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INFORMATION NOTE BY THE THREE PARLIAMENTARY REPRESENTATIVES TO THE INTERGOVERNMENTAL CONFERENCE

MM. Brok, Baron Crespo and Duff participated in the Intergovernmental Conference that took place in Luxembourg on Monday 15 October. This Note is to inform colleagues about the state of play on the eve of the informal European Council in Lisbon tomorrow and Friday.

The Portuguese Presidency rightly insists on the need to reach an agreement on the new treaty at the Lisbon summit. While recognizing that some important questions remain open, the Presidency seems confident that goodwill will prevail to make an overall agreement possible. The Presidency informed the IGC of the decision to make a solemn Proclamation of the Charter of Fundamental Rights between the Lisbon summit and the signing of the new treaty, expected in early December.

The Representatives of the European Parliament welcomed the progress achieved on EU citizenship and other matters at the level of the Legal Experts Group and supported the idea of a political accord at Lisbon. However, the quality of that agreement mattered, and a number of points were still problematical, as follows:

1. We remain concerned about the proliferation of opt-outs in JHA, Schengen and the Charter. We invited the UK, Poland and Ireland to explain and justify their various opt-outs.¹ We repeated our proposal that all opt-outs be accompanied by an 'escape clause' which would allow for the unilateral abrogation of the opt-outs (thereby avoiding the need for further Treaty modification).
2. We continue to insist that parliamentary accountability is desirable and judicial oversight essential in such a sensitive area as the protection of personal data in CFSP (Article 24 TEU). We have proposed various alternative ways of dealing with this, and discussions continue.
3. Another outstanding issue is the appointment of the first High Representative of the Union for Foreign Affairs and Security Policy, presumed for 2009. We are determined to defend Parliament's prerogative to 'elect' the whole college of Commissioners, including the High Representative, as well as to protect the Commission President's role in approving his/her appointment. We have proposed various alternative ways of dealing with this, and discussions continue.

¹ Only Ireland and Poland obliged.

4. We reiterated our regret at the postponement of dual majority decision making in the Council until 2014. We strongly oppose the Polish demand to up-grade the Ioannina clause from secondary into primary law. This would be against the mandate of the IGC, defy the logic of the reform of the decision-making procedure thereby impairing co-decision.

5. We repeated our proposal to include a reference to the social partners in the TEU (Article 8b).

6. We offered support to a proposal by the Commission to give a legal base to the Union's communications policy.

7. Finally, we formally presented Parliament's proposals on the redistribution of seats, pointing out that the Lamassoure-Severin Report, had been adopted by 59% of MEPs voting, that it was a fair and practicable way of defining the principle of degressive proportionality within the criteria of the draft Reform Treaty, and that all alternative proposals had been heavily defeated during the vote. The draft Decision was tabled. The Declaration also proposed by Parliament that proposes further work in the future on the definition of the statistical base for the decision – that is, making the distinction between nationals, citizens, residents, voters – is under further discussion at the IGC.²

Following Parliament's intervention, the Commission expressed its satisfaction that the Group of Legal Experts had produced a "balanced solution". It stressed its support for the EP's demand for a smooth transition concerning the nomination of the High Representative after the entry into force of the Treaty. It also supported the EP's requests on the protection of personal data in CFSP. The Commission finally asked for the insertion of a provision recognizing the right of information of European citizens.

In the subsequent debate:-

- Poland insisted that the Ioannina compromise should be included in the Treaty as a clause or in a protocol. This was opposed by several delegations, as well as by the European Parliament and the Commission. Poland also requested a permanent Polish Advocate-General. A number of delegations supported this demand. The Polish delegation also stated that it would join the UK in its protocol on the Charter of Fundamental Rights, despite its support for the concept of the Charter. Concerning Justice and Home Affairs, Poland announced that it did not have the intention of adhering to the Protocol on the position of the United Kingdom and Ireland.
- Italy strongly opposed Parliament's proposal on seats. Mr D'Alema claimed that the demographic weight of each state - that is, 'population' as authorised by Eurostat - does not suitably reflect the concept of "representation of the citizens" as foreseen in the draft Treaty. He further complained about the decoupling of the traditional equality of the number of MEPs for France, the United Kingdom and Italy. He backed a system of clusters of states without "rigid proportionality". He asked for a postponement of the decision on seats beyond the Lisbon summit.

² AFCO foresees its report on the revision of the 1976 Act on Direct Elections for the first half of 2008.

- Several delegations, however, stressed their agreement with Parliament's proposal, in particular Malta and Spain. Asked to intervene on the point about delay, the Council's Jurisconsult, Mr Jean-Claude Piris, confirmed that the decision on the composition of the Parliament is imperative for the implementation of the Treaty. The two issues cannot be separated, therefore.
- Several delegations, as well as the Commission, indicated their support for the Parliament's concern about the nomination of the first High Representative. The Presidency announced its intention to make a proposal on this point.
- The Presidency circulated a draft declaration aimed at meeting the concerns of Parliament on the processing of personal data in CFSP. This specifies that Article 24 TEU only applies to matters that are entirely within the competence of Member States, and which would in any case be subject to national mechanisms of parliamentary and/or judicial control. All issues on data protection at the EU level would be established through co-decision and subject to ECJ jurisdiction.
- The Bulgarian delegation insisted on the problem of the transcription of the term "Euro" to the Cyrillic alphabet in Bulgarian. Some delegations showed sympathy with Bulgaria, while the Presidency confirmed that it was working on a possible solution for this problem.
- Luxembourg encouraged ratification of the new Treaty in the six first months of the 2008. They called on the European Council to agree on a "fast track" ratification procedure.
- Ireland announced that it will not join the Protocol on the Charter of Fundamental Rights. With respect to Schengen and JHA, Ireland will continue to have the possibility of opting in and out, established in the Protocols, only due to the connection of its legal system with that of the United Kingdom. However, Ireland will express in a Declaration its wish to participate in the maximum possible of acts adopted in those areas, in particular regarding police cooperation, and to propose that after three years, the opt -out is reviewed.
- The Austrian delegation, supported by several others, referred to the problem of access of foreign students to its universities in relation to the principle of freedom of movement. The Commission recalled that this is a question outside the Treaty, and that the Commission is currently seeking to find a solution.
- The Czech delegation put forward a proposal to modify Article 208 of the TFU to allow the Council to oblige the Commission to initiate the repeal of any existing legislative. Many delegations, including Parliament, oppose strongly such a proposal as being a gross infringement of the Commission's right of initiative, as well as way outside the IGC's mandate. Only the Netherlands expressed tentative support.

Closing the meeting, the Presidency appealed to the political will of the Member States to reach an agreement, and asked them to avoid putting on the table issues that are outside the mandate or that do not concern the treaty negotiations.

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