

## **GUEST EDITORIAL**

### **INTERGOVERNMENTAL CONFERENCE 1996: NOT A “MAASTRICHT II”**

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#### **1. Why an Intergovernmental Conference?**

From the start, the European integration process has been accompanied by discussions for reform, varying in their intensity and their objectives. The necessity for adjustments to the institutional system, to certain policy areas or competences has been debated, usually against the background of important political or economic events. After a time of stagnation, a new dynamic integration process started in the 1980s, of which the highlights were the Single European Act of 1986 and the Maastricht Treaty of 1991. The heads of state and government initiated the development towards the Internal Market, Economic and Monetary Union, and European Union. The European idea, taken up again after the horrible experiences of the Second World War, was not new, but it soon developed an amazing political dynamism. The Member States always meant the process of European Integration to be a gradual, step-by-step process of deepening and strengthening the union of the peoples of Europe. No step was ever meant to be the last, each was thought to be the transition to the next.

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The Editors invited Mr Brok, representative of the European Parliament in the IGC, to present some comments in the form of a Guest Editorial on the current stage of developments with regard to the IGC.

The Maastricht Treaty's openness to further integration is revealed in several paragraphs: the Preamble considers "further steps to be taken in order to advance European integration", and Article A states that "this Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe". The Maastricht Treaty did not constitute the political and legal end of the integration process. Well aware of the dynamism of integration, the authors already provided for an Intergovernmental Conference (IGC) in 1996, in Article N of the Treaty in order, *inter alia* to revise Treaty provisions in the new chapters on "Common Foreign and Security Policy" and "Cooperation in the fields of Justice and Home Affairs", should this prove necessary.

At the Turin summit, on 29 March 1996, the IGC that will lead to a revised treaty was launched. This treaty is supposed to differ from its much-criticized predecessor, the Maastricht Treaty. The establishment of the Reflection Group in May 1995, a think-tank for the preparation of the IGC, which consisted of representatives of the Member States, the European Commission and the European Parliament (EP), already indicated that this IGC would be unlike the 1991 conference, which became notorious simply as "Maastricht". "Maastricht" became an emotive word for Euro-sceptics, a symbol for secret diplomacy and unworldly decisions of ivory-towered bureaucrats producing tons of incomprehensible laws. Now, the representatives of the Member States face the challenging task of simplifying and tightening this treaty, and ensuring that the 1996 IGC does not give birth to an unattractive "Maastricht II".

Despite all the criticism, much of it deserved, it must be pointed out that the Maastricht Treaty gave a fresh impetus to the integration process. It widened the scope of Community competences in several areas, presented elaborate and detailed provisions arranging Economic and Monetary Union, and brought two extra fields of activity within the scope of the European Union: Common Foreign and Security Policy, and Justice and Home Affairs. These fields were now included in the integration process. The Maastricht Treaty created mechanisms to press ahead with the integration process from the inside, so to speak. Last but not least, it included Article N, acknowledging its own inevitable imperfection.

Besides this legally binding timetable, there are political reasons why a reform of certain policies and mechanisms is necessary. One reason is the fundamental change in the European security framework that has taken place since the fall of the Berlin Wall in 1989, and its further repercussions. The East-West conflict, which demonstrated the necessity of close cooperation among the Western European democracies, was once seen by citizens as one of the major *raisons d'être* for European integration, so this is now seen as an issue in the past by some people. One effect of this change has, recently, been to put more emphasis on the desire to strengthen and consolidate national and regional values. Popular support for European integration has waned, whereas popular support is essential in democratic states.

In a number of EU Member States, the lack of a feeling of European identity created a steadily growing emotional distance on the part of the people of Europe *vis-à-vis* integration. This process of alienation was not helped by the Maastricht Treaty, which was found to be too technocratic and complex. It created the impression that European politics and administrative structures had developed into a labyrinth of institutions and decision-making procedures whose functioning and interaction is barely comprehensible, even for experts.

Aware that this dilemma – on the one hand the aim of “an ever closer union of the peoples of Europe”, on the other hand the lack of acceptance by these peoples – had to be solved to prevent an erosion of the democratic base of the EU, the heads of states and governments focused on the IGC of 1996, making efficiency, transparency and democracy its priorities.

In order to increase acceptance, it is necessary to show clearly that the EU is an indispensable instrument for the successful solution of problems, even after the Cold War. This applies in areas that concern virtually every Member State: protecting peace and internal security, safeguarding common economic interests, fighting unemployment. As the capacity to act is an indispensable factor in the legitimacy of the Institutions, both they and the decision-making processes have to be further developed.

If we shy away from such a reform, and if we cling to national interests, the EU will break down. The need for reform is intensified by the

fact that, in addition to long-term tasks such as fighting unemployment, we are faced with certain vital decisions which must be taken in the coming five years. These concern:

- the enlargement negotiations with Eastern European States and Cyprus, which will start six months after the successful conclusion of the IGC (which should be in mid-1997: this is at least the desire of the Member States);
- the move to the third stage of EMU on 1 January 1999;
- the re-negotiation of the WEU Treaty;
- the revision of EU financing after the expiration of the current provisions.

This European “Agenda 2000” is not the subject of discussion at the IGC. However, the successful outcome of the IGC is a precondition for coping with all these demanding tasks. In brief, we need to make significant progress in building the Political Union. Only a strong, efficient Political Union, with an appropriate institutional framework, will provide a solid basis for dealing with our future.

## **2. Positions adopted thus far in the IGC**

The Irish Presidency, whose very successful term ended in December 1996, summarized the current status of negotiations in a 140 page document, which was presented at the Dublin European Council in December 1996. The Council called the text a “good basis” for the subsequent work of the Dutch Presidency.

In the areas of EU policy now decided through intergovernmental cooperation, Common Foreign and Security Policy and Justice and Home Affairs, experience has shown that this intergovernmental approach is not appropriate. In Justice and Home Affairs, the desired successes in the fight against organized crime and drug trafficking or in the common asylum and immigration policy have not been achieved. The discussions on Justice and Home Affairs have therefore dealt mostly with the issue of so-called “Comunitarization”. Since the principle of consensus now used in the intergovernmental approach often impedes effective action, communitarization of these policy areas

would increase the EU's capacity to act. Instead of intergovernmental arrangements, the classic Community legislative means, which proved successful *inter alia* in building the Internal Market, should be brought into action. Immigration and asylum policy, external border control, legal cooperation in civil law and the fight against drug trafficking and racism should be transferred to the 1st Pillar. Where possible, Community instruments and procedures should, however, also be applied to those areas that remain in the 3rd Pillar. Communitarization would have the indisputable advantage of opening these policy areas to the full participation of the EP, thus improving democratic control at the European level, as well as to the competence of the European Court of Justice for the uniform interpretation of measures taken. This is of utmost importance, as the EP currently only plays a consultative role in intergovernmental agreements, and even the national parliaments are limited to mere consent or rejection without the possibility of changing a single word. It does not accord with the principles of the rule of law and of democracy that in a core area of individual freedom – such as justice and home affairs – legislative power lies *de facto* in the hands of the executive. Furthermore, communitarization would entail faster and more efficient decision-making procedures than is the case with agreements that have to be ratified by national parliaments. These positions, held *inter alia* by the European Parliament, have been supported by the proposals of the Irish Presidency and the Dublin European Council. The EP attaches great importance to the full participation of Community institutions and to majority voting in legislative matters of a non-constitutional nature.

Another important issue within the IGC negotiations is the safeguarding of fundamental rights by the EU, and judicial review of this through the European Court of Justice and the European Court of Human Rights. There have been many discussions on the concept of Union citizenship and how to develop this further. Against the background of unacceptably high unemployment figures in all the Member States, the introduction of a new treaty chapter on employment policy has been considered. In this respect, a great deal of political pressure is exerted by those countries with social democrat leadership, while the so-called “net contributors”, such as Germany, France, Great Britain

and the Netherlands, warn against unrealistic hopes or promises. Nearly all of them, however, accept new treaty provisions on employment in principle, providing they focus on coordination of national policies and do not lead to a new employment fund.

As for the Common Foreign and Security Policy, there is widespread agreement that the Union as a foreign policy actor must become more visible and effective. One of the key issues is a reform of the decision-making procedure. At present, unanimous voting allows blockages by single Member States. It is therefore necessary to introduce some form of majority voting,<sup>1</sup> without of course forcing any Member State to provide troops or material for military action against its will. It is becoming apparent that a new staff for foreign policy analysis and planning will be established, in which representatives of the Member States, the European Commission and the Western European Union (WEU) will work together. This corresponds to a recommendation by the EP, which pleads in particular for the adequate involvement of the Commission, in order to ensure that the interests of the Union as a whole are taken into account. As to whether the EU should make peace-keeping one of its future tasks, consensus is emerging to include the so-called "Petersberg tasks" of the WEU into the revised treaty.<sup>2</sup> A majority favours a merger of the WEU and the EU in the medium term for the construction of a common European defence policy.

Another topic which has been discussed is the need to improve the Community's capacity to act in foreign trade policy, especially at negotiations in the World Trade Organization, and in relation to the services sector, intellectual property and investment. At present, the Council can give negotiating mandates by majority decision to the Commission in respect of trade policy, but not with respect to services or investment agreements.

As was mentioned above, the structure and working methods of the Institutions need adjusting both with a view to the efficient functioning

1. In addition to the possibility provided for by Art. J.3.2, which depends on a previous vote taken with unanimity.

2. Western European Union, Council of Ministers, Bonn, 19 June 1992. Petersberg Declaration, II.4: "...humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management including peacemaking".

of the Union after enlargement, and in order to ensure transparency and democratic legitimacy. The existing structures were worked out for a Community of six Member States – clinging to them in a union consisting of 20 or even more Member States would make it impossible to function. The adjustments which are needed concern:

- the extension of qualified majority voting as a general rule, with the possible enumeration of exceptions, in the “classic” Community area. This should prevent an imminent paralysis of an enlarged Union;
- overhauling the EU decision-making processes. In general, EU decision-making should be limited to three types of procedures: co-decision, consent and consultation. The co-decision procedure should be extended to the whole area of legislation of a non-constitutional nature, with a view to making the EP an equal partner to the Council in legislative affairs;
- the uniformity of the budget procedure. The different budgets, such as the Community budget, the European development fund, the expenses for the 2nd and 3rd Pillar, need to be unified, and the EP guaranteed a right to comment on all parts of this unified budget;
- a reform of the structure and working method of the Commission. This reform is indispensable, as the Commission will become so big due to enlargement. There have been discussions on granting the Commission President more influence. Some Member States wish for a limit on the number of members. However, the smaller Member States in particular do not want to renounce their right to nominate a commissioner of their nationality. A compromise could be the appointment of Commissioners without portfolio (“junior commissioners”). In any case, the role of the Commission President should be strengthened, i.e. by means of the right to have a say in the nomination of Commissioners or in the division of competences.

One essential element of transparency is simplification. For this reason, the IGC is examining ways of simplifying the existing treaties. The structure and language of the Treaty on European Union should be

simplified and condensed into an easy-to-read, comprehensible text.<sup>3</sup> In the present document, complicated details of European law and the three pillar system obscure the legal and democratic structure of the Union.

### **3. Outlook**

At the European Council in Dublin in December 1996, the Irish Presidency presented a framework document for a revised treaty, in which the positions that have evolved since the IGC started and which enjoy majority support are set out. Moreover, alternative options for open questions are presented. With the presentation of this extensive document, the Presidency achieved its self-set goal to “aim at the upper limit of realism” to a great extent. It reflects the negotiations up to date, and offers a sound basis for the ongoing negotiations under the Dutch Presidency. In the view of the EP, the comments on the co-decision procedure are especially important. The document says explicitly that there should be only three decision procedures in the future, and that co-decision should be the general rule for legislation. The necessity of expanding qualified majority voting is also mentioned.

The document does include a few “drops of bitterness”, but these do not detract from the value of the Irish Presidency work at all. There are still no specific proposals on the core institutional issues outlined above. The EP’s demand for a homogeneous budget procedure covering every policy area has as yet not been taken into account. It can be assumed that a number of decisive and important issues will only be agreed on at the next European Council in Amsterdam in June 1997, in the framework of an overall settlement.

The outcome of the IGC is of decisive importance for the future of Europe. The IGC gives us the single chance to create the appropriate environment for tackling our historic tasks. Due to the dynamic and open nature of the integration process there will certainly be more

3. This by no means easy task is the subject of the Guest Editorial by Von Bogdandy and Ehlermann, “Consolidation of the European Treaties: Feasibility, costs, and benefits”, 33 *CML Rev.*, 1107–1116.



stages in developing an ever closer union of the peoples of Europe after this year's treaty reform. There will be more reform conferences to adjust the Union to current constraints. But the possibility of further enlargement, of the completion of the Economic and Monetary Union, are not likely to present themselves again. To cope with these impressive challenges, we must not be content with minimum reforms in the months to come.

The European Union draws its strength from what is best in the experience of nations: their cultures, languages, histories, traditions and identities. On the other hand, through a common institutional and legal framework, it seeks to overcome what has been most destructive about nation states: mutual suspicion leading, for example, to trade barriers or competitive currency devaluations, aggressive nationalism, and sometimes even war. The principles of our Community founded on common values and a common cultural background, are democracy, solidarity, subsidiarity and the rule of law. These principles must also direct the IGC of 1996.