Policy document of the FRG on the IGC on institutional reform (21 March 2000)

Caption: On 21 March 2000, the government representative of the Federal Republic of Germany communicates Germany's fundamental position on institutional reform to the Chairman of the Intergovernmental Conference Group of Ministers' Representatives.

Source: Conference of the Representatives of the Governments of the Member States Translation of letter – IGC 2000 – Policy document of the Federal Republic of Germany on the Intergovernmental Conference on institutional reform, CONFER 4733/00. Brussels: 21.03.2000. 8 p.
http://www.consilium.europa.eu/uedocs/cms_data/docs/cig2000/EN/04733en.pdf.

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CONFERENCE OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES

Brussels, 30 March 2000 (05.04) (OR. d)

CONFER 4733/00

LIMITE

TRANSLATION OF LETTER

from :	Dr Gunter PLEUGER, Representative of the Government of the Federal Republic of Germany
dated :	21 March 2000
to :	Mr Francisco SEIXAS DA COSTA, Chairman of the Intergovernmental Conference Group of Ministers' Representatives
Subject :	IGC 2000: Policy document of the Federal Republic of Germany on the Intergovernmental Conference on institutional reform

Dear colleague,

In his letter dated 4 February 2000 to Mr Fischer, Federal Minister for Foreign Affairs, Foreign Minister Gama, suggested that the fundamental positions of the Member States of the European Union on the topics of the Intergovernmental Conference relating to institutional reform in the European Union be presented in writing.

Foreign Minister Fischer already put forward the Federal Government's fundamental position at the opening meeting on 14 February 2000. It has now been summarised in the form of a paper which I am attaching to this letter.

I would be grateful if you could circulate the German position as a conference document to the Member States.

(Complimentary close)

(s.) G. PLEUGER

ANNEX

Policy Document on the Intergovernmental Conference on Institutional Reform

The European Council in Helsinki in December 1999 adopted forward looking decisions for the enlargement process and the reform of the European Union. Appreciable impetus has thus been given to the enlargement process. The imminent round of enlargement negotiations will make decisive changes to the geographical expansion of the EU and to its influence in the world. The inclusion of new Member States, especially countries of Central and Eastern Europe, will further help to overcome the division of Europe, while the goal of comprehensive European integration is moving closer. However, an enlarged Union can only live up to these tasks and expectations if the integration process is simultaneously consolidated as well as extended and intensified in its new context. The great challenge over the coming years will be successful mastery of the balancing act between enlargement and consolidation of the EU.

In order to guarantee its ability to function also under the circumstances of an enlarged Union, considerable adjustments and amendments to the institutional framework of the EU will be necessary. Maintaining institutional structures which were designed for an EEC with six Member States will no longer be possible after the next enlargement.

The Helsinki European Council emphasised that in order to enable the Union to accept further accessions by the end of 2002, the Intergovernmental Conference should reach agreement before the end of this year on the necessary amendments to the Treaties. This means that the timescale for the discussions on reform is extremely limited. To take account of this, the European Council brought a short-list of unresolved issues to the forefront of the Intergovernmental Conference. Three issues are thus at the forefront, on which no agreement or only limited agreement could be reached on conclusion of the last Intergovernmental Conference at the Amsterdam European Council:

– the size and composition of the European Commission;
– the weighting of votes in the Council;
– the possible extension of qualified majority voting in the Council.

Other amendments to the Treaty are necessary as regards the European institutions in connection with the above issues and in implementing the Treaty of Amsterdam. If need be, the Portuguese Presidency may propose additional topics for the Conference agenda to the European Council in Feira.

I. Mandate of the Intergovernmental Conference

The Federal Republic of Germany also attaches high priority to the objective of bringing the Intergovernmental Conference to a conclusion by the end of the year 2000. The EU must in any event keep to this objective if it intends to maintain the impetus of the enlargement process. A ratification process lasting about two years is to be counted on for the amendments to the Treaties to be decided on by the Intergovernmnental Conference. If the conclusion of the Intergovernmental Conference is postponed this could delay the accession negotiations.

The Intergovernmental Conference should therefore focus on those issues for which there is an irrefutable need for action, in accordance with the conclusions of the Helsinki European Council.

With a view to the **report to be drawn up by the Portuguese Presidency** on progress to be made at the Conference, the Federal Republic takes the view that in addition to the three Amsterdam issues, the **following issues** should be **discussed** at the Intergovernmental Conference:

- **the individual responsibility of the commissioners;**
- **the composition and working methods of the Court of Justice;**
- any **institutional questions relating to European Security and Defence Policy** in the light of the Portuguese Presidency's report to the European Council in Feira;
- **increased cooperation.** This is an important topic in connection with the discussions on extending qualified majority voting (to overcome the unanimity requirement with regard to the triggering mechanism) and the discussions on foreign, security and defence policy (as regards possible increased cooperation under the second pillar).

If a consensus were to emerge among the Member States to deal also with **other institutional issues** – such as the European Parliament, the European Court of Auditors, the Economic and Social Committee and /or the Committee of the Regions – the discussions should **focus on aspects relevant to enlargement.**

More far-reaching concerns for reform are not to be the subject of this Intergovernmental Conference, but could be tabled for future discussions with a clear timescale.

II. Main issues

Size and composition of the Commission

During the forthcoming enlargements the Commission will no longer be able to grow as it has hitherto. In this connection, the current figure of 20 Members constitutes a limit beyond which, the efficiency of the Commission's work would clearly start to suffer. The proper distribution of powers and portfolios within the Commission is already creating serious problems.

Two options for a solution may be considered:

1. The Intergovernmental Conference could set an upper limit not to be exceeded even if there are more Member States than the expected number, e.g. 20.
2. The Intergovernmental Conference could lay down the rule of "one Commissioner per Member State" as a principle for all further enlargements.

The Federal Republic favours a fixed upper limit to maintain an efficient and effective Commission. This would in any event ensure that the Commission could act effectively.

The related issue of a second Commissioner for Germany depends, however, on a satisfactory outcome in other areas, particularly as regards the weighting of votes.

The second case, in particular, would require the inclusion in the Treaty of criteria and conditions for the Commission's internal structure, such as strengthening the position of the President of the Commission or, as part of a comprehensive solution, increasing the number of Vice-Presidents with overall coordinating responsibilities.

Reform of the weighting of votes

The distribution of weightings among individual Member States has, as a result of the various enlargements, changed in favour of the smaller Member States, as their numbers have increased disproportionately. Future enlargements would considerably increase this trend. Behind a qualified majority of weighted votes lies an increasingly smaller proportion of the total population of the EU. If this process were to continue, it is doubtful whether a bare majority of the population would suffice to legitimise EU decisions with vast implications and effects for all the Member States and their citizens.
The objective of reforming the weighting of votes must therefore be to ensure a more representative balance between Member States so that the minimum percentage of the population required for a qualified majority continues to be about 60%.

Germany could consider two options to resolve these problems: a comprehensive re-weighting of votes or a "dual majority" system (keeping the weighting of votes, but with the added requirement that the Member States in favour must represent a certain percentage of the overall population, e.g. 60%). The Federal Republic's aim is to attain a model that is a truer reflection of the demographic differences between Member States.

Extension of the qualified majority

The extension of qualified-majority decisions was already a declared aim of the Federal Republic at the 1997 Intergovernmental Conference. Acceptance of the broadest possible application of this principle is the decisive starting-point for ensuring that an enlarged Union can act effectively. Real progress must be made here. In order to go beyond the achievements of the Amsterdam Treaty, the Federal Republic has chosen a new approach whereby all provisions requiring unanimous voting should in principle be a qualified-majority voting. Exceptions to this rule should be determined on the basis of a concrete catalogue of criteria ("exceptions to the rule" approach).

The following criteria could be considered for such exceptions:

– decisions subject to ratification by the Member States. A Member State can hardly be expected to implement a decision under its national legislative procedure on which it has been outvoted;
– constitutional decisions which lie outside the scope of amendments to the Treaties, e.g. institutional issues or decisions conferring competence in accordance with Article 308 of the EC Treaty ;
– decisions which, if adopted by a qualified majority, would constitute a backward step in relation to integration or the acquis communautaire;
– decisions relating to military policies and defence.

Any provision which hitherto provided for unanimity should in principle continue to be subject to the unanimity rules only if it meets the above criteria after careful scrunity.

Other solutions are, moreover, conceivable with regard to majority decisions (e.g. maintenance of unanimity in "particularly sensitive" areas, transition to a qualified majority in "less sensitive" areas). Definitive agreement on the extension of majority decision-making is conditional upon results satisfactory to the Federal Government attained in other areas covered of the Intergovernmental Conference (e.g. weighting of votes). Any links to institutional structures should also be taken into account.

III. Further issues

Individual responsibility of the members of the Commission

To date, no express provision has been made in the Treaty for Commissioners' individual responsibility. The institutional crisis in connection with the resignation of the Commission in March 1999 has highlighted this shortcoming. In the context of the discussions on the composition of the Commission, the Intergovernmental Conference should examine a solution to the issue within the Treaty with regard to the Commission-European Parliuament-Council institutional triangle.

Composition and working methods of the European Court of Justice (ECJ)

The duties of the European Court of Justice and of the Court of First Instance (CFI) have constantly increased as a result of the extension of the sphere of competence of the European Union (Amsterdam Treaty, EMU, Case Law of the ECJ derived from agreements under the third pillar). Their workload has grown accordingly. Despite rationalised working methods, proceedings are already excessively lengthy. This ultimately leads to a deterioration of the function of protection by the Law and of cooperation with national courts. Enlargement will further increase demands on the Community judiciary. This will also have an effect on the scale of the Court of Justice. There is an urgent need for reform as regards questions of both procedure and principle. The Federal Republic is thus in favour of the Intergovernmental Conference examining the methods of work and composition of the Court of Justice with a view to efficient jurisprudence.

Any institutional issues in connection with the European Security and Defence Policy (ESDP)

The Helsinki European Council adopted a number of important decisions for the further development of European Security and Defence Policy. The Portuguese Presidency was asked to submit a report to the European Council which should, inter alia, answer the question of whether or not Treaty amendment is judged necessary. In the light of this report, it will have to be decided to what extent the Intergovernmental Conference will also take up this question.

Increased cooperation/flexibility

The Amsterdam Treaty contains provisions for increased cooperation (also referred to as flexibility). This is intended to enable those Member States willing and able to do so to push ahead more rapidly than others with the consolidation of European integration. Closer cooperation must be forward-looking, should not jeopardise the acquis or lead to distortions of competition on the internal market. It must be directed at promoting the objectives of the Union and respect the principles laid down in the Treaties as well as the uniform institutional framework.

In the face of the forthcoming enlargement of the Union, there should in future be greater possibilities for increased cooperation. This also includes the possibility of initiating closer cooperation, if need be, by means of qualified-majority decisions. The right of veto for individual Members States should be rectified at the Intergovernmental Conference by means of a solution in favour of genuine majority decisions.

The Intergovernmental Conference should also examine to what extent flexible solutions are necessary in the area of the Common Foreign and Security Policy.