Contribution from the Finnish Government concerning the IGC on institutional reform (7 March 2000)

Caption: On 7 March 2000, the Finnish Government sends its contribution ahead of the forthcoming Intergovernmental Conference on institutional reform.

Source: Conference of the Representatives of the Governments of the Member States Information note – IGC 2000 – Contribution from the Finnish Government – Background and objectives in the IGC 2000, CONFER 4723/00. Brussels: 07.03.2000. 19 p. http://www.consilium.europa.eu/uedocs/cms_data/docs/cig2000/EN/04723en.pdf.

URL:
http://www.cvce.eu/obj/contribution_from_the_finnish_government_concerning_the_igc_on_institutional_reform_7_march_2000-en-2b695951-4fef-4c1a-84bc-c5c5df47b795.html

Publication date: 19/12/2013

CONFERENCE OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES

Brussels, 7 March 2000

CONFER 4723/00

LIMITE

INFORMATION NOTE

Subject: ***IGC 2000****: Contribution from the Finnish Government:*
– Background and objectives in the IGC 2000

Delegations will find attached for information a document from the Finnish Government concerning the Intergovernmental Conference on institutional reform.

ANNEX

CONTENTS

INTRODUCTION

This report submitted by the Finnish Government in accordance with Section 54 g of the Parliament Act presents the starting points and objectives of the Finnish Government for the conference of representatives of the governments of the Member States of the European Union (hereinafter "the IGC", "the 2000 IGC"), which is to be opened in Brussels on 14 and 15 February 2000 in the course of the General Affairs Council.

In its statement to the Grand Committee of the Finnish Parliament on 15 October 1999 (UaVL 10/1999 vp), the parliamentary Foreign Affairs Committee suggested that the Government should, in good time prior to the opening of the Conference, give Parliament a report on the issues taken on the agenda of the Conference and the positions of the Government on these issues. The Grand Committee concurred with the position put forward in the statement of the Foreign Affairs Committee (26/1999 vp 22.10.1999).

Any amendment to the Treaties on which the European Union (EU) is founded requires calling an intergovernmental conference. Article 48 of the Treaty on European Union contains provisions on convening such a conference. According to this Article, the Council consults the European Parliament and, where appropriate, the Commission prior to calling an intergovernmental conference. If the Council delivers a favourable opinion, the President of the Council convenes the conference for the purpose of determining by common accord the amendments to be made to the Treaties. The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.

The Treaty establishing the European Coal and Steel Community expires on 31 July 2002. After that date, decisions in the coal and steel sectors will be made pursuant to the decision-making procedures laid down in the Treaty establishing the European Community.

On 14 December 1999, after the Helsinki European Council (10 and 11 December 1999), the Finnish Presidency sent the Secretary-General of the Council a letter proposing Treaty amendments. On 16 and 17 December 1999 the Council decided, pursuant to Article 48 of the Treaty on European Union, to consult the European Parliament and the Commission, in order that the Council could deliver an opinion in favour of calling an intergovernmental conference. When the Council has delivered a favourable opinion, the current holder of the Presidency, Portugal, will be able to convene the conference.

THE INTERGOVERNMENTAL CONFERENCE IN 2000 – BACKGROUND AND PREPARATIONS

Institutional issues were among the priorities of the previous Intergovernmental Conference in 1996, which resulted in the signing of the Treaty of Amsterdam. The Conference was considered a good opportunity to adapt the Union's institutional structures and make its decision-making procedures more effective in order for the Union to be better prepared to welcome new Member States. Among other reforms, the Treaty of Amsterdam extended the use of qualified majority voting in the Council, strengthened the position of the President of the Commission, extended the competence of the European Parliament and put a ceiling on the number of its Members.

The IGC did not, however, manage to resolve the most difficult institutional issues, namely the size and composition of the Commission and the weighting of votes in the Council. The IGC made a decision that permitted the opening of accession negotiations. In accordance with Protocol no 11 annexed to the Treaty on European Union and to the Treaties establishing the European Community, the European Coal and Steel Community and the European Atomic Energy Community, the IGC decided to revert to the unresolved issues as the enlargement of the Union progressed. Article 1 of the Protocol establishes that on the date of entry into force of the first enlargement of the Union, the Commission shall comprise one national of each of the Member States, provided that, by that date, the weighting of the votes in the Council has been modified in a manner acceptable to all Member States. Article 2 of the Protocol states that a conference of representatives of the governments of the Member States shall be convened at least one year before the membership of the European Union exceeds 20, in order to carry out a comprehensive review of the provisions of the Treaties on the composition and functioning of the institutions. Italy, France and Belgium gave a Declaration on the Protocol linking the conclusion of the accession negotiations with a significant extension of recourse to qualified majority voting. Further, according to a declaration adopted by the Conference and annexed to the final act, it was agreed that, "Until the entry into force of the first enlargement, the decision of the Council of 29 March 1994 ('the Ioannina Compromise') will be extended and, by that date, a solution for the special case of Spain will be found."

Since then, the situation has changed. The Union's enlargement process has advanced more rapidly than expected, and its progress has been clarified. Accession negotiations with the first six candidate states are well under way, and in spring 2000 the EU will start accession negotiations with the next six states. In the present situation it is appropriate to seek solutions that will encompass all enlargements within sight.

In order to ensure that the Union's institutions can continue to work efficiently after enlargement, the Cologne European Council confirmed on 3 and 4 June 1999 the intention to convene a conference of representatives of the Governments of the Member States in early 2000. According to the Conclusions of the European Council, the conference will aim at resolving the institutional issues left open in Amsterdam that need to be settled before enlargement.

In accordance with the Cologne Conclusions, the Finnish Presidency had the task to draw up, on its own responsibility, for the European Council meeting in Helsinki, a comprehensive report (hereinafter "the IGC report") explaining and taking stock of options for resolving the issues to be settled. In so doing, the Presidency was to take into account proposals submitted by Member States, the Commission and the European Parliament.

Finland prepared the IGC report (13636/99 POLGEN 4) as mandated by the Cologne Conclusions. The report was the responsibility of the Presidency, and it was based on consultations with the Member States, the European Parliament and the Commission. The report was not dealt with at COREPER or the General Affairs Council, but it was distributed to the Member States on 7 December 1999, shortly before the Helsinki European Council. The IGC report (13636/99 POLGEN 4) was largely in line with the positions of most Member States. The report was submitted to the Grand Committee of the Finnish Parliament on 8 December 1999 (E 32/1999 vp).

The IGC report was divided into two parts. Part One dealt with issues which, on the basis of the consultations, could be proposed for the agenda of the IGC negotiations. Such issues were those explicitly referred to in the Conclusions of the Cologne European Council, i.e. the size and composition of the Commission, the weighting of votes in the Council, possible extension of qualified majority voting and other necessary amendments in connection with the above issues and in implementing the Treaty of Amsterdam. Such connected issues covered in the IGC report were the responsibility of the Members of the Commission, the allocation of seats in the European Parliament and the codecision procedure, increasing of the operational efficiency of the European Court of Justice and the Court of First Instance and possible amendments regarding other Union bodies, particularly the Court of Auditors. According to the IGC report, the issues in the latter category should be resolved in the Intergovernmental Conference by the end of 2000.

Part Two of the IGC Report covered other institutional issues raised during the consultations. They were not to be taken on the agenda of the IGC, because it was considered indispensable to complete the negotiations within the timetable set by the Cologne European Council. These issues included separate exercises in parallel with the IGC — the Common European Security and Defence Policy (ESDP) and the draft Charter of Fundamental Rights of the Union. The Common European Security and Defence Policy was not entirely excluded from the agenda, but this issue might be dealt with later during the IGC. As for the Charter of Fundamental Rights the report stated that, after the completion of the process on a charter of fundamental rights, it would be considered whether, and if so how, the Charter should be integrated into the Treaties. Part Two also described suggestions made for other reforms during the consultations, i.e. provisions on closer cooperation and restructuring of the Treaties. The IGC report stated that a clear preference had emerged for not taking closer cooperation on the IGC agenda and only little support had been expressed for the Conference to undertake any exercise on restructuring.

In its Presidency Conclusions, the Helsinki European Council welcomed the Presidency's IGC report. According to the Conclusions, the Conference should complete its work and agree the necessary Treaty amendments by December 2000. The Conclusions further state that, following the Cologne Conclusions and in the light of the Presidency's IGC report, the Conference will examine the size and composition of the Commission, the weighting of votes in the Council and the possible extension of qualified majority voting in the Council, as well as other necessary Treaty amendments arising as regards the European institutions in connection with the above issues and in implementing the Treaty of Amsterdam. According to the Conclusions, the Portuguese Presidency will report to the European Council on progress made in the Conference and may propose additional matters to be taken on the agenda of the Conference.

On 3 December 1999, prior to the Helsinki European Council, Prime Minister Lipponen presented both Finland's and the Presidency's IGC objectives for the Helsinki European Council to the Grand Committee of the Finnish Parliament, in accordance with Section 54 a of the Parliament Act. On 13 December 1999, the Prime Minister reported to the Grand Committee on results achieved at the European Council.

FINLAND'S OBJECTIVES FOR THE INTERGOVERNMENTAL CONFERENCE

At the Intergovernmental Conference of 1996, Finland considered that it was necessary to enhance the Union's operation and make it more effective in order for the Union to respond to both internal and external challenges, particularly to those arising from enlargement. Finland's starting point and objective (VNS 1/1996 vp) in institutional issues was that these issues should be looked at as a whole by assessing the balance between the institutions. In this context, attention should be attached to the requirements of democracy and effectiveness and, in particular, to the interests of the small Member States. Furthermore, Finland emphasised the need to bring the Union closer to its citizens.

These objectives have been given priority also after the adoption of the Treaty of Amsterdam. The Programme of the second Government headed by Prime Minister Paavo Lipponen (15 April 1999) states the following: "The Government will seek further development of the decision making and administrative powers of the EU in accordance with the principles of transparency, responsibility and effective administrative procedure. The Government is committed to strengthening the European Union as an international political and economic actor. The Government aims at institutional reforms that are durable also after enlargement. The Government is ready to support the extension of qualified majority voting to ensure proper functioning of the Union and to preserve a balance among the Institutions of the Union and to ensure joint cooperation."

Finland's activities and objectives in the 1996 IGC and the Government Programme of 15 April 1999 constitute the foundation of its positions at the forthcoming IGC. Finland’s positions on the issues to be dealt with at the IGC in 2000 are presented below in the same order as in the IGC report of the Finnish Presidency.

According to the IGC report, the Conference should have three clear ambitions. Firstly, the agenda of the IGC should be focused on the institutional reforms necessary for enlargement. The Conference should endeavour to undertake comprehensive and lasting institutional reforms so that the Union will be able to increase its membership to include all the states involved in the enlargement process. Secondly, the Conference should work towards a balanced outcome which can be politically defended and at the same time understandable to and acceptable to the citizens of the Member States. Thirdly, the Conference should finish its work by the end of 2000, given the importance of maintaining momentum in the enlargement process. These aims are in line with the Finnish Government's objectives for the forthcoming IGC.

According to the statement issued by the Foreign Affairs Committee (UaVL 10/1999 vp) it is appropriate that Finland, both during its Presidency and after it, endeavours to confine the IGC agenda to issues which are widely considered necessary for enlargement. The Committee states, however, that despite the restricted agenda, the IGC has to ensure that not only the Commission and the Council but also the other bodies of the Union, particularly the European Court of Justice, can operate smoothly in an enlarged Union.

Finland's starting point for the 2000 IGC is an agenda that is in line with the Conclusions of the Helsinki European Council. If, however, the agenda of the Conference is extended to issues not covered by this report of the Finnish Government, the Government will amend the report as necessary.

PART ONE: THE TOPICS PROPOSED BY THE COLOGNE AND HELSINKI EUROPEAN COUNCILS FOR THE INTERGOVERNMENTAL CONFERENCE IN 2000

The final solution on the institutional issues will be an overall solution linking the prominent items on the agenda, i.e. the size and composition of the Commission, the weighting of votes in the Council and the extension of recourse to qualified majority voting.

> *The Government's objective is to arrive at a comprehensive and logical long-term solution. It is essential that the outcome be balanced and that the interests of all Member States be taken into account in a manner which contributes to the consolidation of the Union's legitimacy in all Member States and to more effective decision-making.*

1. The size and composition of the Commission

Pursuant to the Treaties, the Commission shall consist of 20 Members and include at least one national of each of the Member States, but may not include more than two Members having the nationality of the same State. The present Commission comprises two nationals from Germany, France, the United Kingdom, Italy and Spain. The 1996 IGC did not reach unanimity about the size and composition of the Commission with regard to the enlargement of the Union. The issue was referred to the IGC preceding the enlargement.

Two basic options emerged in the consultations for the IGC: 1) a Commission consisting of one national from each Member State, and 2) a Commission consisting of fewer Members than Member States. A college with one national from each Member State was considered the most appropriate way of ensuring the Commission's legitimacy. It is assumed to strengthen citizens' feeling of belonging to a Union and to ensure that expertise of each Member State is represented in the Commission. The argument for a Commission with fewer Members than Member States has been that the limited number of members would enable the Commission to effectively fulfil its functions as a college. In practice, this alternative would particularly affect the representation of the small Member States in the Commission.

In addition to the number of Members of the Commission, their mutual status was discussed in the consultations. According to the provisions in force, the Members of the Commission exert equal powers in decision-making. The Commission acts by a majority of the number of Members. Plans to make the Commission's operation more effective by internal reorganisations, such as a revised division of responsibilities or work in working groups, do not require calling of an intergovernmental conference. Only those changes to the status of the Members which would have an impact on their status in the Commission's decision-making require Treaty amendments, and thus settlement by an intergovernmental conference. For instance, unequal classification of the Members by using the size or population of the nominating Member States as criteria would essentially violate the equality of the Member States and thus require settlement by an intergovernmental conference.

It has also been suggested that the number of Vice-Presidents of the Commission should be increased from the one or two Vice-Presidents currently permitted by the Treaties. Increasing the number of Vice-Presidents to e.g. five or seven might lead to an increased differentiation of the Members' de facto positions within the Commission. An increased number of Vice-Presidents is, however, justifiable on the grounds that the workload of the President in the political steering of the Commission will grow with the Union's enlargement. The Vice-Presidents, for their part, could also make the internal coordination of the Commission more effective. By the Treaty on European Union, which entered into force in 1993, the number of Vice-Presidents was reduced from six to a maximum of two. If the overall solution includes a decision to increase the number of Vice-Presidents, it will also be necessary to determine whether this change should be included in the Treaty or whether the Commission should decide on it.

> *The Government considers that in the enlarging Union, the Commission should comprise one national from each Member State. The Government is of the opinion that the Commission can operate efficiently as a college in this composition even after enlargements. The Government further considers that the Members of the Commission have to possess an equal status in the Commission's collegial decision-making. Such a solution will best ensure the Commission's legitimacy as well as equality among the Member States.*
>
> *The Government can, if required, consider a change in the number of Vice-Presidents as part of a comprehensive, balanced solution. All Members of the Commission have to be on an equal footing in decision-making, irrespective of whether the number of Vice-Presidents is increased or not.*

2. The weighting of votes in the Council

The original weightings allocated to each Council member were constructed to reflect respective population size and a balance between groupings of larger, medium and smaller Member States. With each successive enlargement, the new Member State or States have been slotted into categories following the same principle. The present system for weighting of votes gives Member States with a small population a proportionally larger number of votes compared with the larger Member States.

The alternatives suggested for the weighting of votes are re-weighting of the votes and a dual majority system. Re-weighting of the votes in the Council refers to an approach that primarily aims at safeguarding the larger Member States' relative weight in decision-making by changing the number of the Member States' votes. Dual majority is based on the idea that a qualified majority decision firstly consists of the qualified majority of the Member States' votes and secondly of a separately agreed majority of a certain size, based on the population of the Union.

The Protocol on the Institutions to the Treaty of Amsterdam establishes that "at the date of entry into force of the first enlargement of the Union, the Commission will comprise one national of each of the Member States, provided that, by that date, the weighting of the votes in the Council has been modified whether by re-weighting of the votes or by dual majority, in a manner acceptable to all Member States, taking into account all relevant elements, notably compensating those Member States which give up the possibility of nominating a second Member of the Commission."

The threshold for attaining a qualified majority has remained largely unchanged, at around 71 per cent of total votes. It emerged in the IGC consultations that the need for any change in the threshold for qualified majority voting in relation to enlargement may need to be examined in the forthcoming IGC.

During the 1996 IGC, Finland's basic starting point was that there was no need to change the current system for weighting of votes at least before the next enlargement (VNS 1/1996 vp). Towards the end of the IGC, the Finnish Government concluded that, from Finland's viewpoint, the re-weighting of the votes option would be preferable to dual majority. Finland was prepared to discuss the re-weighting of the votes, provided that all Member States were entitled to have one Member in the Commission. Finland regarded dual majority as an inconvenient procedure and did not believe that it was feasible. Finland's positions are largely based on the positions stated during the previous IGC, because the situation has not essentially changed since the reports for the 1996 IGC were prepared.

In the IGC consultations which the Finnish Presidency conducted in autumn 1999 with the Member States, both the re-weighting of the votes and dual majority were discussed. Of these alternatives, the re-weighting gained broader support. Moreover, an acknowledged link existed between the changes to be made in the size and composition of the Commission and the weighting of votes in the Council.

The IGC report of the Presidency states that a solution based on the re-weighting of the votes could be facilitated by applying an across the board proportional increase in the number of weighted votes to allow for differentiation in voting weights to be introduced to take account of the new Member States. This would make it possible to place the new Member States more accurately on a level with or between the present Member States in the scale for weighting of votes.

> *The Government can accept changes to the weighting of votes in the Council provided that satisfactory results are achieved in other institutional issues. The overall solution has to be balanced and the interests of all Member States need to be taken note of.*
>
> *The Government is of the opinion that a simple and clear solution has to be found to the weighting of votes question, applicable in every phase of the enlargement process. The Government prefers the re-weighting of votes as a clear and simple system and, therefore, indisputably a better option than dual majority.*
>
> *The Government does not consider it necessary to change the present QMV threshold.*

3. Possible extension of qualified majority voting

Finland's position is based on the Programme of Prime Minister Lipponen's second Government, published on 15 April 1999. According to the Programme, “the Government is ready to support the extension of qualified majority voting to ensure proper functioning of the Union”.

The IGC report recommends a greater recourse to qualified majority voting (QMV) to ensure, inter alia, efficiency and dynamism in an enlarged Union. Qualified majority voting would not, however, be extended to all issues. According to the report, a number of issues would still remain subject to unanimous decision-making. The report suggests categories of issues for which sound argument exists for seriously considering an extended recourse to QMV. The extended recourse to qualified majority voting is also connected with the discussion on an extended use of the codecision procedure.

It has also been suggested in the IGC consultations that if the recourse to qualified majority voting cannot be extended sufficiently, it may be necessary to moderate the requirement of unanimity in some other manner.

Finland's general position in the 1996 IGC (reports of the Government to Parliament on the extension of qualified majority voting, 15 November 1996 and 16 May 1997) was as follows*:* *"*… the Government takes a positive stand on extended qualified majority voting pursuant to the present system for weighting of votes and on an extended use of the codecision procedure*"*. The reports prepared for the 1996 IGC dealt with the issues falling under the different decision-making procedures Article by Article.

> *The Government supports the extension of qualified majority voting as the key to preserving efficiency in an enlarging Union. This could involve, among other things,*
>
> – *issues related to Union citizenship, free movement of persons, approximation of legislation (to be separately analysed in relation to taxation) and the Community budget, which closely concern the operation of the internal market;*
> – *good financial management;*
> – *Community policies (industry, culture and the environment);*
> – *trade policy (services, intellectual property) and*
> – *certain institutional issues (such as the approval of the rules of procedure of the Community Courts, procedure for the exercise of implementing powers conferred on the Commission);*
> – *issues presently falling within the framework of unanimous decision-making, which are subject to the codecision procedure (the right of movement and residence of Union citizens, migrant workers' social security, measures to promote cultural policy).*
>
> *Issues related to the basic nature of the Union which do not concern increasing the efficiency of decision-making should remain subject to unanimous decision-making. Such issues include amendments to the Treaties and other primary law, Council decisions which need to be approved separately by the Member States, as well as changes to the common institutional system, certain financing arrangements outside the budget, and the division of competence between the Union and the Member States. Unanimity is also required in decisions concerning derogation from the key principles of the internal market, defence policy (Title V of the Treaty on European Union), and issues related to public order and security and the use of coercion (legally binding instruments in intergovernmental cooperation in Title VI of the Treaty).*
>
> *The Government considers that the codecision procedure should, as a general rule, be extended to cover groups of issues which will be subject to qualified majority decision.*
>
> *Basically, decision-making procedures related to Economic and Monetary Union should not be modified at this phase.*

4. Other necessary Treaty amendments in connection with the above issues and in implementing the Treaty of Amsterdam

4.1. Responsibility of the Members of the Commission

The resignation of the Commission in the middle of its term on 16 March 1999 raised questions about the need to review the responsibility of the Members of the Commission in the forthcoming IGC.

The Commission is not only dependent on the ex post facto supervision of legality by the European Court of Justice, but also on whether it enjoys the political confidence of the European Parliament. The Parliament may only table a motion of censure before the Commission as a college, and in such a case the Members of the Commission must resign as a body. It has been proposed that on some occasions the Parliament's position in relation to the Commission should be strengthened so that a motion of censure could also concern individual Members of the Commission.

The European Parliament's right to table a motion of censure before the Commission only as a body, instead of its individual Members, is justifiable particularly since the Commission makes its decisions as a college. Thus, any attempt to render its individual Members accountable to the European Parliament should be repelled.

In accordance with the practice introduced by the President of the present Commission, the individual Members of the Commission are de facto accountable to the President. The President of the Commission has required an undertaking from each Member that he or she will resign in the event of being asked to do so by the President. The IGC report stated that the forthcoming IGC should consider whether the de facto accountability of the individual Members of the Commission to the President should be reflected in the Treaty.

> *The Government considers that the Commission as a college should continue to be accountable to the European Parliament. The Government rejects the idea that individual Members of the Commission would be rendered accountable to the European Parliament.*
>
> *The Government considers that the accountability of individual Members of the Commission to the President of the Commission should be increased. The inclusion of this idea in the Treaty could be examined.*

4.2. The European Parliament

In anticipation of enlargement, the number of Members in the European Parliament was limited to 700 by the Treaty of Amsterdam. This ceiling was considered necessary, because an excessive number of Members might weaken the Parliament's operational capacity. The Treaty amendments were not intended to affect the Member States' opportunities of having an appropriate representation in the European Parliament. Finland supported the ceiling on the condition that the Member States could retain their appropriate representation.

The allocation of seats in the European Parliament within the ceiling of 700 MEPs may be taken up in the forthcoming IGC. During the IGC consultations, the ceiling of 700 Members as such was not called into question. The IGC may need to consider the way in which a proportional reduction should be made in the number of MEPs from each Member State, also Finland, once the ceiling is reached. The IGC may also have to consider whether provisions need to be included in the Treaty to cover any transitional period between the accession of new Member States and the end of the term of office of serving MEPs.

The Government is in favour of retaining the ceiling of 700 Members for the European Parliament even after enlargements. However, an appropriate representation of the Member States must be safeguarded also in the future.

4.3. The European Court of Justice and the Court of First Instance

The number of proceedings instituted before the European Court of Justice and the Court of First Instance has continuously grown, as Community law has gained significance in the activities of both the citizens and business-life of the Union and also in the decision-making of national courts. The number of cases brought before the Community Courts is likely to increase in the future because of enlargement and because the Courts have been assigned new judicial duties.

The continuously growing workload of the European Court of Justice and the Court of First Instance may lead to difficulties in supervision of legality. Increasingly prolonged proceedings will undermine legal security.

The Community Courts have put forward three proposals concerning the Courts on the IGC agenda: a special system for matters concerning officials, a procedure for applying for leave to appeal and a procedure for approval of the Courts' rules of procedure. Moreover, the interim report submitted on 4 November 1999 by the group of wise men set up by the Commission deals with different measures to improve the operational conditions of the Courts without changing the essential structures of the Community's legal security system.

Safeguarding the functioning of the Community’s legal security system will be an important challenge in the near future. It may also require structural changes to the Community Court system. Such changes cannot, however, be made without thorough preparations.

By contrast, urgent measures requiring Treaty amendments are needed to make it possible to make the proceedings of the European Court of Justice more flexible in order to meet the continuously growing number of incoming cases. This increased flexibility can be attained by allowing amendment of certain provisions concerning the Court, which now require amendment of the Treaty to be approved by a unanimous decision of the Council (e.g. the number of judges and advocates-general), by abolishing the requirement of unanimity in the procedure for approval of the Court's rules of procedure and by introducing more flexible proceedings for certain categories of cases.

The Government considers that the growing number of cases submitted to the European Court of Justice and the Court of First Instance call for more flexibility in the conditions and modes of operation of the Courts.

The Government considers that certain Treaty provisions concerning the Courts which now require amendment of the Treaty could, in the future, be taken by a unanimous decision in the Council. The procedure for approval of the Courts' rules of procedure should be altered so that, in the future, the rules of procedure could be approved on behalf of the Council by qualified majority, however not by the codecision procedure.

The Government further considers that special proceedings could be established for certain categories of action, such as cases involving officials. In addition, a system of leave to appeal could be introduced for certain categories of action when an appeal is submitted against a judgement made by the European Court of First Instance.

The Government considers that in connection with all decisions made within the framework of the Community Court system, it is necessary to ensure the equality of Member States before the Community's judicial organs.

4.4. Other Institutions and advisory bodies

– The Court of Auditors

The 15 Members of the Court of Auditors are appointed for a term of six years by the Council, which acts unanimously after consulting the European Parliament. In practice, each Member State is entitled to nominate one national for the Court of Auditors. The Court of Auditor acts as a college.

It is generally considered that the Union's enlargement will make it more difficult for the Court of Auditors to operate in its present organisational form of a college. In practice, its work and decision-making have already proven to be difficult because of the size of the college.

In the appointment of Members to the Court of Auditors, the new Member States should be equal with the present Member States. In practice, however, an increased number of Members would prevent the Court of Auditors from operating smoothly and efficiently. Some informal suggestions have been made to resolve the problem. All propositions would have also broader impacts on, inter alia, the composition, appointments and Presidency of the Court of Auditors, its decision-making and perhaps also the relations between the Court of Auditors and national audit bodies.

The Court of Auditors should continue to comprise one national from each Member State. The Government endeavours to ensure that the modes of operation and organisation of the Court of Auditors are commensurate with its tasks in an enlarged Union. Therefore, it is necessary to examine different options to improve decision-making in the Court of Auditors.

– The Economic and Social Committee

The Council and the Commission are assisted by the Economic and Social Committee, which consists of representatives of the various categories of economic and social activity and acts in an advisory capacity. By the Treaty of Amsterdam, the Committee was linked slightly closer than before to the operation of the Community, and its right to be consulted on legislative measures in certain issues was extended. The Committee has 222 members, 9 of whom are Finnish nationals.

> *The Government considers that the present position of the Economic and Social Committee and the grounds applied to determine the number of its members are appropriate and there is no need to amend the Treaties.*

– The Committee of Regions

The administrative autonomy of the Committee of Regions was strengthened, its competence was clarified and its right to be consulted was extended by the Treaty of Amsterdam. The Committee has 222 members, 9 of whom are Finnish nationals.

> *The Government considers that the present position of the Committee of Regions and the grounds applied to determine the number of its members are appropriate and there is no need to amend the Treaties.*

PART TWO: OTHER INSTITUTIONAL ISSUES RAISED DURING THE CONSULTATIONS

5. Separate exercises in parallel with the Intergovernmental Conference

5.1. Common European Security and Defence Policy (ESDP)

The Helsinki European Council decided to develop more effective military and non-military capabilities and establish new structures in order that the EU could assume its responsibilities across the full range of conflict prevention and crisis management tasks defined in the EU Treaty, i.e. the so-called Petersberg tasks.

The Finnish Parliament discussed the Common European Security and Defence Policy (ESDP) on 25 November 1999, on the basis of the Prime Minister's oral report. The parliamentary Foreign Affairs Committee dealt with the ESDP regularly during the autumn session.

New bodies charged with crisis management will be established on a permanent basis in Brussels. These bodies are the standing Political and Security Committee (PSC), the Military Committee (MC) and the Military Staff (MS). An interim PSC and an interim MC will be established in March 2000. At the same time, the Council Secretariat will be strengthened by military experts seconded from Member States in order to form the nucleus of the future Military Staff.

Further steps will be taken to ensure full consultation, cooperation and transparency between the EU and NATO. Moreover, principles will be established for cooperation with non-EU European NATO members and other European partners in EU-led military crisis management. Portugal was invited to promote these two tasks during its Presidency.

The EU will improve and make more effective use of resources in civilian crisis management. The Union and the Member States already have considerable experience and resources in many fields of civilian crisis management. However, the Union still needs to strengthen the responsiveness and efficiency of its resources and tools, as well as their synergy. For the coordination of its civilian crisis management tools, the EU will set up a coordinating mechanism at the Council Secretariat. In further preparations, the EU will also examine the possibility of establishing a committee for civilian crisis management.

During the Finnish Presidency the Member States expressed divergent views on whether some Treaty amendments were needed because of the new structures to be established. The Helsinki European Council agreed that also this question would be examined during the Portuguese Presidency.

> *The Government considers that the development of crisis management capabilities does not automatically require amendments to the Treaty on European Union. The examination to be made during the Portuguese Presidency should focus on the delegation of decision-making powers. In case it were concluded that amendments to the Treaty are necessary, the issue should be thoroughly prepared and included on the agenda of the Intergovernmental Conference towards the end of the Conference.*

5.2. Draft Charter of Fundamental Rights of the Union

The Presidency Conclusions of the Cologne European Council state that, at the present stage of development of the European Union, the fundamental rights applicable at Union level should be consolidated in a Charter and thereby made more evident.

According to the decision of the European Council appended to the Conclusions, a draft Charter of Fundamental Rights should be presented in advance of the European Council in December 2000. The European Council will propose to the European Parliament and the Commission that, together with the Council, they should solemnly proclaim on the basis of the draft document a European Charter of Fundamental Rights. The decision also states that it will then have to be considered whether and, if so, how the Charter should be integrated into the Treaties.

In its report before the 1996 IGC (VNS 1/1996), the Finnish Government considered that the protection of fundamental rights could be supplemented at Union level e.g. by including certain fundamental rights in the Treaties of the Union, by preparing a separate list of fundamental rights for the Union or through the accession of the European Community to the European Convention on Human Rights. The Government further considered that the aforementioned alternatives were not mutually exclusive. In its report (UaVM 7/1996 vp) concerning the Government's report the parliamentary Foreign Affairs Committee drew attention to possible problems that might arise from the construction of a separate system of fundamental rights for the Union, as pointed out by the Grand Committee and the Constitutional Committee of Parliament in their statements (SuVL 2/1996 vp and PeVL 6/1996 vp). Therefore the Foreign Affairs Committee suggested that, in the IGC, Finland should aim at the accession of the Community to the European Convention on Human Rights and the Treaty amendments necessary for the accession. This objective was not, however, reached in the 1996 IGC, because certain Member States opposed such developments.

Although the Union is now to have a Charter of Fundamental Rights of its own, the question about the Community's accession to the European Convention on Human Rights has not lost its topicality. The accession would be necessary from the viewpoint of persons residing in the Union's territory, for safeguarding international protection of human rights. The accession would also be needed to clarify the division of competence between the European Court of Human Rights and the European Court of Justice. Therefore, the accession of the Community to the European Convention on Human Rights should be discussed as an exercise in parallel with the drafting of the Charter of Fundamental Rights.

> *The Government considers it important that the protection of fundamental rights of Union citizens and other persons residing in the Union territory be strengthened. In this context the Community's possibility of acceding to the European Convention on Human Rights should be examined.*
>
> *The Government welcomes the agreement that after the completion of the Charter of Fundamental Rights, consideration will be given to whether, and if so how, the Charter should be integrated into the Treaties. The Government basically takes a reserved view of the integration of the Charter of Fundamental Rights into the Treaties.*

6. Suggestions made for other reforms

6.1. Closer cooperation

The Treaty of Amsterdam supplemented the Community Treaties with provisions on closer cooperation, or so-called flexibility (hereinafter "flexibility "). The inclusion of particular flexibility provisions in the Treaties involved a new principle according to which the Member States no longer need to act jointly in all matters. According to the flexibility provisions, those Member States which are willing and capable may, on certain conditions, act together more closely in the Union's sectors of operation, by making use of the institutions, procedures and mechanisms of the Union. Flexibility should be kept within the structures of the Union. The flexibility principle stems from the ongoing enlargement process and the opinion that the Union should not always progress in step with the slowest Member State.

Provisions on the general principles and conditions of flexibility as well as certain issues related to the institutions, decision-making procedures and financing are included in the general flexibility clause of the Treaty of Amsterdam. The first pillar (Community) and the third pillar (police and judicial cooperation in criminal matters) include justification clauses allowing flexibility. The second pillar (the Common Foreign and Security Policy (CFSP)) does not contain any provisions on closer cooperation but only on constructive abstention. The introduction of flexibility calls for a majority decision by the Member States, and the decision to introduce flexibility is made by qualified majority voting. If, however, a Member State invokes a vital national interest, the matter will be referred to the European Council for decision by unanimity.

In the 1996 IGC Finland supported the inclusion of flexibility provisions in the Treaties. It was in favour of a general flexibility clause which would be included in the Treaties and supplemented with clauses specific to the different pillars. Finland underlined the importance of maintaining the unity of the Union and considered that it was necessary to set clear conditions for initiating cooperation. Finland supported the procedure according to which the Council would decide on the use of flexibility in sectors falling under the first and third pillar by qualified majority. From the viewpoint of Finland and other small Member States it is appropriate to apply flexibility under supervision, according to jointly agreed rules, within the Union. In such circumstances the application of flexibility is also open to all Member States fulfilling certain criteria.

The Presidency's IGC report establishes that, in the consultations, a clear preference emerged for not taking this issue on the agenda of the Conference. According to the Conclusions of the Helsinki European Council, the Portuguese Presidency will report to the European Council on progress made in the Conference and may propose additional issues to be taken on the agenda. The discussion about flexibility as a possible additional issue on the IGC agenda has continued during the Portuguese Presidency.

> *The Government's basic views about closer cooperation or flexibility have not changed. The Government considers that thorough changes in the flexibility provisions of the Treaty of Amsterdam are not necessary.*
>
> *The threshold for the use of flexibility can be treated as part of the qualified majority issue.*

6.2. Restructuring the Treaties

For historical reasons, the European Communities have three separate Treaties (the European Coal and Steel Community 1951, the European Atomic Energy Community 1957 and the European Economic Community 1957). In 1992, these Treaties were supplemented with the Treaty on European Union.

The possibility of consolidating the Treaties of primary law into one single Treaty ('Charter') has been discussed on a number of occasions. In 1984, the European Parliament submitted, in the form of a resolution, a proposal on the Charter of the European Union. For the negotiations on the Treaty of Amsterdam, a proposal on the consolidation of the Treaties was prepared by order of the European Parliament. In the negotiations, three measures were discussed, namely elimination of provisions which were out of date or had lost their significance, consolidation of the Treaties and renumbering. Outdated and insignificant provisions were eliminated from all four Treaties (the Treaties establishing the EC, the ECSC and the European Atomic Energy Community and the Treaty on European Union). The Treaty establishing the European Community and the Treaty on European Union were renumbered, but the Treaties were not consolidated.

The restructuring of the Treaties has been discussed again during the consultations for the 2000 IGC. It was proposed in October 1999 by the group of wise men set up by the Commission, and on this basis the proposal was also included in the IGC document published by the Commission on 10 November 1999. The basic idea is to divide the existing provisions of the Treaties into two categories. The first category would include fundamental provisions on competence and the second category all other essential provisions (e.g. sectoral policies). First category provisions could only be amended pursuant to the current procedure for amending the Treaties. Amendments to second category provisions would require a unanimous decision of the Council and approval by the European Parliament.

The restructuring project can be viewed from different angles. Its great advantage is that it would clarify the primary law of the EU. From the political point of view, the question arises whether the project may possibly lead to a drafting of a constitution for the EU. This comprehensive rewriting of the Treaties could also be accompanied by some more extensive reform projects connected with EU principles, such as the inclusion of a list of fundamental rights in the Treaty. As far as the division of the Treaties into two categories is concerned, it is essential to examine which provisions could be amended without the consent of the national parliaments. The basic nature of the EU would undergo a significant change if the institutions themselves could define the scope of the Union's competence. The issue also has a clear constitutional dimension, e.g. in respect of the Finnish Parliament's position. In practice it will probably be nearly impossible to change the order of provisions without affecting their interpretation at the same time. The renumbering of the Articles will constitute a technical problem.

The restructuring of the Treaties may be proposed for the IGC agenda. The project is, however, of such a comprehensive nature that it will probably not be feasible within the timetable agreed for the IGC. The project will require the unanimity of all Member States as well as ratification at national level.

The Government considers that there is no reason to restructure the Treaties in the 2000 IGC.

PRACTICAL ARRANGEMENTS AND FURTHER PREPARATIONS FOR THE INTERGOVERNMENTAL CONFERENCE

According to the Conclusions of the Helsinki European Council, ministers who are members of the General Affairs Council will have overall political responsibility for the Conference. Preparatory work shall be carried out by a group composed of a representative of each Member State's Government. The representative of the Commission shall participate at the political and preparatory level. The General Secretariat of the Council will provide secretariat support for the Conference.

By the Conclusions of the European Council, the position of the European Parliament in the IGC was strengthened to some extent compared with the previous IGC. The European Parliament will be closely associated with and involved in the work of the Conference. Meetings of the preparatory group may be attended by two observers from the European Parliament. Each session of the Conference at ministerial level will be preceded by an exchange of views with the President of the European Parliament, assisted by two representatives of the European Parliament. Meetings at the level of Heads of State or Government dealing with the IGC will be preceded by an exchange of views with the President of the European Parliament.

The candidate states will be regularly briefed within existing fora on the progress of discussions and have the opportunity to put their points of view on matters under discussion. Information will also be given to the states of the European Economic Area.

The Intergovernmental Conference will be one of Portugal's priorities during its Presidency, which began on 1.1.2000. The Portuguese Presidency Programme establishes that it will be a priority of the Presidency to ensure that work advances as rapidly and constructively as possible. This requires willingness and openness by all partners to find balanced and mutually acceptable solutions. The candidate states will be invited to present their views on the items on the IGC agenda and will also be briefed on the progress of ongoing negotiations. The European Parliament will be closely associated. The Presidency will take note of all suggestions received during the IGC from different sectors. The Portuguese Presidency will also make every effort to further the work on establishing the European Charter of Fundamental Rights. Moreover, the Presidency will encourage the debate on how best to involve national parliaments in the Community process, both in terms of information and decision-making.

The IGC negotiations will proceed in line with the work programme and timetable published by the Portuguese Presidency on 24 January 2000 at the General Affairs Council. Negotiations at ministerial level will be conducted once a month at IGC sessions to be held in connection with the General Affairs Council. The group of representatives of the Member States' Governments, who prepare the IGC sessions at ministerial level, will convene as a general rule every two weeks.

At national level, the Intergovernmental Conference is dealt with in Finland by the Cabinet Committee on European Union Affairs and, where necessary, by the Cabinet Committee on Foreign and Security Policy. Preparations at the level of officials are the responsibility of the institutional working group and the EU Affairs Committee. Moreover, the group of the ministers' senior advisers monitors IGC issues. IGC contact persons have been appointed for the ministries and the Åland Islands to facilitate communication.

The Government will inform citizens and organisations in an appropriate manner about the preparations for and the progress of the Conference.

The Government will keep Parliament regularly informed and consult it, in accordance with the Parliament Act, on matters concerning the progress of the Conference and its decisions.

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