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**BRIEFING
ON
THE IGC AND TRANSPARENCY**

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These Briefings have been drafted by the Parliament Secretariat Task Force on the Intergovernmental Conference. Their purpose is to gather together, in an organized, summary form, the proposals and suggestions which the authorities in the Member States, the Union's institutions and specialist commentators have put forward on the issues likely to be on the IGC/96 agenda.

Briefings will be updated as negotiations proceed.

Already out:

- 1 The Court of Justice**
- 2 The Commission**
- 3 The Court of Auditors, ESC and COR**
- 4 Differentiated integration.**
- 5 The common foreign and security policy**
- 6 The role of the national parliaments**
- 7 The hierarchy of Community acts**
- 8 Codecision procedure**
- 9 CJHA**
- 10 European citizenship**
- 11 WEU, security and defence**
- 12 Public services**
- 13 Social policy**
- 14 The European Parliament**
- 15 The European Council**
- 16 The Council of the European Union**
- 17 The budget and the IGC**

THE IGC AND TRANSPARENCY

SUMMARY

When the Maastricht Treaty was being drawn up, and particularly when it was being ratified by the national parliaments, the question of the openness of the decision-making process and the readability of the Treaties was raised in many countries.

It is therefore not surprising that this question constitutes one of the issues which is central to discussion of revision of the Treaty, particularly in countries with a very strong tradition of openness in public affairs.

That is why Denmark, Finland, Sweden, the Netherlands and Ireland, for example, have prepared proposals which seek greater openness and which frequently concentrate on openness in the work of the Council.

Certain other countries have linked transparency to the streamlining of decision-making procedures (replacing the 22 existing procedures with 3 - Belgium) or with respect for subsidiarity (France, United Kingdom and Italy in particular).

However, while nearly everyone agrees what the problem is (lack of transparency and readability), the proposals advanced in negotiations are still often very general, as the attached note shows.

THE IGC AND TRANSPARENCY

1. POSITIONS OF THE UNION INSTITUTIONS

EUROPEAN PARLIAMENT

'Unification of the Treaty would make its structure much clearer and more logical. In addition, however, the Treaty should be further simplified and made more inspiring for its citizens:

- (i) The existing preamble of the Treaty should be rewritten in more inspiring language, and the provisions concerning citizens' rights should be placed at the beginning of the Treaty.
- (ii) The Treaty should provide for a separation between the provisions covering the Institutions and those covering the content of policies.
- (iii) Out-of-date Treaty articles should be deleted.'

'The principle of openness should be explicitly stated in the Treaty, and detailed implementing mechanisms should be established (where the Council is acting in its legislative capacity, its proceedings should be public and its agenda binding). Public access to EU documents should be greatly improved.

Drafts and proposals should be accessible to the public as soon as they are adopted or handed over to other bodies, interested organizations or individuals, or published wholly or partly by others.

All meetings on proposed legal acts are to be held in public unless a specific and duly justified exception is decided by a two-thirds majority.

All documents should be accessible to the public unless exceptions are decided by a two-thirds majority in the responsible body.'

(Extracts from the Bourlanges/Martin resolution)

COMMISSION

More transparency

'A Union that is closer to the people has to be a Union where decisions are easier to comprehend, whose actions are better justified, whose responsibilities are clearer, and whose legislation is more accessible.

The principle of subsidiarity has been explicitly set out in the Treaty, with the aim of reinforcing the legitimacy of acts adopted by the Union as well as clarifying the exercise of powers as between the Union and the Member States.

At the same time the Treaty requires the institutions themselves to become more transparent and more accessible.

This desire for transparency and accessibility raises the question of the comprehensibility of the Treaty itself'.

'The Commission has decided to publish its work programme, its legislative programme and certain of its proposals and to step up its consultation processes.

It publishes its work programme and legislative programme in the Official Journal. Its legislative programme indicates what consolidation exercises are planned and what future legislative proposals might give rise to extended consultations.

The Commission regularly consults interested circles by means of Green and White Papers.'

'Simplifying Community and national legislation is designed to make the texts more accessible and easier to understand. Measures taken to modernize, simplify and streamline Community legislation fall into four categories:

- recasting legislation - bringing several separate instruments into one while also making amendments on matters of substance;
- simplification - repealing obsolete, superfluous or unduly detailed provisions;
- consolidation - bringing several existing instruments and amendments to them together in a single instrument, without changing the substance;
- drafting improvements.³

'Access to the institutions' documents is a vital means of increasing transparency and stimulating dialogue.'

'Of the 260 requests received by the Commission, 53.7% have been accepted, 17.9% have been rejected and 28.4% have been treated as invalid.

'These measures are still in their infancy and it is still too early to analyse in depth their effectiveness. Nevertheless, it is clear that the principle of access to information is now undisputed. The basic instruments are in place, and a review of the code is planned after two years' experience.'

'The Union Treaty further complicated matters by adding a new structure that modifies and amplifies the earlier ones while at the same time provoking new ambiguities with provisions of the old Treaties being neither taken over nor repealed. The net result is that the Union's basic treaties are very difficult to read and understand, which is hardly likely to mobilize public opinion in their favour.

The Commission considers that, without compromising the *acquis communautaire*, the three Communities and the Union should be merged into a single entity, as should the Treaties, while a number of other instruments should also be consolidated.'

Overall assessment

'Openness and transparency are designed to help the public to grasp the decision-making process and require that Community legislation be made more comprehensible.

It is too early to judge the effectiveness of the tools provided. As things stand, the public's expectations are far from satisfied. A great deal remains to be done, especially in the Council, which must be more open in its legislative function. The Community's efforts will be to no avail, however, if the national authorities for their part do not ensure transparency in the transposal and application of Community legislation.

Transparency is particularly wanting in justice and home affairs cooperation, which affects the Union's internal security and closely concerns individual rights.'

(Extracts from the report on the operation
of the Treaty on European Union)

COUNCIL

In its answer to Mr Bonde's Written Question of 16 February 1995, the Council stated inter alia that:

1. it had held 21 'open' debates, particularly policy debates;
2. the record of the votes is made public in accordance with Article 7(5) of the Council's Rules of Procedure, viz.:
 - when the Council is acting as legislator within the meaning of the term given in the Annex to the Council's Rules of Procedure, unless the Council decides otherwise. This rule applies when the Council adopts a common position pursuant to Article 189b of the EC Treaty;
 - when they are cast by the members of the Council or their representatives on the Conciliation Committee set up by Article 189b of the EC Treaty;
 - when the Council acts pursuant to Titles V and VI of the Treaty on European Union by a unanimous decision taken at the request of one of its members;
 - in other cases, by Council Decision taken by simple majority at the request of one of its members.
3. furthermore, Article 15 of the Council's Rules of Procedure stipulates that common positions adopted by the Council in accordance with the procedures referred to in Articles 189b and 189c of the EC Treaty, and the reasons underlying those common positions, shall be published in the *Official Journal of the European Communities*;

4. as regards public access to Council documents, the Council adopted Decision 93/731/EC which reflects the provisions of the code of conduct concerning public access to documents. This procedure guarantees applicants a maximum period for a reply from the Council, a reasoned examination of their applications and a right of appeal in the event of the preliminary reply being negative. This procedure was invoked 70 times in 1994 (see the Council report on the functioning of the Treaty on European Union).

At its meeting on 29 May 1995, the Council reaffirmed its determination to work towards greater transparency of its proceedings.

- (a) The outcome of votes on legislative acts will now be made public as a matter of course.
- (b) The Council will hold more frequent debates broadcast to the public ('open debates') on important matters affecting the interests of the Union or on major new legislative proposals.
- (c) The Council instructs Coreper to consider the conditions under which public access to minutes of Council meetings could be facilitated.

For this purpose, the Council is instructing Coreper to look into the establishment of a procedure which would make it possible, when each set of minutes is adopted, to determine whether the information contained in them, as described in Article 9(1) of the Council's Rules of Procedure, can be made accessible to the public and under what conditions. It also instructs Coreper to continue examining the practice of statements in the minutes in order to work out how to make better use of such statements and thereby to facilitate public access to minutes. Coreper is to report back to the Council by 1 October 1995.

REFLECTION GROUP

* Interim report by the chairman of the Reflection Group

The Group agrees that Union business should be made more accessible and intelligible for Union citizens. This is the purpose of the notion of 'transparency', which has various aspects: the principle of proximity and subsidiarity; 'who does what?' both in relations between the Union and the Member States (cf. topic 8) and in the functioning of the institutions. To this end, the Reflection Group is currently examining the possibility of simplifying and clarifying the functioning of the institutions (cf. topic 3) and recommends that the Union authorities and institutions should improve promotion, information and consultation, in particular vis-à-vis the national parliaments. The Group considers that Commission proposals should be known longer in advance and, in this connection, welcomes the practice of issuing 'Green papers' and regrets the excessively wide use of interinstitutional agreements in so far as they lack transparency. Changes in the Council's organization and working methods should take account, inter alia, of the objective of transparency. Accordingly, the Group recommends that information and

access to documents should be given to individuals and the quality of legislative texts should be improved.

The Group also considers generally that the text of the Treaty itself should be simplified as far as possible to make it accessible to any citizen who wants to examine and study it. To this end, it calls on the Secretary-General of the Council to give his views on the potential for simplifying and clarifying the text of the Treaty without changing its substance, before the Conference which will take a decision on reforming it.

Some members also raised the possibility of holding a referendum at Union level on specific questions of common interest as means of ensuring transparency, which would also permit development of the idea of belonging.

- * Following the Toledo meeting (1 July 1995), Mr Westendorp laid particular stress on the medias access to the Council's legislative work and considered that the idea of opening up the Council's work when it sat as a legislative body seemed to be gaining ground. Moreover, Mr Westendorp hoped, for the sake of transparency, that consideration would be given to the possibility of rewriting the Treaties to make them comprehensible (in the questionnaire that he traditionally sends to his colleagues before each meeting of the Group, he asked in particular how the functioning of the institutions could be made more transparent), and the Group asked the Secretary-General of the Council, Mr Trumpf, to produce this 'clean' version of the texts.

This concern to ensure clarity is shared by the European Commission and in Toledo Marcelino Oreja said that the European Commission would launch an information campaign on the functioning of the European Union.

POSITIONS ADOPTED IN THE MEMBER STATES

DENMARK Positions of the Government and Parliament

Council meetings should be public when decisions or directives are adopted. That should also apply for political discussions within the framework of the European Council. The Danes would also like all new draft directives and all initiatives of any kind to be published in the Official Journal with an explanation of the objective pursued.

For the record: Denmark supported '*The Guardian*' in its action before the Court of Justice for failure to communicate Council minutes'.

GERMANY On 21 February 1995 Mr Kinkel, the German Foreign Minister, commented on his governments main ideas for the Intergovernmental Conference:

The Intergovernmental Conference should be guided by the principle that decisions should be taken as close as possible to the citizen, according to transparent procedures and subject to democratic control. The Conference should not become a debate between technocrats behind closed doors.

BELGIUM The Belgian Government's memorandum proposes that, in order to ensure greater openness, the European Parliament's parliamentary procedures - of which there are currently too many - should be streamlined (limited to codecision, assent and consultation).

GREECE The Treaty reform must bring Europe closer to its citizens.

SPAIN In presenting its objectives to the European Parliament, the Spanish Presidency expressed the view that if the European Union was to rise to new challenges, it had to reform its institutions in such a way as to maintain the current institutional balance while at the same time guaranteeing democracy, effectiveness and the transparency of the decision-making procedure.

The Spanish Government's paper on the Intergovernmental Conference proposes considering the possibility of debates being public when the Council acts as a legislative chamber but remaining secret when it acts as an executive body.

FRANCE The question of transparency has not yet been broached in government documents.

IRELAND Ireland considers that when legislative acts are considered and adopted, the Council should be more open to the public. To this end, it proposes that the preamble or the body of the amended Treaty or an annex thereto should contain a firm reference to the importance of transparency in the functioning of the institutions. In this regard, the role of the Ombudsman could be enhanced precisely so that he could take more action to promote transparency (extension of his mandate to access to documents or appointment of a special ombudsman for information).

ITALY The Italian Government considers that the challenge of democratizing the Union requires, above all, giving the European Parliament - which is the expression of popular sovereignty - increased legislative powers exercised through streamlined procedures, limited essentially to consultation, codecision and assent. In particular, the European Parliament's power of codecision should be made more comprehensible by - as already suggested by Italy at the time of the Maastricht Treaty - a three-level hierarchy of Union acts.

With a view to ensuring greater transparency in the Union and more readable major legislation, the Italian Government proposes that the measures adopted over the last forty years should be codified in a single text and a constitutional text should be drawn up dealing with the institutions, powers, principles and fundamental rights and also, in the form of protocols, the internal market, economic and monetary union and new common policies.

The joint declaration of 15 July 1995 of the Ministers of Foreign Affairs of Germany and Italy concerning the 1996 Intergovernmental Conference states that:

The legislative procedure must be simplified and streamlined in such a way as to make it more transparent and closer to the citizen. In keeping with the principle of subsidiarity, decisions should be adopted at the closest possible level to the citizen while deregulation should be applied at both the European and national level.

So that the European Union's transparency is enhanced in the eyes of public opinion in the Member States and to make its actions more comprehensible, the Treaty should be restructured with a view to enhancing its legitimacy among citizens.

LUXEMBOURG According to the government's memorandum, since it is generally recognized that the Union's decision-making mechanisms are opaque, a special effort must be made to ensure transparency. Accordingly, decision-making processes must be made more transparent and decisions more comprehensible.

Recent experience has undoubtedly shown that more and better information must be provided. The government is determined to use all the means at its disposal to keep not only Parliament abreast but all economic agents and all citizens in general.

The government is determined to explore every avenue to enhance the Luxembourg parliament's involvement in the European decision-making process.

NETHERLANDS In the opinion of the Netherlands Government, legislation should be adopted only when strictly necessary and it should be accessible and comprehensible, with a view to conducting a transparent legislative policy. This objective should be included as a priority item on the European agenda over the coming years.

In its third memorandum on the IGC, which deals with the third pillar, the Netherlands Government regrets that the national parliaments and the public have restricted access to administrative information.

In its fourth memorandum, on the institutions, the Netherlands Government takes the view that the open management of public affairs should be established as a principle at the European level. Dealing first with public access to information, it advocates that the European Union should adopt legislation giving European citizens an extensive right of access to information as well as adequate legal remedies. The basic idea is that documents relating to the management of public affairs should be accessible unless there are good reasons for them to be kept confidential. Any rejection of a request for information should, in any event, be properly justified. The Netherlands Government also proposes that the Treaty itself should include a provision likewise guaranteeing a parliamentary right to be fully informed in good time. As for the public conduct of consultations during the

legislative procedure, the Netherlands Government considers that Council meetings at which it legislates should be open to the public as far as possible. In other words, the public would have access to the discussions on admissibility (subsidiarity) mentioned above and to the final vote in Council, including explanations of vote, but would be excluded from the intermediary stage of negotiation so as to prevent the whole debate leaving the context of the Council.

After transparency, the document deals with the clarity of the decision-making procedures, which it considers should be streamlined in the European Union. The Netherlands Government makes four specific proposals: extension of the scope of the codecision procedure to other fields; a streamlined and clearer codecision procedure; abolition of the cooperation procedure and, finally, a better regulated consultation procedure. In addition, it proposes replacing the assent procedure with codecision in the legislative sphere and only retaining assent for approving treaties. The memorandum also deals with the simplification of the text of the Treaty on European Union, which it suggests should be radical and could be entrusted by the Reflection Group to a group of independent lawyers. The memorandum also recommends that attention be paid to the quality of Community legislation, not just to make it more accessible but also to facilitate its application and reduce infringements. With regard to comitology and the hierarchy of Community acts, the Netherlands Government merely states that it will take a constructive attitude and that, in its view, effectiveness and democracy dictate that comitology should be streamlined and a hierarchy of Community acts introduced in the European Union.

For the record: the Netherlands Government supported 'The Guardian' in its action before the Court of Justice for non-communication of Council minutes

- AUSTRIA In its guidelines, the Austrian Government advocates enhancing democratic legitimacy, transparency and bringing the Community closer to its citizens - the logical extension of the subsidiarity principle.
- PORTUGAL On 2 march 1995, the Assembly of the Republic adopted a resolution tabled by the Committee on European Affairs which listed five guiding principles for revision of the Treaty. One of those principles is to make the European construction more democratic and the institutions more transparent.
- FINLAND The Finnish Government's document talks about a Union of citizens based on the principles of subsidiarity (which should be applied resolutely), transparency (which would involve updating and simplifying Union legislation) and representativeness.

In his government programme, the new prime minister stated that he was ready to work for greater transparency, more public access and an improvement in the EU decision-making system.

SWEDEN

Transparency is accorded considerable importance in political debate in Sweden. That is why, despite the absence of a government memorandum, the Swedish Government will probably do its best to ensure that the Community adopts and strengthens the principle of public access to official documents for citizens, which is a guarantee of democratic control of government and a fundamental principle of Swedish democracy. In its view, the principle of transparency is as important in the European Union as in the Swedish national context. This principle is just as applicable to the Council of the Union, which has everything to gain from as much transparency as possible vis-à-vis the citizens of the European Union.

UNITED
KINGDOM

In its report of 17 July, the House of Commons committee on Community legislation stressed the importance of making Union work more transparent. In particular, it proposed that a network of computerized information exchanges should be set up to provide citizens with access to what is proposed, discussed and decided at Union level. It also emphasized the importance of the consolidation of Community legislation, which would make the legislation more accessible than it is at present.

Moreover, it proposed a minimum period of four weeks between the time a text arrives in a national parliament and the time the Council adopts a decision. That should enable wider consultation and access. The committee proposes that whenever this four-month period cannot be observed, the Council decision would have to be unanimous.

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For further information on this briefing, please contact Mr LAPRAT, Head of the Division for Relations with the Parliaments of the Member States (Tel. 3757, ARD/513).