

# EUROPEAN PARLIAMENT



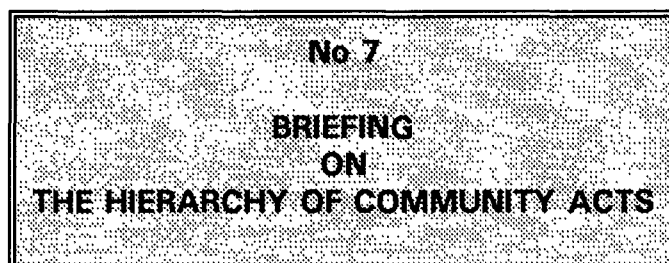
SECRETARIAT WORKING PARTY

TASK-FORCE  
ON THE  
"INTERGOVERNMENTAL CONFERENCE"

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(first update)

**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**
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- 14 The European Parliament**
- 15 The European Council**
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THE HIERARCHY OF COMMUNITY ACTS

1. Subject - legislative acts

Article 189 of the EC Treaty provides that 'the European Parliament acting jointly with the Council, the Council and the Commission shall make regulations and issue directives, take decisions, make recommendations or deliver opinions'. The article then goes on to give a brief description of each of those acts.

Moreover, Declaration No 16 to the EU Treaty, on the hierarchy of Community acts, stipulates that 'the Intergovernmental Conference to be convened in 1996 will examine to what extent it might be possible to review the classification of Community acts with a view to establishing an appropriate hierarchy between the different categories of act'.

This briefing sets out, in particular, the positions adopted by the various institutions, at the request of the Corfu European Council, on the operation of the Treaty on European Union.

2. The European Parliament: resolution of 17 May 1995

The EP's official position is currently defined by the resolution of 17 May 1995, according to which (paragraph 32(ii)), 'the volume of draft legislation submitted to the European parliament and the Council should be limited by introducing a certain hierarchy of acts. This could be achieved by introducing a new category of implementing acts, responsibility for which would lie with the Commission where so empowered by the legislative authority. Under no circumstances would this new category of acts limit the legislative and political control function exercised by the European Parliament'.

As for 'pre-Maastricht' documents, mention should be made of the Resolution of 18 April 1991 on the nature of Community acts, which proposes that the Treaties should classify Community acts according to whether they are legislative (framework laws and laws) or regulatory.

Article 34 (Definition of laws) of the draft Treaty establishing the European Union, adopted by Parliament on 14 February 1984, provided that 'laws shall lay down the rules governing common action. As far as possible, they shall restrict themselves to

determining the fundamental principles governing common action and entrust the responsible authorities in the Union or the Member States with setting out in detail the procedures for their implementation'. From the point of view of the hierarchy of acts, there is a clash between Article 34 and Article 40, which provides that 'the Commission shall determine the regulations and decisions required for the implementation of laws in accordance with the procedures laid down by those laws'.

### 3. Commission: report of 10 May 1995

In paragraph 56 of this report, the Commission states that the legislative processes need to be radically simplified 'with reference to the concept of a hierarchy of acts, a matter which the Treaty has placed on the agenda of the Intergovernmental Conference'.

The report makes no further reference to this subject, even though the Commission tried unsuccessfully to have it discussed during the Maastricht negotiations; in fact the Commission's contributions to the relevant conferences devote an entire chapter to the hierarchy of norms, and it was even proposed (Supplement 2/91 of the Commission Bulletin) that the wording of Article 189 of the EC Treaty be revised to provide that the institutions of the Union 'adopt laws and regulations, take decisions, make recommendations or deliver opinions'.

### 4. Council: report of 20 April 1995

Paragraph 16 of this report ('Democracy and efficiency') merely states that 'it is believed in some quarters that the lack of a real hierarchy of laws (footnote referring to the above-mentioned Declaration No 16) is affecting the decision-making process'.

### 5. Court of Justice: report of May 1995

This report 'on certain aspects of the application of the Treaty on European Union' points out in paragraph 19 that 'the Court is aware that the Intergovernmental Conference is called upon to examine problems of a constitutional nature, such as changes in the nomenclature of acts and the introduction of a hierarchy of norms ...'. In this regard, paragraph 21 of the report states that, in doing so, 'it would be essential to take account of the consequences which such changes would have for the system of remedies, in particular the right of individuals to bring actions for the annulment of such acts'.

The 'contribution' of 17 May 1995 of the Court of First Instance makes no mention of the subject under discussion.

## 6. The position of the Member States

So far, no Member State has adopted a genuine substantive position on this matter. However, the following references should be noted:

(a) France: in an article published in *Le Figaro* on 29 November 1994, Alain Lamassoure, the then Minister with special responsibility for European Affairs, put forward new ideas on the institutional reform to be considered by the 1996 IGC. One of the ideas was the establishment of a hierarchy of legal acts which would distinguish between general principles, a law, implementing decisions and regulations.

(b) Italy: mention should be made of the memorandum of 12 October 1994 of the Minister for Foreign Affairs, Antonio Martino, calling for acts with constitutional force, which are currently scattered through various treaties, to be collected in a single text, for the definition of legal acts to be improved and their legislative hierarchy defined.

In addition, the Italian Government's Communication of 23 February 1995 on the guidelines for its foreign policy stated that the IGC should strengthen democratic participation in the context of the Union decision-making process and, to that end, it proposed that a genuine hierarchy of acts should be established, which would improve the operation of the codecision procedure.

Finally, the Italian Government's Communication on the 1996 Conference, presented to the Chamber of Deputies on 23 May 1995, refers to Italy's position during the Maastricht Conference, when it advocated the established of three tiers of Union act: constitutional acts (requiring unanimity or a qualified majority in Council as well as ratification by the national parliaments), legislative acts (requiring a majority in the Council and codecision with the EP) and regulatory or executive acts (Council, Commission or Member State competence).

(c) Spain: the Spanish document of March 1995 entitled '1996 Intergovernmental Conference: bases for discussion' states that discussion will focus on (among other things) matters relating to the hierarchy of acts, but does not put forward any specific proposal.

(d) Austria: in its guidelines on the issues which will probably be raised at the 1996 IGC, published at the end of June 1995, the Austrian Government states that it is 'interested' in the establishment of a hierarchy of acts. It adds, however, that the Union's institutional balance must be taken into account.

(e) Netherlands: in the fourth memorandum of 12 July 1995, presented by the Netherlands Government to the national parliament, the former merely states that effectiveness and democracy dictate that a hierarchy of Community acts should be introduced in the European Union.

## 7. The Reflection Group

(a) A hierarchy of Community acts was first raised in the meeting of the Reflection Group held on 14 June 1995 when some representatives took the view that a distinction should be drawn between acts of a constitutional nature (requiring unanimity in Council and Parliament's assent), laws (requiring a majority in Council and EP codecision) and purely administrative acts.

(b) In its meetings of 24 and 25 July 1995, the issue of the hierarchy of acts was raised. A large majority of its members were in favour of a new classification or hierarchy of acts with a view, in particular, to distinguishing between 'legislation' and 'implementing measures'. According to the representatives in question, this would be a more efficient system. Some representatives also thought that this issue raised the question of the institutional balance when there was no need to change Article 189 of the EC Treaty since it was already clear and a certain flexibility was necessary. Others thought that the Commission should be delegated greater implementing powers but that the European Parliament and the Council should still retain a power to scrutinize and review Commission decisions. In a similar vein, some representatives in the Group also stressed the link between the hierarchy of acts and implementing measures; the question of the commission's delegated powers would have to be simplified if the subject of comitology was to be avoided.

In the same meeting, Mr Brok demonstrated that in the issue of the hierarchy of acts (and that of subsidiarity), it was transparency that was at stake (who was responsible?). In any case, implementing measures had to be better defined so as not to overburden the legislative procedure.

Again in the same meeting, Mrs Guigou was in favour of simplification; this would require not new legal instruments but a return to the original spirit of directives, which are laws that each Member State transposes.

(c) Finally, two points of view emerge from the Group's interim report of 1 September 1995: the first is that there should be a three-tier hierarchy of acts (constitutional acts, legislative acts and implementing measures), which would make it possible to clarify the powers of each institution; the second is that such a hierarchy (while not 'illogical') would introduce an unnecessary complication. Those who take the latter view (the majority) consider that a better solution would be to return to the original spirit of the Treaties and use directives in a way which is more consistent with their original purpose.

## 8 Other views

With regard to the most recent learned articles, in 'The 1996 Intergovernmental Conference' (European Law Review No 3, 1993), 'Justus Lipsius' asks whether it would be feasible to institute a legal hierarchy between the different Community forms of legislation. He points out that, in spite of Italy's endeavours, no agreement was reached on this subject at Maastricht, which gave rise to the above-mentioned

Declaration No 16. He goes on to say, however, that finding a solution will be as difficult in 1996 as it was in 1991 because it is not easy to distinguish clearly where the border is between 'principles' (laws) and their 'implementing norms' (regulations). He proposes that certain important subjects should be reserved to the highest degree of norms, as is the case in the 1958 French Constitution. Such a division would make it possible to reserve the heaviest procedure (codecision) for the adoption of these last norms.

With a view to the 1996 Intergovernmental Conference, the International European Movement has set up an action committee chaired by Professor Jean-Victor Louis. Mr Dastoli, the Movement's Secretary-General, said (on 5 July 1995) that the hierarchy of acts was one of the main outstanding issues and that it had to be cleared up.

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[For further information on this briefing please contact Mr Rufas, Lux. 3926]

