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PROGRESS REPORT

FROM THE CHAIRMAN OF THE REFLECTION GROUP

ON THE

1996 INTERGOVERNMENTAL CONFERENCE

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TOPIC 1. CHALLENGES, PRINCIPLES AND OBJECTIVES

A. Basic points

Reasons for reform: the challenges facing Europe

- In addition to the **explicit reasons** set out in the TEU itself, which relate to completion of the Maastricht venture, and the commitments subsequently entered into by both the Council and the European Council in connection with the most recent enlargement and with a view to the next, there are also **implicit reasons** for holding the 1996 Intergovernmental Conference which the Reflection Group has been instructed to prepare. The Group has identified two fundamental reasons, namely **improving the functioning of the Union** and equipping it with the means to cope with the **internal and external challenges** facing it, such as the next **enlargement**.
- A key challenge facing the Union **internally** is the need to ensure that European construction becomes a venture to which its citizens can relate. The growing popular dissatisfaction with public matters in general and European construction in particular is partly due to economic, political and institutional reasons: a high level of unemployment, which is particularly serious in the case of young people and the long-term unemployed, social rejection and exclusion, the crisis in relations between representatives and those represented, the European Union's growing complexity and the lack of information on, and understanding of, its *raison d'être*, as well as worrying developments in organized crime (drug trafficking, money laundering, terrorism) which are prompting a growing call for public security, that cannot be met by States acting alone, and is likewise receiving no satisfactory response from the Union because of the gaps or shortcomings in its mechanisms.
- There are also major challenges resulting from the profound changes taking place **outside** the Union as the end of the century approaches: major political instability in the European region following the end of the cold war, major migrations of populations which are particularly acute in Europe, risks of ecological imbalances

which the Union cannot afford to ignore, etc., coupled with an increasing globalization of the economy which highlights Europe's loss of some of the comparative historical advantages gained through its social and technological innovations, and which can only be met by adopting an equally global approach.

The responses

- The new internal and external context in Europe calls for **responses** that will ensure greater political stability while simultaneously allowing economic development and a social climate of solidarity to be safeguarded within an open, global and competitive economy, in other words responses that will put the European Union in a position to continue acting as the **principal factor of peace and prosperity on the European continent**.
- Europe's responses to the above challenges have already been partly determined, as in the case of **economic and monetary union** (although some members of the Group see a case for adjusting the balance between social and economic aspects on the one hand and monetary aspects on the other, without however altering the original timetable and convergence criteria) or of the **next enlargement**, which will present its own challenges. As stated above, other responses have already been formulated either by the Treaty itself or by subsequent European Councils; it is the Reflection Group, however, that has been tasked with working out their details and giving them concrete form. The Group's initial analysis led to the following conclusions:
 - * If, as stated above, the Union's principal **internal** challenge is to reconcile itself with its citizens, enhancing its legitimacy in their eyes will have to be the prime objective of the coming reform.

Achieving this goal will require a clear definition of the Union's objectives, i.e. the joint goals sought, ensuring the credibility of policies and/or the cooperation machinery designed to attain those objectives (or, to put it another way, adapting the instruments with a view to reaching the objectives set) and preserving the Union's internal cohesion. The Group has come to the conclusion that the coming reform must give priority to the "real" problems, i.e. those which preoccupy Europeans most. A majority of personal representatives

include **unemployment, internal security and environmental degradation** among the problems to be tackled as a matter of immediate urgency.

A further response to the challenge posed by citizens' alienation from the Union would be a correct and systematic application of the principles of **efficiency, democracy, transparency and solidarity** to relations between the Union's Institutions and between its Member States, and also between the Member States and the Institutions. Those principles should be put into practice through concrete measures, such as improved application of the subsidiarity principle ("who does what?"); simplification (of texts and procedures); bolstering the rights of the Union's citizens; greater political responsibility for the Institutions combined with increased accountability on their part, with national parliaments assuming a more prominent role in this connection; and greater transparency in the functioning of the Institutions, which should be given the means to take decisions with the broadest possible backing from citizens. The machinery designed to preserve the Union's internal cohesion also needs to be adapted and strengthened, this step being particularly important with a view to the next enlargement.

- * The responses to the challenges posed by the profound changes which have taken place **outside** the Union, in the political and security context as well as in the economic and commercial sphere, need to be based on reinforcement of the instruments set up to achieve the highest possible levels of **external stability and security**. The key task here, therefore, is to take all the steps necessary to provide the Union with a genuine external identity that will enable it to become a world force in international relations, so that it can promote its values, defend its interests and help shape a new world order. This will clearly only be possible if the Foreign Policy really functions, with full consistency being ensured between the political and economic aspects of the Union's external action. To cope with the new challenges that have arisen with regard to security in Europe, it is also necessary to face up to the question of whether the Union should provide itself with a real common defence policy.
- * The **next enlargement** represents both a moral imperative and a major opportunity for Europe. At the same time, however, it presents the Union with a major challenge requiring an adequate response both at the

Intergovernmental Conference itself, through the reforms designed to improve the Union's functioning in general and institutional reform in particular, and in the margins of that Conference, in view of the impact which enlargement will have on applicant countries and on the Union's policies. The next enlargement will be different from the previous ones because of the large number of applicant countries and the heterogeneity of their political, economic and social situations. To ensure that the next enlargement does not weaken or actually break up the Union, the changes needed to cope with the challenge involved must first be made. Sure though they may be, the benefits deriving from enlargement cannot be reaped until the 1996 Conference has been concluded satisfactorily. The success of the former thus depends on the success of the latter.

Principles and objectives

- The Group unanimously emphasizes the need to continue and strengthen European integration in this new end-of-the-century context. Preservation of a common core formed by the **principles and objectives of the Union**, the **single institutional framework** and the "**acquis communautaire**", which characterize the European Community as an entity based on the rule of law, represent the principal guarantee of peace and prosperity for the citizens of the Union. The Group emphasizes that this peace guarantee is not perpetual and that it would be a grave error to underestimate the Community's main contribution to the Member States and their citizens, namely a shared view of life that has ruled out war as a means of settling differences. The Group accordingly feels that the Conference must endorse and reinforce the Union's common principles and objectives, i.e. **peace and freedom, internal and external security and prosperity** for Europeans and **solidarity** between them.

Scope of the Conference

- The Group considers that the Conference should formulate adequate responses to the above challenges, including the changes necessary to accommodate all applicants for enlargement, in respect of both institutional matters and appropriate development of the Union's internal and external security.
- The scope of the Conference should therefore be such as is needed for the above goals to be achieved, without prejudice to the steps already completed towards the

construction of Europe. The process should be unique: it must not prejudge any predetermined politico-legal format or constantly shifting objectives, but adapt them as and when needed.

- The Group further favours comprehensive treatment of all issues as part of a single exercise. A single conference not split into different stages seems the most appropriate method of removing uncertainties regarding the future and avoiding any risk of excessive prolongation of an exercise that virtually amounts to a constituent procedure.
- The Group also emphasizes that all the reforms needed can be tackled partly by amending the treaties and partly also by improving the Union's procedures and working methods.

Context and timetable

- The Conference forms part of a broader context including, inter alia: (1) enlargement; (2) transition to the third stage of EMU; (3) renegotiation of the own resources system and the financial perspective for 1999 and beyond; (4) analysis of the impact of enlargement on policies and resources; (5) debate on a future common defence policy, and on the WEU in connection with the 1998 deadline. It should also be remembered that elections are due to be held in various Member States in the course of 1997 and 1998. All the above elements are linked in some way to the reform of the Union; it will therefore be necessary to consider the **relationship** between them. This matter will be broached as part of the examination of the various topics; however, it is worth noting the political value of making a **comprehensive examination** of all the above aspects.

Flexibility and coherence of the Union

- The prospect of enlargement, combined with the fact that the Union already operates differentiated integration arrangements in those areas where this is allowed, prompts the question whether, and to what extent, any flexibility is possible, a question that will also affect the outcome of the Conference and the approach to be adopted to enlargement.
- As stated above, some members want the Group to give an unequivocal answer to the question "What do we want to accomplish together?". That answer will clarify what the reform is expected to achieve.

It should not be possible for those who want and even need to progress to be held back by those who do not wish to do so. At the same time, however, it will be necessary to consider what should be the limits to the flexibility that will make it possible to manage diversity without jeopardizing the *acquis* and the common objectives.

Outcome of the Conference

- The Group has not yet paused to analyze the consequences of or the possible solutions for a possible scenario in which some Member State fails to ratify the reform.

B. Areas for reflection

- Does the Group consider it necessary to give further consideration to the replies contained in its report to the challenges facing Europe at the end of the century and the guidelines for strengthening the principles and objectives of the Union?
- Does it seem appropriate to proceed with a general review of the various components of the European agenda between now and the end of the century and establish guidelines for its management?
- It would appear to be necessary to give further thought to the Group's reply on flexibility and its limits. Since everyone appears to reject an *à la carte* Europe, what are the other possible arrangements? As regards the limits to flexibility, the following have been mentioned: flexibility should be introduced when all other solutions have been exhausted; no-one who so desires and fulfils conditions previously adopted unanimously should be excluded from involvement in a given action or common policy; provision should be made for accompanying measures for those who want to but are temporarily unable to take part in a given action or policy; the entire *acquis* should be maintained and a minimum common basis should be preserved to prevent any sort of retreat from common principles and objectives; there should be a single institutional framework. Does the Group believe that these are basically the limits to flexibility?
- Can a crisis scenario be envisaged for the Conference? If so, should the Group provide possible alternative solutions, for example introducing changes in the ratification process?

TOPIC 2. THE INSTITUTIONAL SYSTEM: PART 1. THE INSTITUTIONAL BALANCE

A. Basic points

- The institutions are not an end in themselves but **an instrument serving the Union's objectives**.
- Ways must be found of increasing citizens' confidence in the European institutions, the reform of which must be subjected to the test of **more democracy, more efficiency, more solidarity and more transparency** (the last cannot be achieved by greater accessibility and publicity alone; there must be greater simplicity and clarity in the allocation of functions: "who does what").
- The Group believes that institutional reform must involve retaining the **single institutional framework**. Only in that way will it be possible to consider **flexible formulae** for the gradual achievement of common objectives.
- It is also necessary that reform respect **the institutional balance** as a whole, in accordance with the unique nature of the European Union. That must not prevent the institutions' adapting to new circumstances and requirements or the strengthening of some of them – provided such strengthening does not operate to the disadvantage of the others – or better definition of their relative functions for the sake of greater transparency.
- With the prospect of imminent **enlargement** institutional reform **can no longer be postponed**. One of the major challenges of future enlargement will be in the area of the institutions. The stronger and more efficient the Union institutions are and the more support they receive from our citizens, the greater the benefits of all sorts that will derive from the forthcoming enlargement. Inadequate or insufficient institutional reform, on the other hand, will jeopardize the very process of the construction of Europe.
- **Languages:** The richness of the Union's cultural diversity, transparency and greater participation by national parliaments and citizens, and the legal security of

a Community of the rule of law require strict observance of equal treatment for the Union's official languages on the part of the institutions. This behaviour obligation requires no amendment of the Treaties.

- p.m. **Structure** of the Treaty (see Topics 5 and 6)

B. Areas for reflection

- Without questioning the criteria of convergence or the timetable for a single currency, some members point to a lack of synchronization between the institutional development of the monetary aspect of EMU and the – insufficient – institutionalization of its economic and social aspect. Do we believe that the Group should examine this point in greater depth?

TOPIC 3. THE INSTITUTIONAL SYSTEM: PART 2. THE INSTITUTIONS

THE EUROPEAN PARLIAMENT

A. Basic points

- **Composition:** It would appear to be relevant to fix a maximum number of seats, which some have set at 700 members in an enlarged Union, as the European Parliament mentions in its report.
- **Uniform electoral procedure:** The Treaty already provides the legal basis for such a procedure in Article 138(3). Some members consider it desirable to achieve that uniformity as soon as possible.
- **Legislation:**

The EP's legislative initiative: it is felt that the right of invitation established in Article 138b is sufficient.

Legislative procedures: There is a large majority in favour of their simplification, reducing them to three in number: **consultation, co-decision and assent**. There is no agreement on the scope of co-decision: some wish to apply it, in principle, to those legislative decisions which the Council takes by a qualified majority. Others prefer to adopt a case-by-case approach. And, finally, a member does not see any reason to a further increase of the powers of the European Parliament. In any case, the Group feels it would be appropriate to simplify the co-decision procedure.

- **Budgetary function:** See Topic 8, Resources.
- **Political control:** As regards the role of the EP in the appointment of the Commission, some members feel that the present system is adequate. Others prefer the EP to elect the President of the Commission from a list proposed by the Council. As regards political control of the Commission, see under Commission.

- **Executive control:** Some members consider it appropriate to increase the EP's and the Mediator's powers to combat fraud.
- **Role of the EP under Titles V and VI:** See under CFSC (Topic 6) and European Citizenship (Topic 5).

B. Areas for reflection

- Study the guidelines for the simplification of the co-decision procedure.
- Study the scope for co-decision in greater depth.
- Examine the European Parliament's powers of political and executive control in greater depth, with special reference to combating fraud (in practice, it would be useful to measure the extent of agreement within the Group on the latter point).

THE EUROPEAN PARLIAMENT AND NATIONAL PARLIAMENTS

A. Basic points

- Agreement on the need to increase each national parliament's control over its government in Union affairs. Collaboration will be required not only from each government but also from the Community institutions (languages, prior information, deadlines).
- Agreement that no second chamber should be created.

B. Areas for reflection

- Explore formulae for the association of national parliaments with the Community institutions. Study the possibility of expanding Declarations 13 and 14 on the Treaty. Examine in greater detail ways of simplifying each national parliament's task of supervising Union decisions.
- Study the proposed creation of a High Consultative Council on subsidiarity composed of delegations from national parliaments.

THE EUROPEAN COUNCIL AND THE COUNCIL

A. Basic points

- Agreement on strengthening the rôle of the Council as an institution with clear legislative and executive powers, without prejudice to the institutional balance.

The European Council

A. Basic points

- Maintenance of the present functions of the European Council, as the Union's main source of impulse and political orientation.

The Council

A. Basic points

- **Powers:** Maintenance of its present functions, strengthening its ability to act.
- **Decision-taking mechanism:**
 - * **Unanimity or qualified majority?** There is consensus within the Group in favour of maintaining **unanimity** for the amendment of primary legislation: Articles N and O and other decisions of a "constitutional" nature, such as own resources. All of those require ratification by national parliaments and in some cases the EP's assent is required as well.

As regards decisions on secondary legislation, a majority maintains that the enlarged Union would appear to require the extension or even the generalization of **the qualified majority**, for reasons of efficiency, in order to prevent the paralysis of the enlarged Union when taking decisions; it is also necessitated by the need to reduce the discrepancy between the development achieved in the internal market (where qualified majorities are the rule) and the lack of development in accompanying policies in the social, tax and environment spheres (where basically unanimity is the rule). Some members reject this reasoning while others

accept it, but see exceptions as warranted in the defence of sensitive interests. Some link the move from unanimity to a qualified majority with better application of the principles of subsidiarity and sufficient means.

- * **Formulas intermediate between unanimity and a qualified majority** are contemplated for Titles V and VI (a super-qualified majority, positive abstention, consensus less one) and for specially sensitive Community questions. These possibilities must be studied in greater depth.
- * **Weighting of votes for purposes of qualified majorities.** Bearing in mind that in democratic societies efficiency is inseparable from legitimacy and that an efficient decision is not the one that is the easiest to adopt but the one that receives the most support from citizens, some members point to the growing imbalance between the population and its representation in votes by qualified majority, the procedure by which most Community decisions affecting citizens directly are taken. In the view of those members, the next enlargement would create a situation in which, if that imbalance is not corrected, a qualified majority could be achieved with a number of votes that could even represent a minority of the population. Those members consider that such a situation undermines the efficiency and democracy of Council decisions and is unacceptable in the context of future enlargement. In their view, the system should be corrected so that greater account is taken of population by means of new weightings for votes, a change in the threshold for qualified majorities or the introduction of a double threshold (votes and population). Other members, on the other hand, do not endorse that analysis but rather insist that the weighting of votes in the Council must be based more on the principle of the sovereign equality of States than on the population factor, which they feel is already adequately reflected in each State's representation in the European Parliament. They also point out that this is a false problem, since practice shows that in the Community there is no systematic pattern of small-population countries forming coalitions against the large-population countries, and accordingly they do not consider it necessary to alter the present system.

- **The organization of Councils and their methods of work:** Regardless of the growing imbalance that some allege in the efficiency and legitimacy of the

voting system, a large majority recognizes a gradual decline both in the organization and in the methods of work of Councils, which were conceived for a smaller number of Member States. The Group stresses the need for the General Affairs Council to re-assume its role of the general coordination of Union affairs and ensure that the institution's activities are consistent overall. In the preparatory phase of decisions, a majority of members see a need for greater consistency between preparatory committees. For some members of the Group the enlargement of the Union means that reconsideration of the Council's working methods can no longer be postponed, some phases of working group discussion being dropped in favour of a written procedure, on the basis of arrangements that will have to be studied in depth.

- **Publicity:** This question was discussed in topic 4 under the heading concerning transparency. For some representatives, the Council should be open to the public whenever it works as a legislative chamber. Others, on the contrary, point out that an excess of transparency can be harmful to efficiency. For these members, more than trying to differentiate between the executive and the legislative functions, the prevailing question is the intensive and constant negotiation task, which should not be public. Other members, finally, specify that publicity (not so much by the broadcasting of the debates as simply by setting up some listening rooms open to interested media) could be restricted to the initial debate of presentation of a legislative proposal and to the final moment of voting. It would be desirable to explore whether this last idea deserves the support of the Group.
- **Presidency:** The Group stressed the importance of the Presidency's rôle in that it was responsible for conducting the Union's affairs. The Group sets great store by the feeling of belonging that is encouraged by the system of rotating Presidencies and by the will to do better and the stimulation of those holding the office. The prospective enlargement would result in each country's turn coming round much less frequently, making it necessary to establish a system which will ensure greater permanence and visibility for the Presidency without making more sporadic the participation by Member States in an enlarged Union. To achieve that the Group has been looking at various arrangements that combine elements of permanence and rotation, such as Presidency by teams. It is also considering the possibility of electing a President or a High Representative of the Union for external policy matters (see Topic 6). The Group will have to study these questions with a view to ensuring the general consistency of institutional functioning.

B. Areas for reflection

- **Maintenance of unanimity:** In which cases? Should the EP participate when the Council decides unanimously? Under which principles? In which cases?
- **Scope of qualified majority:** Generalized for secondary Community legislation? Should it be accompanied by co-decision with the EP for legislative decisions? Is a case-by-case approach preferable at the present stage of integration and with the prospect of enlargement?
- **Weighting of the qualified majority:** How can an adequate balance of population and votes be ensured in a fashion acceptable to all?
- **Organization of the Council:** How can the central role of the General Affairs Council be restored? Creation of a Council of European Affairs composed of deputies to the General Affairs Council, with frequent meetings, so that the General Affairs Council of full members receives a reduced agenda which will enable them to deliberate and decide on Union affairs?
- **The Council's methods of work:** Study the possibility of applying written procedures in the preparatory phases; study arrangements increasing Permanent Representatives Committee/Political Committee consistency.
- **Publicity:** Can the Group accept the opening to the public of the Council in the initial and final phase of the legislative process?.
- Study **options for exercising the Presidency** that solve its operating requirements in an enlarged Union.

THE COMMISSION

A. Basic points

- Powers

Monopoly of legislative initiative: The Group is inclined to maintain it, without prejudice to the right of invitation as enunciated at present (Articles 138b and 152). Some members, however, suggest mechanisms that amount to limiting it, such as the introduction of a "sunset clause" for Commission proposals for legislation.

Another suggests that such a clause should apply not only to proposals but also to the rules imposed by Community law. A large majority considered the latter incompatible with a Community of law, as general application of such a clause would render law ephemeral (the clause would have a "termite effect" on the *acquis communautaire*). It would have to be studied to see if it would be useful in exceptional cases. The question of the limitation of proposals would have to be examined in depth, bearing in mind the fact that the best rule is not necessarily the one that is discussed least.

Guardian of the Treaties: This function of the Commission's was not discussed.

Executive powers: The Group was in favour of maintaining the current system of powers, in which the Commission shares the Council's executive powers. As regards **committee procedure**, the Group is in favour of finding a solution to simplify procedures, but such a solution cannot consist in a straightforward transfer of executive powers to the Commission without the Council retaining some supervisory power.

For allocation of tasks in Titles V and VI, see topics 5 and 6.

– **Composition and decision-making system of the College**

The Group has identified two possible formulae to avoid confrontation between States, depending on their size and population, which may pass the test of greater democracy, efficiency and transparency, especially with regard to enlargement: one is to retain the current system laid down in Article 157(1), which states that the Commission must include: "at least one national of each of the Member States, but may not include more than two Members having the nationality of the same State." This formula has the advantage that it guarantees the involvement of Commissioners from all the Member States, which promotes a feeling of belonging on the part of its citizens. It has the disadvantage that in the enlarged Union there might be so many Commissioners that they become anonymous, the College will lose its homogeneity and some Commissioners will be left without relevant duties, or the duties now performed by the Commission will be split unnecessarily. These disadvantages may be offset by systems for strengthening the homogeneity of the College, reinforcing the role of its President and revising the system of appointing and censuring Members of the College. The other option is a College made up of a limited number of Commissioners corresponding to the number of really necessary portfolios (between 12 and 15).

The thinking behind that option would be to restore the original character of the College as a homogeneous whole, made up of personalities who are clearly identifiable by the public without being associated with specific countries.

- **Control of the Commission:** Some Members have said they are in favour of increasing control of the Commission, both by the EP and by the Council. Some have put forward the possibility of individual censure of Commissioners.

B. Areas for reflection

- Consideration of the formulae which affect the Commission's exclusive right to initiate legislation (**sunset clause**), and its consequences.
- Search for solutions to the **committee procedure question**, at least adopting provisional criteria so that the Conference can later decide on the practicalities.
- Consideration of the options as regards **composition, decision-making system, appointment and political control** of the Commission, so that it can play its role efficiently and legitimately in an enlarged Union. With regard to the **voting system** in the College, the current system of representing the population already prevents the 10 Commissioners from the most populated countries from adopting a decision by a simple majority. This raises the problem of the decision-making system in the College, especially in view of the forthcoming enlargement. This subject has not been discussed in the Group.

OTHER INSTITUTIONS AND BODIES

A. Basic points

Court of Justice. The great majority are in favour of retaining its functions. With regard to its possible participation in Titles V and VI, see corresponding topics.

Court of Auditors. The Group agrees to look into ways of increasing its control over Union matters which so require, specifically with regard to combating fraud.

Committee of the Regions. Consideration will be given to the possibility of widening the scope of its consultative powers and of providing it with specific administrative infrastructure.

Economic and Social Committee. Its situation will be studied in the light of the above.

B. Areas for reflection

Is it necessary to consider other factors linked with these institutions and bodies in the light of the reports submitted by each of them?

TOPIC 4. THE CITIZEN AND THE UNION – PART 1 EUROPEAN CITIZENSHIP

A. Basic points

– The rights of the citizen

The Group notes that introduction into the TEU of the principle of citizenship of the Union by Article B, third indent, its development in Articles 8 to 8e, and confirmation in Article F(2) of the general principle of respect by the Union for fundamental rights were intended as a response to the need to involve citizens more closely in the process of European construction. However, it recognizes at the same time that this purpose was viewed differently in the various Member States: while in most of them the concept of citizenship increased the feeling of belonging to the Union, in some, by contrast, there was a failure to put across the idea that citizenship of the Union is not intended to replace national citizenship but actually to complement it. In some cases the perception has been precisely the opposite, and in societies where this occurs there is undoubtedly a need to make a special effort to explain the facts.

It is logical that this variety of situations should be reflected in the Group's attitudes.

- There is a tendency by the majority to regard European citizenship as an essential aspect of making the Treaty acceptable to European public opinion, and they therefore strongly support its development in two ways:

Firstly, by means of deepening the **specific rights** of European citizens already included in the Treaty (achieving unrestricted freedom of movement and residence, completing diplomatic and consular protection in third countries) and the inclusion of new rights (see below), and also through reform and unification of the legal bases relating to citizenship, which are currently subject to excessively complex and disparate procedures (national ratifications).

The other type of action to be taken in this area, according to the majority view, consists in spelling out the general principle of respect for **fundamental rights** laid down in Article F(2) and making it more workable.

It is generally felt within the Group that during the current process of European construction, and above all in the run-up to enlargement, there is an urgent need to ensure full observance of fundamental rights, both in relations between the Union and the Member States and between States and individuals. There is therefore consensus within the Group on the need to insert an Article into the Treaty providing for the suspension of its rights or even the **expulsion** of a Member State which infringes fundamental human rights or basic democratic principles. There was also a suggestion that it would be appropriate to require that every applicant country first accede to the European Convention on Human Rights and all its Protocols.

With regard to the **content** of the rights in question, the following were mentioned:

- * express condemnation of **racism and xenophobia** by means of an analogous provision to the one proposed in 1991 by the European Parliament
- * general clause **prohibiting discrimination** (in addition to the one prohibiting discrimination on grounds of nationality in Article 6) on grounds of gender, religion, opinion, sexual preferences, etc. In the opinion of some, the principle of **equality between women and men** should have general application and not be restricted as currently to the economic sphere (Article 119); it should also be worded in a positive way in the Treaty and not simply as the result of a ban on discrimination.

There was general support for the amendments listed in the two previous subparagraphs; the same does not apply to the following, at least on a first reading:

- * Prohibition of the **death penalty**.
- * Protection of **minorities**.
- * **Socio-economic** rights: specifically, inclusion in the Treaty of the content of the European Social Charter. Some representatives pointed out the disadvantages which this possibility entailed because of its legal and economic consequences, and one was fundamentally opposed.

- * **Employment and quality of the environment**

(See topic 8, Policies.)

- * Some members put forward the idea of a European voluntary service, or "Peace Corps", for humanitarian action.

As regards the **way** in which such rights might be embodied in the Treaty, two possibilities were considered:

- * The Union, if it takes on legal personality, or the Community at any rate, would have to **accede to the European Convention on Human Rights**. It should be noted here that the Court of Justice has been asked for an opinion, and it was pointed out that if the opinion were negative it would be necessary to amend the Treaty to overcome the legal obstacle quoted by the Court.
- * Independently of the above, some members pointed out the advantages of including a Bill of Rights in the Treaty, either in the enacting terms or an annex, or in the preamble. With the aim of being able to take a decision on such a list at the appropriate time, it was agreed that the representatives of the Member States would send the General Secretariat of the Council an account of the fundamental rights guaranteed by their respective constitutional provisions, which would serve as a basis for a comparative study.

From the point of view of **individual protection**, it was clear that only accession by the Community to the European Convention and inclusion of a bill of rights in the enacting terms would confer a full guarantee, either by the Luxembourg and Strasbourg Courts in the first case, or only by the Luxembourg Court in the second.

- In response to the majority view, some members point out that adoption of European citizenship is perceived as a threat to national identity in some Member States, and that, unless that perception is corrected, they do not think it appropriate to develop either the content or essence of the concept. They also regard Community accession to the European Convention on Human Rights as unnecessary and, furthermore, do not see the usefulness of including a Charter of Human Rights

in the Treaty, since all the Member States already guarantee them in their territory. Among those who support this view, some would however accept a Bill of Rights in the preamble to the Treaty or are in favour of the Treaty incorporating a citizen's **right to information**.

– **Transparency**

The Group agrees on the need to make Union affairs more accessible and comprehensible to the general public. The concept of "transparency" serves that purpose and covers different aspects: the principles of proximity and subsidiarity: "**who does what**", both in the relationship between the Union and the Member States (see Topic 8) and in the workings of the institutions. In this context, the Group is examining possible **simplification and clarification** of the workings of the institutions (see Topic 3) and recommends that the powers and institutions of the Union employ better **publicity, information and consultation** methods, paying special attention to national Parliaments. The Group feels there should be more advance notice of Commission **proposals** and applauds the practice of issuing "Green Papers" while deploring the excessive use of **interinstitutional agreements** to the extent that they are not transparent. Changes in the Council's organization and working methods will have to take into account, inter alia, the aim of greater transparency. Here, in addition to the question concerning the publicity of the Council activity discussed in topic 3, the Group recommends allowing individuals more **information** and greater access to documents and improving the **quality of legislative texts**.

The Group also feels as a general rule that, as far as possible, the actual text of the **Treaty** must be simplified to make it accessible to members of the public interested in reading and studying it. It has therefore requested an opinion from the Council Secretariat on the possibilities for simplifying and clarifying the text of the Treaty without altering its content, as a preliminary exercise to the Conference which is to decide on reforming it.

Some members have mentioned the possibility of holding a **referendum** at Union level on certain matters of general interest, as a transparency measure which could also help to strengthen the idea of "belonging".

B. Areas for reflection

- Does European citizenship undermine or help to reinforce the national identity of Europeans? Study in depth and prepare an explanation in clear language which citizens can understand.
- Content of the rights attaching to European citizenship: identification of options.
- The Union and the European Convention on Human Rights: options.
- Transparency: adoption of a position on the preliminary report of the Council General Secretariat on possible consolidation of the Treaty.
- Possible new initiatives for a better understanding of the views of European citizens on Community construction.
- European referendum? Under what circumstances?

TOPIC 5. THE CITIZEN AND THE UNION – PART 2 AN AREA OF FREEDOM AND SECURITY

A. Basic points

- The Group is in agreement that its report must give priority attention to strengthening the internal security of the Union, as stipulated by the Cannes European Council.
- The Group considers that there is a clear demand on the part of the public for **greater security** for citizens within the Union in the face of phenomena such as economically-motivated organized crime (drug trafficking, etc.) and terrorism. Those members believe that, in the context of a single market and an open society, the State, acting in isolation, cannot fully guarantee the internal security of its citizens since such phenomena clearly have an international dimension. For those members there is an obvious contradiction between the supranational organization of such crime and the national character of the main instruments used to combat it, which explains their limited effectiveness.
- Citizens are also calling for better handling of the challenge posed to the Union by the **growing migratory pressures** to which it is subject; here the size of the problem demands common management.
- The prospect of forthcoming **enlargement** brings about a qualitative change in the need to guarantee the internal security of citizens of the Union more effectively.
- In view of these initial considerations, the Group has analysed the provisions and operation of **Title VI of the Treaty**:

All members are in agreement that the magnitude of the challenges is not matched by the **results** achieved in response to them. They differ, however, in their analysis of the **causes** of this lack of results and on the **method** of achieving further progress.

- * A large majority feels that the provisions of this Title are inappropriate. They see its operation as clearly defective, as stated in the reports by the Commission and the European Parliament on the operation of the Treaty. Like the Commission and the European Parliament, they feel that **objectives** (inasmuch as Article K.1 simply mentions areas of common interest) and a **timetable** for achieving them are lacking. They also consider its **instruments** to be inappropriate, in that they seem to have been copied from Title V, although the subject matter is very different: external policy rarely involves laying down laws and requires flexibility of action, whereas matters relating to the security of citizens require legal protection and therefore a legislative framework. A true institutional driving **mechanism** is lacking.

In the view of these members, it is necessary to **bring** this Title of the Treaty, at least partially, **into the Community sphere**, bringing the institutions into play, using the Community's legislative instruments (Commission's right of initiative, control by the EP and the Court of Justice, better use of the majority rule, without prejudice to the continued use of unanimity – at least for a certain length of time – in particularly sensitive areas) and going beyond the current phase of intergovernmental cooperation. Many of those members identify **matters relating to aliens** as an area which must be brought within the Community sphere: immigration policy, asylum (although not of course between Union citizens), controls at external frontiers, etc. The areas of police cooperation and judicial cooperation on both civil and criminal matters must be developed, in their view, by means of closer intergovernmental cooperation, at least for a certain period. Meanwhile, political crimes should no longer be allowed as an exception to the rules on extradition between Member States of the European Union. Similarly, the procedure provided for in Article K.9 ("passerelle") should be simplified.

- * Some members, on the other hand, attribute the imperfections of this Title solely to the lack of adequate experience and political will and to over-complex structures, but believe that separation of the pillars is essential for intergovernmental management of matters linked with national sovereignty. They do not, however, rule out methods of strengthening cooperation, such as the abolition of one or more of the current group layers.

The Group is in agreement regarding this last requirement and some members believe there is a need to strengthen the Council General Secretariat in these areas.

- Lastly, the Group considered whether to bring **Schengen** into the *acquis communautaire* by means of a variable geometry arrangement, of the "opting in" kind, which did not meet with any opposition in principle at this stage.

B. Areas for reflection

- Give further consideration to a clearer definition of the objectives of Title VI.
- Pinpoint more precisely options for the necessary development of public security within the Union:

Flesh out the option of bringing part of this area under the Community. How much ought to be dealt with by means of common policies? What should be the role of the institutions? How should specific procedures for this Title be differentiated within the Community: right of initiative, decision-making arrangements, role of the European Parliament and the Court? How should greater cooperation be achieved in areas not brought under common policies (police and judicial cooperation, areas to be addressed as a matter of priority)? Is it possible to distinguish between treatment of arrangements for aliens and the external side of these matters generally, to be brought within a Community framework, and that of the internal aspects, where greater intergovernmental cooperation would be the rule?

Flesh out the alternative option: Leave things as they stand? Any progress which would make the intergovernmental method more effective? Any scope for overcoming the risk of paralysis arising from the system of conventions negotiated by consensus and subject to ratification in each Member State? More flexible "passerelles"? Less complex management arrangements for Title VI? Find common ground between the two options.

- A Community statute for all legally resident third-country nationals? Are a common immigration policy and common handling of the external side of Title VI generally to be regarded as a prerequisite?

TOPIC 6. UNION FOREIGN AND SECURITY POLICY

PART 1. THE UNION'S EXTERNAL ACTION

A. Basic points

- The Group points out that the new situation in Europe poses **new challenges** for the Union's external dimension and it acknowledges **shortcomings** in the operation of Title V and problems of a lack of overall consistency in coping with the new challenges. Where the Group is not agreed, on the other hand, is on a common assessment of the causes of such shortcomings and problems. A few consider that this is due merely to teething troubles with a novel part of the Treaty, others that political will is lacking and attitudes hidebound, while the majority also see a structural problem of a mismatch between ambitious, albeit somewhat vague, objectives and inadequate instruments for achieving them.
- The decision on the next **enlargement** is a response to the new external challenges but it in turn poses a challenge to the Union. Enlargement will make for political stability and security for the people of Europe but it entails a qualitative change for the Union's internal and external aspects, which needs to be prepared for by clarifying objectives and strengthening instruments for the Union's external action.
- As regards the **objectives** of external action, some members have highlighted the need for greater **consistency** in all aspects of external action so that the Union's political weight matches its economic strength. Some members have pointed here to a readily discernible distinction between two kinds of Union external action: one working well and the other not. The first is the external dimension of Community policies and the second the CFSP. Many members see the real problem with the CFSP as lying in the separation between the Union's external political dimension and its external economic dimension. They have emphasized the lack of consistency and coordination between the first and second pillars and the paradoxical situation whereby matters of great moment with far-reaching economic implications, both for the Member States and for their citizens are decided successfully by a qualified majority under the first pillar, whereas others of less substance and consequence

require a consensus under the CFSP. There are those who point to the risk of spillover from the second pillar to the first, which could lead to a shrinkage of the *acquis*. In view of the interdependent and global nature of the present-day world, many members call for a comprehensive approach to overcome inconsistencies between the external dimension of the Community and foreign policy proper. Some consider that a logical solution would be to dispense with the pillar structure, but retain specific proposal, decision-making and implementation procedures within the Community pillar (following the EMU example). Others see a solution in greater cooperation between pillars, with the pillar structure retained. That need for greater consistency should also inform preparations for Council proceedings, with a clearer relationship between Coreper and the Political Committee.

- Some members seek a more specific statement of the Union's **fundamental interests**, as referred to in Article J.1(2), and it has been proposed that they be defined by geographical areas. Other members think the objectives should go into ideas such as solidarity between Member States and the upholding and defence of human rights and democracy.
- As regards **instruments**, first of all several members think the Union should be given **international legal personality**.
- The Group is agreed that an **analysis, forecasting, planning and proposal unit** or body should be set up for the common foreign policy. In principle, reform of the Treaties would not necessarily be required in order to set one up.

As regards its **composition and location**, there are basically two options under discussion, both of which involve embodiment of the CFSP in the figurehead of a "Mr or Ms CFSP":

- * Some advocate locating the unit at the General Secretariat of the Council, with its facilities strengthened and the Secretary-General raised in rank to ministerial level. Those in favour of this option point to the merit of abiding by the present institutional framework by not creating any new bodies, and highlight the desirability of placing the unit at the Council on account of the central role played by States within the CFSP.
- * The other option is to create a new figure, a High Permanent Representative for CFSP, appointed by the European Council,

ranking at least on a par with a Minister, to conduct Union's external political affairs and represent it. That person would chair the Political Committee and would be in charge of the planning and analysis unit. In practice, the unit would be a "tripartite" body, made up of the Member States, the Council and the Commission. (The presence of WEU representatives has even been suggested). However, this arrangement needs to be worked out in more detail since, as it stands, it does not ensure consistency between external Community policy and the CFSP and may give rise to a dichotomy or clash of responsibilities with the Council Presidency.

In any event, the majority of the Group think the Commission should be involved with planning and analysis work in the interests of the necessary consistency in all aspects of the Union's external action. A majority of the Group also oppose the creation of a new institution to handle the CFSP, preferring to look into options within the present institutional framework.

One question to be settled is whether the unit, however composed, should or should not have a **dual role**: analysis and planning, on the one hand, and initiative-taking, on the other. The difficulty of separating analysis, planning and proposal in the CFSP is a factor in favour of assigning a right of initiative. The factor which militates against it is the possible risk of confusion of responsibilities, which can easily be avoided if a "tripartite" arrangement is adopted.

- On **decision-making procedures**, some see the fact that qualified-majority voting is not used as one of the causes of the CFSP's ineffectiveness. Others take the view that consensus and a veto are essential in matters which lie so close to the heart of national sovereignty. As intermediate options, the Group explored ad hoc arrangements such as "consensus bar one", a "super-qualified majority" or "positive abstention" in order to overcome the risk of deadlock in a field in which the Union needs to be able to take decisions.
- As regards **implementation** of the CFSP, two possible approaches are identified in the Group, the first being to explore arrangements maintaining the central role of the **Presidency** in external representation and implementation of the CFSP. This is the present approach under the Treaty, although enlargement and the growing external responsibilities of the Union make it advisable, if that approach is to

continue, to consider ways of giving the Presidency a higher profile and greater permanency. Two possibilities are conceivable here: a team Presidency (see topic 3) and/or an elected presidency. The alternative approach is to assign such implementation tasks to an **ad hoc body** ("Mr or Ms CFSP"), whether the High Representative for CFSP mentioned earlier or any other arrangement in which the Member States and institutions have confidence. Some have pointed out that there is already a figure enjoying such confidence, namely the President of the Commission, who is appointed by the European Council and approved by the European Parliament.

- As regards the **financing** of the CFSP, there is a consensus in the Group on the need to establish specific procedures ensuring availability of the necessary funds for rapid action when required. In any event, solidarity in general and financial solidarity in particular should underlie financing arrangements and therefore be applicable to possible cases of "positive abstention" or "opting out". The view is taken by a broad majority that the CFSP should be financed out of the Community budget.
- Role of the **European Parliament**: the majority view is that the EP cannot play the same role in this field as for Community legislation. Some members think it advisable to build on the present Treaty provisions, centring on the European Parliament's right to be informed in this respect. Others think it necessary to go further and involve Parliament more closely in determining the broad lines of the CFSP and in handling the Union's external political affairs by means of arrangements ensuring confidentiality. A few members are reluctant to see any increase in Parliament's role and several point out that the EP should not under any circumstances be given powers not even enjoyed by national parliaments in an area in which governments conduct their foreign policy without prior authorization by parliament, except in cases distinguished by their extreme gravity.

B. Areas for reflection

- Give further consideration to consistency in the Union's external action: pillar structure or merely specific procedures?
- Look into the question of legal personality for the Union.

- Determine in greater depth the CFSP's objectives and fundamental interests.
- Instruments: structural options to fulfil the role of analysis, planning and preparation for the CFSP. Decision-making procedures: various ad hoc options. Implementation: role of the Presidency, of the institutions and of ad hoc bodies.
- Financing: options.
- Role of the European Parliament.
- Consideration of greater interinstitutional cooperation: The point is that at each stage of the framing of the CFSP (formulation, decision-making and implementation) it is necessary to identify where the seat of power lies. Unlike the Community legislative process, for the CFSP it is not easy to draw a clear distinction between those three stages and it is therefore pointless to adopt a design based on a **consecutive** division of labour with the proposal function falling to the Commission, decision-making to the Council and implementation to both. That fact should prompt the Group to seek solutions.

TOPIC 7. UNION FOREIGN AND SECURITY POLICY
PART 2. SECURITY AND DEFENCE

A. Basic points

- The security and defence challenges in Europe and its immediate vicinity and the global challenges to European territorial integrity cannot be met by Member States of the Union in isolation, nor even by those with the strongest military forces. They therefore require a **collective response**.
- The end of the cold war has meant changes in the issues facing defence. Nowadays, together with the conventional aspect of defence as a safeguard for **territorial integrity**, increasing significance attaches to a **new aspect** centring around internal civil strife, protection of minorities, human rights violations, ecological disaster risks, irresponsible use of new technology, etc.
- The next **enlargement** will bring a quantitative and qualitative change in the Union's security and defence. It is a response motivated by the search for greater stability and security, but it will also constitute a challenge requiring the establishment of relationships of mutual stability at the new borders of the enlarged Union.
- As regards **territorial defence**, the Group is agreed on the vital importance of **NATO's** role. The message must be pressed home to our allies that the Atlantic Alliance is and will remain an essential component of collective security in Europe. It is for the **WEU** to develop a **European security and defence identity** progressively as the European pillar of NATO. That European defence identity also needs to be able to respond to the new aspect of defence through the tasks defined in the Petersberg Declaration.
- The principle of **national sovereignty** remains the basic point of reference in defence matters and so **consensus** has to be the rule in this field. However, some flexibility should be brought to bear on that principle by applying the rule that no-one can be obliged to take part in military action by the Union, nor can anyone prevent such action by a majority group of Member States. In that event, any States not participating should show solidarity with the action taken, both financially and politically.

- EU-WEU relations

A minority school of thought in the Group holds continued autonomy for the WEU to be the only option possible for the foreseeable future since it allows defence matters to be kept clearly within the intergovernmental sphere, avoids weakening the commitments entered into within the WEU and NATO (Article V guarantee) and enables full allowance to be made for the diversity of national positions and for the mismatch between Union and WEU membership. Such continued autonomy for the WEU in relation to the Union should be accompanied by greater complementarity between the two politically (parallel EU-WEU summits), administratively (harmonization of Presidencies and Secretariats) and operationally (through the strengthening of the WEU's capabilities). (It should be pointed out, moreover, that such complementarity is endorsed by a majority of the personal representatives).

A number of members, chiefly representing countries which are not members of the WEU, do not think a merger feasible, at any rate not in the foreseeable future. The reason for this is that their countries' special position does not allow them to take on all of the obligations under the Brussels Treaty, in particular the automatic territorial guarantee in Article V. On the other hand, they do seem prepared to give favourable consideration to participation in the Petersberg tasks.

Lastly, a majority of members see the way to the establishment of a genuine European security and defence identity as lying in the progressive integration of the WEU into the EU with its two potential aspects: territorial defence under the Article V guarantee and the new aspect of defence (Petersberg tasks). Such a merger follows logically from the Treaty and is the only means of achieving consistency between political union, foreign policy and defence. In their view, the progressive development of a defence dimension to the Union with a mutual assistance guarantee would reflect all-round solidarity between Union members, which cannot be confined to the economic sphere alone. With that prospect of eventual merger between the EU and the WEU in view, some members see a need to establish a timetable with a target date for full merger, while others think it sufficient to set a date for discussing a final merger in future and determining arrangements for it. For those members in favour of merger it is important for the Conference to establish legal and political links between the two organizations as well as a minimum set of **operational resources** enabling the WEU to act as the EU's military arm in the field of crisis management, crisis prevention and peace-keeping.

Some members have mooted intermediate arrangements between autonomy and integration, at least until such time as integration is achieved, through the creation of a bond making the WEU subordinate to the EU, either by amending Article J.4(2) of the Treaty or by means of a binding agreement whereby the WEU would implement EU decisions with defence implications. It has also been suggested that Petersberg task matters be included in the Treaty, while leaving the question of territorial defence for an annexed Protocol. In this way it would be possible to make allowance, in the immediate future, for the special situation of certain States, which would thus have a temporary derogation or an "opt-in", which some would like to see apply for a pre-established period.

- Lastly, the question of cooperation regarding **arms production and trade** has been touched on and there has even been a suggestion that Article 223 of the EC Treaty be amended. The Group has not gone into this in any detail.

B. Areas for reflection

- Give further consideration to options for EU-WEU relations, in parallel with discussions under way in the WEU.
- Look at solutions for EU decision-making procedures in security and defence matters: the need to reconcile respect for consensus with the Union's ability to act. Positive abstention? Different arrangements for solidarity, in the light of internal limitations?
- Look at the Union's lack of symmetry in security and defence matters. A variable geometry arrangement in this field? Where must flexibility stop if it is to be compatible with collective security and the consistency of the European design?
- Give further thought to a possible amendment of Article 223 and, in general, to all matters concerning a possible internal market for arms.

TOPIC 8: INSTRUMENTS AVAILABLE TO THE UNION

ACTS

A. Basic points

- Hierarchy of acts

In accordance with the brief to examine the classification of Community acts with a view to the possibility of establishing a hierarchy of acts, as stated in Declaration No 16 annexed to the TEU, the Group has analyzed this question and two positions have become apparent:

On the one hand, there are those who favour establishing a hierarchy of Community acts consisting of three levels: constitutional acts, legislative acts and implementing acts. This hierarchical system of classifying acts would make it possible to identify clearly "who does what" and thereby render matters simpler and more transparent. The functions of each Institution would be clarified by such a system of Community Law sources: Treaties would require unanimity on the part of the Council and ratification by national Parliaments, while legislative acts would be adopted on a Commission proposal as a co-decision involving both the Council and the Parliament, and the Commission would be responsible for implementing provisions under Council and Parliament supervision.

On the other hand, there are those who are against incorporating this system in the Treaty, not because it is illogical but because they feel either that it will introduce an unnecessary complication or that it is based on the idea of separation of powers within a State and they do not want the Union to be subject to that kind of organization of powers. They maintain that the Union is "sui generis" and that the present system of Community Law sources (Regulations, Directives, Decisions and Recommendations) is better suited to its characteristics. They also think that there are other ways of clarifying the functions of each of the Institutions while maintaining the balance between them. In this context, a return to the original spirit of the Treaty and use of the Directive which is more in line with its actual purpose would bring clarification.

- **Implementation of acts: (Committee procedure)**

Those in favour of a hierarchy of acts make the point that, if adopted, it would resolve this issue which the interinstitutional "modus vivendi" of 20 December 1994 identified as one to be dealt with by the Conference.

In any case, one trend in the Group is to abolish the present committee procedure system, which is already confused and complicated and will not survive beyond the next enlargement.

Those taking the opposing view, which is to maintain the 1987 Committee Procedure Decision, stress that the Council is not, as some would have it, the States' Chamber but the main Institution of the Union with legislative and executive powers which must be preserved. They think that abolishing the committee procedure and transferring executive powers to the Commission would alter the balance between the Institutions.

In view of these two opposing positions, some members of the Group favour a compromise approach and recommend simplifying the committee procedure by replacing it with a single procedure under which it would be up to the Commission, in consultation with national experts, to decide on implementing measures under the supervision of the Council and the EP. in application of ordinary legislative procedures. It has been pointed out in this connection that opposition by three Member States within the Council should be sufficient to reject any given implementing measure.

- **Monitoring the implementation of acts**

Some members want the Commission to make full use of the powers conferred upon it by Article 171 regarding penalties for failure to comply with Community law.

There is a suggestion that the EP's powers in this area should be strengthened by means of Investigative Committees which could convene the Authorities of the Member States.

Other members propose allowing private individuals more effective means of action to appeal against failure to comply with Community legislation.

– **Distribution of powers and subsidiarity**

- * **Catalogue of powers and Article 235:** The Group is not in favour of incorporating a catalogue of the Union's powers in the Treaty and would prefer to maintain the system at present in the Treaty, which establishes the legal basis for the Community's actions and policies in each individual case. It is therefore also in favour of maintaining Article 235 as the instrument for dealing with the changing nature of the Union. Some members have suggested incorporating the EP assent requirement in Article 235.
- * **Subsidiarity:** The Group stresses the importance of the principle of subsidiarity enshrined in the second paragraph of Article 3b of the Treaty and confirmed by an Interinstitutional Agreement. Three positions have emerged within the Group on how this principle should be implemented:

Most of the members think that subsidiarity is above all a behavioural dictate. Two abuses need to be avoided when applying it: allowing it to remain an abstract principle without practical effect although the subject or the circumstances may require specific action by the Union, or turning it into an instrument for systematically reducing the Union's powers. If these are not avoided, either the Union would not be able to act or the result would be destruction of the *acquis communautaire*, thereby threatening not only the validity of the Community of Law but also, by extension, the maintenance of the Single Market and other common policies. These members therefore feel that the subsidiarity be applied in such a way as to provide guidance for the proper exercise of the powers shared out between the Community and the Member States, thereby eliminating abuse in either direction. For these reasons, those who adopt this view do not feel it is advisable to alter either the texts or the practice in this area.

Some Member States, while agreeing with the above definition of subsidiarity and the idea that Article 3b should not be amended, nevertheless think it necessary to exercise more effective control over application of this principle. They therefore propose going further than the present system of "ex-ante" control by the Commission or "ex-post" control by the Court of Justice and introducing political supervision by the national Parliaments or even through a new procedure for appealing to the Court. Other Members propose establishing

a new type of "ex-ante" control, either by incorporating a general "sunset clause" in Commission proposals or by obliging the Commission to consult a "High-level Parliamentary Advisory Committee" consisting of Members of the National Parliaments regarding the correct application of the principle of subsidiarity each time legislation is proposed. The first of these practical suggestions has prompted doubts on the part of many members, who point out that the best Community acts are not those which are least discussed and think that such a limitation clause would affect the balance between the Institutions in that it would weaken the Commission's prerogative of proposal. The point needs to be looked at in greater detail. The second suggestion has not yet been discussed by the Group.

Finally, one Member of the Group has suggested that the Edinburgh Declaration should be given the status of a Protocol and that a provision should be included in the Treaty to limit "ex-ante" any regulatory excesses and provide for more systematic use of clauses which expressly limit Community powers, as is at present the case with education, health and cultural affairs.

- * The request by the **Committee of the Regions** to have active legal capacity to refer violations of the principle of subsidiarity within each Member State to the Court of Justice was unanimously opposed by the Group, precisely because the principle of subsidiarity means that questions relating to internal powers should be dealt with at national level within each Member State.
- * **Subsidiarity and sufficient means:** It has been pointed out that there is a need to relate the application of the principle of subsidiarity to that of the principle of sufficient means. The latter should not be interpreted as a mechanism which triggers automatic financing by the Community of every Community decision, but as meaning that before making any proposals, the Commission should apply the criterion of sufficient means in order to ascertain whether the decision proposed can rely upon the financing necessary to achieve its economic effects from the Member States rather than from the Community budget. When a decision requires unanimity, the Commission need not take the place of each and all of the Member States in their estimates. On the other hand, when a decision is to be taken by a qualified majority, the proposal should not be put forward if it is not possible to provide finance at Community level to deal with the effects which may result for those Member States which are in danger of finding themselves in a minority and are not able to oppose the majority decision (see below under "resources").

B. Areas for reflection

- In the section on challenges to be met, the Group agrees on the importance of maintaining the Community of Law as the main guarantee of Community integration and therefore of peace and prosperity in our countries. The Group is therefore unanimous in wanting to maintain and develop the *acquis communautaire* and preserve the single institutional framework. There should be a more detailed examination of the way acts should be handled in the section on the instruments available to the Union with a view to this common objective.
- Hierarchy of acts: identify the options.
- Committee procedure: identify the options.
- Monitoring implementation: further analyze options and methods.
- Subsidiarity: identify the options for practical procedures to ensure correct application of subsidiarity: "ex-post" and "ex-ante" procedures.

RESOURCES

A. Basic points

- The 1993 Interinstitutional Agreement on budgetary discipline and improvements of the budgetary procedure provides for re-examination of these questions at the 1996 IGC. Among these questions, the Group has analyzed the system of own resources, the possibility of a fifth resource, the multiannual financing programme, the budgetary procedure and the principle of necessary means (see above also).

- **Own resources:**

Most of the members were opposed in principle to parallel negotiations by the 1996 IGC of the next Financial Perspectives Agreement. They point out that there is already another session planned for 1999, the year in which the present Financial Agreement expires. All aspects of the system of resources should be examined at that time. Any other course of action would unnecessarily complicate the agenda for the 1996 Conference and run the risk of delaying the agenda to be pursued for

Europe when the Conference has finished. The Community has always adopted a stage-by-stage approach and accumulating tasks for the 1996 IGC would lead to a general debate about the future of Europe which would prove unmanageable.

Some members, however, point out the connection between the Conference, the Financial Agreement and enlargement. They want to know "who will be paying for what" before going ahead not only with enlargement but also with ratification of the Conference itself.

Leaving aside the question of the right moment for discussion of the system of own resources, some members already agree on the need to revise the system of contributions to Community budget revenue, either by establishing a new system of revenue which takes account of the relative prosperity of the various Member States, or by reducing the lack of consistency between the EP's powers with regard to expenditure and its present very limited role in revenue arrangements, or by establishing a genuine Community system for obtaining resources, i.e. a system of taxes which will supersede the present provision of national contributions. None of these proposals has found unanimous favour with the Group.

– **Multiannual financial programming:**

There is some support for incorporating this aspect in the Treaty. A clear majority would prefer to keep it outside the main framework in the more flexible domain of interinstitutional agreements.

– **Budgetary procedure:**

In addition to the fairly general wish to **simplify the procedure** (abolition of one of the readings), the proposal made by some members to reduce the lack of consistency between the EP's budget powers with regard to expenditure and those with regard to revenue has already been mentioned. In the case of expenditure, some members propose simplifying the procedure by removing the distinction between **compulsory and non-compulsory expenditure**. Most members, are, however, against removing the CE/NCE distinction. An intermediate position on improving the balance between the budget powers of the Council and of the Parliament would involve giving the latter some power to intervene in CE, perhaps in the form of a percentage.

– **Principle of sufficient means:**

As already indicated in connection with the principle of subsidiarity, some members think that application of this principle should lead to moderation in the production of legislative proposals by the Commission where their implementation might impose on a Member State an economic burden for which no funds have been allocated. Some members, however, feel that this principle is sufficiently enshrined in Article F(3), although the location of the Article means that its contents are not legally actionable. Others have mentioned Article 201a although that Article refers only to the Community budget. A few members have pointed out that strengthening this principle would make it easier to accept the move from unanimity to a qualified majority on certain sensitive aspects of secondary legislation, particularly those which involve a high financial cost for the Member States.

– **Monitoring expenditure:**

A number of suggestions have been made here, e.g. strengthening the role of the Court of Auditors in the fight against fraud and establishing closer cooperation with national audit bodies. There was also a suggestion that the Ecofin and Budget Council should have more control over the "spending" Councils, in particular the Agriculture Council, and the Commission should regularly evaluate the main items of expenditure (agriculture, structural funds).

B. Areas for reflection

- More detailed discussion of a possible joint proposal by the Group on how to pursue the agenda for Europe: 1996 IGC, Financial Agreement, enlargement – consecutive or simultaneous treatment? (see TOPIC 1 "Challenges, Principles and Objectives").
- Should the Group discuss guidelines for negotiating reform of the system of own resources in greater detail?
- Budgetary procedure: role of the European Parliament. Identify the options.
- Principle of sufficient means: consider the possibility of strengthening this point in the Treaty together with "ex-ante" procedures for practical application.

POLICIES

A. Basic points

- The general feeling within the Group is that the Community should try to do not **more** but **better**.
- Concerning **EMU**, the Group thinks that there is no reason to reconsider either the criteria or the timetable for a single currency. The commitment is one agreed on by all and ratified by the national Parliaments and it is in the process of being implemented in accordance with what was agreed. Some members simply raise the possibility of supplementing the existing content so that there is a proper balance between the development of monetary integration and the corresponding economic and social integration of the Union.
- The Group stresses the urgent need to meet the challenge of **job creation**, in response to a pressing demand from Europe's citizens.

Most of the members also think that the Union must strengthen the social content of the Treaty. Although the Union sees no miraculous cure for unemployment, it cannot remain inactive in the face of this serious problem since its task is to coordinate and mobilize efforts in a common direction. On the one hand, therefore, in addition to including economic and social rights in the text, the Treaty should incorporate practical provisions geared to maintaining a high level of employment in the Union. These members also propose rewording Article 103 to incorporate the idea of giving priority to employment. As regards the organization and working methods of the Institutions, they propose setting up a High-Level Committee on Employment to ensure permanent supervision of the impact of Community policies on job creation; such supervision should moreover be one of the essential tasks of the Employment and Ecofin Councils of Ministers. On the other hand, a considerable majority thinks it urgent to incorporate the **Social Protocol** in the Treaty. It has also been suggested that a "social acceptability clause" be inserted in the Treaty obliging the Commission to evaluate its proposals in the light of social objectives.

One member rejects this line of argument outright. He thinks that job creation is achieved not by more Community regulation but by less. He feels that the real employment challenge comes from the global economy and that the Community's response should be deregulation and emphasis on greater competitiveness.

The Group agrees that employment is not a sectoral policy but an objective which should be strengthened and also the result of a global policy. It also points out that the Union's ability to achieve this objective will depend to a large extent on the general public's acceptance of the process and support for it.

- **Environment.** The Group thinks priority should be given to taking account of environmental aspects of Community policies. Some members have made the following practical proposals: incorporate in the Treaty the agreements subsequently reached at the Rio Conference so that Community policies are geared to a sustainable development model; reference has also been made to the possibility of including the environment in Article 36 (restrictions on imports) and Article 39 (objectives of the common agricultural policy) of the Treaty and to considering extending the possibilities offered to the Member States by Article 100a(4) for laying down higher national standards; more involvement of the EP through co-decisions on these matters is also suggested. These are matters to be looked at more closely.

The Group stresses the pressure being brought by public opinion for greater respect for the limits imposed by the ecosystem.

Some members have pointed to the need to state more clearly the priority objectives of the Union's environmental policy, which should be consistent with other sectoral policies, e.g. agriculture, etc., in terms of conserving environment.

A few members have pointed out the limits which should be imposed by application of the principle of sufficient means if the exceptions currently decided on unanimously were to be decided on by a qualified majority. He also pointed out the quasi-constitutional nature of such exceptions in that they affect highly sensitive areas concerning the sovereignty of the Member States or have major financial implications at national level.

– **New policies**

In accordance with Declaration No 1 annexed to the TEU, the Group has analyzed the possibility of including the spheres of **energy, tourism and civil protection** in common policies, and has reached the conclusion that it would probably be more appropriate in these spheres simply to envisage greater cooperation between the Member States. One member rejects even this possibility and also suggests deleting point (t) from Article 3.

Some members think it necessary to incorporate a provision in the Treaty dealing specifically with support for the **outermost regions** of Member States of the Union.

Some members think it would be appropriate to introduce a provision relating to **public service**, which would include inter alia a definition of universal service.

One member has suggested extending **Article 113 to cover services**.

Other members have reiterated the need to revise **Article 223** on the production of or trade in arms (see Topic 7).

Finally, some members have noted that maintaining Article 235 will make it possible, when appropriate, to embark on new spheres of Community action while complying with the limits of the Treaty.

– **Impact of enlargement**

Under each heading, the Group has analyzed the effect of enlargement, as the Union's response to the new challenges arising facing the continent of Europe, and its impact on the institutional system, the internal and external security of the Union, the need to preserve and strengthen the Community of Law, the new dimension created for the Union's resources, etc. It is, however, clear that enlargement will also have a major impact on the content of the Community's policies.

Above all, the Group agrees in stressing that enlargement must take place and must take place successfully. To avoid enlargement or have it miscarry would create a serious crisis not only in the applicant countries but also in the present Union.

Who will be acceding to the Union when enlargement takes place? The Group thinks that accession should be open to all applicants wishing to accede who comply with the criteria laid down at the Copenhagen European Council. Each case will be dealt with on its own merits. However, the reforms presently being studied by the Group are those necessary for the accession of all the countries of Central and Eastern Europe, Malta, Cyprus and the Baltic States.

When? Once the Conference has ended, negotiations will be launched with all applicants satisfying the criteria referred to above.

How? The next enlargement will have to combine a global approach to meet common demands with flexible adjustment structures which make it possible in each case to adopt an appropriate time scale for the process of full incorporation of applicants. The idea of a time scale, which is a familiar one in Community thinking, will also make it possible to alleviate the burden of enlargement on resources and on the content of the common policies pursued by the present Union.

The Group has not at present reached a united position on the question of whether common policies should or should not be revised in the light of enlargement and if so what the scope of such revision should be. This is not in fact one of the Group's tasks. There is, however, agreement on the need to maintain the *acquis communautaire* and build on it (Articles B and N) as a basic principle for the present Member States and as a major guide for the applicant countries. This should not prevent flexible application of the *acquis* by the applicant countries.

In any case, most members of the Group are in favour of separating the Conference exercise from the study of the impact of enlargement in relation to possible revision of common policies, for the following three reasons: firstly, any revision of policies does not require amendment of their respective legal bases; secondly, the effect of enlargement on common policies will not be immediate but will be spread over time in accordance with the only enlargement model which seems possible for the majority of the next set of applicants; finally, it is not appropriate to combine two such politically sensitive exercises.

This has not prevented some members of the Group from stressing the link between the process of ratification of the Conference and discussion of the effects of enlargement on the various policies and on the financing of the Union.

B. Areas for reflection

- Special consideration should be given to guidelines on employment and the environment, identifying the options for possible reforms of the Treaty, organizational proposals and working methods which could be implemented before the Conference.
- New policies: identify the most useful options.
- The impact of enlargement on common policies: To be dealt with after the Conference or in parallel with it?
