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INFORMATION NOTE

from:	Italian delegation
to:	delegations
Subject :	***2000 IGC:***
	– Italy's position

Attached hereto is Italy's position on the revision of the Treaties, for the Conference of the Representatives of the Governments of the Member States.

Intergovernmental Conference on the Revision of the Treaties

Italy's position

In recent years the European Union has made enormous strides towards an ever closer integration of its Member States' populations. The introduction of a single currency, the entry into force of the Amsterdam Treaty, the definition of a financial programme for the period 2000-2006, the holding of the first Summit on establishing a common area of freedom, security and justice, all these have confirmed that the Union is determined and able to work openly and constructively to serve its citizens.

Enlargement now offers the Union the opportunity to embark upon a major period of reform and change and the occasion to make progress in building a free and prosperous Europe on the basis of shared rules and commitments. The Union has to enlarge, while keeping its original purpose intact, to preserve its common policies and to ensure that its institutional machinery works properly and its decision-making mechanisms are efficient, all in a context of greater diversity among its Member States.

If these goals are to be achieved, enlargement will have to be preceded by a thorough overhaul of the Treaties, which manages to combine realism and ambition and to reconcile effective decision-making with democratic legitimacy.

The Helsinki European Council meeting on 10 and 11 December 1999 accurately identified as main issues that the Conference will have to address the three questions that Amsterdam left in abeyance: the composition of the Commission, the re-weighting of votes in the Council and the extension of qualified majority voting. The remit of the Conference will also include other, related institutional questions: the individual accountability of Commission Members; the number of Members of the European Parliament; application of the co-decision procedure to legislative acts that will be covered by qualified majority voting, and the composition and operation of the Court of Justice, the Court of Auditors and possibly other Union bodies.

Italy believes that in addition to the "left-overs" from Amsterdam and related matters, the Intergovernmental Conference should address the issues of the overhaul of the mechanisms for closer cooperation (flexibility), the amendment of the Treaties as a result of progress made on the security and defence policy, incorporation into the Treaties of the Charter of Fundamental Rights, and the reorganisation and simplification of the Treaties.

Italy's position will be developed along the lines set out below.

Composition of the Commission

Italy considers it essential to ensure that the Commission functions efficiently. It is ready to forgo a second Commissioner in return for a quid pro quo by way of re-weighting of Italy's votes under the Treaties. We would in principle also accept the idea of a Community executive with fewer members than the number of Member States, since Commissioners, as stated in Article 213(1) of the EC Treaty, are chosen on the grounds of their general competence and their independence is beyond doubt. At the same time we also recognise that it is impossible for some Member States to envisage surrendering their claims to a post of Commissioner.

As a compromise we could therefore accept the principle of one Commissioner per Member State. That principle should, however, go hand in hand with internal structural reorganisation of the Community's executive, so that it suffers no loss of effectiveness, independence and efficiency, even with more than 20 members.

The issue of Commissioners' individual accountability is a complex one. The measures adopted by President Prodi should make it make it less likely that we will see a recurrence of a situation in which the European Parliament's loss of confidence in one or two Commissioners and their determination to remain in office ends up by tarnishing the whole executive. But those measures are not legally binding. The Intergovernmental Conference may wish to consider inserting in the Treaties a specific provision, more extensive than Article 216 of the EC Treaty, possibly involving a role for the Council.

Re-weighting of votes

The discussion of re-weighting votes has to be anchored in certain essential facts. Firstly, as envisaged at Amsterdam, the four large Member States will have to be compensated for the loss of their second Commissioner. In addition, the accession of numerous small or smallish countries will mean that the large Member States will have less weight, a change in the current balance which has implications for the Union's democratic legitimacy. Changes to the Union's decision-making procedures are therefore needed, basically to ensure that the current thresholds for adopting decisions by a qualified majority – in terms both of votes and of population size – are maintained (about 70% and 60% respectively).

Technically speaking there are two alternatives, which may also be combined: either to re-weight the votes or to introduce – alongside a majority of votes – a second majority based on population size. We would prefer straightforward re-weighting. Although we do not reject outright the idea of a double majority, it does not convince us, as it would further complicate the current system and make it hard for outsiders to understand. The re-weighting proposal tabled in the final stages of the last Intergovernmental Conference could be a useful basis for negotiation.

Extension of qualified majority voting

For Italy, the extension of qualified majority voting ahead of enlargement is the Conference's most significant political objective and the prerequisite for guaranteeing the European Union's decision-making capacity even beyond future enlargements. The starting point for the Intergovernmental Conference's discussion of this entire question should be the principle that qualified majority voting must be the rule, whence the Conference should move on to agreement on a number of types of decision to which the unanimity rule would continue to apply.

Exceptions could for example include constitutional provisions, provisions requiring subsequent ratification by national Parliaments and provisions derogating from the *acquis communautaire*.

Provision would need to be made for the co-decision procedure with the European Parliament to apply to all legislative acts to which qualified majority voting had been extended.

Related matters: European Parliament

The Intergovernmental Conference will need to consider the criteria for allocating seats, taking into account the proposal that the European Parliament has promised to table. The upper limit on membership could be kept at 700, but ways of proportionally reducing the current Member States' quotas of Members will need to be worked out, with possible arrangement for periods of transition between the applicant countries' accession and the expiry of the current MEPs' terms of office; another, less convincing solution would be to increase the overall membership to cater for the new Member States.

Italy is also in favour of amending Article 48 of the EU Treaty, in order to give the European Parliament a more appropriate role in any revision of the Treaties, possibly by introducing the assent procedure.

Related issues: Court of Justice

The Intergovernmental Conference will have to consider possible amendments to the Treaties which clear the way for significant improvements in the operation of the Community's judicial system. Two aspects of the current system should be preserved: the representation of the Court of Justice and of the Court of First Instance, and the principle of uniform interpretation of Community law (and thus the unity of the judicial system).

With regard to the first point, Italy believes that the rule concerning the representation of all judicial systems within the Union's courts, and thus the principle of one judge per Member State, should be upheld. On the second point, reforms should be directed, on the one hand, towards accentuating the "constitutional" role of the Court of Justice and, on the other, towards assumption by the Court of First Instance of responsibility for dealing with the substance of cases; these solutions would require that, as a matter of principle, the Court of Justice should retain jurisdiction to make preliminary rulings, while responsibility for the whole of the proceedings at first instance would be transferred to the Court of First Instance (which would need to be suitably organised and strengthened in terms of resources) with, of course, the possibility of appeal to the Court of Justice (perhaps subject to some form of "screening").

Finally, Italy considers it essential, for any reform of the Community legal system to be truly effective, to overhaul the current mechanisms for reviewing the Rules of Procedure of the Court of Justice and the Court of First Instance. The two bodies should be able to amend their respective Rules of Procedure autonomously, or at least with Council approval by a qualified majority (rather than unanimity).

Related issues: Court of Auditors

With enlargement in prospect, the role of the Court of Auditors in assisting the budget authority (European Parliament and Council) in performing duties of control in respect of the implementation of the budget and in guaranteeing the legitimacy and lawfulness of the Community's income and expenditure and, more generally, sound financial management will become increasingly important. The number of members (currently 15, one per State) is due to rise; to improve organisation of work, the President's position should be strengthened and the Court will need to be able to make decisions on the technical and organisational aspects, on a proposal from the President. It would also seem advisable for the Court to have the option of appealing to the Court of Justice not only for the purpose of "protecting its prerogatives" (third paragraph of Article 230 of the EC Treaty), but also where a Member State does not properly comply with a request for information.

Other issues: closer cooperation (flexibility)

In addition to extension of qualified majority voting, the review of closer cooperation mechanisms constitutes the other more politically significant aspect of the Intergovernmental Conference. The Union's recent history shows that, if closer cooperation arrangements cannot be implemented within the institutional framework, they are achieved instead outside it. It is then much more difficult either to bring them back within the Treaty or to ensure access for those countries that were unable or unwilling to participate in them from the start. The Amsterdam provisions on closer cooperation appear quite inadequate for an enlarged Europe.

Provision is made for closer cooperation under the first and third pillars. The Articles of the Treaty lay down a framework of reference which is certainly valid in respect of the purpose of the exercise, its limits and involvement of the Union's institutions. However, the mechanism provided for seems too complex and difficult to implement. We believe that, at the very least, the provision giving a Member State the option of opposing authorisation for undefined domestic policy reasons should be reviewed, as should the provision concerning the minimum number of Member States, with the introduction of lower thresholds than those currently laid down in the Treaty. Furthermore, while it seems advisable to maintain the mechanism of constructive abstention in respect of foreign policy, we feel that flexibility needs to be introduced for security and defence.

Other issues: (a) European security and defence policy; (b) EU Charter of Fundamental Rights

(a) Following the conclusions of the Helsinki European Council meeting regarding military capabilities for crisis management, new political and military bodies and structures will need to be established within the Council, in order to equip the Union with the decision-making apparatus necessary to manage those military capabilities, in compliance with the single institutional framework

The conclusions to emerge from the preparatory work on the common defence policy will therefore need to feed into the Intergovernmental Conference, to enable the necessary Treaty amendments to be studied in detail in good time.

(b) In Italy's view, the Charter should stress fundamental rights and define their nature (indivisibility, inviolability and enforceability in law); over and above its political value, it is important as a basis for a constitution-building process aimed at bringing the Union closer to the people and giving concrete, binding effect to the concept of European citizenship We would therefore hope that the Conference will note the importance of this exercise and lay down deadlines and methods for the achievement of further progress. As a first step, the Charter could be included in the Treaties as an annexed protocol, with a view to its becoming the nucleus of the future European constitution.

Other issues: reorganisation of the Treaties

The idea underlying the reorganisation of the provisions of the Treaties is that they should be divided into two parts, the first part being "constitutional and institutional" and the second dealing with the common policies. The purpose here is to establish a systematic framework regarding founding principles, bodies, separation of powers, the decision-making process and the hierarchy of norms, separate from the provisions on individual sectoral policies.

The exercise can be carried out as the Treaties stand, by means of a straightforward reorganisation and merging of the texts, aimed at improving their reader-friendliness (continuing the work which, in Amsterdam, led to the renumbering of the provisions). The Conference could give instructions to the Legal Services of the Commission, Council and European Parliament, or to another technical body, to submit specific proposals on reorganisation and the corresponding procedures.