

**The Intergovernmental Conference in 1997 - Coalition -Building and
Institutional Reform in the European Union**

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DRAFT - NOT FOR QUOTATION

I. Introduction

The Intergovernmental Conference of 1996/97 has again put institutional reform on the policy agenda of the European Union. After the Single European Act and the Treaty of Maastricht the debate on where the Union should turn has been opened for the third time in a decade. Of central concern for policy makers and scholars alike is how the Union will meet the four main challenges which it is facing at the turn of the century: a) the steady pressure for widening the Union, starting with the incorporation of the former GDR, followed by the EFTA states in 1995 and to be continued with the Southern (Cyprus) and the Central and Eastern European Countries;¹ b) the unification of Germany, especially its financial and power related effects; c) the demise of the Common Foreign and Security Policy in the face of the prolonged conflict in Yugoslavia (Jopp 1994); d) the renewed doubts of the European public that integrationists schemes such as European Monetary Union (EMU) will help to ease member countries social ills.

In this article we analyse the positions of member countries as we approach the concluding EU-Summit in Amsterdam in June 1997. The first part of the paper will therefore focus on different concepts of "parallel widening and deepening" such as "Europe of different speeds", "Geometrie variable" and "Europe à la carte". From a theoretical perspective we take note that the Single European Act, the Maastricht Treaty and the conclusion of the European Monetary Union have revitalized the scientific debate between two strands of neoinstitutionalism, supranational- and intergovernmental institutionalists.² As can be deduced from our research agenda we consider both EU governments and institutions to be crucial for the outcome of the Intergovernmental Conference. In addition, however, we also share the concern of "two-level-games-theorists" (Wolf/Zangl 1996) that the interaction between

¹ On the agenda-setting process of the IGC, cf. Wessels 1993; Wessels 1996; Hughes 1996, Piepensneider 1995; Niblett 1996.

domestic and international coalition building will have an important impact on the outcome of international negotiations. The stand-off between anti-European and status-quo oriented forces in the British conservative party is the most obvious but not the only example for this new type of intermestic politics. The second part of the paper outlines the positions of member countries as they evolved over recent months on a variety of issues such as qualified majority voting and the reform of EU institutions. The concluding chapter explores different scenarios on the likely outcome of the "Intergovernmental Conference". For this, we draw on the literature in coalition building in the Union and multilateral negotiations.

II. The new debate on Flexibility in the European Union

The new debate on flexibility in the European Union reflects one of the central characteristics of European integration since the early 1950s - how to reconcile an ever growing heterogeneity within an "ever closer Union". Responding to cross-cutting pressures from integrationists vs. status quo oriented forces within the Union, the new debate has come up with different models of differentiated integration which will lie at the center of the upcoming Amsterdam summit.³ Based on a few studies completed in the 1980s (Grabitz 1984; Ehlermann 1984; H. Wallace 1985) and revitalized by the controversial CDU/CSU 1994 proposal for a "Kerneuropa" a multitude of concepts have been generated by politicians, policy planners and scholars alike. While earnest attempts have been made to sweep the conceptual minefield of differentiated integration (Stubb 1996), a few remarks are in order as to what the various models of differentiated integration mean and imply.

"Europe of different speeds"

The first and most widely known concept is that of a "Europe of different speeds", also named "plusieurs vitesses" or "Kerneuropa". This model refers to a process of differentiated integration in which a group of member states pursues a common objective

² Cf. Zysman/Sandholtz 1989; Sandholtz 1993; Moravcsik 1991, 1993; Cornett/Carporaso 1992; Cameron 1995; Baun 1995; Wolf/Zangl 1996.

³ Cf. Tom Buerkle, EU Leaders Back Dash To Finish Reform Talks, in: IHT, 10.03. 1997.

ahead of other EU members. The concept implies however that the latter, the less willing or less able to pursue the more ambitious goal, will follow later on, thereby assuring that the institutional coherence of the Union - the *acquis communautaire* - will be preserved and even developed (Stubb 1996: 287). Hence, the model boils down to a step-by-step approach towards an ever closer union spearheaded by a "coalition of the willing and able". The "Europe of different speeds" is thus the latest attempt "to make multilateralism work", other prominent examples being the European Monetary Union (EMU), the "Combined Joint Task Force" (CJTF) within NATO and the "Contact group" to streamline the multilateral diplomacy in the former Yugoslavia.

"Géometrie variable"

The concept of "Géometrie variable" or "concentric circles" also deals with but does not try to resolve the problem of heterogeneity. In contrast, it is based on the assumption that differences can not and should not be overcome in one integrative framework but should result in different institutional structures such as the WEU, the Schengen Agreement or the Eurocorps. Hence, *géometrie variable* does not envision a common and coherent institutional framework leading to a European state. Critics of this concept argue that because the concept is based on a multitude of institutions those institutions might well compete with each other or hinder institutional growth in related areas. In addition, solidarity between EU member countries might vanish due to a lack of common ground as a basis for issue-linkage and diplomatic bargaining. As the example of the EMU shows, member states have begun to assess the costs of both "géometrie variable" and "Europe of different speeds". By agreeing on an "EMS II" which tries to stabilize the relationship between those that will be "in" and those that will be "out", member states have not only tried to prevent the problem of competitive devaluation but also - from a theoretical perspective built fire walls against a negative spill-back of a "géometrie variable" solution in the monetary field.

"Europe à la carte"

Among the three concepts discussed here "Europe à la carte" is the most contentious and self-explanatory. In this model Member States are allowed to choose, as from a menu, which

of the proposed integrative schemes they would like to join and on what terms. Almost all member states have made clear in their government statements early in the IGC that they reject a "Europe à la carte".⁴ Due to its inclusion in the Maastricht Treaty through the opt-out clauses for Denmark and Great Britain, however, "Europe à la Carte" still figures prominently in the policy debate of the IGC.⁵ In addition, the discussions of the "Reflection group" have made clear that at least in the field of foreign and defense policy Great Britain and the neutral states "Austria, Sweden, Finland and Ireland remain reluctant to cede any sovereignty, therefore adding to the pressure for an extension of opt-out clauses in the treaty of Amsterdam in this field.

In short, all of these models have historic predecessors and all of them are still debated by member states. But it should be noted that in recent months the concept of the "Europe of different speeds" has been high on the agenda of policy makers since it lies at the heart of the struggle towards European Monetary Union in 1999. As the following remarks on the position of member states in different policy areas show observers of the IGC should keep in mind the close relationship between a successful IGC and the European monetary integration.

⁴ Cf. the Reports by Spain, the Netherlands, Austria, Sweden.

⁵ Cf. the White Paper of the British government for the IGC: "A Partnership of Nations" which calls for opt-out and opt-down options in several policy areas.

III. The positions of Member countries

Having in mind the different concepts of flexibility, this chapter aims at presenting the member states' positions⁶ within the context of the latest developments in the IGC. Given the large array of issues under negotiation, however, this paper can only refer to the most important aspects. Following the Presidency Conclusions of the European Council in Turin on 29th March 1996 these are:

1. revising the Treaty provisions concerning the Common Foreign and Security Policy (pillar II) in order to enhance the Union's capability for cohesive and effective external action;
2. examining the Treaty provisions concerning Home and Justice Affairs (pillar III) with the aim of enhancing the Union's internal security;

⁶ As long as no special references are made, comments on the member states' positions are based on the following official position papers/contributions (The references made contain additional sources): Memorandum on the IGC from the Governments of Belgium, Luxembourg and the Netherlands, 7 March 1996; Basis for Negotiations: An open Europe. The 1996 IGC, Memorandum of the Danish Government, 11 December 1995; Joint Declaration of 15 July 1995 by the German and Italian Foreign Ministers regarding the 1996 IGC; Letter of 6 December 1995 from the President of the French Republic, Jacques Chirac, and the Chancellor of the Federal Republic of Germany, Helmut Kohl, to the Presidency of the European Council; Letter of 9 December 1996 from the President of the French Republic, Jacques Chirac, and the Chancellor of the Federal Republic of Germany, Helmut Kohl, to the Presidency of the European Council; Common Foreign and Security Policy: Guidelines adopted by the Foreign Ministers of France and Germany at the Freiburg Seminar of 27 February 1996; Germany's objectives for the Intergovernmental Conference, 26 March 1996; Memorandum of the Greek Government of 24 February 1996 on the IGC: Greece's positions and comments; Elements for a Spanish position at the 1996 Intergovernmental Conference, 28 March 1996; Memorandum on France's guidelines for the 1996 IGC, in: *Le Figaro*, 20 February 1996; White Paper of the Irish Government on Foreign Policy: External Challenges and Opportunities, 26 March 1996; Position of the Italian Government on the IGC for the Revision of the Treaties, 18 March 1996; Forth Memorandum by the Dutch Government on the Institutional Reform of the European Union, 12 July 1995; From Madrid to Turin: The Netherlands' priorities for the 1996 IGC, March 1996; Speech of the Dutch Prime Minister, Wim Kok on the inauguration of the 47th academic year of the College of Europe in Brussels on 3 October 1996, reported in *AGENCE EUROPE*, 4.10.1996; Austria's positions of principle on the Intergovernmental Conference, 26 March 1996; Portugal and the IGC for the Revision of the Treaty on European Union, Foreign Ministry, March 1996; Finland's starting points and objectives for the 1996 IGC, Report of the Finnish Government, 27 February 1996; Note of July 1995 on the Fundamental Interests of Sweden with a view to the 1996 IGC; Communication of the Swedish Government of 30 November 1995 on the 1996 IGC; A Partnership of Nations, White Paper of the United Kingdom on the IGC, 12 March 1996. Most of these documents/contributions can be found in the White Paper on the 1996 Intergovernmental Conference, Volume II, produced by the Intergovernmental Conference Task Force of the European Parliament, 29 March 1996.

3. reforming the Union's institutional framework and its decision-making structures, so it can accept new member states without rendering itself ineffective, and to make it more democratic.

Additional questions of special importance are, how to improve the Union's transparency, and whether a chapter on employment should be included in the revised Treaty.

Flexibility

The issue of "flexibility" hit the IGC's agenda first slowly but then vehemently, its concrete meaning shimmering in thousand colours. It was firmly placed on the IGC's agenda by the joint Franco-German letter of Chancellor Kohl and President Chirac of 9 December 1996. This initiative proposed that the revised Treaty include a flexibility clause allowing member states willing and able to do so to integrate faster than others.⁷

Most member states included some initial considerations about differentiated integration in their official IGC position papers, which, in general, were published shortly before the opening of negotiations. It was not until autumn 1996, however, that the issue was discussed in depth.⁸ That was changed as result of France and Germany again stepping forward with a detailed joint proposal in late October. At the end of November it was soon followed by Italian and Portuguese contributions,⁹ and in January 1997 additional governments (the UK, the Benelux countries, Denmark, Finland) clarified their positions.¹⁰

The working meeting of the personal representatives of the member states taking place on 17 and 18 February 1997 as well as the the meeting of EU Foreign Ministers in Rome on 25 March 1997 displayed that it will be difficult to reach a consensus on how to put the idea of flexibility into practice, even if there already is relatively broad agreement on its basic principles.

With view to the Foreign Ministers meeting in Rome, the Dutch Presidency in March 1997 submitted an "Addendum" to the Irish draft outline for a revision of the Treaties of 5

⁷ Cf. Frankfurter Allgemeine Zeitung (FAZ), 4.05. 1996.

⁸ Cf. Agence Europe (AE), 4.05. 1996; 15.05. 1996; 17.07. 1996.

⁹ Cf. the Portuguese proposal: AE, 10.01. 1997; for the Italian proposal: AE, 28.11.1996, 17.01. 1997; for the French-German contribution AE Documents, No. 2009 (29.10.1996), also FAZ, 21.10. 1996.

¹⁰ Cf. AE, 20/21.01. 1997, 22.01. 1997, 29.01. 1997.

December 1996.¹¹ Drawing heavily on the different working papers produced since October 1996, including a non-paper of the Presidency itself, the chapter on flexibility distinguishes between a general flexibility clause applicable to all three pillars and specific clauses defining the rules of flexibility in each one of them. The general clause lays down certain principles. "Enhanced cooperation" shall:

- aim at deepening European integration and serving the interests of the Union;
- respect the principles of the Treaties;
- be used only as a last resort;
- concern at least a majority of member states;
- safeguard the single institutional framework of the Union;
- respect the present and future "acquis";
- and not prejudice the member states not participating.

The latter must not stand in the way of implementation of cooperation action by participating states. With regard to institutional provisions it is stated that the normal institutional framework of the Treaty does apply, with one exception: while in the Council all Ministers shall be able to participate in the deliberations, only the representatives of participating member states shall take part in the adoption of decisions. While qualified majority within the Council is made up of two-thirds of the votes of all the participating countries, unanimity is constituted by only those member states participating. Administrative costs arising from cooperation measure shall be borne by the normal EU budget, other costs by special budgets for which revenue shall be provided solely by participating member states.

The draft clause specific to the first pillar of the Treaty provides that closer cooperation may be authorized if it does not:

- concern one of the subjects on the so-called "black list" of enhanced cooperation (namely, the free movement of goods, persons, services or capital, the common commercial policy, the common agricultural or fisheries policy, the common transport policy, the common competition rules or policy with respect to economic and social cohesion);
- constitute arbitrary discrimination or a restriction of trade between member states, and:

¹¹ Cf. Addendum to the Dublin II General Outline for a Draft Revision of the Treaties, Brussels, 20

- distort the conditions of competition within the internal market.

Member states wishing to embark on enhanced cooperation shall make a request to the Commission, which in turn shall give a reasoned opinion within a period of three months. The Council shall act on a proposal from the Commission and after consulting the European Parliament. Concerning the vote in the Council the document leaves open, whether a decision shall be taken by qualified majority or consensus.

The clause specific to CFSP matters provides that enhanced cooperation may be authorized if it respects the powers of the EC and objectives set for CFSP in the Treaty, as well as Council guidelines, and if it aims to promote the identity of the Union as a cohesive force in international relations. Authorization shall be the subject of a unanimous Council decision on the request of the member states concerned. In addition, the document states that in CFSP matters closer cooperation might be approached in three different ways. First, flexibility might be introduced on a case-by-case basis by way of a constructive abstention mechanism (see chapter on decision-making in CFSP matters). Second, flexibility might be predetermined for example in relation to cooperation in armaments. Finally, closer cooperation might be possible by conferring tasks on one or more member states within the framework of a joint action.

Finally, the draft clause referring to the third pillar of the Treaty (JHA) states that enhanced cooperation shall:

- respect the EC's powers and the Treaty objectives for cooperation in justice and home affairs;
- aim at enabling the Union to develop more rapidly;
- and promote the identity of the Union as an area of freedom, security and justice.

Authorization for enhanced cooperation shall take place on the basis of qualified majority voting. The basic lines of this proposal are supported by a large majority of member states. On important details, however, there are difficult discussions.

The biggest problem seems to be agreeing on the quorums necessary for authorizing the member states' wish for enhanced cooperation. Most member states, headed by France,

Germany and Italy, are in favour of majority decisions. They are convinced that no country should be able to stop others integrating faster, otherwise the idea of flexible integration would be meaningless.¹² After the meeting of the EU Foreign Ministers in Rome on 25 March 1997 the French Foreign Minister, Hervé de Charette, confirmed this view. He rejected any notion of unanimous decisions being necessary to trigger reinforced cooperation, saying that he doubted even that a qualified majority would be necessary.¹³ Some other countries, however, take the opposite position. The United Kingdom and Denmark in particular demand that such decisions should be taken unanimously. They believe that each member state should have a veto, even if it is not willing and/or able to participate in enhanced cooperation. The British delegation is especially firm on this issue. In its opinion, the German proposal is unacceptable as it represents an attempt to circumvent the right of veto and because the Community institutions are the property of all member states.¹⁴ Denmark, however, sounds more compromising. The Danish Foreign Minister, Peterson, said it might be possible to distinguish between the different pillars. Whereas to launch enhanced cooperation in pillar I unanimity should be necessary, this would not be necessarily the case for the second pillar.¹⁵

Behind the British insistence on a national veto lays a "Europe à la carte-approach", as outlined above, which does not only reject details of the approach followed by the Presidency but also its basic principles. In an article published in "La Libre Belgique" on 24 July 1996 the British Prime Minister, John Major, wrote: "There needs to be an acceptance of diversity while maintaining the principles of the Union - that demand that no Member State be excluded from the fields it wants and can participate in, and that the setting up of new models of cooperation cannot be done without everybody's consent... Likewise, we do not believe the current model to be etched in stone, nor all the constitutive rights and obligations of the *acquis communautaire*...".¹⁶ On 12 January 1997 he confirmed this position. Vis-à-vis the press he

¹² Cf. FAZ, 20.2.1997, 3.3.1997; French-German proposal of October 1996, Italian proposal of November: AE, 17.1.1997; Portuguese proposal of November: AE, 10.1.1997.

¹³ Cf. AE, 26.03. 1997.

¹⁴ Cf. AE, 27./28.1.1997; also AE, 26.10.1996, 20/21.1.1997; Malcom Rifkind: Wir sind keine Antieuropäer, in: FAZ, 6.3.1997; comments of David Davis, British representative in the Patjin Group, on 26 February 1997 before the European Affairs Committee in the Danish Parliament, reported by AE, 1.3.1997.

¹⁵ Cf. AE, 22.01. 1997.

¹⁶ Article summarized in AE, 27.07. 1996.

said, it was the great debate "what sort of flexibility it will be ... some have opt-outs on monetary union, some on social affairs... This is going to accelerate in future as the EU evolves... There is great scope that countries taking part in those aspects of the EU that are in their own interests not being dragged into parts of EU activity that are unpalatable to them...".¹⁷ On 26 February 1997, David Davis, the British representative in the Patjin Group followed this path in a speech before the European Affairs Committee of the Danish Parliament. On several occasions he criticized the Franco-German "vision" of Europe, the vision of a "core group of countries who are authorized by majority vote to act in the name of the European Union without the consent of, and therefore potentially against the wishes and interests of other Member States". In addition, he made clear that "he was not sure about the meaning of flexibility" in CFSP, which could have "absurd consequences".¹⁸

Another controversial aspect is the minimum number of member states required to allow for enhanced cooperation. Whereas France and Germany have not fixed a minimum number (their joint paper does only speak of the "objective of bringing together the highest possible number of participants"), several other governments are afraid that in the long term differentiated integration might lead to a fragmentation of the European Union, if it were not agreed that only a relatively large group of member states should be allowed to integrate faster than the other. The Portuguese government was the first to demand that at least two-thirds of the member states should wish to participate in enhanced cooperation in order to allow for it.¹⁹ Support for such an approach could come especially from other small states like Finland, Greece and the Benelux-countries.²⁰ The latter set out their conditions on 20 January, demanding inter alia that enhanced cooperation should be possible only with a "significant number of states". A similar middle ground position is advocated by Italy. Its proposal sets out that flexibility should not be "the instrument of a minority to go ahead by marginalising the others" but the instrument that will make it possible to prevent a minority from hindering

¹⁷ Cf. AE, 13/14.1.1997; "A Partnership of Nations", 28 March 1996: "There may be areas in which it is perfectly healthy for some Member states to integrate more closely or more quickly than others."

¹⁸ Cf. AE, 01.03. 1997.

¹⁹ Cf. the Portuguese proposal reported in AE, 10.01. 1997.

²⁰ Cf. AE, 29.01. 1997, 27/28.01 1997.

initiatives pursued "in a restricted framework with majority agreement".²¹ Within the "Addendum" of 20 March 1997 the Presidency takes into account these fears and demands. As mentioned above, the draft general clause on closer cooperation sets out that at least a majority of EU member states should be needed to embark on enhanced cooperation.

Third, the question in which policy areas enhanced cooperation should be permitted, is a difficult one. There is broad consensus that especially with regard to the pillars II and III enhanced cooperation might be appropriate. Concerning the first pillar special attention should be given to not risking distortion of the internal market and related common policies. However, while for some member states like Greece this leads to the conclusion that enhanced cooperation should not be applied at all in the first pillar, a majority of governments (comprising at least Germany, France, Italy, Portugal, Spain and the Benelux countries) is convinced that it should be allowed for on the basis of clearly defined principles and policy areas.²² Not only the United Kingdom but particularly the small countries seem to fear that, in comparison to the large countries, they might be the losers of differentiated integration. They are especially keen not to lose control over the general speed of integration.²³

However, in the fields of Common Foreign and Security Policy and of Justice and Home Affairs there are also several uncertainties and it is not clear what the final agreement will be. As regards CFSP matters various ways of working towards closer cooperation have been outlined above. Concerning Home and Justice Affairs, the Presidency's "Addendum" suggests that a large majority of member states is in favour of a clause, which generally allows for enhanced cooperation in pillar III. A strong group of governments seems to be aiming at using such a clause first of all for the Schengen Convention to be placed under the EU roof, of course applying only to those countries participating. Germany and France advocate this as well as Italy, Austria and the Benelux countries.

The "Schengen" question was discussed by the personal representatives on 10 and 11 February 1997. Since many complex difficulties exist - e.g. the UK and Ireland are not signatories of Schengen and not willing to abolish border controls; the Schengen Convention

²¹ For Benelux: AE, 22.01. 1997; For the Italian proposal: AE, 17.01. 1997.

²² Cf. AE, 24.10. 1996; for Benelux conditions see also AE, 22.01. 1997.

²³ CF. AE, 22.08. 1996; 10/11.02. 1997.

does not distinguish between questions falling under the first and the third pillar - the Dutch Presidency is working on the basis of two different options:

1. On a solution "based on a flexibility clause for the first and third pillar", and
2. On a solution based on the "adoption of a special protocol having an exemption clause", which would mean that the two reluctant member states would not have to be excluded from any discussions, but would "not be forced to take on all of the Schengen acquis".²⁴

In short, the Schengen Convention is likely to come much closer to the Union Treaty. This can but must not necessarily happen by way of a flexibility clause. All that said the general trend is quite clear. There might be controversies as regards technical details. This was confirmed at the meeting of EU Foreign Ministers on 25 March 1997. However, with the aim of preventing stagnation most member states - except the UK - favour at this point in time a "Europe of different speeds".

Institutional Reform

The complex challenge of institutional reform includes a big range of questions. Attention in this paper can only be paid to the five most important aspects, namely:

1. extension of qualified majority voting (QMV) and to the reweighting votes in the Council of Ministers;
2. extension of the scope of application of the codecision procedure;
3. future composition of the Commission;
4. the role of the national parliaments within the European framework; and,
5. improving the transparency of the Union.

The official national IGC position papers demonstrate that a large majority of governments is convinced that far reaching institutional reforms are necessary, not only to make a new round of enlargement possible but also to enhance the Union's democratic legitimacy and its public support in general. Since there are considerable differences on exactly

²⁴ Cf. AE, 12.02. 1997

how to proceed, however, negotiations have not yet really made progress, a fact heavily criticized by the European Parliament in several resolutions.²⁵

Voting in the Council of Ministers

Positions concerning a possible extension of the application of QMV range from applying it as a general rule to any kind of council decision (Italy) to not extending it at all (United Kingdom). The large majority, however, takes a position somewhere between these extremes.²⁶ France, Germany and Spain (with the Benelux countries tending in their direction) argue that QMV should be applied as far as possible, and they propose to list the limited exceptions. A more restrictive position seems to be taken by Austria, Ireland, Denmark, Finland, Greece and Portugal. They favour a case-by-case approach.²⁷ An option discussed and explicitly proposed by several countries is to link QMV in the Council to the application of the co-decision procedure in order to provide majority decisions with a higher level of democratic legitimacy.

Having in mind new rounds of enlargement, the large majority of governments is also in favour of reweighting the votes in the Council of Ministers. Only Sweden and Greece tend to take a rather sceptical position in this question. However, the German proposal of creating some kind of dual majority by introducing the requirement that a qualified majority decision in the Council needs the basis of a majority of the EU's population, has good chances to be realized. Not only Germany and France support it, as was confirmed by a meeting of the Foreign Ministers de Charette and Kinkel,²⁸ but also the Benelux countries, Denmark, Spain, Austria, Italy, and Portugal. Even the UK could be willing to support such a solution.

On the basis of this constellation, the Presidency on 17 January 1997 submitted a draft text concerning the extension of QMV and the reweighting of votes and thresholds of QMV. Concerning the extension of QMV the text draws up a list of provisions for which unanimity should remain the rule, namely

²⁵ Cf. "Resolution of 19 June 1996 on the Florence European Council and the Intergovernmental Conference"; "Resolution of 17 January 1997 on the General Outline for a Draft Revision of the Treaties".

²⁶ Cf. AE, 4.05. 1996; 01.06. 1996.

²⁷ Cf. Agence France Press International, 07. 01. 1997.

- a) for provisions "of a constitutional or quasi-constitutional nature" (citizenship, accession of new members, rules governing languages, the right to vote and stand in EP elections, modifications to the number of Commission members, etc.);
- b) provisions relating to "derogations to internal market rules"; and
- c) provisions "which have a direct impact on expenditure and/or revenue of member states" (tax, social security, structural funds).

Provisions that "could form a working basis for examining a possible extension of qualified majority voting" are: industry (Art. 130), culture (Art. 128), environment (Art. 130S), financial regulation (Art. 209), approximation of laws for the common market (Art. 100), appointment of the Secretary-General of the Council, the members of the Court of Auditors, the Economic and Social Committee, the Committee of the Regions, the right of movement and residence, adoption of the research framework programme (Art. 130 I).

Regarding the reweighting of votes and threshold of QMV the Dutch Presidency limited itself to submitting the different ideas voiced so far during the IGC. Four proposals are distinguishable:

1. introducing a dual majority (a majority of the population should back Council decision);
2. reweighting of vote (this would entail a) a consideration of the divergent impact of enlargements on the relative position of member states or groups of member states in terms of the evolution of the ratio population/ votes; or b) the application of a single adjustment formula);
3. introducing a dual blocking majority (again a specified number of weighed votes and a certain proportion of the population would be combined);
4. modifying the threshold (this could be linked with any of the aforementioned approaches).

After deliberations within the group of personal representatives on 17 January 1997, Michel Patjin, the Dutch Deputy Foreign Minister stated that these drafts had been of "general but not unanimous agreement". "I have the impression that further discussion and political consultation will be necessary".²⁹

²⁸ Cf. FAZ, 04.03. 1997.

²⁹ Cf. AE, 19.01. 1997.

According to sources within the European Parliament the concept of dual majority could be dismissed, because of being too complicated and intransparent. Instead the option of simply giving the large member states additional votes could prevail, linked to an agreement that they would abandon their second Commissioner.

Co-decision procedure

Concerning the extension of the co-decision procedure again a wide range of positions can be identified. The most minimalistic stance is taken by the British government. It argues that not the European Parliament but national parliaments are the main source of the EU's democratic legitimacy, especially with regard to intergovernmental cooperation in pillars II and III. Accordingly "the government does not feel... that the European Parliament needs new powers". Instead Parliamentarians are accused of having used co-decision not only ineffectively but even irresponsibly. With this restrictive position the UK is not isolated. It has a powerful ally in France, which is in favour of remaining at status quo.³⁰

All the other member states demonstrate more flexibility. They follow the notion that the European Parliament plays an important role in providing the Union with democratic legitimacy. Accordingly they are clearly in favour of reducing the huge number of legislation procedures to just three, namely codecision, consultation, and assent; simplifying the cumbersome codecision procedure and giving it a bigger scope of application. While countries like Portugal, Austria, Ireland, Finland, and maybe even France³¹ might support the extension of codecision on a case-by-case basis, Germany, the Benelux countries, Italy, and Greece propose that codecision be used in all matters decided on in the Council of Ministers with QMV. Only in the case of Sweden and Denmark it is not really clear how far they would support extending codecision. Not having adopted an explicit opinion in this field, they just argue that legislative procedures should be simplified, giving the European Parliament, as Denmark formulates it, "a more uniform influence in the various spheres of the Union".

Discussions on codecision have not yet really started. On 11 February, however, the Dutch Presidency submitted a non-paper outlining inter alia its approach to the extension of codecision. According to sources in the European Parliament, the Presidency's starting point is

³⁰ Cf. Malcom Rifkind, in: FAZ, 06.03. 1997; AE, 09.05. 1996; 01.06. 1996.

extending this legislative procedure to certain areas currently dealt with under the cooperation procedure, namely to rules against discrimination; aspects of transport policy; aspects of vocational training; aspects of environmental policy; development cooperation; and to parts of social policy. Additionally, the Presidency seems to be suggesting the examination of codecision's application to certain parts in the field of common agricultural policy as well as to certain areas concerning the internal market.

Composition of Commission

The Irish Presidency's draft outline of December 1996 indicates a broad consensus that the Commission would become too large and ineffective, if the present rule was maintained that this body must include at least one national from each member state and a second one from each of the larger states. There are two competing approaches, however, to exactly how to limit the numbers of Commissioners.

A powerful minority made up of France, Germany, Spain and Italy is in favour of reducing the membership of the Commission to below its present level, even in an enlarged Union, in order to enhance its efficiency. France, for example, introduced the number of ten.³² Regarded as a supranational body the Commission is not seen as necessarily representing all member states.

This notion, however, is not shared by the other eleven member states. Austria, the Benelux countries, Denmark, Finland, Greece, Ireland, Portugal, and Sweden believe that each country should have the right to nominate at least one Commissioner, this possibly combined with strengthening the President of the Commission.

Which approach is going to succeed is difficult to say. It is not clear, whether France, Germany, Italy and Spain are prepared to give up one Commissioner without a "sacrifice" on behalf of the smaller member states, and this is especially true for the United Kingdom.³³

At the meeting of the personal representatives on 10 and 11 March 1997 a clear distinction emerged between the "small" and the "large" countries". The latter believe that,

³¹ Cf. Asia Intelligence News, 17.12. 1996.

³² Cf. FAZ, 04.03. 1997; for the French proposal, AE, 09.05. 1996.

³³ Cf. AE, 15.01. 1997.

without awaiting the forthcoming enlargements, the Commission must be made into an operational unit. The first, however, underscored the need to retain "their" commissioner in order to secure that their points of view are taken into account. Interestingly, the British representative indicated that the UK would be prepared to abandon its second Commissioner, provided that a double voting right was granted to the remaining one. France was the only member state to again signal that it did not see it as indispensable to systematically have a Commissioner of French nationality. At the press conference the Dutch representative, Patjin, summarized the discussion by observing that it would be "very improbable for the Treaty to be approved and ratified if each Member State did not have the possibility of having one Commissioner".³⁴

Role of national parliaments

There is agreement among the member states that the role of the national parliaments in the European framework needs improvement.³⁵ France takes the most far reaching position. In its memorandum on its key objectives as regards the IGC it proposed the creation of some kind of "High Parliamentary Council", possibly consisting of two representatives from each national parliament, and to be consulted on all matters relating to respect for the principle of subsidiarity.³⁶ The Danish government did also submitted a specific paper. This, however, argues in favour of the development of the flexible cooperation within the structure of COSAC.³⁷ At least Germany, Austria, Finland, Portugal, Italy, and Sweden have also made clear that they would like to see closer cooperation between the European Parliament and national parliaments. According to the Danish Foreign Minister, Niels Helveg Petersen, everything seems to point to the incorporation into the revised Treaty of a protocol on the role of the national parliaments, which largely follows the Danish proposal.³⁸

Transparency

³⁴ Cf. AE, 12.03. 1997.

³⁵ Cf. AE, 01.06. 1996, 18.08. 1996.

³⁶ Cf. Memorandum of France' Guidelines for the 1996 IGC, published in: LE FIGARO, 20.2.1996.

³⁷ Cf. AE, 19.03. 1997.

³⁸ Cf. AE, 18.09. 1996, 19.03. 1997.

Since the unexpected difficulties with ratifying the Maastricht Treaty, "transparency" is one of the political terms enjoying frequent use among European politicians. It could become of uttermost importance in selling the Amsterdam Treaty to the public.

Accordingly, all governments incorporated some considerations on this issue in their official IGC position papers. Of course they agree that more transparency is needed to bring the Union closer to its citizens. On the details, however, agreement is far less obvious.

The extremes seem to be represented by Sweden and the United Kingdom. The Swedish government - enjoying considerable support from Portugal, Austria, Spain, Italy, Ireland, and in particular from its nordic partners Finland and Demark - has submitted the most far reaching proposals. It believes that the Union should work with the same openness and transparency as in Sweden. To that end several measures are envisaged, namely:

- making the legislative meetings and acts of the Council of Ministers more public by facilitating the access to the minutes;
- incorporating transparency as a general principle of administrative action, with a Commission responsible for ensuring respect for it, and a Court interpreting the provisions on openness;
- using a more simple Treaty language; and
- simplifying the procedures for legislation and decision-making.

The UK on the other hand argues that introducing too much transparency, for example with regard to the Council of Ministers, could lead to a practice where real negotiations take place in the corridors. Nevertheless the British government is willing to discuss the deletion of obsolete Articles from the Union Treaty and to simplify its language as long as this does not change its substance. Not having issued any concrete statements on the issue of transparency, the governments of Germany, France and Greece in spite of all positive rhetoric also seem to take a rather restrictive position.

The room for compromise became clearer when in March 1997 Peterson, the Danish Foreign Minister, answered questions in the Folketing.³⁹ He commented on a Danish proposal on transparency submitted in 1996, which intends to have a general principle of transparency

³⁹ Cf. AE, 19.03. 1997.

written into the Treaty. According to Petersen this received "broad support" from other member states. In addition, Denmark proposes that more detailed legislation be approved at the latest one year after the revised Treaty comes into effect (with the Council voting through QMV and parliament benefitting from codecision); and to render public the legislative activities of the Council as well as the results of the votes. In these two points the reaction was less positive. Peterson stated there would be a tough battle, and there could be doubts as to the chances of winning it.

Be that as it may, at least in one area the chances are not bad that more transparency will be achieved. As already mentioned there seems to be relatively broad agreement on reducing the large number of legislative procedures to just three, namely codecision, consultation, and assent.

Concluding the chapter on institutional reform, it should be mentioned that this issue was not discussed in depth at the meeting of EU Foreign Ministers in Rome on 25 March 1997. Nevertheless some Foreign Ministers made some interesting comments on it. The German Foreign Minister, Klaus Kinkel, for example, publicly deplored the fact that Germany had such little support in enhancing the powers of the European Parliament. He also spoke in favour of a smaller Commission. Hervé de Charette, the French Foreign Minister, in turn, went much further by saying that France would not accept a Commission with more than ten members. He added: "We need a text on the institutions, it is becoming urgent".⁴⁰

Giving the Union greater capacity for external action

As the Irish Presidency's draft outline points out, it is one of the IGC's top priorities "to make the Union's external policy more coherent, more effective and more visible".⁴¹ The main points of discussion are: - to enable the Union to analyse and prepare its external action jointly; - to review the decision-making procedure; - to provide policy implementation with a higher profile; - to further develop the European identity in the field of security and defence policy/defence.

⁴⁰ Cf. AE, 26.03. 1997.

Analysis and Preparation of External Action

Enabling the Union to analyse and prepare its external action jointly is one of the less controversial questions. Already the meeting of the personal representatives on 6 and 7 May 1996 demonstrated a general consensus on the need to have a better capacity of analysis and projection for the CFSP and to draw the necessary personal from member states, the Council Secretariat, the Commission and possibly the WEU.⁴²

The Irish Presidency's draft outline of December 1996 states that the IGC has agreed on establishing a "policy planning and early warning capability" in the Secretariat of the Council under the responsibility of its Secretary-General. Its tasks should include:

1. monitoring and analysing developments in areas relevant to the CFSP;
2. providing assessments of the Union's foreign and security policy interests and identifying areas where the CFSP could focus in future;
3. providing timely assessments and early warning of events or situations which may have significant repercussions for the Union's foreign and security policy, including potential political crisis;
4. producing, on request of either the Council or the Presidency or on its own initiative argued policy options papers, to be presented under the responsibility of the Presidency as a contribution to policy formulation in the Council.

Appropriate cooperation shall be established with the Commission in order to ensure full coherence with the Union's external economic and development policies. The policy planning and early warning unit shall consist of personnel drawn from the General Secretariat, the member states, the Commission and the WEU. Any member state or the Commission may make suggestions to the planning capability for work to be undertaken. Member states and the Commission will assist the policy planning process by providing, as appropriate, relevant information on a confidential basis.

Decision-Making

⁴¹ Cf. Irish Presidency's Draft Outline, 5 December 1996.

⁴² Cf. AE, 08.05. 1996.

The main question concerning decision-making in the second pillar is, whether and to what extent the unanimity requirement might be relaxed. As the Irish Presidency's draft outline comments, some delegations consider that the unanimity requirement does not constitute a significant constraint on decision-making and oppose any introduction of QMV. The British government is the most outspoken opponent of watering down the national veto in CFSP matters,⁴³ but also the governments of Sweden, Denmark, Portugal, and Greece are reluctant to leave the path of pure intergovernmental cooperation.

Another school of thinking - mainly made up of Germany, France, Italy, Spain, Austria and the Benelux countries - believes that the factual absence of QMV is one of the main reasons of the inefficiency of the Union's external policy. The joint Franco-German letter of December 1996 proposed to use QMV as a general rule concerning implementation decisions. In addition they argued in favour of "constructive abstention" in those fields where unanimity remains, in order to allow member states to express their reservations without hindering the adoption of a joint European action.

Though Britain opposes these proposals, they enjoy considerable support.⁴⁴ Italy, Spain, Austria, and the Benelux countries have made clear that they consider the concept of "constructive abstention" to be a conceivable option. In spite of all reservations against watering down the national veto power in CSFP matters, even Sweden, Portugal and Greece⁴⁵ might be willing to agree on a limited relaxing of the unanimity rule by way of this mechanism. Ireland and Finland send positive signals at least with regard to using QMV for implementation decisions.

Basis for compromise could also be provided for by some kind of "escape clause", which implies the referral of an issue to the level of Heads of State or Government in case that a member of the Council of Ministers declares its intention to oppose the adoption of a common decision.⁴⁶

⁴³ Cf. FAZ, 3.3.1997; Speech of Malcom Rifkind, British Foreign Minister, at the French Institute for International Relations in Paris on 3 March 1997, reported by The Guardian, 4.3.1997; Malcom Rifkind, in: FAZ, 6.3.1997.

⁴⁴ Cf. AE, 06.03. 1996, 08.05. 1996.

⁴⁵ Cf. AE, 20.03. 1996, 23.05. 1996.

⁴⁶ Cf. Irish Presidency's Draft Outline, 5 December 1996.

Be that as it may, on 3 March 1997 the Foreign Ministers of Germany and France, Kinkel and de Charette stepped up pressure. At a meeting in Bonn they agreed that in CFSP matters the European Council and/or the Council of Ministers should take strategic decisions by consensus, whereas all decisions concerning the implementation of these strategic decisions should be taken by qualified majority. At the working meeting of the personal representatives on 10 and 11 March this approach was supported at least by some delegations,⁴⁷ which in turn was reflected by the fact the the Dutch Presidency elaborated on it in its "Addendum" of 20 March 1997. Here the Presidency embarks on clarifying the distinction between fundamental foreign policy decisions, which would continue to be taken at the highest political level, and the decisions for making operational these policy decisions. The European Council would define general guidelines and common strategies in the areas in which the member states have important common interests. Common strategies would be implemented in particular through joint actions and common positions. All decisions within the framework of an agreed common strategy, except those with military or defence implications, would be taken by qualified majority. For common positions and joint actions outside of a common strategy unanimity would apply.

CFSP Representation

The Reflection Group has already discussed various options for ensuring that the Union is able to speak with one voice,⁴⁸ and all governments agree that it is necessary to improve the visibility of the Union's external activity. Again, there is no consensus, however, on how this might be done.

France introduced the idea of a "High Representative", better known as "Monsieur X" or "Mr. or Mrs. CFSP", who would replace the current rotating six-month presidency, having a mandate lasting several years (three or five) and playing an organizational and representative role in the area of CFSP. He or she should be appointed by the European Council and be responsible for exercising functions assigned to him by that body or by the Council of Ministers.

⁴⁷ Cf. FAZ, 04.03. 1997; The Guardian, 04.03. 1997; AE, 12.03. 1997.

⁴⁸ Cf. Reflection Group Report, 5 December 1995.

The Council Secretariat would be strengthened in order to provide this figure with the necessary support and resources.

To enhance the chances of getting this idea through the French government tried to coordinate its position with Germany, as can be seen from the joint Franco-German letter of December 1996. On one hand this letter specified that the representative should head the analysis and planning unit; that he should represent the EU in CFSP matters in close cooperation with the Presidency and the Commissioner in charge for foreign relations; and that he would take part in meetings of all relevant EU bodies, with speaking rights, and possibly the chairmanship of the Political Committee. On the other hand, a specific post like a "High Representative" is only mentioned as one possible option. As an alternative the possibility is expressed of charging that person with heading the Secretariat-General. In this case the Secretary General's status and function should be redefined, and his or her typical tasks should be transferred to a deputy Secretary-General. This seems to indicate that Germany prefers a CFSP representative with a less high profile.

The other governments cover a wide range of positions. They all have in common, however, that they are not willing to follow the French suggestion to completely abolish the rotating six-month presidency. Additionally, three broad schools of thought might be identified. The first one is adhered to by the UK, Portugal, Finland, Denmark, and Sweden, and seems to prefer the creation of some low profile "external representative". While demonstrating some willingness to introduce a special figure, it stresses that the institutional balance should be maintained, safeguarding the central role of the presidency and the governments of the member states. Any CFSP representative should act only in support of the Council or the Presidency and under their mandate, so that it would not create confusion as regards the division of labour vis-à-vis the other representatives of the Union's external policy.

The second school tends in the direction of Germany and comprises Italy, Greece, Spain, Ireland, Austria, and the Benelux countries. On the whole these countries prefer an option, which envisages strengthening the Secretary-General, who assists the rotating Presidency, and works with the help of a reinforced Council Secretariat.

The third approach is represented by Finland. Status quo orientated it explicitly opposes the notion of a permanent figure representing the CFSP. The government argues that visibility is primarily a matter of the member states holding the presidency.

The last working meeting dealing with the issue of CFSP representation was that of personal representatives on 10 and 11 March 1997. According to the Agence Europe diplomatic sources report that there has been no progress on the subject in relation to the content of the Irish Presidency's document drafted in December 1996. In the discussion the Dutch representative asked, whether the role of the Council's Secretary General should be developed or the position of a "High Representative" created. The French representative, Michel Barnier, pleaded for the appointment of an eminent citizen, such as Vranitzky or Gonzales. Other delegations argued for a bigger role for the current Secretary General, without specifying whether he should wear the CFSP "cap" in addition to his current responsibilities or hand over certain tasks to a deputy.⁴⁹

The latter school of thinking seems to be the stronger one. This is indicated by the Dutch Presidency's "Addendum" of 20 March 1997, which outlines that a Secretary General, appointed by the Council for a five year term, shall assist the Council in CFSP matters by contributing to the formulation, preparation and implementation of policy decisions. Acting on behalf of the Council the Secretary General may also conduct political dialogue with third parties.

European security and defence identity

Concerning the European identity in the field of security and defence policy, the central issue is the institutional relationship between EU and WEU. With some derogations the same opposing schools can be identified as with regards to CFSP representation. The first school comprises the UK, Portugal, Denmark, as well as the neutral countries Finland, Austria, Ireland and Sweden. All of them are in favour of strengthening the links between WEU and EU. (Sweden and Finland for example produced a detailed joint memorandum, which argues for a reinforced linkage between EU and WEU in order to improve European crisis

⁴⁹ Cf. AE, 12.03. 1997.

management without the Union itself performing military tasks.)⁵⁰ They oppose, however, the aim to merge these two institutions.⁵¹ Additionally they want to maintain the present treaty language, which states "the EU requests the WEU".

On the other hand, France, Germany, the Benelux countries, Italy, Spain, Austria and Greece are in favour of merging EU and WEU on the basis of a phased approach.⁵² To that end they demand that the IGC shall adopt a timetable defining the stages of the merger. Furthermore they want to give the European Union the possibility to "instruct the WEU".⁵³

With view to the meeting of EU Foreign Ministers on 25 March 1997 in Rome, on 24 March 1997 the EEC founding countries (with the exception of the Netherlands, which currently holds the Presidency, but shares the objectives of the others) and Spain presented a joint document on the gradual integration of the WEU into the European Union. Art. 1 of this proposal states: "The integration of the Western European Union (WEU) into the European Union shall be gradually implemented during a transition period of approximately ... years. This transition period shall consist of three phases (...) Transition to the next phase shall depend on the Council stating in a report that the measures laid down for the previous phase have essentially been implemented. (...)". Art. 2 goes on to propose that during the first phase, "while maintaining the institutional independence of the WEU and within the policy guidelines set by the European Council, the foundations of a common European defence policy as part of the Union's Common Foreign and Security Policy shall be laid and the structures, rules and procedures of both organizations harmonized. (...)". Art. 3 explains that during the second phase "the WEU shall remain responsible for the implementation of military actions of the Union in the field of crisis management, whereas the Union shall assume the decision-making power, binding also on WEU, to initiate the action. The Union will monitor its implementation from the political point of view and may modify the mandate and/or terminate the action in accordance with developments and in close coordination with WEU. (...)". In addition, in this phase the institutions of EU and WEU shall be merged. During the third phase, the integration

⁵⁰ Cf. "The IGC and the Security and Defence Dimension - Towards an Enhanced EU Role in Crisis Management", Joint Memorandum by Finland/Sweden, 25 April 1996.

⁵¹ For the position of the UK, Irish Times, 16.12. 1996.

⁵² Cf. AE, 20.03. 1996.

process shall be completed by transferring all competences to the institutions of the EU, and by "incorporating the assistance guarantee laid down in Article V of the modified Brussels Treaty into the Treaty on European Union or an additional protocol to the Treaty which should contain the appropriate institutional mechanisms for the cooperation of participating Member States on issues of territorial defence making use of the politico-military structures of the EU. In the process, the right of each Member State of the Union not to participate in an assistance mechanism shall be respected. (...)"⁵⁴

At the meeting in Rome this proposal was not only rejected by the British government but also by Sweden.⁵⁵ Malcom Rifkind, the British Foreign Minister, who was surprising with his harshness not only of CFSP matters,⁵⁶ stated that any initiative resulting in the CFSP having a defence component represented by the WEU would be totally unacceptable. The UK would favour closer cooperation between EU and WEU but not a merger, which in any case would be made impossible because of the presence of several neutral countries in the EU. Other obstacles would derive from certain agreements within NATO. The Swedish government's argumentation was different. According to Lena Hjelm-Wallen, the Swedish Foreign Minister, the proposal would jeopardize enlargement, because Russia would be opposed to an enlargement if the EU became a military alliance. The Foreign Minister underlined, that not only the neutral countries were opposing the project but also some of the countries that are part of the WEU.

In sum, national delegations on the whole seem not prepared to venture a big step in CFSP matters. The envisaged changes are likely to be of a rather cosmetic nature.

Justice and Home Affairs

In the field of Justice and Home Affairs the central issues of debate are:

1. transferring certain matters of cooperation from pillar III to pillar I;

⁵³ Cf. AE, 24.1.1997; French-German Strategic Common Concept on Security and Defence, adopted at the Nuremberg Summit of 9 December 1996, reported in AE, 1.2.1997.

⁵⁴ Cf. AE, 24/25.03. 1997.

⁵⁵ Cf. AE, 26.03. 1997; FAZ, 26.03. 1997.

⁵⁶ Cf. FAZ, 26.03. 1997.

2. making the decision-making process more efficient (mainly by relaxing the unanimity rule and improving working methods);
3. increasing involvement of Commission, Court of Justice, European Parliament and national parliaments; and
4. placing the "Schengen cooperation" under the roof of the Treaty on European Union.

All governments agree that cooperation in Justice and Home Affairs needs improvement. Again, however, there is no consensus between member states on how to proceed in detail.

The pace is again set by far reaching German-French proposals put forward in the joint letter of December 1996. First, the two governments are in favour of closer police cooperation, with the long-term objective of creating a European police office with operational powers. The Europol convention should be ratified as soon as possible and the member states should quickly implement the Maastricht declaration on police cooperation. Second, they are in favour of developing the Community policies on external borders, visas, immigration, asylum and customs cooperation, and of transferring them to pillar I (Interestingly, France links this issue to the role of national parliaments).⁵⁷ Acknowledging the special nature of these matters, it is proposed to give the member states a right of co-initiative and to provide for stronger involvement of national parliaments. The transfer to pillar I should be managed on the basis of a definite timetable. Third, cooperation within pillar III should be improved by: - gradually harmonizing laws and procedures in the fields of transboundary crime, terrorism, drug abuse and trafficking; - increasing legal security of citizens in civil and criminal law by closer cooperation, increased harmonization and common procedures; - introducing QMV; - giving the Commission the right of co-initiative; - enhancing the roles of the European Parliament and national parliaments, and the Court of Justice; - and by creating a directive-like legal instrument binding the member states. Finally, France and Germany are convinced that the Schengen cooperation should be incorporated in the revised Treaty.

These ideas enjoy considerable popularity. A large number of member states explicitly supports the "communitarization" of asylum and immigration policies (at least the Benelux

⁵⁷ Cf. AE, 23/24.09. 1996.

countries, Greece, Spain, Italy, Austria, Portugal, Ireland, Sweden, maybe also Finland).⁵⁸ The same countries support giving the Commission a true right of co-initiative in third pillar matters, and involving European Parliament and Court of Justice to a bigger extent. Relaxing the rule of unanimity in order to increase efficiency is considered at least by the Benelux countries, Greece, Finland, Italy, Ireland, Portugal, Austria and even Sweden. Most member states also favour making decisions in Justice and Home Affairs more binding (besides Germany and France at least the Benelux countries, Greece, Spain, Finland, Austria, Italy, and Portugal). The Benelux countries and Italy explicitly support the idea of a directive-like legal instrument. Furthermore, also the Benelux countries, Spain, Italy, Austria, and Sweden are in favour of placing "Schengen" under the Union's roof. Finally, also Italy calls for Europol to be given an operational capacity.⁵⁹

However, Denmark and especially the United Kingdom are firmly opposed to such a far reaching approach. The British government recognizes the need to address the challenge of terrorism, organized crime, drug trafficking and illegal immigration on a "multinational basis". Nevertheless it argues, that, having in mind the sensitive nature of the matters in question, there is no question of imposing supranational measures, for example in the fields of police operations, customs authorities, and the criminal justice system. Accordingly, it demands that unanimity should remain as the general rule in pillar III.⁶⁰ The Commission, the Court of Justice and the European Parliament should continue to play a strictly limited role. In particular, strengthening the status of the Commission would raise difficulties of principle. Concerning the issues terrorism, illegal immigration, asylum and drug trafficking it is stressed that, as an island, the UK could often take more effective measures than the other member states. Giving up border controls is categorically ruled out.⁶¹

This strictly intergovernmental approach is linked with a positive attitude towards making "working methods as expeditious, streamlined and effective as possible".⁶² To that end Annex E of the memorandum "A Partnership of Nations" lists several proposals reaching from

⁵⁸ Cf. Irish Times, 16.12. 1996; AE, 23.05. 1996, 20.11. 1996.

⁵⁹ Cf. Irish Times, 16.12. 1996.

⁶⁰ Cf. FAZ, 03.03. 1997.

⁶¹ Cf. Malcom Rifkind in FAZ, 06. 03. 1997; AE, 13.02. 1997.

removing the Steering group layer and strengthening the element of the Council Secretariat, which supports the work of the member states in this field, to establishing a new machinery for managing relations with third countries on justice and home affairs matters, and improving agreements on circulating documents to member states. Only the Swedish government has produced proposals on developing pillar III working methods in such detail.

Denmark does also stress that intergovernmental cooperation should remain the norm. In order to make decision-making more effective, however, it would be willing to discuss ideas of simplification. In addition it argues that better use could be made of the possibilities for cooperation provided for by the current Treaty.

On 24 February 1997, on the occasion of a working meeting of the EU Foreign Ministers, the Presidency submitted a working paper on the gradual establishment in the Union of an area of "freedom, security and justice".⁶³

The major outlines of the working paper are as follows: Three parts have to be distinguished.⁶⁴ Part A sets out the general provisions. Gradually developing the EU as an area of freedom, security and justice is mentioned as the general goal. In addition, the measures regarded as necessary to attain this goal in the field of free-movement of persons and their security are listed. Part B contains the provisions for the free-movement of persons and the main directly connected flanking measures. First it relates to the content of EU actions. This covers all the measures that the Schengen countries regard as essential to be able to abolish border controls (inter alia visa policy, conditions regarding the movement of third country nationals within the EU; responsibility of member states in dealing with requests for asylum; police cooperation; drugs; improving mutual judicial aid in penal matters; setting up of the Schengen Information System). Second, this part provides for the introduction of an exclusive right of initiative for the Commission (after a period of shared initiative), together with a provision obliging it to investigate all requests made by member states and tending towards it making a proposal; - for qualified-majority voting after an initial period in which decisions would be taken through unanimity; - and for an adaptation of the Court of Justice's role due to

⁶² "A Partnership of Nations", Annex E: Summary of UK proposals for improving the working methods of the third pillar.

⁶³ Cf. AE, 05.03. 1996.

the large number of cases regarding asylum and immigration that national courts have referred to them. Part C refers to the fight against crime and to police and legal cooperation. Again it is distinguished between contents of EU action and decision-making procedures and instruments. The Presidency tries to define in a clearer and more systematic manner the goals, means and instruments of action. It asks whether unanimity should remain the rule for decision-making, and whether the fight against crime and police and legal cooperation are particularly suited to the application of flexibility.

Apparently, reactions of the Foreign Ministers have been positive. In particular, according to Agence Europe, several member states support the idea of a gradual approach towards an exclusive right of initiative for the Commission; to introducing QMV; and to adjusting the role of the Court of Justice.⁶⁵ Klaus Kinkel, the German Foreign Minister, described the Dutch working document as highly satisfactory. According to him, it corresponds more or less to Germany's demands, thus forming a "very good basis for future work".⁶⁶

The Presidency recognized this trend by including a quite ambitious chapter on pillar III in its "Addendum" of 20 March 1997. It outlines a new title in the EC Treaty containing provisions on free movement of persons, asylum and immigration, and envisages strengthening the provisions on police and judicial cooperation in criminal matters. Additionally, making the assumption that the *acquis* of Schengen will be incorporated into the Union, it recommends a cohesive strategy aimed at achieving this end, including derogations for the countries not participating in "Schengen". However, at the press conference after the meeting of the Foreign Ministers in Rome, the new draft text was criticized for back-stepping, since it suggests a five year period before giving some matters of the third pillar a Community dimension. Van Mierlo, the Dutch Foreign Minister, answered that the Presidency had tried to follow the approach that could receive the approval of the largest number of governments and that it had the feeling that a five-year period was necessary. This, as well as the fact that Denmark and the UK seem to be quite satisfied with the compromise reached almost six years ago in Maastricht, indicates that the results concerning pillar III are likely to be rather limited.

⁶⁴ Cf. AE, 26.03. 1997.

⁶⁵ Cf. AE, 05.03. 1997; for the Kinkel statement AE, 26.03. 1997.

⁶⁶ Cf. AE, 24/25.02. 1997.

Employment Policy

Given the high rates of unemployment in almost all member states and a jobless total of over 20 million across the EU,⁶⁷ also in the IGC the fight for employment has assumed top priority. However, though there is consensus that employment policy is first and foremost a national responsibility, the governments have difficulties in agreeing on which basis the Union should assist national governments in their employment policies.⁶⁸

The large majority of member states (at least Spain, the Benelux countries, Portugal, Italy, Greece, Denmark, Ireland, Finland, and Sweden) is convinced that the aims of reducing unemployment and improving pan-European coordination of national employment policies should be reinforced by introducing a new employment chapter in the revised Treaty.

Denmark, Spain, Austria and Belgium have submitted specific contributions on the IGC and employment. The Danish proposal for example suggests, first, to strengthen the Union principles and objectives as regards employment by introducing amendments in the Preamble as well as in Title I and in Art. 3 of the Treaty. Second, it argues in favour of including an employment chapter (to be placed in Title VII), which would comprise Articles on the conduct and on the coordination of employment policy as well as provisions on measures to encourage cooperation between member states. Third, it proposes setting up a Committee of Employment. Finally, QMV is envisaged as regards decision-making.⁶⁹

Any approach of this kind is opposed not only by the British but also by the German and the French governments. The British argument is that "it is businesses which make jobs", and that the basis for European coordination of employment policies had been created with the common employment policy principles agreed on at the Essen European Council in 1994. In March 1996 Rifkind made clear vi-à-vis the House of Common's Foreign Affairs Select Committee that the government would oppose any attempt to introduce a chapter on employment into the Treaty.⁷⁰

⁶⁷ Cf. The Guardian, 06.03. 1997.

⁶⁸ Cf. AE, 23.05. 1996.

⁶⁹ Cf. AE, 02. 10. 1996.

⁷⁰ Cf. AE, 20.03. 1996.

The position of the governments of Germany and France are slightly different. They believe that not only the Essen agreement but also the current Treaty sufficiently provide for the coordination of national employment policies. Art. 103, it is argued, regulates the coordination of economic policy, and employment policy is part of economic policy. A new specific chapter on employment would open the gates for new expensive programmes, unrealistic aims and dangerous "Parallelkoordination".⁷¹ At the Dublin European Council on 5 October 1996, however, at least the German side demonstrated flexibility. Speaking before the press Helmut Kohl again expressed his scepticism as to the utility of an employment chapter. He also stated, however, that he would not oppose a "pragmatic solution".⁷²

Already in September 1996 the Irish Presidency submitted a document proposing to introduce into the Treaty "something like the Essen approach" (thereby immediately invoking the opposition of Britain, Germany and France). Niels Ersboell, the Danish representative, emphasized it was nearly identical to Denmark's ideas.⁷³

⁷¹ Cf. "Beschäftigungspolitik als Thema der Regierungskonferenz", Speech of Staatssekretär Dr. Werner Hoyer on 8 November 1996 in the German Bundesrat; Speech of German Foreign Minister Klaus Kinkel on the occasion of a symposium organized on the IGC in Stromberg on 19 March 1996, reported in AE, 21.3.1996; AE, 9.5.1996; AE, 26.9.1996

⁷² Cf. AE, 7/8.10. 1996; AE, 9/10.12. 1996.

⁷³ Cf. AE, 26.09. 1996.

IV. Conclusion and Scenarios

As the summary of national positions shows, the Intergovernmental Conference clearly poses a challenge to policymakers and academics alike. Can policymakers find a solution for the dilemma of efficiency and legitimacy without losing touch with voters in conflict-ridden member states? Can academics come up with policy advice and will they be able to predict policy outcomes so that politicians, businessmen and the public get some idea on where the EU will be heading after the Amsterdam summit?

Policy advice has been given by various sources over the last two years.⁷⁴ Hence, this section will restrict itself to prediction. A note of caution is in order. While policy prediction has certainly been invigorated after the shock of the Soviet collapse (Booth 1995), researchers still better recognize patterns than nonpatterns. This might particularly hamper their capacity to predict the outcome of international bargaining situations such as the Intergovernmental Conference. Additionally, there are numerous intervening variables to be taken into account which might change between now and the final negotiations in Amsterdam. The British election on May 1, 1997 is the most prominent "intervening variable" among others.

To begin with, the results of this Intergovernmental Conference are unlikely to be recognized by turning to the predecessors in 1985 and 1991 and drawing conditioned analogies from them. There are several distinctive features to the Amsterdam conference. First, unlike the Intergovernmental Conference leading to the common market project and the Single European Act, there is no, not even partial policy convergence between the big three France, Great Britain and Germany.⁷⁵ Consequently, one has to search for "policy compatibility" rather than "convergence". In addition, the Commission as one of the supranational spearheads of the integrationist effort, has so far not been able to exploit differences among member states by forming a winning coalition around a "technical approach". In comparison to the leading role of the Commission as a policy entrepreneur in the "1991 Intergovernmental Conference on Economic and Monetary Union" the Commission in 1996/97 will restrict itself

⁷⁴ Cf. Janning 1994, Lipsius 1996; Falkner/Nentwich 1995; Schmuck 1995.

⁷⁵ Cf. Moravcsik 1991; for the necessity of big-power triangle to construct winning coalitions in an ever more heterogenous Union cf. Wallace 1985.

to a supporting role, the extension of the co-decision procedure being one of the few exceptions.⁷⁶

Turning to external variables of the integration process there appears to be a mix of incentives and deterrents for further integration. On the one hand state crisis and demise in the periphery of the Union have made abundantly clear that the Union desperately needs a common or at least coherent "Common Foreign and Security Policy" (CFSP) and a strong coordination in "Home and Justice Affairs" (HJA). With the default of the CFSP in Yugoslavia and Albania still vigorous in the minds of the public, the Dutch presidency encounters opposition in formulating a common policy towards China while it might have to prepare for an upcoming ethnic crisis in Macedonia.⁷⁷ In addition, as the resolution of the Bosnian crisis has shown American preponderance in European security affairs still persists and is likely to do so in the future. With the Yugoslav example still looming large and the doors of NATO to be opened in 1999 before the most ambitious of accession to the Union in 2002, Poland, Hungary, the Czech Republic and other East and Central European states will turn to the US rather than to the Union and its CFSP. Interestingly, our analysis shows that the accession of some CME countries to the Union early next century appears to have left its mark only in institutional reform where the pressure for less commissioners has been considerable.

Against the disuniting factors, however, one can also detect some strong push factors for a deeper Union, both within and beyond the Union. Most commentators agree that the Intergovernmental Conference simply cannot fail or be delayed because that would set a severe if not mortal blow to the EMU. As domestic political decision making has become increasingly difficult in France and Germany in recent months, European politics still provide a field where the top executives can reap the fruits of their work immediately, although they might still have to fight for ratification when they return home. This effect might be a temptation for the new British administration, although the strong anti-integrationist stance of the British public might well exert a moderating influence.

⁷⁶ A good account of the Commissions role in 1991 is Pollack 1997: 127-128 and Wolf/Zangl 1996.

⁷⁷ Cf. "Konflikt in der EU über gemeinsame China-Politik", in: FAZ, 05.04. 1997; Mike O'Connor, Is Macedonia Next for the Ethnic Pyre?, in: IHT, March 21, 1997.

Scenarios

Taking the various internal and external variables into account we come up with three different scenarios as to what the result of the Amsterdam conference will be:

- a) the consolidation scenario;
- b) the patchwork scenario;
- c) the all in line scenario.

The consolidation scenario

The first scenario embodies what most scholars and politicians would call the lowest common denominator scenario. It emphasizes the Intergovernmental character of the bargaining situation in Amsterdam and envisions a very modest result due to the irreconcilable differences between member states, particularly Great Britain and the more integrationist countries such as Germany and Benelux. It takes into account that after May 1 there will be either a confirmed Conservative government in Britain hampered by Euro-sceptics in its own ranks, or a Labour administration with few incentive to give away its hard-won domestic political capital.

Focussing on the lack of transparency of the original Maastricht Treaty this scenario implies that member states will agree only on minor policy changes and implement with a "technical consolidation" of the treaty (Bogdandy/Ehlermann 1996: 1109). In this effort member states can reach back to two reports commissioned by the European Parliament, one by the legal scholar Roland Bieber, the other by the Robert Schuman Centre of the European University Institute in Florence (Bieber 1995, 1995a; European University Institute 1996).

Despite the consensus on consolidation, the host of differences between status-quo seeking states and integrationists will lead only to marginal changes. As can be derived from the above, the CFSP is likely to be in the center of this modest approach. Member states will agree on the establishment of a "policy planning and early warning capability" but they will fail to agree on a highly visible "Mr. X" settling for a CFSP representative who reports to the

Council and the presidency.⁷⁸ Advances in the field of Home and Justice Affairs will fall short of the expectations of most member states due to opposition from Denmark and Britain.⁷⁹

Under such conditions a majority of member countries may very well opt for a low profile result of the Intergovernmental Conference not to endanger the unity needed for the upcoming EMU process. This trend could be reinforced by a call for another Intergovernmental Conference once the CME countries have joined the Union. Since major reforms, such as those in agriculture, structural and regional policy in any way take place outside the IGC, why not add another reform conference in the early 21st century?

The patchwork scenario

The second scenario draws attention to a common trend in the recent European reform debate, the adding of legal complexity to an already overburdened and inefficient political process. In the patchwork scenario member states, after intense bargaining, reach a consensus in some policy areas while settling for little in others. The resulting picture, a patchwork of different speeds of integration in the three pillars and institutional reform resembles the Maastricht Treaty although on a higher integration level.

To make this scenario work, the domestic situation in some member countries, especially Britain, must change. A central feature would be a strong win by Labour with considerable capital to be spent in foreign affairs or a modest gain by the conservatives with John Major out to strengthen his leadership once and for all against the Euro-sceptics. In addition, other European top officials must be convinced, either through domestic pressure or personal commitment, that in order to restore some European legitimacy and set a precedent for the upcoming battle for monetary union they will have to make advances in political union.

Under this scenario a package deal will be struck both between the small and the big countries as well as between integrationists and status-quo oriented delegations. The outcome will be close to the model of a "Europe of different speeds", although in some areas, e.g. Schengen, "géometrie variable" might prevail. As far as integration in the different pillars is

⁷⁸ The institutional setting might resemble that of the European Gouvenor in Mostar, Hans Koschnik, who reported directly and got his directives from the Council.

⁷⁹ Cf. Rory Watson, Race is on for IGC deadline, in: European Voice, 20-25 March 1997, p. 2.

concerned, the patchwork scenario foresees moderate if any progress in the first pillar (environment, employment, social chapter) and the CFSP (a planning unit and a diffuse constructive abstention clause). Considerable advances, however, could be made in institutional reform (big countries sacrificing their second commissioner, more QMV) and the field of Home and Justice Affairs with the Schengen Treaty integrated in the TEU and the establishment of a "European Monitoring Centre for Racism and Xenophobia".⁸⁰

On the surface this multifaceted "Europe of different speeds" allows both integrationists and intergovernmentalists to claim success. Beneath the surface it leaves room for manoeuvre resulting in an often phased patchwork structure of reform, e.g. the extension of codecision procedure or QMV. Smaller countries will ensure that they will still be represented in the next commission. Some of them might even change their position on QMV in CFSP and HJA matters when an informal agreement can be reached that cohesion funds will be continued at the same level beyond the accession of the CME countries. Big states, under considerable domestic pressure to control migration, drug traffic and organized crime, will cede some of their prerogatives, e.g. the second commissioner, in order to streamline the policy process and to secure compromise in Home and Justice Affairs. A British concession in this area might well be part of an issue area bargain, trading HJA for a prominent role of Britain in CFSP, namely a British secretary-general or "Mr. X".

Intense intergovernmental bargain will certainly restrict the areas where supranational institutions will increase their cloud. Institutional gains will be modest and mainly consist of efforts to streamline the policy process, e.g. reducing the number of legislative procedures to three. To create public support, the role of national parliaments will be strengthened and some other transparency measures will be taken.

In sum, the patchwork scenario is the most likely because it barely touches institutional reform while taking some chances in furthering a "European solution" to some pressing domestic problems. A central feature of this scenario is the absence of thorough institutional reform and a European "employment policy". "National initiatives" in this area still appear to

⁸⁰ Cf. Simon Cass, Euro-centre awaits UK election results, in: European Voice, 20-25 March 1997, p. 6.

be better suited ensuring domestic political capital for elites and prospective costs seem to reduce member countries' ability to meet the convergence criteria of the Maastricht treaty.

The all- inline scenario

The last and most ambitious scenario is characterized by a steady progress in all three pillars of the Union as well as institutional reform. The scenario results from a last minute top official consensus that a broad and thorough reform effort is needed to ship the Union through the heavy waters of the Monetary Union. Therefore, reforms although multispeed in style, will be purpose rather than politics-oriented. A balance between institutional advances - QMV in the second and third pillar, linkage between QMV and the codecision procedure, a reduced number of commissioners, enhanced representation through additional votes for bigger member states - policy reform - Integration of Schengen and phased merging of WEU in the Union - and new policy areas - employment, strengthening of environmental policy, ensures deeper integration without making the Union's policy process ever more complicated.

In this scenario all internal and external factors seem to converge in a sense of urgency at the Amsterdam summit: the US president negotiating NATO-enlargement with the Russian president without EU participation, a reform-minded labor government with considerable political space to manoeuvre, a German chancellor strengthened by his own commitment to serve another term if elected in 1998. In addition, a clever Dutch negotiation strategy facilitating southern support by keeping the looming monetary debate at bay.

As a consequence the "all-inline scenario" seems to be the most attractive to integrationist forces in Germany and elsewhere. It not only takes active steps toward meeting the challenges of the CME countries accession by accelerating the reform momentum for the restructuring of the Common Agricultural Policy and the Structural Funds in 1998/99; it also bolsters the legitimacy of the Union in almost all policy areas, thereby putting the notion of "the Union as a mere economic entity" on the backburner, at least in theory.⁸¹

The chances, however, that this scenario will prevail are remote. Top European Officials have been in trouble-shooting-mode since the lesser challenging days of the Maastricht Treaty. Hence, the days for a "relance Européene" have not yet come.

⁸¹ For a recent thoughtful argument on the legitimacy deficit of the Union, cf. Kielmannsegg 1996.

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