

ADAPTING THE INSTITUTIONS TO MAKE A SUCCESS OF ENLARGEMENT

Contribution by
the European Commission to preparations for
the Intergovernmental Conference
on institutional issues

Presented by the President and Mr Barnier

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The next round of amendments to the Treaties will begin at the start of the year 2000. The Commission will then be tabling the opinion it is required to give under Article 48 of the Treaty on European Union.

With a view to the European Council meeting being held in Helsinki on 10 and 11 December, the Commission would like to make this contribution towards the report currently being drafted by the Presidency.

The Commission has taken as its starting point the commitment made before the European Parliament on 21 July by its President-designate. Mr Prodi. said that he wanted to see institutional reforms which would prepare the European Union properly for receiving a large number of new Member States. He announced at the same time his intention of canvassing the views of various highly placed personalities, who sent the Commission their report on the institutional implications of enlargement on 18 October.¹

Introduction

The accession of several new Member States is the major political objective for the early part of the next century. This project, quite new in scale, raises serious issues about how the Community Institutions function. How can they work, how can they take decisions when there are almost thirty Member States? This key question faces all the Institutions and there are a variety of responses.

This major and complex political endeavour of enlargement will engage the Union as a whole, in all its aspects and with all its resources: it will have an impact not only on the operation of its Institutions, but also on the way in which some of its policies are conducted, and on its new place in the world. The Union will come out of this process transformed. It must not emerge from it weakened.

The Commission is convinced that it is important to identify now all the solutions that can be useful to the next Intergovernmental Conference, **which should be called as soon as possible early in 2000.**

¹ Report to the Commission by Mr Dehaene, Mr von Weizsäcker and Lord Simon.

On 13 October, the Commission approved a series of reports on the progress achieved by each of the countries applying for accession. The composite paper² **calls for a firm commitment to negotiate with all the applicant countries so that they can join the Union as soon as they are ready.** The Commission recommends that the Council conclude that *“the process of institutional reform must be oriented in such a way that the very substantial changes that are necessary as a condition for enlargement will be in force in 2002”*. The Commission also asks the Council *“to commit itself to being able to decide from 2002 on the accession of candidates that fulfil all the necessary criteria”*.

This recommendation takes account of the changes which have taken place over the last two years: the single currency became a reality, some of the applicant countries have made progress and, on all sides, there is a strong desire for reassurance that the Union is preparing to receive them.

If this approach is adopted, as the Commission would like to see, then it will be important to recognise that the political parameters have changed and to draw the right conclusions: the Union must start preparing now for almost twice its current number of members. **The distinction made at Amsterdam between limited adjustment and fuller reform becomes irrelevant.**³ As from 2002, Europe will be embarking upon an enlargement process lasting several years.

This prospect will not allow us to postpone the necessary reforms. What is more, a further Intergovernmental Conference on the heels of the first would only exacerbate the dangers: the risk that any difficulties encountered during the first conference would be put off for the second; the risk that the second will itself be regarded as another prelude to enlargement; and finally, the risk of a growing lack of understanding among the people in the Member States in the applicant countries for ongoing institutional instability.

After the next Intergovernmental Conference, the Union will not be able to deal with enlargement and rethink its institutional system at the same time. Over almost fifteen years now, the Union has been adjusting its internal structures in the Single European Act, Maastricht and the Treaty of Amsterdam. Now it is preparing the next reforms. **These should come before enlargement.** But they should also help to **stabilise the Community’s institutional framework on a lasting basis.**

It is vital, therefore, that the next Intergovernmental Conference should end by producing real reform at the end of 2000, giving enough time for the necessary ratifications before enlargement begins. It is vital, too, to carry through the institutional reforms needed for operating a very substantially wider Union. **The Commission is convinced that a vigorous institutional reform, one suited to our needs, can be completed before the end of 2000 if the political will is sufficiently strong.**

² COM(1999) 500 final of 13 October 1999.

³ Protocol on the institutions with the prospect of enlargement of the European Union.

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Issues at stake in the next Intergovernmental Conference

The European Council in Cologne (3-4 June 1999) defined the brief of the Intergovernmental Conference as covering the following topics⁴:

- *size and composition of the European Commission;*
- *weighting of votes in the Council (re-weighting, introduction of a dual majority and threshold for qualified-majority decision-making);*
- *possible extension of qualified-majority voting in the Council.*

The Conference could also discuss other necessary amendments to the Treaties arising as regards the European institutions in connection with the above issues and in implementing the Treaty of Amsterdam.

In view of this, the Commission recommends that the next Intergovernmental Conference **concentrate on issues of institutional nature**. Our full attention must be focused on these issues if we are to find real and lasting solutions. We do not, in principle, need to examine the fundamental thrust of the Community policies. The goal of the impending reform will not, therefore, be to adjust the institutional balance or to widen spheres of competence - **with the key exception of the ongoing debate on a European security and defence policy, which is crucial to the Union's political standing**. These discussions may in fact have an institutional impact, which should be translated into appropriate amendments to the Treaty when the time comes.

The Commission also feels that now is the time to carry out all the institutional reforms which are needed. **How can we assume that it will be easier, with almost thirty Member States, to achieve something we were unable to achieve with fifteen at Amsterdam, or that we are unwilling to tackle with fifteen today?** It will certainly be easier to deal with the issues identified at Amsterdam and Cologne if these difficult topics, which are of the essence for the forthcoming Intergovernmental Conference, are **placed within a wider political context**: that of materially preparing the Union for enlargement and adapting the Community Institutions accordingly.

If reform is needed today, it is because the Union must be capable, after enlargement, of deepening its vision and consolidating European integration in concert with those who will have become its new Member States. It is in their interests, as well as the

⁴ Paragraph 53 of the Presidency Conclusions.

Union's, that we should tackle these vital reforms without delay and in an objective spirit.

The enlargement of the European Union will have two key impacts on the way in which the Union operates: the impact of sheer **numbers** and a **fragmentation** effect, since an enlarged Union runs the risk of becoming less cohesive and hence less robust. The institutional system must be prepared for both of these consequences.

I. Functioning properly with a large number of Member States

An increase in the number of Member States automatically complicates and slows down the decision-making process. Our first response must be the correct application of the subsidiarity principle, as laid down in the Treaties.

When the Union has to act, it must be able to do so effectively. How can we reach unanimity with almost thirty Member States? How can we make sure that the Treaties can evolve and support the subsequent development of the Union? How can we ensure that the Council's decisions are more representative of demographic balances? How should the other Institutions be organised to allow them to continue carrying out their work as best as possible despite the expansion in the number of Member States? How should the Institutions, more generally, adapt the way in which they operate?

Some of these issues are interconnected: for instance, it will be easier to extend the scope of qualified-majority voting in parallel with a balanced re-weighting of the votes held by Member States in the Council.

Not all of these issues entail changes to the Treaties. But they must all be examined as part of the same problem: how to ensure the **smooth functioning of the Institutions within an enlarged Europe**. Maintaining the crucial balance among all Member States must be part of these reforms, in line with the original spirit of the Treaties of achieving a Union of the Member States and of their peoples.

1. Decision-making

The European Council in Cologne invited the future Intergovernmental Conference to consider **a possible extension of qualified-majority voting in the Council**. The Treaty of Amsterdam enabled important advances to be made, but the fact that the number of Member States is set to almost double means we have to go a great deal further. The interests of the various members will soon be so diverse that the working of the Union could easily be blocked.

All decisions which still require unanimity must therefore be reviewed on the principle that the odds are against such decisions being taken after enlargement. Qualified-majority voting should therefore become the rule, apart from a very few exceptions for issues which are truly fundamental or felt to be extremely sensitive politically. For example, application of this principle could for instance extend qualified-majority voting to the following areas:

- the four Treaty provisions where the co-decision procedure co-exists with unanimity⁵ should be changed to qualified majority to retain the advantages of co-decision;
- in the wake of the European Council in Tampere, note should be taken of the desire of the Heads of State and Government to obtain rapid and concrete results in the field of justice and home affairs. We should therefore ask how the present provisions of the Treaties meet this political objective, especially as regards the area of freedom, security and justice;
- it should be possible to take a decision by qualified majority to extend the mechanisms of the common commercial policy to international negotiations and agreements on services and intellectual property, in accordance with Article 133 of the EC Treaty;
- certain decisions on taxation which are essential to the smooth running of the internal market, social policy (Article 137(3), Article 144), the environment (Article 175(2)), structural policy (Article 159, Article 161) could in future be taken by qualified majority. This is likely in some cases to require changes to the wording of certain Treaty articles.

Of course, where **questions of a legislative nature falling within Community competence** are concerned, **any extension of the scope of qualified-majority voting must be combined with the co-decision procedure in the European Parliament.** As the Commission observed in its opinion on the last Intergovernmental Conference, this would entail clarification of what actually constitutes a legislative instrument. This would in turn make it easier to take implementing action, both at the Community level and within the Member States, and would therefore promote subsidiarity.

2. The evolution of the Treaties

In its opinion on the 1996 Intergovernmental Conference⁶, the Commission found that the Treaty contained provisions of very varied levels of importance as a result of successive amendments. It felt that in future *“it should be possible to amend at least provisions that are not of a constitutional nature by a procedure which imposes fewer constraints than the one currently in force.”*

The report by Mr Dehaene, Mr von Weizsäcker and Lord Simon proposes that the Treaties be split into two parts: basic provisions on the one hand and implementing provisions on the other. The latter would include the less fundamental provisions and could be amended by the Council (by a **reinforced qualified majority** or **unanimity**) with the assent of European Parliament.

⁵ Treaty establishing the European Community: Article 18(2) (facilitating the right of citizens of the Union to move freely and reside freely within the territory of the Member States), Article 42 (coordinating social security for workers), second sentence of Article 47(2) (coordinating legislation governing access to and the pursuit of activities as self-employed persons where it involves amendment of the existing principles laid down by law governing the profession with respect to training and conditions of access for natural persons) and Article 151 (culture).

⁶ February 1996 – European Commission Opinion on the 1996 Intergovernmental Conference provided for under the Maastricht Treaty.

It is worth noting that the ECSC Treaty already contains a simplified amendment procedure for certain non-fundamental provisions in certain circumstances⁷. With respect to economic and monetary policy, the Treaty provides for a simplified procedure for adjusting the protocol on excessive deficits (Article 104 ECT).

Enlargement inevitably leads us to speculate about the possibility of amending Community policies without ratification by national parliaments and, in certain cases, without the need for unanimity.

The Commission does not underestimate the technical and political difficulty of such an exercise, **which should be carried out without changing the legal content and without producing any changes in the existing competences of the Union or the Community**. But reorganising the Treaties, accompanied by revision procedures suited to the prospect of almost twice the number of Member States, would bring clear advantages in terms of the subsequent progress of European integration:

- it would concentrate the basic Treaty on those provisions essential to the Union; clearer commitments and transparent tasks, making the text a better tool of democracy;
- it would allow the evolutionary nature of the Treaties to be preserved. The present procedure, where the conclusions of the Intergovernmental Conference are approved unanimously and then subject to national ratification procedures, will become far too onerous after enlargement and it will be impossible to amend the most short-term and non-fundamental provisions of the Treaties as needed.

The Commission considers this to be a very interesting idea which is worth reflecting on. It therefore intends to promote closer study of it, on an exploratory basis, using work already carried out by academics.

Further, we must begin by identifying existing provisions in the Treaties for which simplified revision procedures could justifiably be allowed. There are already some examples in the present Treaties (Article 67 ECT on changing the visa, asylum and immigration procedures, Article 133 ECT on extending the application of the common commercial policy to certain other areas). The same process should be used for other non-fundamental issues.

⁷ 18 April 1951 – Treaty establishing the European Coal and Steel Community (Article 95, paragraphs 2 and 3).

3. Representation of the Member States in the Council

While the European Parliament, in the words of the Treaty, represents the *peoples of the States brought together in the Community*, the Council represents the democratically elected governments of each Member State. The present balance between the Institutions presupposes that the Council's decisions should be more representative of the relative weight of the various Member States. On this point, the initial thinking behind the founding Treaties should be respected and where necessary reinstated.

The original Treaties required 12 out of the 17 votes then allocated to the Member States (in other words 70.5 % of the votes) for a qualified-majority decision. They also instituted over-representation of the less populated countries.

With the successive additions of nine new members, the threshold required for a qualified majority has risen slightly. The deliberate imbalance originally sought also increased, to the detriment of the most populous Member States. The minimum population required for a qualified majority has thus passed from 67% (six Member States) to 70% (nine and ten Member States) and now 58% (fifteen Member States). To prepare for enlargement, therefore, we must:

- **facilitate decision-making:** the percentage of votes required for a qualified majority (currently 71%) could be set once and for all, maybe even at a lower level;
- **strengthen the democratic representativeness of Council decisions:** today, in the worst-case scenarios, a decision can be blocked by a group of Member States representing just 12% of the Union's population, or adopted by a group of Member States representing only 58%.

If the Treaty were to remain unchanged, in an enlarged Union of 27 members a decision could be blocked by a group of states representing 10% of its population and adopted by a group representing just 50%.

Reflections on the weighting of votes in the Council must take account of these two aspects and **also work towards the goal of simplicity.**

4. The other Institutions and consultative bodies of the Union

The Treaty provisions on the Institutions need to be adapted with a view to enlargement.

- **The European Parliament:** within the upper limit set by the Treaty, it will be necessary to specify the number of elected representatives from each Member State and meet the requirement in Article 189 of the Treaty establishing the European Community to ensure appropriate representation of the peoples of the States brought together in the Community.
- **The Commission:** the current way in which the Commission operates, **with new powers vested in its President to give political orientation directives**

and decision-making by the College on the basis of a simple majority of the Members, creates an important balance which is likely to be disturbed if the number of Commissioners is increased. In the context of enlargement, it will be essential to preserve the **collective responsibility, efficiency and decision-making methods** of an Institution whose job is to represent the public interest in a fully independent way and to arbitrate between different Treaty goals. The number of portfolios should also correspond to the realities of the Commission's tasks.

Finally, the Commission's political responsibility, which is an important part of its legitimacy, will need to be amplified by some formalisation of the undertakings currently given by each Commissioner to resign if the President requests them to do so.

Apart from the exclusive right of initiative it has been given, the Commission will have to put forward timely recommendations on its own way of operating, enabling it to strengthen the capacity for action and decision-making which is essential to the integration of Europe.

- **Community jurisdiction:** in order to cope with the foreseeable increase in caseload and at the same time preserve the effectiveness of the Community's justice system, the composition and operation of the Court of Justice and the Court of First Instance will need to be adapted with a view to enlargement. Account will need to be taken also of the Court's discussion paper of 10 May 1999, and of the conclusions of the reflection group on the future of the Community justice system set up on the initiative of the Commission in cooperation with the Court.⁸
- The membership of the **Court of Auditors** should be reviewed on the sole criterion of what this Institution will need after enlargement to remain effective.

The question of numbers will also arise for the Economic and Social Committee and the Committee of the Regions. The number of members in each of these bodies should be kept to a limit compatible with efficient operation. In the case of the Economic and Social Committee, consideration should be given to ways of better representing civil society.

It will also be important to **reinforce the protection of the Community's financial interests** for example by appointing a Community public prosecutor or introducing some other mechanism which will add a shared judicial dimension to the obligation on the Member States to combat fraud (Article 280 ECT).

5. The workings of the Institutions

Apart from the consequences of amendments to the Treaties, there also need to be important and significant changes made to the ways in which the Institutions

⁸ This group produced an interim report on 13 October 1999, which was sent to Parliament and the Council. The final report should be ready at the end of January 2000.

work. These reforms are already necessary now. They become absolutely essential in the context of enlargement.

- **The European Parliament:** like the other Institutions, Parliament should continue resolutely with its examination of its working methods. Action must be taken under the Treaty provisions on the status and general conditions governing the performance of the duties of its Members (Article 190(5) ECT). As the report by Mr Dehaene, Mr von Weizsäcker and Lord Simon points out, the working methods of Parliament ought to be re-examined in order to make them “*as clear and transparent as possible*”. Finally, it would naturally be desirable to complete rapidly the work on procedures for electing MEPs along common lines (Article 190(4) ECT).
- **The Council:** given its character and operating methods, the Council is likely to be the Institution most affected by future enlargements. Important discussions are already taking place on the basis of a report produced last March by the Council’s own Secretary-General. This report lists all the current difficulties encountered and makes a number of proposals. The report makes clear the need for reforms and for transparency. The Commission, which has a natural interest in improvements to the way the Council operates, believes these reforms should be approved as soon as possible. The Commission will cooperate fully with the Council in implementing them.

Although a considerable number of reforms can be embarked on now, it is quite possible that some major changes will require adaptations to the Treaties.

- **The Commission** has started to reform its internal structures: rationalisation of departments and modernisation of its operating methods to bring them into line with transparent administration. These reforms, which are already producing results but will probably take several years to carry through, are in particular being designed to take account of the arrival of new Member States.

II. Preventing any watering-down of the Union

If we bear in mind that the Member States will show even more evident differences, if not to say disparities, after enlargement than they do now, a wider Union is likely to be less homogeneous. This does not have to result in halting integration at the current level or in weakening the cohesion of the Union.

1. Integration must continue

The Treaty of Amsterdam allows certain forms of cooperation between Member States within the institutional framework which go beyond the level of integration already reached by the Union. The character of the next enlargement justifies making these new provisions as practicable as possible.

In the Commission's view, these provisions should not be used to reduce the requirements on future Member States. In some areas it will be necessary to agree on transition periods so that the new Member States can gradually apply the full '*acquis*' of the Union of fifteen. On the other hand, there can be no compromise on the content of this '*acquis*'. **Under no circumstances should it be regarded as a form of 'closer cooperation' among the fifteen**, with new Member States asking to join this cooperation as they like.

To keep to the current definition and application of closer cooperation, we ought to note that Member States proposing to establish closer cooperation among themselves in police and judicial matters or in areas of Community policy are liable to risk a veto from the Council meeting at heads of state and government level. **This veto possibility could induce Member States which wish to cooperate more deeply to depart from the institutional framework set out in the Treaties.**

Another subject to be looked at in connection with the common foreign and security policy is the mechanism of constructive abstention provided for in the Amsterdam Treaty, to see if it is effective in ensuring that some actions can be planned and executed in the name of the Union by certain Member States only.

2. The coherence of the Union must be reinforced

The Union should not reduce its room for manoeuvre in relation to external partners. Today's process of globalisation is obliging Europe to be more vigorous in affirming its cohesion, its particular style of economic and social organisation, and its shared cultural and ethical background.

Several changes need to be contemplated to reinforce the presence and weight of the Union. Speaking with one voice is no longer just one option, **it is an absolute necessity**. The issue of representation towards the outside in all relevant areas must be examined - in particular in trade and international monetary affairs. The matter of **the Union as a legal entity** should be addressed in this context.

III. Continuing with the political construction of Europe

In addition to the issues directly connected with preparing for enlargement, the Intergovernmental Conference will also have to draw institutional conclusions in due course from the work currently in progress on the **common European security and defence policy**, maintaining a coherent institutional framework which is not detrimental to Community action. At the meetings of the European Council in Vienna and Cologne, the Heads of State and Government showed their willingness to develop a genuinely common policy in this field and to amplify and reinforce in this way the 'acquis' in the Treaty of Amsterdam regarding foreign and security policy. Any amendments needed to the Treaty will have to be taken into account by the Intergovernmental Conference so that the process of the political construction of the Union can continue.

Finally, a draft **charter of fundamental rights** for the European Union is due to be produced in time for the European Council meeting in December 2000. The issue will then arise of the relationship between this charter and the Treaties, in line with the conclusions of the European Council in Cologne.

Working methods

Preparing for the negotiations

The majority of the topics to be covered were discussed in detail at the last Intergovernmental Conference. To advance the work rapidly and meet the target of concluding the Intergovernmental Conference by the end of 2000, the Commission recommends taking the following steps:

- the European Council could decide that the procedure provided for in the Treaty (Article 48 TEU) should be embarked on **as soon as possible after the Helsinki summit**. The meeting of the European Council planned for March 2000 would be an opportunity for a first evaluation of the work done;
- the Commission and Parliament should then submit their formal opinions as soon as January;
- draft texts should be available by the start of the Intergovernmental Conference.

Ensuring the involvement of the European Parliament and dialogue with national Parliaments

Speaking to the conference of Presidents of the European Parliament on 7 September last, Mr Prodi said that the Commission would make sure, "*as far as it was able, that European Parliament would be kept informed and fully involved in preparing and conducting the Intergovernmental Conference*".

The process of negotiating the Treaty of Amsterdam showed the value of associating Parliament in the work on the Intergovernmental Conference. There would be advantages in repeating and improving on this approach.

From the preparatory phase onwards, the Commission and Parliament will be discussing their respective positions with the aim of bringing these as close together as possible.

In the same spirit, the Commission will be contributing to the effort of explaining the issues and the necessary dialogue with national Parliaments.

Cooperation with the applicant countries

The reform process which is now beginning is intended above all to strengthen the structures of a wider Europe. In line with the conclusions of the European Council in Cologne, regular discussions should therefore to be held with the applicant countries.

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Genuine reform to usher in a new era

The next Intergovernmental Conference will only succeed - and its success is vital to accomplishing the forthcoming major enlargement - if the **long-term vision** brought to it, primarily by the heads of state and government, prevails over more immediate concerns.

The Commission, as guardian of the Treaties, is only playing its proper role when it asserts that **these Treaties must evolve today so that the enlarged Union can also function tomorrow.**

The Commission is playing its proper role in pointing out that the citizens in the street remain watchful and want to see Europe become **less remote** from them and more democratic.

This enlargement and its institutional consequences will determine the political shape of tomorrow's Europe. The new era demands that genuine reforms be made. The

preparations for and conduct of the Intergovernmental Conference should therefore be accompanied by a wide-ranging public debate with the people and their national parliaments. The Community Institutions, but also and more particularly the Member States, must commit themselves to this dialogue. The Commission for its part will be contributing to this effort of explaining and debating the issues.
