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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, 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**
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**BRIEFING  
ON  
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 the discussion during the 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) or simplification of the actual Treaty.

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.

**BRIEFING  
ON  
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)

In the Dury/May-Weggen report (13.3.1996) the European Parliaments Institutional Committee makes detailed references towards more openness and transparency within the Union. Apart from confirming the basic demands of the Bourlanges/Martin report the Dury/May-Weggen report wishes that the access to EU documents should be established in the EU Treaty.

Furthermore, EU documents 'must be readable and the Treaties must be summarized, restructured, simplified and edited, and the continuing process of codifying Community law

should be made an integral part of the Treaty as a joint task of the Commission, Parliament and the Council. Declarations in the form of protocols on the adoption of legal instruments are no longer possible'. Also, 'special remarks by, and reservations of, Member States to Union legislation should also be made public'.

In order to simplify the treaty, the report suggests the 'merger of the three Community treaties and the other provisions of the TEU into a single unified treaty.'

To assure transparency in the process of the treaty revision, the report considers it essential that 'European citizens and their elected representatives at both national and Union level are directly informed of the progress and substance of the IGC [...]'. The EP commits itself to continue the dialogue with the public which it has already begun with the public hearings in October 1995 and February 1996.

In its resolution (17.4.1996) on the outcome of the European Council meeting in Turin, the European Parliament wishes 'to see the construction of a Europe which is more democratic, more transparent and more responsive to the concerns of the majority'. The resolution states that the E.P. would have appreciated if the issue of simplification and codification of the Treaty would have been referred to in the European Council's conclusions. Furthermore, it is highlighted that decision-making procedures must be improved in order to increase democracy notably by extending the codecision and assent procedures.

## **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.

'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)

In the latest publication of the Commissions Opinion (Reinforcing Political Union and Preparing For Enlargement, 28.02.1996) the Commission advocates for a simplified and more democratic decision-making. 'The provisions governing budgetary procedure seriously need simplifying and the accumulated set of interinstitutional agreements should be consolidated'.

#### Simplification of the decision making process

As far as the decision-making procedures are concerned, only three types should be maintained: decisions adopted on Parliament's opinion, with its assent and the codecision procedure.

The codecision procedure should be applied more widely and made more simple 'notably by determining time-limits for first readings, by dropping the announcement of the intention to reject a proposal at the second reading stage, and by dropping the third reading'.

The codecision procedure should apply to the adoptions of all acts of a legislative nature. Decisions currently taken by the cooperation procedure should adopt the codecision procedure. The cooperation procedure should be abolished.

The assent procedure should be reserved for decisions on constitutional matters (Treaty amendments, own resources).

#### Simplification of the implementing process

'Decision-making procedures for implementing measures need to be changed to reflect the roles of the institutions more fully'. The number of implementing measures need to be reduced to avoid 'debates between the institutions about the procedures to be followed, and so as to reflect the nature of the decision to be taken'. The Commission proposes three types of committee and procedure - the advisory committee, the management committee and the legislation committee.

### **EUROPEAN COUNCIL**

European Council of Madrid (15./16.12.1995)

The European Council of Madrid has defined the agenda of the Union for the end of the century.

In respect of transparency the European Council of Madrid expresses satisfaction at the progress achieved through the Councils approval of a Code of Conduct to simplify public access to Council minutes and statements in those areas where the Council acts as legislator.

Also, the European Council states that the IGC must make the Union more transparent and bring it closer to the citizens. Many of its members have proposed 'that the right of access to information' should find recognition in the Treaty. In order to launch legislative proposals of how to incorporate the right of information into the Treaty, studies should be made by experts and society in general of how this should be achieved. These studies must be made public

Finally, the European Council agrees on greater accessibility of Union law and that the IGC 'should result in a simpler Treaty'.

European Council of Turin - Intergovernmental Conference 1996 (29.03.1996)

The European Council concludes that transparency and openness in the Union's work must be provided and the possibility Treaty simplification and consolidation should be looked at. The Conference should therefore examine:

- \* firstly, the most effective way of how legislative procedures could be simplified, made clearer and more transparent
- \* and secondly 'the possibility of widening the scope of codecision in truly legislative matters.

## **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.

Further to its decision of 29 May 1995, the Council has adopted the present Code of Conduct (Code of Conduct on Public Access to the Minutes and Statements in the Minutes of the Council acting as Legislator: press release: 02.10.1995) as an addition to the other measures which it has already taken to increase the transparency of its legislative proceedings.

As far as statements are concerned, the Council:

- (a) suggests that some statements by members of the Council could become explanations of vote referred to in the second subparagraph of Article 5(1) of the Council's Rules of Procedures.
- (b) is in favour of public access, in general, to statements (which are not covered by the obligation of professional secrecy) which it enters in its minutes when adopting

legislative acts. This applies except in cases where, at the request of one of its members, the Council establishes that it does not have the simple majority required by the first paragraph of Article 5(1) of its Rule of Procedure to waive that obligation.

- (c) will seek, in the case of a statement by one or more members of the Council, the agreement of the authors of the statement before deciding to make it available to the public.

As far as minutes are concerned, the Council:

- (a) '[...] will systematically examine the question, when adopting the minutes of the meetings, of whether to make public the references to documents before the Council and the decisions taken or conclusions reached by the Council which are contained in the minutes relating to the final adoption of its legislative acts. As regards statements in the minutes, the decision taken by the Council when adopting the legislation will determine whether they can be made available to the public, without prejudice to application of the Council Decision of 20 December 1993 on public access to Council documents'.
- (b) the aim of this process is to ensure the widest possible public availability of Council minutes, 'save in exceptional cases where one of the reasons referred to in Article 4(1) of the Council decision of 20 December 1993 on public access to Council documents does not so permit'.
- (c) will seek the agreement of the author(s) of the statement(s) before taking a decision, if the minutes concerned contain statements by one or more members of the Council.
- (d) 'shall take decisions on whether to make its minutes public on the basis of suggestions made by Coreper acting on a report from the Antici Group or the Mertens Group, as appropriate'.

## **REFLECTION GROUP**

\* With reference to the final 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.

## **II. POSITIONS ADOPTED IN THE MEMBER STATES**

### **DENMARK**

In the document published by the Danish government on 6 September 1996, concrete proposals are made for Treaty amendments concerning transparency:

Greater transparency to EU cooperation could and should be brought by the Intergovernmental Conference by inserting in the Treaty some of the principles of transparency already laid down in, for instance, the Council's Rules of Procedure as well as by introducing new principles of transparency.

The principle of transparency should be inserted in the last paragraph of Article A to read as follows:

Article A, last paragraph

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

In this way the principle will apply both to the decision-making process and to EU activities generally. Transparency needs to be ensured not only in the decision-making process but also, just as importantly, in administration. Insertion of the principle of transparency in Article A means that it would apply to all three pillars.

The principle of public access to all information held by EU institutions and bodies should be inserted in the Treaty in a way which ensures that the general rule in the EU is the right of public access to information and that more precise rules are established in an

implementing Regulation to be adopted by the Council under the procedure in Article 189b (co-decision). It can be inserted in a new Article 5a of the Treaty to read:

#### **New Article 5a Public Access to documents**

1. All natural or legal persons shall be entitled to have access to any written material held by EU institutions or bodies. This right shall be exercised subject to the detailed rules to be adopted by the Council in accordance with paragraph 2 by ..... (at the latest one year after entry into force of the Treaty).
2. The Council shall decide, in accordance with the procedure in Article 189b and after consulting the Economic and Social Committee and the Committee of the Regions, what information is not to be covered by the right of public access to documents under paragraph 1 and on what grounds access to the information concerned may be denied.

In this way the principle will apply to the first pillar, but not to the second and third pillars.

The legislative work of the Council should be made transparent, for instance by the holding of open debates for the first and the final reading of proposals for legislative acts. This would to a large extent correspond to the practice followed in national parliaments' legislative work.

The Treaty should establish a rule whereby the first reading of a proposal for a legislative act is to take place at an open Council meeting. At the same time, provision should be made in the Treaty for the Council to determine the conditions for public access to subsequent proceedings. Lastly, the Treaty should stipulate that the results of voting in the Council are to be made public. This could be laid down in a new Article 149 to read:

#### **New Article 149 Open Council debates**

1. The public shall have access to the Council's proceedings when the Council first discusses proposals for the acts referred to in Article 189.
2. The Council shall determine the conditions for public access to its subsequent proceedings, votes or other forms of adoption or rejection, including those concerning common positions under Article 189b.
3. The results of voting in the Council on the acts referred to in paragraph 1 and 2 shall be published in the Official Journal of the European Communities.

Finally, rules should be introduced on the publication of proposals and decisions for the third pillar as well since there are no such rules at present. A new Article K.3(3) would read:

#### **New Article K.3(3) Third pillar**

All proposals for acts referred to in paragraph 2 of this Article and all acts adopted shall be published in the Official Journal of the European Communities.

An earlier Danish Government document of 11 December 1995 - *Basis for Negotiations - Open Europe: The 1996 Intergovernmental Conference* - stressed the need for greater transparency and openness in EU cooperation with the following suggestions.

- Individual citizens and organizations should have a right under the Treaty to inspect legislation, the EU Ombudsman should have greater access to information and documentation..
- Commission proposals should be submitted to the organizations concerned for consultation. The organizations' response should be made public.
- Greater use should be made of the principle of subsidiarity. If it is specifically stated in individual articles in what areas the EU can legislate, then a clearer division between the responsibilities of the EU and the Member states can be achieved. This would contribute significantly towards more clarity in EU affairs.
- In order to simplify EU cooperation the number of decision-making procedures should be reduced from the present twenty. Provisions in the Treaty that no longer apply should be deleted together with outdated acts. Also, there should be a clearer formulation of the Treaty provisions.

The Danish Foreign Minister, Mr Petersen, has announced that all IGC papers will be made public in the interests of transparency during the IGC negotiations.

In line with the principle of subsidiarity and in order to enhance national parliaments' access to information on the European Union and Commission proposals, Denmark proposes the insertion in the Treaty of the following Article:

(new Article on national parliaments)

The conditions governing information, involvement and cooperation in respect of national parliaments shall be laid down by joint agreement between the European Parliament, the Commission and the Council.

Moreover, the following Declaration could be inserted in the Final Act of the Conference: (Declaration on national parliaments in the Final Act of the Conference)

The Conference encourages the institutions to conclude the joint agreement referred to in Article .... before 31 December 1998. One element of that joint agreement should be the possibility for national parliaments to have a minimum period of time in which to express their views as to whether a legislative proposal from the Commission complies with the principle of subsidiarity before the proposal comes before the Council. Another element of this code of conduct should be a more systematic use of green and white papers for the purpose of consulting national parliaments before the Commission takes steps to draw up important legislative proposals. National parliaments should be consulted on the contents of the joint agreements of the joint agreement prior to its conclusion.

## **GERMANY**

### **Government:**

In the paper titled 'German Aims for the Intergovernmental Conference', published the 26.03.1996 by the German Foreign Office, transparency is only briefly mentioned.

The paper states that 'euro-fatigue' has to be counter acted so that Europe will be brought closer to the citizen. Terms such as 'subsidiarity, closeness to the citizens, democracy and transparency' must not remain words with an empty meaning. Therefore, the principle of subsidiarity should receive its concretization in a protocol to the Treaty.

Community legislation must become more transparent so that citizens can understand better how decisions are made. Also, citizens and the public must have better access to documents. Democratic control should be improved through giving the EP more rights concerning the legal decision-making procedures.

### **Parliament: Bundesrat**

In its resolution from the 15.12.1995, the German Bundesrat calls for more transparency through simplification of the decision-making procedures. The procedures should be reduced to three, notably the assent, consultation and codecision procedures.

## **BELGIUM**

### **Government:**

In its note to the Parliament (Note de Politique du Gouvernement au Parliament concernant la Conference Intergouvernementale de 1996, dated October 1995) the Belgian Government would like to see a more efficient, transparent and democratic decision making process. The most important improvements in this respect are the extension of majority voting which should also extend to the political area of the internal market (social, environmental and fiscal policy), the extension of the EP's right for co-decision as well as the simplification of numerous procedures (limited to codecision, assent and consultation).

Together with its Benelux partners, Belgium has drawn up a memorandum (dated 07.03.1996) in which four points are highlighted in order to increase the citizens confidence in the Union (and which are consequently also applicable for the positions of the Netherlands and Luxembourg).

- \* the right of the citizens to information
- \* deliberations of the Council acting as legislator should be public
- \* simplification of the Treaties in order to increase their legibility
- \* improving the quality of the communities legislation

## Parliament: Chambre des Représentants

In its memorandum, dated 28.03.1996, the Belgian Parliament states that access of the European citizens to EU services should be facilitated and the issue of bureaucracy should be tackled. The final decision of the Council when it acts as legislator must be published without delay. Furthermore, openness of the administration should be established on a European level.

## **GREECE**

### Government:

The Greek Government has advocated in its recent position paper (For a Democratic European Union with Political and Social Content, March 1996) that the respect of the principle of transparency should be a fundamental principle of the Union. An enshrinement of transparency into the Treaty would be a clear step forward. In order to reduce the distance between the institutions and the European citizens, the Union's operations must be made more transparent, the Treaty should be consolidated into a single text and legislation should be simplified in order to be comprehensible to the average citizen. 'To the extent possible, the proceedings of EU institutions should be open to the public'. Finally, the Greek Government suggests that the European Union should acquire legal personality.

## **SPAIN**

### Government:

In its working paper 'Elementos para una posición Española en la Conferencia Intergubernamental de 1996' (containing mainly ideas developed through the Spanish chaired Reflection Group and Council Presidency) dated March 1996 the position is adopted to advocate for greater accessibility and comprehensiveness of Union affairs. Most of the aspects do however not require a modification of the Treaty. The paper raises four points:

- \* the institutions must make better use of publicity, information and consultation. The institutions have to pay special attention in order to facilitate the national parliaments work. Commission proposals have to be made public well in advance. The amount of Commission green books should be increased and so should interinstitutional co-operation. Agreements must be made public.
- \* the application of the principle of subsidiarity contributes to increased transparency.
- \* modifications in organization and methods of the Council's working must pay attention to more transparency. In this context it is important to make information available to citizens and to increase the clarity and quality of the legislative texts.

- \* the Union has to simplify the TEU text so that its content will be clearer and simpler to understand for the interested citizen. The discussion about the simplification of the Treaty is not only a technical question which can be separated from the revision of its content. Spain also wants to work towards a reform of the Treaty structure.

## **FRANCE**

- \* The question of transparency has only briefly been broached in government documents.

Government:

Michel Barnier, European Affairs Secretary advocated in his speech to the Assemblée Nationale (dated 13.03.1996), for a European Union which will be better understood by its citizens. For too long Europe has been dealt with in silence and in secret. Therefore it is necessary to make the European institutions more democratic, more transparent and to bring them closer to the national parliaments and the citizens.

Writing in 'Libération' (25.03.1996), President Chirac only briefly touched on the issue of transparency. He advocates for a closer relationship between the European Parliament and its electors as well as a reform of the voting method. This procedure should be simplified.

## **IRELAND**

Government:

The Irish White Paper 'Challenges and Opportunities Abroad' dated 26.03.1996 states that the Union must ensure that it remains close to the citizen and functions in a transparent way. Processes and decisions must be explained to and understood clearly by the people. Union policies should be designed and respond - and must be perceived to respond - to real public concerns.

The Union's institution often seem remote, its decision making procedures appear opaque and its language is laden with jargon. The Irish Government therefore fully supports the present 'moves within the EU towards the introduction of greater transparency and openness in the institutions and business of the Union'.

## **ITALY**

Government:

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. Rules within the Treaties, which have become obsolete, should be annulled (Speech by Minister for Foreign Affairs S. Agnelli to the E.P. 13.03.1996)

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**

Government:

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**

### **Government:**

In the opinion of the Netherlands Government<sup>1</sup>, 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 should 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

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<sup>1</sup> For the record: the Netherlands Government supported *The Guardian*' in its action before the Court of Justice for non-communication of Council minutes

should be streamlined and a hierarchy of Community acts introduced in the European Union.

## **AUSTRIA**

Government:

In its position paper 'Österreichische Grundsatzpositionen', dated 28.03.1996, the Austrian Government identifies the necessity to increase transparency in Justice and Home Affairs. All documents which have no confidential character should be published. The EP should be regularly informed in connection with Council sessions and information vis-à-vis the Union's citizens should be more forthcoming as far as the co-operation in the areas of justice, police and migration is concerned.

In the framework of the IGC the decision making process should be simplified and made more transparent. The Austrian Government would like to see the public involved to a greater degree in the preparatory phase of EU legislation (through green and white books and Commission proposals). Interinstitutional agreements should be published, legal texts should be clearer and more comprehensive and the public should have better access to EU documents. Furthermore, it would be useful to simplify the structure of the Treaties. Hereby, the European Union could acquire legal personality while maintaining the three pillar system.

## **PORTUGAL**

Government:

In the Portuguese position paper 'Portugal E A Conferência Intergovernamental Para A Revisão Do Tratado Da União Europeia', dated March 1996, the government advocates for the principle of transparency to be present in all institutional systems within the Union which would strengthen the democratic character of the institutions and also foster a stronger link with the European citizens. Transparency has to become common practice in the institutions general conduct and must be written into the Treaty to guarantee the right of the citizens to information. Transparency within the Council has to combine the confidentiality necessary for the negotiation process and a much greater openness as far as the Council's legislative functions are concerned. In order to achieve real transparency in the Council's work, clear rules of process have to be observed (for decision taking and other areas) and rigorous methods have to be applied. Transparency should also be envisaged within a more substantial perspective, to be obtained through a clearer division of competencies and a simplification of processes which should render the system easier to understand for the citizens.

## **FINLAND**

### **Government:**

In the Finnish Government's Report to the Parliament (Finland's Points of Departure and Objectives at the European Union's Intergovernmental Conference in 1996), dated 27 February 1996, the government advocates to increase the openness of operations as well as making documents public and simplifying the texts of treaties and agreements.

'It is the Government's aim that an article concerning publicity of documents be included in the Treaties, making it possible for the Council to issue an act in relation to the matter at a later date. The Government is also prepared to accept the inclusion in the Treaties of a provision to the effect that the Council's decision-making in legislative matters be public when new regulations are being adopted'.

Furthermore, all citizens of the EU should have the right to obtain the information they wish about the operation of the institutions. Publicity of documents in the possession of Member States, however, would remain subject to national legislation.

In respect to simplification of Treaty texts, the Government believes that giving clarity to the structure of the Treaties and improving their systematics would be a means of making the Union more understandable and acceptable to citizens. 'In the view of the Government, the aim at the Conference should be that the Treaties are brought up to date and into a form that citizens can better understand'.

### **Parliament - The Grand Committee:**

The Committee (statement of the Grand Committee, 22.11.1995) is of the opinion that the Council, when acting as legislator must do this in a transparent way and must make available texts in all official languages. Free access to documents and information should be recognised in the Treaty. Furthermore, 'the Treaties should be consolidated in an up-to-date and readable format'.

The Union's decision-making procedures should be simplified and reduced to codecision, assent and consultation.

## **SWEDEN**

### **Government:**

In its Government Report to the Reichstag (Parliament), dated 30.11.1995, the Swedish Government advocates for the implementation of the so-called 'principle of openness'. This principle should encompass:

- \* More public debates in the Council. Minutes of meetings should be accessible to the public to a greater extent as presently possible.

- \* The right to openness should be guaranteed through writing the principal of public examination of EU institutions into the Treaty. The Swedish Government will try to change the Treaty in this respect at the IGC 1996.
- \* The Treaty should be simplified and easier to understand.
- \* The decision-making procedures should be simplified and reduced in number to increase the effectiveness of the decision-making processes.
- \* Finally, the Government suggests to support and simplify society activities which play an important role in the process of strengthening democratic legitimacy and European cooperation. If possible, the right to create societies should receive more support through the Treaty.

In its working document of 20 May 1996 on access to documents in the European institutions, the Swedish Government set out the following position.

1. There are several possibilities for increasing institutional openness and transparency. Sweden is in favour of incorporating the general principle of access to documents in the Treaty. Another possibility would be greater public access to meetings. However this would not be the best way of making the Union more accessible since certain meetings would inevitably have to be closed to the public so as not to hinder the Member States' full freedom of debate and opportunities for compromise.
2. Because of the Swedish Government's long tradition of openness, Sweden believes that the most effective way of achieving greater openness in the European institutions is to ensure public access to the documents on which debates and decisions are based. The principle of public access to official documents ensures public access to and scrutiny of the activities of decision-making and administrative bodies.
3. The principle of public access is based on the idea that the institutions must be open to citizens and the media so they can choose information for themselves, independently of the institutions' information services, although the institutions should of course provide information on their activities.
4. Public access to official documents allows closer monitoring of and easier participation in decision-making by the European Parliament, the national parliaments, associations, individuals and the media. It is thus a means of strengthening the institutions' democratic credentials and public confidence in the administration. This principle should also make the administration more effective since all services and officials operate in the public view.
5. The general principle of access to documents should be accompanied by rules on confidentiality to protect certain interests for reasons of security, public safety,

relations with non-EU countries, commercial and financial secrecy, and protection of individuals and privacy.

6. The main elements of free access to official documents are already part of the Community judicial order. This right is also recognized in Court of Justice case law and is one of the constitutional traditions common to the Member States. It is however time to give this principle a more solid judicial foundation in the Treaties.
7. The principle of public access to official documents from the EU institutions should be applicable within the institutions themselves. There is no need to harmonize national rules on openness. The Member States will retain the right to decide how this should be dealt with at national level, taking account of the principle of fairness set out in Article 5 of the EC Treaty.

### *General principles*

8. The Treaty should state the general principle whereby the Community decision-making process should be based on openness and transparency. It should also establish the principle of public access to documents and the institutions' obligation to inform the public. Another solution would be to state these general principles in Article A of the Treaty on European Union.

### *Public access to documents*

9. The Swedish Government would also like to see the addition of an article stating that the public should have access to official documents held by an EU institution.
10. The Treaty should contain a definition of official documents that covers documents issued by an institution and documents forwarded to it. It is not enough to say that a request should be sent to the author of the document. Official documents held by an institution are part of its decision-making process. There is no real reason for depriving the public of this type of knowledge of the reasons behind a decision.
11. Letters that individuals write to an institution that do not concern the matters it deals with should not of course be considered official documents.

### *Rules of confidentiality*

12. There are of course exceptions to the principle of free access to official documents but the exceptions define the rule. It is thus essential that the Treaty should contain an exhaustive list of interests that may limit public access to documents.
13. This list might include (see Article 4 of Council Decision 93/731/EC on public access to Council documents):
  - (i) security of the Community and the Member States,
  - (ii) relations of the Community and the Member States with non-EU countries or international organizations,

- (iii) protection of the Community's financial and monetary (or exchange) policy,
  - (iv) protection of commercial and industrial secrecy,
  - (v) the prevention or suppression of crime,
  - (vi) the Community's economic interests,
  - (vii) the protection of personal privacy or the economic situation of individuals,
  - (viii) the preservation of animal or plant species,
  - (ix) protection of declarations of opinion made during negotiations that are not open to the public, unless the opinions are divulged by the Member State that made them.
14. In addition the Council should adopt, pursuant to Article 189b of the EC Treaty, provisions setting out the restrictions relating to the list in the Treaty. In the Swedish Government's experience detailed and precise provisions on confidentiality encourage openness and reduce the risk of arbitrary decisions. When these provisions are adopted, the various interests must be individually weighed up to see whether derogation of the principle of public access is justified. When public access is of major interest a derogation should be envisaged only on the grounds of substantial opposing interests.

#### *Registration*

15. The Council should oblige the institutions to register official documents and make the registers public. The Council should also require the institutions to classify official documents.

#### *Judicial proceedings*

16. Applicants should have the opportunity to appeal against an institution's decision not to grant access to an official document. Under the new appeals procedure, the Court should be empowered to overrule the institution's assessment and decide that the applicant should have access to the document.

#### *Communicating information to the media*

17. In the interests of combating maladministration and other misdemeanours, there should be rules enabling officials and other staff of the institutions to communicate information to the media for publication.

#### **Parliament:**

The Swedish Parliamentary IGC 96 Committee (in its publication dated 8 February 1996) states that the 'principle of openness' is an important basis for legitimacy, effectiveness and scrutiny in decision-making. Transparency in decision-making procedures as well as access to documents must be assured as these are also effective means in the fight against fraud and maladministration. The principle of openness protects the integrity of the individual EU citizens. There should be juridical control of transparency and public access.

The paper considers it insufficient to regulate the principle of openness with internal codes of conduct. Openness must be incorporated into the Treaty. The principle of openness also includes the freedom to give information.

Openness must be the rule and all exemptions from that must be limited to clearly stipulated situations. In order that Member States can agree about the principles and exemptions of openness, it must be written into the Treaty. The harmonization of national legislation concerning openness is a matter of decision to the Member States themselves. They themselves will decide the rules which will govern openness.

## **UNITED KINGDOM**

Government:

In the British Approach to the European Union Intergovernmental Conference 1996 (A Partnership of Nations, March 1996), 'the Government attaches priority to openness in the European Union, which brings it closer to people, enabling them to follow and participate in decision making. The Government is willing to consider further progress in this area in the IGC, but complete openness could have the effect of driving negotiations into the corridors, which would be the opposite of what was intended'.

As far as simplification of the Treaty is concerned, the British Government would like to see progress in this area, for example through the deletion of obsolete Treaty articles. Reservation is however expressed regarding suggested simplifications because there is a risk of modifying the substance of the Treaty or alter the institutional balance.

Parliament, House of Commons:

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-week period cannot be observed, the Council decision would have to be unanimous.

Parliament, House of Lords:

The Report of the Select Committee on the European Communities of the House of Lords (dated 17.11.1995), only briefly touches on the issue of transparency.



The Committee would like to see the strengthening of 'the presumption in favour of the release of Council documents' a UK priority in negotiations. The idea of making Council meetings of a legislative character public, is rejected in the report.

## **BENELUX**

The Benelux countries wish to increase transparency by:

- establishing the public right to have access to information,
- greater publicity for deliberations of the Council acting as legislator,
- simplification of the Treaties to make them more readable,
- improving the quality of Community legislation.

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*For further information on this note, please contact Mr LAPRAT, Division for Relations with the Parliaments of the Member States - Tel. 43757 (Brussels) or Mr HESSENBERGER, responsible for this update - Tel. 44656 (Brussels).*

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