

The 1996 IGC - A Challenge for Europe

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Introduction

The intergovernmental conference (IGC) scheduled for 1996 will pose a number of major challenges for the European Union (EU) and its outcome will have a profound effect on the future course of European politics. When the leaders of the EU decided at Maastricht in 1991 to hold an IGC in 1996 it was with a rather limited agenda in mind. But in the past year, and specifically under the pressures of the most recent and potential future enlargement of the EU to include perhaps 20-30 member states, the agenda has been stretched considerably. At this stage, there is no agreement on the agenda, nor on when the IGC should start - not to say when it should conclude. This is because at present there remain fundamental differences of opinion between some key member states as to the desirability and necessity of making significant reforms to the structure and operation of the EU. Perhaps the two most sensitive areas will be institutional reform and changes to the pillar structure involving the common foreign and security policy (CFSP) and Justice/Interior issues.

The question of institutional reform was raised in early 1992 in connection with the prospect of enlargement to a number of EFTA countries. But the Danish "no" in the referendum of May 1992 effectively killed the prospect of institutional reform for the EFTA candidates even though there was an attempt by the UK government to raise certain institutional issues in the spring of 1994, prior to the conclusion of the negotiations with Austria, Sweden, and Finland. The CFSP has hardly been a conspicuous success story but the UK and France seem determined to maintain the pillar structure and avoid any contamination by resort to community procedures.

This brief article outlines the range of possible agenda items for the IGC, examines the current political debate about the future shape of Europe and concentrates on two priority areas of institutional reform and reform of the CFSP.

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The Agenda

The Treaty on European Union (TEU) contained a number of dispositions concerning the 1996 IGC which have been supplemented by decision of the European Council. In the TEU, there is reference to a possible revision of Titles V (CFSP) and VI (Interior and Justice) as well as new areas of community competence (article B); defence (article J4); extension of the field of co-decision (article 189B); hierarchy of norms; and the possible inclusion of civil nuclear protection, energy and tourism within community competence.

In 1996 the EU is also scheduled to take important decisions concerning moves to a single currency, even though EMU as such is not on the IGC agenda. The Corfu European Council in June 1994 decided to establish a Reflection Group, to begin work in June 1995, with a broad mandate to consider IGC issues. The Corfu European Council also made a direct link between the next enlargement and the IGC when it stated that "the institutional conditions for ensuring the proper functioning of the Union must be created at the 1996 IGC, which for that reason must take place before accession negotiations begin" with countries of central and eastern Europe.

The Reflection Group was further instructed to prepare options on some of the most sensitive issues including the "weighing of votes in Council, the threshold for qualified majority decisions, the number of members of the Commission and any other measure deemed necessary to facilitate the work of the institutions and guarantee their effective operation in the perspective of enlargement." It is also worth emphasising that the European Council specifically singled out the Mediterranean "mini states", Cyprus and Malta, as being involved in the next enlargement, a decision which reinforces the institutional dimension of the IGC.

Enlargement

Even before the EU has had time to digest the three new member states, Austria, Sweden, and Finland, attention is focusing on the next enlargement. As regards central and eastern Europe, there are two applications on the table - from Poland and Hungary - and all the others which have, or will soon have (i.e., the three Baltic states and Slovenia), association agreements have indicated their intention to follow suit. The Swiss and Turkish applications remain on the table as well as the previously mentioned applications from Cyprus and Malta. An EU with perhaps 25-30 member states looms on the not too distant horizon.

It is impossible to give an answer to the oft mooted question as to when the east Europeans will be ready for membership because no one can predict the speed and future course of political and economic reforms in those countries. At present there are several governments in the region with ex-communist participation which in some cases has led to a slowing of the reform process. For its part, the EU has

adopted a "pre-accession strategy" designed to assist the east European states meet the requirements for membership, notably through adopting measures outlined in the forthcoming Commission White Book concerning participation in the Internal Market. It seems inevitable that lengthy transition periods will be required for at least some of the central and east European states. But there will also be some adjustments necessary on the EU side including adaptation of the CAP and the Structural Funds. The criteria for membership, however, are reasonably clear and include stability of democratic institutions, a functioning market economy able to compete in the Union, acceptance of the *acquis communautaire* (that is, all EU legislation to date) and acceptance of the future aims of the Union, including EMU.

As mentioned above, European leaders added to this list the question of institutional reform. But before turning to this issue it is perhaps worth addressing the perennial question of Europe's frontier. There would appear to be little advantage in trying to define the border of the European Union at this stage. To the north, west and south there is no problem. To the east the geographic border of Europe lies at the Ural mountains but the Urals are not even an internal border of the Russian Federation. It is difficult to imagine Russia ever joining the European Union because amongst many reasons in size alone it is several times bigger than all current members of the Union taken together. The future orientation of Ukraine is less certain but it too is suffering major economic problems which would seem to preclude any prospect of membership of the Union in the foreseeable future. In former Yugoslavia only Slovenia so far has managed to make a clean break from its past. Others may follow which demonstrates the impossibility of drawing hard and fast lines now as to who should not be considered as future members of the Union.

The Debate on Europe

The prospect of a considerably enlarged EU in the not too distant future has sparked off a vigorous debate on the future shape of Europe. The debate was opened with the publication in September 1994 of the controversial Lamers paper calling for a hard-core Europe. This proposal brought a swift response from John Major in his Leiden speech and various statements from French leaders asserting the need for some "variable geometry". The contrast in style (and substance), particularly between the CDU paper and Major's speech is striking. The German paper draws attention to the critical juncture in European integration created by the collapse of the Soviet Union, the necessity of bringing some eastern European countries into the European Union and of building a stable economic and security framework to cover both those which will, in time, join the Union and those - most crucially Russia - which will remain outside. The Union's response, the paper argues, will show whether it is able and willing to become the main pillar of a continental order, alongside a democratised and once again stable Russia, and in alliance with the USA. The paper goes on to state that because of its position, its size and its close relations with France, Germany bears a special responsibility to promote an integrated wider European order. If Europe

were to drift apart Germany would once again find itself caught in the middle. Germany thus needs an integrated Europe to reassure its partners in the West and East that it has no plans to seek a *Sonderweg*.

In stark contrast, the Major speech lacks any comparable sense of urgency or history. Russia is mentioned only in passing. America's partial disengagement from Europe not at all. The two key concepts of the speech are the permanence of the nation state and the need for a maxim of flexibility. Given the internal divisions within the ruling Conservative Party it is most unlikely that there will be a coherent UK strategy at the IGC. Indeed, such is the negative stance of the UK, there is already speculation that the IGC may not start, or at least not start the serious negotiations, until after the next UK elections which must be held sometime before April 1997.

The debate is already beginning to display some contours and a number of key questions have been raised. First, what vision do governments have of Europe? There is a world of difference between the idea of a United States of Europe and a loose free trade area. The vision of a United States of Europe was once part of the manifest of the CDU but it has since been dropped. It is perhaps still held by some starry-eyed idealists but it is highly doubtful whether Europe will ever develop into a Union akin to the American model. More practical questions relate to the degree of integration and which policy areas should be dealt with at the European level and which at national or regional level. Second, how to organise an enlarged Union of 20 or even 30 members on the basis of democracy, fairness, transparency and efficiency? Apart from the institutional aspects (treated below) the EU needs to respond to the very obvious fears of ordinary people expressed during the Maastricht debate of a European Union not properly subject to democratic accountability, centralist in nature and with very opaque decision-making structures. Further integration of Europe will be in jeopardy if these issues are not resolved. The same can be said for fairness and efficiency. States join the Union because it gives them added value. It increases their influence and provides a greater opportunity to achieve their policy aims or, to put it another way, it increases their real sovereignty. But if member states consider that they no longer receive any real benefit from the Union, or that the voting system has become seriously inequitable, then some members might ask why bother to stay in the club.

Third, is it right that the slowest ship should hold up the rest of the convoy? Or should those that are already, willing and able to push ahead at a faster pace be allowed to do so? This is at the heart of the debate on a multi-speed Europe, sometimes called variable geometry - but which should not be confused with Europe à la carte. Europe à la carte is rather like the mystery game "Murder à la carte" in which someone always gets killed. In the case of Europe the à la carte approach would almost certainly mean death of the Union.

A Multi-speed Europe

As a way out of the dilemma between widening and deepening there have been calls, notably in the Lamers paper, for a multi-speed Europe. To some extent such a Europe already exists. The UK has an opt out on the Social Chapter and EMU. Denmark (and Ireland) on defence. Not all countries have signed up for the Schengen Agreement which deals with immigration procedures. Indeed the underlying assumption behind the move towards economic and monetary union which was agreed at Maastricht is that not all member states will be able to join in the first wave. Such divergence is of course likely to increase as the Union enlarges and is probably unavoidable.

Thus the principle of a multi-speed Europe has already been agreed. The majority view in the Union is that all members should move ahead together wherever possible but if a smaller group wishes to push ahead towards closer integration then they should be allowed to do so. There was perhaps a misunderstanding about this issue in the German paper. It did not propose a closed hard core but rather one open to others wishing to commit themselves to closer integration. A few years ago some member states were competing for opt outs. Now, to judge from those wishing to join the hard core, the competition is for opt-ins.

The difficulty of a multi-speed Europe lies in the institutional framework for such an Europe. The current institutions are based on all members participating in all policy areas (pace the one or two known opt-outs). If this opt out system were to expand and there were varying circles of members the institutional problems would be horrendous. For example, there might be a six-strong hard core accepting all policies; nine accepting most but not all; twelve accepting half; sixteen accepting a quarter; and so on. It would be a nightmare; clearly further thought has to be given as to how such a multi-speed Europe would operate in practice. Other rather more controversial proposals have been aired including the idea that future constitutional amendments to the Union's treaty base should enter into force when 80% of the EU's population and member states have ratified; that there should be provision for a member state to leave the Union and even provision for a member state to be suspended and ultimately expelled. The reasoning is that the EU based on the rule of law and if there are member states who blatantly refuse to implement or comply with EU law then there should be some stricter sanction than a mere fine.

Institutional Reform

To maintain the ability to act and to make an enlarged Union more democratic the CDU paper calls for a federal Europe based on the principal of subsidiarity. One of the reasons for the considerable hot air surrounding the debate on Europe is due to misconceptions about the word "federal". Many who read the UK press seem to believe that federalism means centralism. On the continent, however, the basic federal principal is defined as "as much unity as necessary, as much diversity as possible." Federalism is actually

synonymous with subsidiarity because it implies a system whereby decisions are taken at the lowest possible level. In practical terms this would involve a decision-making structure rather like the Germans involving Brussels, Bonn and Munich. It does not mean that the nation state will disappear. But, as the Lamers paper argues, it does not require a rethink of the concept of national sovereignty and some minimal agreement on the operation of the principle of subsidiarity. In an increasing interdependent world the very idea that a nation state can deal with all problems is untenable. The financial markets are transnational, security issues are transnational, environmental issues are transnational, crime is increasingly transnational.

It is equally an illusion that the most efficient way to deal with these problems on the international level is by the inter-governmental method. The albeit short record of operating pillars II and III is hardly a recommendation for this approach. If the Union were to relapse into this type of cooperation then it would inevitably suffer the impotence of institutions such as the OECD, OSCE and Council of Europe which are organised on an inter-governmental basis. The Single Market is a good example of how member states agreed the legislative framework for the 1992 programme by working within a supranational framework, i.e., using majority voting to reach decisions. There can be little doubt that an enlarged Union would be paralysed unless there was a significant extension of majority voting to other areas.

It would certainly increase the legitimacy of such a move if the voting system in the **Council**, where all major decisions are taken, were reformed to allow more for population size. The present system allocates 10 votes to Germany (80 million) and 2 votes to Luxembourg (3,000,000 thousand) - a ratio of 5 to 1 when the population ratio is more than 200 to 1. The accession of further minnow such as Malta and Cyprus or three Baltic States will accentuate this problem. On the present system these five states, with a combined population of less than 5 million, would have the same voting strength as the UK with more than ten times the population. If the larger member states are not to run away with the ball and perhaps establish their own club then it will be essential to make some adjustment to the allocation of votes in the Council, perhaps using some form of double majority with more weighting for member states with larger populations. There will also have to be some reform of Council working methods if the system is not to grind to a halt. As regards the **European Parliament (EP)** there is a strong case for putting a ceiling on the number of seats regardless of how many new members there will be and again allocating seats more in accordance with population. The German paper calls for increased powers for the EP, a move which Major flatly rejected in his Leiden speech, thus demonstrating the difficulty of achieving agreement on this issue. The first task, however, must be to simplify the legislative involvement of the EP. It is ridiculous that there are no less than seven ways in which the EP may be involved in the passage of the EU legislation. It is also important that the MEP's demonstrate that they are able to use their newly-won powers in a sensible, constructive manner. Another priority task is to evolve a cooperative working relationship with national parliaments is not a zero-sum game. There is plenty of useful work for both to

do in terms of setting the European debate, controlling Ministers and the Commission and exercising their respective budgetary powers.

Turning to the **Commission** there is a general agreement that the IGC should examine the appointment process and the number of commissioners. The fuss surrounding the veto of M. Dehaene and the subsequent appointment of M. Santer revealed fundamental flaws in the nomination system. When the Financial Times writes that the emergence of a Pope is more transparent than the system to find a new President of the Commission then it is surely time to make changes. To avoid such a situation in the future one could consider involving the EP at the nomination stage: perhaps drawing up a short-list from names proposed by member states and then voting on the candidates. This would be far more open and democratic than the current system.

On taking over as President of the Commission, M. Santer was faced with the unenviable task of trying to find interesting jobs for 20 Commissioners. This was a difficult job and could become a total impossibility if after subsequent enlargements there are 30 or more Commissioners. In principle everyone accepts the need to reduce the number of Commissioners. The question is how to do it? There have been proposals to introduce a rotation system based on constituencies but it is difficult to see how this would operate in practise. It would be extremely difficult if not impossible to secure agreement either on the composition of the constituencies (UK/Ireland? Spain/Portugal?) or the nominees. Others suggest de-nationalising the Commission. In other words introducing a system of nominating or even electing, perhaps just 12-15 commissioners, again from lists drawn up by the EP following consultations with member states. Ultimately there is a logical argument for the President of the Commission to be elected directly by the citizens of the Union. This could be done in parallel with the elections to the EP. The advantage of such a system is that it would be quite transparent and at a stroke it would eliminate the democratic deficit. Perhaps for those reasons it is unlikely that such a system will be introduced for a long time.

Making CFSP Effective

The end of the Cold War has dramatically changed the strategic situation of the European Union. The Soviet threat has disappeared. The US is gradually disengaging from Europe and concentrating on domestic issues. In these changed circumstances it is clear that Europe will have to take on more responsibility for its own security. With 380 million people, with a combined GNP ahead of the US, with the largest single market in the world, as the most important player in international trade, as the main source of development assistance and humanitarian aid to the third world, the European Union simply cannot avoid taking increased responsibility in world affairs. The mechanism to promote this increased responsibility is the Common Foreign and Security Policy (CFSP) but as this policy area was set up outside the Community framework, i.e., on the inter-governmental lines, it has been largely paralysed by

the unanimity principle. The result has been that some member states have established smaller groupings to deal with particular problems, e.g., the creation of the Contact Group to deal with Bosnia and the Union has failed to develop a strategic approach to major foreign and security policy issues.

Title V of the TEU was of course a compromise between the "Europeans" and the "Atlanticists", between those advocating a communautaire approach and those preferring the inter-governmental method. It is perhaps worth recalling the principle points agreed under Title V. On the positive side the TEU abolished the old EPC restriction about discussing the military aspects of security. The CFSP was to be all embracing. There was provision for Joint Actions, a legal commitment for all member states, acting by unanimity, to pursue a certain policy. There was also provision for "common positions" and indeed provision for majority voting in the implementation of agreed policies.

As the TEU has only been in force for eighteen months it is perhaps premature to make a definitive judgment on CFSP, but a preliminary assessment would certainly justify the concerns which President Delors expressed following the Maastricht negotiations about the pillar structure and adherence to the unanimity principle. So far CFSP has proved to be little improvement on EPC. Member states have shown a lack of political will to make effective use of CFSP. Despite the single institutional framework (article C) the new inter-governmental arrangements have not led to a more coherent approach to external affairs. Dialogue partners find the institutional arrangements bizarre. For example, in some transatlantic discussions, the US Secretary of State sits alone on one side of the table. On the other side are fifteen Foreign Ministers, a Commissioner and a representative from the Council CFSP Secretariat.

There are also serious structural flaws. Above all continuous adherence to the principle of unanimity has led to delays and inaction in policy areas of major interest to the Union. There is no proper mechanism for conceptual planning and analysis. There are constant disputes over competence and financial arrangements for CFSP and there is a lack of coordination between the (too many) players in the CFSP game. As result CFSP has come under criticism for doing too little, too late. Its first Joint Actions (monitoring elections in Russia and South Africa) were modest in the extreme. The Stability Pact was a more solid action but it hardly provided the EU with a major international profile.

Given the poor performance of CFSP to date there are likely to be demands for changes including:

-conception: there is a need to establish a planning and analysis capacity at the Union level which would be tasked with identifying vital common interests, assessing priorities and preparing alternative courses of action.

-proposition: there is no driving force in CFSP comparable to the role of the Commission in Community business. The rotating Presidency operates essentially on a short-term agenda giving focus to its own priorities. There is also confusion as to whether policy initiatives should fall under Community or CFSP competence. A stronger role for the Commission would go some way to alleviating these problems.

-decision-making: making important decisions are postponed or avoided, e.g., Macedonia and Slovenia, because of strict adherence to the unanimity principle. Such behavior is catching and also encourages some member states to operate outside Union structures. In light of the future enlargement of the Union there is thus an urgent need to secure some reform, perhaps on the model "consensus minus one." At the very least member states should live up to the existing treaty commitment that "to the extent possible, member states will avoid preventing a unanimous decision where a qualified majority exists in favour of that decision."

-representation: the outside world is confused as to who speaks for the Union in CFSP. The formulas are many: the Presidency, Presidency/Commission, the Troika, the Fifteen. Whilst the Presidency was granted increased responsibilities in the Treaty there is the problem of maintaining coherence. Given the Commission's competences under Community business it would make sense to move to a dual Presidency/Commission representation.

Defence is perhaps the most sensitive area and it is unlikely that there will be any substantial movement in this front, although there has been some debate on the merits of establishing a fourth pillar for defence. The UK and France are keen to boost the role of the WEU but disagree on whether or not it should come under the EU single institutional framework umbrella. US support for the concept of a European Security and Defence Identity (ESDI) and a Combined Joint Task Force (CJTF) may have some impact on the debate but most European states will be reluctant to take any steps which may involve an increase in defence expenditure.

Conclusion

There is a huge gap between the positions of some of the major players. The British are fond of stating that the 1996 IGC will be akin to a 5,000 mile car service inspection whereas some influential German politicians are calling for a complete overhaul and possibly a new engine. There remains some time before ministers have to agree on the agenda and timing of the IGC but at present it seems as if it will be difficult enough reaching agreement on these relatively simple matters. As far as the major issues outlined above are concerned the prospects at present for reaching agreement can only be described as bleak. But then the prospects in 1985 of Mrs. Thatcher signing up to the Single Act, the most radical treaty change since the Treaty of Rome, were also rather bleak. The history of the EU demonstrates that hard decisions are usually only taken at the last minute and when there is a major challenge. No one can dispute that the 1996 IGC will be the major challenge for the future of Europe.