October provided an important impetus for the work of the Conference. The Heads of State or Government confirmed on that occasion that the Conference should conclude as agreed in June 1997. They also reaffirmed that the Conference should maintain an adequate level of ambition to ensure that the Union is equipped to address more effectively the concerns of its citizens, that it can play a coherent role in international relations commensurate with its potential and responsibilities and that it can carry the weight which the restructuring of the wider continent is likely to place on it in the years ahead. An adaptation of the Union's institutions and the way they function must play a central role in that regard.

The European Union is facing a daunting array of challenges at the threshold of the

twenty-first century: rapidly evolving international developments; globalization of the world economy and its impact on employment, competitiveness and job creation; terrorism, drug trafficking and international crime; migratory pressure; and ecological imbalances. Future enlargement of the Union affords both a unique opportunity and an important challenge. These are challenges which the Union must meet at a time when political institutions everywhere are under question by a well informed public.

The priorities addressed in the five sections of Part A of the present document reflect the main aims for the Conference set by the European Council at Florence.

The Conference must make the Union more relevant to its citizens and more responsive to their concerns. To do that, it must focus on what needs to be done at European level to address those concerns.

- ***People wish to live in a Union in which their fundamental rights are fully respected. They wish to be able to live and to move freely within the Union, without fear of threats to their personal security. International crime transcends national borders within the Union. The Union must therefore be able to extend as necessary across those borders the protection of its citizens and the fight against international crime.***
- ***Citizens attach particular importance to employment. They want to live in a clean environment. They want adequate protection as consumers. While the main responsibility for ensuring the economic and social well-being of citizens lies within Member States, it is increasingly important that action on these issues be addressed also at European level, with full respect for the principle of subsidiarity. The public wants institutions which function openly and transparently and decision-making procedures which are comprehensible and effective.***
- ***The Union's external action must be enhanced so that the Union can exercise a more effective political and economic influence in the world commensurate with its size and potential. The Union's foreign and security policy structures must be strengthened. The Treaty provisions on security and defence should also be developed, including with a view to enabling the Union to assist in managing international crises and to work in support of peace. The Community must be able to negotiate effectively in today's changed economic and trading environment in order to defend the interests of its Member States, its economic operators and its workers. Above all, the Union's external policy must be coherent and consistent. An effective external policy is essential in order to promote peace, stability and prosperity.***
- ***It is important for the Union's institutions to retain the trust, respect and active support of its citizens in each and every Member State. With the prospect of future enlargement, it will be necessary to make institutional changes which marry the desire for more efficient and effective decision-making with the need to ensure***

that the institutions are visibly democratic and firmly rooted in public acceptance.

- *The Conference has also been considering how the Treaty might be amended to allow for the development of what has come to be called "flexibility" or "enhanced cooperation". This is one of the most important issues at the Conference. Whatever is decided in this area will be of the utmost importance in determining the shape of the Europe in which its peoples, including future generations, are to live.*

If the Intergovernmental Conference is to equip the Union to address the challenges ahead, notably with a view to enlargement, and to respond imaginatively to the aspirations of its citizens, significant progress will have to be achieved in all of these areas.

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In presenting the present document, the Presidency notes that Denmark makes it clear that its position in these negotiations continues to be based on the Edinburgh texts of 11-12 December 1992 on "Denmark and the Treaty on European Union".

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* *

In this document Treaty texts are in normal script with suggested new provisions indicated in **bold**. *The introductions and the comments are in italics. The comments set out, a number of the alternative approaches and suggestions which are still under consideration.*

The numbering of Articles is provisional and will need to be reviewed in the presentation of the final outcome of the Conference.

PART A

PART A

SECTION I
AN AREA OF FREEDOM,
SECURITY AND JUSTICE

INTRODUCTION

CHAPTER 1 FUNDAMENTAL RIGHTS AND NON-DISCRIMINATION

CHAPTER 2 FREE MOVEMENT OF PERSONS, ASYLUM,
IMMIGRATION

CHAPTER 3 SAFETY AND SECURITY OF PERSONS

AN AREA OF FREEDOM, SECURITY AND JUSTICE: INTRODUCTION

1. *The European Union must be maintained and developed as an area of freedom, security and justice. The dimension of the challenges facing the Union has not as yet been matched by adequate results but it is increasingly matched by a willingness to address those challenges imaginatively and effectively.*
2. *If the Union is to be maintained and developed as an area of freedom, security and justice, it is important to reaffirm and to ensure the safeguarding of the fundamental principles on which the Union is founded.*
3. *The people of the Union rightly insist that they should be allowed to benefit fully from the freedom which the development of the European Union makes possible, and at the same time be protected from threats to their personal security. This requires more effective action by the Union, including effective and credible checks at external borders.*
4. *International crime, terrorism, and drug trafficking are scourges which transcend national boundaries. They impact directly on people's security. Asylum and immigration are also pressing issues, in particular as a result of the changed international situation since the early 1990s.*
5. *Section I sets out a number of Treaty changes which would principally:*
 - *underscore the fundamental principles on which the Union is founded, and strengthen and safeguard the Union's commitment to fundamental rights, non-discrimination and equality of men and women;*
 - *strengthen the instruments for addressing issues such as immigration, asylum, visas and external borders which must be handled collectively if free movement in the Union is to be achieved without jeopardizing the security of citizens;*
 - *greatly enhance the Union's ability to take more effective action to tackle international crime, including terrorism, trafficking in people and offences against children, illegal drug trafficking and to combat fraud and corruption, as well as to enhance police and judicial cooperation.*

CHAPTER 1. FUNDAMENTAL RIGHTS AND NON-DISCRIMINATION

I. The issue

The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law; these principles are upheld by all the Member States. It is important to reaffirm these principles and to strengthen the Treaty to ensure respect for them.

The texts suggested by the Presidency which follow would in particular:

- reaffirm those principles with regard to both present and future Member States of the Union;*
- put in place a procedure for determining the existence in a Member State of a serious and persistent breach of those principles and allow for the suspension of certain of the rights of the Member State in question;*
- incorporate a new article in the EC Treaty to clarify judicial control of respect for fundamental rights;*
- extend significantly the grounds on which action could be taken by the Community to prohibit discrimination;*
- strengthen the Treaty with a view to ensuring respect for the principle of equality between men and women.*

It has also been suggested in this context that certain social rights should be explicitly mentioned in the Treaty.

There is, however, also a view that no Treaty amendment is required in relation to human and fundamental rights, non-discrimination or equality between men and women.

II. Texts

General principles underlying the Union

Amend Article F of the TEU

1. **The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are upheld by the Member States.**
2. The Union 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 **[words deleted]**.
3. The Union shall respect the national identities of its Member States **[words deleted]**.
4. The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.

Action in the event of a serious and persistent breach by a Member State of the principles on which the Union is founded

New Article Fa in the TEU

- 1. The Council, meeting in the composition of the Heads of State or Government and acting by unanimity on a proposal by one third of the Member States, by the European Parliament or by the Commission, may determine the existence of a serious and persistent breach by a Member State of the principles mentioned in Article F paragraph 1, after inviting the government of the Member State concerned to submit its observations.**
- 2. Where such a determination has been made, the Council, acting on a recommendation by the Commission and after consulting the European Parliament, may decide to suspend certain of the rights deriving from the application of the provisions of the Treaties to the State in question. The Council shall act by a majority of two thirds of the votes of its members weighted in accordance with Article 148(2) of the Treaty establishing the European Community, cast by at least ten members.**

The Council, acting in accordance with the same procedure, may decide subsequently to vary these measures in response to changes in the situation which led to their being imposed.

- 3. If the Council, meeting in the composition referred to in paragraph 1 and acting in accordance with that paragraph, finds that the situation of serious and persistent breach referred to in that paragraph has ceased, it shall revoke the measures adopted under paragraph 2.**
- 4. When taking the decisions referred to in paragraphs 1, 2 and 3 above, the Council shall act without taking into account the vote[s] of the representative of the Member State concerned. For the purposes of this Article, the European Parliament shall act by a majority of its component Members and three fifths of the votes cast.**

Respect by any country applying to join the Union for the fundamental principles on which it is founded

Supplement the first sentence of Article O of the TEU

Any European State, **which respects the principles set out in Article F(1)** may apply to become a member of the Union [remainder unchanged].

Judicial control of respect for Fundamental Rights

New Article 3c in the TEC

The Community 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.

Comments

- 1. A number of Member States maintain the view that a more appropriate way of guaranteeing judicial control of fundamental rights would be for either the European Union or the European Community to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms.*
- 2. Another view is that Article L of the Treaty on European Union should be amended to bring matters covered by all three pillars within the jurisdiction of the Court of Justice insofar as human rights are concerned.*

Non discrimination

New Article 6a in the TEC

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 consulting the European Parliament, may take appropriate action to prohibit discrimination based on sex, racial, ethnic or social origin, religious belief, disability, age, or sexual orientation.

Comments

1. *With regard to the categories of discrimination against which action could be taken by the Community, further detailed examination by the Conference will be required in order to agree a definitive list and precise definitions.*
2. *It has been suggested that provision might also be made in the Treaty to take special account of persons with a disability. Such reference could be made, for example, in Article 127 or Article 100a of the TEC.*

Equality of men and women

Supplement Article 2 of the TEC

The Community shall promote ... a high level of employment and social protection, **equality between men and women**, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.

Supplement Article 3 of the TEC with a new paragraph

In all the activities referred to in this Article, the Community shall aim to eliminate inequalities and to promote equality between men and women.

Amend the first paragraph of Article 119 of the TEC

Each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for **[word deleted]** work **of equal value**.

Add the following paragraphs at the end of Article 119 of the TEC

The Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for work of equal value.

With a view to ensuring full equality in practice in working life, this article shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

Introduce gender neutral language into the Treaties

The Presidency proposes that gender-neutral language should be incorporated into the Treaties wherever this is appropriate.

**PROGRESSIVE ESTABLISHMENT OF AN AREA OF FREEDOM,
SECURITY AND JUSTICE**

I. The issue

The objective of furthering the development of the European Union as an area of freedom, security and justice should be set out in Article B of the Treaty on European Union as proposed below. This objective should be addressed in two principal ways: first, through the new Title on free movement of persons, asylum and immigration which is proposed in Chapter 2 in the present Section and, second, through strengthened provisions (in Title VI of the Treaty on European Union) on security and safety of persons as proposed in Chapter 3 in the present Section.

In each of these Chapters, the Presidency proposes target deadlines for adopting certain measures in order to ensure practical progress without delay in this area which is of direct and immediate concern to citizens.

*The Presidency suggests that the Conference should consider whether to set an overall target date, perhaps **1 January 2001**, to complete the progressive establishment of an area of freedom, security and justice in which the free movement of persons would be ensured. If this political commitment were agreed by the Conference, it could be reflected either in Article B below or in the form of a declaration to the Final Act of the Conference.*

II. Text

Amend the fourth indent of Article B of the TEU

The Union shall set itself the following objectives:

- to maintain and develop the Union as an area of freedom, security and justice, in accordance with the principle of the rule of law [, to be progressively established before 1 January 2001];**

CHAPTER 2. FREE MOVEMENT OF PERSONS, ASYLUM AND IMMIGRATION

I. The issue

Free movement of persons is one of the fundamental objectives of the EC Treaty. However, allowing freedom to move from one Member State to another without internal border controls must not undermine in any way the security of people who live in the Union. Matters such as asylum, visas and immigration have until now been dealt with largely through the provisions for cooperation set out in Title VI of the Treaty on European Union. Cooperation has, in the view of many, lacked sufficient coherence, consistency and impetus. There is wide support for strengthening the Treaty provisions in this area.

It is widely considered that the starting point for an examination of Treaty changes in this area should be an identification of the objectives to be achieved. This should be followed by an examination of the instruments to achieve those objectives and the establishment of a timetable according to which they are to be achieved. Institutional changes should not be made for their own sake.

The text, in the form of a new Title, suggested by the Presidency which follows would:

- define the objective of furthering the development of an area of freedom, security and justice, in which the free movement of persons would be ensured and underpinned by security for those living in the territory of the Member States;*
- set target dates for adopting clear rules and procedures governing the crossing of the external borders of the Member States;*
- establish provisions for drawing up common rules for visas as well as common rules regarding the free movement of third country nationals;*

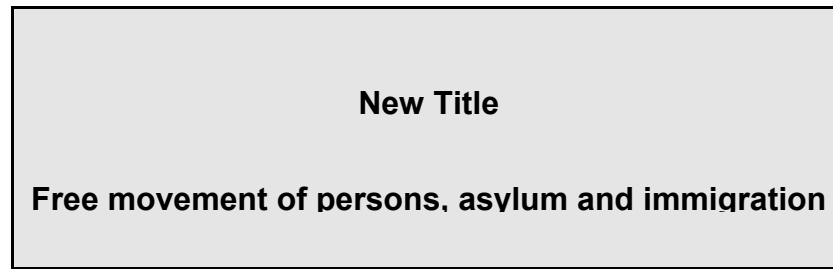
- *set out provisions on aspects of asylum and immigration policy which must also be tackled in common;*
- *provide for coherent action in relation to certain aspects of illegal drugs.*

In order to provide a framework for discussion, the Presidency suggests a draft text for a new Title. The Presidency considers that the incorporation of this Title in the Treaty establishing the European Community would provide the most coherent basis for effective action.

However, as the key will be to ensure that provisions permitting effective action are agreed rather than to introduce particular procedures for their own sake, the Conference should decide definitively at a later stage where such a new Title, if it is agreed, should be located in the Treaties. The procedures of the TEC would in any event have to be adapted to apply to these areas and, if the adaptation of those procedures were to be of a fundamental nature, it might prove preferable to locate the new Title elsewhere.

A number of Member States have indicated that they do not accept the transfer of any matter at present dealt with under Title VI to the Treaty on European Union.

II. Texts



Article A

- 1. In order to further the development of an area of freedom, security and justice in which the free movement of persons is ensured as provided for in Article 7a, the Council shall adopt appropriate measures in the following areas:**
 - the crossing of internal and external borders of Member States, as provided for in Article B;**
 - asylum policy, immigration policy and policy regarding nationals of third countries within the territory of the Member States, as provided for in Article C;**
 - administrative cooperation, as provided for in Article D;**
 - coherent action in the field of drugs, as provided for in Article E;**
 - customs cooperation, as provided for in Article F.**

- 2. This Title shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.**

Article B

The Council, acting in accordance with the procedure referred to in Article G, shall, within a period of one year after the entry into force of the Treaty, adopt:

- 1 measures, consistent with the best possible security conditions and in compliance with Article 7a, with a view to ensuring the absence of any controls on persons, be they citizens of the Union or nationals of third countries, when crossing internal borders;
- 2 measures on the crossing of the external borders of the Member States which shall, consistent with the best possible security conditions, establish :
 - (a) standards and procedures to be followed by Member States in carrying out checks on persons at such borders;
 - (b) rules on visas for intended stays of no more than three months, including:
 - (i) the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement;
 - (ii) the procedures and conditions for issuing visas by Member States;
 - (iii) a uniform format for visas;
- 3 measures setting out the conditions for the free movement of nationals of third countries within the territory of the Member States during a period of no more than three months after their entry into that territory.

Article C

The Council, acting in accordance with the procedure referred to in Article G, shall adopt:

- 1 measures on asylum, in accordance with the Convention of 28 July 1951 and the Protocol of 16 December 1966 relating to the Status of Refugees, within the following areas:**
 - (a) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a third country national in one of the Member States;**
 - (b) standards on the reception of asylum seekers in Member States;**
 - (c) common rules with respect to the qualification of third country nationals as refugees;**
 - (d) standards on procedures in Member States for granting or withdrawing refugee status.**
- 2 measures on refugees and other displaced persons within the following areas:**
 - (a) rights of displaced persons from third countries who cannot be sent back to their country of origin;**
 - (b) promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and other displaced persons.**

- 3 measures on immigration policy within the following areas:**
- (a) harmonization of conditions of entry and residence, and standards on procedures for the issue by Member States of long term visas and residence permits, including those for the purpose of family reunion;**
 - (b) combating illegal entry and residence on the territory of the Member States by nationals of third countries, including provisions for the return of such persons to their country of origin or of transit.**
- 4 measures defining the rights of nationals of third countries who are legally resident in a Member State, including their right of establishment and their right to seek employment in other Member States.**

Measures referred to under paragraphs 1, 2 and 3 above shall be adopted within a period of two years after the entry into force of the Treaty. Measures referred to under paragraph 4 above shall be adopted within a period of three years after the entry into force of the Treaty.

Article D

The Council, acting in accordance with the procedure referred to in Article G, shall take the necessary measures to ensure and encourage close and regular cooperation between the relevant departments of the administrations of the Member States competent in the areas covered by Articles B and C, as well as between those departments and the Commission. With respect to questions relating to asylum policy, close and regular consultations with the United Nations High Commissioner for Refugees shall be established.

Article E

In the exercise of its powers, the Council shall take account of the importance of combating drug-related crime, and in particular illicit trafficking in narcotic drugs and psychotropic substances. It shall coordinate the exchange of information and sharing of experience between Member States and it shall encourage international cooperation in this field.

Article F

The Council, acting in accordance with the procedure referred to in Article G, may adopt measures on mutual assistance between customs authorities of the Member States and between the latter and the Commission in matters within the sphere of Community competence.

Comments

- 1. The suggested provisions on drugs in Article E above, of course, complement the provisions elsewhere in the Treaty which provide a basis for combating drug-related crime and other aspects of the drugs problem and which the present document proposes to strengthen significantly.*
- 2. The possibility of developing the suggested provisions in Article E above in relation to drugs should be considered further, including the possibility of adding a specific provision in relation to drug addiction insofar as this may not be fully covered by Article 129.*

Article G

The role of the institutions and decision-making procedures under this Title remain to be considered further by the Conference. The Presidency would offer the following comments:

1. *It would seem logical, in the view of the Presidency, that the Commission should have the right of initiative, but this could be complemented by a provision to oblige the Commission to examine a request by a Member State that it submit a proposal (see Article 100c(4) and Article 109d of the TEC). Some delegations consider that Member States should have a shared right of initiative with the Commission. One possibility would be to accept this at the outset and to move on a phased basis towards an exclusive right of initiative for the Commission.*
2. *The Conference will also have to consider further the European Parliament's necessary role in decision-making in this area. The question of a role for national parliaments is dealt with in the section of the present document dealing with national parliaments (see Chapter 19 in Section IV below).*
3. *As far as the Council is concerned, consideration could be given to establishing a date or dates after which decisions, to be taken during an initial period on the basis of unanimity, could be taken by a qualified majority (without prejudice, of course, to the existing provision for QMV under Article 100c).*
4. *The role of the Court of Justice in this area will also require consideration by the Conference. The large number of cases which come before national courts in the areas of asylum and immigration suggests that many applications for interpretation of provisions in this area by way of preliminary ruling would be submitted to the Court of Justice by national courts at the request of parties involved in such cases. This would lead to a considerable increase in the workload of the Court and delay national proceedings. In this respect, specific modalities should be contemplated regarding the role of the Court of Justice.*

Article H

The provisions of the conventions in force between Member States and the provisions of conventions and other instruments adopted on the basis of Title VI of the Treaty on European Union and which govern matters covered by this Title shall remain in force and may be amended or complemented until their content has been replaced by measures adopted pursuant to this Title.

Comment on Chapter 2

The Presidency approach has been to propose addressing the fight against international crime through strengthened provisions in Title VI of the TEU as set out in the immediately following chapter. In the view of some delegations, additional areas, including the fight against international crime, should also be dealt with according to the provisions set out in this Title.

CHAPTER 3. SECURITY AND SAFETY OF PERSONS

I. The issues

The Union's citizens should be free to live without fear or threat to their personal safety. There is a growing recognition that the problems of international crime, terrorism, drug trafficking, trafficking in persons and offences against children require a response which, like the problems themselves, transcends national boundaries.

These issues are therefore being given a high priority by the Conference. Addressing these problems effectively will, as set out in this chapter and in conjunction with the proposals set out in Chapter 2 of the present document, play an essential role in developing the Union as an area of freedom, security and justice.

The texts suggested by the Presidency which follow would in particular:

- *provide a clearer and more focused definition of the areas in which the Member States would cooperate and develop common action. These areas, which would be defined in a clear and comprehensive way, would include in particular:*
 - *all forms of police cooperation, in particular for the purposes of preventing and combating terrorism and other forms of international crime, including cooperation through EUROPOL and the development of its operational capacity;*
 - *combating trafficking in persons and offences against children;*
 - *combating illegal drug trafficking;*
 - *preventing and combating racism and xenophobia;*
 - *judicial cooperation*
- *strengthen significantly the instruments available to the Union in cooperating and developing common action in these areas;*

This is one of the most important areas under consideration at the Conference and further detailed work will be required on the objectives, scope and instruments for Union action.

II. Texts

Scope and objectives of JHA action

Article K of the TEU

Action in the fields of justice and home affairs shall have as its objective to maintain and develop the Union as an area of freedom, security and justice, in accordance with the principle of the rule of law, by promoting cooperation and developing common action as set out in the following provisions.

Article K.1 of the TEU

Without prejudice to the powers of the European Community, the following areas shall be regarded as matters of common interest for the Member States with a view to cooperation and common action within the Union:

- (1) all forms of police cooperation, in particular for the purposes of preventing and combating terrorism and other forms of international crime, including cooperation through EUROPOL and the development of its operational capacity;**
- (2) combating trafficking in persons and offences against children;**
- (3) combating illegal drug trafficking;**
- (4) preventing and combating racism and xenophobia;**
- (5) judicial cooperation in criminal matters;**
- (6) judicial cooperation in civil and commercial matters;**
- (7) ensuring consistency in the rules applicable in the Member States on conflicts of law and jurisdiction in civil and commercial matters;**
- (8) preventing and combating corruption, as well as fraud on an international scale;**
- (9) customs cooperation.**

While there is a wide measure of agreement that the scope of action in certain areas set out in the proposed Article K1 should be defined in greater detail, the texts suggested below for some of these areas, have not yet been considered in great detail by the Conference. The Presidency, however, has decided, in the light of the interest shown in proposals which it submitted to the Conference for developing common action in these areas, to set out these texts in the present document for illustrative purposes, on the clear understanding that a great deal of further work would be required to reach agreement on specific provisions.

Illustration of possible detailed Treaty provisions on judicial cooperation

Possible New Article K1a in the TEU

- 1. The development of common action as provided for in Article K.1(5) shall include:**
 - (a) all forms of cooperation between competent ministries and judicial or equivalent authorities of the Member States in relation to the conduct of proceedings and the enforcement of decisions in criminal cases, taking account of the development of modern technologies;**
 - (b) the approximation of the laws and regulations of the Member States on the admissibility of evidence and on mutual assistance in criminal matters with a view to improving cooperation as referred to in (a) above;**
 - (c) establishing mechanisms for the prevention of conflicts of jurisdiction between Member States;**
 - (d) the approximation of substantive provisions of the laws of the Member States to the extent that this is necessary to improve cooperation as referred to in (a) above.**

- 2. The development of common action as provided for in Article K.1(6) and (7) shall include:**
 - (a) all forms of cooperation between competent ministries and judicial or other authorities of the Member States in relation to the conduct of proceedings and the recognition and enforcement of decisions in civil and commercial cases, including extrajudicial cases, taking account of the development of modern technologies;**
 - (b) the approximation of rules on conflicts of law and jurisdiction;**
 - (c) the improvement of the conditions for access to justice.**

Illustration of possible detailed Treaty provisions on police and customs cooperation, and combating international crime

Possible new Article K1b in the TEU

1. The development of common action as regards police and customs cooperation under Article K.1 shall include:
 - (a) operational cooperation between the competent ministries and central authorities and the police, customs and other specialized law enforcement services of the Member States in relation to the prevention, detection and investigation of criminal offences;
 - (b) the collection, processing, analysis and exchange of relevant information in particular through Europol, subject to appropriate provisions on the protection of personal data;
 - (c) cooperation in such fields as training, the exchange of liaison officials, secondments, the use of equipment, and forensic research;
 - (d) the common evaluation of the effectiveness and suitability of particular investigative techniques, in particular those which relate to the detection of serious forms of organised crime.

2. With a view to combating all forms of international crime, including terrorism, illicit trafficking in narcotic drugs and psychotropic substances, corruption and fraud, as well as trafficking in persons and offences against children, the Council shall in particular:
 - (a) within [x] years after the date of entry into force of the Treaty, adopt measures enlarging the functions of Europol to enable it to facilitate and assist in the preparation and carrying out of specific cooperative actions by the judicial, police and customs authorities of the Member States, including operational actions of joint teams;
 - (b) within [x] years after the date of entry into force of the Treaty, adopt measures allowing Europol to call on police forces in Member States to conduct investigations in specific cases and providing Europol with one or more technical units to assist Member States in investigating cases of international crime;

- (c) within [x] years after the date of entry into force of the Treaty, establish a liaison arrangement between prosecuting/investigating officials specialising in the fight against organised crime in close cooperation with Europol;
- (d) adopt such measures as may be necessary for the approximation of substantive and procedural laws and regulations of the Member States;
- (e) within [x] years after the date of entry into force of the Treaty, establish a research, documentation and statistical network on international crime.

Comment

The principle of incorporating detailed provisions along the lines suggested in the proposed paragraph 2 above is a particularly important and sensitive question being addressed by the Conference.

Institutions and instruments for JHA action

Article K.3(2) of the TEU

The Council shall take measures and promote, using the appropriate forms and procedures, any cooperation contributing to the pursuit of the objectives of the Union.

To that end, on the initiative of any Member State or of the Commission and after consulting the European Parliament, it may:

- (a) adopt specific decisions [by unanimity], whether for the purpose of establishing a common position or for the purpose of setting up an operational action of the Union. These decisions shall be binding upon the Member States. The Council, acting by a qualified majority, shall adopt measures implementing the decisions setting up an operational action.**
- (b) adopt [by unanimity] framework decisions for the purpose of approximation of laws. These decisions 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 their provisions.**
- (c) establish conventions which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements. Member States shall begin the procedures applicable within a time limit to be set by the Council⁽¹⁾.**

(1) *This provision could be complemented by a declaration attached to the Treaty to the effect that Member States undertake to take all the necessary steps to ensure the completion of the necessary national procedures within a reasonable time.*

Conventions may provide that, once adopted by a number of Member States which they shall determine, they shall enter into force for those Member States. Measures implementing conventions shall be adopted within the Council by a majority of two thirds of the High Contracting Parties.

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 dispute 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. The Court of Justice shall have jurisdiction to rule on any dispute between Member States regarding the interpretation or the application of conventions whenever such dispute cannot be settled by the Council within six months of its being referred to the Council by one of its members.

Cooperation with third countries

Add a new first paragraph in Article K.5 of the TEU

In pursuing the objectives of this Title, the Union shall cooperate with third countries where such cooperation would further the achievement of these objectives.

Comments on Chapter 3

Political asylum

1. *It has been strongly urged that the Treaty should provide, perhaps in the context of the citizenship provisions, that no Member State shall agree to process an application for asylum or refugee status submitted by a national of another Member State of the Union. This is an important proposal which should be considered further by the Conference.*

Schengen

2. *An important issue requiring further consideration by the Conference is whether the Schengen Agreement should be incorporated into the Treaty on European Union. It has been suggested that this might be done in a phased way with a provision for opt-outs.*

Other issues

3. *Various suggestions in relation to the precise formulation of the objectives of third pillar action set out in Article K and the precise definition of matters of common interest set out in Article K.1 remain to be considered further by the Conference.*
4. *The issue of decision-making procedures remains to be considered further. The suggestion in the proposed Article K.3(2) that unanimity might be retained in the Council is based on the assumption that many of the matters dealt with at present under Title VI (such as asylum, visas and immigration - see Chapter 2 above) would be dealt with according to new strengthened procedures. Some delegations have indicated that they would be prepared to consider the introduction of QMV for some of the matters set out in the proposed Article K.1 above.*
5. *The question of whether some instruments (specific decisions and framework decisions) should be binding on the institutions of the Union is to be considered further by the Conference.*
6. *The question of a possible case by case flexibility for framework decisions is also for further consideration.*
7. *The role of the Court of Justice in this area will need to be examined in greater detail. Some delegations have expressed the view that the Court of Justice should have mandatory jurisdiction as regards all conventions adopted in this area. Other delegations oppose a development in the role of the Court of Justice as suggested in the proposed Article K3(2).*
8. *While the provisions of Article K.3 will continue to permit the adoption of resolutions and recommendations, it has been suggested that this possibility be made explicit in the Treaty.*
9. *A view is also held that no Treaty amendment is required on institutional provisions in this area, in particular regarding the respective roles of the Commission, the European Parliament and the Court of Justice.*

PART A

SECTION II

THE UNION AND THE CITIZEN

INTRODUCTION

CHAPTER 4 EMPLOYMENT

CHAPTER 5 SOCIAL PROVISIONS

CHAPTER 6 ENVIRONMENT

CHAPTER 7 CONSUMER POLICY

CHAPTER 8 TRANSPARENCY

CHAPTER 9 SUBSIDIARITY

THE UNION AND THE CITIZEN: INTRODUCTION

Making the Union more relevant and comprehensible to its citizens is a major aim which runs through the work of the Conference and is reflected in all chapters of this document.

Section II addresses a number of issues which affect citizens in their daily lives and how they perceive the Union and its institutions.

People want the opportunity to work.

They want a decent society not just for themselves but for all.

They want to live in a clean environment.

As consumers living in the largest market in the world, they want adequate protection. They want the institutions of the Union, of their Union, to be comprehensible and transparent.

They want the Union to play the role which it must play in certain areas while leaving for action at the level of Member States matters which are more properly addressed at that level.

Their citizenship of the Union complements and does not replace their national citizenship.

CITIZENSHIP OF THE UNION

Amend Article 8 of the TEC

1. 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 complement and not replace national citizenship.**

I. The issue

The high level of unemployment is of direct and particular concern to citizens. Maintaining and creating jobs has been recognized by successive European Councils as the most important challenge facing the European Union. While competence for employment matters must remain essentially at Member State level, the importance of addressing the employment issue at European level also, in support of action taken at national level, is widely accepted. The challenge is to strengthen and provide an explicit Treaty basis for arrangements at the level of the Union for coordinating and developing common strategies on employment.

It is clear that employment policy should be fully consistent with the broad guidelines set for economic policy.

The text suggested by the Presidency which follows would in particular:

- *specify the promotion of a high level of employment as an objective;*
- *introduce a new Title on employment into the Treaty. The provisions of this new Title would establish a coordination process on employment policy at Community level, involving : (a) a significant role for the European Council in giving political impetus (b) adoption by the Council of Ministers of common guidelines on employment (c) annual assessments of national measures with a view to ensuring consistency and in the light of which the Council would be entitled to address recommendations to Member States (d) provision for the adoption of incentive measures designed to encourage cooperation on a transnational basis in relation to employment (e) ensuring a coherent approach to employment through the establishment of an Employment Committee with an advisory role which would include two members from each Member State and from the Commission.*

The approach suggested is largely inspired by, and would build on, the coordination arrangements which have been put in place on a less formal footing in recent years as part of the so-called Essen process.

II. Texts

Employment in the General Objectives of the Treaties

Amend Article B of the TEU

The Union shall set itself the following objectives:

- to promote economic and social progress which is balanced and sustainable **and a high level of employment**, in particular

Amend Article 2 of the TEC

The Community shall have as its task to promote throughout the Community a harmonious and balanced development of economic activities, sustainable and non-inflationary growth respecting the environment, a high degree of **competitiveness and convergence** of economic performance, a high level of employment and social protection,....

Amend Article 3 of the TEC : Additional indent before (i)

- (-) **the promotion of coordination between employment policies of the Member States with a view to enhancing their effectiveness by developing a common strategy for employment.**

Article 1

Member States and the Community shall work towards developing a common strategy for employment as provided in this Title with a view to achieving the objectives defined in Article 2 of the Treaty establishing the European Community and in Article B of the Treaty on European Union.

Article 2

- 1. Member States, through their employment policies, shall contribute to the achievement of the objectives referred to in Article 1 in a way consistent with the broad guidelines of the economic policies of the Member States and of the Community adopted pursuant to Article 103(2).**
- 2. Member States shall regard the promotion of employment as a matter of common concern and shall coordinate their action in this respect within the Council, in accordance with the provisions of Article 4.**

Article 3

- 1. The Community shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, as necessary, complementing their action, while respecting the competence of the Member States in this field.**
- 2. The objective of a high level of employment shall be taken into consideration in the formulation and implementation of Community policies.**

Article 4

1. The European Council shall each year consider the employment situation in the Community and adopt conclusions thereon, on the basis of a joint annual report by the Council and the Commission.
2. On the basis of the conclusions of the European Council, the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee, the Committee of the Regions and the Employment Committee referred to in Article 6, shall each year draw up guidelines for employment policy, which the Member States shall take into account in their employment policies. These guidelines shall be consistent with the broad guidelines adopted pursuant to Article 103(2).
3. Each Member State shall provide the Council and the Commission with an annual report on the principal measures taken to implement its employment policy in the light of the guidelines referred to in paragraph 2.
4. The Council, on the basis of the reports referred to in paragraph 3 and having received the views of the Employment Committee referred to in Article 6, shall each year carry out a detailed examination of the implementation of the employment policies of the Member States in the light of the guidelines for employment referred to in paragraph 2. The Council, acting by a qualified majority on a recommendation from the Commission, may, if it considers it appropriate in the light of that examination, make recommendations to Member States.
5. On the basis of the detailed examination of the implementation of the employment policies of the Member States, the Council and the Commission shall make a joint annual report to the European Council on the employment situation in the Community and on the implementation of the guidelines for employment.

Article 5

The Council, acting in accordance with the procedure referred to in Article 189b, and after consulting the Economic and Social Committee and the Committee of the Regions, may, as it considers appropriate, adopt incentive measures in relation to employment to contribute to the achievement of the objectives referred to in Article 2 and the tasks referred to in Article 3(i) of the Treaty establishing the European Community. These measures shall not include any harmonization of the laws and regulations of the Member States.

Article 6

The Council, after consulting the European Parliament, shall establish an Employment Committee with advisory status to promote coordination between Member States on employment and labour market policies. The tasks of the Committee shall be:

- to monitor the employment situation and employment policies in the Member States and the Community;**
- without prejudice to Article 151, to formulate opinions at the request of either the Council or the Commission or on its own initiative, and to contribute to the preparation of the Council proceedings referred to in Article 4.**

In fulfilling its mandate, the Committee shall consult the social partners.

The Member States and the Commission shall each appoint two members of the Committee.

Comments

1. *While there is a broad measure of support for provisions along the lines suggested, different approaches are still under discussion.*
2. *Some delegations would favour a more binding procedure based, for example, on quantified criteria and possible sanctions. It has also been suggested that the specified objective should be "full employment" rather than a "high level of employment". Moreover, it has been suggested that the principles guiding employment policy should be set out in detail in the proposed Title.*
3. *Other delegations are either not convinced that a new Title or Chapter on employment would be justified, or favour the status quo and argue against any new Treaty provisions in this area.*
4. *Some delegations question the inclusion of provision for possible incentive measures in Article 5. Such measures, if the provision is agreed, would be designed to encourage cooperation on a transnational basis through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences. "Incentive measures" is a term already used in several areas under the Treaty (e.g. education, culture and public health). As is the case where the term is used elsewhere in the Treaty, incentive measures in relation to employment would involve neither harmonization of national laws and regulations, nor major spending programmes.*
5. *In the further examination of the definition of the Employment Committee proposed above with a view to ensuring greater coherence in the examination of employment matters by different formations of the Council, account should be taken by the Conference of the recent decision by the Council to establish a committee in this area.*

CHAPTER 5. SOCIAL PROVISIONS

There has been considerable support at the Conference for developing the social provisions of the EC Treaty notably by integrating the Agreement on Social Policy into the Treaty. While this is the view of a large majority of delegations, it is strongly opposed by one delegation. The Presidency recognises the importance of the proposal as an aim for the Conference but it also accepts the widespread view that it would be preferable to leave the issue to be dealt with in detail at a later stage of the Conference.

The Agreement on Social Policy provides the means, through both its scope and procedures, to make substantial progress in the social field. Integration into the EC Treaty would extend to all Member States the content of the Agreement, which at present applies to fourteen Member States only. The incorporation of its content into the EC Treaty would therefore establish a single, coherent and effective legal framework for action by the Community in this field.

Incorporation of the Agreement into the EC Treaty, if this were agreed by the Conference, would probably involve replacing the social provisions set out in Chapter 1 of Title VIII of the EC Treaty while ensuring that the substance of those provisions is maintained. It would also seem necessary to make certain technical and institutional adjustments.

The Presidency considers that in examining in due course the incorporation of the Social Agreement into the Treaty, the Conference should consider whether certain improvements of substance should be made in order to strengthen the effectiveness of the Community's social policy including for example the proposal which has been made to strengthen the Treaty provisions on social exclusion.

Other issues in the area of social policy which fall for further consideration by the Conference are the recent proposals by one delegation to amend the provisions of Article 118a concerning the health and safety of workers, to add a Protocol to the Treaty concerning the Working Time Directive and to make a number of other amendments concerning the rights and interests of employed persons.

Another area in which a range of proposals have been submitted is that of the provision of services of general interest. These proposals will have to be considered further by the Conference. One suggestion put forward in this context is to refer to the promotion of

services of general interest in the list of activities set out in Article 3 of the Treaty establishing the European Community.

The Conference has also received submissions proposing that the provisions of the Treaty in relation to youth policy should be developed.

CHAPTER 6. ENVIRONMENT

I. The issue

Environmental problems do not respect borders. At its most simple they can follow the flow of a river or the direction of the wind. The existing EC Treaty provisions on the environment reflect the cross-border nature of environmental problems as well as the high degree of public support for action at Union level. The challenge now is to sharpen and refine the existing Treaty provisions so as to strengthen the basis for Union action.

The texts suggested by the Presidency which follow would:

- make the achievement of sustainable development one of the explicit objectives of the Union;*
- define the tasks of the European Community in such a way as to include balanced and sustainable development of economic activities as well as a high level of protection of the environment and improvement of its quality;*
- highlight the need to integrate environmental protection requirements into the definition and implementation of all Community policies;*
- strengthen, clarify and tighten up the internal market provisions as they relate to the environment without in any way undermining the principles of the internal market.*

II. Texts

Place of the environment in the General Objectives of the Treaties

Amend seventh indent of the Preamble to the TEU

Determined to promote economic and social progress for their peoples **taking into account the principle of sustainable development** and within the context of the accomplishment of the internal market

Amend Article B of the TEU

The Union shall set itself the following objectives:

- to promote economic and social progress **and to achieve balanced and sustainable development**, in particular through

Amend Article 2 of the TEC

The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing the common policies or activities referred to in Articles 3 and 3a, to promote throughout the Community a harmonious, **balanced and sustainable** development of economic activities, sustainable and non inflationary growth **[words deleted]**, a high degree of convergence of economic performance, a high level of employment and of social protection, **a high level of protection of the environment and improvement of its quality**, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.

Integration of environmental protection into all sectoral policies

New Article 3d in the TEC ⁽²⁾

Environmental protection requirements must be integrated into the definition and implementation of Community policies and activities referred to in Article 3, in particular with a view to promoting sustainable development.

Declaration to the Final Act

The Conference notes that the Commission undertakes to prepare environmental impact assessment studies when making proposals which may have significant environmental implications.

(2) As a consequence of this amendment, the last sentence of Article 130r (2) first subparagraph would be deleted.

Decision-making process

Amend Article 100a(3) of the TEC

The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection. **Within their respective powers the European Parliament and the Council will also seek to achieve this objective.**

Amend Article 100a(4) of the TEC

If, after the adoption **by the Council or by the Commission** of a harmonisation measure **[words deleted]**, a Member State deems it necessary to apply national provisions on grounds of major needs referred to in Article 36, or relating to the protection of the environment or the working environment, it shall **immediately** notify the Commission of these provisions.

The Commission shall **within six months** confirm the provisions involved after having verified that they are not a means of arbitrary discrimination or a disguised restriction on trade between Member States.

[remainder of paragraph unchanged].

Comments

Among the issues relating to the environment which are still under consideration at the Conference are the following:

- 1. whether, in addition to the general provision in the suggested new Article 3(d), explicit provision should be made in certain specific sectoral policies that environmental protection requirements must be taken into account;*
- 2. whether to improve the decision-making process by extending provision for qualified majority voting in relation to the environment. This will be considered at a later stage by the Conference when it considers in detail the general question of extending qualified majority voting;*
- 3. whether Member States could be allowed under the Treaty to introduce more stringent national environmental provisions without upsetting the principles and operation of the internal market;*
- 4. whether further clarification or adjustments should be made to Article 100a with a view, for example, to specifying that a Member State may maintain national provisions pending confirmation of those provisions by the Commission.*

CHAPTER 7. CONSUMER POLICY

I. The issue

Citizens are also consumers. Their interests and concerns as consumers should be taken on board effectively in Union legislation.

The text suggested by Presidency which follows would :

- *establish more clearly the objective of the promotion of the interests of consumers;*
- *make explicit reference in the Treaty to certain aspects of consumer protection, namely information, education and representation;*
- *further enhance the protection of consumer interests in the definition and implementation of other Community policies;*
- *give the Community enhanced means of action to support or supplement the policies of Member States in this area.*

One view is that no Treaty changes are required in relation to consumer protection.

II. Texts

New Article 129a in the TEC

1. In order to promote the interests of consumers and to ensure a high level of consumer protection, the Community shall contribute to protecting the health, safety and economic interests of consumers as well as to promoting their right to information, education and representation.
2. Consumer protection requirements shall be taken into account in defining and implementing other Community policies and activities.
3. The Community shall contribute to the attainment of the objectives referred to in paragraph 1 through:
 - (a) measures adopted pursuant to article 100a in the context of the completion of the internal market;
 - (b) specific action which supports and supplements the policy pursued by the Member States [**words deleted**].
4. The Council, acting in accordance with the procedure referred to in Article 189b and after consulting the Economic and Social Committee, shall adopt the specific action referred to in paragraph 3(b).
5. Action adopted pursuant to paragraph 4 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with this Treaty. The Commission shall be notified of them.

p.m. Article 100a(3) of the TEC

It should also be noted that the proposed amendment to Article 100a(3) (see chapter 6 on the environment above) provides that the European Parliament and the Council, within their respective powers, will seek to achieve the objective of a high level of consumer protection when acting under Article 100a (internal market).

CHAPTER 8. TRANSPARENCY

I. The issue

Greater transparency and openness in the operation of the Union and its institutions are essential in order to ensure that the Union is understood and accepted by its citizens. It is important to reinforce the progress already made by including in the Treaty appropriate provisions designed to achieve this.

The text suggested by the Presidency which follows would:

- *reflect the principle that decisions of the Union should be taken as openly as possible;*
- *incorporate provisions in the Treaty allowing a right of access to European Parliament, Council and Commission documents, and providing that when the Council acts as a legislator the results of votes and explanations of votes shall be made public.*

II. Texts

Amend the second paragraph of Article A of the TEU

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 openly as possible and as closely as possible to the citizen.**

New Article 192a in the TEC

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents, subject to conditions which shall be laid down by each of these institutions under its own rules of procedure.

General principles and limits governing the exercise of that right may be determined by the Council, acting in accordance with the procedure referred to in Article 189b.

Addition to Article 151(3) of the TEC concerning the Rules of Procedure of the Council

The Council shall lay down in these Rules the conditions under which the public shall have access to Council documents. For the purpose of this paragraph, the Council shall define the cases in which it is to be regarded as acting in its legislative capacity with a view to allowing greater access to documents in those cases, while at the same time preserving the effectiveness of its decision-making process. In any event, when the Council acts in its legislative capacity, the results of votes and explanations of vote as well as statements in the minutes shall be made public.

Comment**Quality of legislation**

The Conference is still considering proposals with a view to improving the quality of legislation which have yet to be discussed in detail. In the Presidency's view, any progress which can be made in this regard would make an important contribution to making the Union more comprehensible to its citizens.

CHAPTER 9. SUBSIDIARITY

I. The issue

The principle of subsidiarity, which is set out in Article 3b of the Treaty establishing the European Community, is designed to ensure that action to achieve an objective is taken at the most appropriate level, whether by the Member States or by the Community. The same Article also limits Community action, according to the principle of proportionality, to what is necessary to achieve the objectives of the Treaty.

These principles, complex though they may sometimes seem, are of direct relevance to citizens. They regulate both what can and should be done at the level of the Community and what cannot be done at that level. The challenge is, while maintaining the definition of those principles, to ensure that they are applied more effectively.

The text suggested by the Presidency which follows would address that challenge by incorporating in the Treaty by means of a Protocol certain agreed guidelines for the application of the principles in question, thereby making them legally binding.

II. Texts

<p>New protocol to the TEC on the application of the subsidiarity principle and Article 3b</p>

The HIGH CONTRACTING PARTIES,

WISHING to establish the conditions for the application of the subsidiarity principle and Article 3b of the Treaty establishing the European Community;

TAKING ACCOUNT OF the overall approach to the application of the subsidiarity principle and Article 3b agreed by the European Council meeting in Edinburgh on 11-12 December 1992;

TAKING ACCOUNT OF the Interinstitutional Agreement of 28 October 1993 between the European Parliament, the Council and the Commission on procedures for implementing the principle of subsidiarity;

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

1. In exercising the powers conferred on it, each institution shall ensure that the principle of subsidiarity is complied with. It shall also ensure compliance with the principle of proportionality, according to which any action by the Community shall not go beyond what is necessary to achieve the objectives of the Treaty.
2. The application of the principles referred to in paragraph 1 must respect the general provisions and the objectives of the Treaty on European Union, particularly as regards maintaining in full the *acquis communautaire*, the powers conferred on the European Community and the institutional balance. 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.

- 3. 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.**
- 4. Without prejudice to its right of initiative, the Commission shall, except in cases of particular urgency or confidentiality:**
 - consult widely before proposing legislation and, wherever appropriate, publish consultation documents;**
 - justify the relevance of its proposals with regard to the principle of subsidiarity; whenever necessary, the explanatory memorandum accompanying a proposal will give details in this respect;**
 - submit an annual report to the Council and the European Parliament on the application of Article 3b.**
- 5. While fully observing the procedures applicable, the European Parliament and the Council shall, as an integral part of the overall examination of Commission proposals, consider their consistency with Article 3b. This concerns the original Commission proposal as well as amendments which the European Parliament and the Council envisage making to the proposal.**
- 6. In the course of the procedures referred to in Articles 189b and 189c, the European Parliament shall be informed of the Council's position on the application of Article 3b, by way of a statement of the reasons which led the Council to adopt its common position. The Council shall 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.**
- 7. Compliance with the principle of subsidiarity shall be reviewed in accordance with the rules laid down by the Treaties.**

Comments

1. *One view is that the content of the Edinburgh European Council conclusions should be reflected in a more extensive way in the Treaty. The draft text for a protocol above makes clear in a preambular paragraph that account would be taken of the Edinburgh conclusions in their entirety. Another possibility would be for the full text of the Edinburgh conclusions to be reproduced in the form of a declaration to the Final Act of the Conference.*
2. *Another view is that no further provisions on subsidiarity are required.*
3. *It has been suggested that reference should be made in Article 3(b) of the TEC to regional and local levels.*

PART A

**SECTION III
AN EFFECTIVE AND
COHERENT FOREIGN POLICY**

INTRODUCTION

CHAPTER 10 THE COMMON FOREIGN AND SECURITY POLICY:
OBJECTIVES, MEANS AND STRUCTURES

CHAPTER 11 EXTERNAL ECONOMIC RELATIONS

CHAPTER 12 SECURITY AND DEFENCE

CHAPTER 13 LEGAL PERSONALITY OF THE UNION

AN EFFECTIVE AND COHERENT FOREIGN POLICY: INTRODUCTION

- 1. Despite the fact that it is the world's largest trading entity, the European Union is not as effective as it should be in using its diplomatic influence and its economic capacity in relations with third countries and in promoting peace, stability and prosperity in the world. One of the Conference's top priorities must be to make the external policies of the Union more coherent, effective and visible.*
- 2. The proposed Treaty changes set out in Section III are designed to address this challenge and to ensure that the political and economic aspects of the Union's external policy are consistent, coherent and mutually reinforcing. The main elements of the approach set out in this Section are as follows:*
- 3. More effective policy structures would be introduced under the common foreign and security policy and continuity would be improved in a number of ways. There would be improved support structures to assist the Presidency. There would be better preparation of decisions and more focused policy implementation. Overall consistency would be strengthened by closer involvement of the Commission. Decision-making procedures would be significantly improved.*
- 4. In its external economic relations, the Community would be able to act more effectively in multilateral international organizations, notably in the World Trade Organization, to defend the interests of its Member States, its industry and workers in today's highly competitive international trading environment.*
- 5. The Union's objectives in security and defence matters and the means by which the Union can pursue these objectives would be adapted to address the new challenges facing the Union.*
- 6. The Union would be endowed with legal personality enabling it to negotiate and enter into international agreements with other countries or international organizations where this is required to achieve foreign policy objectives.*

CHAPTER 10. THE COMMON FOREIGN AND SECURITY POLICY: OBJECTIVES, MEANS AND STRUCTURES

I. The issue

Strengthening the Common Foreign and Security Policy (CFSP) is one of the key elements in equipping the Union with a coherent and effective external policy.

The texts suggested by the Presidency which follow would strengthen the CFSP in a number of significant and practical ways. In particular:

- the role of the European Council in defining the principles of and general and strategic guidelines for all areas of the CFSP would be highlighted;*
- the Presidency, which has overall responsibility for policy implementation and representation of the Union under the CFSP, would be assisted by the Secretary-General of the Council, who would be given new standing and visibility in foreign policy;*
- a new policy planning and early warning capability would be established under the responsibility of the Secretary-General of the Council;*
- the Commission would be associated in an enhanced way with CFSP policy implementation and representation. This is important in order to ensure coherence in the overall external action of the Union;*
- diplomatic meetings with third countries would be conducted by the Presidency, supported by the Council Secretary-General, the Commission and, if need be, by the incoming Presidency;*

decision-making procedures would be improved in two ways:

- first, where unanimity would still apply, it would be possible to make a declaration of constructive abstention. A Member State which made such a declaration would not be obliged to apply the decision;*
- second, qualified majority voting would be introduced for all decisions under the CFSP other than the adoption of Joint Actions and all decisions with a military/defence dimension subject, however, to provision that no vote would be taken where a member of the Council declared its intention to oppose the adoption of a decision for stated reasons of national policy. In such cases a qualified majority could ask to have the issue referred to Heads of State or Government for decision by unanimity.*

II. Texts

Overall consistency of external activities

Amend the second subparagraph of Article C of the TEU

The Union shall in particular ensure the consistency of its external activities as a whole in the context of its external relations, security, economic and development policies. The Council and the Commission shall be responsible for ensuring such consistency **and shall cooperate appropriately to this end**. They shall ensure the implementation of these policies, each in accordance with its respective powers.

Definition of the principles of and general and strategic guidelines for the CFSP by the European Council

Amend the first subparagraph of Article J.1(1) of the TEU

The Union and its Member States shall define and implement a common foreign and security policy, governed by the provisions of this Title and covering all areas of foreign and security policy. **The European Council shall define the principles of and general and strategic guidelines for the common foreign and security policy.**

Objectives of the CFSP

Amend the first indent of Article J.1(2) of the TEU

2. The objectives of the common foreign and security policy shall be:

- to safeguard the common values, fundamental interests, independence and **integrity** of the Union **in conformity with the principles of the United Nations Charter**;

Comment

It has been proposed that Article J.1(2) be amended to include a reference to safeguarding the territorial integrity of the Union and the inviolability of its external borders. While this proposal remains under consideration, the Presidency suggests that the formulation above for the first indent of Article J.1(2) could take account of various concerns expressed.

Reinforced political solidarity clause

Amend Article J.1(4) of the TEU

4. The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity.

The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.

The Council shall ensure that these principles are complied with.

Comment

Other suggestions which have been made include:

- 1 couching a political solidarity clause in stronger terms than those suggested above;*
- 2 introducing, in addition to the formulation suggested above, a reference to the development of mutual political solidarity between the Member States in the general provisions of the TEU.*

The Presidency, the Troika and special representatives

Amend Article J.5 of the TEU

1. The Presidency shall represent the Union in matters coming within the common foreign and security policy.
2. The Presidency shall be responsible for the implementation of common measures; in that capacity it shall in principle express the position of the Union in international organizations and international conferences.
3. **The Presidency shall be assisted by the Secretary-General of the Council.**
4. **In order to ensure consistency in the external activities of the Union, the Commission shall be fully associated in the tasks referred to in paragraphs 1 and 2.** The Presidency shall be assisted in these tasks if need be by the **[words deleted]** next Member State to hold the Presidency.
5. **The Council may, whenever it deems it necessary, appoint a special representative with a mandate in relation to particular policy issues.**

Comment

Other possibilities in relation to support for the Presidency are also under consideration, including the maintenance of the present troika arrangement.

The Secretary-General of the Council

New Article J.8b in the TEU

The Secretary-General of the Council shall assist the Council in matters coming within the scope of the common foreign and security policy.

To this end, the Secretary-General of the Council shall contribute to the formulation, preparation and implementation of policy decisions. The Secretary-General of the Council, acting on behalf of the Council at the request of the Presidency, may undertake or be involved in tasks relating to external representation of the Union, including conducting political dialogue with third parties.

Comments

1. *Other approaches have been advanced in relation to the appointment of a new figure with a view to enhancing the effectiveness, continuity and visibility of the CFSP:*
 - (i) *Some have suggested the appointment of a personality for a set term outside the existing structures (a CFSP High Representative) to act under a specific mandate from the European Council.*
 - (ii) *Others have suggested the appointment of a person of Secretary General rank within the Council, accountable to the Council through the Presidency, to work in conjunction with the Secretary-General.*
2. *It has also been suggested that provision should be made for the appointment of the Secretary-General of the Council, as proposed in the new Article J.8b, to be endorsed by the European Council.*

A new policy planning and early warning capability

Declaration to the Final Act

The Conference agrees that:

1. A policy planning and early warning capability shall be established in the General Secretariat of the Council under the responsibility of its Secretary-General.
2. The tasks of the policy planning and early warning capability should include the following:
 - (a) monitoring and analysing developments in areas relevant to the CFSP;
 - (b) providing assessments of the Union's foreign and security policy interests and identifying areas where the CFSP could focus in future;
 - (c) providing timely assessments and early warning of events or situations which may have significant repercussions for the Union's foreign and security policy, including potential political crises;
 - (d) producing, on request of either the Council or the Presidency or on its own initiative, argued policy options papers, to be presented under the responsibility of the Presidency as a contribution to policy formulation in the Council.
3. Appropriate cooperation shall be established with the Commission in order to ensure full coherence with the Union's external economic and development policies.
4. The policy planning and early warning capability shall consist of personnel drawn from the General Secretariat, the Member States, the Commission and the WEU.
5. Any Member State or the Commission may make suggestions to the planning capability for work to be undertaken.
6. Member States and the Commission will assist the policy planning process by providing, as appropriate, relevant information on a confidential basis.

The Political Committee

Amend Article J.8(5) of the TEU

Without prejudice to Article 151 of the Treaty establishing the European Community, a Political Committee **[words deleted]** shall monitor the international situation in the areas covered by common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the Council or on its own initiative. It shall also monitor the implementation of agreed policies, without prejudice to the responsibility of the Presidency and the Commission.

Declaration to the Final Act

The Conference agrees that the Political Committee referred to in Article J.8(5) shall as a general rule meet weekly at Political Director or deputy level.

Instruments for implementing the CFSP

The following amendments, additions and renumbering are proposed to Articles J.1(3) to J.3 of the present Treaty⁽³⁾

Article J.1(3) of the TEU

3. The Union shall pursue these objectives:

- by establishing systematic cooperation between Member States in the conduct of policy, in accordance with Article J.2;
- **by adopting common positions in accordance with Article J.2a;**
- **by adopting joint actions in accordance with Article J.3.**

Systematic cooperation

Article J.2 of the TEU

Member States shall inform and consult one another within the Council on any matter of foreign and security policy of general interest in order to ensure that their combined influence can be exerted as effectively as possible by means of concerted and convergent action.

Common positions

New Article J.2a in the TEU

Whenever it deems it necessary, the Council shall **adopt** a common position.

Common positions shall define the approach of the European Union to a particular matter of a geographical or thematic nature. Member States shall ensure that their national policies conform to the common position.

(3) Provisional numbering of Articles for the sake of presentation.

Joint actions

Article J.3

1. The Council shall decide, on the basis of general guidelines from the European Council, that a matter should be the subject of joint action.
2. **Joint actions shall define the Union's objectives and the means to be put at the disposal of the Union to address specific situations where operational action is deemed to be required in areas in which the Member States have important interests in common. The following procedure shall apply for the adoption of joint actions.**
3. Whenever the Council decides on the principle of joint action, it shall lay down the specific scope, the Union's general and specific objectives in carrying out such action, if necessary its duration, and the means, procedures and conditions for its implementation.

[Paragraph J.3(2) deleted. For decision-making see new Article J.8a below]

4. If there is a change in circumstances having a substantial effect on a question subject to joint action, the Council shall review the principles and objectives of that action and take the necessary decisions. As long as the Council has not acted, the joint action shall stand.

(Remainder of Article J.3 unchanged)

Comment

The question of whether common positions and joint actions should be stated to be binding on the institutions of the Union is still to be considered further by the Conference.

Decision-making

New article J.8a in the TEU

- 1. Decisions to adopt joint actions in accordance with article J.3 and decisions referred to in Article J.4(3) shall be taken by the Council acting unanimously. Abstentions by members present in person or represented shall not prevent the adoption of such decisions.**

When abstaining in a vote under subparagraph 1, a member of the Council may qualify its abstention by making a formal declaration under the present subparagraph. In that case, it shall not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position. If the members of the Council qualifying their abstention in this way represent more than 25 votes weighted in accordance with article 148(2) of the TEC, the decision shall not be adopted.

- 2. Decisions under this Title other than those referred to in paragraph 1 shall be adopted by the Council acting by a qualified majority. The votes of the members of the Council shall be weighted in accordance with Article 148(2) of the Treaty establishing the European Community. For their adoption, decisions shall require at least 62 votes in favour, cast by at least 10 members.**

If a member of the Council declares formally that, for stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. If, however, the Council acting by a qualified majority in accordance with the previous subparagraph so requests, the matter shall be referred to the Council, meeting in the composition of the Heads of State or Government, for decision by unanimity.

- 3. For procedural questions, the Council shall act by a majority of its members.**

Comments

1. *There is a wide range of views on the extent to which the provision for unanimity under the common foreign and security policy could be relaxed with a view to improved decision-making.*
2. *Some delegations consider that the unanimity requirement does not constitute a significant constraint on decision-making and oppose any extension of qualified majority voting.*
3. *Other delegations could accept that even joint actions be adopted by qualified majority within general guidelines laid down by the European Council. To the extent that qualified majority voting were to apply, accompanied by a right of veto, it has been suggested that a qualified majority could nevertheless decide to proceed to a vote on the matter in question.*
4. *It has been suggested that the question of introducing super-qualified majority voting should be further examined.*

I. The issue

Economic relations with third countries are an essential component of the Union's external action. The Community must be able to act decisively in a highly competitive international trading environment which has changed radically in recent years, notably with the growing importance of new areas such as services, intellectual property and direct foreign investment. It is essential for all Member States that the Community be able to conduct effective multilateral negotiations in this evolving environment, notably in the global system of the World Trade Organization (WTO).

The issues involved are important and complex. They will clearly require further consideration by the Conference. There is a wide measure of support for amending the Treaty to ensure procedures that enable the Community to act effectively.

The text suggested by the Presidency for a new Article 113a would provide for a limited extension of external Community competence in order to ensure that the Community can defend effectively the interests of its Member States and its economic operators in the fields of services, intellectual property and direct foreign investment, notably in the WTO. The important features of the suggested approach are as follows:

- there would be no transfer of internal competence from the Member States to the Community. The Community's powers would be limited to the negotiation and conclusion of agreements in the framework of multilateral international organizations in the areas concerned (and would certainly not apply in organizations such as the World Bank and IMF);*
- the Commission would be the sole negotiator, subject to appropriate control by the Member States;*
- the Commission would negotiate only when authorized by the Council and within the framework of a mandate adopted by the Council;*

- *the resulting agreements would be concluded by the Council, with no need for national ratification procedures. They would not have direct effect.*

If the approach suggested by the Presidency to address the problem which has been identified were to be accepted, a key question would be the decision-making procedure in the Council to be provided for in paragraph 4. In the Presidency's view, a provision for decisions to be taken by qualified majority would clearly enable the Community to defend the interests of its Member States more effectively.

There is still a wide range of views on this issue and on the nature of any Treaty changes which might be made in this area. Some delegations, while favouring strengthening the Treaty with a view to enhancing the ability of the Union to act in external economic relations, have focused in discussions on the need to introduce in the Treaty an obligation for the Community and for the Member States to take a single position in multilateral international organizations in the areas where powers are shared, as well as procedures to that effect. Other delegations oppose any Treaty change arguing that the Community has managed to negotiate successfully in the WTO in the areas of services, intellectual property and direct foreign investment and that any improvements should be made by way of a code of conduct.

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The Presidency also recalls that the Conference has considered draft Treaty provisions on provisional application or suspension of international agreements, as well as on a possible new legal basis for the conclusion of "horizontal" agreements. Further detailed work remains to be carried out by the Conference on these issues.

II. Texts

Negotiations in multilateral international organizations on services, intellectual property and direct foreign investment

New Article 113a in the TEC

1. In the framework of multilateral international organizations, negotiations in the areas of services, intellectual property and direct foreign investment not covered by Article 113(1) shall be conducted by the Commission in consultation with the special committee provided for in Article 113.
2. To this end, the Commission shall make recommendations to the Council which shall authorize the Commission to open and conduct the negotiations within the framework of such directives as the Council may issue to it.
3. Agreements resulting from those negotiations shall be concluded by the Council, acting on a proposal by the Commission and after consulting the European Parliament. They shall not have direct effect.
4. In exercising the powers conferred upon it by this article, the Council shall act [by a qualified majority].
5. The provisions of Article 228(4),(5), (6) and (7) shall apply.
6. Member States and the Community shall retain their respective internal powers in the fields covered by this Article, subject to the provisions of Article 228(7).

Declaration to the Final Act

A declaration should be included in the Final Act of the Conference to provide that the Commission would conduct negotiations with maximum transparency vis-à-vis Member States.

CHAPTER 12. SECURITY AND DEFENCE

I. The issue

As part of a credible foreign policy, the European Union must be able to respond effectively to the new and complex security challenges of the post Cold War world, which require multifaceted approaches and solutions. The achievement of its foreign and security policy objectives increasingly requires the Union to draw on the full range of instruments at its disposal.

The relationship already set out in the Treaty on European Union between the EU and the WEU is an important point of departure, particularly as regards the EU's potential to enhance its role in crisis management and peace support in furtherance of the objectives of the United Nations. The European Union itself does not possess military means. It has access to the capability of the WEU, of which not all EU Member States are full members. Discussions on the future security and defence development of the Union have to take account not only of the different defence situations and commitments of the Member States, but also of the fact that there is a broader European security context to these discussions. Account must be taken of recent and continuing developments in NATO, notably the Berlin Ministerial meeting of June 1996 and its follow-up, in particular as regards the possible provision of NATO assets to the WEU for Petersberg tasks.

The approach suggested in this area takes account of the current institutional landscape in European security, which is evolving in a gradual manner. There is convergence towards the view that the Union should have at this stage an enhanced capacity to pursue objectives of the Union which may involve the use of military means, on the basis that the implementation of such tasks would be a matter for the WEU in a development of the already existing Treaty relationship between the EU and the WEU.

There appears to be a clear political will to make practical progress in this area, in particular by including in the Treaty the objectives of the Petersberg tasks.

The texts suggested by the Presidency which follows would notably:

- *reformulate the objectives of the CFSP in the field of security and defence to take account of developments in this area since the Treaty on European Union was negotiated;*
- *provide for developing the relationship between the EU and the WEU including by fostering closer institutional relations;*
- *incorporate the objectives of the Petersberg tasks in the Treaty so as to allow the Union to develop its action more effectively;*
- *confirm that decisions and actions of the Union having military or defence implications would continue to be taken by unanimity.*

II. Texts

Union's objectives in security and defence

Amend Article J.4(1) of the TEU

1. The common foreign and security policy shall include all questions relating to the security of the Union, including the **progressive** [present wording: eventual] framing of a common defence policy **in the perspective of** [present wording: which might in time lead to] a common defence.

Questions referred to in this article shall include humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking.

Declaration to the Final Act

The Conference notes that the reference to humanitarian tasks in Article J.4(1) second subparagraph relates to the use of military means for humanitarian purposes and is without prejudice to the humanitarian tasks conducted by the Community under the Treaty establishing the European Community.

Comments

1. *The formulation suggested for the first sentence of Article J.4(1) reflects a middle course between two views which have been expressed. On the one hand, some wish to proceed now to the unqualified definition of a common defence policy and a common defence. On the other hand, others wish to see no change in the existing wording of Article J.4(1).*
2. *The tasks listed in Article J.4(1), second subparagraph, are as set out in paragraph II.4 of the WEU Petersberg declaration of 19 June 1992. The definition of the term "peacemaking" is not, however, uniform in all relevant organizations. An alternative formulation ("tasks of crisis management involving the use of military means") has been suggested to replace the words "tasks of combat forces in crisis management, including peacemaking". The WEU may wish to be involved should redefinition or clarification of these tasks remain at issue, and this may have to be reflected in an appropriate manner in the Final Act of the Conference.*
3. *The view has been expressed that a statement of the European Council's competence to set guidelines, including for the WEU, should be inserted also in Article J.4(1). See above the amendment proposed to Article J.1(1).*
4. *The view has been expressed that, in inserting the objectives of the Petersberg tasks in Article J.4(1), reference should also be made to the principles of the United Nations Charter.*

Relationship with the WEU

Amend Article J.4(2) of the TEU

- 1. The Western European Union (WEU) is an integral part of the development of the Union and the Union shall accordingly foster closer institutional relations with it.**

The Union will avail itself of [word deleted] the WEU [words deleted] to elaborate and implement decisions and actions of the Union which have defence implications.

- 2. When the Union has recourse to the WEU to elaborate and implement decisions of the Union on the tasks referred to in Article J.4(1), all Member States of the Union shall be entitled to participate fully in the tasks in question. The Council, in agreement with the institutions of the WEU, shall adopt the necessary practical arrangements. These arrangements shall allow all Member States contributing to the tasks in question to participate fully and equally in planning and decision-taking in the WEU insofar as these relate to the commitment and deployment of that Member State's national contribution.**

Decisions having defence implications dealt with under this paragraph shall be taken without prejudice to the policies and obligations referred to in Article J.4(4).

Comments

- 1. The Presidency, on its responsibility, has suggested a wording for paragraph 1 above which seeks a balance between two views regarding the development of a common defence policy and the EU's relationship to the WEU. One view is that the current wording of the Union's objectives and the present Treaty language on the WEU ("the EU requests the WEU"), and indeed on security and defence more generally, should be retained. The other view is that the Union's authority over the WEU should be spelled out ("the EU instructs the WEU") along with a timetable for eventual integration of the WEU into the EU. It is clear that these views remain on the table and that this issue, which is one of the most sensitive under consideration at the Conference, will need to be considered further.*
- 2. Some have argued that an optional Protocol should be annexed to the Treaty setting out the mutual defence commitment which at present applies to full WEU members.*
- 3. The issue of the rights of Member States who are not full members of the WEU in*

relation to WEU decision-making on Petersberg tasks undertaken at the instigation of the European Union may have to be addressed through a parallel or related process involving the WEU, the results of which would be reflected in a Declaration to be adopted as part of the Final Act of the Conference. In any event, consideration will have to be given to appropriate adjustments to Declaration No. 30, made by the Member States of the WEU, which formed part of the Final Act of Maastricht.

Unanimity to apply for Union decisions with military or defence implications

Amend Article J.4(3) of the TEU

3. **The Council shall act unanimously** when dealing with issues under this article having **military or defence implications**.

CHAPTER 13. LEGAL PERSONALITY OF THE UNION

I. The issue

The European Union is increasingly perceived by public opinion, by the media and by its third country partners as a political entity. There is an increasing need for European representatives, when negotiating with third countries or international organizations, to deal with the whole range of issues covered by the TEU, which include matters covered by the Common Foreign and Security Policy and by cooperation in the fields of Justice and Home Affairs. However, the Treaty does not provide for the Union as such, as distinct from the Community, to conclude international agreements and, until now, it has been necessary to resort to pragmatic expedients whenever the conclusion of even an administrative agreement is called for. It is widely acknowledged that this situation is far from satisfactory from a legal or political point of view and has hampered the Union's ability to act effectively on the international scene.

The text suggested by the Presidency which follows would:

- endow the Union with legal personality;*
- set out a procedure for the Presidency to negotiate agreements on behalf of the Union subject to unanimous authorization and negotiating directives issued by the Council. The resulting agreements would be concluded by the Council by unanimity.*

The Presidency considers that the text it has suggested offers a good basis for the ongoing work of the Conference on this question, while being aware that other approaches, which would go some way towards achieving the objective referred to, have also received support. Much of what needs to be achieved in this area could be done simply by providing the Union with the capacity to conclude international agreements. This would require adapting the Presidency's suggested text, in particular by removing the first two paragraphs.

If the Conference were to follow the Presidency's suggestion to endow the Union with legal personality, it would be logical to consider merging the existing legal personalities of the three Communities and of the Union into a single legal entity. This could be done in a way which would not affect in any way the respective features of the Community, CFSP and JHA and which would allow the pillar structure established by the Treaty on European Union to remain unchanged.

II. Text

Endowing the Union with legal personality

New Article in 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, acting unanimously, authorize the Presidency, assisted by the Commission if appropriate, to open the necessary negotiations. The negotiations shall be conducted within the framework of 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. The Council, a Member State or the Commission may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of this Treaty.
9. Agreements concluded under the conditions set out in this Article shall be binding on the institutions of the Union and the Member States.

Comment

The view has been expressed by some delegations that the lack of an explicit legal personality of the Union has not constrained the ability of the Union to act. These delegations oppose any Treaty change in this area.

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PART A

SECTION IV

THE UNION'S INSTITUTIONS

INTRODUCTION

CHAPTER 14 THE EUROPEAN PARLIAMENT

CHAPTER 15 THE COUNCIL

CHAPTER 16 THE COMMISSION

CHAPTER 17 THE COURT OF JUSTICE

CHAPTER 18 OTHER INSTITUTIONAL ISSUES

CHAPTER 19 NATIONAL PARLIAMENTS

THE UNION'S INSTITUTIONS: INTRODUCTION

- 1. The Florence European Council identified "... the good functioning of institutions while respecting their balance and the efficiency of the decision-making process..." as one of three main areas to be addressed in the general outline for a draft revision of the Treaties.*
- 2. There is general agreement at the Conference on the central importance of this issue. The institutions must function efficiently and effectively now and in the future; the balance between institutions must be respected; and they must operate as democratically and as openly as possible so that their representative nature is clearly seen and their legitimacy in the eyes of the public is maintained and reinforced.*
- 3. Already, in the present Union of fifteen Member States, there is need to consider steps to ensure that the institutions will function to best effect. Beyond this, it is necessary to prepare now for the larger and more diverse Union of the future so as to avoid paralysis and to preserve the capacity of the institutions to act.*
- 4. The negotiations to date have shown that on some institutional issues there is already a good deal of common ground.*
- 5. The central role of the European Parliament must be recognised and find full expression in the institutional procedures of the Union. The role of the European Parliament as "co-legislator" with the Council was firmly established in the Maastricht Treaty. In the light of experience, that procedure should now be extended to new areas; and it should be simplified and made more efficient and understandable.*
- 6. The Court of Justice, too, must be in a position to function effectively and play its vital role in a Community founded on Treaties and on the rule of law.*

- 7. This Section of the present document sets out draft proposals in Treaty form on a number of these issues. There are on the other hand some other very important issues where it is generally accepted that it would be preferable not to put forward specific Treaty texts at this stage, pending further negotiation at the Conference. The Presidency shares this view. These include in particular issues relating to the Commission, its size and composition, and the voting system in the Council (in particular the extension to new areas of the rule of qualified majority voting (QMV) instead of unanimity, the question of re-weighting of votes in the Council and the threshold for a qualified majority). These, it is generally agreed, are issues which will have to be settled at a later stage of the Conference.**
- 8. Although it has not offered specific textual proposals on these questions the Presidency has considered it desirable to try to clarify the issues at stake and to identify the options in a way which may help the incoming Presidency to find a solution in the final stages of the Conference. A short analysis of each of the issues is therefore offered under the appropriate heading in this Section.**
- 9. This Section also contains a chapter dealing with a number of other institutional and budgetary issues which are explained in the introduction of that chapter.**
- 10. The role of national parliaments in relation to the European Union is dealt with in the last Chapter of this Section where certain improvements are proposed.**
- 11. One view in relation to several of the issues dealt with in this Section is that the status quo should be maintained. This applies, for example, to extending the scope of qualified majority voting and of the codecision procedure, and to the method of appointing the President of the Commission.**

14. THE EUROPEAN PARLIAMENT

I. The issue

A strong European Parliament is an essential part of a democratic Union. The European Parliament's powers therefore need to be consolidated as regards both its political and legislative action.

This Section of the document puts forward a draft Treaty text which would strengthen the political role of the European Parliament by providing that it must approve the nomination of the President of the Commission.

It is also desirable to take a further step in the process of establishing the Parliament's role as "co-legislator" with the Council. The Presidency proposes in this Section that the number of legislative procedures should essentially be reduced to three. It suggests that the areas where co-decision applies should be extended on the basis of agreed criteria. It also suggests that a limit should be placed on the size of the European Parliament.

There appears to be a general willingness to improve the co-decision procedure. The draft Treaty text suggested for amendment of the procedure would streamline the co-decision procedure, make it more effective and most importantly place the European Parliament on an equal footing with the Council.

The issue of the introduction of a uniform electoral procedure for elections to the European Parliament remains under discussion at the Conference but as yet no Treaty amendment has been identified which would be likely to command unanimous support.

II. Texts / Proposals

Approval of the Nomination of the President of the Commission

Amend the first subparagraph of Article 158(2) of the TEC

The governments of the Member States shall nominate by common accord **[words deleted]** the person they intend to appoint as President of the Commission; **the nomination shall be approved by the European Parliament.**

Number of legislative procedures

The Presidency proposes that the number of legislative procedures involving the Parliament should in principle now be reduced to three - co-decision, consultation and assent - and it would suggest that the assent procedure should be limited to accession and association agreements. There is, however, a general concern at the Conference not to reopen, even incidentally, any of the provisions already agreed for EMU. This implies that the cooperation procedure would be maintained for that particular area only.

Extension of the scope of the codecision procedure

The question of extending the range of areas in which the co-decision procedure applies is a key issue under discussion at the Conference. A report setting out proposals on this issue has been put forward by the Commission. The Parliament has adopted a resolution setting out views on that report.

The Parliament has made it clear that it is seeking a right of co-decision with the Council in legislative matters only. It does not seek such a role when the Council is acting in an executive capacity. The Commission's report and the Parliament's resolution referred to above have each proposed criteria which could be a basis for such distinction.

It would be preferable to approach the question of extension of the co-decision procedure by reference to accepted criteria as suggested by the Commission and the European Parliament rather than on a case by case basis. However, while there has been some discussion of this matter, there has not, as yet, been agreement at the Conference on criteria and the question of how far the co-decision procedure could be extended to new areas is accordingly an issue for further negotiation.

Co-decision procedure

Amend Article 189b of the TEC

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,

- **if it approves all the amendments contained in the European Parliament's opinion, may adopt the proposed act thus amended;**
- **if the European Parliament does not propose any amendments, may adopt the proposed act;**
- **shall otherwise adopt a common position and communicate it 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) **rejects, by an absolute majority of its component members, the common position, the proposed act shall be deemed not to have been adopted;**
- (c) 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, **the act in question shall be deemed to have been adopted in the form of the common position thus amended**; however, the Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion. If the Council does not approve **all the amendments**, the President of the Council, in agreement with the President of the European Parliament, shall **within six weeks** 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. **In fulfilling this task, the Conciliation Committee shall address the common position and the amendments proposed by the European Parliament.**
5. 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 each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If **either** of the two institutions fails to approve the proposed act within that period, it shall be deemed not to have been adopted.

6. Where the Conciliation Committee does not approve a joint text, the proposed act shall be deemed not to have been adopted [**words deleted**].
7. 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 [**words deleted**].

**Declaration to the Final Act on respect for time limits under co-decision
procedure**

The Conference calls on the European Parliament, the Council and the Commission to make every effort to ensure that the codecision procedure operates as expeditiously as possible. It recalls the importance of strict respect for the deadlines set out in Article 189b and confirms that recourse, provided for in paragraph 7 of that Article, to extension of the periods in question should be considered only when strictly necessary. In no case should the actual period between the second reading by the European Parliament and the outcome of the Conciliation Committee exceed nine months.

Comments

1. *The approach set out above would delete the last stage of the codecision procedure whereby the Council can confirm its common position if no agreement is reached in the Conciliation Committee. There are divided views on this issue which remains to be settled by the Conference. In the Presidency's view, the amendment suggested would be appropriate since it would place the Parliament on an equal footing with the Council. The Parliament has argued that, even if the procedure were not amended as proposed, it would in any event, under the existing procedure, reject any common position so confirmed.*
2. *Proposals have been made to simplify further the codecision procedure. One suggestion in this regard is that the composition of delegations in the Conciliation Committee could be more limited and that not all members of the Council need necessarily attend such meetings.*

Limit on the size of the European Parliament

The Presidency proposes that, with the prospect of future enlargement of the Union, a ceiling of seven hundred should be placed on the number of members of the European Parliament. This is in accordance with the Parliament's own proposal.

15. THE COUNCIL

I. The issues

1. *The Florence European Council asked the Conference to address three issues in relation to the Council: the scope of qualified majority voting, the weighting of votes and the threshold for qualified majority decision-making.*
2. *There is wide agreement that this complex of questions, together with the issue of the size of the Commission (see Chapter 16 in this Section), is one of the sensitive institutional issues which will have to be settled, perhaps together, at a relatively late stage in the Conference. For this reason, the Presidency, responding to a wish expressed by delegations, has decided not to put forward a draft text for Treaty amendment in the present document. Nevertheless, as a help to future discussion, the Presidency outlines below the main issues and options which have emerged at the Conference so far.*

THE SCOPE OF QUALIFIED MAJORITY VOTING (QMV)

3. ***One view at the Conference is that the time has come for a very substantial extension of QMV under Pillar 1. (Decision-making under Pillars 2 and 3 is dealt with in the relevant sections of this document). This is seen as already desirable to improve decision-making in the existing Union; and even more necessary with each further enlargement if paralysis is to be avoided. A contrary view sees the further extension of QMV, at least to any significant degree, as an unacceptable inroad on national sovereignty and would wish to maintain the status quo or could accept, at most, minimal change. The view has also been expressed that agreement to the extension of QMV to new areas would depend on how far there may also be agreement to a re-weighting of votes (see below). Many Member States are at this stage reticent about showing their hands.***

4. ***It appears to the Presidency that there are essentially three possible avenues of approach if progress is to be made on this issue :***
 - (a) ***approach the possible extension of QMV case by case taking each Treaty article in turn;***

 - (b) ***agree on more general criteria to be applied in a more systematic way;***

 - (c) ***accept a generalized move to QMV - subject to certain relatively limited exceptions.***

5. ***In the view of the Presidency, it remains essential to make significant progress on QMV at the Conference both for the Union of today and in order to ensure that decision-making will not become paralysed in the larger Union of the 21st century. Merely starting with a case by case approach is unlikely to lead to satisfactory results. There has as yet been no indication of criteria which might be agreed. The Presidency considers, however, that it may well be possible to find a basis for progress in the later stages of the Conference - but only if a clear political direction is eventually given from a high level at a stage when the likely balance of issues in the outcome of the Conference has become clear.***

6. *In the view of the Presidency, it might be possible to prepare for such a development, by an approach drawing on the following points:*
- (a) seek general agreement to exclude some areas (such as constitutional or quasi-constitutional matters) a priori from QMV;*
 - (b) examine the extension of QMV to other areas under the Treaty establishing the European Community with the burden of proof being with those who do not consider an extension of QMV to be justified. As indicated in paragraph 5 above, this approach if it is to lead to successful results will eventually require political direction from a high level. In examining the specific Articles, particular attention should be given to matters bearing directly or indirectly on the Internal Market;*
 - (c) work to define as precisely as possible within larger and more general areas of activity those particular aspects to which QMV might be extended;*
 - (d) explore the possibility of phasing in the extension of QMV over specified time periods as a way of facilitating progress.*

WEIGHTING OF VOTES IN THE COUNCIL AND THE THRESHOLD FOR A QUALIFIED MAJORITY

7. *Two main issues arise for consideration at the Conference under this general heading: (1) Is a re-distribution of voting weights in the Council necessary? Or, if a change is to be made, would it be preferable to provide for a "dual majority" (see below)? (2) What should be the "threshold" for attaining a qualified majority in the Council? Both issues will be of importance in the context of enlargement but, in the view of some Member States at the Conference, they arise also for consideration in the present Union of 15.*

The issue of re-weighting votes

8. *So far with each successive enlargement of the Union, the new Member State or States have been slotted into one or other category defined broadly by population size and there has been a more or less linear extrapolation of respective voting weights.*
9. *One view is that this has already - even in the present Union of 15 - produced distortions which need to be remedied and that it will be all the more necessary to do this with further enlargement. The fear is expressed that if a re-weighting does not take place, then, with the entry to the Union of a number of small and medium sized countries, the proportion of the Union's population represented by Member States required to constitute a qualified majority would decrease. It is argued that this would affect the legitimacy of the Union's decision-making process.*
10. *A counter view is that there is no need for change in the present Union; and that changes with enlargement should be limited to direct extrapolation. It is argued that, in a diverse Union of shifting interests, it is unrealistic to think all smaller States would act collectively against the group of larger States; that, in all conceivable cases, a qualified majority would represent a majority of the population of the Union; that it is the role of the European Parliament to represent the population of the Union and that, as well as population, the fact that each Member of the Council represents a sovereign State must also be taken into account.*
11. *If there were to be agreement at the Conference to an approach other than the direct extrapolation of present arrangements, two avenues of approach would fall for consideration: (A) a re-weighting of votes in the Council or (B) the introduction*

of some form of dual majority.

A. A re-weighting of votes in the Council

12. *If a re-weighting of votes were agreed, this could be done in three broad ways:*

- (i) in proportion to the population of each individual Member State;***
- (ii) by allocating votes to Member States by broad categories of population size;***
- (iii) by a somewhat arbitrary adaptation of the figures - for example by subtracting one vote from each Member State, which would adjust the proportions in favour of larger Member States as a group.***

B. The introduction of some form of dual majority

13. *It has been suggested that another possible approach would be to introduce a system of dual majority in Council decision-making. The two broad ways identified in which this could be done are:*

- (i) require for the adoption of a decision by the Council, in addition to a qualified majority of weighted votes, that those votes should also be cast by members representing a certain percentage of the population of the Union;***
- (ii) require for the adoption of a decision by the Council the support of members representing a certain percentage of the population as well as the support of a specified number of members of the Council.***

14. *If this approach were followed it would be necessary to consider what the appropriate percentage of the population and appropriate number of Member States should be.*

15. *A variation on this approach would be to provide that a blocking minority could consist either, as at present, of a specified number of weighted votes or of a specified number of Member States representing a certain percentage of the population.*

The issue of the threshold

16. The second issue mentioned - the threshold for attaining a qualified majority (with its corollary, the number of votes required to constitute a blocking minority) was the subject of an agreement at Ioannina in March 1994. While the issue has been mentioned in discussion, the Conference has not as yet discussed it in detail and it remains a matter for consideration. One view is that the threshold for attaining a qualified majority requires to be raised as of now, even in the Community of 15. It is argued that this will be even more necessary in the context of enlargement. Another view expressed is that in order to ensure a decision-making procedure which functions effectively the present threshold, or its equivalent in an enlarged Union, should be maintained or even decreased slightly.

Timing

17. The issue remains to be considered of whether any decision on a reweighting of votes or on the introduction of a system of dual majority, if either of these were agreed, should take effect on ratification of the outcome of the Conference or only as and when successive enlargements take place.

SUMMARY

18. While aspects of these matters have been discussed on several occasions at the Conference, there is wide agreement among delegations that they should be left with certain other sensitive institutional questions to be settled, perhaps together, towards the closing stages of the Conference. In the view of the Presidency, it might be worth exploring at that stage to what extent amending present provisions so as to require a dual majority - whether of votes and population or of population and number of Member States - for adoption of decisions could provide a solution acceptable to all sides on this sensitive question.

*

* *

The following technical Treaty amendment is also proposed to enable the Permanent Representatives Committee to adopt procedural decisions in certain cases.

II. Text

Adoption of procedural decisions by Coreper

Amend Article 151(1) of the TEC

The Committee may adopt procedural decisions in cases provided for the Council's Rules of Procedure.

Comments

1. *The above amendment is considered to be a practical and necessary improvement.*
2. *Further consideration could be given to the suggestion that the adoption of, and amendments to, the Council Rules of Procedure should be by qualified majority (rather than as at present by simple majority) in the light of the particularly sensitive issues involved.*

16. THE COMMISSION

The issue

- 1. The Commission has a central role to play in the institutional structure of the Union: as initiator; as administrator; as mediator; as negotiator; and as guardian of the Treaties. It is vital therefore to the good functioning of the Union that it be both efficient and effective.*
- 2. The Florence European Council asked the Conference to address the manner of appointing the Commission and its composition. The main point at issue has been the future size of the Commission and whether it should continue to include at least one national from each Member State as the Union enlarges further. If the present rule that the Commission must include at least one national from each Member State and the present practice that a second national is drawn from each of the larger States are maintained as the Union enlarges, then the membership of the Commission could in due course increase to 30 or more.*
- 3. The need to preserve the efficiency of the Commission and its public acceptability throughout the Union is already common ground.*
- 4. Some argue on the one hand that both of those aims would best be served by a smaller Commission which would be seen to be less explicitly linked with nationality than at present and thus more dedicated to the common interest. On the other hand, it is argued equally strongly that those aims would best be served by continuing to include at least one national from each Member State in the Commission not, of course, as a national representative but because the Commission needs to be constantly alert to the sensitivities in each Member State when making its proposals or deciding issues.*

Possible avenues of approach

5. *A number of possible approaches have been put forward at the Conference. The Presidency considers these approaches worth recording as a possible help to further discussion. These approaches fall broadly under two headings: (A) a Commission with a membership smaller than the number of Member States and (B) a Commission with a number of members at least equal to the number of Member States. Some of the variants set out below are not mutually exclusive and could have a relevance under both headings.*

A. *Commission with a membership smaller than the number of Member States*

6. *One broad approach would be to reduce the membership of the Commission below its present level and to fix the number of Members of the Commission, for the future, even in an enlarged Union, at a level considerably below the number of Member States. Numbers suggested have ranged from 10 to 20.*

7. *If this approach were followed one possibility would be to introduce a rule of rotation which would ensure that each Member State in turn, on an equal basis, has an opportunity for a set period to nominate a Commissioner. (A variant of this could be to provide for some method of grouping two or more Member States into "constituencies" and allowing for rotation within each).*

B. *Commission with a number of members at least equal to the number of Member States*

8. *The second broad approach would be to maintain the number of Members of the Commission at least equal to the number of Member States. At present, the larger Member States, of course, each nominate two Commissioners.*

9. *One suggestion is that the five large Member States should nominate one Member of the Commission only. In a Union of the present size, this would mean a Commission of 15 Members. If the rule of one Commissioner, and one only, from each Member State were established and accepted, it would be possible to admit five new Member States before the Commission would grow again to its present membership of 20.*

- 10. It would also be possible to focus on the internal structure and organization of the Commission. There could be some grouping or differentiation or hierarchy within the Commission. With this approach it would be possible for each member State to continue to nominate one Member of the Commission and each Member would have a vote in the College of Commissioners.**
- 11. Various sub-options have also been advanced for consideration, some of which could be of relevance also if the Commission had a membership smaller than the number of Member States. They include ideas such as the following:**
- (a) establish a system of senior and junior Commissioners: the latter would not be responsible for a full portfolio;**
 - (b) establish a certain number of Vice-Presidents, each of whom would have additional responsibilities;**
 - (c) the establishment of two Vice-Presidents who would function as real deputies to the President of the Commission. One could be responsible for internal affairs, the other for external relations. Each of the two Vice-Presidents would lead a team of three or four other Commissioners each dealing with a particular area, much as certain larger Member States have a Foreign Secretary or Foreign Minister who is helped by a number of Ministers of State (in the sense of "junior" Ministers).**
- 12. There is a wide measure of agreement on strengthening the powers of the President of the Commission to make the Commission more effective. Some would be willing to contemplate giving the President authority, under some arrangement to be determined, both to select, and perhaps to dismiss, individual Commissioners in certain circumstances as well as an explicit right to allocate and re-shuffle portfolios.**

Timing

- 13. *It is argued that the size of the Commission already exceeds the optimum size and that it should be reduced before enlargement. Others see the issue of the size of the Commission as one which arises only in the context of future and perhaps gradual enlargement of the Union. As regards timing, it is suggested that this could allow a phased approach or possibly allow deferral of the issue until the need to address it arises - either of which might open up new possibilities.***

Summary

- 14. At this stage of the Conference, the Presidency would not wish to endorse one of these approaches over the others. It would, however, suggest that a combination of ideas based in part on internal organization and structuring of the Commission and in part on strengthening the powers of the President of the Commission could offer a useful avenue of approach to further discussion and perhaps eventually to a settlement of this question, in conjunction with some other sensitive issues, in the later stages of the Conference. The issue of timing may also play a role.**

17. THE COURT OF JUSTICE

I. The issues

The Court of Justice plays a vital role in the Union by ensuring that in the interpretation and application of the Treaties the law is observed. Its position should be confirmed and strengthened. The Presidency has suggested, for example, in Section I of the present document that judicial control of respect for fundamental rights should be clarified.

There is widespread agreement at the Conference that, as the Union enlarges, the number of judges should be correspondingly increased.

Appropriate measures should also be considered by the Conference to preserve the efficiency of the Court in an enlarged Union by allowing greater latitude to the Court regarding its own organization.

The texts suggested by the Presidency which follow would :

- *allow the Advocates-General to take part in the appointment of the President of the Court of Justice;*
- *enlarge the scope for amendment by the Council at the Court's request of the provisions of the Court's Statute.*

A number of other significant proposals which have brought forward in relation to the Court of Justice are still under consideration at the Conference.

II. Texts

Amend the fifth subparagraph of Article 167 of the TEC

The Judges **and the Advocates-General** shall elect the President of the Court of Justice from among [words deleted] **the Judges** for a term of three years. He/**she** may be re-elected.

Amend the second subparagraph of Article 188 of the TEC

The Council may, acting unanimously at the request of the Court of Justice and after consulting the Commission and the European Parliament, amend the provisions **[words deleted]** of the Statute.

Comments

1. *The question of whether the term of office of Judges and Advocates-General should be longer (and not renewable) is still under consideration by the Conference.*
2. *Proposals have also been put forward with a view to:*
 - *setting up an appeals procedure internal to the Court;*
 - *explicitly giving the Court power to:*
 - = *limit the retrospective effect of its judgements*
 - = *limit the damages payable by Member States to cases of grave and manifest infringement of Community law or to cases where the Member State would be so liable in respect of a comparable breach of its domestic law*
 - = *apply national time limits within which proceedings based on rights deriving from the Treaty must be commenced.*
 - *allowing an expedited procedure for Article 177 references;*
 - *enlarging the jurisdiction of the Court of First Instance to include the possibility of hearing and determining questions (upon referral) for preliminary rulings.*

These and other proposals are still under consideration by the Conference.

18. OTHER INSTITUTIONAL ISSUES

I. The issues

The texts suggested by the Presidency which follow would in particular:

- (a) give the Court of Auditors the right to take action before the Court of Justice for the purpose of protecting its prerogatives;*
- (b) allow greater administrative autonomy for the Committee of the Regions;*
- (c) provide for Community budgetary provisions to apply in principle to financing under Common Foreign and Security Policy and Justice and Home Affairs, while providing for national financing in specific cases;*
- (d) facilitate, in the context of expenditure from the Community budget, the role of private sector financing in relation to Trans-European networks;*
- (e) strengthen Treaty provisions to counter fraud affecting the financial interests of the Community;*
- (f) provide for a specific legal basis for the Council to act as regards statistics.*

II. Texts

(a) Court of Auditors

Amend the third subparagraph of Article 173 of the TEC

The Court shall have jurisdiction under the same conditions in actions brought by the European Parliament, **by the Court of Auditors** and by the ECB for the purpose of protecting their prerogatives.

Comment

The question remains to be considered further by the Conference of whether the Court of Auditors should be allowed to audit all Community revenue and expenditure, irrespective of the managing body concerned.

(b) Committee of the Regions / Economic and Social Committee

Delete Protocol (no. 16) on the Economic and Social Committee and the Committee of the Regions.

Deletion of the Protocol would allow greater administrative autonomy for the Committee of the Regions.

Comment

Other questions which are still under consideration include :

- 1. whether the areas in which the Committee of the Regions and the Economic and Social Committee are consulted should be extended. The new employment provisions suggested in Section II Chapter 4 of the present document envisage an appropriate role for both bodies.*
- 2. whether the Committee of the Regions should be allowed to bring actions before the Court of Justice for the purpose of protecting its own prerogatives.*

(c) Budgetary issues

(i) Financing of CFSP

Amend Article J.11 of the TEU

1. The provisions referred to in Articles 137, 138, 139 to 142, 146, 147, 150 to 153, 157 to 163 and 217 of the Treaty establishing the European Community shall apply to the provisions relating to the areas referred to in this Title.
2. 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.
3. **Operational expenditure to which the implementation of those provisions gives rise shall also be charged to the budget of the European Communities, except for such expenditure arising from operations undertaken pursuant to Article J.4(2) and in cases where the Council decides otherwise by a qualified majority calculated in accordance with the first subparagraph of Article J.8a(2). In cases where expenditure is not charged to the budget of the European Communities it shall be charged to the Member States in accordance with the GNP scale, unless the Council acting unanimously on a proposal from the Commission, decides otherwise.**
4. The budgetary procedure laid down in the Treaty establishing the European Community shall apply to the administrative expenditure referred to in paragraph 2 and the operational expenditure referred to in paragraph 3 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.

(ii) Financing of JHA

Amend Article K.8 of the TEU

1. The provisions referred to in Articles 137, 138, 139 to 142, 146, 147, 150 to 153, 157 to 163 and 217 of the Treaty establishing the European Community shall apply to the provisions relating to the areas referred to in this Title.
2. 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.
3. **Operational expenditure to which the implementation of those provisions gives rise shall also be charged to the budget of the European Communities, except where the Council decides otherwise by a qualified majority calculated in accordance with the second subparagraph of Article K.4(3). In cases where expenditure is not charged to the budget of the European Communities it shall be charged to the Member States in accordance with the GNP scale, unless the Council, acting unanimously on a proposal from the Commission, decides otherwise.**
4. The budgetary procedure laid down in the Treaty establishing the European Community shall apply to the administrative expenditure referred to in paragraph 2 and the operational expenditure referred to in paragraph 3 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.

Comments

1. *There has been a widespread view that the present budgetary arrangements should be broadly preserved. Some delegations, however, support possible amendments to the Treaty aimed at simplifying the budgetary procedure and putting an end to interinstitutional conflict on the classification of budgetary expenditure. Certain delegations have recently submitted detailed proposals in this regard in the light of which the Conference should give further in-depth consideration to the matter.*
2. *The Treaty texts suggested above in relation to financing under the CFSP and JHA require further detailed examination.*

(d) **Trans-European networks**

Amend third indent of paragraph 1 of Article 129c of the TEC

In order to achieve the objectives referred to in Article 129b, the Community :

- may support the financial efforts made in Member States for projects of common interest **[words deleted]**, which are identified in the framework of guidelines referred to ...(rest unchanged).

Comment

The precise wording of the suggested amendment to Article 129c in relation to Trans-European networks remains to be examined in detail by the Conference.

(e) Countering fraud

Amend Article 209a of the TEC

1. **The Community and the Member States shall take the necessary measures to counter fraud and any other form of misdemeanour affecting the financial interests of the Community. Such measures shall be effective, act as a deterrent and be such as to afford effective and equivalent protection in all Member States.**
2. **The measures referred to in paragraph 1 shall be decided by the Council, acting in accordance with the procedure referred to in Article 189b, after consulting the Court of Auditors.**
3. **For the purpose of the objectives referred to in paragraph 1, the Member States and the Commission shall coordinate their action and shall organize [words deleted] close and regular cooperation between the competent authorities.**

(f) **Statistics**

New Article 213a in the TEC

1. Without prejudice to the provisions of Article 5 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall adopt measures for the organization and implementation of the statistical activities of the Community and for the production of statistics where required for the performance of the activities of the Community.
2. The handling of statistics as referred to in paragraph 1 shall be governed by the principles of impartiality, objectivity, scientific independence, cost-effectiveness and confidentiality of individual items of information. Individual items of information secured for the purposes of such statistics may be used only for those purposes or for other purposes stipulated by the Council acting in accordance with the procedure referred to in paragraph 1.

Comment

The wording of the suggested provision will need to be considered further by the Conference, including in the light of proposals which have been submitted.

19. NATIONAL PARLIAMENTS

I. The issue

National parliaments play a direct role in the approval of certain primary and secondary legislation of the European Union. National parliaments also play an important role regarding the choice of the form and methods for transposing into national legislation the result to be achieved by EC directives. While the scrutiny role of national parliaments in relation to the activities of the Union is primarily a matter for the internal constitutional organization of each Member State, it is accepted that improvements should be made at the level of the European Union to help national parliaments to do their job more effectively.

A view has been strongly expressed at the Conference that the Treaty should provide for national parliaments to be able to express a collective view in relation to certain issues at the level of the Union. Another view is that it should be left to national parliaments themselves to develop any procedure through which they could express such a collective view.

In order to meet the various concerns which have been put forward, the Presidency suggests a draft Protocol to be annexed to the Treaty. The suggested Protocol which follows would in particular:

- ensure that national parliaments receive copies of consultation papers and legislative proposals in good time and allow a minimum four-week period between a legislative proposal being tabled and its being placed on a Council agenda for decision, except in cases of particularly urgency;*
- recognise that the Conference of European Affairs Committees of national parliaments and the European Parliament (COSAC), an existing forum through which national parliaments may express a collective voice, may make any contribution to the institutions of the Union which it deems appropriate about important texts which may be of particular interest to national parliaments.*

**New Protocol on the role of National Parliaments in
the European Union to be annexed
to the Treaty on European Union**

THE HIGH CONTRACTING PARTIES

RECALLING that scrutiny by individual national parliaments of their own government in relation to the activities of the Union is a matter for the particular constitutional organization and practice of each Member State,

DESIRING, however, to encourage greater involvement of national parliaments in the activities of the European Union and to enhance their ability to express their views collectively on matters which may be of particular interest to them,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty on the European Union:

I. INFORMATION FOR NATIONAL PARLIAMENTS OF MEMBER STATES

- 1. All Commission consultation documents (green and white papers) shall be promptly forwarded to national parliaments of the Member States.**
- 2. Commission proposals for legislation, as defined in Article 151 of the Treaty establishing the European Community, shall be made available in good time so that the Government of each Member State may ensure that its own national parliament receives them as appropriate.**
- 3. A four-week period shall elapse between a legislative proposal, as defined in Article 151 of the Treaty establishing the European Community, being made available in all languages to the European Parliament and the Council by the Commission and the date when it is placed on a Council agenda for decision either for the adoption of an act or for adoption of a common position pursuant to article 189b or 189c, subject to exceptions on grounds of urgency.**

II. The Conference of European Affairs Committees

4. **The Conference of European Affairs Committees, hereinafter referred to as COSAC, established in Paris on 16-17 November 1989, may contribute to the activities of the Union under the conditions set out in this Protocol.**
5. **COSAC may make any contribution it deems appropriate for the attention of the EU institutions, in particular on the basis of draft legal texts which Representatives of Governments of the Member States may decide by common accord to forward to it, in view of the nature of its subject matter.**
6. **COSAC may examine, at the request of any national Parliament, any proposal or initiative falling in particular under Title VI and which might have a direct bearing on the rights and freedoms of individuals. The European Parliament, the Council and the Commission shall be informed of any request made to COSAC under this paragraph and shall receive any contribution made by COSAC in the light of that request.**
7. **COSAC may hold debates at regular intervals on the normative aspects of the activities of the Union. It may address to the European Parliament, the Council and the Commission any contribution which it deems appropriate in this regard, notably concerning the implementation of the principle of subsidiarity.**

Comments

1. *The Protocol suggested by the Presidency is designed to respond to concerns voiced during discussions on this question by improving information to, and encouraging greater involvement of, national parliaments regarding the activities of the Union, without creating any new institution or body, without upsetting the balances in the current decision-making procedures and without complicating the Union's decision-making process.*
2. *Some delegations do not favour a Protocol which would contain the elements set out in part II of the Protocol suggested above.*
3. *A number of other practical ways of enhancing the role of national parliaments have also been suggested. In particular, it has been suggested that a declaration emphasising the nature of directives as set out in the Treaty might be included in the Final Act of the Conference.*

PART A

SECTION V

ENHANCED COOPERATION "FLEXIBILITY"

SECTION V: ENHANCED COOPERATION - "FLEXIBILITY"

- 1. The issue of what has come to be called "flexibility", "enhanced cooperation" or "differentiated integration" - that is the possibility for a number of Member States less than the full membership to cooperate more closely in specific areas using the institutional framework of the Union - is one of the most important issues being examined by the Conference. Whatever may be agreed in this regard - or alternatively the absence of agreement - will be of the greatest significance for the future development of the Union.*
- 2. The issue has been discussed by the Conference on several occasions and important*

proposals have been tabled. Discussions have been constructive and a degree of common ground seems to be emerging. However, the issues are complex and sensitive and the Presidency accepts the widespread view of delegations that it would be premature at the present stage of the negotiations to put forward draft Treaty texts.

3. *The extent to which new flexibility mechanisms prove necessary will depend at least to some degree on the progress made in various substantive areas under consideration by the Conference.*
4. *The concept of flexible arrangements in the Union is not new. The existing Treaty provisions, for example, allow Member States to move at different speeds towards the objective of full Economic and Monetary Union.*
5. *However, the larger the number of Member States and the greater their diversity, the more the issue of flexibility comes to the fore. In the view of many Member States, further enlargement of the Union will make the development of flexibility provisions inevitable.*

6. *Several Member States have emphasized the importance of any enhanced cooperation developing inside rather than outside the Union. They stress that the institutions, procedures and mechanisms of the Union should apply.*
7. *Since discussion is at a relatively early stage, the Presidency's assessment which follows binds delegations neither as regards principles nor details. Some delegations still favour the status quo.*
8. *Amongst the issues on which, in the Presidency's view, a degree of common ground seems to be emerging are the following:*
 - (a) *flexibility which already exists in different forms may, subject to appropriate conditions, provide an appropriate approach especially with the prospect of further enlargement;*
 - (b) *flexibility should not be regarded as an alternative to the normal decision-making process or to traditional Community mechanisms such as transitional periods;*
 - (c) *flexibility should be used only subject to precisely defined conditions which should ensure notably that the internal and external coherence of the Union's action is maintained, that the acquis is preserved in full and that the Union's objectives are respected;*
 - (d) *flexibility in a given area should be open equally to all Member States but no Member State should be obliged to participate;*
 - (e) *the possible requirement for flexibility varies according to the subject matter concerned and the issue of flexibility should therefore be approached on a pillar by pillar basis;*
 - (f) *the position of non-participating Member States should be respected.*

9. *Three broad forms of possible flexibility have been examined by the Conference. These forms of flexibility would not be mutually exclusive and could be complementary.*

- (i) *Flexibility could apply when individual acts or decisions are adopted in certain policy areas. The present outline draft Treaty already suggests provisions in two specific areas which would allow for case by case flexibility: (a) the possibility of constructive abstention is suggested in the context of the Common Foreign and Security Policy (see Section III, Chapter 10); (b) in relation to Justice and Home Affairs, the possibility is made explicit of conventions entering into force for a limited number of Member States (see Section I, Chapter 3);*
- (ii) *Provision could be made for flexible cooperation in a specific area by detailing all aspects in the Treaty itself, in the form of a Protocol. This approach would involve all of the relevant details to cover that particular area as part of the Treaty revision negotiations. This possibility has been mentioned in connection, for example, with the possible incorporation of the Schengen Agreement into the Treaty;*
- (iii) *The Treaty could take a more general approach which would set out (a) general provisions defining conditions to be respected for enhanced cooperation in whatever areas this might take place in future and (b) specific clauses in appropriate parts of the Treaty setting out conditions and rules to be respected for the application of flexibility in the relevant areas. This would imply that the detailed provisions for implementing such cooperation in any particular area would be developed whenever required to the extent that this proved necessary.*

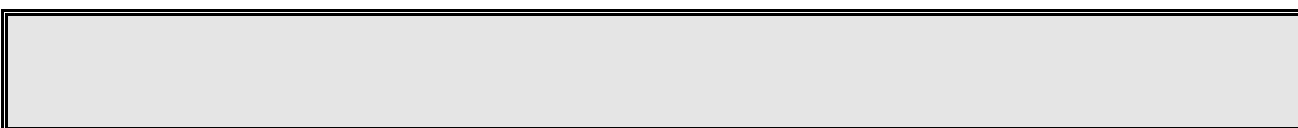
10. *As regards the third form of flexibility referred to above, the following overall structure has been discussed:*

- (i) *a **general clause** in the common provisions of the TEU establishing the general principle of enhanced cooperation which would not, in itself, be operational but which would govern whatever arrangements for enhanced cooperation were later put in place;*

- (ii) *the **general conditions** to be respected for any enhanced cooperation would be set out in a general Article. Examples of such possible general conditions are referred to in paragraph 8 above;*
- (iii) ***detailed enabling provisions** in particular parts of the Treaty which would set out the specific conditions for enhanced cooperation in the relevant areas.*

11. *If the Conference were to decide to develop further the idea of enhanced cooperation based on this structure, several questions would remain to be resolved. These include :*

- (i) *whether the decision to establish enhanced cooperation in a particular area should be taken by all Member States, by a qualified majority or by a specific number of Member States. On the one hand, some argue that unanimity is an essential requirement to trigger flexibility in all or in some areas. Others consider that once certain basic conditions have been objectively fulfilled and the present and future interests of non- participating states are safeguarded, those Member States which wish to proceed should not be prevented from doing so;*
- (ii) *what role the Commission should have in deciding on enhanced cooperation in a particular area and whether that role should be adapted according to the pillar concerned;*
- (iii) *what the minimum number of participating Member States should be to enable enhanced cooperation to go ahead in a particular area;*
- (iv) *whether the Treaty should specifically exclude the possibility of having recourse to enhanced cooperation in certain areas, for instance the internal market and its related policies or where distortions of competition might result for non-participating Member States;*
- (v) *what the financing arrangements would be;*
- (vi) *what provisions would apply to enable non participating Member States to join at a later stage.*



PART B

OTHER ISSUES

PART B - INTRODUCTION

Part B contains a brief description of proposals for Treaty revision which have been tabled by delegations at the Conference but which do not fall easily under any of the Chapter headings in Part A.

A number of these proposals (which are listed in the chronological order in which they were tabled) have received strong support from some delegations. A number have not yet been considered in detail by the Conference.

- A. Island regions (GR)*
- B. Nuclear safety - discussion document (IRL)*
- C. Fishery "quota-hopping" (UK)*
- D. Competition rules for agricultural products (UK)*
- E. Animal welfare (UK, D)*
- F. Voluntary service (ES)*
- G. Distinction between provisions and measures in Articles 100a and 130s (UK)*
- H. Principle of sufficient means (ES)*
- I. Tourism (GR)*
- J. Outermost regions (ES, P, F)*
- K. Religion (D, I, ÖS)*
- L. Local self-government (D)*
- M. Energy (B)*
- N. Cultural diversity (B)*
- O. Vocational training (B)*
- P. Education (B)*
- Q. Public health (B).*

All proposals which have been submitted to the Conference, including those in areas dealt with in Part A of the present document, remain of course on the table even where no explicit reference is made to them. It is recalled, for example, that a range of specific proposals have also been tabled in relation to citizenship and fundamental rights.

It should be recalled that many contributions and proposals have been made by delegations orally rather than in written form.

PROPOSALS

A. ISLAND REGIONS

Provision to take account of the special characteristics of island regions, including taking measures to offset the problems of these regions (Greece).

B. NUCLEAR SAFETY

A discussion document was tabled concerning the possibility of strengthening the nuclear safety provisions of the Euratom Treaty, particularly in the context of further enlargement of the Union (Ireland).

C. FISHERY "QUOTA-HOPPING"

A Protocol to the Treaty providing that only vessels owned and crewed by a minimum proportion of residents of the state in question would be eligible for fishery quota entitlement, and requiring that vessels should depart from a port in the state in question, with a minimum proportion of catches being landed in the same state (UK).

This proposal has been the subject of a written memorandum from another Member State (Spain).

D. COMPETITION RULES FOR AGRICULTURAL PRODUCTS

Application of state aid rules to all agricultural products (UK).

E. ANIMAL WELFARE

Strengthening the Community's commitment to animal welfare by establishing legally binding provisions to ensure that Community policy on agriculture, transport, the internal market and research pay full regard to the welfare requirements of animals (UK).

Proposal to include, among the activities of the Community, a contribution to the improvement of animal protection (Germany).

F. VOLUNTARY SERVICE

Proposal to give special attention and support to voluntary service initiatives by European citizens and enable the Community to adopt measures to contribute to achieving the objectives of the Community in this area (Spain).

G. CLARIFICATION OF THE MEANING OF THE TERM "PROVISION" IN ARTICLES 100a(2) AND 130s(2)

Clarification that, in Articles 100a(2) (internal market) and 130s(2) (environment), qualified majority voting should not apply to measures containing provisions relating to taxation, the rights and interest of employed persons and the free movement of persons (UK).

H. PRINCIPLE OF SUFFICIENT MEANS

Clarification in the Treaty of the principle whereby the Community shall finance its own actions from its own resources and may not pass on to the Member States, without their consent, the cost of actions which it cannot finance itself for want of a budget (Spain).

I. TOURISM

Development of a Community tourism policy, while respecting fully the principle of subsidiarity, in order to strengthen the competitiveness of the Community tourist industry, step up the development of tourism in a framework of balanced and sustainable development, support employment and job creation, achieve greater economic and social cohesion and foster cultural links (Greece).

J. OUTERMOST REGIONS

Three proposals have been tabled to allow the possibility that special measures be taken for the outermost regions of the Union (French Overseas Departments, the Azores, Madeira and the Canary Islands) given the special characteristics of these territories and their remoteness (Spain, Portugal, France).

K. RELIGION

Proposal that the Treaty state that the Union respects the constitutional status of religious associations in the Member States as a manifestation of the identity of the Member States and their cultures and as part of the common cultural heritage (Germany).

Other suggestions concerning a possible reference in the Treaty to religion formed part of a proposal submitted by two delegations in relation to fundamental rights (Italy/Austria).

L. LOCAL SELF-GOVERNMENT

Guarantees in the Treaty of the right of local authorities and groups of local authorities to regulate all affairs of the local community within the limits laid down by law and to have a representative assembly elected by the people (Germany).

M. ENERGY

Establishment of a common energy policy aimed at guaranteeing the Community's energy supply, encouraging long-term energy planning, promoting the rational use of energy and the use of renewable sources, contributing to economic and social cohesion, and contributing to low prices while allowing necessary development and modernisation investment (Belgium).

N. CULTURAL DIVERSITY

Proposals to enshrine in the Treaty the principle that the Union shall respect the cultural identity and diversity of the Member States and their entities which have been given powers under national law, and the right of every citizen to use his or her own official Union language in contacts with Union institutions and bodies (Belgium).

O. VOCATIONAL TRAINING

Proposal to specify that the Community's vocational training policy respects Member States' cultural and linguistic diversity (Belgium).

P. EDUCATION

Provision in the Treaty for a compensation mechanism in relation to the burden on Member States which have higher than average numbers of students from other Member States in higher education (Belgium).

Q. PUBLIC HEALTH

Strengthening of the Treaty provisions on improving the quality of public health and developing exchange of information on common surveillance of the quality and safety of organs, blood products and food products which can be contaminated by communicable diseases, and reinforcing cooperation among Member States on health care (Belgium).

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PART C

SIMPLIFICATION OF THE TREATIES

SIMPLIFICATION OF THE TREATIES

The Florence European Council in June called 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".

The European Parliament, the Council, the Commission and the Court of Justice all identified similar problems in regard to the complexity of the Treaties and advocated a similar manner of proceeding, that is codification of all the Treaties and simplification to remove obsolete and repetitive provisions.

The Treaties establishing the European Union and the European Communities have become increasingly complex and correspondingly less easy to understand over the years. There are now a dozen basic Treaties and Acts, not to mention protocols, containing a total of nearly eight hundred Articles. These Treaties and Acts are not always presented in a uniform

manner and they have become unwieldy through successive amendments. Simplification and rationalization would be an important step in making the Treaties more readable and more accessible to citizens for whose benefit they have been designed and whose interests they serve.

*The Conference decided earlier this year that detailed preparatory work should be carried out by the Conference Secretariat. The Secretariat has recently presented drafts of various simplified and codified versions of the Treaties and basic Acts, based on fully preserving the characteristics of Titles V (CFSP) and VI (JHA) of the TEU, including the decision-making and budgetary procedures, as well as the specific roles of the institutions in those areas. In the light of that preparatory work, there is a general willingness to pursue the simplification exercise, provided that the *acquis* of the Treaties is not reopened, that the pillar structure is preserved and that the outcome of the Conference is not delayed. Furthermore, it is widely felt that, if such an exercise is to be worthwhile, the approach should be ambitious. The alternative drafts presented by the Secretariat include the merging into one treaty of the different treaties establishing the European Communities, as well as the merging of those treaties with the Treaty on European Union.*

The operation of simplifying and codifying the Treaties is to remain separate from the negotiations on substantive revision of the Treaties. Accordingly, a new Treaty in simplified and codified form could, if it were to be agreed, be presented at the end of the Conference separately from the substantive amendments (although it would incorporate those amendments).