

**CONFERENCE
OF THE REPRESENTATIVES
OF THE GOVERNMENTS
OF THE MEMBER STATES**

Brussels, 25 November 2003

**CIG 52/1/03
REV 1 (en)**

PRESID 10

NOTE

from: Presidency
dated: 25 November 2003
to: Delegations

Subject: ***IGC 2003***
– *Naples Ministerial Conclave: Presidency proposal*

1. In line with the conclusions of the European Council meeting in Thessaloniki, the work of the InterGovernmental Conference has been carried out at political level. The IGC meetings so far, together with a series of bilateral contacts, have enabled the Presidency to identify a number of issues in the draft Constitutional Treaty which delegations consider need either clarifying or amending, and in some cases to draw up proposals for a possible way forward.

LEGAL/TECHNICAL ISSUES

2. In parallel with discussions at political level the Presidency, with the agreement of all delegations, set up a group of legal experts in order to undertake a legal review of the draft Treaty establishing the Constitution drawn up by the Convention. The legal experts group met in October and November under the Chair of the Legal Counsel of the IGC. The outcome of the group's proceedings has been circulated in document CIG 51/03.

3. The revised texts contained in doc. CIG 50/03 and ADD 1 incorporate all the improvements of a legal or technical nature which are suggested by common accord of the legal experts of the Member States and of the acceding States, without prejudging any amendments which delegations might wish to put forward at the political level. The Presidency considers that the texts resulting from the legal experts group should not be reopened and should serve as a reference point for ministers and Heads in their discussions on the political issues.

OTHER ISSUES

4. As a complement to this consolidated text, the Presidency submits to delegations the current document which is intended to help make progress on the political issues in order to pave the way for an overall agreement in December. **This document is based on the work of the IGC to date. It contains a number of issues identified by the Presidency on the basis of clarifications, modifications and improvements requested by delegations or suggested by the Presidency. Addendum 1 contains proposals for texts.**¹ On some issues on which it is not yet possible to draw conclusions, the Presidency describes the current situation and limits itself to setting out the outlines of a possible way forward.
5. The current document, which constitutes the basis for the discussions in Naples, is intended to evolve in the light of subsequent discussions. It could be revised to take account of the discussions up to the moment when there is a final and overall agreement. In the absence of an issue being raised in this document, the Presidency considers that the text of the draft Constitutional Treaty (as set out in CIG 50/03) remains the basis for future work. This is without prejudice to the right of delegations at any stage to ask to discuss any additional issue on which they maintain that there is a need for clarification or amendment.
6. This document is not binding on any delegation, nor does it prejudice any position taken by delegations to date. **It is being circulated on the basis that none of the proposals contained in it can be considered final until agreement is reached on the draft Constitutional Treaty as a whole.**

¹ In this Addendum, the basic text to which the amendments have been added is that circulated by the Convention on 18 July 2003 (CONV 850/03).

I. PREAMBLE / DEFINITION AND OBJECTIVES OF THE UNION

a) Christian inheritance

The Presidency has noted that this is an important issue for a number of delegations, but does not at this stage put forward suggestions for amending the Convention text. A proposal will be presented on this issue at a later stage referring not only to Europe's Christian inheritance, but also to the secular nature of the institutions of EU Member States (principe de laïcité).

b) Union's values

- Rights of minorities
- Equality between men and women

The Presidency proposes to respond to the request for a treaty reference to the rights of minorities and to equality between men and women by means of an amendment to the existing Article 2 on the values of the Union [see text in Annex 1 to Addendum 1].

c) Primacy of EU law

The Presidency proposes to address the issue of the primacy of EU law, as requested by several delegations, by means of a declaration [see text in Annex 2 to Addendum 1].

II. CHARTER OF FUNDAMENTAL RIGHTS

The Presidency proposes that, for reasons of transparency and legal certainty, the last preambular provision be amended to refer also to the updating of the official explanations on the Charter and that these explanations be incorporated into a declaration to the Final Act of the IGC which, together with the other declarations, will be published in the Official Journal [see text in Annex 3 to Addendum 1].

III. INSTITUTIONAL ISSUES

a) Definition of QMV

The Presidency has noted that a large number of delegations support the draft Convention text on this issue. The Presidency is nevertheless aware that for a few delegations, the Convention proposal is not acceptable as it now stands. Given these differing views and the overall objective of maintaining the institutional balance established by the Convention, the Presidency does not propose changes to the Convention's proposals on the definition of qualified majority. It is however of the opinion that it is necessary to continue to reflect on possible ways to respond to these concerns, bearing in mind the shared overall objective of having simple, efficient and transparent decision making procedures.

b) Composition of the Commission

In an enlarged Union, the Commission needs to function effectively. The Presidency considers that the Convention text provides a good basis for meeting this objective. Nevertheless the Presidency is also aware that a significant number of delegations would prefer, for reasons of legitimacy, that the Commission be composed of one national from each Member State. The Commission itself has expressed the same opinion in its communication to the InterGovernmental Conference.

The Presidency proposes, at this stage, to address delegations' concerns by clarifying the provisions of the Convention text on the precise role and responsibilities of the "non-voting" Commissioners. These clarifications could cover the following points:

- full participation by "non-voting" Commissioners in the work of the Commission, including in meetings of the College;
- the assignment to "non-voting" Commissioners by the President of the Commission of substantive dossiers with real responsibilities.

The Presidency does not exclude the possibility of a discussion on other aspects relating to the composition of the Commission during the meeting in Naples.

c) Council of Ministers – formations and Presidency

On the basis of the broad support for its earlier proposals on this issue, the Presidency maintains its approach and submits a draft text [see texts in Annexes 4 and 5 to Addendum 1]. The Presidency has taken note that a large majority of Member States are opposed to the creation of a legislative Council, but recalls that this could be done subsequently by means of a decision of the European Council.

d) Foreign Minister

The Presidency maintains its earlier proposals for clarifying the provisions on the Foreign Minister, and suggests additional adjustments in order to meet some concerns from some delegations on this issue while fully maintaining the concept of double hatting [see text in Annex 6 to Addendum 1].

e) European Council – Judicial control of its legal acts

The Presidency proposes, as agreed by a majority of delegations, that the legal acts which are intended to produce legal effects vis-à-vis third parties adopted by the European Council (which is formally becoming an institution) be subject to judicial control by the Court of Justice [see text in Annex 7 to Addendum 1].

f) European Parliament

The Presidency has noted that a large number of delegations support the draft Convention text on this issue, although some have proposed that the minimum threshold of four members per Member State should be raised.

IV. FINANCES / BUDGET / ECONOMIC AND MONETARY POLICY

The Presidency has taken into account the various views of delegations on the full range of issues covered under this heading. It submits proposals for clarification or modification on some of those points, taking into account the degree of support which they have received as well as the necessity of not calling into question the general balance achieved in the Convention, especially as far as institutional issues are concerned.

a) Financial Perspective

The Presidency has taken note of concerns expressed by some delegations over the procedures for adopting the Financial Perspective after 2013, and suggests that the Conference might discuss the idea of a "rendez-vous" clause as a possible way of meeting these concerns.

b) Budget

The Presidency has noted that a very significant number of delegations have strong objections to the provisions on the budget in the draft Constitutional Treaty as they stand now. However at this stage the Presidency considers it appropriate to maintain the provisions in the Convention text, given that the various alternative approaches put forward so far would have the effect of calling into question the overall institutional balance within the budget procedures.

c) Multilateral surveillance

The Presidency has noted that some delegations have proposed amendments to the Convention text, in particular on the procedures for establishing detailed rules for the multilateral surveillance procedure. However the Presidency proposes not to introduce changes to the text in order to maintain the balanced approach of the Convention.

d) European Central Bank

The Presidency proposes to:

- i) amend the procedures for conferring on the ECB specific tasks concerning policies relating to prudential supervision [see text in Annex 8 to Addendum 1];
- ii) enlarge the scope of provisions covered by the existing enabling clause for amending the ECSB/ECB statute [see text in Annex 9 to Addendum 1];
- iii) provide for the introduction of QMV for appointment of members of the ECB [see text in Annex 10 to Addendum 1].

e) Lamfalussy procedures

The Presidency proposes to address the concerns of some delegations on this issue by means of a declaration [see text in Annex 11 to Addendum 1].

f) EIB enabling clause

The Presidency proposes modifying the procedures for amending the statute of the EIB [see text in Annex 12 to Addendum 1].

g) EMU – decision-making process concerning the euro

The Presidency proposes two amendments to the provisions on decision-making concerning the euro [see text in Annex 13 to Addendum 1].

V. AREA OF FREEDOM, SECURITY AND JUSTICE

The Presidency has noted the concerns from a number of delegations on provisions under this chapter, and specifically on judicial cooperation in criminal law. It proposes to address these concerns (in particular those related to the existence of different legal systems) in the following ways:

- a) Criminal law
 - i) The Presidency proposes to address these particular concerns by means of amendments to the Convention text which, while not changing its substance nor the voting procedure, will *inter alia* give assurances to the delegations concerned that they can specifically raise their particular concerns through adequate procedures before an act is adopted [see text in Annex 14 to Addendum 1].
 - ii) The Presidency proposes to clarify that the scope of the remit of the public prosecutor concerns the fight against fraud affecting the Union's financial interests [see text in Annex 15 to Addendum 1].
- b) Civil law

The Presidency proposes to clarify some aspects of the provision on judicial cooperation in civil matters [see text in Annex 16 to Addendum 1].

VI. DEFENCE

As far as structured cooperation is concerned, taking account of the concerns expressed by a number of delegations, the Presidency submits proposals which, with a view to making such cooperation inclusive, align *mutatis mutandis* the structured cooperation provisions more closely with the more general provisions on enhanced cooperation in CFSP. As far as "mutual defence" is concerned, the text proposed clarifies that the clause shall not prejudice existing commitments under NATO [see text in Annex 17 to Addendum 1].

VII. CFSP

The Presidency proposes that, in order to achieve an overall balanced outcome on decision-making procedures, as well as to ensure an effective CFSP, qualified majority voting within the CFSP should be extended [see text in Annex 18 to Addendum 1].

VIII. OTHER POLICIES OF THE EU

The Presidency has taken note of the various proposals from delegations for amending or clarifying some of the provisions on policies in Part III of the draft Constitutional Treaty. In the light of reactions from all delegations, the Presidency submits proposals for changes to the Convention text or declarations on the following issues:

- a) social clause [see text in Annex 19 to Addendum 1];
- b) social security [see text in Annex 20 to Addendum 1];
- c) taxation [see text in Annex 21 to Addendum 1];
- d) social policy [see text in Annex 22 to Addendum 1];
- e) economic, social and territorial cohesion [see text in Annex 23 to Addendum 1];
- f) transport [see text in Annex 24 to Addendum 1];
- g) research and development [see text in Annex 25 to Addendum 1]
- h) energy [see text in Annex 26 to Addendum 1]
- i) public health [see text in Annex 27 to Addendum 1]
- j) sport [see text in Annex 28 to Addendum 1]
- k) tourism [see text in Annex 29 to Addendum 1]

IX. REVISION PROCEDURE

In the light of the discussions on simplified procedures for revising the Constitutional Treaty, the Presidency proposes to address the issue in two ways:

- a) as to the decision to move from unanimity to qualified majority, or from a special legislative procedure to the ordinary legislative procedure (general bridging clause), it is proposed that the text be amended to include a provision whereby that decision would not come into effect if [X] national parliaments raise an objection ("nihil obstat" procedure) [text in Annex 30 to Addendum 1];
- b) as to the decision to amend the Constitution provisions on internal policies (Title III of Part III (special revision procedure), the Presidency maintains its approach as proposed to ministers at the last IGC meeting: no increase of competencies conferred on the Union in the Constitution, decision of the European Council by qualified majority and approval by all Member States in accordance with their respective constitutional requirements. Such an approach would have the advantage of removing the requirement for an InterGovernmental Conference [text in Annex 31 to Addendum 1].

X. OTHER ISSUES

- a) Outermost regions

The Presidency proposes to include a possibility to adapt the list of outermost regions through a simpler procedure [text in Annex 32 to Addendum 1].

- b) Protocol on Denmark

In the light of the discussion in the ministerial meeting on 18 November, the Presidency proposes the amended protocol No 5 on the position of Denmark as presented in Annex 33 to Addendum 1.

- c) Services of general interest

The Presidency proposes to amend the Convention text so as to recall the competence of Member States to provide, commission and fund such services [text in Annex 34 to Addendum 1].

d) EU neighbouring small States

The Presidency has noted the request for the inclusion of a specific reference to the EU neighbouring small States, and proposes to address this by means of a declaration [text in Annex 35 to Addendum 1].

e) EU accession to the European Convention on Human Rights

In the light of discussions on this issue, the Presidency puts forward a minor amendment to the Convention text. It also suggests that this would be an appropriate issue on which qualified majority voting in the Council could apply [text in Annex 36 to Addendum 1].

f) Protection and welfare of animals

The Presidency proposes to convert the existing protocol on protection and welfare of animal into a provision to be put at the beginning of Part III of the draft Constitution [text in Annex 37 to Addendum 1].

g) Signature of Constitutional Treaty by acceding states

The three candidate countries (Bulgaria, Romania and Turkey) have requested that they be signatories to the text resulting from the InterGovernmental Conference. The Presidency proposes that these countries be invited to sign the Final Act as observers.

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MISCELLANEOUS

In a final Annex, on items which were discussed but not solved in the Group of legal experts and were supported by a large majority of delegations, the Presidency proposes some adaptations to the Convention text either to make the text legally more correct or to address some of these items [see texts in Annex 38 to Addendum 1].

- a) On the delimitation between CFSP procedures and other policies' procedures, the Presidency proposes to amend the text of that rule in order to make it legally more sound.
- b) On access to documents of the European Investment Bank, the Presidency proposes to align the treatment of these documents with the treatment of the documents of the European Central Bank.
- c) On the right to vote in European Parliament elections and the fact that the Convention text deprives about 1 million people from the right to vote in such elections, the Presidency proposes to amend the text so as to correct this effect.
- d) On the role of national parliaments under the subsidiarity protocol and the protocol on national parliaments, the Presidency proposes to clarify the drafting to address the particularities of federal structures.
- e) On the fluctuation margins which must be observed in order to become member of the euro zone, the Presidency proposes to refer to the European Monetary System in the relevant provision.
- f) On the power of the Court of Justice to impose fines on Member States, the Presidency proposes amending the Convention text to clarify the power of the Court.
- g) On the legal basis to adopt European laws in common commercial policy, the Presidency proposes to clarify that urgent unilateral trade protection measures be adopted under a lighter procedure than the legislative one.

- h) On enhanced cooperation, the Presidency proposes to remove the bridging clause, and on the specific provisions concerning enhanced cooperation in CFSP, it suggests making it clearer that these follow normal CFSP procedures.
 - i) On the solidarity clause, the Presidency proposes amending the text to make it clear that any decision with defence implications will be taken by unanimity, and that the defence aspects of any such decision would be excluded from the competence of the Court of Justice.
 - j) In Article 5, the Presidency proposes to replace the term "internal" security with "national" security.
 - k) On the question as to who negotiates an agreement on the withdrawal of a Member State from the Union, the Presidency proposes amending the text to refer to the relevant aspects of the general provision on the negotiation of agreements in Part III.
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