

NOTE

from: Presidency
dated: 16 June 2004
to: Delegations

*Subject: IGC 2003
– Meeting of Heads of State or Government, Brussels, 17/18 June 2004*

1. In paper CIG 81/04, delegations have received a set of texts which the Presidency believes will find consensus in the framework of the final overall agreement.
2. This paper contains suggested approaches on outstanding issues, both on the institutions and on other matters, for discussion by Heads of State or Government.

Institutions

3. The Presidency has always acknowledged that delegations will view arrangements on institutional questions in the round, and that any package on them must strike an overall balance. It believes that the approach it is now proposing achieves such a balance.

Voting in the Council

4. In its report to the European Council in March, the Presidency stated its belief that, to secure consensus, a solution on the question of voting must be based on the principle of double majority, must allow for greater efficiency, and must have due regard to balance among all Member States and to their specific concerns.

5. In its paper of 19 May, the Presidency stated its belief that consensus would only be found through raising the population threshold and that, in that context, the Member State threshold would also have to be raised, ensuring that the gap between the two thresholds is not widened over that proposed by the Convention text.
6. The Presidency notes the clear preference of a significant number of Member States for an outcome that narrows the gap between the two thresholds or which establishes parity between them. It also notes that others strongly believe that, in this regard, the Convention proposal for a 10% gap offers a reasonable balance and are opposed to any change.
7. Having reflected carefully on the different views that have been expressed to it, and in keeping with the principles it identified in its report in March, including the need for greater efficiency, the Presidency believes that, as part of an overall balanced outcome on the institutions, the population threshold should be set at 65%. In this context, the Member State threshold should not be set lower than 55%.
8. As the Presidency has previously stated, it believes that the new system must have due regard to balance among all Member States. It considers that a requirement that a blocking minority should not be possible without the participation of at least 4 Member States would contribute to this.
9. It is aware of suggestions that a blocking minority should also be required to include Member States representing at least 12% or 15% of the Union's population. However, in the context of the thresholds proposed above, it does not believe that such a requirement would be justified.
10. The Presidency notes that many delegations have said that they are open to or could support an arrangement under which abstentions would no longer count for the purposes of calculating a qualified majority. Such an arrangement would contribute to increasing the efficiency of the Council's decision-making. It notes, however, that this is not yet the subject of consensus. Before reaching a final view, the Presidency would welcome delegations' views.

11. In the context of the implementation of new voting arrangements in the Council, the Presidency believes that it would be useful for the Conference to reaffirm that it will be the Council's continuing practice to devote every effort to strengthening the democratic legitimacy of decisions taken by qualified majority and to securing the highest possible degree of consensus on them.
12. The Presidency suggests that this commitment might be similar to that made in Ioannina in March 1994 and might make it clear that where a group of Member States somewhat less than a blocking minority was opposed to a particular measure, the Council would do all in its power, within a reasonable timeframe and without prejudice to any time limits set by Union law, and respecting the Council's Rules of Procedures, to reach a satisfactory outcome.
13. If the Conference is agreeable to such an approach, it will need to consider whether such a commitment should be made in a Protocol, in a Declaration or, as was the case in 1994, in a Council Decision. It will also need to consider whether the commitment should be permanent in nature or whether it should apply only for a period of transition. Finally, the Conference will have to decide what population and Member State thresholds should apply. One possibility is that the thresholds in either case should be set at 5 percentage points below the requirements for a blocking minority.
14. The Conference will also need to decide arrangements for a qualified majority in cases when the Council is not acting on the basis of a Commission proposal, or where not all Member States participate in a given area (for example, in the eurogroup or in enhanced cooperation). The Presidency will submit proposals on the application *mutatis mutandis* of the Qualified Majority arrangements in such cases, avoiding unnecessary complications.

The European Parliament

15. As the Presidency has noted previously, there appears to be broad consensus in favour of raising the minimum number of seats per Member State. It therefore now proposes that this minimum number should be six, to meet the needs of the smallest Member States.

16. In addition, the Presidency is aware that, in the context of a balanced overall package on the institutions, some delegations believe that the distribution of seats in the Parliament should be re-examined. It notes that the Draft Constitutional Treaty stipulates that the Parliament will bring forward an initiative in this regard in advance of the European Parliament elections in 2009, for adoption by the European Council by unanimity with the consent of the Parliament.
17. Some have suggested that, to provide the Parliament with the necessary degree of flexibility in bringing forward its initiative, the maximum number of seats in the European Parliament should be raised (possibly to 745 or 750) and that, to balance the minimum number of seats per Member State, a maximum number should also apply.

The Commission

18. The Presidency has previously stated its view that consensus can be found on an arrangement under which the Commission would continue to include a national of every Member State until 2014, moving to a reduced size thereafter. It is, therefore, now proposing that from 2014, the Commission should comprise 18 Commissioners, including the President of the Commission and the Foreign Minister, chosen according to a system of strictly equal rotation.
19. The Presidency's proposal is set out in Annex 1.

Non-Institutional Issues

20. The Presidency attaches proposals in Annexes 2–5 in regard to four outstanding economic governance issues – the coordination of economic policy, admission to the eurozone, the Stability and Growth Pact and the role of the Commission in the excessive deficit procedure – which it believes would represent a reasonable balance between the views of delegations.

21. Specifically in regard to the role of the Commission in the excessive deficit procedure (Annex 5), some delegations have suggested that both references to Commission "proposals" in Article III-76(6) be changed to "recommendations". However, with a view to seeking a compromise, the Presidency has suggested only one such change, which it notes is in line with what ECOFIN Ministers broadly agreed during the Italian Presidency.
22. The Presidency also attaches a proposal in Annex 6 on the multiannual financial framework, under which unanimity would be maintained pending the application of a simple passerelle to qualified majority voting, and believes that this should be agreed in an overall package.
23. Finally, in a context where there is consensus on the content of the Charter of Fundamental Rights, on its legal status as part of the Constitution, and on the need for the Courts when interpreting the Charter to give due regard to the Explanations, the Presidency believes that its compromise proposal on the placement of a reference to the Explanations, set out in Annex 7, should be acceptable to all.

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PART I

INSTITUTIONS

THE EUROPEAN COMMISSION

Article I-25: The European Commission

1. The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure that the Constitution and the measures adopted by the Institutions pursuant thereto are applied. It shall oversee the application of Union law under the control of the Court of Justice of the European Union. It shall implement the budget and manage programmes. It shall exercise coordinating, executive and management functions, as laid down in the Constitution. With the exception of the common foreign and security policy and other cases provided for in the Constitution, it shall ensure the Union's external representation. It shall initiate the Union's annual and multiannual programming with a view to achieving interinstitutional agreements.
2. Union legislative acts may be adopted only on the basis of a Commission proposal, except where the Constitution provides otherwise. Other acts shall be adopted on the basis of a Commission proposal where the Constitution so provides.
3. **The first Commission appointed under the provisions of the Constitution shall consist of one national of each Member State, including its President and the Union Minister for Foreign Affairs who shall be one of its Vice-Presidents.**
4. **As from the end of the term of office of the Commission referred to in paragraph 3, the Commission shall consist of 18 members, including its President and the Union Minister for Foreign Affairs who shall be one of its Vice-Presidents.**
5. **The Commission's term of office shall be five years.**
6. **The Members of the Commission shall be chosen on the ground of their general competence and European commitment and their independence shall be beyond doubt.**

They shall be selected among the nationals of the Member States on the basis of a system of equal rotation between the Member States. This system shall be established by a European decision adopted unanimously by the European Council on the basis of the following principles:

- (a) Member States shall be treated on a strictly equal footing as regards determination of the sequence of, and the time spent by, their nationals as Members of the Commission; consequently, the difference between the total number of terms of office held by nationals of any given pair of Member States may never be more than one;
- (b) subject to point (a), each successive **Commission** shall be so composed as to reflect satisfactorily the demographic and geographical range of all the Member States of the Union.

7. In carrying out its responsibilities the Commission shall be completely independent. **Without prejudice to Article I-27(2)**, the Members of the Commission shall neither seek nor take instructions from any government or other institution, body, office or agency. They shall refrain from any action incompatible with their duties or the performance of their tasks.

8. The Commission, as a body, shall be responsible to the European Parliament. Under the procedures set out in Article III-243, the European Parliament may vote on a censure motion on the Commission. If such a motion is carried, the Members of the Commission shall resign as a body **and the Union Minister for Foreign Affairs shall resign from the Commission.**

Article I-26: The President of the European Commission

1. Taking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission. This candidate shall be elected by the European Parliament by a majority of its members. If he or she does not obtain the required majority, the European Council, acting by a qualified majority, shall within one month propose a new candidate who shall be elected by the European Parliament following the same procedure.

2. **The Council, by common accord with the President-elect, shall adopt the list of the other persons whom it intends to appoint as Members of the Commission. They shall be selected, on the basis of the suggestions made by Member States, in accordance with the criteria set out in Article I-25(6).**

The President, the Union Minister for Foreign Affairs and the other Members of the Commission shall be subject as a body to a vote of approval by the European Parliament. On the basis of this approval the Commission shall be appointed by the European Council, acting by a qualified majority.

3. The President of the Commission shall:

- (a) lay down guidelines within which the Commission shall carry out its tasks;
- (b) decide on the internal organisation of the Commission, ensuring that it acts consistently, efficiently and as a collegiate body;
- (c) appoint Vice-Presidents, other than the Union Minister for Foreign Affairs, from among the Members of the Commission.

A Member of the Commission shall resign if the President so requests. **The Union Minister for Foreign Affairs shall resign, in accordance with the procedure set out in Article I-27(1), if the President so requests.**

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PART II

NON-INSTITUTIONAL ISSUES

**PROVISIONS SPECIFIC TO MEMBER
STATES WHOSE CURRENCY
IS THE EURO**

Article III-92 (2)

2. After consulting the European Parliament and after discussion in the European Council, the Council, on a proposal from the Commission, shall adopt a European decision establishing which Member States with a derogation fulfil the necessary conditions on the basis of the criteria set out in paragraph 1, and shall abrogate the derogations of the Member States concerned. **The Council shall act having received a recommendation of a majority of those among its members representing Member States whose currency is the euro and comprising at least three fifths of the population of those Member States**¹.

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¹ The draft of this sentence will have to be adapted in the light of the final drafting of Article I-24 on the definition of qualified majority.

COORDINATION OF ECONOMIC POLICY

Article I-11 (3)

3. The Union shall have competence **to provide a framework for the coordination by the Member States of their** economic and employment policies.

Article I-14 (1)

1. The Member States shall coordinate their economic policies within the Union. **To this end, the Council shall adopt measures, in particular broad guidelines for these policies.**

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**DECLARATION ON THE STABILITY AND
GROWTH PACT**

**Declaration to be incorporated in the Final Act
re Article III-76**

With regard to Article III-76, the Conference confirms that raising growth potential and securing sound budgetary positions are the two pillars of the economic and fiscal policy of the Union and the Member States. The Stability and Growth Pact is an important tool to achieve these goals.

The Conference reaffirms its commitment to the provisions concerning the Stability and Growth Pact as the framework for the coordination of budgetary policies in the Member States of the European Union.

The Conference confirms that a rules-based system is the best guarantee for commitments to be enforced and for all Member States to be treated equally.

Within this framework, the Conference also reaffirms its commitment to the goals of the Lisbon Strategy: job creation, structural reforms, and social cohesion.

The Union aims at achieving balanced economic growth and price stability. Economic and budgetary policies thus need to set the right priorities towards economic reforms, innovation, competitiveness and strengthening of private investment and consumption in phases of weak economic growth. This should be reflected in the orientations of budgetary decisions at the national and EU level in particular through restructuring of public revenue and expenditure while respecting budgetary discipline in accordance with the Constitution and the Stability and Growth Pact.

Budgetary and economic challenges facing the Member States underline the importance of sound budgetary policy throughout the economic cycle.

The Conference agrees that Member States should actively consolidate public finances and improve their budgetary positions in economic upswings which creates the necessary room to accommodate economic downturns and thus contribute to the long-term sustainability of public finances.

The Member States look forward to possible proposals of the Commission as well as further contributions of Member States with regard to strengthening and clarifying the implementation of the Stability and Growth Pact. The Member States will take all necessary measures to raise the growth potential of their economies. Improved economic policy coordination could support this objective.

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**MEASURES RELATING TO EXCESSIVE
DEFICITS CONCERNING THOSE MEMBER
STATES WHOSE CURRENCY IS THE EURO**

Article III-76 (6)

6. The Council shall, on a proposal from the Commission, having considered any observations which the Member State concerned may wish to make and after an overall assessment, decide whether an excessive deficit exists. In that case it shall adopt, **on a recommendation from the Commission**, recommendations addressed to the Member State concerned with a view to bringing that situation to an end within a given period. Subject to paragraph 8, those recommendations shall not be made public.

Within the scope of this paragraph, the Council shall act without taking into account the vote of the member of the Council representing the Member State concerned.

A qualified majority shall be defined as the majority of the other members of the Council, representing Member States comprising at least three fifths of the population of the participating Member States.¹

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¹ The draft of this sentence will have to be adapted in the light of the final drafting of Article I-24 on the definition of qualified majority.

MULTIANNUAL FINANCIAL FRAMEWORK

Article I-54

1. The multiannual financial framework shall ensure that Union expenditure develops in an orderly manner and within the limits of its own resources. It shall determine the amounts of the annual ceilings of appropriations for commitments by category of expenditure in accordance with of Article III-308.
2. A European law of the Council shall lay down the multiannual financial framework. The Council shall act **unanimously** after obtaining the consent of the European Parliament, which shall be given by a majority of its component members.
3. The annual budget of the Union shall comply with the multiannual financial framework.
4. **The European Council may adopt, by unanimity, a European decision allowing for the Council to act by qualified majority when adopting the European law of the Council referred to in paragraph 2.**

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**EXPLANATIONS RELATING TO THE
CHARTER OF FUNDAMENTAL RIGHTS**

5th paragraph of the Preamble

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter **and updated under the responsibility of the Praesidium of the European Convention.**

Article II-52: Scope and interpretation of rights and principles
(New (7))

7. The explanations drawn up as a way of providing guidance in the interpretation of the Charter of Fundamental Rights shall be given due regard by the courts of the Union and of the Member States.

Declaration for incorporation in the Final Act
concerning the explanations relating to the Charter of Fundamental Rights

The Conference takes note of the explanations relating to the Charter of Fundamental Rights prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention, as set out below.