

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

Brussels, 12 June 2004

CIG 80/04

PRESID 22

NOTE

from: Presidency
dated: 12 June 2004
to: Delegations

*Subject: IGC 2003
– Ministerial meeting, Luxembourg, 14 June 2004*

1. Delegations will find attached proposals from the Presidency on a number of outstanding issues to be addressed by the IGC. Ministers are invited to discuss these issues at their meeting on 14 June with a view to reaching an overall agreement at the meeting of Heads of State or Government on 17/18 June. The Presidency does not submit at this stage any proposal on institutional issues, which will be discussed by Heads of State or Government on 17/18 June.
2. In putting forward its proposals, in particular in the field of scope of QMV, the Presidency has taken into account the different views expressed by delegations both in the IGC meetings themselves and during the many bilateral contacts which have taken place. The aim has been to introduce a fair overall balance between different delegations' views.
3. Delegations will note that in the case of the explanations relating to the Charter of Fundamental Rights, the Presidency submits options on which it would welcome Ministers' views.
4. The Presidency also wishes to draw the attention of delegations to a number of outstanding issues in the area of economic policy, and invites Ministers to offer their views, given that each of these points raise difficulties for some delegations.

- Eurozone provisions: One delegation has asked that the articles related to the eurozone should include a specific provision requiring the agreement of eurozone members (by QMV) before a decision is taken by the full Council on admitting new members to the eurozone (Annex 20 of doc. CIG 79/04).
 - Economic policy coordination: Article I-11.3 of the Convention text provides that the Union has competence to promote and co-ordinate the economic and employment policies of the Member States. Some delegations have sought to revert to language based on that in the current Treaty. A possible compromise formula is set out in Annex 10.
 - Declaration on the Stability and Growth Pact: The Presidency submits for the attention of delegations a draft declaration (see Annex 11). As a result the earlier text on ECJ jurisdiction over procedural stipulations relating to excessive deficit has been removed. In addition, some delegations have also advised the Presidency that they attach particular importance to amending Article III-76.6 (excessive deficit procedure) so that decisions on the existence of an excessive deficit are taken on the basis of a Commission recommendation (as currently provided for in the Treaty) rather than a proposal (as provided for in the Convention's text).
5. As regards the Preamble, the Presidency notes that, despite the strong support of several delegations for the inclusion of a specific reference to Europe's Christian or Judeo-Christian heritage, there is no sign of consensus on this matter. It has, however, proposed a limited number of drafting changes to the text, which it hopes can be agreed by Ministers.
6. As in doc. CIG 79/04, technical/legal adjustments appear in shaded characters.

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PREAMBLE

HIS MAJESTY THE KING OF THE BELGIANS, THE PRESIDENT OF THE CZECH REPUBLIC, HER MAJESTY THE QUEEN OF DENMARK, THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY, THE PRESIDENT OF THE REPUBLIC OF ESTONIA, THE PRESIDENT OF THE HELLENIC REPUBLIC, HIS MAJESTY THE KING OF SPAIN, THE PRESIDENT OF THE FRENCH REPUBLIC, THE PRESIDENT OF IRELAND, THE PRESIDENT OF THE ITALIAN REPUBLIC, THE PRESIDENT OF THE REPUBLIC OF CYPRUS, THE PRESIDENT OF THE REPUBLIC OF LATVIA, THE PRESIDENT OF THE REPUBLIC OF LITHUANIA, HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG, THE PARLIAMENT OF THE REPUBLIC OF HUNGARY, THE PRESIDENT OF MALTA, HER MAJESTY THE QUEEN OF THE NETHERLANDS, THE FEDERAL PRESIDENT OF THE REPUBLIC OF AUSTRIA, THE PRESIDENT OF THE REPUBLIC OF POLAND, THE PRESIDENT OF THE PORTUGUESE REPUBLIC, THE PRESIDENT OF THE REPUBLIC OF SLOVENIA, THE PRESIDENT OF THE SLOVAK REPUBLIC, THE PRESIDENT OF THE REPUBLIC OF FINLAND, THE GOVERNMENT OF THE KINGDOM OF SWEDEN, HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

Drawing inspiration from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, democracy, equality, freedom and the rule of law,

Believing that **Europe reunited after bitter experiences** intends to continue along the path of civilisation, progress and prosperity, for the good of all its inhabitants, including the weakest and most deprived; that it wishes to remain a continent open to culture, learning and social progress; and that it wishes to deepen the democratic and transparent nature of its public life, and to strive for peace, justice and solidarity throughout the world,

Convinced that, while remaining proud of their own national identities and history, the peoples of Europe are determined to transcend their ancient divisions and, united ever more closely, to forge a common destiny,

Convinced that, thus "united in its diversity", Europe offers them the best chance of pursuing, with due regard for the rights of each individual and in awareness of their responsibilities towards future generations and the Earth, the great venture which makes of it a special area of human hope,

Determined to continue the work accomplished within the framework of the Treaties establishing the European Communities and the Treaty on European Union, by ensuring the continuity of the Community acquis,

Grateful to the members of the European Convention for having prepared the draft of this Constitution on behalf of the citizens and States of Europe,

Have designated as their plenipotentiaries:
(list...)

Who, having exchanged their full powers, found in good and due form, have agreed as follows:

* * *

JUDICIAL COOPERATION IN CRIMINAL MATTERS

Article III-158

1. The Union shall constitute an area of freedom, security and justice with respect for fundamental rights **and the** different legal traditions and systems of the Member States.
2. *(unchanged)*
3. *(unchanged)*
4. *(unchanged)*

Article III-171

1. Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgements and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in paragraph 2 and in Article III-172.

European laws or framework laws shall establish measures to:

- (a) establish rules and procedures to ensure the recognition throughout the Union of all forms of judgments and judicial decisions;
- (b) prevent and settle conflicts of jurisdiction between Member States;
- (c) encourage the training of the judiciary and judicial staff;
- (d) facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.

2. **To the extent necessary** to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, European framework laws may establish minimum rules. **Such rules shall take into account the differences between the legal traditions and systems of the Member States.**

They shall concern:

- (a) mutual admissibility of evidence between Member States;
- (b) the rights of individuals in criminal procedure;
- (c) the rights of victims of crime;
- (d) any other specific aspects of criminal procedure which the Council has identified in advance by a European decision; for the adoption of this decision, the Council shall act unanimously after obtaining the consent of the European Parliament.

Adoption of **the** minimum rules **referred to in this paragraph** shall not prevent Member States from maintaining or introducing a higher level of protection **of for** individuals.

3. **Where a member of the Council considers that a draft European framework law as referred to in paragraph 2 would infringe the fundamental principles of its legal system, it may request that the draft framework law be referred to the European Council. In this case, the procedure referred to in Article III-302 shall be suspended. After discussion, the European Council shall, within 4 months of this suspension, either:**

- a) **refer the draft back to the Council, which shall terminate the suspension of the procedure referred to in Article III-302, or**
- b) **request the Commission or the group of Member States from which the draft framework law emanates to submit a new draft; in that case, the act originally proposed shall be deemed not to have been adopted.**

4. **If, by the end of the period referred to in paragraph 3, either no action has been taken by the European Council or if, within 12 months from the submission of a new draft under paragraph 3b), the European framework law has not been adopted, and at least one third of the Member States wish to establish enhanced cooperation on the basis of the draft framework law concerned, they shall notify the European Parliament, the Council and the Commission accordingly.**

In such a case, the authorisation to proceed with enhanced cooperation referred to in Articles I-43(2) and III-325(1) shall be deemed to be granted and the provisions on enhanced cooperation shall apply.

Article III-172

1. European framework laws may establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension^s resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money-laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.

On the basis of developments in crime, the Council may adopt a European decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European Parliament.

2. If the approximation of criminal legislation proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, European framework laws may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned. **Such framework laws** shall be adopted by the same procedure as was followed for the adoption of the harmonisation measures in question, without prejudice to Article III-165.

3. **Where a member of the Council considers that a draft European framework law as referred to in paragraph 1 or 2 would infringe the fundamental principles of its legal system, it may request that the draft framework law be referred to the European Council. In this case, where the procedure referred to in Article III-302 is applicable, it shall be suspended. After discussion, the European Council shall, within 4 months of this suspension, either:**

- a) **refer the draft back to the Council, which shall terminate the suspension of the procedure referred to in Article III-302 where it is applicable, or**
- b) **request the Commission or the group of Member States from which the draft framework law emanates to submit a new draft; in that case, the act originally proposed shall be deemed not to have been adopted.**

4. **If, by the end of the period referred to in paragraph 3, either no action has been taken by the European Council or if, within 12 months from the submission of a new draft under paragraph 3b), the European framework law has not been adopted, and at least one third of the Member States wish to establish enhanced cooperation on the basis of the draft framework law concerned, they shall notify the European Parliament, the Council and the Commission accordingly.**

In such a case, the authorisation to proceed with enhanced cooperation referred to in Articles I-43(2) and III-325(1) shall be deemed to be granted and the provisions on enhanced cooperation shall apply.

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EUROPEAN PUBLIC PROSECUTOR'S OFFICE

Article III-175

1. In order to combat crimes affecting the **financial** interests of the Union, a European law of the Council may establish a European Public Prosecutor's Office from Eurojust. The Council shall act unanimously after obtaining the consent of the European Parliament.
2. The European Public Prosecutor's Office shall be responsible for investigating, prosecuting and bringing to judgment, where appropriate in liaison with Europol, the perpetrators of, and accomplices in, offences against the Union's financial interests, as determined by the European law provided for in paragraph 1. It shall exercise the functions of prosecutor in the competent courts of the Member States in relation to such offences.
3. The European law referred to in paragraph 1 shall determine the general rules applicable to the European Public Prosecutor's Office, the conditions governing the performance of its functions, the rules of procedure applicable to its activities, as well as those governing the admissibility of evidence, and the rules applicable to the judicial review of procedural measures taken by it in the performance of its functions.
4. **The European Council may adopt a European decision amending paragraph 1 in order to extend the powers of the European Public Prosecutor's Office to include serious crime having a cross-border dimension and amending accordingly paragraph 2 as regards the perpetrators of, and accomplices in, serious crimes affecting more than one Member State. The European Council shall act unanimously after obtaining the consent of the European Parliament and after consulting the Commission.**

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**QUALIFIED MAJORITY VOTING IN THE FIELD
OF THE COMMON FOREIGN AND SECURITY POLICY**

Article III-201 (2)

2. By way of derogation from paragraph 1, the Council shall act by a qualified majority:
- (a) when adopting European decisions defining a Union action or position on the basis of a European decision of the European Council relating to the Union's strategic interests and objectives, as referred to in Article III-194(1);
 - (b) when adopting a European decision defining a Union action or position, on a proposal which the Union Minister for Foreign Affairs has presented following a specific request to him or her from the European Council, made on its own initiative or that of the Minister;
 - (c) when adopting a European decision implementing a European decision defining a Union action or position;
 - (d) when adopting a European decision concerning the appointment of a special representative in accordance with Article III-203.

If a member of the Council declares that, for vital and stated reasons of national policy, it intends to oppose the adoption of a European decision to be adopted by qualified majority, a vote shall not be taken. The Union Minister for Foreign Affairs will, in close consultation with the Member State involved, search for a solution acceptable to it. If he or she does not succeed, the Council may, acting by a qualified majority, request that the matter be referred to the European Council for a European decision by unanimity.

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TAXATION

Article III-62 (2)

2. Where the Council, acting unanimously on a proposal from the Commission, finds that the measures referred to in paragraph 1 relate to administrative cooperation or combating tax fraud and tax evasion **and that they do not affect the fiscal regimes of the Member States**, it shall act, **by way of derogation from** paragraph 1, by a qualified majority, when adopting a European law or framework law laying down those measures.

Article III-63

~~Where the Council, acting unanimously on a proposal from the Commission, finds that measures on company taxation relate to administrative cooperation or combating tax fraud and tax evasion, it shall adopt, by a qualified majority, a European law or framework law laying down these measures, provided that they are necessary for the establishment or functioning of the internal market and to avoid distortion of competition.~~

~~That law or framework law shall be adopted after consultation of the European Parliament and the Economic and Social Committee.~~

The Presidency considers that in the context of an overall balanced agreement in which all delegations demonstrate some flexibility paragraph 2 of Article III-62 should also be deleted.

* * *

SOCIAL SECURITY

Article III-21

1. In the field of social security, European laws or framework laws shall establish such measures as are necessary to bring about freedom of movement for workers by introducing a system to secure for employed and self-employed migrant workers and their dependants:

- (a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries;
- (b) payment of benefits to persons resident in the territories of Member States.

2. Where a member of the Council considers that a draft European law or framework law referred to in paragraph 1 would infringe the principles of its social security system or would affect the financial balance of that system, it may request that the matter be referred to the European Council. In that case, the procedure referred to in Article III-302 shall be suspended. After discussion, the European Council shall, within 4 months of this suspension, either:

- (a) refer the draft back to the Council, which shall terminate the suspension of the procedure referred to in Article III-302, or**
- (b) request the Commission to submit a new draft; in that case, the act originally proposed shall be deemed not to have been adopted.**

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OWN RESOURCES

Article I-53

1. The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.
2. Without prejudice to other revenue, the Union's budget shall be financed wholly from its own resources.
3. A European law of the Council shall lay down the **provisions relating to the system of own resources of the Union; in this context it** may establish new categories of own resources or abolish an existing category. The Council shall act unanimously after consulting the European Parliament. That law shall not enter into force until it has been approved by the Member States in accordance with their respective constitutional requirements.
4. A European law of the Council shall lay down **implementing measures of the Union's own resources system in so far as this is provided for in the law adopted on the basis of paragraph 3**. The Council shall act after obtaining the consent of the European Parliament.

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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 ~~limits~~. 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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ENHANCED COOPERATION

Article III-328

1. Where a provision of the Constitution which may be applied in the context of enhanced cooperation stipulates that the Council shall act unanimously, the Council, acting unanimously in accordance with the arrangements laid down in Article I-43(3), may decide to act by qualified majority.
2. Where a provision of the Constitution which may be applied in the context of enhanced cooperation stipulates that the Council shall adopt European laws or framework laws under a special legislative procedure, the Council, acting unanimously in accordance with the arrangements laid down in Article I-43(3), may decide to act under the ordinary legislative procedure. The Council shall act after consulting the European Parliament.
3. **Paragraphs 1 and 2 shall not apply to decisions having military or defence implications.**

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COORDINATION OF ECONOMIC POLICY

Article I-11 (3)

3. The Union shall have competence to promote **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, ~~shall be adopted by the Council.~~**

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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 Treaty and 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 in compliance with price stability. 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 Treaty 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 budgetary positions with the objective to achieve budgetary surpluses 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 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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COMMON COMMERCIAL POLICY

Article III-217 (7)

1. The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action.

2. European laws shall establish the measures **defining the framework for implementing** the common commercial policy.

3. Where agreements with one or more States or international organisations need to be negotiated and concluded, the provisions of Article III-227 shall apply subject to the special provisions of this Article.

The Commission shall make recommendations to the Council of Ministers, which shall authorise the Commission to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Union policies and rules.

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee and to the European Parliament on the progress of negotiations.

4. **For the conclusion** of the agreements referred to in paragraph 3, the Council shall act by qualified majority.

For the conclusion of agreements in the fields of trade in services ~~involving the movement of persons~~ and the commercial aspects of intellectual property, **as well as foreign direct investment**, the Council shall act unanimously where such agreements include provisions for which unanimity is required for the adoption of internal rules.

The Council shall also act unanimously **for the conclusion** of agreements:

- (a) in the field of trade in cultural and audiovisual services, where these risk prejudicing the Union's cultural and linguistic diversity;
- (b) **in the field of trade in social, education and health services, where these risk seriously disturbing the national organisation of such services and prejudicing the responsibility of Member States to deliver them.**

5. The negotiation and conclusion of international agreements in the field of transport shall be subject to the provisions of Section 7 of Chapter III of Title III and Article III 227.

6. The exercise of the competences conferred by this Article in the field of commercial policy shall not affect the delimitation of competences between the Union and the Member States, and shall not lead to harmonisation of legislative or regulatory provisions of Member States insofar as the Constitution excludes such harmonisation.

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

The Presidency invites the views of Ministers on the three options set out below. If agreement were reached on either option 2 or 3, the necessity to retain the preambular reference to the Explanations could be considered.

Option 1

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 at the instigation** of the Praesidium of the Convention which drafted the Charter **and updated under the responsibility of the Praesidium of the European Convention.**

**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 at the instigation 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.

[reproduction of the explanations contained in CONV 828/1/03 REV 1 of 31 July 2003, which will be published in the "C" series of the Official Journal of the European Union.]

Option 2

As Option 1, plus

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

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

Option 3

As Option 1, plus

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

7. This Charter shall be interpreted 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.
