

Report to the European Commission, The institutional implications of enlargement (18 October 1999)

Caption: In an independent report on the institutional implications of enlargement submitted to the European Commission on 18 October 1999, Richard von Weizsäcker, Jean-Luc Dehaene and David Simon propose a comprehensive reform of the institutional system of the European Union on the basis of a reorganisation of the Treaties.

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Brussels, 18 October 1999

On the first of September 1999, the President designate of the European Commission, Professor Romano Prodi, invited Mr. Jean-Luc Dehaene, former Prime Minister of Belgium, Mr. Richard von Weizsäcker, former President of the Federal Republic of Germany and Lord Simon of Highbury, former chairman of British Petroleum and former Minister, to give their views in complete independence, by mid October, on the institutional implications of enlargement in view of the forthcoming Intergovernmental Conference.

The mandate of the group was to identify institutional problems which needed to be tackled and to present arguments indicating why they needed to be dealt with by the IGC. It was not to make specific proposals: this will be the task of the Member States and of the institutions, before and during the IGC.

The group met several times in September and October under the chairmanship of Mr. Dehaene.

It presented its report on October 18th.

1. Introductory Remarks: The Challenge

1.1 Reform is urgent

The institutional structure of the European Union was established in the fifties for a Community of six Member States. It was a very original construction and it has served Europe well. It is largely due to the institutions that political, social and economic relations between the states and societies of Western Europe have been fundamentally transformed in a balanced and peaceful manner. The basic elements of this structure must obviously be maintained.

But there are now clear indications that the system is no longer working as it should in a Union of fifteen members. The question automatically arises whether the institutions, as initially conceived, will be able to serve efficiently a Union which may in the foreseeable future extend to 25 – 30 or even more participants. Since the fifties, successive treaties have introduced some adaptations of the institutional framework, but there has been no effort at comprehensive reform. This is a challenge we will sooner or later have to face.

Member States are in agreement on this point. When signing the Amsterdam treaty they accepted the necessity, in due course, of a comprehensive institutional reform enabling an enlarged Community to perform efficiently. This agreement is embodied in a protocol annexed, in Amsterdam, to the European treaties.

This protocol envisaged a two step approach: a limited reform before the first enlargement, a comprehensive reform before the number of Member States exceeded twenty.

Positive developments in the accession process, since Amsterdam, have blurred this distinction. Negotiations are being pursued with six candidate countries and the Helsinki European Council is likely to initiate negotiations with a further group. This means that the first enlargement might well bring the Union membership beyond twenty, and that, in any case, the time span between the first enlargement and the second would be shorter than initially projected. Given this evolution, which may well accelerate in the coming months, the group concluded that the spirit of the Amsterdam protocol, the needs of the institutional system of the Union and the difficulties inherent in a limited agenda implied that **an effort at comprehensive reform should be undertaken right now**. There might be no better occasion in future.

1.2 Enlargement is Imperative

There is also agreement among Member States that enlargement is an objective of such political and historical importance, both for the Union and candidate countries, that it cannot be delayed or postponed because institutional reform is incomplete. The challenge for the present generation of European leaders is to attain the fundamental objective of enlargement while

also resolving, in the same time frame, one of its consequences, namely the need for such reform as will enable an enlarged Union to perform effectively.

The Cologne European Council considered that, in order not to delay enlargement, it was necessary for the forthcoming IGC to be concluded by the end of 2000. **The group has taken that deadline as imperative.**

1.3 The Challenge

The challenge therefore is to identify those elements of reform that are necessary and to indicate the means whereby they could be addressed in the year 2000.

On the first point – the elements of reform - the group noted that the three issues identified at Cologne had implications or consequences going well beyond the apparent simplicity of their formulation. It advises a somewhat broader agenda, including a reorganisation of the treaty texts in order to avoid constant revisions.

On the second point – the means to achieve reform - it suggests that, drawing on the lessons from Amsterdam, the IGC negotiating procedure should be adapted and that the resulting acceleration could, if the political determination was sufficient, produce a more substantial reform package within the prescribed deadline.

1.4 Connecting with the people

In the course of its work the group has discussed the necessity of more simplicity and clarity in the governance of European affairs, more transparency, flexibility and accountability in the way the institutions work. The fact that most Europeans do not understand the working of our institutions must surely be a problem governments should consider. This is not directly linked to enlargement, though of course the citizens of new Member States will be even more puzzled than those of Member States who have lived through half a century of European integration. **We must find ways of connecting or reconnecting to the people:** why and how the institutions work and to whom they are accountable must be demystified.

Transparency implies clarity and public understanding of aims and objectives. With this in mind the “*Millennium Declaration*” which the Finnish presidency is preparing for the Helsinki European Council is significant. Language approved in that declaration might usefully be introduced in a preamble to the forthcoming treaty.

Similarly the Charter of Fundamental Rights of the European Union, which is called for by the Cologne European Council conclusions, would enhance in public opinion the legitimacy and relevance of the institutions. As the European Council indicates the question whether and, if so, how the Charter should be integrated into the treaties will have to be considered.

The reorganisation of the treaties, proposed in this report, would, as a side effect, contribute to that simplicity and clarity which is needed to make the whole more understandable. Similar efforts could be made to clarify the elaboration of secondary law and of the budget. As a minimum, negotiators should, in the process of institutional reform, keep the important objectives of clarity, simplicity and transparency in mind.

Clarity and public understanding also implies, in the long term, that Member States will have to take a position on the ultimate geographical extension of the Union. The Group does not suggest that this should be done now, but the problem should not be forgotten.

2. Efficiency of the Institutions

2.1 Reasons for Change

It is a fact that the institutional structure of the Union has, in recent years, shown signs of strain. Everyone acknowledges that the Council is not working well: sluggish decision making, lengthy debates, lack of co-ordination between too many different Councils, numerous operational and legislative problems sent for decision to the heads of Government inhibiting their focus on strategic leadership.

The efficiency of the institutional process has also clearly been hindered by the unsatisfactory performance of the Commission. Management weaknesses, analysed in a controversial report by independent experts, have been acknowledged by the Commission

The European Parliament itself has seen its powers increase through successive treaties but is not making a commensurate impact, as an elected assembly should, on public opinion.

The balance between institutions, which is an essential element of stability and efficiency in the system, is also being put under pressure

A significant increase in the number of participants automatically increases problems of decision making and management. Interests are more different, discussion is slower, decision more difficult, management more complex. Problems in the working of the European institutions are already apparent today, and are affecting the functioning of the basic institutional triangle: Commission, Council, and Parliament. They are bound to increase. Institutional reform is needed to remedy those problems.

The necessity of reform, as recognised by the treaty of Amsterdam, led the Cologne European Council to indicate three issues which clearly need to be considered: size and composition of the Commission, weighting of votes in Council (including re-weighting, double majority and threshold of qualified majority), extension of majority voting. The group believes that discussion of these issues can not be handled in isolation. Firstly because they cover in fact more topics than is immediately apparent. For example, extension of co-decision with Parliament is generally seen as a democratic consequence of the extension of majority voting. Secondly because the arguments leading to the choice of these issues are also valid in other cases. For example the Commission is obviously not the only institution where the number of members will create problems.

The issues identified by the European Council are clearly of major importance but they need to be considered in the context of a more extensive institutional reform.

In a larger and more diverse Union, flexibility in the institutional framework is even more important than at present. Enlargement will increase diversity. This does not imply that Member States should be allowed to opt out of any policy they choose: the European Union would not survive if Member States were allowed to pick and choose among obligations of the Union. But it does imply that, in a more heterogeneous aggregate of Member States, some will wish to go further or faster than others. They will want to build on the Union's agreed common policies, objectives and achievements. They will therefore wish to pursue forms of closer co-operation between themselves. This seems both legitimate and indispensable.

In the absence of such a possibility, Member States will tend to co-operate outside the Union (Schengen) or outside the institutional framework of the Union (Euro 11). Those solutions affect the institutional balance of the Union and they deprive the Member States, and their citizens, of the democratic and judicial guarantees that an institutional framework provides.

Flexibility is in no way directed against candidate countries and will not impede accession. On the contrary accession negotiations might well be accelerated if, on some of the more difficult issues, closer co-operation was effectively a practical option. The principle that flexibility initiatives are open to all Member States which fulfil the necessary conditions has always been the rule in the European Union. If necessary, it should be reaffirmed.

The efficiency of the representation of the European institutions in external relations needs to be considered and enhanced. For several decades capacity to act as a major player on the world stage has been one of the driving forces of European integration. The forces of globalisation enhance that aspiration. An enlarged European Union will have, even more than at present, the capacity, and hopefully the will, to be such a major player in a globalised economy. That, indeed, should be one of its main goals.

2.2 Proposals

2.2.1 *The Commission*

Since the conclusion of the Amsterdam treaty negotiation, it is implicitly agreed that the European Commission will increase in number in parallel with successive enlargements. For understandable reasons most Member States do not accept the perspective of a Commission in which their country would not be represented. But the Commission is not, and must not become, an assembly of national delegates. It is a European institution of great originality, which has a crucial role to play both in decision making and in management. It therefore needs to remain effective, operational and well respected. The group considers that to safeguard these characteristics in a larger body, a strengthening of the authority of the President and a clarification of the individual responsibility of Commissioners is essential. These two points should be addressed in the IGC, in addition to the question of the size and composition of the Commission, which is mentioned in the European Council conclusions.

The authority of the President of the Commission has been increased by the treaty of Amsterdam. The group believes that, in order to enable the President to cope effectively with an increased membership, it would be advisable to go further. He should have more effective influence in the nomination and selection of Commissioners. He should be given clear authority to organise, co-ordinate and guide the working of the institution.

Recent events have raised the question of the individual responsibility of Commissioners and of reconciling it with the collective responsibility of the Commission. President Prodi is dealing with this in an informal manner by requesting in advance the agreement of Commissioners to resign if he so requires. The group believes that this informal arrangement should be formalised in the treaty, so as to confirm the authority of the President, with due respect for the collegial character of the Commission. This would also clarify the respective powers of Parliament and President regarding the performance and tenure of Commissioners.

2.2.2 Qualified Majority Voting

The need for qualified majority voting to be the rule in an enlarged Union, if decision making is to remain effective, is self-evident. When unanimity is required, the risk of blockage increases in due proportion with the number and diversity of participants. On the other hand, the experience of the Community itself shows that qualified majority voting creates a dynamic decision making process, leading to consensus, even if very few votes are effectively taken.

Extension of majority voting should obviously be applied to Community affairs (the first pillar) but it is also significant for the other two pillars.

The three aspects mentioned by the European Council conclusions (extension, re-weighting and threshold) are linked. Any solution will need to be well balanced and calculated to enhance the decision-making capacity of the Union.

Whenever qualified majority voting applies in legislative matters in the first pillar, the group believes that Parliament should have the power of co-decision. Extension of qualified majority voting in that field should therefore imply parallel extension of the co-decision procedure. This is a democratic requirement, well suited to an enlarged and therefore potentially more remote Union. It would also contribute to the desirable simplification and transparency in the decision-making procedures.

2.2.3. Reweighting of votes

The group accepts that proximate enlargement to a large number of mostly small or medium-sized countries implies that the relative weight of Member States in the decision making process should be reassessed. The issue is politically and symbolically important, but the group feels it has no mandate to make specific proposals in this respect.

2.2.4 The Council

The Council is at the centre of the decision making process of the Union. Practically all governments and outside observers acknowledge that it is not working well and that, if no change occurs, increased participation is bound to further weaken the efficiency of the institution. Many reform proposals are on the table, including an important one introduced by the Secretary General of the Council (Trumpf-Piris report). Most of these proposals, such as a significant reduction of the number of Council formations or an effective co-ordinating mechanism between Councils, do not necessitate any treaty change and the group is convinced that they should be actively pursued in parallel with the IGC. Nevertheless time may show that treaty amendments are needed to reorganise the role of the presidency, for instance, or to clarify the distinction between the legislative and the executive roles of the Council. Such amendments could well contribute to more efficiency and to a better public understanding of the working of the Council. The possibility of introducing them should be left open.

2.2.5 Parliament

Article 189 of the treaty establishing the European Community limits to 700 the number of members of the European Parliament. This effectively protects the institution against inflation in numbers as a result of enlargement. It would however be useful to establish, before the problem becomes acute, a rule on how to allocate seats to Member States once the upper limit is reached.

Proposals made elsewhere in this report imply a development of the legislative role of Parliament through an extension of the co-decision procedure.

Parliament, like the other institutions should also reconsider its working methods so as to maximise clarity and transparency.

2.2.6 Other Institutions

An increase in the number of Member States creates problems of size, organisation and efficiency in several institutions. This is the case, for instance, in the Court of Justice, the Court of Auditors and the Committee of Regions. The group does not wish to examine separately the case of each institution but believes that Member States should give due consideration to the suggestions put forward by the institutions themselves (for instance, the Court of Justice) or by independent committees (such as the Committee of

Independent Experts on the reform of the Commission which has suggested the appointment of a European Public Prosecutor).

2.2.7 External Relations

The legal situation today is that a focussed representation of European interest in global negotiations is only guaranteed when discussions concern trade in goods (for instance in the Uruguay Round). The legal capacity for the Community to act as a unit in other economic and financial debates on the world stage needs to be established; it is a logical consequence of economic and financial integration.

Therefore the question of external representation of the Union, in subjects like trade in services or international monetary matters, should be revisited in the IGC. In this context legal personality of the Union is also an issue.

2.2.8. Flexibility

The Treaty of Amsterdam introduced the concept of closer co-operation **into** European law. The group is aware that there has been little time and scope for its implementation, and that it may be too early to pass judgement on those clauses. But the group is also aware that most observers, inside and outside the institutions, consider that the treaty clauses are so complex and subject to such conditions and criteria that they are unworkable. Given the increased importance of institutional flexibility in an enlarged Union, and the fact that they may indeed facilitate enlargement, the group considers that they should be revisited.

It should be possible to initiate such a co-operation by qualified majority, or super qualified majority, without the possibility of veto by any single Member State, but with due respect for the interests of non-participants. Common Foreign and Security policy should be included in the scope of closer co-operation. The process should remain open to all Member States who fulfil the necessary conditions. The principle should remain that flexibility is a way of building on and strengthening the Union's achievements, not of loosening the ties that bind Member States.

2.3 Implementation

Given the constraints of timing, the Union should draw conclusions from previous experiences and make a serious effort to accelerate the negotiating process. The last IGC was launched by the European Council in Turin on the 29th of March 1996, the first draft proposal for treaty modifications appeared on the negotiating table nine months later (5th.December 1996), six months after that, the treaty was concluded (17th.June 1997).

The group believes that the I.C.G. should start with a draft treaty on the table. On past experience this could cut by half the length of the conference.

Practically all the issues mentioned in this section were discussed in the Amsterdam negotiations and have been the subject of extensive academic debate since then. The Commission, representing as it does the collective interest of the Union, has always had the right to make proposals to intergovernmental conferences. In the past the Commission has, in general, been cautious in exercising this right. However, given the urgency and the scope of the reforms and extensive previous discussion, the group believes that the Commission should submit comprehensive and concrete proposals, in the form of a draft treaty, right at the beginning of the conference. In present circumstances the Commission has a strong obligation to make full use of its right to submit proposals to the Intergovernmental Conference. Obviously the Commission would need to work in close contact with other institutions of the Union before formulating those proposals.

As indicated above, the group is well aware that many of the problems facing the institutions can be settled without treaty changes. For other problems that is not the case and, in view of its mandate, the group's report concentrates on these. But adaptation to enlargement should be seen as a single task of fundamental importance, whether or not it implies treaty change. Both Council and Commission have ongoing procedures oriented towards internal reform, largely motivated by the perspective of enlargement. The group believes that the two exercises (IGC and reform that does not imply treaty changes) should be conducted in parallel, as part of a single effort, and within the same time frame. It notes that many changes go against long established practices and vested interests. In view of these difficulties, the European Council should give a clear mandate requiring a package of significant reforms which do not imply treaty change to be agreed by the end of next year, together with the results of the IGC, so as to make a comprehensive reform effective.

3. Reorganisation of treaty texts

3.1 Reasons for Change

The group believes that significant change needs to be introduced in the way legal texts which are presently in treaty form can, in future, be modified. That change should be based on a distinction in the nature of the clauses in the present treaties.

For the past ten or fifteen years the Union has lived through a permanent process of treaty modification. At any given moment we have been either preparing or negotiating or ratifying treaty changes. The present situation is typical: the treaty of Amsterdam entered into force on May 1st. and, on June 4th, the Cologne European Council called for a new intergovernmental conference.

Constant treaty revision is a source of political difficulties in several member countries of the present Union. It contributes to the feeling of legal insecurity, to the fear of constant new interventions and progressive centralisation, which, rightly or wrongly, is present in significant sectors of public opinion. It cannot be right to pursue this course in an enlarged Union, when each treaty change will have to go through 25 or more parliamentary systems with the foreseeable delays, frustrations and risks of complete paralysis.

3.2 Proposals

The group suggests that present treaty texts should be divided in two separate parts:

- The basic treaty would only include the aims, principles and general policy orientations, citizen's rights and the institutional framework. These clauses, as is the case now, could only be modified unanimously, through an IGC, with ratification by each Member State. Presumably such modifications would be infrequent.
- A separate text (or texts) would include the other clauses of the present treaties, including those which concern specific policies. These could be modified by a decision of the Council (acting on the basis of a new super-qualified majority or on unanimity, depending on the subjects) and the assent of the European Parliament (eventually with a special majority).

Such a change would have the following advantages:

- greatly reduce the present need for constant modifications of the European treaties.
- make the basic institutional structure more readable, more understandable and accessible to the public.
- introduce a procedure for changes based, at least partly, on a form of majority voting, with intervention of the European Parliament.

3.3 Implementation

Important preliminary work has been done on this subject, notably by the European University Institute in Florence. Drafts already exist indicating how such a division could be operated. The approach indicated by this report would therefore not cause undue delay. The Commission should mandate the European Institute to finalise its work, in co-operation with the legal services of the Council, the Commission and Parliament. This would clarify the debate and demonstrate the feasibility and the attraction of a reorganisation of treaty texts. The IGC, when convened, would then have a concrete proposal to serve as basis for negotiation if, as the group suggests, it decided to go down that road.

4. Defence

The mandate of the group is clearly centred on institutional reform, and it has therefore abstained from suggestions of a different nature. But the fact is that the future IGC will not be working in a political vacuum.

The declaration adopted by the European Council in Cologne on strengthening the common European policy on security and defence calls for important new steps. It wants the Council to have the ability to take decisions on the full range of conflict prevention and crisis management. This implies the development of a capacity for autonomous action backed up by credible military force. The European Council also wants the inclusion in the European Union of functions of the WEU. The WEU as an organisation would then become redundant. These are major new initiatives, indicating a high level of ambition in the European Council and also with high visibility in public opinion.

The date fixed for the complete implementation of this declaration is the same as that scheduled for the IGC: the end of 2000.

Given this coincidence in timing, the pressing character and the paramount importance of the issue of European defence policy, the group believes that it cannot be ignored in the forthcoming IGC. This matter is of fundamental significance for the future of Europe and the development of the European Union. New institutional arrangements will be needed; they should fit in the single institutional framework of the Union and not lead to the creation of a fourth pillar. Article 17 of the treaty on European Union offers some scope for the integration of W.E.U into the European Union without treaty change. Nevertheless treaty amendments may well be called for and should be dealt with in the IGC

Conclusion

The forthcoming Intergovernmental Conference should aim at a comprehensive approach to institutional reform, including a reorganisation of the present treaties. Firstly because the two step approach envisaged by the protocol annex to the Amsterdam treaty has been overtaken by the broadening and acceleration of the accession process. Secondly because the issues described in the Cologne conclusions have implications going well beyond the specific subjects they describe. Thirdly because no better moment can be identified in the foreseeable future for the sort of institutional reform that an enlarged Union obviously requires.

This reform can, and should, be negotiated in the course of next year, culminating in a substantial and comprehensive reform package agreed under the French presidency. This may seem a formidable challenge. The group believes that it can be met if the negotiating process is adapted in the light of previous experience, particularly that of the negotiation of the treaty of Amsterdam.

As indicated in the report, the group believes that a draft proposal for treaty modifications could be put on the table at the start of the negotiations. It should draw on the discussions which took place in the course of the Amsterdam negotiations and on reflections which have been pursued since then, both within the institutions and in the academic world. It should combine ambition and realism. On this basis, a negotiation launched early in 2000 and pursued with a high level of political determination could very well culminate in a substantial reform package by the end of the year.

This is indeed an ambitious goal but enlargement is a historical challenge of fundamental importance and serious difficulty, both for the Union and for candidate countries. At this crucial moment in its development the European Union should not lower its sights. It should rise to the challenge and formulate ambitions commensurate with that challenge.