

## Report by the Reflection Group: A Strategy for Europe (Brussels, 5 December 1995)

**Caption:** On 5 December 1995, the Reflection Group established by the Corfu European Council of 24 and 25 June 1994 and chaired since June 1995 by Carlos Westendorp y Cabeza, Spanish Junior Minister for European Affairs, submits to the Brussels European Council its final report on the challenges that need to be addressed at the 1996 Intergovernmental Conference (IGC) in order to bring the European Union up to date and to prepare it for the next enlargement.

**Source:** Reflection Group's Report. [ON-LINE]. [Brussels]: European Parliament, [s.d.]. 07.10.2005. Disponible sur [http://www.europarl.eu.int/enlargement/cu/agreements/reflex1\\_en.htm](http://www.europarl.eu.int/enlargement/cu/agreements/reflex1_en.htm).

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## Report by the Reflection Group: *A Strategy for Europe* (Brussels, 5 December 1995)

### Part One: A Strategy for Europe

For six months, the members of the Reflection Group have been working on the European Council mandate to pave the way for the revision of the Treaty at the 1996 Conference and any other improvements in the Union's operation, in a spirit of openness and democracy.

We feel it has been our task not only to establish an annotated agenda for the Conference but also to set in motion a process of public discussion and explanation regarding the thrust of the changes to be made.

#### The Challenge

Men and women of Europe today, more than ever, feel the need for a common project. And yet, for a growing number of Europeans, the rationale for Community integration is not self-evident. This paradox is a first challenge.

When the European Communities were established some forty years ago, the need for a common design was clear because of the awareness of Europe's failure over the first half of this century.

Now, almost half a century later, the successive enlargements of the Union, the expansion of its tasks, the very complexity of its nature and the magnitude of the problems of our times, make it very difficult to grasp the true significance of, and the continuing need for, European integration.

Let us accept that complexity is the price that Europe pays to protect our plural identity. But we firmly believe that this creation of Europe's political ingenuity, which cannot take the place of but is now an inseparable counterpart to the Union's Member States, from which its main political legitimacy flows, has been making an invaluable contribution of its own: peace and prosperity based on a definition of common interests and action that is the result not of power politics but of a common body of law agreed by all.

Today Europe has changed, partly because of the Union's success. All those European nations rediscovering their freedom wish to join, or to cooperate more closely with, the European Union. Yet, in Western Europe there is a growing sense of public disaffection despite the Union's contribution to an unprecedented period of peace and prosperity.

We therefore need to explain clearly to our citizens why the Union, which is so attractive to others in Europe, remains necessary for us too.

One reason is that the world outside Europe has also changed. Goods, capital and services nowadays flow globally in an increasingly competitive market. Prices are set worldwide. The prosperity of the Europe of Today and Tomorrow depends on its ability to succeed in the global marketplace.

The end of the cold war may have increased the overall security of Europe. But it has also brought greater instability in Europe.

Furthermore, high levels of unemployment, external migratory pressures, increasing ecological imbalances and the growth of international organised crime have stimulated a public demand for greater security that cannot be satisfied by Member States acting alone.

In an increasingly interdependent world, that reality poses new challenges and opens up new opportunities for the Union.

#### The Response

However, we are not starting from scratch. Over the last five years, Europe has adjusted successfully to

changing times. In 1990, the Community welcomed in the 17 million Germans who had been living on the other side of the Berlin Wall.

The Maastricht Treaty succeeds in mapping out the path of adjustment by the Community to changing times: it establishes a European Union closer to its citizens, setting out the principle of subsidiarity; it establishes the path towards a single currency and puts forward a strategy of economic integration based on price stability that strengthens competitiveness and makes for growth in our economy. It reinforces social and economic cohesion and provides for high standards of environmental protection. It opens the way for a common foreign and security policy and attempts to bring about an area of freedom and of public security.

Since then, in very difficult economic circumstances, the European Union has been able to take timely decisions on progress in line with its new needs: it has agreed to the outcome of the Uruguay Round, it has managed to reach agreement on the Union's finances up to 1999 and it has been enlarged to bring in three new members.

Yet that is not enough. European Heads of State or Government have already identified the steps necessary to develop Europe's strategy for these changing times: the 1996 Conference, the transition to a single currency, the negotiation of a new financial agreement, the possible revision or extension of the Brussels Treaty setting up the WEU and, lastly, the most ambitious target, enlarging the Union to bring in associated countries of Central and Eastern Europe, including the Baltic States, Cyprus and Malta.

That next enlargement provides a great opportunity for the political reunification of Europe. Not only is it a political imperative for us, but it represents the best option for the stability of the continent and for the economic advancement not just of the applicant countries but for this Europe of ours as a whole. That enlargement is not an easy exercise. Its impact upon the development of the Union's policies will have to be assessed. It will require efforts both by applicants and present Union members that will have to be equitably shared. It is therefore not only a great chance for Europe but also a challenge. We must do it, but we have to do it well.

The Union cannot tackle all the steps in that European strategy at once, but it does not have any time to waste. The Heads of State or Government have personally taken responsibility for agreeing on a European agenda for carrying out this plan, which will only become a reality if it finds democratic backing from Europe's citizens.

### **The 1996 Conference**

The 1996 Conference is an important, but just one step in this process.

The Maastricht Treaty already foresees that a Conference should be convened in 1996 with a limited scope. This scope has subsequently been enlarged at various European Councils. The Heads of State or Government have identified the need to make institutional reforms as a central issue of the Conference in order to improve the efficiency, democracy and transparency of the Union.

In that spirit, we have tried to identify the improvements needed to bring the Union up to date and to prepare it for the next enlargement.

We consider that the Conference should focus on necessary changes, without embarking on a complete revision of the Treaty.

Against this background, results should be achieved in three main areas:

- making Europe more relevant to its citizens;
- enabling the Union to work better and preparing it for enlargement;
- giving the Union greater capacity for external action.

## **I. The citizen and the Union**

The Union is not and does not want to be a superstate. Yet it is far more than a market. It is a unique design based on common values. We should strengthen these values, which all applicants for membership also wish to share.

The Conference must make the Union more relevant to its citizens. The right way for the Union to regain the commitment of its citizens is to focus on what needs to be done at European level to address the issues that matter to most of them such as greater security, solidarity, employment and the environment.

The Conference must also make the Union more transparent and closer to the citizens.

### **Promoting European values**

Europe's internal security rests on its democratic values. As Europeans we are all citizens of democratic States which guarantee respect for human rights. Many of us think that the Treaty must clearly proclaim these common values.

Human rights already form part of the Union's general principles. For many of us they should, however, be more clearly guaranteed by the Union, through its accession to the European Convention on Human Rights and Fundamental Freedoms. The idea of a catalogue of rights has also been suggested, and a provision allowing for the possibility of sanctions or even suspending Union membership in the case of any state seriously violating human rights and democracy. Some of us take the view that national governments already provide adequate safeguards for these rights.

Many of us think it important that the Treaty should clearly proclaim such European values as equality between men and women, non-discrimination on grounds of race, religion, sexual orientation, age or disability and that it should include an express condemnation of racism and xenophobia and a procedure for its enforcement.

One of us believes that the rights and responsibilities we have as citizens are a matter for our nation states: reaching beyond that could have the opposite effect to that intended.

Some of us also thought it worthwhile to examine the idea of establishing a Community service or European "peace corps" for humanitarian action, as an expression of Union solidarity; such a service could also be used in the event of natural disasters in the Union. Furthermore, some of us recommend that the Conference should examine how to better recognize in the Treaty the importance of access to public service utilities ("services publics d'intérêt général").

We believe that Europe also shares certain social values which are the foundation of our coexistence in peace and progress. Many of us take the view that the Social Agreement must become part of Union law. One of us believes that this would only serve to reduce competitiveness.

### **Freedom and internal security**

The Union is an area of free movement for people, goods, capital and services. Yet people's security is not sufficiently protected on a European scale: while protection remains essentially a national matter, crime is effectively organized on an international scale. Experience of the implementation of the Maastricht Treaty over the last few years shows that opportunities for effective European action are still very limited. Hence, the urgency for a common response at European level, following a pragmatic approach.

We all agree that the Conference should strengthen the Union's capacity to protect its citizens against terrorism, drug trafficking, money laundering, exploitation of illegal immigration and other forms of internationally organized crime. This protection of citizens' security at European level must not diminish individual safeguards. For many of us, this requires further use of common Institutions and procedures, as

well as common criteria. It is also for national parliaments to exercise political scrutiny over those who administer such common action.

Many of us take the view that, in order to act more efficiently, we need to put fully under Community competence matters concerning third country nationals, such as immigration, asylum and visa policy, as well as common rules for external border controls. Some would also like to extend Community competence to combating drug addiction and fraud on an international scale, and to customs cooperation.

For some of us, however the key to success has to be found in a combination of political will and more effective use of existing intergovernmental arrangements.

## **Employment**

We know that job creation in an open society is based on sound economic growth and on business competitiveness, which must be fostered by initiatives at local, regional and national levels. We believe that, in the European Union, the main responsibility of ensuring the economic and social well being of citizens lies within the Member States. In an integrated economic area such as ours, however, the Union also has a responsibility for setting the right conditions for job creation. It is already doing so by the completion of the internal market and the development of other common policies, with a joint growth, competitiveness and employment strategy which is achieving positive results, and with its plan for Economic and Monetary Union.

We all agree that the provisions on the single currency which were agreed at Maastricht and ratified by our parliaments must remain unchanged.

While we are all aware that jobs will not be created simply by amendments to the Treaty, many of us want the Treaty to contain a clearer commitment on the part of the Union to achieving greater economic and social integration and cohesion geared to promote employment, as well as provisions enabling the Union to take coordinated action on job creation. Some of us advised against writing into the Treaty provisions which arouse expectations, but whose delivery depends primarily on decisions taken at business and state-level. In any case, most of us stress the need for stronger coordination of economic policies in the Union.

## **Environment**

In essence, the environment has crossborder effects. Protection of the environment is an objective involving our survival not only as Europeans but also as inhabitants of the planet. Therefore the Conference should examine how to improve the capacity of the Union to act more efficiently and to identify whenever that action should remain within the Member State.

## **A more transparent Union**

Citizens are entitled to be better informed about the Union and how it functions.

Many of us propose that the right of access to information be recognized in the Treaty as a right of the citizens of the Union. Suggestions have been made on how to improve the public access to Union's documents which should be examined by the Conference.

Prior to any substantial legislative proposal, information should be duly gathered from the sectors concerned, experts and society in general. The studies leading up to the proposal should be made public.

When such a proposal is made, national parliaments should be duly informed and documents supplied to them in their official languages and in due time to allow proper discussion from the beginning of the legislative process.

We all agree that the Union law should be more accessible. The 1996 Conference should result in a simpler

Treaty.

## **Subsidiarity**

The Union will be closer to the citizen if it focuses on what should be its tasks.

This means that it must respect the principle of subsidiarity. This principle must therefore not be construed as justifying the inexorable growth of European powers nor as a pretext for undermining solidarity or the Union's achievements.

We believe it necessary to reinforce its proper application in practice. The Edinburgh Declaration should be the basis for that improvement and some of us believe that its essential provisions should be given Treaty status.

## **II. Enabling the Union to work better and preparing it for enlargement**

The Conference should examine the ways and means to improve the efficiency and democracy of the Union.

The Union must also preserve its decision-making ability after further enlargement. Given the number and variety of the countries involved, this call for changes to the structure and workings of the institutions. It may also mean that flexible solutions will have to be found, fully respecting the single institutional framework and the "acquis communautaire".

The European Council, consisting of the Heads of State or Government of the Member States and the President of the Commission, is the highest expression of the Union's political will and defines its general political guidelines. Its importance is bound to increase in view of the Union's political agenda.

Improving democracy in the Union means both fair representation in each of the institutions, and enhancing the European Parliament, within the existing institutional balance, and the role of national parliaments. In this context, it is recalled that, according to the Treaty, a uniform electoral procedure for the European Parliament should be established. Many of us believe that the European Parliament's procedures are too numerous and complex and therefore favour reducing them to three: consultation, assent and codecision.

The current codecision procedure is over-complicated and we propose that the Conference simplify it, without altering the balance between the Council and the European Parliament. Many of us also propose that the Conference should extend the scope of the codecision procedure. One member believes, however, that the European Parliament gained extensive new powers at Maastricht and therefore should grow into these powers before seeking more.

National parliaments should also be adequately involved. This does not imply that they have to be incorporated into the Union's institutions. For many of us its decision-making procedures should be organised in a way which allows national parliaments adequately to scrutinise and influence the positions of their respective governments in the decision-making of the Union. Some of us suggest a more direct involvement of national parliaments: in this context, the idea of a newly established advisory committee has been suggested by one of us. Cooperation among national parliaments and between them and the European Parliament should also be fostered.

The decision-making processes and working methods of the Council of Ministers will need review. The Union must be able to take timely and effective decisions. But efficient decision-making does not necessarily mean easy decision-making. The Union's decisions must have popular support. Many of us believe greater efficiency would be enhanced by more qualified majority voting in the Council, which, according to many, should become the general procedure in the enlarged Community. Some of us believe that this should only be countenanced, if democratic legitimacy is improved by a reweighting of votes to take due account of population. One of us opposes extension on principle.

We consider the role of the Council Presidency to be crucial for the efficient management of the Union's business and we support the principle of rotation. But the present system applied to an enlarged Union could become increasingly disjointed. Alternative approaches combining continuity and rotation should be examined further.

We agree that the Commission should retain its three fundamental functions: promotion of the common interest, monopoly of legislative initiative and guardianship of Community law. Its legitimacy, underlined by its parliamentary approval, is based on its independence, its credibility, its collegiality and its efficiency. The composition of the Commission was designed for a Community of six. We have identified options for its future composition in order to preserve the Commission's ability to fulfil its functions in view of an enlarged Union that may extend to more than twice the number of Member States having negotiated the Maastricht Treaty.

Broadly, one view within the Group is to retain the present system for the future, reinforcing its collegiality and consistency as required. This option would allow all members to have at least one Commissioner. Another view is to ensure that greater collegiality and consistency be attained by reducing the Commissioners to a lesser number than Member States and enhancing their independence. Procedures should be established to select those members on grounds of qualification, and commitment to the general interest of the Union. When deciding the future composition of the Commission, the Conference may also examine the possibility of establishing senior and junior Commissioners.

Some of us believe that the Committee of the Regions has to play an important role in Community legislation and that the consultative role of this body should be better used.

Europe's achievements depend on its ability to take decisions together and then to comply with them. An improvement in the clarity and quality of Community legislation would contribute to this, as would better financial management and a more effective fight against fraud. The Conference should also improve the key role of the Court of Justice especially in ensuring uniform interpretation of and compliance with Community law.

### **III. Giving the Union greater capacity for external action**

The Maastricht Treaty has established the Union's Common Foreign and Security Policy. In our opinion, this was the right decision at the right time, at a time with the end of the cold war increasing the burden of responsibility on the European Union to lay the foundations of peace and progress in Europe and elsewhere.

The current possibilities offered by the Treaty have provided some positive results. We believe, however, that the time has come to provide this common policy with the means to function more effectively.

The Union today needs to be able to play its part on the international stage as a factor for peace and stability. Although an economic power today, the Union continues to be weak in political terms, its role accordingly often confined to financing decisions taken by others.

#### **Common Foreign Policy**

We think that the Conference must find ways and means of providing the Union with a greater capacity for external action, in a spirit of loyalty and mutual solidarity. It must be capable of identifying its interests, deciding on its action and implementing it effectively. Enlargement will make this task more difficult, but also makes it even more imperative.

This means that the Union must be able to analyse and prepare its external action jointly. With that in mind, we propose the establishment of a common foreign policy analysis and planning unit. For most of us, this unit should be answerable to the Council. Many of us also think that it should be recruited from Member States, Council Secretariat and Commission and be established within the institutional framework of the Union. It has been suggested by some that the head of the unit, whose functions could eventually merge with



those of the Secretary General of the WEU, should be the Secretary General of the Council.

It also calls for the capacity to take decisions. To that end, we propose that the Conference examines how to review decision-making and financing procedures in order to adapt them to the nature of foreign policy, which must reconcile respect for the sovereignty of States with the need for diplomatic and financial solidarity. It should be commonly agreed whether and if so how to provide for the possibility of flexible formulae which will not prevent those who feel it necessary for the Union to take joint action from doing so. Some members favour the extension of qualified majority voting to CFSP and some others propose to enhance the consultative role of the European Parliament in this area.

The Union must be able to implement its external actions with a higher profile. We have examined several possible options for ensuring that the Union is able to speak with one voice. Some of us have suggested the idea of a High Representative for the CFSP, so as to give a face and a voice to the external political action of the Union. This person should be appointed by the European Council and would act under precise mandate from the Council. Many of us have stressed the need for a structured cooperation between the Council, its Presidency and the Commission, so that the different elements of the external dimension of the Union they are responsible for function as a coherent whole.

This greater political role for the Union in the world should be consistent with its current external economic influence as the premier trading partner and the premier humanitarian aid donor. The Conference will have to find ways of ensuring that the Union's external policy is visible to its citizens and the world, that it is representative of its Member States and that it is consistent in its continuity and globality.

### **European security and defence policy**

The multifaceted challenges of the new international security situation underline the need for an effective and consistent European response, based on a comprehensive concept of security.

We therefore believe that the Conference could examine ways to further develop the European identity, including in the security and defence policy field. This development should proceed in conformity with the objectives agreed at Maastricht, taking into consideration the Treaty provisions that the CFSP shall include all questions related to the security of the Union, including the eventual framing of a common defence policy, which might in time lead to a common defence.

The Conference will have to take account of the reality that, in the view of NATO members, such a development should also strengthen the European "pillar" of the Atlantic Alliance and the transatlantic link. The Alliance continues to guarantee the collective defence of its members and plays a fundamental role in the security of Europe as a whole. Equally, the right of States which are not members of the Alliance to take their own defence decisions must be respected.

Many of us feel that the Conference should consider how to encourage the development of European operational capabilities, how to promote closer European cooperation in the field of armaments and how to ensure greater coherence of action in the military field with the political, economic or humanitarian aspects of European crisis management.

Against this background, many of us want to further strengthen relations between the EU and the Western European Union (WEU), which is an integral part of the development of the Union.

In this regard, several options for the future development of this relationship have already been suggested within the Group. One option advocates a reinforced EU/WEU partnership while maintaining full autonomy of WEU. A second option suggests that a closer link should be established enabling the Union to assume a directing role over WEU for humanitarian, peacekeeping and other crisis management operations (known as Petersberg tasks). A third option would be the incorporation of these Petersberg tasks into the Treaty. As a fourth option, the idea of a gradual integration of WEU into the EU has been supported by many of us: this could be pursued either by promoting EU/WEU convergence through a WEU commitment to act as



implementing body of the Union for operational-military issues, or by agreeing on a series of steps leading to a full EU/WEU merger. In the latter case, the Treaty would incorporate not only the Petersberg tasks but also a collective defence commitment, either in the main body of the Treaty or in a Protocol annexed to it.

In this context, the idea that the IGC examines the possibility of including in the revised Treaty a provision on mutual assistance for the defence of the external borders of the Union has been put forward by some members.

It will be for the Conference to consider these and other possible options.

Europe and democracy are inseparable concepts. To date, all the steps in the construction of Europe have been decided by common accord by the democratic governments of its Member States, have been ratified by the national parliaments and have received popular support in our countries. This is also how we shall construct the future.

We realize that this reflection exercise by the Group is only one step in a public debate initiated and guided by the European Council. We hope that this public and joint exercise between our nations will lead to renewed support for a project which is more than ever necessary for Europe today.

## **Part Two: An Annotated Agenda**

### **I. Reform of the European Union: A commitment to the future**

#### **A. Why reform?: Mandate and challenges**

1. In addition to the **mandate** contained in the treaty on European Union (TEU) and the commitments subsequently entered into by the Council and the European Councils, all of which were aimed either at completing the work of Maastricht or at dealing with specific institutional issues raised as a result of the most recent enlargement or preparing adequately for the next one, there are further **substantive reasons** for holding the 1996 Intergovernmental Conference (IGC 96).

The Group has identified two fundamental reasons, namely **improving the functioning of the Union** on the one hand, and, on the other, creating the conditions to enable it to cope successfully with the **internal and external challenges** facing it, and notably the next **enlargement**.

The mandate of the Conference

2. The mandate of the 1996 Conference, the legal basis for which is Article N of the TEU, was in part set by the **treaty** itself and its accompanying Declarations. Hence:

- The fifth indent of Article B makes clear that, to maintain in full the "acquis" communautaire and build on it, the Conference will have to analyse to what extent "the policies and forms of cooperation introduced by this treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community";
- Article 189b(8) provides for a possible extension of the codecision procedure to other areas;
- Article J.4(6) and Article J.10 provide for possible revision of the CSFP "with a view to furthering the objective of this treaty and having in view the 1998 deadline laid down in the modified Brussels treaty of the WEU".
- Declaration No 1 sets out the possibility of introducing energy, tourism and civil protection as new titles into the treaty establishing the European Community;

- Finally, Declaration No 16 requests that consideration be given to the question of introducing a hierarchy of Community acts into the TEU.

3. In the framework of the **negotiations for the accession** of Austria, Finland, Norway and Sweden, various institutional issues arose which were dealt with at the **Brussels European Council**, in the "**Ioannina compromise**" and at the **Corfu European Council**. All those issues (reform of the institutions in general, including the weighting of votes and the number of votes for a qualified majority in the Council, the number of members of the Commission and "any other measures necessary to facilitate the work of the institutions in a spirit of democracy and openness and guarantee their effective operation with a view to enlargement") will also have to be dealt with at the IGC 96.

As a result of **inter-institutional agreements** between the European Parliament, the Council and the Commission, questions relating to budgetary discipline and procedure and the implementation of Community acts (committee procedure) have been added to the Conference agenda.

4. It goes without saying that this planned agenda is likely to be supplemented, in accordance with **Article N**, by other topics raised by the member States or the institutions. Notwithstanding that possibility, in the light of the experience acquired after the entry into force of the treaty on European Union, and taking into account the challenges and difficulties posed in particular by the prospect of further enlargement, the **Cannes European Council** felt that the discussion in the Reflection Group should focus on a number of **priorities** to enable the Union to respond to its citizens' expectations. These priorities are:

- to analyse the principles, objectives and instruments of the Union, with the new challenges facing Europe;
- to strengthen common foreign and security policy so that it can cope with new international challenges;
- to provide a better response to modern demands as regards internal security, and the fields of justice and home affairs more generally;
- to make the institutions more efficient, democratic and open so that they are able to adjust to the demands of an enlarged Union;
- to strengthen public support for the process of European integration by meeting the need for a form of democracy which is closer to the citizens of Europe, who are concerned about employment and environment questions;
- to put the principle of subsidiarity into practice more effectively.

The new challenges facing Europe

### **Internal challenges**

5. A key challenge facing the Union **internally** is the need to ensure that European construction becomes a venture to which citizens can relate.

Most Europeans consider that community integration is an invaluable asset, assuring peace in an increasingly unstable continent and prosperity in a global market. Nevertheless, the growing popular dissatisfaction with public matters in general affects also the European construction, partly due to economic, social, political and institutional reasons: a high level of unemployment, which is particularly serious in the case of young people and the longterm unemployed; environmental degradation; social rejection and exclusion; major changes in our demographic structures, which undermine the European social model; the crisis in the political contract between representatives and those represented; the European Union's growing complexity and the lack of information on, and understanding of, its *raison d'être*; finally, the worrying phenomenon of organized crime (drug trafficking, money laundering, terrorism).

As a result, there is a growing **call for public security** that cannot be met by States acting alone, and that is not receiving a satisfactory response from the Union. This is due to the gaps or shortcomings in the Union's mechanisms and to the lack of political will to remedy these.

### External challenges

6. Other major challenges are a result of the profound changes taking place **outside** the Union as the end of the century approaches.

The magnitude of some of the challenges which can only be met by adopting an equally broad, global approach is demonstrated by questions such as major political instability in the European region following the end of the cold war, despite greater overall security; strong migratory pressures which are particularly acute in Europe; risks of ecological imbalances which the Union and the member States cannot afford to ignore, etc., and an increasing globalization of the economy which highlights Europe's loss of some of the comparative advantages gained through its social and technological innovations.

### The challenge of enlargement

7. The next enlargement represents both a political imperative and a new opportunity for Europe, but at the same time it presents the Union with a major challenge requiring an adequate response:

- firstly, in the framework of the Intergovernmental Conference, through the reforms designed to improve the Union's functioning in general and institutional reform in particular;
- secondly, in view of the impact which enlargement will have on applicant countries and on the Union.

The next enlargement will be a great opportunity for Europe and will also be different from the previous ones because of the large number of applicant countries and the heterogeneity of their political, economic and social situations. To ensure that the next enlargement does not weaken, change the nature of or actually break up the Union, the reforms needed to cope with the challenges involved must first be made. The enlargement negotiations cannot begin until the 1996 Conference has been concluded satisfactorily. The success of the former thus depends on the success of the latter.

### The responses

8. As we have just seen, the new situation inside and outside Europe raises questions and requires the European Union and the Member States to provide responses which will ensure greater political stability while simultaneously allowing economic development and the proper social climate to be maintained within an open, global and competitive economy. In other words, responses which will enable the European Union to continue acting as a crucial factor for peace and prosperity on our continent.

Some of Europe's responses to these challenges have already been identified, as in the case of **Economic and Monetary Union**, achievement of which is a priority for Europe, as agreed in the Maastricht treaty and ratified by the national parliaments. The Group strongly feels that the EMU should carry on its process of implementation in accordance with what was agreed.

9. The **next enlargement** also constitutes a response to the challenges of security and political and economic stability in Europe. However, in order to achieve it, reforms of the Union are required in some areas and, very significantly, in the Union's institutions. Other possible responses have already been formulated, as stated in the introduction, by the treaty itself or by subsequent European Councils. It is the Reflection Group, however, that has been given the task of identifying and producing concrete proposals. The Group shares the points which follow.

10. As stated above, the Union's principal **internal** challenge is to reconcile itself with its citizens. Therefore, enhancing its legitimacy in their eyes has to be the prime task of the coming reform.

The achievement of this aim will depend on a **clear definition** of the Union's **objectives**, i.e. the joint goals sought, the **credibility of common policies and the cooperation machinery** designed to attain those objectives (or, to put it another way, the suitability of the instruments for the purpose of achieving the objectives set) and the preservation of the Union's **internal cohesion**.

- The Group has come to the conclusion that the coming reform must equip the Union with the necessary means to give priority to the problems which are of the greatest concern to the citizens of Europe. A majority of personal representatives include unemployment, **social exclusion, lack of internal security and environmental degradation** among the problems to be tackled as a matter of urgency.

- A further response to the challenge posed by citizens' alienation from the Union must be sought in a correct and systematic application of the principles of **democracy, efficiency, transparency, subsidiarity and solidarity** in the European Union.

Those principles should be put into practice through concrete measures, such as improved application of the subsidiarity principle ("who does what?"); Community legislation concentrating on essentials; promotion of competitiveness on a European scale; simplification (of texts and procedures); effective enforcement of the rights of the Union's citizens; promotion of equality between men and women; greater political responsibility for the Institutions combined with increased accountability on their part; the fight against fraud; greater transparency in the functioning of the Institutions, which should be given the means to take decisions with the broadest possible backing from citizens; and closer involvement of national parliaments in the Union's tasks.

- The mechanisms for maintaining **solidarity and cohesion** within the Union must also be adapted and reinforced.

11. On the other hand, the responses to the challenges posed by the profound changes which have taken place **outside** the Union, in the political and security context as well as in the economic and commercial sphere, need to be based on reinforcement of the instruments set up to achieve the highest possible levels of **external stability and security**.

- The key task here, therefore, is to take all the steps necessary to provide the Union with a genuine, **external identity** that will enable it to promote its values and defend its interests. This will clearly only be possible if the Common Foreign and Security Policy really functions, with full consistency being ensured between the political and economic aspects of the Union's external action.

- In view of the new challenges that have arisen with regard to security in Europe, it is also necessary to enable the Union to continue **moving towards** the eventual framing of a **common defence policy**, which might in time lead to a common defence.

## **B. Principles and objectives**

The objective to be achieved

12. A prime objective to be achieved can be established from a mere enumeration of the challenges and the responses to them: maintenance of strong European **integration and cooperation** in this new end-of-the-century context, as, together with the organizations responsible for European security and national policies, they are both a guarantee of peace and prosperity for the citizens of the Union.

The Group emphasizes that this guarantee of prosperity and peace is not perpetual and that it would be a grave error to underestimate the Community's main contribution to the Member States and their citizens,

namely a shared view of life that has ruled out war as a means of settling differences and has decided to follow resolutely the path of growth respecting the environment, competitiveness and employment, promoting stringency in public finances and in combating inflation as the best way to meet citizens' demands. The Group accordingly feels that the Conference must endorse and reinforce the Union's common objectives, which aim at peace and freedom, internal and external security, democracy, protection of the human rights and prosperity for the citizens of Europe and solidarity between them.

#### Flexibility, its rationale and its limits

13. The success of this evercloser Union among the peoples of Europe depends, as we have seen, on its ability to meet citizens' demands. However, it must also be based on common principles which must be reaffirmed. They inspire the **common core** which characterizes the Community as an entity based on the rule of law, and in particular involve:

- maintenance and development of the "**acquis communautaire**" as a whole, as provided for by Article B of the treaty. Maintenance of the "acquis communautaire" should not however prevent the necessary adjustments from being made in order to respond to new situations. Neither, as we shall see below, should it prevent flexible formulae from being found on a case-by-case basis and where necessary to enable new stages of integration to be entered upon at different paces, without the objectives of a common project being jeopardized in any circumstances;

- consolidation of a **single institutional framework** as the best guarantee for the consistency of the Union's action and a means of enabling the citizen to clearly identify those responsible for areas where the decisions taken clearly affect him.

It should be emphasized that respect for these two principles should constitute an adequate response to the growing need for consistency of action by the Union as a whole, irrespective of the outcome of the Conference on the options of a bicephalous Union/Community structure, division into treaty "pillars", or unification.

14. On the basis of this common core, the prospect of enlargement and the existence in the Union of differentiated integration arrangements, raises the question of **flexibility and its limits** in relation to the outcome of the Conference and the approach to be adopted to enlargement. An unequivocal answer to the question "What do we want to accomplish together?" will clarify what the reform is expected to achieve. If a common will is ultimately found to be lacking, that should not prevent those who wish and even need to make the Union progress from doing so subject to clear limits. It will have to be considered on a case-by-case basis and when necessary what should be the allowed flexibility that will make it possible for the Union to manage diversity without jeopardizing the "acquis" and the common objectives.

15. Therefore, the Group rejects any formula which could lead to an à la carte Europe. As regards the guidelines to allow flexibility, there is a large majority view sharing the following criteria:

- flexibility should be allowed only when it serves the Union's objectives and if all other solutions have been ruled out and on a case-by-case basis;

- differences in the degree of integration should be temporary;

- none who so desires and fulfils the necessary conditions previously adopted by all can be excluded from full participation in a given action or common policy;

- provision should be made for ad hoc measures to assist those who want to take part in a given action or policy but are temporarily unable to do so;

- when allowing flexibility the necessary adjustments have to be made to maintain the "acquis", and a

common basis should be preserved to prevent any sort of retreat from common principles and objectives;

- a single institutional framework has to be respected, irrespective of the structure of the treaty.

Several members, while agreeing with most of the above, stress that such flexible arrangements in the Union should only be possible when agreed by all, as in the past. Some members believe that, whereas such arrangements should in principle be temporary, they need not always be so, especially where they do not concern "core disciplines" of the EC.

16. It should be pointed out however that the degrees of flexibility admissible are different both under each of the three "pillars" and also in the case of the present Member States and those acceding on next enlargement:

- Whereas derogations must not be allowed in the Community "pillar" if they jeopardize the internal market and create discriminatory conditions for competitiveness, CFSP and some Justice and Home Affairs issues enable a greater degree of flexibility (see below, when treating those subjects ).
- The formulae applicable to the acceding countries should in principle be transitional arrangements based on consideration of their specific circumstances and can only be more closely defined when their respective accessions are negotiated. Nevertheless, a "critical mass" of "acquis" essential for accession has to be preserved in spite of any flexible arrangement.

### C. Context and timetable

17. The Conference is not an isolated event. It forms part of a broader **context** parallel to the Conference in some respects and subsequent to it in others. This context includes, inter alia, the following elements which will form Europe's agenda up to the end of the century:

- analysis of the impact of enlargement on policies and resources;
- renegotiation of the own resources system and the financial perspective for 2000 and beyond, depending on the previous point among other things;
- transition to the third stage of Economic and Monetary Union;
- debate on the WEU bearing in mind the 1998 deadline;
- negotiations on enlargement and its ratification.

18. The comprehensive examination of the best way to manage **Europe's agenda** up to the end of the century has been taken on personally by the members of the European Council, i.e. Europe's highest level of political leadership. All the above points, although having their own momentum, are clearly linked in one way or another to the reform of the Union; it will therefore be necessary to consider the relationship between them, so that they can be achieved without obstructing one another.

To sum up, only once the 1996 Conference has reached a satisfactory conclusion will it be possible for the other tasks to be tackled on more solid bases, although this does not prevent appropriate preparatory work from being carried out at the same time. The Group therefore considers that the Conference should start and conclude its proceedings in good time in order to enable the other important elements on the schedule to be dealt with properly.

19. We have already seen that **enlargement** is a response by the Union to the new challenges facing the continent of Europe. However, as we shall see below, it is also a challenge in itself. This is because of its threefold impact on an institutional system conceived for the six founding States, on the internal and external security of the Union and on the need to preserve and strengthen the Community as an entity based



on the rule of law. It is furthermore possible that enlargement will also have a definite impact on Community policies and give a new dimension to the problem of the Union's resources.

20. Therefore, the Group above all agrees in stressing that enlargement must take place but it has to be duly prepared so that it is successfully achieved. To avoid enlargement or have it miscarry would create a serious crisis not only in the applicant countries but also in the present Union.

Who will be acceding to the Union when enlargement takes place? It is clear that accession should be open to all European countries wishing to accede which comply with the criteria laid down at the Copenhagen European Council. Each case must be dealt with on its own merits during the negotiations. However, the aim of the Reflection Group is to identify the reforms desirable and sufficient to enable the Union to incorporate associated Central and Eastern European countries, including the Baltic States, Cyprus and Malta.

When? In accordance with the conclusions of the Essen European Council, negotiations with the associated States of Central and Eastern Europe, including the Baltic States which fulfil the above criteria, can only start after the Conference has ended. In accordance with those of the Cannes European Council, Cyprus and Malta will start six months after the end of the Conference taking into account its outcome.

How? The next enlargement will have to combine a global approach to meet common demands with flexible adjustment structures which make it possible in each case to adopt an appropriate time scale for the process of full incorporation of applicants into the present Union's common policies.

21. The question of whether and if so how common policies should be revised in the light of enlargement is not within the Group's mandate. There is, however, agreement on the need to maintain the "acquis communautaire" and build on it (Articles B and N) as a basic principle for the present Member States and as a major guide for the applicant countries. This should not prevent progressive implementation of the "acquis" by the applicant countries.

A broad majority of members of the Group favours the separation of the Conference exercise from the study of the impact of enlargement in relation to future development of common policies, for the following three reasons: firstly, a revision of policies does not require amendment of their respective legal bases; secondly, the effect of enlargement on common policies will not be immediate but will be spread over time in accordance with the model for enlargement which in general seems possible for the next set of applicants; finally, it is not appropriate to combine two such politically sensitive exercises.

Some members consider that the analysis of the impact of the enlargement on policies and resources should be developed simultaneously with IGC. One member stresses that, each of the EU's major tasks from now until the end of the century are aspects of the same overall strategy, the results of which will be judged with an assessment of all the efforts, concessions and opportunities involved in the common project.

#### **D. What kind of conference?**

The scope of the Conference. The need for transparency

22. The Group considers that the Conference should formulate **adequate responses** to the above challenges. This means that on top of improving the present functioning of the Union it must make the reforms necessary to incorporate into the Union a greater number of Member States than was the case in earlier enlargements. The forthcoming enlargement will make the Union much more heterogeneous than at present as regards differences in size of countries, variety of languages, disparity of income levels and differing sensitivities with regard to Foreign Policy or Justice and Home Affairs.

The Maastricht treaty foresees a specific scope for the Conference. As seen above, this scope has subsequently been enlarged at various European Councils. The Heads of State or Government have identified the need to make institutional reforms as an important issue of the Conference in order to improve

the efficiency, democracy and transparency of the Union. According to these elements, the Group has convened that the scope of the Conference should be **targeted** to deliver the **necessary results** without opening a general revision of the treaty.

23. The Group favours **comprehensive** treatment of all the Conference issues **as part of a single exercise**. A single Conference keeping a general vision of the essential issues and which is not split seems the most appropriate method of achieving consistent results able to cope with challenges facing the Union.

24. It should also be emphasized that the necessary results can be achieved by **amending the Treaties** and also by **improving** the Union's **procedures and working methods**. The Cannes European Council has recommended the Group to bear in mind the advantages of seeking improvements in the working of the Institutions that do not require any amendment to the Treaties and can thus enter into force without delay. It should be pointed out, however, that in the report often the proposals for practical improvements refer to matters that, according to alternative options, should be subject to treaty reforms. The choice between them is not of technical but political nature, since they express a different level of political ambition for the Union.

25. It is also considered that the proceedings of the 1996 IGC should be as **transparent** as possible. The concerns of the Institutions, the organizations representing civil society and the future applicants must be given an appropriate hearing. The public must also be provided with all important information enabling it to follow closely a discussion which is directly relevant to citizens' fundamental concerns. This is essential, not only so that citizens can feel that they are participating in the construction of Europe but also because their opinions are essential for carrying out the reform.

26. The Group is aware that, if citizens consider the reform inappropriate or insufficient or feel that they were not involved in it by means of adequate information, it will run the risk of not being approved. As the reforms resulting from the Conference are an essential part of Europe's agenda until the end of the century, the Group stresses the importance of holding a **Conference** the content and course of **which meets the expectations** on the basis of which it was convened. We consider that there is therefore an obligation to achieve sufficient results, and this obligation must be met by the Parties to the Conference.

27. In the light of the above points and of its mandate, the Group considers that the Conference should confine itself to its own specific aims, namely realizing the (legal or practical) reforms to enable the Union to meet the current challenges facing Europe, continuing and building on the achievements of Maastricht and preparing the ground for the forthcoming enlargement.

The Conference will moreover form part of an open process. It is an important step in the process but will certainly not be the last. The Union will continue to develop in the future after the 1996 Conference.

28. Against this background, the Group without seeking to limit the Conference's sovereign power, recommends that results should be achieved in three main areas:

- **Making Europe more relevant to its citizens;**
- **Enabling the Union to work better and preparing it for enlargement;**
- **Giving the Union greater capacity for external action.**

## **II. The citizen and the Union**

29. The Group considers that a key element, not only for an understanding of the reasons for reform of the treaty but also in order to guarantee the success of the Conference, is to place the citizen at the centre of the European venture by endeavouring to meet his expectations and concerns, that is to say, to make Europe the affair of its citizens. Therefore, **servicing the citizens interests and perspectives** for the future should be the main **guiding principle** for the envisaged reform.

30. The Group believes that there are European common values that the Union should protect and promote. They are the basis of our democracies, of our security and are also present in the feeling of belonging in the citizens. Essential elements are to be found in respect for fundamental rights, non-discrimination, clarification of the rights and obligations of both citizens of the Union and third-country nationals in the Union. Furthermore, the citizens' concern about greater security, employment, environment, transparency and a Union closer to them should be properly taken into account by the Union. This is all developed under this heading.

## A. Promoting European values

### Human rights and fundamental rights

31. A basic approach in this area would, in the first place, consist in spelling out the general principle of respect for **fundamental rights** laid down in Article F.2 and making it more workable. This principle clearly applies "erga omnes", i.e. covers all persons within the Union whether citizens of the Union or citizens of third countries.

32. In this connection reference has been made by some to the possibility of expressly including in Article F2 an obligation of the Member States to respect human rights and fundamental freedoms and add that non-compliance would prompt the Union to take suitable action. Such an explicit statement would enhance the Union's image as a community of shared values. It is important to ensure this both for present members and for those who will accede at the next enlargement.

33. It is generally felt within the Group that during the current process of European construction, and above all in the run-up to enlargement, there is an urgent need to ensure full observance of fundamental rights, both in relations between the Union and the Member States and between States and individuals. The majority opinion within the Group is that an Article should be inserted into the treaty providing for penalties which could go as far as **suspension** of the rights inherent in membership in the case of any State which commits a serious and repeated breach of fundamental human rights or basic democratic principles. Reference was even made to the possibility of **expulsion**.

However, most representatives were wary about agreeing to such a possibility as they thought it would be unnecessary if suspension of rights achieved the desired effects and felt there might be a danger that this would call into question the irreversibility of membership of the Union.

34. As for the possibility of **complaints by individual natural persons** concerning human rights, the great majority of members of the Group makes the point that there is at present an inconsistency in the fact that, while the Member States are subject to the monitoring mechanisms of the European Convention on Human Rights, the Institutions of the Union and Community law remain exempt from such control. The protection of individual human rights has hitherto been ensured solely by the Court of Justice in Luxembourg.

It is a widely held view within the Group that the Union, if it takes on legal personality, or the Community at any rate, **should accede to the European Convention on Human Rights**. It is recalled here that the Court of Justice has been asked for an opinion on this question.

Opposing this majority feeling, some members regard Union or Community accession to the European Convention on Human Rights as unnecessary.

35. Independently of the above, some members point out the advantages of including a **Bill of Rights**, either in the enacting terms or in an Annex or in the Preamble. The Group has looked at a comparative study of fundamental rights guaranteed in the Member States, which was made by the Council Secretariat and shows the technical difficulties of such an exercise despite the fact that all Member States guarantee the protection of human rights on their territory.

At European Union level, from the point of view of **individual protection**, it is felt by those members that only accession by the Community to the European Convention and/or inclusion of a Bill of Rights in the enacting terms would confer additional protection either by the Luxembourg and Strasbourg Courts in the first case, or only by the Luxembourg Court in the second.

It has also been noted that the implications for the Union of the various proposals in relation to fundamental rights will need to be carefully studied by the Conference.

Some members do not see the usefulness of including a Charter of Fundamental Rights in the treaty, since all Member States already guarantee such rights on their territory.

An intermediate view would accept inclusion in the preamble to the treaty - thereby producing no direct legal effects but obtaining a high political profile - of a catalogue of the rights and obligations of the citizen compiled by bringing together all those scattered throughout the various provisions of the treaty.

36. A large majority of the Group stresses the need to incorporate in title VIII of the EC treaty the Social Agreement as an expression of common European values so that a proper social climate may accompany economic integration. One member will not agree with that incorporation, since he believes it will reduce competitiveness.

37. Some members of the Group referred to other forms of recognition in this area. Among such ideas was the possibility of including in the treaty socioeconomic rights and more specifically incorporating the **European Social Charter**, the right to **employment**, the right to a **healthy environment**. Even the idea of including in the treaty the prohibition of the **death penalty** has been suggested by some members.

38. Various representatives also proposed that the citizens of **third countries** established in the Union be given a special **status** with certain rights (right of free movement and right of residence). Some members have made it conditional upon the existence of a common immigration policy.

#### Non-discrimination

39. With a view to the Union embodying European common values further, the Group analysed the following possibilities:

- A general clause prohibiting discrimination (in addition to the one prohibiting discrimination on grounds of nationality in Article 6) extending beyond nationality notably to grounds of gender, race, religion, disability, age and sexual orientation.
- The strengthening and extension to all areas not just of equal pay for equal work pursuant to Article 119, but also of the general principle of **equality between men and women**, which should be formulated positively in the treaty and not simply as a result of prohibiting discrimination. In this context some members favour a reference in the treaty regarding the integration of a gender perspective in all policies and programmes in the Union.
- Express condemnation in the treaty of **racism and xenophobia** (including explicit reference to **antisemitism**) and **intolerance** by means of a provision similar to the one proposed in 1993 by the European Parliament.
- Special consideration for disabled persons both by referring to them in the nondiscrimination clause in Article 6 of the TEU and by a provision in one of its chapters. In the latter case, some feel that a safeguard clause should be provided making it possible to limit any disproportionate economic consequences which might derive from such a provision.

All these options received majority support within the Group subject to a more detailed assessment of their

legal and economic implications by the Conference. One member, however, felt that new or increased Community references in these sensitive areas were unnecessary, and that such rights were best secured in a national context.

### Citizenship of the Union

40. The Group notes that introduction into the TEU of the principle of citizenship of the Union - in addition to and not instead of national citizenship - by Article B, third indent, and its development in Articles 8 to 8e was intended as a response to the need to involve citizens more closely in the process of European construction. However, it also recognizes that this purpose was viewed differently in the various Member States; while in most of them the concept of citizenship increased the feeling of belonging to the Union, in some, by contrast, it was not readily understood that citizenship of the Union was intended to be complementary to, rather than to replace national citizenship.

41. It is logical that this variety of situations should be reflected in the Group's attitudes.

- The broad majority of the Group regards citizenship of the Union as an essential aspect of making the treaty acceptable to European public opinion, and they therefore strongly support its development. This could be achieved, for example, by deepening the **specific rights** of citizens of the Union already included in the treaty (achieving unrestricted freedom of movement and residence, completing diplomatic and consular protection in third countries), by the inclusion of new rights, and also through simplification of the treaty articles relating to citizenship. A specific right to information on Union's matters and how it functions should be granted to the citizens.

- Opposing this majority view, some members point out that citizenship of the Union is perceived as a threat to national identity in some Member States and that they do not think it appropriate to develop either the content or the essence of the concept.

- The Group suggests that the treaty should make it even more clear that citizenship of the Union does not replace national citizenship.

42. Some members have drawn the Group's attention to the positive effects on the feeling of belonging which would be achieved by **abolishing use of the passport** for the purpose of crossing its internal borders.

43. The Group also discussed the idea of a European voluntary service "**peace corps**" for humanitarian actions. A sizeable majority of the representatives favour this in principle and note that it would foster a feeling of solidarity and belonging to the Union among young people. A proposal was also made by some Members that the peace-corps' tasks include assisting Member States to deal with major natural disasters in the Union (floods, fires, earthquakes, etc.). The point is, however, made that the procedure for implementing such an idea might raise difficulties which would have to be resolved but which the Group could not discuss in detail.

### Public service utilities

44. A majority is in favour to consider during the IGC the reinforcement of the concept of **public service utilities** ("services publics d'intérêt général") as a principle supplementing market criteria. It has been pointed out that in modern economies, a number of services (such as the supply of electricity and water, postal services, education, telephone and some forms of public transport) are supplied on the basis that they must meet certain criteria such as universal availability which should be guaranteed irrespectively of the public or private nature of the supplier. Therefore it is the consumer's access that should be protected instead of the nature of the supplier. According to some members the treaty should contain better and more complete provisions concerning the role of public services and services of general interest so as to guarantee that competition does not affect the availability, the quality and the universality of the services provided to the citizen. Others believe that the general interest would best be served by maintaining the existing

provisions of the treaty which, they believe, ensure an appropriate balance between competition policy and the needs of public service utilities.

## B. Freedom and internal security

### General considerations

45. Consolidation of internal security within an area of free movement without internal frontiers is one of the principal challenges currently facing the Union. Accordingly, as requested by the Cannes European Council, the Group has given priority to this aspect. Thus:

- the Group considers that there is a clear demand on the part of the public for **greater security** for citizens within the Union in the face of phenomena such as terrorism and other forms of organized crime (drug trafficking and others);
- it is also felt that, in the context of a single market, an open society and the abolition of the Union's internal frontiers in accordance with the treaty, the State, acting in isolation, cannot fully guarantee the internal security of its citizens since such phenomena clearly have an international dimension. There is an obvious contradiction between the effective international organization of such crime and the national character of the main instruments used to combat it, which explains their limited effectiveness;
- citizens are also calling for better handling of the challenge posed to the Union by the growing **migratory pressures** to which it is subject, and whose size and diversity demands common management. The exploitation of illegal immigrants is a problem which should be countered by action on a European scale;
- finally, the prospect of forthcoming enlargement implies a qualitative change in the need to guarantee the internal security of citizens of the Union more effectively.

### Critical analysis of cooperation in the fields of justice and home affairs

46. In view of the above, the Group has analysed the provisions and operation of **Title VI of the treaty** and, whilst recognizing that JHA cooperation has been in force for a very short time and has been a step forward compared with the previous situation, it has concluded unanimously that the magnitude of the challenges is not matched by the **results** achieved so far in response to them.

47. A broad majority, while admitting the influence of a lack of running-in of this new Title and of the largely inter-governmental component of the matters regulated by it, consider that neither these nor the alleged lack of political will alone explain the scant results in this area. The problem is rather that some provisions of this Title are inadequate and clearly deficient in operation, as stated in the reports by the Commission and the European Parliament on the operation of the treaty.

However, some members referring to political difficulties in giving up national sovereignty in this area have pointed out that the lack of progress is not necessarily attributable to the intergovernmental nature of cooperation and that improvements in the present complex structure could solve many of the present problems.

48. For the great majority there is a threefold explanation for this state of affairs:

- Lack of **objectives** and of a timetable for achieving them. Instead of placing emphasis on consolidation of an area of freedom and security in which there are no internal frontiers and where persons can move freely - the goal at which all action should be targeted - Article K.1 merely lists areas of common interest.

Definition of the objectives pursued would allow the specification of needed means and actions with greater accuracy. This would clarify for citizens any doubt which might currently exist on action contemplated or on



the final goal sought. Furthermore, the limits of the various common interest areas are not clearly differentiated from Community powers aimed at the same objective (e.g. free movement of persons). This entails an overlapping of actions and a risk of "contamination" between "pillars". The possibilities for improvement ("passerelle") have proved ineffective. In fact, the unanimity rule and the need for national ratification make the "passerelle" very difficult to use.

- Neither are the **instruments** of this Title, which are similar to those of Title V except that the nature of the subject matter is very different, regarded as appropriate: external policy is rarely normative and requires flexibility of action, whereas matters relating to the security of citizens require legal protection and, therefore, a legislative framework. Still, some members consider that joint action may prove a specially useful instrument in certain cases. Others state that directives could adapt well to the JHA sector. It is also pointed out that Conventions are put through an extremely slow approval procedure and that it would be helpful if they could enter into force between Member States that have ratified them once a certain number of ratifications has occurred.

- Finally, the same majority considers that a true institutional driving **mechanism** is lacking. Complex working structures, spread out over five different negotiating levels - one sometimes being superimposed on the other, thereby contributing towards the blocking of decisions - are not - and here the view coincides with that of the minority group - the most appropriate instruments for making progress in this area.

### Ways of achieving greater efficiency

49. For the large majority, the Conference should improve the objectives and the instruments in this area of the treaty. Many members favour a pragmatic approach in order to identify where there is need of further use of common institutions and criteria (Commission's non-exclusive right of initiative, control by the European Parliament and the Court of Justice, use of the majority rule in some instances, without prejudice to the appropriate use of unanimity in particularly sensitive areas) and where the full use of Community competence is required:

- These members consider that the field of police and judicial cooperation, both civil and criminal, must be developed by means of closer intergovernmental cooperation, at least for a certain period. In the meantime, within the Union serious consideration should be given as to whether it should henceforth be considered admissible to exempt "political" crime from extradition between Member States and it might be useful to lighten the procedure provided for in Article K.9 ("crossover"). There has also been a suggestion that a specific legal basis be incorporated in the treaty to enable actions to combat drug trafficking. It has further been pointed out that it would be desirable for Member States' penal codes to include a harmonized rule classifying **fraud** against the Community budget as an offence punishable by comparable penalties.

Better cooperation on those lines requires improvements to legal instruments (conventions can be too unwieldy; in some cases, they should be replaced or allowed to enter into force once ratified by a majority) or to the role of the Institutions (generalized - but shared - initiative for the Commission, consultation of the European Parliament and judicial control by the Court of Justice).

- Also, within this tendency, many members agree in identifying, as an area which ought to be brought under Community competence, everything to do with the crossing of external frontiers: **arrangements for aliens, immigration policy, asylum** (ruling out asylum among citizens of the Union) and **common rules for external border controls**. Moreover, since other aspects of the crossing of external frontiers, such as the format for visas and the common visa list, are already addressed under the first "pillar", it is thought that introduction of Community control would give greater coherence of the Union's external action in this area, an essential requisite for effectiveness in these matters.

50. Others believe that the current separation of "pillars" is essential in order to respect intergovernmental management of these matters that are so closely linked with national sovereignty. For them, consequently, the principal way of improving the operation of Title VI is to find practical improvements which reinforce cooperation.

51. The entire Group agrees on the need to reduce the number of preparatory levels, and many also urge the need to strengthen the General Secretariat of the Council in these areas.

52. The idea has been put forward that the European Union should explore ways of cooperating on more structured basis with Council of Europe in the fight against drugs.

53. The Group agrees that the national parliaments and the European Institutions should intensify their relations on justice and home affairs. It has been suggested in this connection that COSAC or an ad hoc interparliamentary commission could facilitate the exchange of parliamentary information on the subject. The idea of a High Consultative Council made up of two representatives of each of the national parliaments was also presented as having a special value for this area.

54. Various members of the Group propose the incorporation of **Schengen** into the European Union by means flexible arrangements (see above, chapter I.B). Others consider this to be examined in view of the Conference progress on Justice and Home Affairs.

55. As regards the arrangements for aliens, some members, as indicated in the previous section, would like to see the Union introduce a common status for legally **resident** thirdcountry nationals, whilst others point out that this would require the precondition of an overall common immigration policy.

### C. Employment

56. The Group stresses the urgent need to meet the challenge of **job creation**, in response to a pressing demand from Europe's citizens.

57. Increased **competitiveness** - which is encouraged by Europe's integration - is the key to job creation. However it must be acknowledged that, on the one hand, this takes place above all through enterprises located at local level; on the other hand, States continue to be the bodies mainly responsible for ensuring economic and social cohesion and helping people living on the fringe of society. This being so, the Union cannot ignore the economic and social effects of national policies. Although the Union sees no miraculous cure for unemployment, it can coordinate and mobilize efforts in a common direction. The Group therefore considers that it must continue to follow the course set out in the White Paper on Competitiveness and in the process for examining the employment problems which was initiated after the Essen European Council and which has already been the main item on the agenda of the latest European Council meetings.

It is also agreed that employment is not nowadays a sectoral policy but an objective which must be strengthened and also the global result of the Community's policies. In this context, Article 2 of the TEC states that the task of the single market, EMU and all policies is to promote a high level of employment and of social protection. There are currently several policies which may make a particular contribution to that endeavour, in particular policy on competition, the environment, structural funds, education and research.

It is therefore considered appropriate that the Commission, ECOFIN and the Social Affairs Council should continue to follow the recommendation that they devote special attention to this subject. Their monitoring, coordinating and commonly reporting work should result in a framework for common strategies and strengthening of the Union's economic and social features, reflected in the broad guidelines of economic policies as referred to in Article 103 of the TEC.

Some members suggest that competitiveness should be mentioned in Article B of the treaty.

58. A large majority of the Group propose that the objective of job creation be strengthened in the legal bases for the above mentioned policies. In any case, many members consider that the Community should carry out an efficiency audit of its proposals and of the implementation of its policies to determine their job-creating capacity in accordance with Article 2.

For some members, job creation should be included among the tasks referred to in Article 3 of the treaty.

59. Several members go further and support inclusion in the TEU of a chapter on employment policy. In this view, according to some a Committee on Employment with the same rank as the Monetary Committee should be created to monitor the effect of Union policies and funds with regard to the impact on employment. This would imply the development of the Union's economic and social integration in full respect to the EMU provisions.

60. From an opposite view, some members do not consider that introducing new employment policy provisions into the treaty is either necessary or that it would help to improve competitiveness or job creation; they underline that job creation is the result of greater competitiveness, flexibility of the economy and reducing bureaucratic burdens. They further believe that employment policy is a matter for Member States to decide in the light of their individual circumstances. In this view, at the Union's level, job creation should be a matter for practical improvements of the ways and means to coordinate national policies.

#### **D. The Environment**

61. With regard to the **environment**, the Group stresses the pressure being brought by public opinion for greater respect for the limits imposed by the environment and sustainable development.

62. Some members have pointed to the need to state more clearly that environment and sustainable development are priority objectives of the Union. Hence, environmental considerations should be integrated with other sectoral policies, e.g. agriculture in terms of environmental conservation. The Group thinks priority should be given in the Conference to taking account of the environmental dimension in Community policies.

63. A number of possible proposals have been made within the Group in this context: incorporation in the treaty of the agreements reached at the Rio Conference so that Community policies are geared to a sustainable development; possible inclusion of the environment in Article 36 of the treaty (restrictions on imports), Article 39 (objectives of the common agricultural policy), Article 74 (transport), Article 129b and the following Articles (trans-European networks), and consideration of extending the possibilities offered to the Member States by Article 100a(4) for laying down higher national standards; more involvement of the EP through codecisions on these matters; inclusion in each proposal of an environmental impact assessment.

64. From another point of view, it has been pointed out that a large part of environmental legislation in each Member State is of Community origin and that in the first place the considerable body of legislation already in force should be properly implemented. Means to strengthen implementation and enforcement should be considered, without necessarily reforming the treaty. In particular, the Conference should examine how to improve the capacity of the Union to act more efficiently and to identify whenever that action should remain within the Member States.

65. A majority of members is prepared to consider extensions of qualified majority voting system in this area. However, some members pointed to the limits which application of the principle of sufficient means should impose if the exceptions to qualified majority voting in this area were to be abandoned. Stress was also laid on the quasiconstitutional nature of such exceptions in that they affect areas highly sensitive for the sovereignty of the Member States or have major financial implications at national level.

66. In connection with the environmental concern, one member suggested the idea of strengthening the nuclear safety provisions of the Euratom treaty. One member suggested the inclusion in the treaty of a reference to the gradual phasing out of the use of nuclear energy. However, it was noted by others that nuclear energy actually provided up to 75% of some member States' energy supply and that it is seen by many of their citizens as the cleanest way of producing energy.

#### **E. A more transparent Union**

67. The Group agrees on the need to make Union affairs more accessible and comprehensible to the general public. The concept of "transparency" serves that purpose and covers different aspects (many of which do not require any amendment to the Treaties):

- The Group has examined the possible **simplification and clarification** of the workings of the Institutions and recommends that institutions make better use of **publicity, information and consultation** methods, paying special attention to facilitating the work of national parliaments. There should be more advanced notice of **Commission proposals**. The Group favours the practice of issuing "Green Papers". It is further thought that the increasingly frequent use of **Interinstitutional Agreements**, which are recognized by all to be useful, should be accompanied by appropriate general dissemination and public notification of their contents.

- Application of the principle of subsidiarity contributes to increase transparency. (see below).

- Changes in the **Council's** organization and working methods will have to take into account, inter alia, the aim of greater transparency. Here, in addition to the question concerning the **publicizing** of the Council's activity, it is recommended that individuals be allowed more **information** and the **clarity and quality of legislative texts** be improved. Various members have referred to recommendations on this point in the Koopmans Report which they feel to be relevant.

- Some representatives are in favour of inclusion in the TEU of the general principle of **access to documents** of the Union. They think that guaranteeing this principle by secondary legislation or political undertakings would not be sufficient and that there is a need for a legal basis in the treaty so that citizens and national parliaments are assured of more direct access to such documents. Others prefer to maintain and develop this principle through a Commission and Council Code of Conduct.

68. The Group also feels in general that it is necessary to **simplify** as far as possible the actual text of the **treaty** so that its contents are clearer, easier to understand and therefore accessible to citizens interested in examining and studying it. To this end, the Secretary General of the Council has upon request of the Group presented a paper on possible ways of simplifying and clarifying the text of the treaty without altering its contents.

An initial examination of this interesting report has led the Group to the following two conclusions:

- On the scope of the operation to be carried out, all representatives could agree, on a minimal simplification process involving deletion of all obsolete provisions and the renumbering of Articles. Some members do not think it advisable or appropriate to go beyond such simplification, as it seems unlikely that this could be achieved without altering the substance or balance of the treaty. However, the majority favours more sweeping options which deliver as a result a simpler treaty. Those options mean a reform of the structure of the treaty that only the Conference can decide.

- Therefore, the discussion on simplification of the treaty is not a technical matter which can be separated from a decision on its contents. However, a working party answerable to the Conference could examine the issue of formal simplification, and its conclusions together with those on the substance could be the subject of final agreement at the Conference.

Some members insist that if there is to be that working party, its mandate should be decided as soon as possible.

## F. Subsidiarity

69. The Group stresses the importance of correct application of the principle of subsidiarity and proportionality enshrined in Article 3b of the treaty and confirmed by an Interinstitutional Agreement on its implementation.

Subsidiarity imposes not only a legal but also a behavioural obligation.

Correct application of this principle must avoid two misuses: that of subsidiarity remaining an abstract principle without practical effect and that of it becoming in practice an instrument for systematically limiting the powers of the Union. It is felt that the principle of subsidiarity should serve as a guide to the proper exercise of the powers shared between the Community and the Member States and avoid their misuse either to excess or the contrary. Subsidiarity cannot be used as an excuse for lack of solidarity or for the renationalization of common policies. Nor can it be an alibi for systematically increasing the Community's tasks. For these reasons, most members of the Group do not feel it advisable to amend Article 3b of the treaty but think it necessary to ensure that it is properly exercised in practice.

70. It is also thought by some members that there is a need for more effective control over application of this principle by those **Institutions** responsible for watching over the Treaties: the Commission by "ex ante" control and the Court of Justice by "ex post" control.

In this sense various representatives have insisted that on the basis of the **Edinburgh Declaration** a Protocol on subsidiarity should be incorporated to the treaty.

Also, one member proposes stepping up control on subsidiarity through a new legal procedure for the national parliaments before the Court. Others favour further political supervision. In this context, it has been suggested to increase the "ex ante" control through the consultation of a **High Level Advisory Committee** consisting of two members of each national parliament, which would report on whether subsidiarity is being correctly applied. Furthermore, the idea was recalled that when the **Council** receives Commission proposals and before it examines the substance, it should first decide whether the proposal correctly applies subsidiarity, but, the majority of members consider that the Council's decisionmaking mechanism should not differ from that applied to the substance of the proposal.

One member has suggested introducing into the treaty a provision **limiting** any regulatory excesses and providing for more systematic use of clauses which expressly limit Community powers, as is at present the case with education, health and cultural affairs.

71. A very large majority within the Group is opposed to the request made by the **Committee of the Regions** in its report that it be authorized to bring proceedings before the Court of Justice for incorrect application of the principle of subsidiarity. They believe that it is not a task for the Committee of Regions to interpret the application of the principle of subsidiarity to the powers shared between the Union and the States.

72. Various members have put forward the need to strengthen the **principle of sufficient means** in the treaty as a way of moderating the exercise of the Community's powers. This principle does not pursue Community financing for every Community decision which creates costs for one of its Members but should imply "ex ante" control of proposals so as to prevent the Union from deciding intolerable financial obligations against the will of those States which would be obliged to fund them from their national budgets. The principle of sufficient means looks for consistency between the ambitions of the Union's proposal and the constraints on the Member State provider of funds.

73. Some members have stressed that correct application of subsidiarity and appropriate recognition of the principle of sufficient means could facilitate the transition from unanimity to qualified majority in areas such as education, environment or social policy.

### III. An efficient and democratic Union

74. The objective of the 1996 reform, as defined in the terms of reference and given the challenge of enlargement, is to ensure that the Union functions efficiently and with legitimacy; in short, the purpose is to **improve the quality** of the way the Union works. To this end it will be necessary to clarify its objectives



and refine the instruments that serve those objectives, bearing in mind that in future the intention is not that the Union should necessarily have more powers but that it should perform its tasks better.

75. The instruments of the Union, that is to say its institutions, rules, resources and policies, are not ends in themselves but are there to serve the objectives and tasks of the Union. The aim of the reform must be to ensure that the adjustments decided at the Conference will enable the instruments of the Union to operate according to the criteria of **efficiency, democracy, solidarity, transparency and subsidiarity**.

76. The richness of the Union's natural diversity, transparency and greater participation by national parliaments, and the legal security of a Community on the rule of law require strict observance of equal treatment of the Union's official languages on the part of the institutions. This behaviour obligation should be reinforced without amendment of the treaties.

77. The 1996 reform must adjust the instruments of the Union so as to guarantee the improvement in their operation in the Union as it is now and in the Union that emerges from **next enlargement**. The reform is already necessary now, but the prospect of enlargement makes it imperative. The results of the Conference will have to be judged in this light.

## A. The Institutions

### General considerations

78. The Group considers it necessary that the institutional reform should consolidate the **single institutional framework** throughout the Union treaty, whatever its structure may be. It is also the common view of the Group that the Union does not need to create new Institutions.

79. The Group also considers that the reform of the institutions must observe the overall **institutional balance**, in accordance with the specific character of the European Union. This is consistent with the adaptation of the institutions to new circumstances and needs - especially to the increase in the number of Member States - after enlargement, with their strengthening and with a better definition of their respective functions.

80. The prospect of the forthcoming **enlargement** makes it a matter of urgency that institutions designed for the six founding States of the Community be adapted, so that they can emerge from the Conference with renewed legitimacy: the more efficient and transparent the institutions of the Union are, the more support they receive from our citizens, the greater the benefits of all kinds that will flow from the Union to Europe and its citizens. An inappropriate or inadequate reform, on the other hand, would imperil the very nature of European integration. For this reason the negotiations for the accession of the applicant countries should not commence until the Conference has been concluded, as the European Council has pointed out.

### The European Parliament

81. **Composition:** It seems appropriate to fix a maximum number of seats. A majority accept a maximum of 700 in an enlarged Union, as the European Parliament itself proposes in its report. It has also been suggested by some members that there should be at least enough members to ensure that major political forces of each Member State have the possibility to be represented.

82. **Uniform electoral procedure:** It has been recalled by the Group that Article 138(3) provides for the establishment of such a procedure in all Member States. Some members propose that this legal basis should be changed to help achieve this objective and that a final date be established for its application. Others do not consider such amendments necessary.

### Legislation:



83. The EP's legislative initiative: The Group considers that the right of request established in Article 138b is broadly sufficient. Some members nevertheless point out that this Article should require the Commission to reply to the European Parliament's request.

84. **Legislative procedures:** The Group is in favour of reducing the variety of procedures currently in force under the treaty, and a large majority proposes its reduction to three: **co-decision, assent and consultation**. Some members note that this should not imply a change of the present institutional balance.

85. Some members propose that **assent** should be applied where the Council decides with unanimity, specially in treaty changes (article N), own resources, article 235 and Third Countries' agreements.

86. The Group feels it is appropriate to improve and simplify the **codecision** procedure without changing its nature. A large majority is in favour of extending it. Most would extend it to all legislation adopted by the Council by qualified majority. Another view focus extension to the matters currently dealt with by the cooperation procedure, whereas others suggest a case by case approach.

One member, in principle, opposes any extension.

87. **Budgetary function:** (see below under **Resources**)

88. **Political control:** As regards the role of the EP in the appointment of the Commission, several members see that the current approval procedure of Article 158, applied for the first time to the present Commission, represents a satisfactory balance that should not be changed. Others would prefer the EP to elect the President of the Commission from a list proposed by the European Council. (As regards political control of the Commission, see below **Commission**).

89. **Executive control:** A distinction should be made here between executive powers exercised by the Commission and those exercised by the Member States in implementation of Community law. Most members consider it appropriate to increase the EP's and the Ombudsman's powers in **combating fraud** and, in general, in monitoring the executive powers of the institutions.

90. **Role of the EP under Titles V and VI:** (see under "Freedom and Internal Security" and "Common Foreign Policy").

National parliaments

91. The Group considers that the national parliaments' principal role in relation to EU decision-making lies in the monitoring and **control** that each parliament exercises over its government's action in the Council. The procedures for exercising these powers are not a matter for the Union but are for each State to organize.

92. The Group also recommends that the role of national parliaments be fully respected. Therefore, national parliaments should be provided with all the necessary information of the Union and its institutions. The Group feels that the Community and the Union must not act "by surprise". Rather, an improved process of prior consultation and transparency is required, the central pivot of which must be respect for the role played by each national parliament in shaping the will of each Member State in regard to Union matters. In consequence, the institutions, specially the Commission and the Council, should conduct their work so as to facilitate the task of national parliaments. This could be reinforced by amending the treaty and/or adopting an appropriate code of conduct, so that each national parliament receives **clear and complete** documentation in its official **language** adequately **in advance** (four weeks has been mentioned) on every substantial Commission legislative proposal enabling each parliament to examine and discuss it before it is discussed and decided on by the Council.

93. As for relations between the European Parliament and the national parliaments, the points contained in

**Declaration No 13** of the treaty are especially apt. Some members referred to the possibility of giving treaty force to some elements of Declaration No. 13.

The experience of the last few years favours a formula which has been operating adequately, namely COSAC, a conference composed of representatives of the European Affairs Committees of the national parliaments together with a delegation from the European Parliament.

The Group nevertheless has doubts about the wisdom of making this conference more institutionalized as its success is perhaps due to its informal nature. At all events, it is a body for the exchange of information and should not take decisions or replace the expression of the will of the people in each of the parliaments for which this conference is a coordinating body. Another formula is that of the growing number of contacts between specialist committees of national parliaments and of the European Parliament, especially for matters such as Foreign Affairs or Justice and Home Affairs.

In this context, the idea of the creation of a **High Consultative Council** made up of two representatives of each of the national parliaments has been put forward by one member. Such a body could, be consulted on Union matters outside Community competence. It could also advise the Commission on the proper application of the subsidiarity principle when preparing a proposal.

The Group shares the view that closer association of national parliaments should not result in the creation of a new institution or a permanent organ with its own staff and premises.

The majority in the Group does not recommend as a general rule the convening of Conferences of the Parliaments as referred to in **Declaration No 14** on the treaty, in the light of the experience of using this arrangement, which is not very practical.

94. Among the practical improvements that might facilitate the role of the national parliaments, some members feel it would be worthwhile for **Commissioners to appear** before national parliaments whenever circumstances warrant this. An idea was advanced by some representatives that the members of the Court of Auditors could also appear before national parliaments.

95. The creation of a second chamber comprising members of national parliaments has been rejected by the Group.

#### The European Council and the Council

96. The Group considers that the Conference must clarify and improve the role of the Council as an institution with legislative and executive functions, without detracting from other institutions and without prejudice to the institutional balance. The increase in the number of States affects the operation of this institution very directly.

#### The European Council

97. The Group considers that the European Council's central role is essential to the Union, as the ultimate political impulse and highest expression of the Union's political will and of its strategic policy formulation. The European Council assumed greater importance with the entry into force of the Maastricht treaty when the Union acquired external policy and internal security responsibilities. The European Council is also the highest decision-making authority in the development of Economic and Monetary Union. The Group considers the leadership role of the European Council will be even more important in future in view of Europe's agenda.

#### The Council

98. **Powers:** The Group is in favour of maintaining its present functions and strengthening its capacity for

action both by means of **treaty reforms** and **by practical improvements** in the operation.

### Decisionmaking mechanisms

#### \* **Unanimity and qualifiedmajority voting:**

99. There is broad agreement in the Group that unanimity should remain the rule for decisions on **primary law**: Article N and Article O, as well as for establishing the system of the Union's own resources and their amount. All such decisions need to be ratified by national parliaments.

However, a few members have expressed concern about retaining unanimity on primary legislation in a Community enlarged to 30 members since such a procedure would render decisionmaking extremely difficult, and could in the future leave the Union in a state of paralysis. To resolve that problem, they point to the possibility of having some provisions of the treaty either stipulate unanimity for a while, giving way thereafter to a more flexible decisionmaking mechanism, or stipulate that such a subsequent change would not take place automatically but could be adopted under a simplified procedure. The latter possibility is already envisaged in ECSC treaty and for EMU.

100. In the case of **Community legislation**, a large majority in the Group is prepared to consider making qualified majority voting the general rule, on grounds of efficiency, since it will facilitate decisionmaking and, according to some reduce discrepancies between the state of development attained by the internal market (qualified majority) and the policies in the social, fiscal and environmental spheres (in which unanimity is often the rule).

Some members consider exceptions warranted to safeguard sensitive interest; and one member sees no case for extending qualified-majority voting on the grounds that it would not mean more effective decision-making in comparison with unanimity.

It has been stressed by some members that the extension of qualified-majority voting would increase the efficiency of the Union only if its decisions are supported by a significant majority of the Union's citizens. In this context, those members point out to the need of adequately taking into account of population in the decision-making by the re-weighting of votes within the Council, and/or the adoption of a double significant majority of votes and citizens. Strengthening the principles of subsidiarity and adequacy of means have also been mentioned to help extension of qualified-majority voting in this context.

101. Novel arrangements steering a middle course between unanimity and qualified majority voting have been mentioned in the Group **for Council decisions on Title V and VI** matters (a superqualified majority, positive abstention, a qualified majority with a minority dispensation or consensus minus one). None of these have been explored in depth. However, it would be possible to have different decisionmaking procedures for the Council in such matters if they are established in the treaty, irrespective of its structure.

#### \* **Threshold for a qualified majority and weighting of votes:**

102. The European Council has decided that the 1996 Conference is to consider the question of the present qualified majority and voteweighting system, which currently operates in accordance with the current treaty provisions as interpreted by the Ioannina compromise with regard to their practical implementation. The Group has been instructed to look into the matter.

103. There is a majority in the Group in favour of the 1996 Conference establishing a qualified majority voting system through which the Union will strengthen its effectiveness and legitimacy. The Union must be able to take decisions but some members insist that it is not simply a matter of assisting the ability to decide. Its effectiveness will depend on such decisions having the backing of as many European citizens as possible. For this to be the case, the revision should keep the qualified majority threshold at an effective level and such decisions should not leave a significant proportion of the people of Europe in a minority. However, there is no specific option enjoying broad support in the Group when it comes to putting this into practice.

104. Several members point to a gradual deterioration in popular representation in the weighting of qualified majority voting as a result of the under representation of the people of the more populous States and the growing number of less populous States in the Union. These members underline that this gradual deterioration feeds into decisions on policies which directly affect citizens in an integrated area. According to these members this problem seems even more serious in the view of next enlargement.

In the view of some, the answer is a new weighting of votes that takes greater account of population. On the other hand, a system of double majority of votes and population has been suggested. In this view, for some, decisions should be taken by a simple majority of States and population behind them. This implies the suppression of different weight in votes for Member States, and of the qualified majority voting system. For others, counting on population should not substitute but reinforce the qualified majority voting. For these members, besides reweighting of votes, the Conference should establish the significant proportion of Union's population that should allow decisions by qualified majority system.

105. In any event, several members have voiced objections to the arguments in support of greater account being taken of the population criteria in qualified majority voting. Some have pointed out that the entire integration process rests on the fundamental principle of sovereign equality of States, with the present voting system already representing a concession under that principle. Others have taken the view that the present voting takes due account of population, arguing that in any case the institution which represents the people is the European Parliament.

These members also emphasize that the smaller and medium sized Member States do not act as a block and that there is little if any prospect of Governments representing a majority of the Union's citizens being outvoted.

One member has stated that the present balance is satisfactory and should be maintained; but, since the enlargement will bring into the Union mainly small countries, keeping the present formula would weaken the position of the larger Member States, and, consequently, the number of votes granted to the last ones should accordingly be increased but without retaining a precise proportion between votes and population.

### **Organization and working methods**

106. Aside from the growing imbalance pointed to by some in the voting mechanism, which they believe impairs the legitimacy of Council decisions, a broad majority in the Group sees a gradual deterioration both in the organization of the Council and in its working methods, devised for a smaller number of Member States. Both can be improved without revising the Treaties, although certain aspects of them, such as the role of the Council Presidency, are dealt with by the treaty and this is therefore discussed as a separate issue.

The Group points to the need for the General Affairs Council to regain its role of general coordination of the Union's affairs, ensuring overall consistency in Council actions in all areas of the treaty. With that end in view, some members of the Group have suggested practical improvements, such as the possibility of the General Affairs Council meetings being held at two levels: a preparatory level, composed of Ministers for European Affairs, and full member level, which would concentrate on the most important issues. The Group also advocates greater consistency in the committees paving the way for Council meetings. In this context, several members were concerned to maintain the specific roles of these committees. A large majority recommends strengthening Coreper in its key role of coordinating and preparing for Council meetings in order to ensure their overall consistency.

In addition, the Group recommends that consideration be given to fresh approaches to preparatory work for the Council with the next enlargement in prospect. The possibility should here be looked into of replacing some stages of discussions in working parties by a written procedure. These ideas should be given further consideration.

### **Publicity**

107. The Group notes that substantial progress has been made in making the workings of the Council more open. Following the 1993 Council rules of procedure, many Council votes are now published, and there has been a number of public Council debates. Most recently, the Council decision in October establishes much greater access to Council minutes (when the Council is acting as legislator) and minutes statements.

However, the Group agrees that further progress could be made. Several members maintain that the Council should meet in public whenever it is acting as a legislative authority. Several members in the Group favour extending the Council rules of procedure, to provide that Council votes on legislation be made public in all cases and not, as at present, unless the Council decides against; and that the initial debates on significant legislative questions should all in principle be made public.

Others, while sharing a will for transparency, point out that it is not easy in practice to separate the Council's discussions acting as legislator from its deliberations as a political institution with executive powers. They emphasize that what is involved in practice is a continual, intensive task of negotiation, which should not be performed in public if it is to remain genuine.

### Presidency

108. The Group highlights the important role of the Presidency and its fundamental responsibilities for the conduct of the Council's affairs. The majority in the Group takes a positive view of the sixmonthly rotating Presidency system under the treaty (Article 146 EC, Article 27 ECSC and Article 116 EURATOM) since it fosters a sense of belonging and the urge to excel on the part of those holding office.

However, the present system applied to a 30member Union would mean that each member serves as President only every 15 years. For some there could also be problems concerned with the accession of very small States. The Group has therefore considered different possible arrangements. One proposal has been the idea of a team-Presidency consisting for instance of four member States acting for a period of at least 12 months. Within the limits of the present treaty there are practical improvements which must be given more careful study.

### The Commission

#### Powers

109. **Exclusive right of legislative initiative:** The Group considers that maintenance of the Commission's monopoly of initiative is a fundamental aspect of the institutional balance of the Community. It will be exercised without prejudice to the right of request under the treaty and the possible inclusion of an obligation to reply.

It is broadly accepted that legislative proposals should lapse at the end of the term of the European Parliament if they are not expressly confirmed by the Commission.

Moreover, some members have suggested that the Commission set a time limit to some proposals on a case-by-case basis ("sunset clause"): those Commission proposals should include the period of validity of the provisions proposed, with a date laid down for expiry or review, and/or should lapse after a fixed space of time, if not adopted by then.

110. **Guardian of the Treaties:** The Group is in favour of retaining this role.

111. **Executive powers:** The large majority of the Group is in favour of retaining the present system of responsibilities, in which the Commission shares executive powers with the Council. One member has put forward the idea of transferring executive powers of the Commission to special agencies. The broad majority of the Group considers that it is for the Commission as a college to exert its powers in full responsibility.



The Group also agrees that more needs to be done to ensure full and even implementation of EC law and obligations.

**112. Powers of the Commission under Titles V and VI:** These are dealt with in commenting on those Titles of the treaty.

### **Composition of the college**

113. The Group considers that a suitably constituted college of Commissioners is a fundamental aspect of the credibility and legitimacy of the Commission as an institution able to lend its proposals overall consistency and able to identify the different sensibilities and interests affected by each of its proposals.

114. In considering the various options for the composition of the college, the Group has attempted to identify proposals avoiding a confrontation between States with larger and smaller populations, while endeavouring to achieve a result providing greater democracy, greater effectiveness and a higher profile for this important institution. In the light of these considerations, it identifies basically two possible approaches set out hereunder.

115. One option would be to retain the present system under the treaty. This arrangement has the advantage of ensuring at least a Commissioner per Member State, thus fostering their citizens' sense of belonging. Some members of the Group have pointed out, that they would have difficulty in supporting any revision as a result of which they did not have a Commissioner of their own nationality.

The drawback of this arrangement, in the view of some, is that an institution originally designed for a nine-member college now has 20 members and in a 30-member Union would have at least 36. The problem posed by such a large number of Commissioners is the difficulty of warranting portfolios of any real substance in a Commission which is not going to increase proportionally the number of its powers. This will give less importance to the members of a college which will be not only greater in number but also much more heterogeneous and thus likely to be less consistent in its decisions.

Its advocates, on the other hand, believe that these problems are surmountable. An enlarged College can strengthen its internal consistency and collegiality by adapting its working methods and, if necessary, its decision-making procedures. Its efficiency could be also increased by allowing greater authority for its President, and through an increased parliamentary monitoring. In support of their arguments, they point out that some Member States' Governments are composed of over 36 Ministers. Lastly, they maintain that the Community should not opt out of its complexity in as much as it ensures the safeguarding of its diversity. The presence of Commissioners of all nationalities is not the simplest course but it allows such diversity to be preserved.

116. An alternative option is to ascertain the appropriate number of Commissioners to perform the Commission's duties consistently and effectively. They would then be fewer than the number of Member States. This option has the advantage of visibility and consistency, it restores to the Commission its collegiate nature and independence, it avoids proliferation, bringing savings in human and financial resources, and it would give the Commission a higher profile, as the Institution that safeguards the general interests of the Community.

Its drawbacks have been pointed out in describing the advantages of the previous option: it fails to ensure the presence of Commissioners of all of the Union's nationalities at all times.

In its supporters' view, this option should not involve any discrimination since the Commissioners should be chosen by the President of the Commission (who would be chosen by the Parliament, acting on a proposal from the European Council, and subsequently invested, together with the entire college, by the Parliament) on their merits, from a list of three candidates put forward by each of the Member States. This system would make for a higher-quality membership of the college.



117. Set against these two approaches other possible arrangements have been mentioned:

\* Some members have put forward as a middle way the option of a Commission composed of just one national Commissioner from each of the Member States, thus removing the second Commissioner which the five most populous States currently have. This would result in a maximum of 30 Commissioners instead of 36 for a Union of 30 Member States. Other members of the Group regard this option as unbalanced and tantamount to renationalizing the college, converting it into a kind of Council deciding by a simple majority, with a negative effect on popular representation in decisionmaking. This option would only be considered by those members if it were accompanied by amendment of the voting system in the college to introduce qualified-majority voting for its decisions. For the majority of members such a system of voting would strip the Commission of its originality and independence. For some members, the option of a Commissioner per Member State will not make it possible to maintain the present voting system in the Commission.

\* Others propose a reduced college in which each Commissioner would represent a minimum number of inhabitants, which would result in the permanent presence of nationals of the more populous States and rotation for nationals of the rest of the Union. Seen in those terms, this arrangement is rejected by various members.

118. Another idea that has been put forward is the possibility of the college in future being composed of two kinds of Commissioners, seniors members and voting or nonvoting juniors commissioners. This proposal is, in principle, favourably considered by some members as a possible way of enriching or approaching the afore mentioned options, and should be given further examination in the Conference.

### **Accountability of the Commission**

119. A majority in the Group favours making the Commission more accountable to the European Parliament. Some members propose the possibility of individual motions of censure of Commission members by the Parliament, but others object to this on the grounds that such a possibility would undermine the collegiate nature of the Commission. Some members advocate establishing procedures to improve the accountability of the Commission to the Council.

Other institutions and bodies

### **Court of Justice**

120. The Group agrees on the need to strengthen the Court's **role**, highlighting the part played by the Court in watching over a Community based on the rule of law, in ensuring legal uniformity in the interpretation of Community law and in guaranteeing the protection of individual citizens' rights.

A majority of representatives are in favour of stepping up its role in the fields of justice and home affairs on grounds of legal certainty, in order to ensure the protection of individual rights which might be affected in those fields. A few have suggested the possibility of enabling the Court to enforce more swiftly the penalties it may impose.

One member argues, however, that ECJ judgments can lead to consequences that are considered disproportionate in their effect. This member suggests that the Conference should examine possible limits to member States economic liability when a member State has genuinely attempted to comply with Community law and the application of national time limits in such cases. This representative also suggests that the Conference should consider limits on the retrospective effect of judgements and the establishment of a right of appeal.

A proposal that the Court should speed up its procedures and improve its translation facilities was

favourably received by the Group.

The Group has not been able to deepen the valuable ideas put forward by the Court in its report. A broad majority in the Group is prepared to recommend consideration of the amendment of Article 188 proposed by the Court in order to be able to adopt rules of procedure, which other institutions and bodies are already able to do.

121. As regards the Court's **composition and number of members**, a majority of representatives think the term of office of Judges should be extended to nine years, with no possibility of reappointment. With a view to future enlargement of the Union some take the view that the number of Judges, should be fewer than the Member States in order to ensure efficiency and consistency. Others take the line that all States should have a Judge at the Court so that all legal systems of Member States are represented. A middle course put forward is that, for the purposes of national participation, not only Judges should count but Advocates General as well.

### **Court of Auditors**

122. The Group note the key role of the Court in taking effective action against fraud and financial mismanagement of the Community budget.

Proposals have been put forward to make explicit the duty of States' internal official bodies and of national audit boards to cooperate with the Court of Auditors and also to make clear its ability to audit the Union's accounts for foreign policy and for justice and home affairs. The possibility has been expressed of the European Parliament being more directly involved in the appointment of the Court's members. Some members have also suggested that it should be granted a right of access to the Court of Justice for the protection of its prerogatives.

The Group makes the point that more effective action against fraud is also and primarily a matter for the Member States.

### **Committee of the Regions**

123. The majority of the Group underlines the importance of the role played by this body representing the regions and local authorities and fostering throughout the whole territory of the European Union a further sense of belonging. It is also, however, argued by some that, as an innovative acquisition of the Union, it needs to be given time to fullfledge its effectiveness before consideration is given to developing it further.

The majority view is that it could be provided with administrative machinery of its own, that its consultative functions could be better used and possibly extended and that the European Parliament should have the right to consult it. Some members argue for it to be given active legal capacity before the Court of Justice in order to safeguard its prerogatives and one representative would like such capacity to be extended to the bringing of proceedings for infringement of the principle of subsidiarity.

### **Economic and Social Committee**

124. A broad majority points to its role in social dialogue and appreciates its contribution as a consultative committee in economic and social matters, the abilities of which should be better exploited at the consultative stage in preparation for legislative action. One member, however, questions the future role of the Committee given the increased use of white and green papers and other possibilities for direct consultation.

## **B. Acts, Resources, and Policies**

Acts

## Article 235

125. The Group is not in favour of incorporating a catalogue of the Union's powers in the treaty and would prefer to maintain the present system, which establishes the legal basis for the Union's actions and policies in each individual case. It is therefore in favour of maintaining Article 235 as the instrument for dealing with the changing nature of interpretation of the Union's objectives. Some members have suggested incorporating the EP assent requirement in Article 235.

## Hierarchy of acts

126. The Group has analyzed this question in accordance with the brief contained in Declaration No 16 annexed to the treaty and identified two positions:

\* Those who favour establishing a hierarchy of Community acts based on the level of their origin source (constitutional acts, legislative acts and implementing acts) point out that this classification would render simpler and more transparent the application of subsidiarity. The functions of each institution would be clarified by such a system of Community law hierarchy: Treaties would be adopted by unanimous decision of the Council followed by ratification by national parliaments, laws would be adopted on a Commission proposal by codecision of the Council and the Parliament and the Commission or the Member States would be responsible for implementing provisions, the former under Council and Parliament supervision.

\* Those who are opposed to this system do not deny its clarity, but refute its logic, which is based on the idea of separation of powers within a State, since this approach would transform the Council into a second legislative chamber and the Commission into the European executive. Their view is that the Union has its own particular nature which is suited to a characteristic classification of acts: Regulations, Directives, Decisions and Recommendations. They feel, however, that within this characteristic system it is possible to clarify the functions of each of the institutions while maintaining the balance between them. In this context, they recommend a return to the original spirit of the treaty through greater attention to the quality of each act and a use of the Directive which is more in line with its genuine purpose. It was also pointed out that the introduction of the co-decision procedure has meant that the debate on the hierarchy of acts has lost its previous importance.

Among those in favour of a hierarchy of acts, some stress that directives should be retained as best suited means to abide with the principle of subsidiarity.

## Powers of execution (committee procedure)

127. On this subject, which the interinstitutional "modus vivendi" of 20 December 1994 identified as one to be dealt with by the Conference, there are the following positions:

\* Those in favour of a hierarchy of acts resolve this issue by assigning full power to the Commission, subject to control by the Council and the European Parliament.

\* Those opposed to granting executive power to the Commission because they believe it would disturb the balance between the institutions are willing to consider simplified procedures which would not undermine the Council's executive functions.

\* There is a compromise proposal for a single procedure under which it would be up to the Commission, in consultation with national experts, to decide on implementing measures under the supervision of the Council and the EP, which could cancel the measures and request the application of normal legislative procedures. At least one member pointed out that opposition by a minority of States should be sufficient to reject any implementing measure.

128. In any case, a large majority in the Group is in favour of simplifying the present committee procedure,

which is already complicated and confused and will not survive beyond the next enlargement. The need to improve the quality of the rules adopted under these procedures was also emphasized.

In any event, revision of the 1987 Decision on committee procedure **does not require reform of the treaty** and therefore consideration must be given to the improvements which can be introduced before the Conference. In this context, one member has suggested the idea of introducing a standard set of internal rules of procedure to apply to all committees.

### Monitoring the implementation of acts

129. The Group considers that the Commission should make full use of the powers conferred upon it by **Article 171** regarding penalties for failure to comply with Community law. Some propose that Article 171 be amended to enable the Court of Justice, at the Commission's request, to impose penalties on Member States in default, without the need for the second court case currently required.

130. Some members suggest that the EP's powers in this area should be strengthened by means of **Investigative Committees** empowered to convene and request explanations from Community, and even national, authorities. It was also pointed out that the Commission should make periodical reports on procedures of infractions.

131. On the other hand, a majority suggests making it obligatory for the **Commission** to produce **annual reports** on the effectiveness of policies implemented.

132. Some members also propose allowing **private individuals** more effective means of action to appeal against failure to comply with Community legislation.

### Combating fraud

133. The Group wants the Community institutions to be more effective in combating fraud, improving financial control of the Community budget, ensuring value for money and full compliance with Community law.

A large majority believes that the European Parliament and the Court of Auditors should make full use of their responsibilities in combating fraud which, according to some, could be reinforced. All institutions and bodies must be subject to proper control.

It also must be recalled that often fraud cases appear within the Member States at regional and local level. As pointed out in the chapter on Justice and Internal Security several members of the Group suggested a harmonized rule in the national penal codes punishing fraud against the Community budget.

### Resources

134. The 1993 Interinstitutional Agreement on budgetary discipline and improvement of the budgetary procedure provides for examination of these questions on the occasion of 1996 Conference.

### Own resources

135. Most members of the Group do not want the IGC 96 to deal with these questions. They point out that there is already another session planned for 1999, the year in which the present Financial Agreement expires. All aspects of the system of **resources** should be examined at that time. Any other course of action would unnecessarily complicate the agenda for the 1996 Conference and run the risk of delaying the European agenda scheduled to follow the Conference. The Community has always adopted a stagebystage approach and accumulating tasks for the IGC 96 would lead to a general debate about the future of Europe which would prove unmanageable.

136. Some members note, however, that the system of own resources is one matter and the amounts involved another, and that the Conference is the proper time to lay down in the treaty, if so desired, the legal bases for a new system of the Community's own resources and the participation of the Community Institutions in these decisions.

As for possible revision of the system of contributions to the Community budget, some members advocate introducing a **new revenue system** which takes account of the relative prosperity of the various Member States, with several of them wanting the Conference to reduce the lack of consistency between the EP's powers with regard to expenditure and its present very limited role in revenue arrangements. Others defend the present system as reasonable.

137. At least one member is in favour of incorporating **multiannual financial programming** in the treaty. A clear majority would prefer to keep it outside the main framework in the more flexible domain of interinstitutional agreements.

### **Budgetary procedure**

138. In addition to the fairly general wish to **simplify the procedure** (abolition of one of the readings), the proposal made by some members to reduce the lack of consistency between the EP's budget powers with regard to expenditure and those with regard to revenue has already been mentioned. In the case of expenditure, some members propose simplifying the procedure by removing the distinction between **compulsory and noncompulsory expenditure**. Most members, are, however, against removing the CE/NCE distinction. Some suggest an intermediate approach for improving the balance of budget powers between the Council and the Parliament which would involve giving the latter some latitude to intervene in CE, perhaps in the form of a percentage.

### **Monitoring expenditure**

139. As we saw earlier, a broad majority is in favour of strengthening the role of the Court of Auditors in the fight against fraud and establishing closer cooperation with national audit bodies. According to some members Ecofin and Budget Council should have more control over spending activities when dealt with in the Council.

### **Policies**

140. The general feeling within the Group is that the Community should try **to do not more but better**.

141. In accordance with Declaration No 1 annexed to the TEU, the Group has analyzed the possibility of including the spheres of **energy, tourism and civil protection** in common policies and, although several members consider that specific Community action in one or another of those subjects is of great interest, a majority has reached the conclusion that it would probably be more appropriate in these spheres simply to envisage greater cooperation between the Member States. One member holds the opinion that article 3t should be deleted.

142. Several members think it necessary to incorporate a provision in the treaty dealing specifically with support for the **outermost and island regions** of Member States of the Union. Some members point out that the treaty should highlight the importance of **local development**.

143. Some members have suggested extending **Article 113 to cover commercial policy as a whole and therefore including services** and intellectual property. Other members recall the importance that they attach to the Opinion 1/94 of the European Court of Justice.

144. Finally, some members have noted that maintaining Article 235 will make it possible, when

appropriate, to embark on new spheres of Community action while complying with the limits of the treaty.

145. Some members consider that the requirement of a high level of consumer protection should be taken into account also in other Community policies and that Article 129a should be revised accordingly.

#### IV. External Union action

146. The profound changes which occurred in Europe at the end of the cold war have radically altered the scenario of international relations hitherto operating in the world. The threat posed by rival blocks facing each other has receded and has given way to new roles of the main actors on the international political scene and to an overall more secure, but also more unstable situation. The European Union must assume increased responsibilities in this new context and thus has to face **new challenges** confronting it. This requires the Union to give itself the means appropriate to more effective and coordinated external action.

147. The next **enlargement** is clearly a response to the new responsibilities but it in turn poses a challenge to the Union. Enlargement will undoubtedly make for political stability and security for the people of Europe but it will bring a qualitative change to the internal and external dimension of the Union. Preparations must be accomplished inter alia by clarifying the objectives and strengthening the instruments of the Union's external action.

148. In evaluating the experience from a complete new Title (V) on Common Foreign and Security Policy (CFSP), introduced by Maastricht into the TEU, the Group has drawn the following two conclusions. First, despite the short period of time which has elapsed, some **positive results**, such as the Stability Pact, have been achieved. Second, **shortcomings** in the operation of Title V and problems of a lack of overall consistency in coping with the new challenges have been detected.

The Group does not share, however, a common view of the causes of these shortcomings and problems. For some this is partly due to the lack of running-in time of a novel part of the treaty yet to be developed or to the creation of excessively high and as yet unfulfillable expectations; for others there is a lack of political will and inertia of attitudes; for the majority there is also a structural problem of a mismatch between fairly ambitious, albeit somewhat vague, objectives and inadequate instruments for achieving them. Still others blame the shortcomings mainly on the current functioning of the Institutions and on the inadequate structural cohesion of a treaty organized into "pillars".

Some members have pointed here to a readily discernible distinction between two kinds of Union external action: one working satisfactorily and the other with a long way to go. The first is the external dimension of Community policies and the second the CFSP. Many members see the real problem with the CFSP as lying in the disjunction between the external political and external economic dimensions of the Union. They have emphasized the lack of synergy and coordination between the first and second "pillars" and the paradox whereby matters of great moment with far-reaching economic implications, both for the Member States and for their citizens, are decided successfully by a qualified majority under the first "pillar", whereas others of less substance and consequence require a consensus under the CFSP. According to some, recent practice shows that the current functioning of the "pillars" does not make for increased consistency between actions undertaken under them but that, on the contrary, there is a risk of spill-over from the second "pillar" to the first, which reduces the efficiency of the Union and which could weaken the "acquis". Some are equally concerned by the opposite effect.

#### A. Globality and Consistency

149. In view of the interdependent and global nature of today's world, many members call for a **global approach** to overcome inconsistencies between the external dimension of the Community and foreign policy proper. According to them, the weakness of Title V lies in the current separation between political, economic and military aspects. They highlight a need for greater **consistency** in all aspects of external action so that the Union's political weight matches its economic strength.



In order that the Union can ensure the member States the influence which it must exercise, bearing in mind their collective importance in economic and political fields, it is necessary both to make the most of the potential synergies between the different strands of external relations, and to ensure the effectiveness of each of the elements and of the Union as a whole.

150. To correct these problems and to facilitate the synergies required, the following ideas have been put forward:

- A majority considers that the treaty already sets adequate, though somewhat general, **objectives** and that the problem lies in the structural difficulties which prevent them from being achieved. This being so, some members seek a more specific statement of the Union's **fundamental interests**, as referred to in Article J.1(2). Their definition in relation to geographical areas has been suggested by some. Other members see the need for definition of common interest not through a geographical approach, but through common priorities such as reinforced diplomatic solidarity between Member States, guaranteeing of external frontiers and the upholding and defence of human rights and democracy.
- A majority of members points to the advantage of **international legal personality** for the Union so that it can conclude international agreements on the subject-matter of Titles V and VI concerning the CFSP and the external dimension of justice and home affairs. For them, the fact that the Union does not legally exist is a source of confusion outside and diminishes its external role. Others consider that the creation of international legal personality for the Union could risk confusion with the legal prerogatives of Member States.
- The smooth operation of the whole institutional system requires better definition of the various instruments. Here, some representatives state that the differences between **common positions** and **joint actions** should be clarified as this would help to strengthen the consistency of the Union's external action.
- Lastly, in order to ensure optimum consistency in Union action, many members call for the introduction of a **comprehensive** set of rules. Some consider that a logical solution would be to dispense with the "pillar" structure, but retain specific proposal, decision-making and implementation procedures within the Community (following the EMU example). Others see a solution in greater cooperation and consistency between "pillars", and in structural coordination between the Presidency and the Commission.

151. In any event, it has been pointed out that decisions with political impact are taken in both CFSP and Community matters and that the Council is always involved; and that, once a decision has been taken, the Commission is required to take account of it in carrying out its executive role, regardless of whether the decision was taken under the first or second "pillar". The purpose of the reform is to ensure that Union external actions are clearly perceived as forming a harmonious whole.

For some representatives that idea should be expressly enshrined in the TEU by spelling out in Articles J.2 and J.3 that common positions and joint actions are binding on the Commission.

For other members, it should rather be emphasized that decisions under all "pillars" are taken within a single institutional framework in which all institutions participate and where the European Council provides guidelines. The day-to-day coordination of external action in order to ensure consistency between the Community and CFSP frameworks is, pursuant to article C, a matter for the Commission and the Council. To reinforce this, Article J.8, paragraph 2 might name not only the Council, but also the Commission, as having responsibility for ensuring consistency of external action decided in both the Community and CFSP frameworks. The necessary coordination between the two institutions, to this effect, must be ensured.

The need for greater consistency should also inform **preparations for Council proceedings**, clarifying the relationship between Coreper and the Political Committee. In that sense some members consider that Coreper's coordinating and central role as the preparatory committee for the whole of the areas within the Council's competence should be reinforced in the treaty.

## B. Common Foreign Policy

152. With a view to rectifying shortcomings in the operation of Title V, the Group considered the various stages of the realization of the CFSP, i.e. **formulation, decision-making and implementation**. Unlike the Community decision-making process, in the CFSP area it is not easy to distinguish clearly between the various stages, so that it would not be realistic to use a rigid structure based on a successive distribution of tasks, since they intertwine. From a methodological viewpoint, it would nonetheless seem desirable to look at each one of them separately.

The formulation stage: setting up of an analysis unit

153. Regarding the **preparatory** stage of common foreign policy, the majority of the Group agrees that an **analysis, forecasting, early warning system and planning unit** should be set up. Thus, the necessary follow-up to crisis situations could be ensured from the outset; possible response and decision options could be considered and prepared. Such a unit could, moreover, encourage a common vision and greater cooperation among the Member States. The latter and the Commission should in the unit share the information they possess so that correct analyses of the situations may be done. In principle, setting up such a body does not necessarily require reform of the Treaties.

As regards the unit's **composition and location**, most representatives advocate locating it in the General Secretariat of the Council, with a strengthening of its structures. Those in favour of this option point to the merit of abiding by the present institutional framework by not creating any new bodies, and highlight the advantage of situating the unit at the Council on account of the central role played by the States within the CFSP. As stated above, a broad majority of members point at the same time to the need to involve the Commission in forecasting and analysis, by establishing a close link with the General Secretariat of the Council in order to avoid inconsistency between the political dimension and the external economic dimension of the Union. For a large majority, it is understood that the unit should include Commission staff as well as staff from the national foreign ministries.

Regardless of the location chosen, certain members see a case for some form of link or coordination between the unit and the WEU.

It is widely considered that, far from developing into a new institution, the analysis and forecasting unit ought to be a preparatory body and therefore have no formal right of initiative, which could be a source of conflict or confusion of powers between Member States, the Council and the Commission.

### Decisions

154. With regard to decision-making procedures, some state that the failure to use **qualified majority** voting is one of the reasons for the ineffectiveness of the CFSP, which is why more general use should be made of such a procedure in this sphere, particularly given the prospect of enlargement. Others take the view that consensus and the right of veto are essential in matters which lie so close to the heart of national sovereignty and that unanimity does not prevent important decisions from being taken.

As intermediate options, the Group explored **ad hoc arrangements** such as unanimity with "positive or constructive abstention", "unanimity minus one", "super-qualified majority", qualified majority with dispensation of the minority, general platforms of decisions taken by unanimity to be followed in their specifics by qualified-majority voting, in order to overcome the risk of deadlock in a field in which the Union needs decisionmaking capability. It is understood that constructive or positive abstention would involve political solidarity and, according to some, also financial solidarity with the decision taken. Those ideas should be examined further by the Conference. There is widespread agreement on the need to have more frequent recourse to the possibilities for majority voting laid down in the TEU.

It should be commonly agreed whether, and if so, how to provide for the possibility of flexible formulae which will not prevent those who feel it necessary to take for the Union a joint action from doing so.

155. The efficiency imperative will succeed only if the legitimacy of decisions in this area is assured. Given that in some cases it might not be acceptable for a State to be put into a minority, many of those in favour of the adoption of decisions by qualified majority favour as a further arrangement the recognition that a **fundamental** or vital national **interest** may prevent a common position or action. According to some members, this approach should be tempered by the need for prior definition of the concept of vital interest and the circumstances in which it applies.

Implementation: management and administration

156. Because of the specific nature of the CFSP, instead of implementation, (which is a matter for the Member States and/or the Council and - within areas falling within its jurisdiction - for the Commission), we should really use the terms **management** or **administration**, depending on whether we want to highlight internal or external aspects respectively. To achieve this, the Group identifies various possible approaches: either the CFSP might be personified in the guise of a "Mr or Ms CFSP", or through arrangements which keep the central role of the Presidency in the external representation and implementation of the CFSP; another possibility would be to reinforce the Commission's role and responsibilities in this area.

### Personification of CFSP

157. In order to find an answer to the problem of stability and continuity in the Union's external representation, the Group examined the possibility of embodying the CFSP behind the figurehead of a "**Mr or Ms CFSP**". Three main options were identified:

158. Some members consider that this function would devolve, at least in time, upon **the Commission**. The advantage would be that it would be better able to ensure consistency with external economic measures and to call directly on Commission resources and means to implement foreign policy. While situating such a person in the Commission, possibly with a special status given by the European Council the advocates of this option recognize that CFSP management would, in any case, require a method for the Institutions to work in common and an ad hoc system of voting within the Council in line with the arrangements outlined above.

159. For the majority, this would be someone in **the Council**. They consider that this approach is more in keeping with the central role which States have within the framework of the Council in relation to the CFSP. Two variants, which are not respectively incompatible, have been identified:

- Some members advocate creating a new figure, a **High Representative for the CFSP**, appointed and dismissable by the European Council, and receiving instructions directly from it, and from the General Affairs Council.

Within this variant the High Representative must be clearly subordinate not only to the European Council but also to the General Affairs Council and to the Presidency.

- Others advocate nomination by General Affairs Council and placing this function within the **General Secretariat of the Council**, with its structures strengthened and the duties of Secretary-General raised to high ranking level. Those in favour of this option emphasize that it would not require any change in the current framework and that it would avoid any danger of conflict with the Council Presidency to which it would in any event remain subordinate.

Some propose that this "Mr CFSP" attends the Commission when it discusses matters relating to external action.

160. A synthesis option would be that the President of the Council together with the Commission, takes direct charge of CFSP affairs assisted by a Secretary General of the Council who would head the analysis and planning unit and have increased functions. This option would be even more effective if the Secretary of the WEU and the Secretary General of the Council were one and the same person.

161. There is no consensus on the personification of CFSP. Many members stress that the formula decided upon must allow for a higher profile for the Union without introducing additional confusion over functions or creating a conflict between the powers of this new personality and those of the Council Presidency, nor fragmenting the unity of the existing institutional framework. Lastly, they do not want this "Mr or Ms CFSP" to contribute to increased inconsistency between the "pillars".

162. Various representatives insist that, over and above the alternatives described, the central role of the **Presidency** must be maintained in the external representation and implementation of CFSP and should not be impaired through any external representation figure. Such is the current approach of the treaty, although the Union's enlargement and growing external responsibilities make it advisable to consider ways of bolstering the Presidency by means of better utilization of the Troika or, as some representatives see it, by means of some innovative Presidency formula, either in the form of teams or by other arrangements ensuring participation, democratic legitimacy and continuity in the exercise of the Presidency. It was also underlined that coordination between the Presidency and the Commission must in any case be strengthened and that this should also be done structurally.

#### Other questions

163. As regards the **financing** of the CFSP, there is consensus in the Group on the need to establish specific procedures ensuring the availability of the funds necessary for rapid action when required. In any event, solidarity in general and, according to many members, financial solidarity in particular should underlie financial arrangements and therefore be applicable to possible cases of "positive abstention" or "opting out". The view is taken by a broad majority that the CFSP should be financed from the Community budget. For some members, this would imply the approval by the European Parliament of the broad outline of outlays related CFSP.

164. The majority consider that the role of the **European Parliament** cannot be the same in this area as in Community legislation, since national parliaments do not use the same mechanisms of participation in framing and monitoring foreign policy as in their legislative work or in domestic control. However, some members think the present treaty provisions should be better developed in practice, centring on the European Parliament's right to be informed in this respect. Others think it necessary to go further and involve Parliament more closely in determining the broad lines of the CFSP and in controlling the Union's external political affairs by means of arrangements in the treaty ensuring confidentiality.

Several members point out that the EP should not under any circumstances be given powers in this area in which governments conduct their foreign policy without prior authorization from Parliament, except in cases of extreme gravity. At least one member is against any increase in Parliament's role in this sphere.

165. It is not easy to distinguish which of the above options can be achieved by means of simple, practical improvements in operation and which of them require amendment of the Treaties. In fact it will depend upon the degree of political will achieved at the Conference. The creation of an analysis unit does not in principle require amendment of the treaty. According to some, neither does the creation of a personality symbolizing the management of CFSP appear to require any institutional change. The question is whether the creation of such a personality does or does not in practice require the strengthening in the treaty of consistency between Title V and the other functions of the Union. Furthermore, the best practical organization of the Presidency has its limits in Article 146 of the treaty. If it is not amended and special arrangements made for CFSP, the single institutional framework will necessarily have to be retained for all aspects of the Union.

The Group recommends a global approach to assess the impact of each of these arrangements on the

functions of the Union as a whole.

### C. Security and Defence Policy

Elements for reflection

166. The new international situation and prospects for enlargement lead to a more just and secure European order but also pose **new challenges** to the security of the Union. These challenges require a **collective response** to the new risks and crises which can affect Member States' security. Their multifaceted nature calls also for a **global approach** ensuring consistency between the various aspects of the Union's external action, based on a comprehensive concept of security.

The Group therefore believes that the Conference could examine ways to further develop the European identity, including in the security and defence policy field. This development should proceed in conformity with the objectives agreed at Maastricht, taking into consideration the treaty provisions that the CFSP shall include all questions related to the security of the Union, including the eventual framing of a common defence policy, which might in time lead to a common defence.

167. Provisions of the TEU to be revised in 1996 also include those dealing with **links with WEU**, which is an integral part of the development of the Union. On 14.11.95 WEU Ministers approved and transmitted to the EU a **WEU contribution to the IGC** on the experience acquired since Maastricht (regarding both WEU's relations with the EU and with NATO and its operational development) and on the possible future development of the European Security and Defence Identity. In its reflection, the Group has been fully aware of this WEU work.

168. Apart from the classic **collective defence** of territorial integrity, the cooperation on security and defence matters which the new challenges require is also directed at preventing conflicts and **managing regional crises** which stem from a large variety of political, economic, ecological, social or humanitarian factors. While both types of task may become intertwined in practice, it must also be pointed out that, as we shall see below, some Member States of the Union, which are not members of military alliances, wish to contribute to European security by participating in humanitarian, peacekeeping and other crisis management operations (the so-called Petersberg tasks), but without entering into collective defence commitments such as those defined in Art. 5 of the Brussels and Washington Treaties. These two facts will have to be taken into account when considering future arrangements for European security and defence cooperation.

169. In the view of many members of the Group, the gradual development of a European **Security and Defence Identity** agreed by the members of WEU at Maastricht must be given fresh impetus in order to establish the **mechanisms** permitting a European response to such crises, including through **military operations** to supplement the political, economic or humanitarian action decided on within the CFSP framework.

170. The **means** needed for such European operations must be to hand:

\* Insofar as crises require a response including the use of armed force, fresh impetus must be given, according to WEU members, to developing further WEU's **operational capabilities**, which are still inadequate in many areas. This would also require that the procedures for making NATO assets and capabilities (including CJTF Headquarters) available for operations conducted by WEU be developed further.

The EU "**peace corps**" suggested by some members of the Group (see above) could, were the idea to be accepted, play a role in this regard. Its relationship with existing or planned humanitarian capabilities, including those of WEU, would need to be considered.

\* The question also arises here of the need for greater **European armaments cooperation**. The Group was



aware that thought is being given to this question within the Union, WEU and the WEAG. The Group discussed possible responses - including the proposed European Armaments Agency, the possible revision or even deletion of Article 223, and the need for a common arms export policy.

171. The **Atlantic Alliance** and the transatlantic link continue to play a fundamental role in European security. The Alliance guarantees the collective defence of its members and also contributes through other tasks to the security of the continent. For this reason, the Conference will have to take account of the fact that, in the view of NATO members, the development of a European Security and Defence Identity should strengthen the European pillar of the Atlantic Alliance and include a development of **Euro-Atlantic relations**.

The prospect of an eastward **enlargement** implies qualitative as well as quantitative changes for the security and defence of the Union. The enlargement of the EU, WEU and NATO will proceed autonomously according to their respective internal dynamics and processes. Each organization should ensure that their respective processes are transparent and mutually supportive of the goal of enhancing European stability and security.

172. Participation in military operations in the framework of the Petersberg tasks will remain a matter for national decision. The majority of members strongly feel that the **principle of national sovereignty** should continue to govern relations between European countries on defence matters and that the intergovernmental nature of decision-making on these issues should be preserved and be conducted on the basis of consensus. Some representatives consider that the consensus rule should not exclude the possibility of European supranational bodies playing a certain role in defence matters in the future. Others wish the IGC to consider all possible options in this respect, including majority-voting.

In case present decision-making procedures are preserved, it would seem appropriate in the view of some members to introduce some element of flexibility in this sphere. To that end, the possibility has been suggested of applying a non-binding principle to the effect that, while no one can be obliged to take part in military action by the Union, neither should anyone prevent such action by a majority group of Member States, and this without prejudice to the required political solidarity and adequate financial burden sharing.

173. Some members, while indicating that the range of institutional options identified for future EU-WEU relations would be of assistance to the IGC negotiators, saw a need to identify at this stage the purposes and principles that should govern developments in this regard. In particular, in response to Europe's new security challenges, developing the Union's capabilities in such areas as conflict prevention, peacekeeping and humanitarian operations was identified as a priority. These members attached importance to the concern that all the Member States of the Union, whether or not they are members of a military alliance, should be in a position to contribute to the European security through the Petersberg tasks. Some members of the Group also welcomed the fact that, in all of the options identified below, consideration was given to how to accommodate those partners not in a position to enter into Article V type commitments, and that the Group had examined ways to address this situation.

#### Options for future EU-WEU relations

174. Working from these general premises and taking note of Declaration 30 of Maastricht, the Group agrees on the need to continue **improving the relationship between the EU and WEU**, while fully respecting all Member States' **national defence policies**. In this context, the WEU Contribution to the IGC reaffirms the agreement of all WEU Member States to strengthen the EU-WEU institutional and operational links, together with WEU's operational capabilities.

Nevertheless, **different views** have emerged within the Group (as in WEU) on how this relationship should be developed in the future. In this respect, a number of options and modalities have been put forward in the Group's discussion, although most representatives were open to consider several interrelated options.



175. One view advocates **maintaining full autonomy of WEU** in the foreseeable future. According to this view, such autonomy allows maximum flexibility for participation by all Member States in developing the European Security and Defence Identity and avoids weakening the defence commitments within NATO and WEU, taking into account the differing memberships of these organizations and the Union.

In this context, the option of an **EU-WEU "reinforced partnership"** has been proposed, aimed both at establishing closer political (EU/WEU back-to-back Summits) and administrative relations (coordination of Presidencies and Secretariats) between the two organizations and at developing WEU operational capabilities for crisis management tasks to complement NATO, while allowing for participation in such tasks of the widest possible range of European States.

176. Another view advocates a **greater role of the Union in the Petersberg tasks** while at the same time preserving WEU as a separate defence organization. The development of operational capabilities necessary for the implementation of these tasks would proceed as a matter of urgency in view of Europe's new challenges. Two options have been mentioned in this context:

\* An option which would provide for a closer and more formal link between both organizations by means of either political or legally binding directives. **WEU would be subordinate in the Petersberg area to the Union**, so as to act as its executive arm.

\* An alternative option would be to fully **transfer the Petersberg tasks from WEU to the EU**. WEU would remain as an organization responsible for territorial defence together with NATO.

177. The majority of representatives see the way to the establishment of a genuine European Security and Defence Identity as lying in the **gradual integration of WEU into the EU**, in parallel with the development of European operational capabilities. In this way, the European defence function (both for crisis management tasks and for the collective defence guarantee embodied at present in the Brussels treaty) would in time be incorporated into the single institutional framework of the Union. According to this view, EU-WEU integration responds to the logic of Maastricht, would reflect the solidarity amongst Europeans (which cannot be solely confined to the economic sphere) and would be the best way to achieve coherence between the CFSP and the defence policy, thereby allowing for better coordination between the various instruments of crisis management (political, economic, humanitarian, as well as military) available for effective action by the Union in crisis situations such as that of the former Yugoslavia. In this context, the idea has also been put forward within the Group that the IGC examines the possibility of including in the revised treaty a provision on mutual assistance for the defence of the external borders of the Union.

This view admits **various approaches on the timetable and stages for WEU-EU integration**:

\* Some regard integration as feasible only in the medium term. They therefore consider that the IGC should pursue an **"intermediate" option** which, while preserving the autonomous existence of WEU, would establish measures to promote a **EU-WEU institutional convergence**, with full integration as the final goal. This would be achieved by means of some political or legal commitment whereby WEU would be subordinated to the EU in matters concerning the operational-military elaboration and implementation of EU decisions and actions (Petersberg tasks), so as to act as implementing body of the Union in this area, while maintaining the possibility of WEU deciding autonomously its own actions.

Three possible ways of establishing this commitment have been suggested: A new Article J.4 (and a new WEU Declaration) could state that the European Council will address **general guidelines** to WEU, as the organization requested to implement through the appropriate military actions the follow-up decisions adopted by the EU at ministerial level. Or it could state that the EU will address concrete **instructions** to WEU, thereby expressing its political and operational subordination to the Union. Finally, it could also be envisaged that a **legally binding EU/WEU agreement** be established whereby WEU would be committed to implementing decisions of the Union with defence implications.

\* Others consider that the IGC should clearly establish the goal and timetable for a **WEU-EU merger in the**

**short term** (bearing in mind the possibility of denouncing the Brussels treaty after 1998). **WEU would thus disappear** and the present duplication of structures for security (CFSP) and defence in the broad sense (WEU) would be eliminated.

The modalities for this integration could be decided on by the IGC or at a later moment. One possibility would be to transfer all WEU functions and capabilities from WEU to the Second Pillar (**defence function within the CFSP**); Member States not willing or able to enter into a collective defence commitment could opt out of such commitment. Another, initially more feasible, modality of integration, would be for the **CFSP to take on the crisis management functions** (Petersberg tasks) but leave the collective defence guarantee to a **Defence Protocol** to which those Member States so desiring would opt in on conditions to be agreed.

Those who advocate the gradual integration of WEU into the EU consider, furthermore, that all these modalities could be seen as complementary measures and that the IGC could therefore envisage their being carried out either separately or as successive phases of a **sequential approach**, within the framework of an agreed timetable.

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**Brussels, 5th December 1995**