

EU Presidency note on closer cooperation (18 July 2000)

Caption: Note from the Presidency of the Council of the European Union, dated 18 July 2000, on closer cooperation. In its note, the Presidency sets out a series of questions that will be put forward for discussion at the ministerial meeting on 24 July 2000.

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LIMITE

PRESIDENCY NOTE

Subject: **2000 IGC**
– *Closer cooperation*

Following representatives' discussions in the Preparatory Group on 14 July 2000, the Presidency is putting forward the following questions for discussion by Ministers and taking on the continuation of the clarification work begun in the Portuguese Presidency's report, in order to pin down more clearly the various aspects of closer cooperation.

1. Aim of closer cooperation: promoting integration within the Union

Closer cooperation making use of the Union's institutions, procedures and mechanisms has to be aimed (Article 43 of the TEU) "at furthering the objectives of the Union and at protecting and serving its interests".

Would it not be possible to go further and stipulate the such cooperation constitutes a means of integration?

Would it not then be necessary to establish "coming on board" arrangements in each case of closer cooperation, in particular specifying transparent, non-discriminatory terms on which participation would be open to all Member States, including those joining the Union in future?

2. Conditions for use of closer cooperation (enabling clauses)

The authorisation conditions currently laid down in Articles 40, 43, 44 and 45 of the TEU and in Article 11 of the TEC seem, to most delegations, in need of revision to make the use of closer cooperation within the Union's institutional framework more attractive (as against closer cooperation completely outside the Union setting).

- 2.1. *The condition as to the number of participants (currently "at least a majority of Member States") and the possibility of a "veto" by the European Council are generally considered over-restrictive requirements, which could be relaxed. Do delegations share that view?*
- 2.2. *Would it not be possible, as some delegations propose, to structure the other conditions around a few principles as follows: (1) respect for the Union's institutional framework; (2) participation open to all Member States on transparent, non-discriminatory terms; (3) strict compliance with the Union acquis; (4) full respect for the rights of non-participating States?*
- 2.3. *Should the "last resort clause" be added? Is that clause not impossible to put into practice and therefore always open to legal challenge? Should it be redrafted?*
- 2.4. *Is there a need, as some delegations propose, to set apart closer cooperation relating in particular to regulatory action in connection with the operation of the internal market (free movement of persons, goods, services and capital), to extensively integrated common policies and to economic and social cohesion, which could be made subject to more stringent requirements than in other cases? In so doing, would it not be possible to distinguish between two types of closer cooperation: (1) that concerning activities at the heart of the integration process and (2) that covering less integrated activities, with different conditions of use applying to each of the two kinds?*

3. CFSP

- 3.1. *Should provision be made for closer cooperation, using the Union's institutions, procedures and mechanisms in the CFSP field?*
- 3.2. *If so, is it necessary, for the sake of preserving the unity of the Union's external action, to limit such cooperation to two kinds, viz.: (1) initiatives in areas not covered by a common strategy/action/position, (2) specific aspects of the implementation of policies already approved by the Council in respect of which certain Member States would like to have special responsibility conferred on them in keeping with their situation or their means of action?*
- 3.3. *Should the method of approving such closer cooperation be voted by a qualified majority (as with the First and Third Pillars) or unanimously (as is proposed in the Spanish document)? In the event of qualified majority voting, should the "right of veto" be retained in the European Council, something which a majority of delegations seem willing to abolish for the other pillars?*
- 3.4. *ESDP: several delegations proposed that the ESDP be the subject of a specific closer cooperation clause using, for example, a protocol annexed to the Treaty ("predetermined closer cooperation") or an enabling clause. Should this idea be followed up at this stage of the negotiation?*

4. Operating conditions for closer cooperation

Article 44 TEU stipulates that "the relevant provisions of this Treaty and of the Treaty establishing the European Community shall apply". The Council thus decides by a majority or unanimously depending on the areas concerned, with only the votes of the States participating in closer cooperation being counted.

Would it not be possible, on a case-by-case basis, to relax the internal rules for the operation of closer cooperation if the participants are in agreement (examples: a Presidency of a more permanent nature, wider use of qualified majority voting, etc.)?

5. An intermediate category?

Some kinds of closer cooperation have developed outside the institutional framework but are obviously connected with the attainment of the objectives of the Union. This is the case with Schengen (where the Commission sat as an observer and which has since become an integral part of the "acquis" of the Union). This is no doubt the case at present with certain forms of cooperation in defence or weapons matters.

- *Should consideration be given in the Treaty to a possible "compliance with the objectives of the Union" clause which would make it possible, under certain conditions, to embody in the Treaty certain types of cooperation designed to help attain the objectives of the Union but which are outside the remit of the institutions and which may concern matters outside the Union's jurisdiction?*
- *Or should the links between such types of cooperation and the Union be governed on a case-by-case basis, in a pragmatic manner, with the risk of lack of mutual awareness and of parallel procedures?*

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