HOUSE OF COMMONS SESSION 1994–95

SELECT COMMITTEE ON EUROPEAN LEGISLATION

Twenty-fourth Report

THE 1996 INTER-GOVERNMENTAL CONFERENCE: THE AGENDA DEMOCRACY AND EFFICIENCY THE ROLE OF NATIONAL PARLIAMENTS

Volume I: Report

Report, together with the Proceedings of the Committee on 17 July 1995

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The Select Committee on European Legislation is appointed under Standing Order No.127, *viz*:

Select Committee on European Legislation

127.—(1) There shall be a select committee, to be called the Select Committee on European Legislation, to examine European Community Documents and—

(a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;

(b) to make recommendations for the further consideration of any such document pursuant to Standing Order No.102 (European Standing Committees); and

(c) to consider any issue arising upon any such document or group of documents.

The expression "European Community Documents" means—

(i) any proposal under the Community treaties for legislation by the Council of Ministers;

(ii) any document which is published for submission to the European Council or the Council of Ministers;

(iii) any document (not falling within (ii) above) which is published by one Community institution for or with a view to submission to another Community institution and which does not relate exclusively to consideration of any proposal for legislation;

(iv) any other document relating to European Community matters deposited in the House by a Minister of the Crown.

(2) The committee shall consist of sixteen members.

(3) The committee and any sub-committee appointed by it shall have the assistance of the Counsel to Mr Speaker.

(4) The committee shall have the power to appoint specialist advisers for the purpose of particular enquiries, either to supply information which is not readily available or to elucidate matters of complexity within the committee's order of reference.

(5) The committee shall have power to send for persons, papers and records; to sit notwithstanding any adjournment of the House; to adjourn from place to place; and to report from time to time.

(6) The quorum of the committee shall be five.

(7) The committee shall have power to appoint sub-committees and to refer to such sub-committees any of the matters referred to the committee.

(8) Every such sub-committee shall have power to send for persons, papers and records; to sit notwithstanding any adjournment of the House; to adjourn from place to place; and to report to the committee from time to time.

(9) The committee shall have power to report from time to time the minutes of evidence taken before such sub-committees.

The cost of preparing for publication the Shorthand Minutes of Evidence published with this Report was £4,130.80.
The cost of printing and publishing this Volume is estimated by HMSO at £7,546.

(10) The quorum of every such sub-committee shall be two.

(11) The committee or any sub-committee appointed by it shall have leave to confer and to meet concurrently with any committee of the Lords on the European Communities or any sub-committee of that committee for the purpose of deliberating and of examining witnesses.

(12) Unless the House otherwise orders, each member nominated to the committee shall continue to be a member of it for the remainder of the Parliament.

Friday 5 June 1992

The following were nominated as members of the Select Committee on European Legislation:

Mr Harry Barnes	Mr Robert Hicks
Mr William Cash	Mr Jimmy Hood
Mr Hugh Dykes	Mr David Knox
Mr Derek Enright	Mrs Jacqui Lait
Mrs Margaret Ewing	Mr David Madel
Dr Norman A Godman	Mr Nigel Spearing
Mr David Harris	Mr Tony Marlow
Mr Alan Haselhurst	Mr Jimmy Wray

Subsequent changes in the membership have been:

Friday 12 June 1992: Mrs Jacqui Lait discharged; Mr Hartley Booth appointed.
Friday 30 October 1992: Mr Jimmy Wray discharged; Mr Jimmy Boyce appointed.
Friday 4 December 1992: Mr Hartley Booth discharged; Mr Peter Atkinson appointed.
Tuesday 25 January 1994: Mr Jimmy Boyce died.
Thursday 17 February 1994: Mr Kevin Hughes appointed.
Friday 13 January 1995: Dr Norman A Godman discharged; Ms Rachel Squire appointed.

Mr Jimmy Hood was elected Chairman, 17 June 1992.

Resolution of the House of 24 October 1990[1]

Resolved, That, in the opinion of this House:—

(1) No Minister of the Crown should give agreement in the Council of Ministers to any proposal for European Community legislation—

(a) which is still subject to scrutiny (that is, on which the Select Committee on European Legislation has not completed its scrutiny) or

(b) which is awaiting consideration by the House (that is, which has been recommended by the Select Committee for consideration pursuant to Standing Order No.102 (European Standing Committees) but in respect of which the House has not come to a Resolution, either on a Resolution reported by a European Standing Committee or otherwise).

(2) In this Resolution, any reference to agreement to a proposal includes, in the case of a proposal on which the Council acts in co-operation with the European Parliament, agreement to a common position.

(3) The Minister concerned may, however, give agreement:-

[1]C.J., 1989-90, p.646.

(a) to a proposal which is still subject to scrutiny if he considers that it is confidential, routine or trivial or is substantially the same as a proposal on which scrutiny has been completed;

(b) to a proposal which is awaiting consideration by the House if the Select Committee has indicated that agreement need not be withheld pending consideration.

(4) The Minister concerned may also give agreement to a proposal which is still subject to scrutiny or awaiting consideration by the House if he decides that for special reasons agreement should be given; but he should explain his reasons—

(i) in every such case, to the Select Committee at the first opportunity after reaching his decision; and

(ii) in the case of a proposal awaiting consideration by the House, to the House at the first opportunity after giving agreement.

(5) In relation to any proposal which requires adoption by unanimity, abstention shall, for the purposes of paragraph (4), be treated as giving agreement.

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Volume II

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TWENTY-FOURTH REPORT

The Select Committee on European Legislation has made further progress in the matter referred to it and has agreed to the following Report:-

THE 1996 INTERGOVERNMENTAL CONFERENCE

THE AGENDA
DEMOCRACY AND EFFICIENCY
THE ROLE OF NATIONAL PARLIAMENTS

PART I: INTRODUCTION

1. The 1996 Inter-Governmental Conference (IGC) will be of profound importance in the history of the European Union.[1] Whether it prepares the way for "deepening" of the Union — greater integration and more powerful Union institutions, or whether it results in a looser grouping of Member States — a *Europe des patries* — it will set Europe's course into the twenty-first century.

2. So far as this House is concerned, the Select Committee on European Legislation has a special role in relation to the IGC. The key documents in the process will come to us for scrutiny (five of the reports to the Reflection Group have already done so) and our task is to analyse them, assess their legal and political importance, and recommend debate if necessary. Moreover, since the ratification of the Maastricht Treaty,[2] as part of our weekly scrutiny of draft European legislation, we have examined and reported on many of the matters which the IGC must address, and we have to be close observers of the day-by-day operation of the institutions. Finally, both through our scrutiny work and our membership of the Conference of European Affairs Committees (CEAC)[3] we have a particular interest in the powers of National Parliaments within the Union.

3. Other Committees in both Houses also have an interest in the IGC. Our counterpart in the House of Lords, the Select Committee on the European Communities, has set up a Sub-Committee on the IGC. In this House, the Foreign Affairs Committee is in the course of an inquiry into the IGC, and the Treasury and Civil Service Committee has recently begun an investigation into the prospects for Economic and Monetary Union (EMU).

4. When we began work on the IGC, we were keen to avoid duplication between the Lords Committee, the Foreign Affairs Committee and ourselves; but all three Committees recognised that each had a distinct contribution to make, so that too rigid a demarcation, or — in the case of the Lords Committee — a joint inquiry,[4] was probably not appropriate. What we have therefore done is to share all our oral and written evidence; this has produced economies of scale, has helped us avoid overlap, and has minimised the burden on our witnesses. In this Report, references to evidence taken by the Lords Select Committee on the European Communities and the Foreign Affairs Committee are prefixed by "HL" and "FAC" respectively.

5. Our present Report is the first of several we intend to make. In this Report we examine the prospects for the IGC, its likely agenda, and two key agenda items: how to make the Union more open and democratic; and, in this context, what should be the role of National Parliaments?

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[1] For a definition of the terms "Union" and "Community", see the Glossary.

[2] The *Treaty on European Union*, OJ No. C224, 31.8.92. (as amended by the Accession Treaty with Austria, Finland and Sweden). We use the informal title of "Maastricht Treaty"in this Report.

[3] Also known by the French acronym COSAC: *Conférence des organes specialisés dans les affaires communautaires*. This Conference meets every six months; the European Affairs Committees in each of the 24 Chambers of national Parliaments of the Union are represented upon it, together with the European Parliament (through its Institutional Affairs Committee). See also paragraphs 115 and 116 below.

[4] S.O. No. 127 gives us power to confer and meet concurrently with "any committee of the Lords on the European Communities or with any sub-committee of that committee".

6. The world of the Union institutions is complex and riddled with jargon. We therefore thought that the House might appreciate a Report which was also a companion to the IGC, and so we append a Glossary, a list of abbreviations, and charts of the main legislative processes.

7. In the time available to us, we have had to be selective. For example, we do not report on European Monetary Union (EMU), as this is now the subject of an inquiry by the Treasury and Civil Service Committee. Nor have we covered the prospects for common defence and the relationship with Western European Union (WEU) and the North Atlantic Treaty Organisation (NATO); these are subjects which other Committees, principally the Foreign Affairs Committee, may wish to examine.

8. We plan to make two further Reports in the Autumn. In one we will examine institutional and legislative issues; and in the other we will examine the Scrutiny system - the way in which European policies and proposals for legislation can be assessed and influenced on a national level. In our judgement, this system is now in deep crisis, both because of chaotic decision-making and a disregard for the rights of National Parliaments. We intend to analyse the difficulties and see how procedures in the Union and in this House might be made more effective.

9. Thereafter, depending on how the IGC develops, we will report on issues as they come forward, concentrating upon institutional and legislative issues.

PART II: THE INTER-GOVERNMENTAL CONFERENCE

Why an IGC?

10. An inter-governmental conference is the means whereby the Treaties governing the European Union (including the European Community)[5] may be amended.[6] The Maastricht Treaty[7] itself lit the fuse for the 1996 IGC, stating that:

> "A conference of representatives of the governments of the Member States shall be convened in 1996 to examine those provisions of this Treaty for which revision is provided, in accordance with the objectives set out in Articles A and B."[8]

What will be the IGC's agenda?

11. Article B of the Maastricht Treaty requires that the 1996 Conference should consider:

> "to what extent the policies and forms of co-operation introduced by this Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and institutions of the Community."

With its — perhaps deliberate — confusion of form and content, this could mean almost anything. Does one really revise a *policy* to make a *mechanism* more effective? Or should it be for institutions and mechanisms to ensure the effectiveness of policies? The usual exegesis of this Article is that it is the *three-pillared structure* of the Union (Community, CFSP, and Justice/Home Affairs) that is to be reviewed; but at any event, Article B seems to offer a wide canvas.

12. The Maastricht Treaty specifies other matters that the IGC shall consider:

— *defence*;[9]

— *the Common Foreign and Security Policy;* [10]

— *the scope of the co-decision procedure;*[11]

— *new Titles on civil protection, energy and tourism;*[12]

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[5] For the distinction between the Union and the Community, see the Glossary.

[6] Article N. 1 of the Maastricht Treaty states:
"The government of any Member State or the Commission may submit to the Council proposals for amendment of the Treaties on which the Union is founded.

"If the Council, after consulting the European Parliament and, where appropriate, the Commission, delivers an opinion in favour of calling a conference of representatives of the governments of the Member States, the conference shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to those Treaties...

"The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements."

[7] *Treaty on European Union* (TEU), signed at Maastricht on 7 February 1992, published with Protocols, Final Act, and Declarations, as Cm 1934, May 1992. Published in *Official Journal of the European Communities,* together with complete text of the Treaty establishing the European Community, C224, 31 August 1992. The Treaty came into force on 1 November 1993.

[8] Article N.2. For the text of Articles A and B, see Annex A.

[9] On the basis of a report to be presented in 1996 by the Council to the European Council "which shall include an evaluation of the progress made and the experience gained until then", as required by Article J.4.6.

Article J.4 begins "The common foreign and security policy shall include all questions related to the security of the Union, including the framing of a common defence policy, which might in time lead to a common defence"; and the Article specifies that defence issues dealt with under it shall not be subject to the CFSP procedures set out in Article J.3.

[10] Article J.10 links to the review of defence provisions the question "whether any other amendments need to be made" to the CFSP.

[11] Article 189b.8 states that the scope of this procedure "may be widened...on the basis of a report to be submitted to the Council by the Commission by 1996 at the latest".

[12] To be examined on the basis of a report "which the Commission will submit to the Council by 1996 at the latest" (Declaration 1 of the Maastricht Treaty).

— *a possible "hierarchy of Community acts"*, also known as a "hierarchy of norms" — in other words, a classification of Community legislation by degree of importance. The implication is that the demands of a particular legislative procedure should be appropriate to the importance of the legislation being considered.[13]

13. The Maastricht Treaty also implies that the 1996 Conference may consider *economic and monetary union;* Article 109j.3 requires that the Council "meeting in the composition of Heads of State and Government" shall decide not later than 31 December 1996 whether a majority of the Member States fulfil the "necessary conditions for the adoption of a single currency" and "whether it is appropriate for the Community to enter the third stage". The British Government's view is that EMU will not be raised at the IGC but that it cannot be excluded.[14] The Minister of State at the Foreign and Commonwealth Office (FCO) (Mr Davis) told us that if the issue were to come up at the IGC "it would simply be a deadlock debate between those who want to relax the criteria and those who want to tighten the criteria...".[15] However, it remains the fact that the Article 109j.3 decisions could be considered by the Heads of State and Government *within* the IGC framework.

14. Since the signing of the Maastricht Treaty, other subjects have been put formally on the IGC's shopping list:

— *the budgetary provisions,* including budgetary procedure and the distinction between "compulsory" and "non-compulsory" expenditure, were added under the Inter-Institutional Agreement of 29 October 1993;[16]

— *the number of Commissioners and their method of appointment* was added by the Brussels European Council in December 1993;

— *the weighting of votes in Council and the threshold for qualified majority decisions* was added by the Ioannina informal Foreign Affairs Council in March 1994[17];

— *comitology, or the scrutiny of delegated legislation made by the Commission,* was added by the 20 December 1994 *modus vivendi* between the Council and the European Parliament; and

— *the incorporation of the European Charter of Human Rights and the establishment of a Constitution of the European Union* have both been suggested by the European Parliament.

15. The Corfu European Council of June 1994 gave a broader sweep to the agenda, speaking of:

> "...a new intergovernmental conference with a view to making the European Union better able to confront the challenges of the 21st century, including those arising from enlargement of the Union to the East and to the South",
>
> and of measures

[13] Maastricht Declaration No.16 says that the IGC "will examine to what extent it might be possible to review the classification of Community acts with a view to establishing an appropriate hierarchy between the different categories of act". See also Working Document of the European Parliament's Committee on Institutional Affairs (Rapporteur, Mr Willi Rothley) PE 211.103 of 16 December 1994.

[14] HLQ 71. See also HL Memorandum by Professor Helen Wallace.

[15] Q368.

[16] See OJ No. C331, 7.12.93, p.10.

[17] See Annex B.

"deemed necessary to facilitate the work of the institutions and guarantee their effective operation in the perspective of enlargement."

16. **The agenda is already wide, and there is no bar to adding further items.[18] It also seems to us that the agenda is not *required* to be settled at any stage.** In a pragmatic sense, of course, there will come a time - probably when the Madrid European Council has assessed the work of the Reflection Group (see paragraphs 34 to 45 below) when the effective agenda is clear to all; but even then the vagaries of negotiation may bring new items forward.[19]

17. **Equally, the fact that something is on the agenda does not mean that it will be decided by the IGC.** The fact that the negotiations will be between fifteen governments[20] means that the feasible will be several lengths ahead of the merely desirable.

What will matter?

18. The rather haphazard accretion of subjects tends to obscure the overall picture. Each of the major institutions, in their reports on the operation of the Treaty which are the starting point for the Reflection Group's work, try to synthesise the main themes. For the European Parliament, they are:

"— the need to tackle a democratic deficit that a growing number of European Union citizens find unacceptable,

— the need to redefine the current decision-making processes, which have become excessively complex and cumbersome and often inefficient,

— the need to prepare the European Union for future enlargement without slowing down the integration process or watering down the progress already achieved".[21]

The Commission identifies two "guiding principles" for the IGC:

"— the Union must act democratically, transparently and in a way people can understand;

— the Union must act effectively, consistently and in solidarity. This is obvious when we are talking about its internal workings, but it must also be true in its external dealings, where it will have to bring a genuine European identity to bear".[22]

The Council's Report aims to be purely factual, and contains little advocacy, but the themes of democracy, transparency and effectiveness recur.[23]

19. **In our view, a convenient distillation is that presented by Sir Leon Brittan, a Vice-President of the Commission:**

"...these questions — they are simple to ask but difficult to answer — what changes do we need to make in all the institutions of the European Union, in order to...enlarge, principally to Eastern and Central Europe?

[18] Article N provides that the government of any Member State, or the Commission, "may submit to the Council proposals for the amendment of the Treaties on which the Union is founded".

[19] See HLQ 44 of 10 January 1995 (Baroness Chalker of Wallasey) and HLQq 67 and 114.

[20] As yet it is not clear what role, if any, the candidate countries will play.

[21] Resolution of the European Parliament, 17 May 1995, PE 190.441 (A4-0102/95).

[22] *Report on the Operation of the Treaty on European Union,* SEC(95) 731 final, 10 May 1995, p.4.

[23] Report adopted by the EU's Foreign Ministers at their meeting in Luxembourg on 10 April 1995: Cm 2866, May 1995.

"Secondly...what changes may be needed to be made to accommodate further developments in the common foreign and security policy and defence area?

"Thirdly, what changes are needed to make the European Union simpler, more comprehensible, more acceptable to parliamentary and popular opinion?"[24]

A 5,000 mile service or a rebuild?

20. **Sir Leon's three questions all have what one might call procedural answers - but those answers may well involve profound changes in the shape and functioning of the Union.** And, as the UK Permanent Representative, Sir John Kerr, reminded us, changes aimed at making institutions work better may also change the institutional balance of power.[25] The enlargement of the Union now in prospect will raise fundamental issues; it will be very different from the admission of three relatively small, highly developed and prosperous countries which we saw on 1 January this year. The future of the Common Agricultural Policy (CAP) and the Structural Funds[26] is the other side of the enlargement coin: given that present levels of support are unthinkable after enlargement to the East, what levels of support can we afford? What will be the effect of reductions on existing Member States, particularly now that the Southern emphasis of the 1982 and 1985 enlargements has been matched by the Northern emphasis of the 1995 accessions?[27] Add to enlargement the further development of inter-governmental co-operation, chiefly in foreign and security policy, but also in home affairs and justice matters, and the tasks of the IGC appear substantial.[28] **The Conference may stop short of a rebuild, but it is likely to be much more than just a routine service.**[29]

Will there be pressure to extend Community competence?[30]

21. The Maastricht Treaty has been perceived as extending Community competence — the power of the Community to act in new fields — although it is arguable that much of this was in effect achieved under the Treaty as amended by the Single European Act.[31] So far as the Union was concerned, the Maastricht Treaty extended competence through the addition of the Common Foreign and Security Policy and Justice and Home Affairs pillars. Our witnesses thought that further extension of Community and Union competence at the IGC was unlikely. Sir John Kerr saw this as the main difference between the 1991 IGC and the 1996 IGC. "I do not think Parliament or the Commission are going to propose it. I think it is now accepted that the idea of continually spreading competence is certainly unpopular and probably wrong. So to that extent I think the climate has changed quite a lot since 1991."[32] Mrs Elisabeth Guigou MEP, one of the two European Parliament representatives on the Reflection Group, agreed, saying that the European Parliament should not press for an increase in the competence of the Union; what was in the Maastricht Treaty should suffice.[33] "No one is proposing an increase in competences" said the then Foreign

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[24] HLQ 217.

[25] Q251.

[26] Unlikely to be formally on the agenda, but proceeding in parallel with the IGC. See paragraphs 22 to 24 below.

[27] See Q260 and HL Q32 of 10 January 1995 (HL Paper 19).

[28] We note that the Foreign Affairs Committee regarded the Maastricht Treaty as "an interim treaty". See Second Report from the Foreign Affairs Committee, *Europe after Maastricht,* HC 642-I of Session 1992-93, paragraph 21.

[29] See HLQ 1; but see also Q206 and *Official Report,* 5 July 1995.

[30] That is, explicit Community competence, rather than the terms of Article 235.

[31] For example, social policy (Protocol No.14); visa policy (Article 100c and 100d); education, training and youth policy (Articles 126 and 127); culture (Article 128); public health (Article 129); consumer protection (Article 129a); trans-European networks (Article 129b to 129d).

[32] Q259. See also Mr Santer, President of the Commission, quoted by Sir Leon Brittan, HLQ 217, and FCO witnesses, HLQ 64.

[33] FACQ 6.

Secretary in a debate on 21 June.[34] Many others have echoed these views. We note that the IGC will have to consider the possibility of new Treaty Titles on civil protection, energy and tourism, but **we think it unlikely that there will be pressure for extension of competence. There may, however, be pressure to delineate existing competences more precisely,[35] or to reduce them.**

What subjects will not be on the agenda?[36]

22. In view of the theme of enlargement running through the IGC agenda, the most surprising absentees seem likely to be the Common Agricultural Policy and the Structural Funds. The Prime Minister told the House on 1 March:

> "Reform of the Common Agricultural Policy is bound to feature, but not at the IGC, because it is not a matter for Treaty revision. But it will inevitably happen before enlargement proceeds, because the present CAP is unsustainable as we move towards a larger EU."[37]

In the view of the then Minister of Agriculture, Fisheries and Food (Mr Waldegrave), "it could be extremely dangerous to open up the subject of reform of [the Treaty Articles on agriculture]... if you look at the Treaty as it is now written there is not much, if anything, important that one wants to do with the Common Agricultural Policy that cannot be done within these Articles."[38] Sir Leon Brittan foresaw the Commission putting forward CAP reform proposals in the course of this year, but again as a process separate from the IGC.[39] The Minister of State at the FCO (Mr Davis) saw a distinction between institutional matters, which would be for the IGC, and policy matters such as the CAP and the operation of the Structural Funds, "all of which have significant implications for enlargement and which will run in parallel".[40]

23. There is considerable pressure in some quarters for the Common Fisheries Policy (CFP) to be put on the agenda, but this seems unlikely. It does, however, raise the question of how policies such as this are to be reviewed.

24. **There is an good reason for keeping the CAP and the Structural Funds separate from the IGC. Reform will be painful to some Member States and negotiations may be difficult; but Treaty changes at the IGC must be by common accord - by unanimity - and the CAP can be reformed by qualified majority voting (QMV). Nevertheless, the distinction may be somewhat artificial. To use the words of Lord Howe of Aberavon, we would expect the CAP to "hover over" the IGC.[41] Indeed, Mr Davis acknowledged a potential linkage when he said "I do not know how countries who have an interest in the Structural Funds or in the Common Agricultural Policy will play the IGC in terms of the timing of enlargement".[42]**

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[34] *Official Report,* col.359. Mr Klaus Kinkel, the German Foreign Minister, is of a similar mind; see *Frankfurter Allgemeine Zeitung,* 14 June 1995, reporting a German Cabinet meeting of 13 June.

[35] Q279 (Sir John Kerr). See also FACQ 6 (Mrs Elisabeth Guigou MEP).

[36] As we noted in paragraph 13 above, Member States will have an option as to whether they deal with economic and monetary union within the framework of the IGC or not.

[37] *Official Report,* 1 March 1995, col.1064. See also HLQ 68.

[38] In evidence to Sub-Committee D of the House of Lords Select Committee on the European Communities, 29 June 1995, Q1. Articles 38 to 47 of the Treaty have remained unchanged since they were first drawn up in 1957.

[39] HLQ 228. The former Foreign Secretary, Lord Howe of Aberavon, concurred. See HLQ 274. See also the then Minister of Agriculture, Fisheries and Food (Mr Waldegrave), Sub-Committee D of the House of Lords Select Committee on the European Communities, Q17.

[40] FACQ 68. See also HLQ 68 and Qq 253-255 (Sir John Kerr).

[41] HLQ 279. See also HL Memorandum by Professor Helen Wallace.

[42] FACQ 78.

Is the agenda manageable?

25. **The agenda is substantial, and by its nature difficult to organise into neat negotiating compartments.** It seems generally accepted that the success of an IGC is in proportion to the precision with which its agenda can be focused. For Lord Howe, the proper preparation of the agenda was essential, to make it "manageable in scale and not gargantuan".[43] Minister-President Biedenkopf of Saxony, with whom we had talks in January this year, wanted to see an agenda that was task-oriented, not institution-oriented. Professor Helen Wallace pointed out that the Single European Act emerged from an IGC that lasted only three months, partly as a result of a tight agenda, and partly as a result of the excellent preparatory work of the Dooge Committee. By contrast, the Maastricht Treaty "came out of a ragged IGC that had lasted a year and had not been carefully prepared as regards anything but the EMU sections".[44] Sir Leon Brittan agreed; apart from the EMU provisions "the political side was a ragbag, which came out at whatever the highest common factor was".[45]

26. **In our view, the work of the Reflections Group will be crucial in producing a focused and manageable agenda** although, as we shall see later,[46] the task the Group has set itself is a daunting one.

Is it too soon after Maastricht?

27. The 1996 date for the next IGC was set by the Maastricht Treaty. There was then an unforeseen delay of nearly two years before that Treaty came into force. This, combined with what one might call the "Maastricht experience" (described as "educational" by Sir John Kerr in dry understatement[47]) has led to a widespread feeling that the 1996 IGC is happening too soon.[48] In its report on the functioning of the Treaty, the Council of Ministers emphasises that experience is limited; "some of the new provisions — sometimes major ones — have not worked through in their entirety, or have not yet been invoked" and; "a degree of caution is called for when assessing the initial findings".[49] The Commission sounds a similar warning note.[50] The Prime Minister believes that there is too short an interval between the coming into force of the Maastricht Treaty and the 1996 IGC,[51] and this view is reflected by witnesses.[52] **However, it is too late to worry about that now; the IGC has to begin in 1996 as required by the Maastricht Treaty. Nevertheless, as we consider below,[53] the 1996 IGC process could be very lengthy, and the interval may eventually be nearer what was originally expected.**

What is the approach of Her Majesty's Government?

28. This was set out by the Prime Minister in a debate on 1 March:

> "I shall speak first about the inter-governmental conference...I do not believe that it will make huge changes in Europe. No one can be absolutely certain what our partners will bring forward, but I doubt whether any serious significant changes will be proposed.
>
> "However, the conference can and should usefully improve the way in which Europe operates, and we shall present a range of our ideas

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[43] HLQ 273.

[44] HL Memorandum by Professor Helen Wallace, p.2.

[45] HLQ 217.

[46] See paragraph 38 below.

[47] Q 259.

[48] See *Official Report,* 5 July 1995, col. 379 (Mr Hurd).

[49] Cm 2866, paragraph 2.

[50] Commission report, p.1.

[51] *Official Report,* 1 March 1995, col.1062.

[52] See, for example: Sir Leon Brittan (HLQ 217); Mr Tom Spencer MEP (HLQ 337); Professor Helen Wallace (HL Memorandum).

[53] See paragraphs 46 to 49.

at the conference. We shall suggest ways of developing the common foreign and security policy, and ways of stepping up the fight against organised crime and terrorism. We shall set out ways of achieving a stronger role for national Parliaments, and more subsidiarity. We shall build on the steps agreed at the Essen summit to crack down on fraud.

"Under qualified majority voting, a larger say should be given to the larger states, and we shall set out our plans for that. At the intergovernmental conference we shall also seek to reinforce the democratic authority of the Council of Ministers...we shall not accept the end of the national veto, or significant constitutional change that would impact adversely on the House.

"We shall argue that foreign, security and home affairs must continue to be agreed between sovereign governments, and must not be collapsed into Community competence. On that basis they can, and in many ways they should, be expanded to the benefit of countries and people throughout the European Union".[54]

29. The theme of "no significant constitutional change" (not necessarily with the explicit qualification "that would impact adversely on this House") has been emphasised by Ministers over the last few months.[55] What might amount to "significant constitutional change" was spelt out by the then Parliamentary Under-Secretary at the FCO (Mr Baldry):

"Such constitutional change might include ending the veto, extending qualified majority voting,[56] giving massive new powers to the European Parliament...".[57]

Close textual analysis of broad statements is usually unrewarding, but we think it worth asking: first, what options would be compatible with this statement, and second, how strong a negotiating stance it is.

30. *First, "ending the veto".* We think it inconceivable that unanimous voting would be abolished. Many Member States besides the United Kingdom would not accept such a move. But what constitutes *retention* of the "veto"?[58] There are 77 legal bases which require unanimity, ranging from amendment of the Treaties and accession of new Member States to approval of the Rules of Procedure of the Committee of the Regions.[59] How much room is there for negotiation, while keeping to the letter of the policy?

31. *Second, extending qualified majority voting (QMV).* Her Majesty's Government wishes to see a "fairer" system of QMV which takes into account populations as well as the conventionally weighted votes in the Council. But the other Member States strongest in their advocacy of this "double QMV" (France and Germany) are not opposed to the extension of QMV. So what might the price be? An extension of QMV *on the condition* that it was "fairer"?

32. *Third, what would constitute "massive new powers" for the European Parliament?* The Parliament has suggested that the number of legislative procedures should be reduced to three, with the abolition of the co-operation procedure. In its view, the assent procedure should be used for Treaty revision, international agreements, enlargement and adjustments to own resources. Consultation should be used only for the common foreign and security policy, and "in all other areas, the co-

[54] *Official Report,* cols.1063-1064.

[55] See, for example, *Official Report,* 13 February 1995, cols. 674-683 and 761-768, and 5 July 1995, col. 378.

[56] See also Q356 (Mr Davis).

[57] Or providing a firm commitment to a single currency; *Official Report,* 13 February 1995, col.762.

[58] Itself not an entirely clear concept, and one we will return to in our Report on institutional issues. See also HLQ 87.

[59] Or "common accord" of the Member States. See Cm 2866, Annex V(a), and Glossary.

decision procedure should apply".[60] Sir John Kerr saw this as changing the institutional balance:

> "...the European Parliament's ideas on co-decision, on extension of qualified majority voting, on simplification of legislative procedures, these are all very seductive...The kind of simplification the European Parliament would like to see is one which harmonises upwards the involvement of the European Parliament."

He thought that the matching of co-decision to an extended QMV would be "a very major change to the institutional balance".[61] We agree; but, in terms of the Government's position, at what stage does the extension of co-decision become a "massive" increase in the powers of the European Parliament? Relatively small formal increases can have a disproportionate effect in terms of leverage. The European Parliament's other proposals include assent to nominations to the European Court of Justice (ECJ), the Court of First Instance (CFI), the European Court of Auditors, and the Executive Board of the European System of Central Banks; equal status with the Council "in all fields of EU legislative and budgetary competence"; a reinforced role in the CFSP, the Justice and Home Affairs Pillar, and in EMU; right to request the opinion of the ECJ, a requirement upon the Commission to respond to its initiatives for legislation, and full involvement in the negotiation and ratification of future Treaty changes. What combination of these might be viewed in the same light? And how much can realistically (and successfully) be resisted?

33. Objectives apart, **we welcome one aspect of the negotiating *technique* which the Government will adopt**. The Minister of State at the FCO (Mr Davis) told us that, in institutional matters, "the mastery of complexity is the key to success".[62] We agree; detailed procedural changes may have a much wider significance, and much of the business of the IGC will be in intricacy rather than adding nuances to broad statements.

[60] Resolution of 17 May 1995, paragraph 29.

[61] Q 251.

[62] Q 2. See also *Official Report,* 13 February 1995, col.677.

PART III:

THE REFLECTION GROUP AND THE IGC TIMETABLE

Establishment and terms of reference

34. The setting up of the Reflection Group (or Study Group)[63] was agreed at the Council of Foreign Affairs Ministers at Ioannina in Greece on 27 March 1994. The Group was to be made up of representatives of the Ministers of Foreign Affairs of the Member States, and was to work "in association with" the European Parliament[64]. The Ioannina Council saw the task of the Group as preparing "options based on the positions and arguments of the Member States on the weighting of votes and on the threshold of the qualified majority decisions, taking into account future enlargement". This was an obvious first task for the Group, as the Ioannina Council had been called because of the unwillingness of the United Kingdom (supported by Spain) to agree to an increase in the size of the minority required after the 1995 enlargement to block a qualified majority decision.

35. The Group was actually established at the Corfu European Council in June last year, when its role and task was more clearly defined. A representative of the President of the Commission was added to the membership, two European Parliament representatives would "participate in its work", and it would have "exchanges of views with the other institutions and organs of the European Union". The Chairman would be Spanish (because it would begin work at the start of the Spanish Presidency), and the institutions were invited to produce reports on the functioning of the Treaty on European Union to provide an "input" for the work of the Group. The secretariat would be found by the Secretary-General of the Council, and the Group would be required to report in time for the meeting of the European Council at the end of 1995.

36. The Corfu Council took the Group's terms of reference much wider than Ioannina:

> "The Reflection Group will examine and elaborate ideas relating to the provisions of the Treaty on European Union for which a review is foreseen and other possible improvements in a spirit of democracy and openness, on the basis of the evaluation of the functioning of the Treaty as set out in the reports. It will also elaborate options in the perspective of the future enlargement of the Union on the institutional questions set out in the conclusions of the European Council in Brussels and in the Ioannina agreement (weighting of votes, the threshold for qualified majority decisions, number of members of the Commission and any other measure deemed necessary to facilitate the work of the institutions and guarantee their effective operation in the perspective of enlargement".

The inclusion of "other possible improvements" and "any other measure deemed necessary" means that **the Group's terms of reference are in practice entirely unconstrained.**

Membership and work programme

37. The Group held its first session in Taormina, Sicily, on 3 June this year. The 18 members of the Group[65] include seven serving Ministers (from Spain (the Chairman, Mr Carlos Westendorp), France, Germany, the UK (the FCO Minister of State, Mr Davis), the Netherlands, Ireland and Sweden), and two former Ministers (for Finland and Portugal). Luxembourg, Italy, Greece and Austria are represented

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[63] The proper title in English is "Study Group". The French translation is *"Groupe de Réflection"*. However, the Group is frequently referred to in English as the Reflections or Reflection Group, and that is the term we use in this Report.

[64] See FAC Memorandum by the Foreign and Commonwealth Office, with FCO oral evidence, 17 May 1995.

[65] A full list of members appears in Annex B.

by ambassadors or former ambassadors; Denmark's representative is a former Secretary-General of the Council, and that of Belgium is a professor of European law. The Group is completed by Commissioner Marcelino Oreja, who is responsible for the Commission's relations with the European Parliament and with Member States (and is a former Chairman of the European Parliament's Institutional Affairs Committee), and by two MEPs, Mr Elmar Brok (Germany, Christian Democrat) and Mrs Elisabeth Guigou (France, Socialist). (We have so far taken evidence from Commissioner Oreja, from Mr Brok and Mrs Guigou, and, four times, from Mr Davis.)

38. **Mr Westendorp has set the Group a substantial programme of work. It centres around five questions:**[66]

Challenges, principles and objectives: views on the reports of the three main institutions; the criteria of "greater democracy, greater efficiency and greater transparency"; involvement of the public in the development of the Union; how to reconcile flexibility and coherence in an enlarged Union; the future of the single institutional framework; should the pillar structure be maintained; should the end result be a constitution, a charter or a simplified Treaty;

the institutional system: the institutional balance; adapting to enlargement; strengthening democracy, efficiency and transparency in the decision-making process, and the institutional reforms which need to be made to achieve this;

the citizen and the Union: the concept and development of European citizenship; fundamental rights; information; a comprehensible Treaty; justice and home affairs;

external and security policy: external action, the challenge of enlargement; legal personality and the EU's external representation; strengthening the CFSP; examination of the defence concepts of the Treaty in the light of the changes in European security and defence; links between the Union, WEU and NATO;

instruments: Community law, hierarchy of acts, subsidiarity; own resources, budgetary powers; common policies and "new fields of actions"; impact of enlargement.

As implied by the Corfu conclusions, almost anything is the Group's business. **Two intriguing questions suggested by Mr Westendorp are: whether there should be a European referendum; and whether ratification by all the Member States is necessary "if reform is to be implemented". The latter might be regarded as an insurance against stalemate in the IGC negotiations. We return to this second question in paragraphs 55 to 57 below.**

39. **In view of the Ministerial responsibilities of almost half the Group, the schedule is punishing.**[67] *The first phase,* of five meetings in June and July, each of two days, are devoted to a preliminary examination of the topics on the basis of an "indicative questionnaire" circulated beforehand (although some difficulty has arisen from late circulation of questionnaires).[68] Mr Westendorp will then draw up a "preliminary draft summary which will serve as a basis for work in the second phase".[69] This summary is to be available for the informal meeting of Heads of State and Government which is due to take place on 22 and 23 September in Palma de Mallorca.

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[66] Eight topics in all: institutions, citizenship and external and security policy are all sub-divided. See Annex E.

[67] Q349 and HLQ 956.

[68] Q348 and HLQ 956. For the texts of the questionnaires, see Annex E.

[69] Letter of 24 May 1995. See Annex E.

40. In *the second phase,* beginning on 4 September, a first reading will take place over four two-day meetings "in the light of the Messina Declaration and the conclusions of the Cannes European Council",[70] with a further four two-day meetings for second reading of those topics which need it. The *third phase,* with final meetings in late November and early December, is for preparing the Group's report to the Madrid European Council which is scheduled for 15 and 16 December.

The Group's role

41. **It is clear that the Group is not, and cannot be, a negotiating body.** Mr Westendorp sees its task as "to identify useful and reasoned options".[71] There is neither veto[72] nor voting[73] nor, it seems to us, will an option be excluded simply because it has only one proponent. Mr Davis recalled the Dooge Committee preparing for the Single European Act as producing "a majority report with footnotes from minority viewpoints...different views put by different countries";[74] and he said of the Reflections Group: "if somebody wants to bring something up and propose an option then it is almost certain...unless it is completely defeated in debate, to make it into the final report. This could be enormously broad".[75] It is also worth keeping in mind that **the work of the Group in no way constrains Member States from bringing forward other topics, or adopting other positions, at the IGC itself.**[76]

42. Mr Davis described the first meeting as "very friendly, very constructive, very amiable, and I think a good augury for the future meetings".[77] To encourage free discussion, the Chairman has asked that opinions should not be attributed outside the Group, although Mr Davis was able to tell us that at the first meeting the European Parliament representatives "took a fairly strong federalist line, others took a rather more moderate line"[78]. The phase 1 meetings have been to a large extent a round-the-table statement of positions on the different topics,[79] which makes Mr Westendorp's work of synthesis, the "preliminary draft summary" at the same time more important and more difficult.

43. **The notion of a Reflection Group — a preparatory committee — is an excellent one. It assists debate and makes the IGC process more open. Experience has shown that good preparation makes for better IGCs, and the Group can do valuable work in refining and clarifying the issues. But the wide spectrum of opinion among the Member States, and the scale and complexity of the raw material, means that the Group has an uphill task.**

44. Mr Davis, the British representative on the Reflection Group, has now appeared before us twice to report on the progress of the Group's work, and the Foreign and Commonwealth Office has provided the Group's initial documentation and subsequent questionnaires to us and to other Select Committees with an interest.[80] **This is welcome; we expect that other Reflections Group documents will be made available in the same way. With democracy and transparency among the key issues**

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[70] *ibid.*

[71] Letter of 24 May. See also Qq 295 and 344.

[72] FACQ 44 and Q370.

[73] Q 310.

[74] FACQ 59 and Q 312.

[75] Qq 295, 374 and 381.

[76] See Qq 298 and 299.

[77] Q 286.

[78] Q 286.

[79] See, for example, HLQ 956.

[80] He has also undertaken to report on developments which take place during the Summer Adjournment (Qq 390-392).

for the IGC we are sure that the Reflection Group will want to set an example.

Representation of National Parliaments on the Reflection Group

45. The question of representation on the Group received considerable attention in National Parliaments. As first mooted, the Group was confined to representatives of Governments, but the later addition of European Parliament representatives suggested that the distinct democratic voice of National Parliaments, who are much closer to, and much better understood by, their citizens, should also be heard. The matter was considered by the Conference of European Affairs Committees in Paris in February, and by the informal meeting of Speakers convened by Mr Philippe Séguin, the President of the *Assemblée nationale,* in Paris on 19 April. Among 24 Chambers of National Parliaments, the mechanics of such representation, even if accepted in principle, would have been complex, and the idea was taken no further. **This is regrettable but probably inevitable. However, Parliaments of the Member States have an opportunity for a link with the work of the Reflection Group; four members of the Group have given evidence to the three Westminster Select Committees most closely involved;[81] documents should be available as we recommend in paragraph 44 above; and input to the Group is possible through Select Committee Reports such as this one (which we are sending to all members of the Group).** In addition, following a suggestion by Mr Séguin, a parliamentary "think-tank" of representatives of national parliaments was set up to shadow the work of the Reflection Group. It met for the first time on 29 June, but with the participation of Members of only five Chambers. We hope that the work of the think-tank will be useful; but there seems a fairly widespread view that, for the time being, ideas may best be developed on a national basis.

How long an IGC?

46. The IGC is spoken of a "the 1996 IGC" - indeed, so we describe it in the title of this Report. The assumption has been that the Madrid European Council will produce some signposts for the IGC on the basis of the report of the Reflections Group; that the Conference will be convened early in 1996 under the Italian Presidency, and that the work could be brought to a conclusion under the Irish Presidency in the second half of 1996. The closer we get to 1996, the less likely this seems.

47. The Treaty says only that the Conference shall be *convened* "in 1996".[82] No doubt the Italian Government will want the IGC to start under its own Presidency, but there may then be a delay before serious negotiation begins. The starting time and length of the negotiations will depend on a number of factors, principally:

— the size of the eventual agenda;

— the extent to which the Reflection Group has been able to refine and clarify the agenda;

— the inclusion of late items;

— the effect of "parallel" negotiations, particularly on the CAP and the Structural Funds;

— extraneous events: forthcoming Spanish and British General elections[83] have been perceived as falling into this category;

— the interesting possibilities, mentioned by Mr Davis, that the Reflection Group might wish to revisit its report after the Madrid

[81] Mr Davis, Mr Brok and Mrs Guigou to all three Committees; Commissioner Oreja to us.

[82] Article N. See HLQ 37.

[83] See Mr Werner Hoyer, German Secretary of State for European Affairs and a member of the Reflection Group, quoted in *The Times,* 17 May 1995. A General Election in Spain must be held by June 1997. In the UK, a General Election must be held on 22 May 1997 at the latest.

> European Council[84] or that the European Council might give the Reflections Group a further study mandate;[85]

and, of course, the distance between negotiating positions at the Conference itself.

48. The then Foreign Secretary said:

> "The intergovernmental conference will not start, I believe, until the Spring — I do not think the Italians will be in a rush to start it — and it is likely to last a considerable time."[86]

Mr Davis also suggested that the IGC could be convened later than January 1996[87]. "If I had to place a bet now it would be somewhere round about April/May".[88] He thought it could take "a very long time".[89] **"I would be surprised if it took much less than a year"[90]. So would we. "The Inter-Governmental Conference 1996-97" seems a more realistic title.**

How many enlargements?

49. As we have seen, one of the three key tasks of the IGC is to prepare for enlargement; and the prospect of further accessions will be a factor in everything else the Conference does. However, the scale of this task will depend on *how much enlargement* is expected, and when. It might be possible to cope with 20 members on the basis of institutional and other changes which were more limited, and thus possibly easier to negotiate, than those which might be necessary for 28 or 30 members.

50. There is no consensus as to how many countries are on the waiting list; numbers quoted vary between 5 and 15, giving an eventual size of the Union of between 20 and 30 countries.[91] We use the Prime Minister's estimate of 25 or 27 in total,[92] and take these to be some or all of the following countries:

- Cyprus[93] and Malta[94]: accession negotiations are expected to start six months after the IGC;
- the "Visegrad Four": Poland,[95] Hungary,[96] the Czech Republic[97] and the Slovak Republic,[98] possibly with Slovenia;[99]

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[84] Q350.

[85] HLQ 959.

[86] *Official Report,* 5 July 1995, col. 379.

[87] FACQ 68.

[88] HLQ 959.

[89] FACQ 68.

[90] FACQ 78 and HLQ 970.

[91] 15 to 30: report of the *Comité d'avis chargé de questions européennes/Adviescomite voor Europeese aangelegenheden* of the Belgian Lower House (-1783/1 - 94/95); 20: Mr Tom Spencer MEP (HLQ 340); 25 to 28: Mr Laurens Jan Brinkhorst MEP (HL Memorandum) and Mr Philippe Séguin, President of the French *Assemblée nationale;* 27: Mr John Toulmin QC (HL Memorandum); "heading towards 30": Mr Davis (Q 103); at least 30: former Prime Minister of France Edouard Balladur; eventually 30: European Policy Forum (HLQ 8). See also HLQq 979-983 (Mr Davis).

[92] *Official Report,* 9 March 1995, col. 1063.

[93] 1994 population 0.725m; 1991 GNP per head US$ 8,640.

[94] 1993 population 0.365m; 1991 GNP per head US$7,341.

[95] 1993 population 38.31m; 1991 GNP per head US$1,830.

[96] 1993 population 10.31m; 1991 GNP per head US$2,690.

[97] 1993 population 10.33m; 1993 GNP per head US$2,710.

[98] 1992 population 5.3m; 1993 GNP per head US$1,950.

[99] 1992 population 2.0m; 1991 GNP per head US$7,150.

— Bulgaria[100] and Romania;[101]

— Lithuania,[102] Latvia[103] and Estonia.[104]

51. Accession negotiations for Cyprus and Malta could start six months after the IGC, but they might not be members until three or four years from now. Moreover, both are small countries, more easily absorbed into Union.[105] Thereafter, the outlook is uncertain. As Sir John Kerr pointed out to us, only Slovenia has an income per head even half that of the poorest country in the Union, and Hungary and the Czech Republic are relatively wealthy compared with Bulgaria and Romania.[106]

52. The Schaüble/Lamers paper[107] predicted admission of the Visegrad Four, plus Slovenia, by the year 2000. There may, of course, have been an element of over-optimism in this, given Germany's strong commitment to early enlargement to the East. Lord Howe of Aberavon thought there was no possibility of an applicant State becoming a member in the next five years (apparently not excluding Cyprus and Malta).[108] Mr Tom Spencer MEP thought that in the next 7 or 8 years there might be four new members, possibly five.[109] Professor Helen Wallace spoke of a shorter timescale, saying that the eastern and southern applicants had been "given to understand and certainly have wished to understand that their applications will be up for active consideration in 1997."[110] Sir John Kerr foresaw enlargement to the east in five to seven years.[111] Mr Westendorp's initial paper to the Reflection Group assumed an enlargement "to embrace the countries of Central and Eastern Europe, Cyprus and Malta" being concluded before the end of the century.[112]

53. In view of the substantial problems of economic assimilation for the Visegrad countries, we think the longer end of these timescales is more realistic. As far as wider enlargement is concerned, in Sir John Kerr's view, "there is no chance of a Community of 25 for 10/15 years". Moreover, Sir John thought that, provided the question of QMV was addressed, the institutions of the Community would work "perfectly well" for a Community of 20.[113]

54. **We are in no way talking down enlargement; merely making the observation that, *if* negotiations in the IGC prove difficult, there may be pressure (and a plausible case) for a minimalist solution this time, with major change reserved for a later IGC.[114] The joker in**

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[100] 1992 population 8.47m: 1991 GNP per head US$1,840.

[101] 1992 population 22.76m; 1991 GNP per head US$1,340.

[102] 1994 population 3.74m; 1991 GNP per head US$2,710.

[103] 1993 population 2.61m; 1991 GNP per head US$ 3,410.

[104] 1992 population 1.6m; 1991 GNP per head US$ 3,830.

[105] See Q 258.

[106] *ibid.* For comparison, population and GNP figures for present Member States are: Austria 7.8m (1991) and US$ 23,256 (1992); Belgium 10.02m (1992) and US$ 19,300 (1991); Denmark 5.18m (1993) and US$ 23,660 (1991); Finland 5.05m and US$ 21,009 (1992); France 57.8m (1994) and US$ 20,600 (1991); Germany 80.28m (1992) and US$ 23,650 (1991); Greece 10.26m (1991) and US$ 6,374 (1992); Ireland 3.55m (1992) and US$ 10,780 (1991); Italy 56.96m (1992) and US$ 18,580 (1991); Luxembourg 0.395m (1993) and US$ 31,080 (1991); the Netherlands 15.24m (1993) and US$ 21,030 (1992); Portugal 9.86m (1991) and US$ 5,620 (1991); Spain 39.08m (1992) and US$ 14,920 (1992); Sweden 8.7m (1992) and US$ 25,490 (1991); and United Kingdom 58.0m (1992) and US$ 16,080 (1991).

[107] *Reflections on Europe,* by Wolfgang Schaüble and Karl Lamers, for the Bundestag CDU/CSU Caucus, 1 September 1994.

[108] HLQ 323.

[109] HLQ 340.

[110] HL Memorandum.

[111] Q 242

[112] See Annex E.

[113] *ibid.*

[114] We note Commissioner Oreja's opposition to a "patchwork" solution (Q 228).

the pack is the CAP/structural fund negotiation. The Minister of State at the FCO estimated that admission of the Visegrad Four in present circumstances would cost 50 billion ECU a year (£39 billion)[115] which shows what sort of pre-enlargement adjustments are needed, and how difficult they may be to secure.[116]

Ratification

55. It may seem premature to discuss ratification some months before the IGC has even begun. However, the events which followed the signing of the Maastricht Treaty, and the possibility that full agreement at the 1996 IGC may be elusive, suggest that now may not be too early to look at some of the implications.

56. There has been discussion about the possibility of amending Article N of the Treaty to provide for future Treaty revision to be approved by a super-qualified majority.[117] This is clearly a highly sensitive issue; but a related suggestion, mentioned in the initial Reflection Group paper,[118] is whether implementation of Treaty changes should have to await ratification by all Members. In Commissioner Oreja's opinion, it ought not to be possible for one country to block agreement among the others;[119] and in Professor Wallace's words, "the case may well be made (as it was in the EEA Treaty) for a prudential clause to allow those that ratify to go ahead or for implementation to be set in train when a given number of member states have ratified. This would be consistent with the 'consensus minus one' concept that is beginning to be suggested as a means of avoiding the whole EU being held hostage by a single 'difficult' member".[120]

57. There is, of course, a circular logic involved, in that Article N already provides that Treaty amendments shall enter into force after being ratified by *all* the Member States in accordance with their respective constitutional requirements but, not least because the matter has been formally raised with the Reflections Group, **we think it sensible to bear the ratification and implementation procedures in mind from the outset.**

[115] FACQ 82.

[116] See Q 106, HLQ 34 of 10 January 1995 (HL Paper 19), and the evidence of the then Minister for Agriculture, Fisheries and Food before Sub-Committee of the House of Lords Select Committee on the European Communities, 29 June 1995, Qq 21-24.

[117] In other words, QMV with a higher majority needed for approval.

[118] See Annex E.

[119] To the Institutional Affairs Committee of the European Parliament, January 1995.

[120] HL Memorandum, p.2. A distinction should perhaps be made between specific arrangements (of the Schengen type) which could possibly be implemented without all Member States having ratified, and institutional changes, which almost certainly could not.

PART IV: DEMOCRACY AND EFFICIENCY

58. In our darker moments it sometimes seems as though there are three "in" trays in the European Union. One is labelled "difficult"; one is labelled "too difficult"; and the third is labelled "exciting and visionary". The trouble is that only the third tray is ever emptied. **Member Governments and the institutions have shied away from - or have simply not given a high enough priority to - reforms that will make the Community and the Union work better. Our criticisms have nothing to do with whether there should be more or less integration. They are aimed at getting the Community and the Union to operate in the ways which citizens expect of their National Parliaments and Governments as a matter of course, and to fulfil existing commitments.**

59. The Preamble to the Maastricht Treaty describes the Heads of State and Government as:

> "Desiring to enhance further the democratic and efficient functioning of the institutions so as to enable them better to carry out...the tasks entrusted to them".

The recent reports of the Council, the Commission and the European Parliament — the Reflection Group's starting point — are full of references to democracy, openness and transparency. **If these aspirations are not to be mere rhetoric — and, more important, if the results of the IGC are to be acceptable to Parliaments and peoples, then there must be changes in the way the Union does business.**

60. **We emphasise that high-flown "commitments" and "intentions" will no longer do; the Maastricht Declaration on the Role of National Parliaments has shown just how much such statements of intent are worth. Action is now needed, backed where necessary by legal requirement.**

Making the law

61. **The process of legislation in a democratic society always contains the elements of proposal, consideration, amendment if necessary, and approval. This process works only if what is proposed is clear, if it is widely available, if there is publicity and public consultation, and if there is time to consider the proposal before decisions are taken. European law accounts for a large and growing proportion of the law of each Member State[121], yet it increasingly seems to be made in a private club.** We set out our specific criticisms below.

Use of unofficial texts

62. **First, the Council is at the moment prepared to discuss legislation on the basis of an "unofficial" text[122] — a Presidency**

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[121] Mr Philippe Séguin, President of the French *Assemblée nationale*, has estimated that 80% of law in economic and social matters will eventually be of Community origin. His view has been echoed by the French *Conseil d'Etat*. In the view of Mrs Rita Süssmuth, President of the German Bundestag, 80% of "economic law" and almost half of all laws in Germany stem from the Community. The Speakers of the States General of the Netherlands, Mr H.D. Tjeenk Willink (Eerste Kamer) and Mr W.J.Deetman (Tweede Kamer) estimated that in the Netherlands the proportion was moving from about 30% to about 60%. Sources: Papers for the Conference of Speakers, London, May 1995. The DTI estimated that a third of existing UK legislation arises from obligations to implement EC law, and that in future 70% of business law will come from that source. See DTI Efficiency Scrutiny Report, *Review of the Implementation and Enforcement of EC Law in the UK*, 1994, paragaphs 1 and 4.14.

[122] Recent examples include (with, in each case, our reference number, the Council reference number if available, and the reference to our Report on the document): (15244) 5947/94, draft Directive on the conservation of wild birds, where the UK Government Department concerned received a copy of the proposal only at the Council meeting where it was to be considered, see HC 48-xx (1993-94), paragraph 3.14 (25 May 1994); (15458) on health rules for trade in cattle and pigs, where no English text of any sort was available until the day the directive was adopted (27 July 1994), see HC 48-xxvi (1993-94), paragraph 23 (19 October 1994); (15950), financing of trans-European networks (Presidency compromise), see HC 70-vii (1994-95), paragraph 6 (15 February 1995); (15499) 8599/94, draft directive on air quality (Presidency compromise), see HC 70-ix (1994-95), paragraph 8; (16017), fisheries: total allowable quotas and catches 1995, see HC 70-xi (1994-95), paragraph 2.4 (22 March 1995); (16035), social dimension of international trade, see HC 70-xii (1994-95), paragraph 6 (29 March 1995); (16153), Presidency proposal on integrated pollution prevention and control, see HC 70-xix (1994-95), paragraph 1 (21 June 1995);

compromise or a Commission working paper. This would be unthinkable in a National Parliament. We accept that this is usually because negotiation shades into legislation; but the result is an opaque process where those not directly involved have no idea what is actually on the table.

Minimum period of notice

63. **This leads us to our second criticism; there is no minimum period of notice for legislation to be considered in the Council.** There is an increasing tendency for the Council agenda to contain proposals for which an official text appears just before the Council meets - or, indeed, at the meeting.[123] Frequently, not even an unofficial text is available outside Governments before then. This is unacceptable; not only are those affected put at a disadvantage, but any National Parliamentary Scrutiny system experiences great difficulty. This situation has been getting steadily worse,[124] and we are now having to consider whether we should, as a matter of course, refuse to clear any proposal for which an official text is not provided.[125]

64. This difficulty has been addressed by the French; in July 1994 the then Prime Minister issued the "Balladur instruction" under which French representatives would refuse to consider a proposal which had not been forwarded to the French Parliament at least a fortnight before a Council meeting. This was a welcome attempt, but it covered only those proposals regarded as "legislative" in the French system — a small proportion of the whole; and even in that category, and even during the French Presidency in the first half of 1995, we discerned no great improvement.

65. **The only acceptable solution seems to us to be a requirement of minimum notice - a clear Treaty requirement, not just a provision**

(16207), Presidency revision of draft directive on air quality, see *ibid.*, paragraph 10; 15219 (5543/94), control of major accident hazards ("provisional" Council text circulated the previous day), see HC 70-xxi (1994-95), paragraph 8 (28 June 1995).

[123] We note the view of the Secretary-General of the Commission: "Experience shows that when legislation is put forward or proposals come on to the table of the Council there is often a feeling that we have just got to decide them straightaway and we have got no time at all to deal with them." (Q184).

[124] See, for example, the evidence before us of the then Minister of State at the Department of the Environment, 21 June 1995.

[125] Recent examples of documents which we have had to consider without a formal text or after a decision had been taken by the Council include: (15323), amended draft decision on the SOCRATES programme, see HC 48-xviii (1993-94), paragraph 4 (11 May 1994); (15244), 5947/94, draft Directive on the conservation of wild birds, see HC 48-xx (1993-94), paragraph 3 (25 May 1994); (15351) proposals on interchange of data between Administrations, see *ibid.*, paragraph 6; (15347), health rules for eggs, see *ibid.*, paragraph 12; (15353), draft Regulation defining fishing vessel tonnage, see *ibid.*, paragraph 13; (15375), revised proposal on counterfeit and pirated goods, see HC 48-xxi (1993-94); paragraph 6 (15 June 1994); (15356), proposal for a partnership and co-operation agreement with the Ukraine, see *ibid.*, paragraph 7; (15378), 7467/94, broad guidelines of economic policy, see *ibid.*, paragraph 18; (15424), ACP countries and India; guaranteed prices for cane sugar, see HC 48-xxiv (1993-94), paragraph 9 (6 July 1994); (15624), amended draft directive on part-time and temporary work, see *ibid.*, paragraph 53; (15638), timeshare, see HC 48-xxvii (1993-94), paragraph 23 (26 October 1994); (15637), arable set-aside, see HC 48-xxviii (1993-94), paragraph 15 (2 November 1994); (15651), definition of intervention butter, see *ibid.*, paragraph 19; (15654), amended draft directive on advanced television services, see *ibid.*, paragraph 20; (15659), fisheries: total allowable catches and quotas, see *ibid.*, paragraph 21; (15688), sugar régime, see HC 70-i (1994-95), paragraph 7 (30 November 1994); (15721), reform of the agri-monetary system, see *ibid.*, paragraph 8; (15671), trans-European networks, see *ibid.*, paragraph 17; (15677) further amendments to fisheries: total allowable catches and quotas, see *ibid.*, paragraph 19; (15679), guide prices for fishery products 1995, see *ibid.*, paragraph 20; (15758), packaging and packaging waste, see HC 70-iii (1994-95), paragraph 14 (14 December 1994); (15780), relations with Turkey, see *ibid.*, paragraph 15; (15789), fisheries: Community quotas in Icelandic waters, see *ibid.*, paragraph 16; (15791), fisheries: total allowance catches and quotas 1995, see *ibid.*, paragraph 17; (15793), fisheries: Norway 1995, see *ibid.*, paragraph 18; (15721), amended proposal on the reform of the agri-monetary system, see HC 70-iv (1994-95), paragraph 12 (18 January 1995); (15857), tobacco régime, see HC 70-v (1994-95), paragraph 10 (25 January 1995); (15958) safety of passenger ferries, see HC 70-vii (1994-95), paragraph 1 (15 February 1995); (15359) 6495/94, interoperability of high speed trains, see HC 70-ix (1994-95), paragraph 1 (8 March 1995); (15992), telecommunications open network provision, see *ibid.*, paragraph 25; (16041), guide prices for deep water prawns and herring, see HC 70-xii (1994-95), paragraph 7 (29 March 1995); (16030), fisheries: Norway 1995 (replacing (15793) above), see *ibid.*, paragraph 15; (16034), fish imports 1995, see *ibid.*, paragraph 16; (16036), equal treatment for men and women, see *ibid.*, paragraph 17; (16037), implementation of social directives, see *ibid.*, paragraph 18; (16042) catch quotas for Greenland halibut, see *ibid.*, paragraph 19; (16094), telecommunications infrastructure, see HC 70-xiv (1994-95), paragraph 6 (3 May 1995); (16126), agri-monetary reform, see HC 70-xvii (1994-95), paragraph 10 (25 May 1995); (16157), fauna and flora (trade and possession), see HC 70-xix (1994-95), paragraph 9 (21 June 1995); (16183), legal protection of databases, see *ibid.*, paragraph 14; (16187), veterinary checks, see *ibid.*, paragraph 19; (16206), fisheries enforcement: financial provision, see HC 70-xxi (1994-95), paragraph 1 (28 June 1995); (16233), Common Fisheries Policy (control system), see *ibid.*, paragraph 2. **We emphasise that this is no more than a selection of such instances since May last year, and that every document quoted was judged by us to be of legal or political importance in the terms of Standing Order No. 127.**

in the Council's Rules of Procedure. In this House, situated in one place, with a single tradition and a single language, two weekends pass between presentation and Second Reading of a Government Bill, other than in exceptional circumstances. At the European level, involving fifteen Member States and considerable additional complexity, it seems to us that **the minimum period of notice should be four weeks: that is, four clear weeks between an official text of a document being available in the appropriate language in every national capital and a decision on the document being taken in Council.** We can envisage emergency action being required to avoid an *unforeseen* legal vacuum or to prevent damage to the Community's interests (in sanctions or anti-dumping cases, for example). These categories could be excluded from the minimum notice requirement if they were clearly and narrowly defined.

66. Of course there will be other situations when rapid decisions have to be taken - on a national level, all Governments ask their Parliaments to consider legislation urgently from time to time. **If a period of minimum notice is introduced, however, there must be a safeguard against the urgent procedure becoming the norm. We propose that, where an item is taken within the minimum period of notice, the Council's decision should be by unanimity.**

67. **A period of minimum notice should not be limited to consideration of legislative proposals.** Council Resolutions are often of great significance for the citizen, and Green and White Papers lay out the legislative agenda far ahead. **Any period of minimum notice should also apply to any document *with legislative implications*.**

68. There is of course a practical problem in that the Council is a negotiating body as well as a legislature, and this dual function is at the root of much difficulty and misunderstanding. The Presidency often assumes the role of mediator, putting forward compromise texts. It would be difficult to extend a minimum notice rule to cover compromise texts, and such an extension would no doubt be unacceptable on the grounds that it would encourage obstruction. If the four-week minimum we have suggested is introduced, then it will often be the case that the parameters of compromise will also be clear at that stage. But **if a compromise were to introduce a wholly new element,[126] not present in the original proposal, then we would favour an additional period of notice (perhaps less than four weeks), or a unanimity requirement.**

Other problems

69. Other problems, before the Council comes to a decision, have contributed to the difficulties. Chief among them are *translation, transmission and organisation of business.*

Translation

70. In a multi-lingual Community, translation and interpretation are vital functions. The majority of Commission proposals are drafted in French. The Commission's Translation Service employs 1640 staff,[127] and in 1994 supplied 1,029,000 pages of "conventional" translation[128]. Translation is expensive, accounting for 20% of the Commission's resources.[129] However, despite the positive and energetic approach of the Secretary-General of the Commission, Mr David Williamson, translation delays are still too long. When a proposal is about to go to the Council, these delays become critical. Time and again an English text

[126] For a view on what constitutes a new element, see Case C — 65/90, *European Parliament v. Council of the European Communities*, 1992 ECR 45/93.

[127] With a further 260 staff in process of recruitment for the newly added languages of Finnish and Swedish.

[128] Together with 150,000 pages of automatic translation via Systran and Eurotra, and 1,000,000 pages of standardised texts (particularly public procurement directives).

[129] Q 197.

emerges only just before a Council;[130] and from time to time the Council will take a decision on the basis of a single language text.[131] When time is short, we have been prepared to consider a document on the basis of the French (or occasionally German) text; but this is not an acceptable way to proceed.[132] Some Member States experience this more frequently than we Anglophones; this is not an acceptable state of affairs, and falls short of the Union's aspirations of democracy and openness.

71. If our suggestion on minimum notice were to be implemented, then any translation delays would be pushed upstream of the notice period; the four weeks could not begin until the document was available in the national capital in the language of the country.

Transmission

72. It seems extraordinary that, in the last years of the twentieth century, so much documentation is transmitted in paper form. The legislative proposals and other documents which we consider are either laboriously faxed to London, or arrive *via* the Belgian postal service which, we have been told by the Government, is used in preference to the Diplomatic Bag, but which nevertheless may take upwards of a week.[133] Electronic document transmission is highly effective and virtually instantaneous. Moreover, almost every document has already been keyed so is available in electronic form; scanners can be used where this is not the case.

73. We have experimented with electronic transmission, and have received both Council "outcome" press releases from the Council Secretariat, and European Parliament Minutes of Proceedings from the Division for Relations with National Parliaments, electronically. Electronic mail is widely used within the Commission[134], and Commission documents already go by electronic mail to some Member Governments, including those of France and Germany (but not, we note, of the United Kingdom,[135] although we trust that steps will be taken to put this right).

74. We note the proposal to set up a system for Interchange of Data between Administrations (IDA), which we considered in May and November last year and recommended should be extended to National Parliaments.[136]

75. **Although the *ad hoc* methods already being used are welcome, unco-ordinated conventional E-mail will not provide what is required. We believe that the time has come for a properly co-ordinated system of data exchange to be introduced within the Union.** First and foremost, it should carry Commission proposals and documents for consideration by the Council, together with Council agendas and records of Council decisions. Other categories of information could include European Parliament documentation (particularly Committee reports, debates and resolutions), ECJ and CFI proceedings, Court of Auditors material and the CELEX legislation database.[137] We also want to see a two-way flow between the institutions and the Member States;

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[130] A recent example was the draft directive on integrated pollution prevention and control: the document (7861/95), prepared for the Environment Council on 22 and 23 June, was not available in French until 16 June, and in English until 20 June. See HC70-xxi (1994-95), paragraph 4 (28 June 1995).

[131] A recent example was the Resolution on "complementarity" between Community and Member State aid policies, which was agreed on 1 June 1995 on the basis of a French text. See HC70-xxi (1994-95), paragraph 14 (28 June 1995).

[132] We note that the *Délégation pour l'Union européenne* of the *Assemblée nationale* has, from time to time, been critical of the non-availability of texts in French. See Report No. 2079, 6 June 1995 and Report No. 1985, 30 March 1985.

[133] Although this seems strange now that there is a direct rail link.

[134] Q 201.

[135] Q 202.

[136] See HC 48-xx (1993-94), paragraph 6 (25 May 1994) and HC70-i (1994-95), paragraph 10 (30 November 1994).

[137] Q204.

for example, we would like British MEPs to be able to access our weekly Scrutiny Reports; and we have already made changes in the method of production of the Reports which are designed to facilitate this. Finally, we would like to see easier communication of documents between National Parliaments, to support the collective role which they should be playing within the Union.

76. Not only would this be an exchange between national and Union institutions. If "bringing the Union closer to the citizen" is to be any more than a pointless mantra, then this information must be available to the individual as well. E-mail is rapidly becoming a commonplace, and **the ability to access what is proposed, what is debated and what is decided will empower the citizen far more effectively than any pious declaration.**

77. Moreover, a comprehensive indexed system of this sort will allow businesses, trade associations and other bodies to monitor events much more effectively, reducing their reliance on "Brussels insiders" and consultants for information.

78. **We therefore look to the Governments of the Member States, and to Her Majesty's Government in particular, to secure at the IGC the introduction and co-ordination of such a network, to a precise timescale. We do not expect the gross cost to be high; and quite apart from the contribution of such a system to democracy and openness, we expect the net savings in terms of money and efficiency to be substantial.**

Commission proposals

79. We intend to examine the working of the Commission in greater detail in a future Report. At this stage we raise two issues: the use of "unofficial" proposals,[138] and late proposals. Both contribute to problems of the sort we discussed in paragraphs 61 to 68.

Unofficial proposals

80. The Secretary-General of the Commission told us that the Commission did not favour unofficial proposals:

> "There are quite strict rules within the Commission for making available texts. For example, working documents of the Commission, they are all inspected to see whether they are disguised proposals or not, and if they are disguised proposals they should not go forward in the form of working documents."[139]

Mr Williamson acknowledged that the process of compromise in agricultural price negotiations had historically resulted in unofficial proposals, but said "we are not favourable to too many informal initiatives".[140]

81. In fact, the Commission's recent record on informal proposals has been less than perfect. Both in the process of bringing Spain and Portugal within the ambit of the Common Fisheries Policy and settling total allowable catches and quotas[141], and in settling the agri-monetary arrangements, negotiations proceeded on the basis of informal proposals,[142] and no formal documents were available for scrutiny by National Parliaments.

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[138] In other words, not a formal proposal from the Commission to the Council, but — for example — a working paper that may form the basis for negotiation, and then suddenly become a proposal at a very late stage.

[139] Q 191.

[140] *ibid.*

[141] (15558), 8941/94, Com (94)309 and (15559), 8940/94, Com(94) 308; see HC48-xxvi (1993-94), paragraph 9 (19 October 1994).

[142] See also the Opinion of the European Parliament's Committee on Fisheries on the functioning of the EU Treaty (Draftsman: Mrs Brigitte Langenhagen), PE 211.324/fin, 23 February 1995.

Late proposals

82. In respect of both the fisheries and agri-monetary proposals referred to above, the Commission was required to produce formal proposals by a specified time. On Spanish and Portuguese accession to the CFP, the deadline was 1 June 1994. Nothing happened until September, when informal proposals emerged, only to be rejected by the Member States. Further (again informal) proposals were produced in late November (although by that stage matters were greatly complicated by the decision of Norway not to join the Union). In the case of reform of the complex agri-monetary system, which is central to the operation of the CAP and of wider economic significance, we had to consider the proposal on 30 November 1994 without a text, although it was expected to come before the Agriculture Council on 12-13 December, and come into effect on 1 January 1995.[143] The then Minister of State for Agriculture, Fisheries and Food told us:

> "I share the concern that your Committee expressed over lack of time to consider the proposals and the fact that it had to do so without formal texts. Your Committee has also expressed similar concerns in relation to fisheries documents. I take this matter very seriously and this is why I gave a personal undertaking yesterday that the whole system would be examined as thoroughly as necessary to try to ensure that documents are brought forward as quickly as possible. I can assure your Committee that this will include urging the Commission to come forward with proposals to allow adequate time for Parliamentary scrutiny."

We are not yet able to report an improvement.

In both cases the Council had to agree "roll-over" arrangements to keep the régimes in force; in both cases the Commission failed to meet what was formally required of it. These are not isolated examples.

83. **We do not know whether the Commission's failure to meet the deadlines was the result of a shortage of resources or poor planning; but we are quite sure that it should not recur. This is primarily something for the Commission itself to deal with, but we would also expect the Council Secretariat and the relevant European Parliament Committees to keep the Commission up to the mark if necessary. A Community institution should not allow itself to be in breach of a Community legal requirement.**

84. A related difficulty occurs when the Commission produces proposals only a short time before the Council at which they are to be discussed.[144] Again, this may be a matter of planning or resources; but we must acknowledge a feeling in some quarters that the proponent of a late proposal is often at an advantage. **However, if there is any temptation towards tactical delay, our proposed minimum period of notice will eliminate it.**

85. Credit should be given to the Commission for its initiatives in two areas: first, the increased use of Green and White Papers to focus debate and gather opinion on issues before formal legislation is proposed. We welcome the Commission's intention to make wider use of such documents[145], subject to two *caveats:*

— consultation and debate becomes rather less useful once the Council has taken up a position on a Green or White Paper, so there should be a longer period between publication and Council consideration; and

[143] See HC70-i (1994-95), paragraph 8 (30 November 1994).

[144] This is another aspect of the "short notice" problem outlined in paragraphs 63 and 64.

[145] *Legislative Programme for 1995,* paragraph 6.1.

— when the Commission seeks responses, particularly from national governments, it must allow enough time for consultation within Member States.[146]

86. Second, the format of the Commission's legislative programme is good. It is well set out, clearly written (exempt from the criticisms we make in paragraph 93 below) and contains a great deal of information. We know of no comparable document produced by a Member State government: there is certainly no comparison with the short and vague United Kingdom legislative programme. It would be helpful to have more information on the phasing of the programme, and this might also allow more effective consideration and response on a national level. We will return to this subject in our further Report on scrutiny and institutional issues.

Organisation of business

87. The ordering of Council business, and the settling of the agenda, is the responsibility of the Presidency, assisted by the Council Secretariat. Implementing the Presidency's priorities may not always produce an agenda which is convenient to every Member State, but this is a natural part of the political process, and we make no complaint about it. However, there are difficulties associated with the six-monthly rhythm of the Presidency. There is often a lull as a new Presidency takes over and settles in; then the tempo of business builds up; and then there is often a mad rush in the last few weeks of a Presidency - partly because the Presidency country wants to chalk up achievements, and partly because there may be matters it wants to avoid having settled under the next Presidency. This surge of business imposes unnecessary strains, and does not improve the product. Even when two successive Presidencies co-operate closely (as was the case with the German Presidency in the second half of 1994 and the French Presidency in the first half of 1995) it seems to make little difference to this six-monthly cycle.

88. A number of suggestions have been made for reform of the Presidency, by dividing its responsibilities,[147] by having more than one country at a time hold it,[148] by enhancing the role of the Troika,[149] and by extending the period of the Presidency[150]. We will return to this question when we report on institutional issues in the Autumn.

Language: the Treaties

89. The Treaty on European Union is an uneasy marriage between legal drafting and political compromise. It is a difficult document to use and to interpret. The President of the European Parliament has described it as "unreadable even for Community experts".[151] It has been described in evidence as "extremely imprecisely and widely drafted"[152] and "opaque"[153]. The Council has acknowledged that "the successive juxtaposition of treaties and the amendments to them, with the ensuing consequences in terms of texts' readability, has increased the impression

[146] See, for example, the Green Paper on the liberalisation of telecommunications infrastructure and cable television networks (15756) 10589/94 and (15977) 4674/95, the second part of which was not available in the UK until 21 February 1995, but on which the Commission deadline for responses was 15 March; see HC70-ix (1994-95), paragraphs 2.3 and 2.16 (8 March 1995). See also the Green Paper on tourism, (16167) 6871/95, which was dated 4 April 1995, sent to the Council on 24 April, and not available in the UK until 7 June, but which had a response deadline of 30 June; see HC70-xix (1994-95), paragraphs 1.1 and 1.9.

[147] *Rapport d'information sur les réformes institutionelles de l'Union européenne,* presented by Mrs Nicole Catala and Mrs Nicole Ameline, for the *Délégation pour l'Union européenne,* Part III. See also Q356 (Mr Davis).

[148] *La réforme de 1996 des institutions de l'Union européenne,* presented by Senator Yves Guena for the *Délégation du Sénat pour l'Union européenne,* p.17.

[149] *La Conférence intergouvernementale 1996/De Intergouvernementele Conferentie 1996, Comité d'avis chargé de questions Européennes/Adviescomite voor Europese aangelegenheden* of the Belgian Lower House, presented by Mr Eyskens and Mr Willockx, p.10.; and Mr Laurens Jan Brinkhorst MEP, HL Memorandum.

[150] *ibid.*

[151] Mr Klaus Hänsch, in a speech at the Royal Institute of International Affairs, 22 February 1995.

[152] Mr John Toulmin QC, HL Memorandum.

[153] Professor Helen Wallace, HL Memorandum, paragraph 13.

of complexity".[154] The Commission agrees, both on the Maastricht Treaty[155] ("the ratification debates revealed the acuteness of a problem that the Treaty's authors had not perceived: is the Treaty comprehensible at all?") and also on the sedimentary process which has led to amendment without revision ("the result is that the Union's basic Treaties are very difficult to read and understand").[156] The Commission and the Parliament[157] agree that the Treaties should be unified[158] and rewritten.

90. **We agree that the Treaties should now be unified and redrafted to achieve clarity and precision. If this process is to work it will require considerable self-control on the part of the IGC not to use vague provisions as a means of papering over disagreements.** We do not agree with the European Parliament and its President that the text should be made "more inspiring".[159] Inspirational language is rarely precise, but Treaties should be precise, and they serve people better by being so. We are sure that other ways can be found to evoke the appropriate emotions.

Language: drafting

91. The Commission sagely says:

> "In every country in the world legislation is difficult to grasp because it is produced by experts using technical language. In the Community context, the problem is compounded by the fact that legislation is the fruit of negotiations, and ambiguities may be the price to be paid for agreement."[160]

Maybe so, but we would prefer to see it acknowledged that **ambiguities have a continuing price: obscurity, potential unfairness, and litigation.**

92. In June 1993, following a request by the Edinburgh European Council, the Council laid down criteria for improving the quality of legislative drafting[161]. We are also told that efforts have been made to make secondary legislation more accessible and more readable.[162] **These initiatives are welcome, but there is still much room for improvement. We hope that Her Majesty's Government, under whose Presidency the first steps were taken, will keep up the pressure; particularly, perhaps, by exploring the feasibility of a "quality assurance" process.**[163]

Language: clarity

93. If there is to be greater openness and accessibility in the Union, then the quality of drafting and translation needs to be improved; not only in the specialised legislative field, but generally. We hope not to be thought parochial if we deal only with English; but there are indications that other languages suffer too. The problem is "Eurospeak", known also as "Euroguff", "Eurobabble" and other names just as apposite but less printable. We are aware of the tension between free and literal

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[154] Cm 2866, paragraph 13. The Council report also notes that "Since they were signed, the Treaties establishing the European Communities have undergone a number of amendments, notably with the Merger Treaty, the Treaties amending certain budgetary and financial provisions, the Single European Act, the TEU and the Acts of Accession" — ten Treaties in addition to the Acts of Accession.

[155] Commission report, paragraph 90.

[156] *ibid.*

[157] Resolution of 17 May 1995, paragraph I.2.

[158] Although (paragraph 14(i) of the Resolution) the Parliament uses unification as a vehicle for substantial change (bringing Pillars 2 and 3 within the Community system).

[159] *op.cit.*

[160] Commission report, paragraph 87.

[161] OJ No. C166, 17.6.1993, p.1.

[162] Cm 2866, paragraph 14.

[163] See, for example, the work of the Netherlands Working Party on the quality of EC legislation, chaired by T. Koopmans, formerly a judge of the ECJ, for the Legislative Projects Review Committee.

translation; but "English" texts constantly use language that no native English speaker would employ. To take a random instance (already quoted in paragraph 36 of this Report), the Reflection Group is to "elaborate options in the perspective of the future enlargement". This is a mild example compared with many, but it does appear in the Conclusions of a European Council, one of the most important documents of the Union. **If the Union is to move closer to the citizen, then it must speak in a language that the citizen recognises as his or her own. Jargon and institutional dialect will not help.[164] We look to Her Majesty's Government to press for improvements. We are sure support will be forthcoming from other governments, on the grounds that the English language is not the only victim.**

Consolidation

94. **We have consistently stressed the importance of consolidation[165], or the updating of legislation to take account of subsequent amendment. Consolidation may appear to be a narrow technical subject, but its importance should not be underestimated. The complexity and lack of real accessibility of much Community law is a real problem for individuals and public and private organisations; it imposes extra costs and distances law from the citizen.**

95. **The problem is compounded when a Directive is transposed into domestic law. We take as an example the Animals and Animal Products (Import and Export) Regulations 1993,[166] which** were laid before Parliament on 30 December 1993 and came into force two days later. Part II of the Regulations relates to intra-Community trade, and applies "to trade between Member States in live animals and all animal products which are the subject of the Directives listed in Schedule 3". Schedule 3, headed "measures to be complied with", contains 16 Council Directives, most of which have been amended to some degree. The first of these, 64/432[167] is, according to the Regulations, "as amended by and as read with..." and a list of *thirty-four* texts follows. **These Regulations have to be understood and implemented by people whose livelihood is involved. If the participants in the IGC want an example of something that makes the Community look inefficient and undemocratic, they need look no further.**

96. How, then, to improve matters? There are two means of consolidation:

— *legislative consolidation,* in which the original text and all later amendments are combined in a single legally authoritative text; this is consolidation as it is understood at Westminster; and

— *declaratory or administrative consolidation,* a "cut and paste" exercise in which the amendments are inserted in an informal document.

A parallel approach is the *restructuring* of legislation for greater simplicity; this is a more fundamental approach, but with consolidation as by-product.

97. The Secretary-General of the Commission was able to report to us very good progress on administrative consolidation, with the Publications Office in Luxembourg producing amended working texts

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[164] We note the Commission's intention (paragraph 6.2 of the 1995 legislative programme) that "information will be presented in straightforward language".

[165] See, for example, on consideration of particular proposals in Session 1993-94, our Ninth Report (HC 48-ix), paragraphs 4.1 to 4.12; our Tenth Report (HC 48-x), paragraph 1; our Eighteenth Report (HC 48-xviii), paragraphs 1.9, 1.10 and 9.13; our Twenty-first Report (HC 48-xxi), paragraph 9; our Twenty-sixth Report (HC 48-xxvi), paragraph 23; our Twenty-seventh Report (HC 48-xxvii), paragraph 19; and in 1994-95, our Seventh Report (HC 70-vii), paragraph 5; and paragraph 18.8 (arable set-aside).

[166] S.I., 1993, No. 3247.

[167] OJ No. L121, 29.7.64.

within 48 hours of new amendments being made, and catching up on past texts.[168] This is welcome, but cannot replace juridical consolidation of laws which confer rights and impose duties.

98. Progress on consolidation on Community law has been very slow, for three main reasons:

— although consolidation should not be more than a technical exercise (since it should not involve substantive change), it has been used as an excuse to reopen Council debate on the substance of proposals to be consolidated; and some proposals presented as consolidation have in fact included substantive change;

— the fact that amending legislation is, or is said to be, imminent has led to the postponement of consolidation; and

— the resources required for consolidation in nine — now eleven — languages.

99. 15 consolidation instruments were announced in the 1993 and 1994 legislative programmes but, despite the Edinburgh European Council's strong support, and other expressions of support by the Council, the European Parliament and Community Ministers of Justice, there was very little progress.[169] In our Ninth Report of last Session we recommended that, if legislative consolidation could be shown not to include new material, then a streamlined process should be used.[170]

100. We therefore welcomed the European Parliament Resolution of 6 May 1994[171] and the inter-institutional agreement of 20 December 1994 between the Council, the Commission and the European Parliament. This included an undertaking by the Commission "not to change the substance of the acts being codified", a procedure whereby the purity of the consolidation would be checked by a working party consisting of the Legal Services of the three institutions, and substantive change by the Parliament or the Council would be prohibited.

101. Unfortunately progress is still slow. The Commission's report on the working of the Treaty says that the delays are due to "legal and language difficulties and to teething problems with the computer system set up by the Publications Office."[172] Annex 12 of the Commission report gives the current state of play. In the last two years, fifteen instruments have been identified for consolidation. On two of these, consolidation has been abandoned in favour of recasting. On eight, the Commission has made proposals. Two[173] have proceeded as far as a draft in nine official languages, but are held up because Swedish and Finnish versions are not yet available.

102. As long ago as 1974, the Council came to a Resolution calling for the consolidation of acts which had been amended only "several" times.[174] A Commission decision of 1 April 1987 imposed a requirement that consolidation should take place no later than the tenth amendment. Even this may be thought a rather late stage to consolidate, but in fact this limit has been breached many times.

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[168] Q 204.

[169] We noted in February 1994 that, on the seven sets of consolidation proposals made at that stage, those relating to agricultural tractors, units of measures, marketing and use of dangerous substances, and fertilisers, were all with the Council, and that 31, 31, 29 and 26 months respectively had passed since each was proposed by the Commission. Proposals on doctors' diplomas, public works contracts and fruit juices had been adopted, but 16, 17 and 16 months respectively after their submission. See HC 48-ix (1993-94), paragraph 4.5.

[170] *ibid.*, paragraph 4.7.

[171] OJ No. C205, 25.7.1994, p.514.

[172] Paragraph 86.

[173] Harmful organisms: vegetable products (Directive 77/93/EEC) and seeds and seedlings (Directives 66/400/EEC, 66/401/EEC; 66/402/EEC; 66/403/EEC; 69/208/EEC; 70/457/EEC and 70/458/EEC.

[174] 26 November 1974; OJ No. C20, 28.1.75, p.1.

103. This is an unglamorous but vital area which the IGC must address. There must be a comprehensive programme of consolidation of existing acts, not just for the worst cases, but covering the whole body of Community law, and setting priorities and deadlines. If additional resources are required, so be it. Law which is opaque and unnecessarily complex loses respect; and these apparent technicalities are touchstones of the democracy and efficiency which the IGC must promote.

Conclusion

104. In this section of our Report we have considered areas in which the Union needs to be made more democratic and open, and where it needs to operate in a more professional way. "Insiders" may resist change, alleging that the system works well and that it is clear to those who understand it. But this is precisely the point. If the Union is to be brought closer to the citizen, then the burden is upon the Union and its institutions, and not upon the citizen, to make it comprehensible and accessible, and to ensure that it operates in an open and democratic way.

105. Her Majesty's Government has said that the IGC should "improve the way in which Europe operates."[175] Our criticisms and recommendations are directed towards exactly this aspiration, and we are therefore confident that these will be among the matters that the Government will press at the Inter-Governmental Conference.

[175] *Official Report,* 1 March 1995, col.1063.

PART V: THE ROLE OF NATIONAL PARLIAMENTS

106. **There is a widespread and growing recognition that National Parliaments are, and should remain, the primary focus of democratic legitimacy in the European Union.** This does not imply a judgement on the relative role of the European Parliament. Democratic power in the Union is not "a zero-sum game",[176] as the jargon has it, and there is too little of it at the moment to squabble over exact shares.

107. National Parliaments, with their diverse characters matched to their national cultures, have, compared with the European Parliament, many fewer electors per Member of Parliament. They are closer to the citizen, and are uniquely qualified to provide an element of responsiveness and democratic control that the Union needs. The "Karlsruhe Judgement" has settled a constitutional relationship between the Bundestag and the European Union that is of much wider significance.[177] There is a clear expectation that the IGC will pronounce on their future role.[178] **The question is, will the IGC strengthen the role of National Parliaments *in practice,* or will it simply produce empty rhetoric? The last IGC is not an encouraging precedent.**

The Maastricht Treaty

108. The June 1990 Dublin European Council drew attention to a possible "greater involvement of the national parliaments in the democratic process of the Union, in particular in areas where new competences will be transferred to the Union".[179] This theme was taken up in the Commission's paper for the 1991 IGC[180], and explored in the IGC itself. The result was two Declarations attached to the Maastricht Treaty: No.13 on the role of National Parliaments in the European Union, and No.14 on the Conference of the Parliaments. We reproduce these Declarations in Annex F to this Report. Declaration No.14 has not been implemented**: and we shed no tears about the Conference of the Parliaments, or *Assises,* for reasons we set out in paragraphs 127 to 130 below.**

109. Declaration No.13 noted the importance of encouraging "greater involvement of national Parliaments in the activities of the European Union". In it, the governments of the Member States proposed closer contacts between the European Parliament and National Parliaments and, much more important, committed themselves to ensure "that national Parliaments receive Commission proposals for legislation in good time for information or possible examination." **We have demonstrated in paragraphs 58 to 71 above that this part of the Declaration, solemnly agreed by the Member States, and offering the opportunity of real democratic involvement at the national level, has been routinely ignored. It has proved to be a sham, reflecting no credit upon those who agreed it at Maastricht. This experience shows clearly that something more is required of the 1996 IGC.**

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[176] See, for example, Mr Tom Spencer MEP, HLQ 366; Lord Plumb, former President of the European Parliament, *Official Report,* House of Lords, 8 March 1995, col.312; Mr Elmar Brok MEP, Qq 7 and 9; Mrs Elisabeth Guigou MEP, Q 6.

[177] Judgement of the German Constitutional Court, 12 October 1993.

[178] See, for example, Commission report, 10 May 1995, paragraph 38; Papers by European Speakers for the Conference of Speakers, London, May 1995; Lord Plumb, former President of the European Parliament, *Official Report,* House of Lords, 8 March 1995, col. 312; Commissioner Oreja's evidence to the European Parliament's Institutional Affairs Committee, 4 January 1995, and to us, 25 April 1995, Qq 223-40; the then French Minister for European Affairs, Mr Alain Lamassoure, in evidence to the *Délégation du Senat pour l'Union européenne,* 15 December 1994; Mr Philippe Séguin, President of the *Assemblée nationale,* interview in *Le Figaro,* 7 December 1994; Mrs Rita Süssmuth, President of the Bundestag; paper for the Conference of Speakers, Bonn, September 1994;

[179] Conclusions.

[180] *Conférences intergouvernementales: contributions de la Commission, Bulletin des Communautés européennes,* Supplement 2/91.

The stance of Her Majesty's Government

110. The Prime Minister has said that at the IGC the Government w "set out ways of achieving a stronger role for national Parliaments"; and although the Government has floated some ideas[182], it has sai quite properly, that it is for Parliament to put forward suggestions.[183]

What happens already?

111. *The main role of national Parliaments in this context is respect of their own Governments.* **Ministers represent Member Stat in the Council of Ministers, and they are answerable to their ov Parliaments.** In both Houses at Westminster, the full range of questi and debate in the Chambers, and Select Committee activity outside, available for this purpose. Throughout the Union, different Chambers u these functions in different ways as they wish and as politic circumstances dictate; **it is not an area in which any formal c ordination would be of any use.**

112. *The second area is the formal scrutiny of European proposals* not only formal legislative proposals, but various categories of documer considered by the Council. Here there is a wide range of traditior expectations, and activity. Some countries, such as Denmark and t United Kingdom, have for many years operated comprehensive syster with a form of scrutiny reserve. Other countries, such as France a Germany, have recently stepped up their efforts; but many Chambe undertake no formal scrutiny of European proposals. The responses the questionnaires which formed the basis of the Paris Conference European Affairs Committees demonstrated that, out of 17 Chambe (from 24) which responded, only 7 carried out regular scrutiny.[184]

113. **While it is for each Parliament to consider how best proceed, we believe that a high priority given to detailed, demandi and timely scrutiny throughout the Parliaments of the Union wou have a salutary effect on the Council of Ministers, and would crea a *climate of accountability* which would offset the disproportiona and growing power of Executives.**

114. *Third, there are formal meetings of Presiding Officers.* Speake of the 24 national Chambers and of the European Parliament m formally every other year[185], and also from time to time informa under the current Presidency. Although the Presiding Officers repres different Parliamentary traditions, including those who are able to ta up political positions, and those who must maintain a rigid impartiali they have been influential in seeking more effective involvement National Parliaments.

115. *Fourth, there are formal meetings between Parliament Committees.* The most extensive arrangements are those which bri together the European Affairs Committees of the Parliaments the Uni together with the Institutional Affairs Committee of the Europe Parliament, in the six-monthly Conference of European Affa Committees/*Conférence des organes specialisés dans les affai communautaires* (CEAC/COSAC). This Conference, begun in 19 under the French Presidency, has now met twelve times under success Presidencies. Each country (and the European Parliament) is represen by up to six Members of Parliament at a two-day Conference. T Conference proceeds by consensus; it is a body for exchanging vie

[181] *Official Report,* 1 March 1995, cols.1063-1064. See also *Official Report,* 13 February 1995, col.679, and *Offi Report,* House of Lords, 8 March 1995, col. 352.

[182] See *Why Westminster must take the lead,* by the then Foreign Secretary (Mr Hurd), *The House Magazine,* 1 30, 1994.

[183] See also HLQ 99 (Foreign and Commonwealth Office).

[184] *La XII.e Conférence des organes specialisés dans les affaires communautaires,* presented by Senators Jac Genton, Claude Estier and Yves Guéna for the *Délégation du Sénat pour l'Union européenne,* No. 241 of 1994

[185] Alternately with a larger Conference which also includes the Speakers from Member States of the Counc Europe not in the Union, and the Presidents of the Parliamentary Assemblies of the Council of Europe an Western European Union.

ideas and experience rather than for taking executive decisions.[186] Its outcome is reported through Conclusions which are the responsibility of the Presidency alone.

116. CEAC/COSAC was conceived as consultative in character, and has remained so; delegations do not have a mandate from their Chambers. **In our view, the Conference has been most successful when it has considered the technique and practice of Parliamentary control and scrutiny rather than engaging in inconclusive political debate.**[187] Its proceedings are usually based on national responses to questionnaires; these are often invaluable information sources.

117. The Chairmen of *Foreign Affairs Committees* of the lower Houses of National Parliaments meet every six months, as do the Chairmen of *Finance Committees,* usually with the participation of the relevant European Parliament Committee.

118. *Ad hoc meetings* are organised by the Committees of the European Parliament; representatives of the counterpart committees in National Parliaments are invited to take part in the European Parliament Committee's discussion of a particular topic. These are usually broad debates and, as with the other forms of co-operation listed in the preceding paragraphs, do not lead to joint decision.

119. *Fifth, there are bilateral meetings between national and European Parliament committees.* These usually take place in Strasbourg or in Brussels, and are often combined with visits to other Community institutions.[188] From Westminster, the Foreign Affairs Committee of this House, the House of Lords Select Committee on the European Communities, and we ourselves, make regular visits. These are usually informal exchanges of view, but UK Members have taken part in proceedings of European Parliament Committees and MEPs and Commissioners have on a number of occasions given evidence to Westminster Committees[189]. We note especially the role of the European Parliament's Division for Relations with National Parliaments, which has played a helpful part in facilitating these exchanges. It has also developed an good working relationship with staff of both Houses, and acts as a clearing-house for information about developments in National Parliaments and the European Parliament.

120. *Sixth, there is a wide range of personal contacts through individual visits by Members of National Parliaments and MEPs,* which benefit from not being formalised.[190]

121. We should not forget *bilateral meetings on European matters between national Committees.* A joint meeting with our counterpart Committee is a key element in the visits we make to each Presidency country just before it assumes the Presidency, and many other Westminster Committees are involved in similar activity. There are also frequent visits by other national Parliamentary Committees to Westminster. Closer relations have developed between the Secretariats of European Affairs Committees.[191]

122. It will be seen that all the *inter-Parliamentary* activity described above is limited to the exchange of information - vitally important in

[186] See, for example, the Conference's unwillingness to consider a formal draft Resolution on openness and the Council's Rules of Procedure, tabled by the Netherlands delegation, X CEAC/COSAC, Athens, May 1994.

[187] See, for example, the XII CEAC/COSAC, Paris, February 1995, which considered scrutiny procedures and the role of National Parliaments in combating fraud in the Community.

[188] These increased from about 20 in 1992 to 44 in 1993 (see Commission report, paragraph 37).

[189] For example, during the present inquiries into the IGC being carried out in this House and in the House of Lords.

[190] In 1991 the House made funds available for an annual visit by each British Member to Community institutions.

[191] For example, the attachment at Westminster of an official of the Secretariat of the *Delégation pour l'Union européenne* of the French *Assemblée nationale.*

promoting understanding and sharing ideas and experience, but not affecting the formal role of National Parliaments.

What might be done?

123. There is no shortage of suggestions about how the role of National Parliaments might be developed. Many are for "more of the same" - an intensification of the contacts described in paragraphs 114 to 120 above. This is process should certainly be encouraged - the former Foreign Secretary described the relationship between British Members and MEPs as "in general correct but distant, and sometimes soured by mutual misunderstandings."[192] A wide range of institutional and role changes have also been put forward.

124. These include:

— making National Parliaments, collectively or individually, guardians of subsidiarity[193];

— giving National Parliaments some responsibility for budgetary matters[194] and the fight against fraud;[195]

— hearings of Commissioners;[196]

— National MPs accompanying Ministers to Council meetings;[197]

— the right to contest actions taken by an institution which are beyond that institution's competence, through the European Court of Justice;[198]

— joining the European Parliament in the supervision of inter-governmental activity under the second and third pillars;[199]

— more frequent Conferences of the Parliaments;[200]

— in each legislature, joint committees of National and European Members of Parliament;[201]

— through a body composed of members of National Parliaments, supervising particular activities, such as EMU, Schengen[202] and Europol;[203] and, related to this proposal and to the monitoring of the application of the subsidiarity principle,

— the creation of a Second Chamber, composed of delegations from National Parliaments,

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[192] *The House Magazine,* 30 May 1994, p10.

[193] HLQ 98 (Foreign and Commonwealth Office), and HLQ 234 (Sir Leon Brittan). See also *La réforme de 1996 des institutions de l'Union européenne,* presented by Senator Yves Guéna for the *Délégation du Sénat pour l'Union européenne.*

[194] See HL Memorandum by Mr John Toulmin QC.

[195] See Mr H.D.Tjeen Willink (Erste Kamer) and Mr W.J. Deetman (Tweede Kamer); paper for the Conference of Speakers, London, May 1995.

[196] Mr Laurens Jan Brinkhorst MEP, HL Memorandum. Select Committees at Westminster have taken evidence from Commissioners since the early days of the United Kingdom's membership, and indeed did so before Select Committees of any other Parliament see; for example, Expenditure Committee, Trade and Industry Sub-Committee, *Regional Development Incentives,* Minutes of Evidence, HC 327 of Session 1972-73; Commissioner George Thomson, Commissioner M. R. Borschette and Commission officials gave oral evidence in Brussels, 19 February 1973, Qq 1306-1406.

[197] HLQ 14.

[198] Q267 and Sir Leon Brittan: *The Europe we need,* Hamish Hamilton, London, 1994. See also HLQ 219.

[199] Guéna, *op.cit.,* and HLQ 347.

[200] The European Parliament's Resolution of 17 May 1995 (paragraph 42) suggests the calling of a Conference of the Parliaments at the beginning and the end of the IGC.

[201] HLQ 359.

[202] Mr Réné Monory, President of the French Senate; paper for the Conference of Speakers, London, May 1995.

[203] Guéna, *op. cit.*

and many permutations of these and related ideas. The possibilities of a Second Chamber, or of an enlarged role for the Conference of Parliaments, have received particular attention.

A second Chamber?

125. A "European Senate" composed of delegated national Parliamentarians has had a number of proponents.[204] Not surprisingly, the principal opponent of the idea has been the European Parliament, which no doubt sees it as a competitor. **Whatever the merits — or demerits — of this proposition, the following questions must be addressed:**

— *would its members be representatives or delegates?* Would it matter that they spoke only for themselves (we think not) or should there be a mandating system from National Parliaments; and if there were, would it be manageable?

— *how big would it be?* and how big would the delegations be? Here a balance has to be struck; the Chamber should not be unwieldy but, in some Parliaments, the requirement give representation to a number of parties of roughly equal size might put upward pressure on delegation size; and, related to this question,

— *would a double mandate be sustainable?* A dual mandate of membership of the House of Commons and of the European Parliament has been shown by experience to be a heavy burden. In this case it would depend on how often the Second Chamber sat.

— *what would it do?* There is a wide choice; we have noted some of the suggestions above. The monitoring and review of subsidiarity seems to have the most support;

— *would it address the "alienation" problem?* — in other words, would the membership of a Chamber set up to bring the Union closer to the citizen end up as remote as the existing institutions?

— *would it be too weak, as the European Parliament has alleged?*[205] This depends entirely on political will. It would certainly be preferable to have a Second Chamber with a distinct, but narrow, role and the powers to perform that role properly, than an aimless consultative body.

— *how would it be supported?* Depending upon its functions, a Secretariat need not be large, but it must be permanent (or have a permanent core supplemented temporarily from Member Parliaments) and it must be of high quality.

— *would it make matters more complicated?* This was an argument deployed by the European Parliament.[206] The answer depends entirely on what is seen as the balance of advantage; will an additional body pay for itself in terms of more effective democracy?

The Parliamentary Assembly of the Council of Europe

126. There is often merit in building upon existing structures rather than creating new ones; and if the possibility of a Second Chamber were to be explored further by the IGC, one possibility would be the development of CEAC/COSAC. Valuable as this body is, it would need

[204] Mr Michael Heseltine: *The Challenge of Europe: Can Britain win?* Weidenfeld and Nicholson, London, 1989; European Policy Forum: *A European Consitutional Settlement,* London, 1993; Mr Philippe Séguin, President of the *Assemblée nationale,* 1994; Sir Leon Brittan, *op.cit.* (and see evidence to the Foreign Affairs Committee, 18 March 1993, Q556.

[205] See Resolution on the preparation of the meeting with the national Parliaments to discuss the future of the Community (the *Assises)* 12 July 1990, OJ No. C231, 17.9.90, p.165.

[206] See note 32 above.

substantial change to become a Second Chamber. Lord Finsberg, the Leader of the British Delegation to the Parliamentary Assembly of the Council of Europe, suggested to us that the Assembly could fulfil the functions of a Second Chamber.[207] The Council of Europe has 36 Members, including all the potential new Members of the Union listed in paragraph 50 above; it has a long Parliamentary tradition (longer than that of the European Parliament) and an experience in the promotion of democracy and human rights which would be an asset; it has a permanent Secretariat; its practice and procedure bring together many of the Parliamentary traditions of the National Parliaments of the Union; it is located in Strasbourg (and indeed owns the Chamber in which the European Parliament meets when it is there); and it has a constitutional link with Western European Union and identical delegations to the Assembly of WEU for those countries which are also members of that body.

127. If the Council of Europe Assembly were to be developed in this way, it could operate in two modes: with the current membership of the Union, and as a larger forum, including the applicant countries. It would also provide ready-made answers to most of the questions outlined in paragraph 125 above.

The Conference of the Parliaments

128. Maastricht Declaration No.14 invited the European Parliament and the National Parliaments "to meet as necessary as a Conference of the Parliaments".[208] This was actually a watered-down version of a French proposal for a Second Chamber, and probably had as its starting point the suggestion made by President Mitterrand in a speech to the European Parliament in October 1989.[209] A Conference of the Parliaments has met only once, in November 1990 before the IGC that resulted in the Maastricht Treaty; our Committee and the Foreign Affairs Committee, and the House of Lords Select Committee on the European Communities, were represented on the UK delegation.

129. This is an idea which now has few friends. The European Parliament has recommended the holding of a Conference before and after the 1996 IGC,[210] but the President of the European Parliament has said that Conferences should be kept for such special occasions; he is opposed to regular *Assises*.[211] Speakers[212] and Committees[213] have expressed scepticism, and Commissioner Oreja has acknowledged some of the drawbacks of the 1990 Conference.[214]

130. The reasons for this lack of enthusiasm are not far to seek. It is an essentially consensual body, so there is a tendency to wordy conclusions limited by the highest common factor among the participants; there is no Secretariat[215]; and there are no terms of reference or continuing agenda: the Maastricht Declaration says merely that the Conference "will be consulted on the main features of the European Union". The European Parliament was instrumental in showing a further disadvantage: the ease with which the *Assises* can be hijacked. The Resolution adopted in Rome in 1990 was an endorsement of the Parliament's approach to the forthcoming IGC; and Commissioner Oreja

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[207] See Evidence, Volume II.

[208] Or *Assises,* the French term.

[209] OJ No. C382, 25.10.89, p.163.

[210] Resolution of 17 May 1995, paragraph 42.

[211] Dr Klaus Hänsch, *The House Magazine,* 22 May 1995, p.19.

[212] For example, Mr Monory, Mr Willink and Mr Deetman.

[213] For example, both European Committees of the French Parliament, and the Foreign Affairs Committee: see *Europe after Maastricht,* Second Report from the Foreign Affairs Committee, HC 642-I of Session 1992-93, paragraphs 103 and 110. See also HLQ 963 (Mr Davis).

[214] To the Institutional Affairs Committee, 4 January 1995. The arrangements for drafting texts, seating and voting are among those which have been criticised.

[215] Except what is provided *ad hoc* by the host country.

(a representative of the European Parliament at that *Assises*), told us in evidence "I think Members of the European Parliament ended that delighted - we thought we had won 3-1 or 5-2 to the Members of National Parliaments".[216]

131. The Foreign Affairs Committee was "not persuaded that the proposed Conference of the Parliaments could be more than simply a talking-shop or an audience for an annual 'state of the union' speech from the President of the Council of Ministers" and described it as "unwieldy" and "unprofitable".[217] **We see no merit in pursuing the Conference of the Parliaments further. We could suggest many ways in which it could be made to work; but the net effect of these would be to turn it into a proper Second Chamber, and that is an idea which has to be considered separately in its own right. We do not favour the summoning of another *Assises*.**

The legislative involvement of National Parliaments

132. As we noted in paragraph 109 above, the major part of Declaration No.13 on the Role of National Parliaments has been largely ignored by Member Governments. **It is our firm view that, if the IGC is to have credibility in recognising the role of National Parliaments, it must**

- **extend the terms of the Declaration to include all documents with legislative significance - in other words, draft decisions and resolutions, and Green and White Papers;**
- **specify a period of notice, rather than the vague phrase "in good time"; and**
- **make it binding.**

133. **If our recommendations in paragraph 65 to 68 were to be implemented in full, then the terms of this recommendation would be largely covered. It might be appropriate to make the date of deposit of an official text of a proposal in all the Chambers of the National Parliaments (rather than its availability in all capitals) the trigger for the period of notice.**

134. **So far as National Parliaments are concerned, we believe that the four clear weeks notice that we recommended in paragraph 65 is a minimum. Time has to be allowed for the processes of scrutiny, report, debate and decision.**

135. A Parliamentary scrutiny process is addressed primarily to the Government of the Member State concerned. **It would be possible to give National Parliaments collectively, under the Treaty, a formal role in legislation. If, by the end of the period of notice, a prescribed proportion (perhaps the same blocking minority as in QMV) of National Parliaments had recommended amendment or rejection of a proposal,[218] then that proposal could be approved in Council only by unanimity.** A provision of this sort would also put a premium on effective scrutiny activity in all the Parliaments of the Union.

136. **Such a provision might be used rarely, but it would be a clear commitment to enhancing the role of National Parliaments.** It will no doubt be argued that a Member Government which was doubtful about its ability to achieve a blocking minority in Council would stage-manage Parliamentary rejection in the hope of reaching the same destination by a different route. But if the blocking minority is the same in each case, then the same arithmetic would apply.

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[216] Q 235.

[217] Second Report, HC 642-I of Session 1992-93, paragraph 103 and 110.

[218] In a bicameral system, if either Chamber had done so.

Changes at Westminster

136. We will look in detail at what changes might be made at Westminster when we report on the Scrutiny system in the Autumn, but some agenda items are already clear:

— effective scrutiny of activity under the second pillar (Common Foreign and Security Policy) and the third pillar (Justice and Home Affairs). It is an irony that the Maastricht Treaty, which should have been sensitive to the requirements of democracy and openness, introduced two major areas of inter-governmental co-operation with very little Parliamentary accountability either on a European or national level. The House of Lords Select Committee on the European Communities recommended ways in which these pillars could be scrutinised at Westminster,[219] and there is still much to be done in this area.

— the relationship of British MEPs to the Westminster process. Various suggestions have been made, including increased rights of access, participation in Committees, the use of a joint Grand Committee, and temporary membership of the House of Lords. These are immensely sensitive areas. At this stage we would urge only that practicalities are taken into account. In the case of participation in committee activity, for example, is it going to be any easier for MEPs to come to Westminster than for Westminster Members to engage in the same sort of activity in Brussels? And how can such activity be focused? British MEPs have as wide a range of interests and concerns as do Westminster Members. What should be the relative role of Parliamentary and party structures?

— to what extent can the scrutiny process be pro-active, moving upstream of formal Commission proposals? Is our exclusively documentary-based scrutiny system adequate? Should the scrutiny reserve be widened or made more effective? Should there be a House of Commons office in Brussels, as there is for the Danish *Folketing?* To what extent can departmental Select Committees play a role in scrutiny, and is there a case for bringing the functions of detailed investigation (as in Select Committee) and questions and debate (as in European Standing Committee) closer? Should there be scrutiny of transposition into domestic law, including the question of whethr the result is more or less demanding than that in other countries? Should the impact of European legislation, once approved, be monitored?

Conclusion

137. **The Government has made a clear commitment to the enhancement of the role of National Parliaments at the 1996 IGC. Our recommendations are directed to the implementation of this commitment. We now look to the Government to take matters forward in consultation with Committees of both Houses.**

[219] 28th Report from the Select Committee on the European Communities, *House of Lords Scrutiny of the Inter-Governmental Pillars of the European Union*, HL Paper 124 of Session 1992-93; and Government Reply, Cm 2471, February 1994.

PART VI: CONCLUSION

138. We said in our Nineteenth Report[220] that we would use our first Report on the IGC as the vehicle for our Scrutiny judgement on the IGC documents which had so far been deposited in Parliament. Our formal decision is as follows:

139. We have given further consideration to the first three of the following documents. We maintain our opinion that they raise questions of legal and political importance. We consider that the fourth and fifth documents also raise questions of legal and political importance. We now recommend the further consideration of all five documents by the House rather than by European Standing Committee B:—

(16171)	Resolution of the European Parliament relating to A4—0102/95 the functioning of the Treaty on European Union.
(16172)	Report of the Council on the functioning of the Cm 2866 Treaty on European Union.
(16173)	Report by the Commission on the operation of the SEC(95)731 Treaty on European Union.
(16203)	Report by the Court of Auditors on the operation of the Treaty on European Union.
(16204)	Report of the Court of Justice on certain aspects of the application of the Treaty on European Union.

140. We make recommendations for debates on the Floor of the House very sparingly. It is regrettable that on a number of occasions the Government has not been able to find time for a debates on the Floor on matters of real significance recommended by us.[221] We hope that the Government will be able to demonstrate the importance of the matters to be discussed at the IGC, and its positive attitude to the Conference, by finding time for a full-day debate on this occasion. Anything less might cast doubt on the priority accorded by the Government to the IGC and to the role of National Parliaments. Such a debate would be an appropriate time to consider other Select Committee Reports on the IGC, especially from the Foreign Affairs Committee.

A White Paper

141. The Prime Minister has spoken in the House of how, at the IGC, the Government "will present a range of our ideas"; "we shall suggest ways"; "we shall set out our plans"[222] on the various likely agenda items. **We think it right that the Government should set out its ideas to Parliament and the public in the United Kingdom first, in a White Paper. Such a document might also contain the Government's formal response to those Select Committee Reports on the IGC which have been published at that stage. This would of course require the agreement of other Select Committees involved, but we would have no objection. The important thing is that Parliamentary and public debate on the substance of the Government's proposals should be a key element of the British approach to the Inter-Governmental Conference. If democracy and openness are to be among the themes of the IGC, nothing less will do.**

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[220] HC 70-xix (1994-95), paragraph 4 (21 June 1995).

[221] In this Session, for example, debates on Documents 4075/94 (Agreement on social policy), 6230/94 (European works councils), 9069/94 (European social policy), 11115/94 (Resolution on the future of social policy); 7988/94 (partnership and co-operation agreement with Russia), and unnumbered Explanatory Memorandum on relations with the Russian Federation; 11287/93 (external frontiers); 8693/94 and 8943/94 (relations with Central and Eastern Europe), 5928/95 (industrial co-operation with central and eastern Europe).

[222] *Official Report,* 1 March 1995, col. 1062.

LIST OF ABBREVIATIONS

CAP	—	Common Agricultural Policy
CCP	—	Common Commercial Policy
CCT	—	Common Customs Tariff
CEAC	—	Conference of European Affairs Committees
CFSP	—	Common Foreign and Security Policy
CFI	—	Court of First Instance
CFP	—	Common Fisheries Policy
COREPER	—	Committee of Permanent Representatives
COSAC	—	*Conférence des organes specialisés dans les affaires communautaires*
DG	—	Directorate-General
EBRD	—	European Bank for Reconstruction and Development
ECA	—	European Communities Act
ECB	—	European Central Bank
ECHR	—	European Convention of Human Rights
ECJ	—	European Court of Justice
ECOFIN	—	Council Meeting of Economic and Finance Ministers
ECOSOC	—	Economic and Social Committee
ECSC	—	European Coal and Steel Community
ECU	—	European Currency Unit
EDF	—	European Development Fund
EEA	—	European Economic Area
EEC	—	European Economic Community
EFTA	—	European Free Trade Association
EIB	—	European Investment Bank
EM	—	Explanatory Memorandum
EMF	—	European Monetary Fund
EMS	—	European Monetary System
EMU	—	Economic and Monetary Union
EP	—	European Parliament
EPC	—	European Political Co-operation
ERDF	—	European Regional Development Fund
ERM	—	Exchange Rate Mechanism
ESCB	—	European System of Central Banks
ESC	—	Economic and Social Committee
EU	—	European Union
EURATOM	—	European Atomic Energy Communities
FAC	—	Foreign Affairs Committee (of the House of Commons)
FCO	—	Foreign and Commonwealth Office
HC	—	House of Commons
HL	—	House of Lords
IGC	—	Inter-Governmental Conference
IIA	—	Inter-Institutional Agreement
MEP	—	Member of European Parliament
OECD	—	Organisation for Economic Co-operation and Development
OJ	—	Official Journal of the European Community
QMV	—	Qualified Majority Voting
SEM	—	Supplementary Explanatory Memorandum
SEA	—	Single European Act
SO	—	Standing Order
TEN	—	Trans-European Network
TEU	—	Treaty on European Union (Maastricht Treaty)
WEU	—	Western European Union

GLOSSARY OF TERMS

Assent procedure *(Avis conforme)*

On some matters of major importance, the Council can take action only with the assent of the European Parliament. For example, the Parliament's assent is required before the Council can agree to an application by a European State to join the European Union (Article O of the Treaty on European Union). The Treaty Articles which provide for the assent procedure are:

Article 8a(2)	Facilitating citizens' rights of free movement and residence
Article 105(6)	ECB: prudential supervision of credit institutions etc
Article 106(5)	Amendment of ESCB Statute (*qualified majority when acting on ECB recommendation*)
Article 130d	Organisation of Structural Funds and setting up Cohesion Fund
Article 138(3)	European Parliament electoral procedure
Article 228(3)	Conclusion of association agreements and certain other international agreements (*qualified majority in some cases*)
Article O	Admission of new Members to the Union

The Council acts by unanimity, unless otherwise indicated.

Assises

See Conference of the Parliaments.

Budgetisation

Under the Treaty on European Union it is left open in certain cases whether expenditure incurred by the Union is to be charged to the budget of the European Communities or is to be funded by Member States. This is the case under both the CFSP and Justice and Home Affairs pillars[1]. "Budgetisation" occurs when it is decided to charge such expenditure to the European Community budget.

Co-decision

A new procedure introduced by the Treaty on European Union[2] to enhance the role of the European Parliament in the Community legislative process. If the Parliament proposes amendments to the common position adopted by the Council which the Council does not accept, a Conciliation Committee, on which both institutions are represented, is convened to agree a joint text. A joint text agreed by the Committee has to be approved by both institutions and, if one fails to do so, the proposed legislation falls. If the Committee cannot agree on a joint text, the Council can approve a text itself, but it is then open to the Parliament to veto the proposed legislation by rejecting that text[3]. The Treaty Articles which provide for co-decision are:

Article 49	Free movement of workers
Article 54(2)	Freedom of establishment
Article 56(2)	Treatment of foreign nationals
Article 57(1)	Mutual recognition of qualifications
Article 57(2)	Right of establishment
Article 66	Freedom of services
Article 100a(1)	Establishment and functioning of the internal market
Article 100b(1)	Mutual recognition of legislative procedures
Article 126(4)	Education: incentive measures
Article 128(5)	Culture: incentive measures (*unanimity*)
Article 129(4)	Public Health: incentive measures
Article 129a(2)	Consumer Protection
Article 129d	Trans-European Networks: guidelines
Article 130i(1)	R & D multiannual framework programmes (*unanimity*)
Article 130s(3)	Environment: general action programmes

The Council acts by qualified majority, unless otherwise indicated.

Chart A sets out the stages of the procedure.

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[1]Article J.11 (2) and K.8 (2) of the Treaty on European Union.

[2]Article 189b.

[3]The Parliament has used the power of veto on two occasions.

Cohesion

The Community's policy of assisting its less developed regions. The objective of reducing economic disparities between regions of the Community first appeared in the Single European Act. The Treaty on European Union restated this objective as follows:

> "In order to promote its overall harmonious development, the Community shall develop and pursue its actions leading to the strengthening of its economic and social cohesion. In particular, the Community shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least-favoured regions, including rural areas".[4]

The main instruments of cohesion are the Structural Funds (European Agricultural Guidance and Guarantee Fund, European Social Fund, European Regional Development Fund), the European Investment Bank and the Cohesion Fund.

Comitology

The Council can confer on the Commission legislative powers to implement legislation adopted by the Council.[5] The Comitology Decision[6] sets out three procedures which the Council can use to govern the exercise of these powers by the Commission. Each requires the Commission to submit a draft of its proposals to a Committee (hence "comitology") consisting of representatives of Member States, and chaired by a representative of the Commission. In the case of the *Advisory Committee* model the Commission is only required to take the "utmost account" of its opinion (commonly called the *avis*), but in the case of the *Management Committee* and *Regulatory Committee* models the Committee has power to delay the adoption of the measure so as to enable the Council to intervene if it disagrees with what is proposed by the Commission. Since the introduction of the co-decision procedure, the Parliament has been pressing for a role in comitology for implementing measures adopted under co-decision. A temporary solution is the inter-institutional *modus vivendi* agreed in December 1994 which makes provision for the Parliament to be informed and consulted, and (at the request of the Parliament, the Commission and several Member States) puts the matter on the agenda for the 1996 IGC.

Commission

The Commission is the executive arm of the European Communities and has responsibility for "ensuring the proper functioning and development of the common market.[7]" It has the sole right of initiative on legislation under the Treaty of Rome, and shares the right of initiative with Member States under the CFSP and Justice and Home Affairs pillars. It has the duty of ensuring that the provisions of the Community Treaties are applied. Following the recent enlargement of the European Union, there are 20 Commissioners (previously 17): two from France, Germany, Italy and Spain and the United Kingdom and one from each of the other Member States. The Commission has extensive powers of delegated legislation mainly, but not exclusively, on agriculture. These powers have to be exercised in accordance with the comitology procedures prescribed in the parent legislation, but are not subject under the Treaty to democratic control or scrutiny.

The Committee of the Regions

The Committee of the Regions was set up by the Treaty on European Union[8] in order to provide a forum in which representatives of regional and local government could be consulted on European Community initiatives in such fields as education, culture, public health and trans-European networks. Following the recent enlargement, it has a membership of 222. The members of the Committee (together with an equal number of alternates) are appointed for four years by the Council on proposals from Member States.

Common Agricultural Policy (CAP)

The Treaty of Rome makes provision for a Common Agricultural Policy. The objectives, set out in Article 39 of the Treaty are:

> (a) to increase productivity by promoting technical progress and ensuring the rational development of agricultural production;

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[4]Article 130a.

[5]Article 145 of the Treaty.

[6]Council Decision of 13 July 1987, OJ No. L 197 18.7.87, p. 33.

[7]Article 155.

[8]Article 198a.

(b) thus to ensure a fair standard of living for the agricultural population;

(c) to stabilise markets;

(d) to guarantee a secure supply of food; and

(e) to assure reasonable retail prices to consumers.

It operates on three principles: *Community preference* whereby priority must be given to the sale of Community agricultural products, *financial solidarity* which requires that the policies should be funded by the Community as a whole, and *unity of the market*, meaning a single Community market for agricultural products freely traded between Member countries. Qualified majority voting is the norm and the role of the European Parliament is mainly consultative. The CAP operates through

(a) price management;

(b) direct producer aids;

(c) supply controls such as quotas; and

(d) structural and environmental payments.

Common Fisheries Policy (CFP)

This derives from Articles 38 and 39 of the Treaty. It was developed later than the CAP. The original six Member States formalised it in the early 1970s to present as part of the *acquis communautaire* to the three new Member States - the UK, Denmark and Ireland - whose territorial waters contained most of the Community fish. In 1973, fisheries legislation covered the right of vessels to fish in another EC country's waters, marketing of fishery products and access to Community funding for modernisation. A 10-year transitional period for the three new Member States was followed by major developments in 1983 with the development of conservation and management systems for fish stocks. The CFP has as its objectives:

(a) protecting species from overfishing;

(b) guaranteeing fishermen their future livelihood; and

(c) ensuring the processing industry and consumers enjoy regular supplies of fish at reasonable prices.

In 1986, with Spanish and Portuguese accession, the number of EC fisherman doubled, Community fishing capacity increased by 75%, tonnage by 65% and fish production and consumption by 45%. Qualified majority voting applies on CFP matters.

Common Foreign and Security Policy (CFSP)

The CFSP was established by the Treaty on European Union.[9] It built on the arrangements for European political co-operation (EPC) established by the Single European Act and makes provision for the Union and its Member States to define a common policy "covering all areas of foreign and security policy". Provision is made for Member States, acting within the Council, to define common positions and to adopt joint action. Provision is also made in the Treaty[10] for "the eventual framing of a common defence policy, which might lead in time to a common defence". The CFSP is commonly referred to as the second pillar. (See also joint action, pillars and political committee.)

Common position

The adoption of a common position by the Council marks the end of the first stage in the Community's legislative process (the first reading) when either the co-decision or co-operation procedure applies. On the basis of the Commission's proposal and after obtaining the opinion of the Parliament, the Council reaches a decision on the proposed legislation. This is the common position, which is then communicated to the European Parliament, thus starting the second stage of the legislative procedure (the second reading).[11]

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[9]Title V.

[10]Articles B and J.4.

[11]Articles 189b(2) and 189c(a) and (b).

Competence
Competence means power to act. Where the Treaty provides for the Community, or one of its institutions, to take action on something, the Community is said to have competence in relation to that matter. Community competence can be exclusive (where Member States retain no independent right to act) or shared with Member States.

Compulsory Expenditure
The distinction between compulsory and non-compulsory expenditure arises from Article 203 of the Treaty which distinguishes between them in prescribing the powers of the two parts of the Budgetary Authority (the Council and the Parliament). Amounts of expenditure necessarily arising from the Treaty or from acts adopted in accordance therewith (compulsory expenditure) are determined by the Council, having regard to estimates put forward by the Commission and modifications proposed by the European Parliament. There is no definitive description of what expenditure is compulsory[12], though in the main, agricultural expenditure is regarded as compulsory (in so far as the underlying regulations contain guarantees of payments to third parties).

In respect of most other expenditure (non-compulsory), the European Parliament has the final decision as long as this expenditure is contained within agreed financial limits. Non-compulsory expenditure is normally subject to a maximum rate of increase taking into account the trend, in terms of volume, in GNP within the Community, "average variation" in the budgets of Member States, and the trend in the cost of living during the previous financial year[13].

Conference of the Parliaments *(Assises)*
Declaration No. 14 annexed to the Treaty on European Union invites the European Parliament and national parliaments "to meet as necessary as a Conference of the Parliaments" to be "consulted on the main features of the European Union". Only one such Conference has been held, in Rome in November 1990 (before the above Declaration was made).

Conciliation Committee
See co-decision.

Consultation
Where Treaty provisions[14] require the Council to consult the Parliament before adopting legislation.

Co-operation
The co-operation procedure was introduced by the Single European Act to enhance the role of the European Parliament in the Community legislative process.[15] Before the Single European Act, the Parliament had the right to be consulted on Commission proposals in certain cases, but no more. The co-operation procedure, however, provides for a second reading in which the Parliament is also consulted on the common position adopted by the Council on the Commission's proposal. If the Parliament rejects the common position, a unanimous vote in the Council is required for the adoption of the legislation. If the Parliament proposes amendments and the Commission agrees with them, unanimity in the Council is required in order to change them. However, the decision whether or not to adopt the legislation remains solely with the Council (unlike the co-decision procedure). Under the Single European Act the procedure applied mainly for internal market measures.

Under the Treaty on European Union it has been replaced for most of these by co-decision, but the co-operation procedure applies, for example, in relation to health and safety measures[16] and most environmental measures.[17] The Treaty Articles which provide for co-operation are:

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[12]The Joint Declaration of 30 June 1982 on various measures to improve the budgetary procedure described it as "such expenditure as the budgetary authority is obliged to enter in the budget to enable the Community to meet its obligations, both internally and externally, under the Treaties and acts adopted in accordance therewith"; OJ No. C 194, 29.7.1982.

[13]Article 203(9).

[14]For example, Article 43 under which Common Agricultural Policy legislation is made.

[15]Article 189c, which reproduces the relevant provision in the Single European Act.

[16]Article 118a.

[17]Article 130s (1).

Article 6	Prohibition of discrimination on grounds of nationality
Article 75(1)	Transport: rail, road and inland waterway
Article 84(2)	Transport: sea and air
Article 103(5)	Economic policy: multilateral surveillance rules
Article 104a(2)	Definitions for "no privileged access" rule
Article 104b(2)	Definitions for "no bail out" rule
Article 105a(2)	Measures regulating the issue of coins
Article 118a(2)	Health and safety of workers
Article 125	European Social Fund: implementing decisions
Article 127(4)	Vocational training
Article 129d	Trans-European Networks: measures other than guidelines
Article 130e	European Regional Development Fund: implementing decisions
Article 130o	R & D implementation measures
Article 130s(1)	Environment
Article 130w	Development co-operation measures

The Council acts by qualified majority.

Chart B sets out the stages of the procedure.

COREPER: The Committee of Permanent Representatives of Member States

There are in fact two such Committees, one consisting of the ambassadors to the Union from the Member States (the permanent representatives), and the other of their deputies. COREPER has responsibility for managing the business of the Council. It is responsible for the negotiation of legislative proposals at official level and prepares the agenda for the adoption of decisions and legislative proposals by the Council of Ministers.[18]

Council

The Council is the main legislative and decision-making body of the Community. It also has responsibility for ensuring co-ordination of the general economic policies of Member States and important functions under the CFSP and Justice and Home Affairs pillars. The Council consists of representatives of Member States at ministerial level authorised to commit the governments of the Member States.[19] It meets in many different guises, for example, General Affairs Council, Foreign Affairs Council, Budget Council, Agriculture Council and so on. But whatever its name, it is still the Council, fully competent to exercise any of the powers or functions assigned to it under the Treaty. While business is usually arranged so that matters will be dealt with at a Council attended by Ministers who have responsibility for them in their national governments, it is quite common, in case of urgency or for reasons of convenience, for business to be dealt with which does not relate to the main subject matter of a Council.

Before the coming into force the Treaty on European Union the powers of the Council derived solely from the Community Treaties. Under the Treaty on European Union, however, power is conferred on the Council outside the Community Treaties, though within the European Union, under the CFSP and Justice and Home Affairs pillars. Article C of the Treaty on European Union provides that "the Union shall be served by a single institutional framework" so the Council referred to in the pillars is the same Council as that exercising functions under the Community Treaties. But there are important differences between the conduct of business under the pillars and Community business. For example, the activities of the Council under the pillars are not subject to judicial review by the European Court of Justice, and the European Parliament has only a limited role.

The office of President of the Council is held in turn by each Member State for a term of six months. The order of Presidencies appears in Annex G.

Court of Auditors

The Court of Auditors has 15 members. It examines the revenue and expenditure accounts of the Community and is required to provide the Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions. It reports in respect of each financial year.[20] Its role was

[18]Article 151(1).

[19]Article 146.

[20]Article 188c.

ANNEX A

Treaty on European Union ("The Maastricht Treaty")

ARTICLE A

By this Treaty, the High Contracting Parties establish among themselves a European Union, hereinafter called "the Union".

This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen.

The Union shall be founded on the European Communities, supplemented by the policies and forms of co-operation established by this Treaty. Its task shall be to organize, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples.

ARTICLE B

The Union shall set itself the following objectives:

— to promote economic and social progress which is balanced and sustainable, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion and through the establishment of economic and monetary union, ultimately including a single currency in accordance with the provisions of this Treaty;

— to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the eventual framing of a common defence policy, which might in time lead to a common defence;

— to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union;

— to develop close co-operation on justice and home affairs;

— to maintain in full the "acquis communautaire" and build on it with a view to considering, through the procedure referred to in Article N(2), to what extent the policies and forms of co-operation introduced by this Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community.

The objectives of the Union shall be achieved as provided in this Treaty and in accordance with the conditions and the timetable set out therein while respecting the principle of subsidiarity as defined in Article 3b of the Treaty establishing the European Community.

ANNEX B

The Ioannina Declaration

(1) Declaration of the 12 present Member States of the European Union

The representatives of the 12 States referred to above have adopted the following Declaration at the end of the Conferences having elaborated the text of the Treaty on Accession of Norway, Austrian, Sweden and Finland to the Euopean Union:

(a) The twelve present Member States of the European Union have agreed that, in the hypothesis where four new Member States will join the Union, the threshold necessary for a qualified majority required by the Treaties shall be fixed at 64 votes. They have also agreed that the question of the reform of the institutions. including the weighting of votes and the threshold of the qualified majority in the Council, shall be examined during the Conference of representatives of the governments of the Member States which shall be convened in 1996, in accordance with article N, paragraph 2, of the Treaty on European Union.

(b) Besides, they have agreed to invite the European Parliament, the Council and the Commission to establish a report on the functioning of the Treaty on European Union. These reports will provide input for the work of a Reflection Group of Representatives of the Foreign Ministers which should be created by the European Council in Corfu and start its work in mid-1995. This Group will work in association with the European Parliament. It will, *inter alia,* prepare options based on the positions and arguments of the Member States on the weighting of votes and on the threshold of the qualified majority decisions, taking into account future enlargement.

(c) They have taken note that the Council has decided that, if Members of the Council representing a total of 23 to 26 votes indicate their intention to oppose the adoption by the Council of a decision by qualified majority, the Council will do all in its power to reach, within a reasonable time and without prejudicing obligatory time limits laid down by the Treaties and by secondary law, such as in Articles 189B and 189C of the Treaty establishing the European Community, a satisfactory solution that could be adopted by at least 68 votes. During this period, and always respecting the Rules of Procedure of the Council, the President undertakes, with the assistance of the Commission, any initiative necessary to facilitate a wide basis of agreement in the Council. The members of the Council [will] lend him their assistance.

(d) They have finally agreed that the different elements of the present Declaration shall continue to be in operation until entry into force of an amendment to the Treaties, following the 1996 Conference.

(2) Declaration by the four applicant States

The four applicant States, ie Finland, Norway, Austria and Sweden, have expressed their agreement on the above texts of the Declaration by the 12 Member States of the European Union as well as on the text of the Decision by the Council.

28 March 1994

ANNEX C

Reflection Group Mandate from the Corfu Conclusions

The European Council, following the Ioannina Agreement, hereby establishes a Reflection Group to prepare for the 1996 Intergovernmental Conference consisting of representatives of the Ministers of Foreign Affairs of the Member States and the President of the Commission. It will be chaired by a person appointed by the Spanish government and begin its work in June 1995. Two European Parliament representatives will participate in the work of the Reflection Group. The Group will also have exchanges of views with the other institutions and organs of the European Union.

The institutions are invited to establish before the start of the work of the Reflection Group reports on the functioning of the Treaty on European Union which will provide an input for the work of the Group.

The Reflection Group will examine and elaborate ideas relating to the provisions of the Treaty on European Union for which a review is foreseen and other possible improvements in a spirit of democracy and openness, on the basis of the evaluation of the functioning of the treaty as set out in the reports. It will also elaborate options in the perspective of the future enlargement of the Union on the institutional questions set out in the conclusions of the European Council in Brussels and in the Ioannina agreement (weighting of votes, the threshold for qualified majority decisions, number of members of the Commission and any other measure deemed necessary to facilitate the work of the institutions and guarantee their effective operation in the perspective of enlargement).

The Secretary-General of the Council will make the necessary arrangements for the secretariat of the Reflection Group in agreement with its president.

The Reflection Group will report in time for the meeting of the European Council at the end of 1995. The procedure laid down in the Treaty relating to revision will apply to the next phase.

ANNEX D

Membership of the Reflection Group

Austria	Manfred Scheich	Permanent representative to EU
Belgium	Franklin Dehousse	Professor of European Law
Denmark	Niels Ersbøll	Former Secretary General of the Council
Finland	Ingvar Melin	Former Defence minister
France	Michel Barnier	Minister for European Affairs
Germany	Werner Hoyer	Secretary of State for European Affairs
Greece	Stephanos Stathatos	Former Greek Ambassador
Ireland	Gay Mitchell	Foreign Affairs Minister
Italy	Silvio Fagiolo	Former Deputy Ambassador, Washington
Luxembourg	Joseph Weyland	Ambassador to London
Netherlands	Michiel Patijn	Secretary of State for Foreign Affairs
Portugal	André Gonçalves	Professor of international law
Spain	Carlos Westendorp (Chairman)	Secretary of State for European Affairs
Sweden	Gunnar Lund	Under-Secretary for Trade in Foreign Ministry
United Kingdom	David Davis	Minister of State, Foreign and Commonwealth Office
EP	Elmar Brok Elizabeth Guigou	Germany, CDU France, PS
Commission	Marcelino Oreja	Responsible for relations with the European Parliament and Member States

ANNEX E

Letter from the Chairman of the Reflection Group to its Members

Following the useful talks with all the appointed members of the Group and in the light of the reports from the institutions and with the help of the Council Secretariat, I have taken the liberty of drawing up a list of topics which could constitute the subject of the proceedings of the Reflection Group.

As you can see, it consists of eight topics concerning five questions: Challenges, Principles and Objectives, the Institutional System, the Citizen and the Union, the Union's Foreign and Security Policy and the Instruments of the Union.

I consider that the most efficient way to organize our work with the aim of fulfilling our instructions to submit a report to the Madrid European Council, is to divide our meetings into three phases.

At its first five meetings the Reflection Group would carry out an initial discussion on the topics involved in accordance with the attached work programme. so that when we break off our work in August we shall have completed an initial examination of the matter. For the purposes of this preliminary examination I shall draw up with the help of the Council Secretariat, an indicative questionnaire which you will receive at least one week in advance of each meeting and which will serve to guide our discussion.

In the light of the initial examination, I shall draw up a preliminary draft summary which will serve as a basis for work in the second phase. As from September, in the light of the Messina Declaration and the conclusions of the Cannes European Council, we shall conduct a first reading of the draft summary over the course of four meetings and then, for those topics which need it, a second reading during another four meetings.

We shall devote the last two meetings to preparing the conclusions which will constitute our report to the Madrid European Council.

Reflection Group for the 1996 Conference

I TOPICS

1. *Challenges, Principles and Objectives*

The challenges facing Europe in the general political and economic context and the prospects for broadening the Union. Achieving reform: nature and scope of the Conference. Fundamental principles and objectlves of the Union. The responses involved; the Conference as part of the strategy for Europe at the turn of the century. The outcome of the Conference. Tasks for the Reflection Group.

2. *The Institutional System Part I: Institutional Balance*

Institutional balance: its adaptation to the new context and to the requirements of enlargement. A reform directed at strengthening democracy, efficiency and transparency in the decision-making process.

3. *The Institutional System Part II: The Institutions*

The modifications which need to be made to each of the Institutions: Parliament, Council and European Council, Commission, Court of Justice; other institutions and bodies.

4. *The Citizen and the Union Part I: European Citizenship*

European citizenship: definition, content, development. Fundamental rights. The Union and the citizen: democratic control, information, simplification. A Treaty that is comprehensible to the citizen.

5. *The Citizen and the Union Part II: An Area for Freedom and Security*

Definition of the Union's field of action in the field of cooperation in justice and home affairs. Breakdown of tasks between the Community-ambit and the third pillar; bridges and interconnections between the two. Methods and instruments.

6. *Union's External and Security Policy Part I: External Action by the Union*

Nature and details of the Union's external policy. The challenge of enlargement. Legal personality and external representation. Coherence and links between the CFP and external action arising out of the Community's powers. Ways for strengthening CEP in its conception, decisions and implementation.

7. *Union's External and Security Policy Part II: Security and Defence*

Examination of the concepts of the TEU in the light of the changes in the general context of European security and defence. Links between EU/WEU/(NATO): different schemes possible, stages.

8. *Instruments at the Union's Disposal*

Community law: hierarchy and sources, execution, monitoring, subsidiarity ("Who does what?")

Resources: system of own resources, budgetary powers, multiannual programming, solidarity and adequacy of resources.

Policies: deepening common policies. New fields of actions. Impact of enlargement.

Work Programme

PHASE 1

Meeting 1 (Messina 2 and 3.VI.95) Topic No 1

Meeting 2 (Luxembourg 13 and 14.VI.95) Topics 2 and 3 (institutional system)

Meeting 3 (Spain, 30-VI/I.VII.95) Topics 4 and 5 (the citizen and the Union)

Meeting 4 (Strasbourg, 10 and 11.VII.95) Topics 6 and 7 (Union's CFSP)

Meeting 5 (Brussels, 24 and 25.VII.95) Topics 8 and 1 (instruments and principles)

PHASE II

Meeting 6 (Brussels, 4 and 5.IX.95) Topics 2 and 3 (institutional system)

Meeting 7 (Brussels 11 and 12.IX.95) Topics 4 and 5 (the citizen and the Union)

Meeting 8 (Brussels, 25 and 26.IX.95) Topics 6 and 7 (Union's CFSP)

Meeting 9 (Luxembourg, 3 and 4.X.95) Topics 8 and 1 (instruments and principles)

Meeting 10 (Brussels, 16 and 17.X.95) Topics 2 and 3

Meeting 11 (Brussels, 23 and 24.X.95) Topics 4 and 5

Meeting 12 (Brussels. 6 and 7.XI.95) Topics 6 and 7

Meeting 13 (Brussels, 13 and 14.XI.95) Topics 8 and 1

PHASE III

Final drafting of report to European Council

Meeting 14 (Brussels, 21 and 22.XI.95)

Meeting 15 (Brussels, 5 and 6.XII.95)

Questionnaire No. 1

1. *Why the IGC?*

Article N(2) of the TEU provides for the convening of the 1996 Conference and the Treaty itself lays down specific terms of reference for the Conference (Article 189b(8) - co-decision, - Article J.4(6) - common defence policy, - ; Article J10 - CFSP, - Article B, fifth indent, - pillars structure, - Declaration No 1 - energy, tourism and civil protection, - Declaration No 16 - hierarchy of Community acts).

The Brussels European Council of December 1993 decided that the 1996 IGC should deal with the matter of the number of Commissioners.

The Ioannina compromise of March 1994 provisionally resolved the issue of the threshold for the qualified majority and instructed the 1996 IGC to deal with reform of the institutions, including the weighting of votes and the voting threshold for the qualified majority.

The 1993 Interinstitutional Agreement on the 1993-1999 financial perspective assigned the task of examining the provisions of the Agreement on the financial perspective to the 1996 IGC.

The 'modus vivendi' of 20 December 1994 on committee procedure instructed the Reflection Group to study this subject in preparation for the 1996 IGC.

The Corfu European Council linked the next enlargement to the 1996 IGC in two ways: it entrusted to the IGC the task of creating the institutional conditions for ensuring the proper functioning of the Union and decided that the Conference should take place before the accession negotiations began.

Finally, the Corfu European Council decided to set up the Reflection Group with instructions to prepare for the Conference and consider, in a spirit of democracy and openness any measures deemed necessary to facilitate the work of the institutions, guarantee their effective operation in the run-up to enlargement and introduce any other possible improvement in the Treaty.

The Corfu European Council also instructed each institution to prepare a report on the operation of the Treaty for the Reflection Group.

In view of the explicit terms of reference for the Conference in the Treaty itself, of the decisions already mentioned relating to the Conference and in the light of the reports of the institutions, the first question which the Reflection Group must answer is "why reform the Treaties?" In other words: "what are the challenges of Europe at the end of the century to which the Conference must try to provide an answer?"

In their reports the Commission and the European Parliament pinpoint a challenge in the internal context of the Union: the need to involve the public in the venture of the construction of Europe. In fact, it is possible to identify economic, political and institutional causes which can explain the growing public dissatisfaction with regard to Europe: unemployment and social exclusion, the crisis in the political contract between representatives and represented, the increasing complexity and inadequate explanation and understanding of the construction of Europe, the unsatisfactory management of the third pillar in the eyes of the public given the magnitude of the tasks assigned to it (combating organized crime, drug trafficking, terrorism, money laundering), and so on, call for political debate and an urgent response. Do we agree that we should devote part of our work to identifying these challenges and possible ways of responding to them?

The institutions also underline the challenge arising from the radical changes which have taken place in the international context at the end of this century: end of the Cold War, globalization of the economy, population movements, risks of ecological imbalances, etc.,

— *The end result of reform*

Constitution, Charter or simplified Treaty? In any case, how do we make the result comprehensible to the man in the street?

Should the separate pillars structure be maintained?
How can we achieve demarcation of powers between the Union and the Member States?
As regards the allocation of powers, by means of an inventory of the Union's powers?
As regards the exercise of powers, through the subsidiarity principle?

6. *Tasks of the Group and working method*

The Corfu European Council defined the Group's terms of reference. Do we agree that the Group's tasks should focus on identifying the real challenges of the European Union with the next century in prospect and presenting the Madrid European Council with the most suitable answers on the basis of maintaining and developing what has been achieved in the process of European construction?

The Group must be ambitious in the scope of its discussions and realistic in its objectives. It is not the Group's task to negotiate decisions, but rather to identify useful and reasoned options.

The questions discussed at this first meeting of the Reflection Group must be raised at the beginning of the proceedings, since they will determine the direction of the Group's work, but obviously it will not be possible to provide definitive answers at the first meeting. Only once all the topics have been covered will it be possible to identify the relevant options. Thus, after a preliminary exchange of views in Messina, this first part of the list of topics will be discussed together with topic 8 at the last meeting before the August break. Are we in agreement, therefore on pressing ahead with consideration of the list of topics, so that, after all the items have been covered, and in the light of the Messina declaration and the conclusions of the Cannes European Council, we can conclude our initial examination with further consideration of the questions mentioned here?

24 May 1995

Questionnaire No. 2

The Institutional System, Part one: Institutional Balance

1. Are we agreed that institutional reform is not an end in itself nor is it an adequate instrument for coping with all the challenges facing the European Union, but it is a necessary condition in order for the European Union to be able in future to take decisions effectively and in a manner acceptable to its citizens?

2. Are we agreed that institutional reform should be judged by the threefold touchstone of bringing greater democracy, greater efficiency and greater transparency? Are we agreed that efficiency does not necessarily mean easiness?

3. The balance of the institutional system is made up of a two-part balance: intra-institutional balance (enabling each institution to fulfil its role in the general interest) and inter-institutional balance (reflecting the overall relationship between the various institutions).

3.(a) Is it in the common interest shared by all - Member States, institutions and citizens of Europe - for each institution to strike a suitable balance in its internal composition so that it can fulfil its role in the manner most in line with the general interest, not just maintaining but improving the legitimacy of that role?

3.(b) Do we see a need to maintain and strengthen a balanced and consistent single institutional framework? Is it necessary to enhance the role of any particular institution?

4. The institutions' reports point out that the pillared structure of the Treaty affects the proper operation of the institutional system. In practice, cases have been seen of spillovers between subject areas belonging to different pillars. How can we improve the overall consistency of the European Union's institutional system?

Institutional balance and enlargement

5. In order to get the Union's institutional system working properly, should we now prepare the institutional system for a future Union of twenty-seven members or should we confine ourselves to making the essential adjustments called for by greater democracy, efficiency and transparency, leaving the other reforms until later, as and when new members join?

6. Is it advisable to continue to apply the criterion of mechanical extrapolation used up to now or do we think it impossible to put off revising the institutions to ensure a balanced system?

Languages

7. How is it possible to ensure within each institution arrangements for the use of languages that encourage democracy, efficiency and transparency in its operation?

Questionnaire No. 3

The Institutional System, Part two: The Institutions

NB: The Group will bear in mind the institutions' reports in considering this questionnaire

EUROPEAN PARLIAMENT

Composition

1. What is the maximum number and appropriate allocation of seats in the European Parliament in order to achieve the right level of democratic representation, efficiency and transparency?

Uniform electoral procedure

2. Should this still be the aim for the election of Members and the EP? How can it be achieved?

Powers

— Legislative role:

3. Should the EP's powers in this area be increased? If so, by extending the scope of the co-decision procedure? (To all cases at present covered by the co-operation procedure? Or to only some cases?)

4. Is there a need to simplify the number of legislative procedures involving the EP? Is there a need to streamline the co-decision procedure? (Greater equivalence between the EP and the Council? Other simplifying factors?)

5. Should Parliament share with the Commission the power to initiate legislation? Is the right of referral sufficient?

— Budgetary role:

6. Greater consistency between the EP's legislative and budgetary powers?

Should the distinction between compulsory and non-compulsory expenditure be continued or abolished?

— Political accountability role:

7. Should the political accountability to the EP of the Commission be improved? And that of the Council?

— The EP and the Union's external action:

8. Should changes be made in the application of the assent procedure?

9. Is there sufficient accountability to the EP in common foreign policy?

— The EP and justice and home affairs:

Is there sufficient EP involvement in these areas?

— EP relations with national parliaments:

11. Is it desirable to strengthen the EP's links with national parliaments? Should the role of national parliaments in Community law-making be increased:

— leaving each Member State to determine the details;
— devising association arrangements (Congress of COSAC [Conference of bodies concerned with Community affairs in the Parliaments of the European Community]);
— through formal incorporation into the Union's institutional system?

EUROPEAN COUNCIL AND COUNCIL

European Council

12. Should there be any change in the role assigned by the Treaty to the European Council?

13. Should its powers be specified?

14. Should it be stipulated by whom the European Council Presidency is to be held and how its duties are to be performed?

15. Should the Commission be answerable to the European Council?

Council

16. Institutional nature: Are we agreed that it is an institution of the Union and therefore does not come within the intergovernmental sphere, even when acting unanimously?

— Decision-making procedure:

17. Unanimity: in what cases should this be retained? Is it consistent with some involvement of the European Parliament or does its legitimacy stem from the accountability to national parliaments of their respective executives?

18. Qualified majority: Should its application be extended? In view of changes in the ratio of votes to population in the weighting of qualified-majority voting under successive enlargements, how should the weighting of votes be established? A twofold majority (a qualified majority and a majority of the population)? Adjustments to the weightings? other methods (a super-qualified majority)? How should the qualified-majority threshold, or in other words the critical minority (the unfortunately named "blocking minority"), be calculated in order to achieve a result that is balanced, efficient and acceptable to the citizens?

19. Simple majority: In what cases?

— Organisation of Council proceedings:

20. Presidency. Powers. Elected? Rotating? In teams? With what organisational back-up: a strengthened Secretariat?

21. Council compositions: New compositions? How can the institution's consistency and transparency be improved?

22. Committees and working parties: Greater consistency between COREPER, the Political Committee and the Article K.4 Committee?

23. Replacement of debate by use of the written procedure and questionnaires? A greater role for the Presidency and Secretariat in preparatory work? Collective, interinstitutionally coordinated planning?

24. Union consistency: Through general coordination by the General Affairs Council? Role of the Secretariat in a single institutional framework?

COMMISSION

25. Composition: Should a maximum number of members of the Commission be set to ensure the institution's consistency, efficiency and transparency? Should the rule requiring at least one Commissioner from each Member State be retained? Different classes of Commissioners? Introduction of a qualified majority in voting within the college? Review of criteria and procedures for the appointment of Commissioners? A greater role for the President?

Powers

26. Right of initiative: Shared with other institutions? Remaining the exclusive prerogative of the Commission?

27. Executive role: Limits to centralisation in implementation? Role of the Member States? Committee procedures? Oversight of management (political, administrative and economic management)?

28. Guardian of the Treaties: Specialised agencies for judicial tasks? Need to ensure general consistency by the college?

29. Accountability: Besides judicial review by the Court of Justice, greater political accountability to the EP? To the European Council? A greater role for the Court of Auditors?

COURT OF JUSTICE

30. Composition: Maximum number to ensure the Court's consistency? Composition criteria (possibility of allowing for participation by all Member States, having regard to the number of Judges and Advocates-General and to the Court of First Instance)?

31. Is the involvement of other institutions in selecting its members (EP) consistent with the independence of the judiciary? How can its autonomy be strengthened?

32. Powers: Bearing in mind that the success of integration hinges on the reality of the European Community as a community based on the rule of law, do we wish to leave the Court's powers unchanged, strengthen them or amend them?

33. As we agreed that, while the principle of legislative non-retroactivity makes for legal certainty, judicial non-retroactivity would give rise to legal uncertainty in Community law?

34. Should the ability to penalise Member States for failing to fulfil their obligations under Community law be stepped up?

35. Should entitlement to active legal capacity before the Court be extended?

36. Is there sufficient involvement of the Court in matters of home affairs and justice?

OTHER INSTITUTIONS AND BODIES

37. Court of Auditors: Should its role be left unchanged, strengthened or altered? Maximum number of members? Composition and appointment procedure (role of other institutions)?

Committee of the Regions and Economic and Social Committee

38. Composition (separate sections for the Committee of the Regions)?

39. Role? Extension of the scope of consultation?

40. Organisational structure (separation of the two Committees)?

Questionnaire No. 4

The Citizen and the Union

Part 1: European Citizenship

Greater support by our citizens for the construction of Europe will to a large extent to conditional on the achievement of tangible results in ares which affect them most directly. These include the concepts of European citizenship and the creation of an area of freedom and security.

The Treaty and the European citizen's rights

1. The Commission's report points out that creation of the concept of citizenship of the Union is a step forward which offers many possibilities, its aim being to render deeper and more tangible the European citizen's feeling of belonging to the European Union. This ambitious idea has not however always been translated into provisions which confer genuine rights, the rights of citizens being only occasional or incomplete so that in reality the concept of citizenship does not yet seem to match up to citizens' expectations. Has the time come to take care of those expectations: Should the citizens' rights already enshrined in the Treaties be developed and/or extended? If so, in which spheres? Are preset instruments appropriate for their development (Unanimity, consistency of legal bases and the required ratification of any new provision by all the Member States)?

2. Are fundamental rights sufficiently guaranteed in the Treaty? If not, how could the situation be improved? By the Community (or the Union) acceding to the European Convention for the Protection of Human Rights and Fundamental Freedoms and/or by including provisions on fundamental rights in the Treaty itself?

3.1 Do we believe that the time has come for a provision in the Treaty explicitly opposing racism and xenophobia, in line with the European Parliament's 1991 proposal?

3.2 Should the right to non-discrimination on grounds of sex (not only with regard to economic rights but also to all aspects of women's equality, as proposed by the European Parliament report) not be enshrined in the Treaty in as complete a form as possible?

3.3 Has the time not come to proclaim as common values the economic and social rights contained in the Europe Social Charter?

Transparency

4. How can the operation of the institutions be made more transparent, at the same time as more democratic and efficient, taking the specific tasks of each institution into account?

A Treaty which is comprehensible to the citizen

5. The TEU is highly valuable in its contents but from a formal viewpoint it does not foster the citizen's feeling of belonging to the Union due to outdated expressions, a complex structure, and obsolete or superfluous Articles. Surely the time has come to make the Treaty comprehensible to the citizen?

6. How can the Treaty be made more comprehensible to the citizen? By means of a Treaty Charter with Annexes developing its themes or by means of a single instrument?

7. Should we not already start work on it, as one of us has suggested, in preparation for the Conference?

8. What other measures would there be to bring the European Union closer to the citizen?

Questionnaire No. 5

The Citizen and the Union

Part 2: An Area of Freedom and Security

Principles and Objectives

1. One of the citizen's fundamental concerns is security, without restrictions on his freedom. However he feels threatened by organised crime, drug trafficking and by terrorism, problems which cannot be effectively combated by a State acting in isolation; this is why cooperation at European and even world level is necessary and urgent?

   The European Union is on the other hand the target for considerable migratory flows which also require a common approach.

   These are the major challenges at present and citizens' views of the European Union will depend on the response made by those challenges. However, as pointed out in both the Commission and the Council reports, the magnitude of those challenges is not matched by greater European action on the same scale. Must progress be made at European level in this area?

2. The possibilities for development of European action in this area are insufficient owing to the lack of well-defined objectives in the Treaty. In this context the Treaty does not lay down objectives or guiding principles but only procedural rules. Is a clear definition of the objectives and the principles necessary in this field? What would those objectives and principles be in order to ensure an area of freedom and security for the citizens?

Content of the Treaty

3. Aliens:

3.1 Immigration: How can this common challenge be dealt with? Can we adopt a common immigration policy?

   Should harmonisation of common visa policy be intensified, going beyond Article 100c?

3.2 Asylum: Faced with this common problem, what progress can be made in this area for citizens of third countries? By means of a common asylum policy? Is asylum an understandable concept for citizens of the Union?

3.3 Residents from third countries: Is it considered necessary to establish Community status for citizens of third countries residing legally in the Union? Should minimum, flexible standards be set for their acquisition of European citizenship?

4. Police cooperation: How can it be intensified? Are we prepared to expand EUROPOL's functions (for example by means of a common list of transnational offences and consequent direct actions), establish European criminal law and confer powers in this area upon the Court of Justice?

5. Combating drug trafficking: Is it appropriate to adopt a common policy for combating drug trafficking?

6. Judicial cooperation: Are we prepared to intensify judicial cooperation in civil and criminal matters? Are we prepared to create a European judicial area in specific civil and criminal matters? Which matters?

   Is maintenance of the concept of political offence conceivable in the European Union?

7. Other possible contents of the Treaty: What contents? The external dimension, for example?

Instruments

8. The possibilities for instruments offered by the TEU have been used on a limited number of occasions, preference being given to other more usual instruments which do not normally involve a legal obligation. Besides, Title VI includes instruments

which were conceived for Title V. But while the nature of the common foreign and security policy is variable, the subjects of justice and home affairs frequently have a legislative character affecting individual rights and therefore requiring judicial safeguards. Common actions and positions are instruments which do not provide sufficient legal certainty and agreements are instruments which are slow and complicated to implement, sometimes being subject to ratification by the member States without a time-limit. What instrument would be more suitable for progress in this area? Would it not be appropriate to move towards common regulations?

The role of the institutions

9. Is the role allocated to the institutions by the Treaty an appropriate one? What should the Commission's role be in these matters? Is it necessary to strengthen the Council Secretariat in order to coordinate? As these are matters likely to affect people's rights, is greater Parliamentary monitoring necessary? Should the jurisdiction of the Court of Justice and the Court of Auditors be extended to these subjects?

10. Is it necessary to maintain unanimity in such matters in all cases? If so, on what grounds? If not, in which cases should it be maintained? What other forms of decision-making are possible?

11. Given the great sensitivity of public opinion to this matter and with a view to greater effectiveness in its development, are the established working methods the most suitable? Is the five-level structure the most suitable or should it be simplified to increase efficiency and consistency in the decision-making process?

Structure of the Treaty

12. In view of our answers to these questions, what conclusions must we draw with regard to the structure of the Treaty?

Questionnaire No. 6

The Union's Foreign and Security Policy
Part 1: The Union's External Action

1. The new situation in Europe poses new challenges for the Union's external dimension: the end of the cold war and its consequences (potential instability no so much between States as within them: nationalism based on exclusion, ethnic and religious conflicts, risk of ecological disaster, etc.)

   Does the Treaty respond adequately to those challenges?

2. Despite the progress resulting from the CFSP with regard to EPC (comprehensiveness and progressiveness), reports from some institutions draw attention to insufficiencies in the operation of Title V and problems of overall consistency. Why do such insufficiencies occur? Lack of political will? Lack of experience? Stagnation of attitudes? Or is it a structural problem?

3. The enlargement of the Union will contribute to Europeans' political stability and security but at the same time raises new challenges calling for adequate responses. Does future enlargement imply a quantitative change or also a qualitative change for the Union's external dimension? In which aspects?

4. In view of Europe's new reality and the Union's future enlargement, what should the Union's objectives be in the CFSP field?

5. Does the Union have sufficient means to achieve those objectives? If not, will adjustments to existing mechanisms be sufficient or is a more fundamental change required?

Questionnaire No. 7

The Union's Foreign and Security Policy
Part 2: Security and Defence

1. Do we agree that the challenges of security and defence in Europe and its vicinity and the overall challenges to Europe's territorial integrity cannot be met separately by the Member States of the Union, even by those that are best equipped from the military viewpoint?

2. With regard to the nature of those challenges, do we agree that, in addition to the collective defence of Europe's territorial integrity, for which NATO continues to form the cornerstone, new challenges to security have emerged which go beyond its traditional dimension and affect social, economic, political and environmental stability? Do we agree that this new concept of security calls for action including military action in some cases, for missions such as those defined in the WEU's 1992 Petersberg Declaration: humanitarian missions, peace-keeping missions and even missions to restore peace?

3. What are the consequences for European security of the successive enlargements for the Union, which have already brought in traditionally neutral States and will in future take in Central and Eastern European countries? What impact will the larger number and greater diversity of Member States have on the CFSP's security and defence dimension? How do these enlargements affect the relationship between the EU and the WEU? Will membership of the EU and the WEU be possible in future without prior membership of NATO?

4. In view of the new situation in Europe, the new dimension of the concept of security, the need to maintain a collective guarantee of territorial integrity and the commitment to enshrined in Article J.4 of the Treaty and the WEU's Declaration of 10 December 1991, should the operational capacity of the WEU be strengthened as NATO's European pillar?

ANNEX F

Maastricht Declaration No. 13 on the Role of National Parliaments in the European Union

The Conference considers that it is important to encourage greater involvement of national Parliaments in the activities of the European Union.

To this end, the exchange of information between national Parliaments and the European Parliament should be stepped up. In this context, the governments of the Member States will ensure, *inter alia,* that national Parliaments receive Commission proposals for legislation in good time for information or possible examination.

Similarly, the Conference considers that it is important for contacts between the national Parliaments and the European Parliament to be stepped up, in particular through the granting of appropriate reciprocal facilities and regular meetings between Members of Parliament interested in the same issues.

Maastricht Declaration No. 14 on the Conference of the Parliaments

The Conference invites the European Parliament and the national Parliaments to meet as necessary as a Conference of the Parliaments (or "Assises").

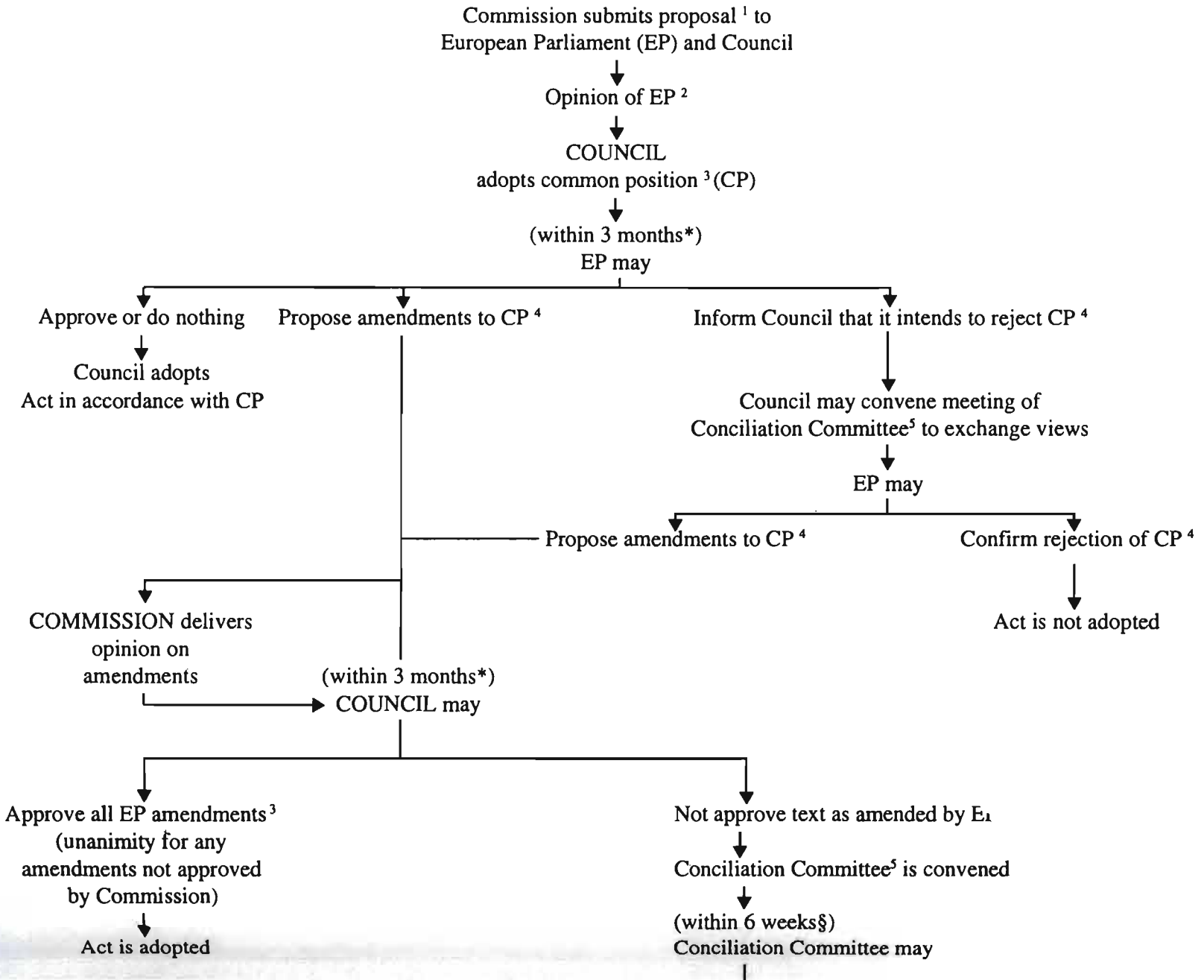
The Conference of the Parliaments will be consulted on the main features of the European Union, without prejudice to the powers of the European Parliament and the rights of the national Parliaments. The President of the European Council and the President of the Commission will report to each session of the Conference of the Parliaments on the state of the Union.

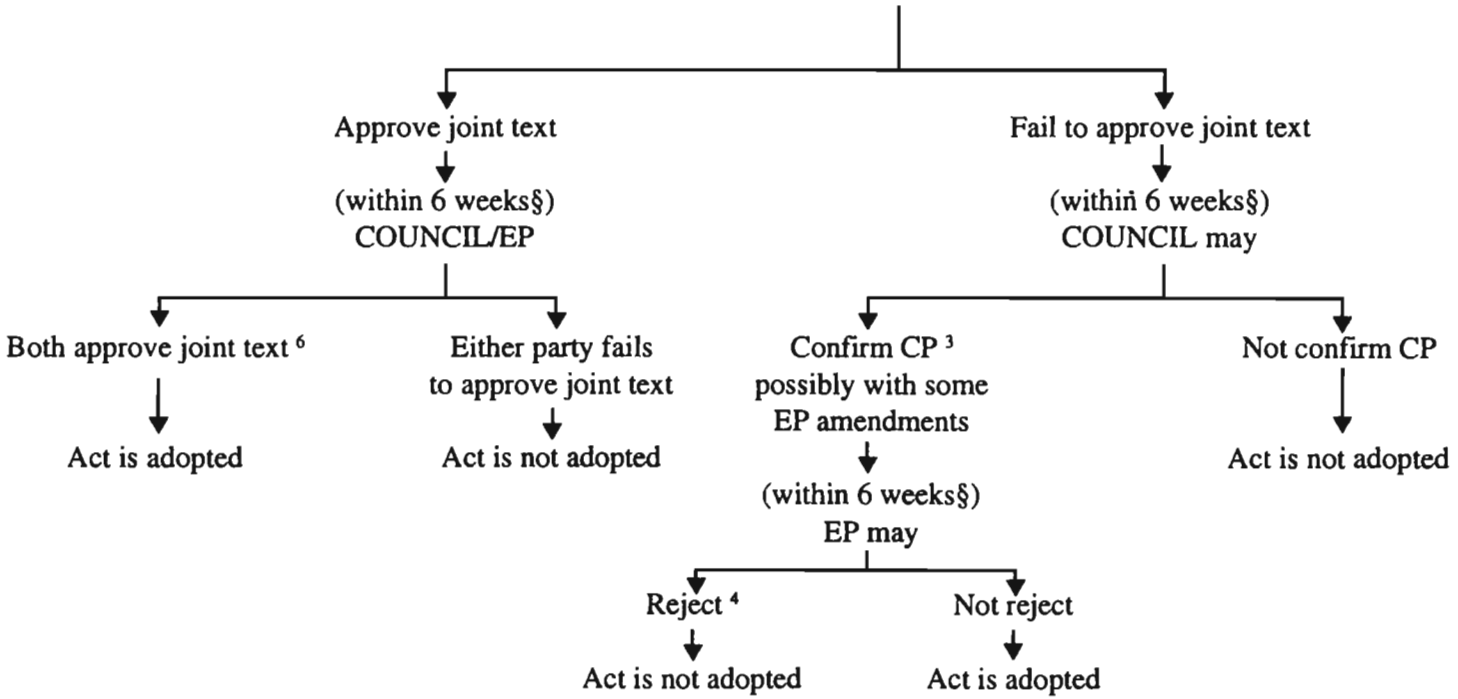
ANNEX G

Order of Presidencies of the Union

Second half 1995	Spain
First half 1996	Italy
Second half 1996	Ireland
First half 1997	The Netherlands
Second half 1997	Luxembourg
First half 1998	United Kingdom
Second half 1998	Austria
First half 1999	Germany
Second half 1999	Finland
First half 2000	Portugal
Second half 2000	France
First half 2001	Sweden
Second half 2001	Belgium
First half 2002	Spain
Second half 2002	Denmark
First half 2003	Greece

CO-DECISION PROCEDURE UNDER ARTICLE 189b





* The period of three months may be extended by a maximum of one month by agreement between the EP and the Council and is automatically extended by two months when the EP informs the Council that it intends to reject CP.

§ The period of six weeks may be extended by a maximum of two weeks by agreement between EP and Council.

1 As long as the Council has not acted, the Commission may alter its proposal at any time during the procedures leading to the adoption of a Community act.

2 Where the relevant Treaty Article so provides, the Economic and Social Committee is also consulted.

3 Council acts by qualified majority except when acting under Article 128(5) (Culture) or 130i1 (R and D multiannual framework programme) where unanimity is required.

4 EP acts by an absolute majority of its members.

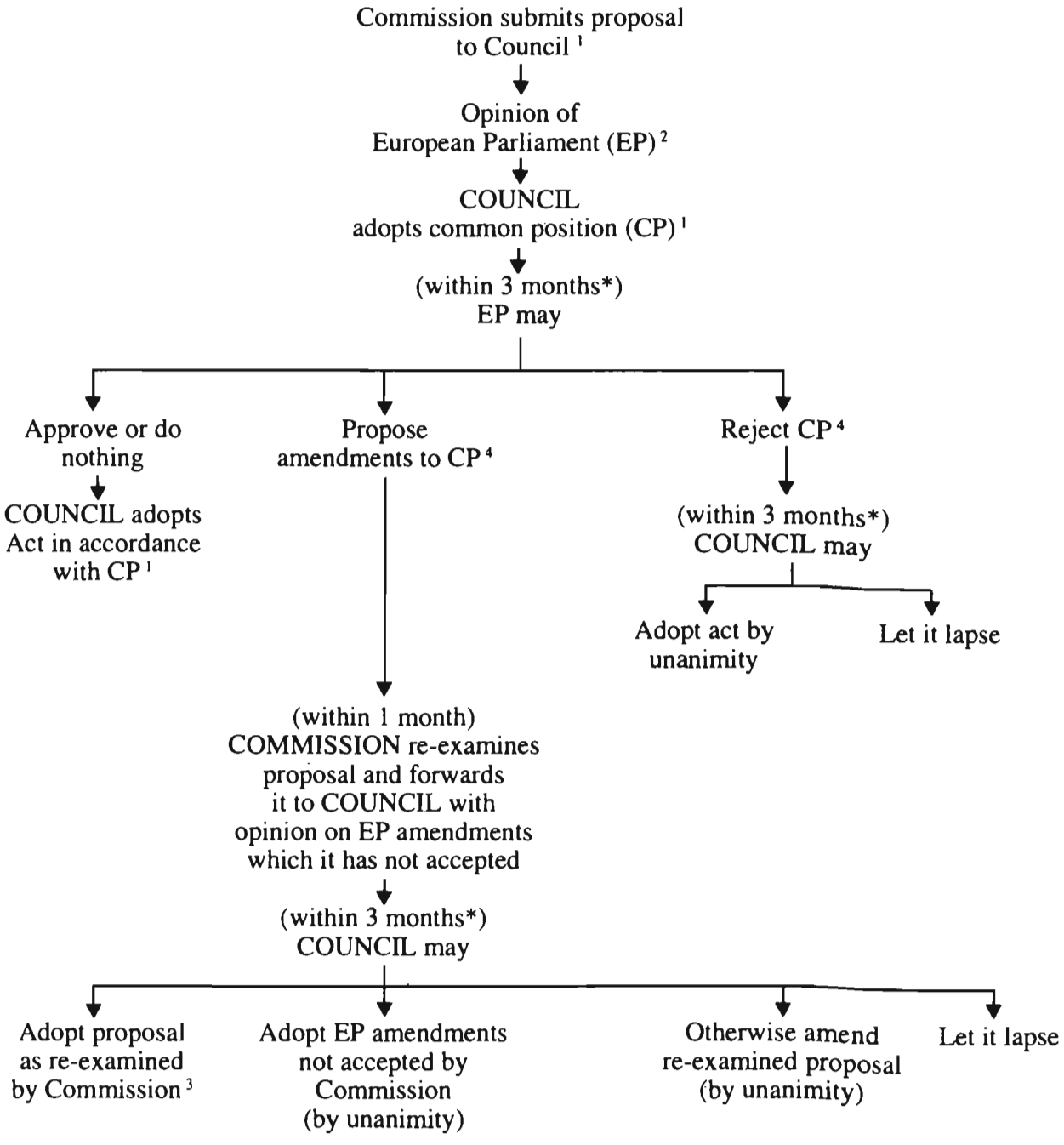
5 Conciliation Committee comprises 12 representatives each from Council and EP; Council acts by qualified majority and EP representatives by simple majority.

6 EP acts by absolute majority of votes cast, and Council by qualified majority with the exceptions noted in footnote 3 above.

CHART A

CHART B

CO-OPERATION PROCEDURE UNDER ARTICLE 189c



* The period of three months may be extended by a maximum of one month by agreement between the EP and the Council

1 As long as the Council has not acted, the Commission may alter its proposal at any time during the procedures leading to the adoption of a Community act.

2 Where the relevant Treaty Article so provides, the Economic and Social Committee is also consulted.

3 Council acts by qualified majority.

4 EP acts by an absolute majority of its members.

CHART C

CONSULTATION PROCEDURE

COMMISSION submits proposal[1] to Council.

↓

Opinion of the EP[2]

↓

COMMISSION considers EP opinion

↓

COUNCIL may

↓

Adopt proposal in accordance with voting procedure prescribed by relevant Treaty Article

Adopt proposal with Council amendments (unanimity always required)

ASSENT PROCEDURE (*AVIS CONFORME*)

Proposal[3]

↓

Opinion of Commission, Economic and Social Committee or other body, if required by the relevant Treaty Article

↓

EP may

↓

Give assent

↓

COUNCIL may adopt proposal by unanimity[4]

Refuse assent

↓

Proposal not adopted

---

[1] As long as the Council has not acted, the Commission may alter its proposal at any time during the procedures leading to the adoption of a Community act.

[2] Where the relevant Treaty Article so provides, the Economic and Social Committee is also consulted.

[3] Not always made by the Commission. For example, under Article 138(3), the EP makes proposals and under Article O the procedure is initiated by an application for membership by a European State.

[4] Except under Article 106(5), when acting on a recommendation of the ECB, or in certain circumstances under Article 228(3), when qualified majority voting applies.

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2. Letter from Mr David Davis MP, Minister of State, Foreign and Commonwealth Office to the Chairman of the Committee.

3. Memorandum submitted by Lord Finsberg, MBE.

MINUTES OF PROCEEDINGS RELATING TO THE REPORT

Monday 17 July 1995

Members present:

Mr Jimmy Hood, in the Chair

Mr Peter Atkinson
Mr Harry Barnes
Mr William Cash
Mr Hugh Dykes
Mrs Margaret Ewing
Mr David Harris
Sir Alan Haselhurst
Mr Robert Hicks
Mr Kevin Hughes
Sir David Knox
Mr Nigel Spearing

The Committee deliberated

Draft Report, proposed by the Chairman, brought up and read.

Ordered, that the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 142 read and agreed to.

Several papers were ordered to be appended to the Report.

Resolved, That the Report be the Twenty-fourth Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

[Adjourned till Wednesday 18 October at Four o'clock.

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all the contracting States in accordance with their respective constitutional requirements.[25] The Community initially had a membership of six (Belgium, France, Italy, Germany, Luxembourg and The Netherlands) and has grown to a membership of 15 as follows:

1973 Denmark, Ireland and the United Kingdom
1981 Greece
1986 Portugal and Spain
1995 Austria, Finland and Sweden

Norway was a party to the Accession Treaties in 1972 and 1994 but did not ratify on either occasion.

Euratom
See European Communities.

European Agricultural Guidance and Guarantee Fund (EAGGF/FEOGA[26])
This is the fund that finances the Common Agricultural Policy. It is divided into the Guarantee Section, which finances commodities, and the Guidance section, which finances structural policies.

European Communities
Each of the three founding Treaties established a Community. The Treaty of Paris in 1951 established the European Coal and Steel Community (ECSC), the Treaty of Rome in 1957 established the European Economic Community (EEC) and the Euratom Treaty (also in 1957) established the European Atomic Energy Community (Euratom). These Communities are collectively referred to as the European Communities. The Merger Treaty of 1967 established a single institutional framework for the three Communities. The Community established by the Treaty of Rome became known as the European Community[27] and is often simply referred to as the "the Community".

European Council
A meeting of Heads of State or Government and the President of the Commission, assisted by Foreign Ministers, held at least twice a year under the chairmanship of the Head of State or Government holding the Presidency of the Council.[28] Its main function is defined in the Treaty on European Union as providing the Union with the necessary impetus for its development and defining the general political guidelines. The European Council also defines the principles and guidelines for the Common Foreign and Security Policy, on the basis of which the Council takes its decisions and agrees on joint action[29] and settles the broad guidelines of the economic policies of the Member States and the Community.[30] The European Council submits to the European Parliament reports of its meetings and a yearly report on the progress achieved by the Union.

European Court of Justice (including the Court of First Instance)
The Court of Justice has the function of ensuring that, in the interpretation and application of the Treaty, the law is observed. It consists of 15 Judges, one from each of the Member States, and 9 Advocates General. To deal with the increasing pressure of business in the Court of Justice and in particular to handle cases (for example in the competition field) involving extensive factual analysis, a Court of First Instance (CFI) attached to the Court of Justice was established by the Single European Act.[31] This Court also has 15 Judges, one from each Member State, but no Advocates General.[32] There is a right of appeal on questions of law from the CFI to the Court of Justice.

---

[25]Article O.

[26]The French acronym.

[27]Now its official title following an amendment to that effect made to the Treaty of Rome by the Treaty on European Union.

[28]Article D.

[29]J3(1) and 8(1) and (2).

[30]Article 103.

[31]Article 168a.

[32]Council Decision of 24 October 1988, OJ No. L356, 24.12.88, p 1, as amended by the 1994 Accession Treaty. There is provision for one of the judges to be appointed to act as Advocate General in the very rare cases in which this is thought necessary.

The Court of Justice can sit in plenary form (which it does quite frequently to deal with cases of major legal or institutional importance) or in chambers of three, five or seven judges. There are similar arrangements for the CFI, though it rarely needs to sit in plenary form.

The jurisdiction of the Court of Justice can be divided into two main categories: direct actions and references from national courts. Direct actions include infraction proceedings by the Commission against Member States for failing to fulfil their obligations under the Treaty[33] and judicial review proceedings in which the legality of acts of any of the Community institutions can be challenged at the instance of a Member State or of another institution.[34]

As to the second category, all national courts may, and national courts of last resort must, refer to the Court of Justice for a preliminary ruling any question of Community law raised in the national court proceedings where a decision on that question is necessary for the purpose of deciding the case.[35] The national court will submit questions to the Court of Justice. After hearing written and oral argument from the parties, the Commission and any Member State which chooses to put in observations, the Court gives rulings on the issues of Community law arising, which the national court then applies in deciding the case before it. The Court of Justice also has jurisdiction to give Opinions on whether a Treaty which the Community is proposing to enter into is compatible with Community law.[36]

The jurisdiction of the CFI covers direct actions for judicial review of the legality of the acts of Community institutions by individuals or undertakings[37], actions for damages against the Community institutions and Community staff cases.

European Monetary Institute (EMI)

The EMI was established at the beginning of Stage Two of monetary union to take over the tasks of the Committee of Governors of the central banks and the European Monetary Co-operation Fund. Its functions include strengthening co-operation between national central banks and the co-ordination of monetary policies, overseeing the development of the ECU and carrying out the technical preparations necessary for the introduction of a single monetary policy in Stage three.[38] All Member States' central banks are members of the EMI.

The European Parliament

The Community Treaties originally provided for an Assembly consisting of delegates designated by the parliaments of the Member States. The role of the Assembly was largely a consultative one. Election of Members by direct universal suffrage was, however, introduced in 1976 and the first elections held in 1979. The Assembly became known as the European Parliament.

The Treaty was amended in 1970 to constitute the Assembly as the Joint Budgetary Authority with the Council, with a substantial role in the agreement of the Community's budget.[39] The Single European Act introduced the co-operation procedure and provided that the assent of the Parliament was required for the accession of new Members to the Community and for association agreements with third countries. The Treaty on European Union introduced the co-decision procedure, made the appointment of the Commission subject to the approval of the Parliament,[40] gave the Parliament a right to request the Commission to make a legislative proposal,[41] enabled the Parliament to set up committees of inquiry to investigate alleged contraventions or maladministration[42] and provided for the Parliament to appoint an Ombudsman. Following the recent enlargement the Parliament has 626 Members elected by direct suffrage for a term of five years. The number of Members elected for each country is as follows:

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[33]Article 169.

[34]Articles 173 and 175.

[35]Article 177.

[36]Article 228(6).

[37]Individuals and undertakings may challenge directly decisions of Community institutions addressed to them but, as a general rule, they have no right to challenge in the CFI Community legislative acts of general application.

[38]Article 109f.

[39]Treaty amending certain budgetary provisions of the European Communities Treaties of 2 January 1971, OJ No. L2, 2.1.71.

[40]Article 158(2).

[41]Article 138b.

[42]Article 138c.

reinforced and enhanced by the Treaty on European Union which gave it the full status of a Community institution.[21]

Court of First Instance

See European Court of Justice.

Cyprus: latest state of play on accession

Cyprus applied for Membership of the Community in 1990. The Commission submitted its formal opinion on the application in June 1993. The Council agreed in September 1993, "without awaiting a peaceful, balanced and lasting solution to the Cyprus problem", to use "all the instruments offered" by the EU/Cyprus Association Agreement to help transition towards integration into the European Union. The Essen European Council in December 1994 confirmed that the next phase of enlargement of the Union will involve Cyprus and Malta. On 6 March 1995 the Foreign Affairs Council foresaw accession negotiations starting six months after the 1996 Inter-Governmental Conference.

Economic and Monetary Union (EMU)

Under Article 2 of the Treaty on European Union, economic and monetary union is an objective of the Community. Three stages for the establishment of EMU were recommended in 1989 by a Committee comprising the 12 Governors of the central banks of the Member States and three independent experts, under the chairmanship of the President of the Commission, Mr Delors. The three stages[22] are as follows:

Stage One, which started in 1990, required Member States to take all necessary measures to realise the free movement of capital and to ensure the economic convergence necessary for EMU, in particular, price stability and public finances.

Stage Two (from 1 January 1994) requires Member States to avoid excessive deficits and reinforce the independence of central banks. It has seen the establishment of the European Monetary Institute, charged with strengthening the coordination of monetary policies and preparation for Stage Three.

Stage Three, the establishment of Economic and Monetary Union, the irrevocable fixing of exchange rates and the establishment of the European Central Bank, could occur on 1 January 1997 if a majority of States were able to meet the economic convergence criteria prescribed by the Treaty[23]. The Treaty otherwise provides for a starting date of 1 January 1999.

A recent Green Paper from the Commission suggested that, for practical reasons, a period of three years might need to elapse between the fixing of exchange rates at the start of Stage Three and the introduction of a single currency.

The United Kingdom's "opt out" applies in relation to Stage Three.

Economic and Social Committee (ECOSOC)

The Committee was set up under the Treaty of Rome[24] to provide representation for various categories of economic and social activity, such as manufacturers, farmers, workers, professionals and the general public. It must be consulted on proposals by the Commission for legislation in many fields including the internal market, but its opinions only have advisory status. It is appointed by the Council on the basis of lists provided by Member States.

ECSC

See European Communities.

Enlargement

The Treaty on European Union provides that any European State may apply to become a Member of the Union. Applications for membership require the assent of the European Parliament and the unanimous approval of the Council. The terms of accession have to be agreed between the Member States and the applicant State and are subject to ratification by

[21] Article 4.

[22] For which provision is made in Articles 109e to 109m.

[23] Article 109j.3.

[24] Article 193.

Austria	21
Belgium	25
Denmark	16
Finland	16
France	87
Germany	99
Greece	25
Ireland	15
Italy	87
Luxembourg	6
Netherlands	31
Portugal	25
Spain	64
Sweden	22
United Kingdom	87
	626

The President is elected by the Parliament and the post is currently held by President Klaus Hänsch (Germany, PSE/SPD, elected 1994).

European System of Central Banks (ESCB) and European Central Bank (ECB)

The ESCB and the ECB will be established as soon as a date is set for the beginning of Stage Three of economic and monetary union[43]. The ESCB will be composed of the ECB and of the central banks of Member States and will be governed by the decision making bodies of the ECB (the Governing Council and the Executive Board)[44]. Its primary objective "shall be to maintain price stability". It will also be responsible for defining and implementing the monetary policy of the Community and foreign exchange rate operations and will hold and manage the official reserves[45]. The ECB will be governed by a Governing Council composed of an Executive Board and the Governors of national central banks participating in Stage Three. The Executive Board comprises a President, Vice President and four Members appointed for 8 years by common accord of participating Member States at the level of Heads of State or Government[46].

European Union

The recitals to the Single European Act spoke of the will to transform relations as a whole among Member States into a European Union. The Treaty on European Union establishes that Union and goes on to provide that it shall be founded on the European Communities, supplemented by the policies and forms of co-operation established by the Treaty[47]. The European Union embraces the Treaty of Rome and the other Community Treaties (the first pillar) and the two intergovernmental pillars, the Common Foreign and Security Policy and Justice and Home Affairs. The Union is therefore a wider concept than the Community; but the Community is not superseded by it, and remains as the main constituent part of the Union.

Exchange Rate Mechanism (ERM)

The ERM is a device to ensure stability in the value of the ECU. The ECU is a composite currency (or basket of currencies) made up of specific amounts of the currencies of Member States which determine its value. All Member States, except Greece, Italy and the UK, participate in the ERM. The participants have pledged not to allow their currencies to fluctuate by more than a predetermined percentage above or below the central rate. Once a currency reaches its bilateral limit against another currency, the two central banks concerned are required to intervene in order to prevent further departure from the central rate. The Italian lira's and the UK pound's membership of the ERM were suspended in September 1992.

Four Freedoms

The free movement of goods, persons, services and capital. They lie at the heart of the Community Treaties and constitute the basis of the internal market. In the early years of the Community progress in establishing the four freedoms was slow. As a result, however, of

[43]Article 1091.

[44]Article 106.

[45]Article 105.

[46]Article 109a.

[47]Article A.

rulings by the Court of Justice in the seventies[48] and the provisions of the Single European Act relating to the internal market (in particular, the introduction in Article 100a of qualified majority voting for internal market measures), the free movement of good, persons, services and capital is substantially established.

Hierarchy of acts (otherwise known as the hierarchy of legal norms)

There is a wide variety of legislative procedure laid down in the Treaties, ranging from co-decision and procedures requiring the assent of the Parliament to those in which the Council can act by simple or qualified majority without consulting the Parliament (for example, Articles 113 and 213). However, the choice of legislative procedure is largely governed by the nature of the subject matter rather than the importance of the measure. The proposal for a hierarchy of Community acts is an attempt to remedy this by categorising acts by their constitutional importance and selecting the legislative procedures accordingly. Proposals to this end were made during the Maastricht negotiations, but were not adopted. However, in Declaration No.16 annexed to the Treaty on European Union, it was agreed that the 1996 Inter-Governmental Conference would examine "to what extent it might be possible to review the classification of Community acts with a view to establishing an appropriate hierarchy...."

Inter-Governmental Conference (IGC)

The holding of an IGC is the procedure for amending the Treaties. There have been a number of IGCs over the years, but by far the most important are those which led to the adoption of the Single European Act in 1986 and to the Treaty on European Union in 1992. The procedure for convening an IGC is now laid down in Article N(1) of the Treaty on European Union. The Government of a Member State or the Commission may submit to the Council proposals for the amendment of the Treaties. If the Council, after consulting the Parliament and the Commission, delivers an Opinion in favour of calling an IGC the conference is convened by the President of the Council to determine by common accord the amendments to be made to the Treaty. The amendments enter into force after being ratified by all Member States in accordance with their constitutional requirements. In the case of the 1996 IGC, the decision to convene it has already been made by Article N(2) of the Treaty on European Union.

Inter-institutional agreements

These are agreements made between the Parliament, the Council and the Commission on matters of common concern. They have no legal status under the Treaty, but they play an important role in co-ordinating Community procedures involving the three institutions and in ensuring their effective operation (for example, the inter-institutional agreement on budgetary procedure in 1982 and that on subsidiarity in 1993).

Ioannina agreement

The agreement reached in March 1994 to break the deadlock over the adjustment to the qualified majority voting requirements needed to accommodate the accession of Austria, Finland, Norway and Sweden. It was agreed that the threshold for a qualified majority would be increased from 54 votes to 64 votes (with the result that the number of votes required for a blocking minority would be increased from 23 to 27). It was also agreed, however, that if members of the Council representing a total of 23 to 26 votes "indicate their intention to oppose the adoption of a decision by qualified majority, the Council will do all in its power to reach, within a reasonable time without prejudicing obligatory time limits... a satisfactory solution that could be adopted by at least 68 votes". These proposals would continue in operation until the entry into force of an amendment to the Treaties following the 1996 IGC, the agenda for which would include the weighting of votes and the threshold for qualified majority voting. As a result of Norway's decision not to accede, the requirement for a qualified majority was changed to 62 votes and the number of votes required to invoke the compromise arrangements was adjusted to from 23 to 25 votes. The text of the Ioannina agreement is at Annex B.

Joint Action

Article J.3. of the provisions on a Common Foreign and Security Policy provide for the Council to adopt joint actions in matters covered by that policy. The Council is empowered to decide, on the basis of general guidelines from the European Council, that a matter should be the subject of a joint action, and to lay down the specific scope, the objectives in carrying out the action, its duration and the means, procedures and conditions for its implementation. Joint action commits Member States in the positions they adopt but, in case of imperative need

[48]For example Case 2/74 *Reyners*, Case 33/74 *Van Binsbergen* and, Case 8/74 *Dassonville*.

arising from changes in the situation, a Member State is permitted to take the necessary action as a matter of urgency, having regard to the general objectives of the joint action.

Justice and Home Affairs

The "third pillar" established by the Treaty on European Union provides for co-operation in the fields of justice and home affairs. It sets out a list of areas to be regarded as of common interest for achieving the objectives of the Union, in particular the free movement of persons.[49] These areas include asylum policy, external frontier controls, immigration of third country nationals, combating drug addiction and fraud, judicial co-operation in civil and criminal matters and police co-operation. Provision is made for the Council (acting by unanimity[50]) to adopt joint positions and joint actions and to draw up conventions for adoption by Member States.[51] Provision is also made for some of the areas, including asylum policy and immigration of third country nationals, to be transferred into Community competence, but this requires a unanimous Council decision adopted by Member States in accordance with their constitutional requirements.[52] The European Court of Justice has no jurisdiction in respect of this pillar except where it is expressly provided for in conventions adopted under it.

K4 Committee

The provisions for intergovernmental cooperation in the field of justice and home affairs (the third pillar) provide for the establishment of a coordinating committee consisting of senior officials to assist the Council by giving opinions and contributing to the preparation of Council discussions. It is called the K4 Committee because provision for it is made in Article K4.

Luxembourg Compromise

The agreement reached in 1966 to resolve the 'empty chair' crisis when France withdrew its representation. It was agreed that if, in a case where majority voting applied, "very important interests" of a Member State were at stake, the members of the Council would endeavour within a reasonable time to reach a unanimous solution. It is not clear what happens if they do not. Must discussion be allowed to continue indefinitely unless and until unanimous agreement is reached or can the issue be put to a vote after "a reasonable time"? The compromise has no legal status.

Malta: latest state of play on accession

Malta applied for Membership of the Community in 1990. The Commission submitted its formal opinion on the application in June 1993. The Council agreed in September 1993 to use "all the instruments offered" in the EU/Malta Association Agreement to help transition towards integration into the European Union. The European Council confirmed in December 1994 that the next phase of enlargement will involve Malta and Cyprus. The Foreign Affairs Council on 6 March 1995 foresaw accession negotiations starting six months after the 1996 Inter-Governmental Conference.

Non-Compulsory Expenditure

See Compulsory Expenditure.

Opt-Out

Commonly used to describe the two major concessions the United Kingdom secured in the Maastricht negotiations. If the third stage of monetary union does not start before 1 January 1999, the United Kingdom will not be obliged to participate with effect from that date, unless it notifies the Council before 1 January 1998 of its intention to do so.[53] A decision not to join at the outset does not, however, prevent the United Kingdom changing its mind and joining later, provided that it is able to satisfy the necessary conditions.[54] The other concession relates to the Social Agreement; for details, see Social Protocol.

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[49]Article K.1.

[50]Provision is made for implementing measures to be adopted by majority voting, if the Council so decides or, in the case of a convention, unless otherwise provided.

[51]Article K.3.

[52]Article K.9.

[53]Treaty on European Union, Protocol 11, Article 1.

[54]*ibid.* Article 10.

Own Resources

Article 201 of the Treaty provides that, without prejudice to other revenue, the budget shall be financed wholly from *own resources*. The nature of *own resources* is currently determined by a Decision of 24 June 1988.[55] Own resources comprise:

	*1996 Estimate in ECU**
Agricultural levies	864,000,000
Sugar and isoglucose levies	1,286,500,000
Custom duties (net of collection costs)	12,637,850,000
VAT (the product of a uniform rate)	34,594,256,882
GNP (a share of each Member State's GNP calculated to provide the balance of total expenditure not covered by the other resources)	31,971,657,519

*These figures are derived from the Commission's Preliminary Draft General Budget for 1996 (COM(95)300 - EN)

A new own resources decision was agreed following decisions at the December 1992 Edinburgh European Council, but has not yet been implemented. It will reduce the uniform VAT rate and require a higher proportion of own resources to come from the GNP source within overall limits determined by the financial perspective.

Pillars

The three pillars which comprise the architectural structure of the European Union are as follows:

First pillar:	The European Communities
Second pillar:	Common Foreign and Security Policy
Third pillar:	Justice and Home Affairs

The second and third pillars are distinguished from the first in that they are intergovernmental in character and not part of the Community legal order. However, the three pillars have a single institutional framework (though there are significant differences in the roles and powers of the institutions under each of the pillars). See also European Communities, Common Foreign and Security Policy, Justice and Home Affairs, European Union.

Political Committee

Provision is made in the CFSP for a Political Committee consisting of Political Directors in the Ministries of Foreign Affairs in Member States to monitor the international situation and to contribute to the definition of policies by giving opinions to the Council[56].

Proportionality

See subsidiarity.

Qualified Majority Voting

The system of weighted majority voting provided by the Treaty for the adoption of acts by the Council[57]. The votes allocated to each Member State are as follows:

Austria	4
Belgium	5
Denmark	3
Finland	3
France	10
Germany	10
Greece	5
Ireland	3
Italy	10
Luxembourg	2

[55]OJ No. L 185, 15.7.88, p.24. Decisions laying down provisions relating to the system of own resources are made by the Council, acting unanimously, but are subject to adoption by Member States in accordance with constitutional requirements.

[56]Article J.8(5).

[57]Article 148 of the Treaty as amended by the 1994 Accession Treaty.

Netherlands	5
Portugal	5
Spain	8
Sweden	4
United Kingdom	10
	87

Adoption by the Council of an act by qualified majority requires at least:

— 62 votes in favour (out of 87), where the Treaty requires the Act to be adopted on a proposal from the Commission; or
— 62 votes in favour, cast by at least ten members, in other cases.

As will be seen from the table below, in terms of comparative population, the larger Member States (particularly Germany) have too few votes and the smaller Member States have too many, hence the suggestion that there should be a double requirement for qualified majority voting, one based on the present system of weighted votes and the other on population.

	Population[58] (Millions)	*Population*[59] (Share of total)	*Votes*[60] (Share of total)
Austria	7.9	2%	4.6%
Belgium	10.0	3%	5.7%
Denmark	5.2	1%	3.5%
Finland	5.0	1%	3.5%
France	57.4	15%	11.5%
Germany	80.6	22%	11.5%
Greece	10.4	3%	5.7%
Ireland	3.5	1%	3.5%
Italy	57.9	16%	11.5%
Luxembourg	0.4	<1%	2.3%
Netherlands	15.2	4%	5.7%
Portugal	9.3	3%	5.7%
Spain	39.1	10%	9.2%
Sweden	8.7	2%	4.6%
United Kingdom	57.8	16%	11.5%

Schengen

The Schengen Agreement was concluded on 14 June 1985 and provides for the abolition of border controls among its signatories. The present parties are: Belgium, France, Luxembourg, Germany, Netherlands, Portugal and Spain. Austria, Finland, Sweden and Norway (despite its position as a non-Member State of the Community) are understood to be interested in joining.

The agreement entered into force provisionally on 26 March 1994; this had been delayed because of difficulties in bringing into operation the computerised information system.

France decided at the end of June 1995 to defer the final entry into force of its obligations for a further six months.

Scrutiny Reserve

The process whereby a Member State withholds agreement[61] to a proposal in the Council of Ministers, pending the favourable completion of scrutiny of that proposal in its National Parliament. A scrutiny reserve has no formal status under the Treaty or the Council's Rules of Procedure, but is recognised as a practical constraint on Ministers representing Member States which have a Parliamentary scrutiny system.

[58] 1992 figures.

[59] 1992 figures. Percentages are rounded.

[60] Percentages are rounded.

[61] Or makes agreement conditional on favourable completion of scrutiny.

The scrutiny reserve arrangements as far as the House of Commons is concerned are set out in the Resolution of the House of 24 October 1990 which appears on page iii of this Report. Similar arrangements apply in the House of Lords.

Scrutiny system

Arrangements made by a Chamber of a National Parliament to examine European documents, to identify those which are important, contentious or otherwise problematical, and to allow a Parliamentary input (usually through debate and decision) before the Minister concerned takes part in a decision of the Council of Ministers.

The extent and effectiveness of scrutiny arrangements vary from Parliament to Parliament. Denmark, the UK and the Netherlands in particular have highly developed systems; recent improvements have been made in France and Germany; and the new Member States, Austria, Finland and Sweden have instituted systems from the start of their membership.

In the House of Commons system, the Select Committee on European Legislation examines European Community documents as defined in Standing Order No. 127. This definition includes proposals for legislation by the Council of Ministers, draft Council Decisions and Resolutions, Commission White Papers and Green Papers, European Parliament amendments to legislation and Conciliation Committee texts under the co-decision procedure. More than 1,000 documents are scrutinised each year; some 400 of these are identified as being of legal and/or political importance; and, of those, some 70 are recommended for further consideration. This takes place either on the Floor of the House or in one of two European Standing Committees (where the responsible Minister may be questioned for up to an hour before the 1½ hour debate). A document "clears" the scrutiny process if the Committee decides that it does not merit debate, *or* where debate has been recommended and has taken place *and* the House has come to a Resolution on the document.

The Select Committee on European Legislation performs three main functions:

- analysing documents and reporting upon them in its weekly Reports for the information of the House and the public;

- identifying legal and/or political importance, and recommending debate where necessary; and

- monitoring the handling of proposals by Government Departments, and the discharge of their scrutiny obligations.

Similar functions are performed by the House of Lords Select Committee on the European Communities, which reports on many fewer documents (about 40 a year compared with 400 a year in the Commons) but in greater depth, taking extensive oral and written evidence. The Lords Committee normally operates through five Sub-Committees (which account for much of the Select Committee activity in that House). 20 Lords are members of the Committee, and up to 40 more may be co-opted onto Sub-Committees. In recent years, the Committee has also raised questions with Ministers on the merits of proposals, by correspondence where time does not allow for a Report.

In both Houses, the scrutiny arrangements are additional to, and do not replace, other Parliamentary opportunities of question and debate. In the Commons, any of the 17 departmental select committees may investigate European documents, or other Community or Union matters affecting their Orders of Reference.

Single European Act

The Single European Act was adopted in February 1986. It provided for the completion of the internal market by 31 December 1992 and included a general provision for the approval of internal market measures by qualified majority voting.[62] It allowed the adoption of measures for the health and safety of workers, co-operation in economic and monetary policy, social cohesion, research and technological development and the protection of the environment. It also introduced the co-operation procedure. Provisions for European foreign policy co-operation were introduced; these formed the foundation for the Common Foreign and Security Policy provisions of the Treaty on European Union.

[62]Article 100a.

Social Agreement
See Social Protocol.

Social Charter
The Community Charter of Fundamental Social Rights was adopted in 1989 by all the Member States other than the United Kingdom. It is not a legally binding measure but was in the form of a declaration by Heads of Government of the 11 Member States who were parties to it. It included provision for the Commission to submit an action programme on the application of the Charter.

Social Protocol
Protocol No. 14 on Social Policy annexed to the Treaty on European Union contains the compromise negotiated at Maastricht to overcome the United Kingdom's opposition to amendments (agreed by the other 11 Member States) to the social provisions of the Treaty of Rome. Those provisions remain as they were. However, the other Member States adopted an agreement (the *Social Agreement*) which contained the amended version which the United Kingdom had rejected. In the *Social Protocol* the United Kingdom agreed to authorise the 11 (now 14) other Member States "to have recourse to the institutions, procedures and mechanisms of the Treaty for the purpose of taking among themselves the acts and decisions required for giving effect" to the Social Agreement. It was further agreed that the United Kingdom should not take part in the Council's deliberations on proposals made under the Agreement. Acts adopted by the Council and financial consequences (other than administrative costs) entailed for the institutions would not be applicable to the United Kingdom. To date, only one measure has been adopted under the Social Agreement, the Directive on Works Councils.

Special Committee for Agriculture (SCA)
A Council High Level Working Party which meets weekly to consider reports from specialist Council Working Parties examining Commission proposals, and prepares final texts for Agriculture Council decision. Much of its work is on commodities.

Structural Funds
See cohesion.

Subsidiarity
This principle of legislative restraint was introduced into Community law by Article 3b of the Treaty on European Union. That Article laid down three basic principles governing Community action:

(1) The Community must act within the limits of Treaty powers and objectives ("competence");

(2) In areas which do not fall within its exclusive competence, the Community is to take action "only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore by reason of scale on effects of the proposed action, be better achieved by the Community" ("subsidiarity");

(3) Action by the Community is not to go beyond what is necessary to achieve the objectives of the Treaty. ("proportionality").

Guidelines were laid down at the Edinburgh European Council in December 1992 for the application of these principles.

Treaty base (legal base)
Community legal acts must cite the provision of the Treaty under which they are adopted, thus identifying the Treaty or legal base.

Treaty of Rome
The Treaty was signed in Rome on 25 March 1957 and established the European Economic Community. The Treaty has been substantially amended over the years, most recently and most significantly by the Single European Act and the Treaty on European Union. The latter replaced the term "European Economic Community" with "European Community", in recognition of the fact that the scope of the Community was not confined to economic matters.

Treaty on European Union

The Treaty was signed at Maastricht on 7 February 1992 and came into force on 1 November 1993. It established the European Union and new forms of inter-governmental co-operation in respect of common foreign and security policy and justice and home affairs. It amended the Treaty of Rome so as to provide for Citizenship of the Union, the principle of subsidiarity, economic and monetary union and the co-decision procedure and determined and clarified the nature and extent of Community competence in a number of areas including education, training, youth, culture, public health, consumer protection, trans-european networks, industry and development co-operation.

Troika

The collective name for the six-month Presidency just past, the current Presidency and the next Presidency, from the Russian carriage or sleigh drawn by three horses abreast.
The three countries involved may co-operate, for example in the planning or organisation of business.

Unanimity

A number of Treaty provisions require unanimity within the Council or common accord of the Member States. When the Council is acting by unanimity abstention by one or more Member States will not prevent the adoption of the act if all the others vote in favour[63].

Visegrad

Poland, Hungary, the Czech Republic and the Slovak Republic all have Association Agreements with the EU. Collectively these States are known as the Visegrad group. The group was formally established in February 1991 at a summit meeting held at Visegrad (in Hungary) with the adoption of a joint declaration on co-operation "on the road to Europe". The place was chosen to mirror the Visegrad Congress of 1335 at which the Kings of Bohemia, Hungary and Poland met to agree a joint economic programme in the face of trade restrictions.

Western European Union

The WEU is an inter-governmental organisation for European co-operation in the field of security. The Member States are Belgium, France, Germany, Greece, Italy, Luxembourg, Netherlands, Portugal, Spain and United Kingdom. Its origins go back to 1948, but its present status is founded largely on institutional restructuring carried out in the 1980s and Declarations issued by WEU Foreign Ministers at the Maastricht European Council in December 1991 providing for the WEU to be developed as the defence component of the European Union and as a means to strengthen the European pillar of NATO. Members of the European Union who were not WEU Members were also invited to accede or to become observers. Austria, Denmark, Finland, Ireland and Sweden have observer status. Iceland, Norway and Turkey are associate Members and there are nine associate partners from Eastern Europe.

[63]Article 148(3).