

# The European Union's Future. A Preview of the Intergovernmental Conference of 1996

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## Introduction

On 3 June 1995, at the commemorative Messina Conference, the European Union set up a Reflection Group to prepare the so-called Intergovernmental Conference (IGC) of 1996. This Conference will adapt the Union's institutional structure in the perspective of its enlargement with the Central and Eastern European countries, Malta and Cyprus.

Two substantive policy discussions will weigh heavily on the IGC's institutional debate. The first discussion concerns the Union's role in the economy, and this in light of Europe's struggle for competitiveness and employment in a new world economy characterized by the fast growing dynamism of the Asia-Pacific region. The second substantive policy discussion deals with the Union's foreign policy role, in view of the perceived weaknesses of the current Common Foreign and Security Policy. That the substantive policy differences between the Member States will be reflected during the IGC's institutional discussions is the red thread running through this paper. The IGC is, indeed, largely a position game during which the Member States attempt to create a congenial institutional framework, favorable to their substantive policy preferences.

While the perspective of a Union with more than 25 Member States does not fundamentally change the substantive policy priorities of the current players, future enlargement nevertheless adds a crucial factor to the discussions. To those Member States that want the European Union to be more than a loosely knit free trade area, the current institutional mechanisms - initially designed for the Community of the Six - cannot simply be transposed to a European Union with more than 25 members without the certainty of paralysis and dilution. If a vibrant European Union with a high decision-making capacity is the goal, overcoming the double challenge of increasing numbers and increasing diversity requires a fundamental streamlining of the Union's institutional framework. As the following chapters will illustrate, however, the Member States do not all share this goal.

In many respects, the current institutional discussion resembles the debate of the 1950s between those countries that did not want European cooperation to develop beyond the stage of a purely intergovernmental free trade zone, and those which insisted that Europe's future depended on a supranational integration process leading "toward an ever closer union". For the first group of states, including the United Kingdom (UK), wide organizations operating on the basis of unanimity seemed the most attractive alternative. For the more ambitious second group, it soon became clear that the gradual build-up of a Community based on coherence and solidarity could only be achieved among those countries which realized that the notion of "unsurrenderable sovereignty" had become an empty shell. Thanks to the Schuman Plan, the Six were able to break the stalemate and leave behind those countries unwilling to move beyond intergovernmentalism. Through the process of enlargement, however, the successful and coherent Community method has been gradually undermined from within. Especially during

the Thatcher and Major years, the UK has, indeed, given the impression that it only joined the Union to beat it.

Unless the IGC of 1996 is able to strengthen the Union's decision-making capacity and restore the discipline necessary to maintain an equilibrium between the Member States' rights and duties, a new Schuman-like initiative is called for to give new impetus to the European integration process.

Chapter 1 of this article includes a basic introduction to the IGC of 1996. In chapters 2 and 3, the substantive policy debates regarding the European Union's role in the economy and in foreign and defense policy will be examined, in relation to the IGC. The concrete institutional options for the IGC will be analysed in chapter 4. Finally, chapter 5 briefly puts today's discussion in a historical perspective.

## **I. The Intergovernmental Conference of 1996**

### **A. *The Agenda***

#### **a. Article N(2)**

The IGC of 1996 is foreseen by Article N(2) of the Treaty of Maastricht on European Union. According to this provision "[a] conference of representatives of the governments of the Member States shall be convened in 1996 to examine those provisions of this Treaty for which revision is provided, in accordance with the general objectives set out in Articles A and B". The procedure under Article N(2) is, thus, limited in nature. Firstly, the revision must take place in accordance with the general objectives set out in Articles A and B. This implies that the amendments which are adopted should fit in the existing conceptual framework, as established by the Treaty of Maastricht. Secondly, under Article N(2), the IGC of 1996 will examine only those provisions the revision of which is already provided for in the Maastricht Treaty.

This includes the following topics:

- the inclusion of energy, civil protection, and tourism as policy areas within the Community framework (Declaration No. 1 to the Treaty of Maastricht);
- the establishment of a new hierarchy between the different categories of Community acts; this implies a review of the complex system of EC legal instruments such as regulations, directives, and decisions (Declaration No. 16 to the Treaty of Maastricht);
- the widening of the scope of the co-decision procedure which allows the European Parliament to have a decisive say in the Community's legislative procedure (Article 189 B(8));
- the revision of the security and defense provisions of the Maastricht Treaty in view of the Western European Union's expiration in 1998 (Article J.4 (6)); and
- the examination of "any other" amendments deemed necessary to improve the functioning of the Common Foreign and Security Policy (Article J.10).

#### **b. Article N(1)**

In light of the current momentum for further enlargement of the Union - which had not been foreseen by the Maastricht negotiators - the IGC of 1996 will not be limited to the topics which are listed above. Preparation for further enlargement requires a more comprehensive review of the Union's structures, in accordance

with the procedure of Article N(1). In this framework, the Council can, at any time, deliver an opinion in favour of calling a conference of representatives of the Member States for the purpose of determining by common accord the Treaty amendments to be made.

The European Council meetings in Brussels (December 1993) and Corfu (June 1994) have given an indication of the issues which should be dealt with under this procedure in 1996:

- the weighting of the votes in the Council of Ministers;
- the determination of the threshold for qualified majority decisions in the Council of Ministers;
- the determination of the number of members of the Commission; and
- any other measures deemed necessary to facilitate the work of the Institutions and guarantee their effective operation in the perspective of enlargement.

Under the last topic, the Member States will bring up matters such as the simplification of the Community's confusing legislative procedures, and the generalization of qualified majority voting for legislative matters in the Council.

Also, the European Parliament, the Council and the Commission have agreed that two other issues should be treated by the IGC of 1996:

- the operation of the complex budgetary procedures, notably the classification between obligatory and non-obligatory expenditures; and
- the adaptation to the co-decision procedure of the rules under which implementation powers can be conferred to the Commission.

Moreover, from a technical point of view, it is likely that the IGC will consider removing a number of obsolete Treaty provisions dealing, for instance, with the transitional period of the 1950s and 1960s. Also, the European Coal and Steel Community Treaty will expire in 2001 and could, during the IGC of 1996, be integrated in the European Community structures.

Thus, the IGC of 1996 will involve negotiations going well beyond the limited framework of Article N(2).

## B. *Preparing for the IGC*

The preparation for the IGC is characterized by several phases.

First, the institutions of the Union (European Parliament, Council, Commission, Court of Justice, and Court of Auditors) were each invited to establish a report containing their evaluation of the functioning of the Treaty of Maastricht on European Union.

These reports provide an input for the work of the Reflection Group established on 3 June 1995. The work of the Reflection Group forms the essence of the second phase. The Group is chaired by Spanish State Secretary for European Affairs Carlos Westendorp and consists of the representatives of the Ministers of Foreign Affairs of the Member States. The Commissioner in charge of institutional reform as well as two European Parliament representatives also participate. In accordance with the instructions from the European Council at Corfu (June 1994), the Reflection Group is to "examine and elaborate ideas relating to the provisions of the Treaty on European Union for which a revision was foreseen and on other possible improvements...It will also elaborate options in the perspective of the future enlargement of the Union". The Reflection Group will report its conclusions to the European Council in December 1995.

The report by the Reflection Group will form the starting point for the third phase: the IGC itself, which has to begin in the course of 1996.

### *C. The IGC: a problem of timing*

While the IGC has to start in 1996, the date of its conclusion is not pre-determined. Three problems of timing threaten to complicate the IGC's functioning and conclusion.

Firstly, the UK will face important parliamentary elections during the first semester of 1997. This could push the UK Government to get the IGC out of the way as quickly as possible. Alternatively, the elections could pressure a weak Major administration into staying in its trenches, which would make meaningful negotiations impossible during 1996. Obviously, the elections in the UK also offer hope to the integration-minded Member States, which might be inclined to delay final deal-making while hoping that the Euro-sceptic Conservative Government would be replaced by a more pro-European majority.

Secondly, the move toward Economic and Monetary Union (EMU) also has implications for the IGC. EMU as such is not on the IGC's agenda. For several Member States, however, achieving the final phase of EMU - including irrevocably linked exchange rates between the participants - is much more important than the IGC. Some, like France, value EMU mainly for the macroeconomic and monetary stability which it entails. For other Member States, like Belgium, EMU also represents a political point of no return "toward an ever closer union". The timing of EMU's final phase (to begin in 1999) will inevitably coincide with the IGC or with ratification of its results. In addition, German representatives have on several occasions made an explicit link between IGC and EMU. In their view, a real move toward Political Union during the IGC seems to represent an important pre-condition for German participation in EMU's final stage. This position, obviously, puts pressure on Member States like France. Since EMU without German participation makes little economic or monetary sense, those members willing to achieve EMU are warned not to simply dismiss the Federal Republic's institutional proposals.

Thirdly, if the IGC, or ratification of its results, would last till the late 1990s, it runs the risk of clashing with the renegotiations of the Community's own resources, the review of the Union's financial perspectives, and the reform of the structural funds. By 1999, the current agreements governing these areas expire. If the past serves as a guide to the future, the Member States may be expected to go to the brink during these renegotiations in order to maximize their concrete financial gains and minimize their contributions. The ratification of the IGC's results could be rendered problematic if it were to interfere with the discussions on the concrete financial credits and debits which the Union membership entails.

The three problems of timing set out in this section are essentially of an internal nature and easy to predict. Obviously, the pace and outcome of the IGC could be influenced in an even more fundamental way if, for instance, aggressive nationalism were to become the predominant source of inspiration in the Kremlin. This would certainly affect the Union's pre-accession strategy vis-à-vis the Central and Eastern European countries. An unexpected collapse of the European Monetary System, would, no doubt, change the prospects for political integration too.

The following discussion departs from the challenges as seen at the start of the Reflection Group's activities in June 1995. First, the institutional debate will be analysed in light of the Member States' economic policy preferences. Second, the Member States' viewpoints on the Union's role in the foreign policy and defense fields will be examined in relation to the IGC of 1996.

## II. The IGC and the European Union's Economic Role

As the preamble to the Treaty of Rome indicates, ensuring "economic and social progress" has always been one of the European Community's main goals. In order to safeguard the Union's economic future in light of today's global economic revolution, the European Council in Brussels (December 1993) adopted an Action Plan for growth, competitiveness, and employment. In spite of the consensus on the broad lines of the Action Plan, there are significant differences between the Member States' concrete economic policy preferences. These differences lead to contradictory institutional priorities. Also, while the Maastricht Treaty's Economic and Monetary Union provisions are not on the agenda of the IGC in 1996, they nevertheless influence the stance taken by the Member States during the institutional debate. Broadly speaking, the positions expressed by the Member States in the economic policy debate can be summarized in three categories.

### A. *Rejecting active economic regulation*

The first viewpoint is that expressed most clearly by the Conservative Government of the United Kingdom. Seen in a historical perspective, the UK has never been in favour of a European Community which would move beyond the stage of a free trade area. That was the reason why the UK, in the 1950s, decided not to join the Common Market of the Six, but to form a much looser alternative: the European Free Trade Area (Calleo, 1968; Camps, 1964). As was made clear in the British contribution to the strategy for growth, competitiveness and employment, the UK Government still adheres to the point of view that the Community should not develop an active economic and social policy. Through the Maastricht Treaty's Social Protocol the UK partly succeeded in escaping the constraints of the Union's social dimension. Also, Prime Minister Major managed to obtain a Protocol on EMU stating that the UK shall not be obliged or committed to move to the final stage of Economic and Monetary Union. The Conservative Government is determined to pursue its "opt-out strategy" and not to surrender any economic sovereignty during the IGC. "Britain could lose control of its own destiny", warned current Foreign Secretary Malcolm Rifkind, if it were to join the continent in such projects as a single currency (Barber and Parker, 1995).

In the tradition of Anglo-Saxon capitalism, the UK blames over-regulation for Europe's current economic problems. If Europe is to regain its competitiveness, labour markets have to become more flexible and economic structures have to be increasingly liberalized. According to this view, the European Union's main task is the completion of Internal Market liberalization. European attempts to regulate economic activities through the adoption of Community-wide legislation, "whether it relates to labour markets, social protection, the environment, health and safety or other areas" are rejected as "damag[ing] the competitiveness of European business" (United Kingdom, 1993, 289).

Since the Conservative Government sees all European regulation as harmful, it is not aiming for an active Union which would be able to intervene swiftly in the European economy through a streamlined decision-making system. On the contrary, in view of its philosophical aversion from European regulation, the UK Government wants to make decision-taking as hard as possible. This implies, as former Foreign Secretary Douglas Hurd stated, that the UK will try to "hang on to the British right, and the right of other countries, to say 'no'" (White et al, 1995). Thus, the UK will attempt to maintain the unanimity requirement where it still exists and to increase the threshold of the qualified majority, so as to reduce the number of votes needed for a blocking minority.

Enlargement is, in the perspective of the Conservative Government, an opportunity to impose its ideal of a more "flexible" Union. As Prime Minister John Major stated: "Greater flexibility is the only way in which we shall be able to build a Union rising to 16 and ultimately to 20 or more Member States" (Major, 1994, 6). In a more flexible Union, Members would pick and choose the areas in which they want to participate. In such a Union, characterized by a multiplication of opt-outs, the Social Protocol would serve as the positive example to follow by the Central and Eastern European candidates for membership.

### B. *Protecting particular Mediterranean interests*

The second point of view is that vigorously expressed by Spain during the negotiations on voting in the Council, in preparation for the accession of Austria, Finland, and Sweden. Spain acted in defense of the Mediterranean region. It feared that specific Mediterranean interests such as the maintenance of the financially important economic cohesion instruments or the protection of particular agricultural and fisheries policies, would be endangered in an enlarged Union shifting to the North and the East. In the prospect of a further enlargement, Spain claimed, in 1994, a blocking minority in the Council for the Mediterranean countries. In addition to protecting established policies against dismantlement, a blocking minority for the Southern members was expected to serve a second cause: preventing the adoption of new "harmful" European legislation in such areas as social or environmental protection. While the Southern countries, in the tradition of "Latin capitalism", have no philosophical objections to economic or social regulation, they have nevertheless rejected the approval by the Council of Northern social and environmental standards, requiring extensive industrial adjustment in the Mediterranean region.

Also, Spain protested firmly against proposals for the institutionalization of a "hard core" of Northern Member States that would not only start the final phase of Economic and Monetary Union, but would also pursue integration in other economic areas without Southern involvement.

Thus, to keep a further enlargement of the Union from endangering the Mediterranean region's vested interests, Spain in particular can be expected, during the IGC, to argue against a further erosion of the Mediterranean countries' relative voting power. Spain has shown, during the enlargement negotiations of 1994, that it is willing to go to the brink to achieve this purpose.

### C. *Fostering the "social market economy" through active European intervention*

For the Community's Founding Fathers, European integration had to go well beyond the level of a free trade area. The famous Spaak Report of 1956, which formed the basis of the Treaties of Rome, stressed the necessity to eliminate distortions which could hinder the proper functioning of the Common Market. The Spaak Report proposed a specific procedure by which the Council would tackle problems as differences in direct and indirect taxation and in the financing of social security systems (Spaak, 1956, 60-66).

Today, the Member States striving for the consolidation of the "social market economy" continue in the tradition embodied in the Spaak Report. They defend what Michel Albert (1991) calls "Rhineland capitalism", in which free initiative goes hand in hand with active solidarity. From the point of view of these Member States, the European Union would lose much of its interest if it would degrade into an undisciplined free trade area, as proposed by the UK, or into a mere instrument transferring resources to the poorer members but unable to tackle new challenges, as could be the consequence of Spanish demands.

Consolidating the social market model, as proposed by Germany and the Benelux countries, necessitates an active European Union which not only liberalizes rigid economic structures but also ensures minimum standards for social, environmental or consumer protection. Thus, European institutions with a high decision-making capacity are essential. Two arguments are used to sustain this position.

First, Member States such as Germany and the Benelux countries share the view that continuing Internal Market liberalization and greater labour market flexibility are essential components of a successful European adjustment strategy. A policy limited to pure liberalization is insufficient, however, to deal adequately with such problems as the lack of permanent education or a degrading environment. Since the globalization of economic activity reduces the impact of national economic, social, and environmental measures, the Rhineland countries argue that achieving a proper balance between the free market on the one hand and their social and environmental goals on the other hand requires an active European involvement. The Commission has traditionally shared this view.

The point made by the Rhineland countries is illustrated by the carbon/energy tax story. According to the Commission, the Union as a whole suffers from a triple social and ecological problem which cannot be resolved through liberalization (Commission, 1993, 136-142 and 145-147). The components of the problem are the following:

- the "underuse" of available labour resources: the European economies are characterized by structural unemployment of around 11% of the registered workforce, which is partly due to the high social security contributions which must be paid by employers;
- the "overuse" of environmental resources: the Member States have only just begun to deal in economic terms with issues as the preservation of the quality of drinking water or the reduction of CO<sub>2</sub> emissions; and
- the need to find alternative ways to finance expanding social security costs.

To deal with this triple challenge, the Commission suggested the organization of a swap between reducing the cost of labour and increasing pollution charges. More concretely, the Commission, in 1992, proposed a compulsory tax on carbon dioxide emission in all Member States.

This so-called CO<sub>2</sub> tax was to serve three purposes:

- it would limit the emission of greenhouse gases and promote the efficient use of energy;
- it would generate substantial revenues, which would constitute an alternative way to finance Europe's social security systems; and
- it could boost employment since it would permit a reduction in the social security contributions to be paid by employers.

The Commission proposal was strongly supported by the Rhineland countries. They appreciated the social and ecological benefits of a common European approach that would minimize competitive disadvantages among the Member States.

The proposal was opposed, however, by the United Kingdom and to a lesser extent by the Union's southern members. Britain strongly argued that taxation was a matter for nations to deal with individually. Moreover, the UK and the Mediterranean countries were worried that a CO<sub>2</sub> tax would harm their industrial competitiveness both vis-à-vis the modern economies of Northern Europe and vis-à-vis their world-wide competitors. Because tax measures must be approved by unanimity in the Council, the resistance of the UK and the southern members could not be overcome. In light of this experience, the defenders of the Rhineland model are currently striving for a generalization of qualified majority voting, also for environmental measures of a fiscal nature. The generalization of qualified majority voting is their only option to overcome the resistance by those members opposing an economically active European Union.

The second substantive reason for the Rhineland countries to work toward a streamlining of the Union's decision-making is related to the move toward Economic and Monetary Union. EMU is regarded by the Rhineland countries as vital to restore a stable macroeconomic and monetary framework that forms a basis for job-creating growth. The evolution toward EMU's final phase is based on macroeconomic convergence. This implies that the economic and budgetary policies of the Member States are being brought ever closer together. From the perspective of the defenders of the Rhineland model, EMU is therefore also bound to increase the need for social and fiscal convergence. According to the Parliamentary Group of the German Christian Democrats, the core group which is laying the foundations for EMU "should strive for ever closer coordination and aim to establish common policies", not only with regard to "monetary policy", but also "in the fields of...fiscal and budgetary policy [and] economic and social policy" (CDU/CSU, 1994, 5). The alternative would be destructive social and fiscal competition, which could be especially painful for the Member States with a high degree of social protection. Achieving social and fiscal convergence requires, once again, a European Union which is able to act efficiently and which avoids decision-making paralysis.

As such, for those Member States wanting to go beyond Internal Market liberalization, a successful economic and social adjustment necessitates a substantial streamlining of Council decision-making, including the generalization of qualified majority voting. Current plans to enlarge the Union increase, in their view, the urgency to eliminate unanimity requirements. Also, in order to prevent an enlarged Union from diluting the social and ecological dimension of the Union, the Rhineland countries will clash with the "pick and choose" model proposed by the UK. A strictly monitored "multi-speed Europe", in which all Member States accept the obligation to strive for a - necessary gradual - integration in all policy areas, is their alternative for the "Europe à la carte".



#### D. *France and the link between substantive interests and institutional preferences*

Obviously, the logic explained in this chapter - the link between substantive policy interests and institutional preferences - is "an abbreviation of reality". France, for instance, is a country which has always defended an active European Union, for example in the social policy field. At the same time, it also has strong intergovernmental tendencies which, in the history of European integration, have provoked grave institutional crises. It suffices to remember the 1965 empty chair policy, due in large part to President Charles de Gaulle's refusal to accept qualified majority voting from entering into force, as foreseen by the Rome Treaty, on 1 January 1966. Of course, France's refusal, in 1965, to give up the right to veto Community decisions was closely related to its substantive, mainly agricultural, interests (Camps, 1966; Couve de Murville, 1971, 334-339).

France's substantive interests today make it difficult to imagine a return to a purely intergovernmental stance, even under the Presidency of Gaullist leader Jacques Chirac. First, France has lost all illusions about sovereignty in economic policy-making during the first Mitterrand years. Since 1983, France's goal, both under Socialist and Conservative Governments, has been to search for macroeconomic and monetary stability within a European framework. German pressure to build an effective Political Union around this European monetary framework will certainly influence France's attitude during the IGC (Landau, 1993; Juppé, 1995). Second, once the Union starts a discussion on concrete policy proposals, France's theoretical views have, in the past, frequently made place for a pragmatic attitude. For instance, during the negotiations on the Community's trade policy instruments in 1993, France's current Prime Minister Alain Juppé was the leading voice in favour of a proposal which would increase the Commission's powers to the detriment of the Council. France simply wanted an effective European anti-dumping and anti-subsidy policy (Devuyst, 1995). This substantive policy interest resulted in an institutional preference which was the opposite of France's theoretical intergovernmental view.

It remains uncertain how President Chirac's Gaullist inspiration will affect France's European policy. To the degree the negotiators at the IGC argue in terms of substantive priorities and rational policy interests, France might nevertheless lean more closely toward the side of the Federal Republic and the other Rhineland countries than the Gaullist rhetoric would predict.

Table 1 summarizes the three substantive viewpoints on the Union's economic role and the resulting institutional options. It is precisely in light of the differences of view regarding the substantive policy preferences that finding a compromise on the institutional issues during the IGC will be extremely difficult.

TABLE 1

## The IGC and the EU's Economic Role

Economic policy preferences	Institutional options	
	Council voting	EU structure
Rejection of active economic regulation	Unanimity; veto-right	Flexible 'Europe à la carte'
Protection of Mediterranean interests	Blocking minority for Mediterranean countries	Against Northern 'hard core'
Social market economy - EMU	Qualified majority	Strictly monitored 'multi-speed Europe'

### III. The IGC and the Common Foreign and Security Policy

One of the innovations included in the Treaty of Maastricht was the creation of the so-called Common Foreign and Security Policy (CFSP). According to the Treaty, the CFSP shall include "the eventual framing of a common defense policy, which might in time lead to a common defense". The Western European Union (WEU) was charged with the elaboration and implementations of Union's decisions with defense implications. In spite of the promising wording of this new CFSP Treaty title, it is hard to discover meaningful differences with the level of foreign policy coordination which existed under European Political Cooperation, before the entry into force of the Treaty of Maastricht. The CFSP's lack of effectiveness has led to almost daily "Union bashing" in the media. In many respects, the failing CFSP has served as the scapegoat that is being blamed for all foreign policy tragedies in Europe, in particular for the continuing war in the former Yugoslavia. It is not surprising, therefore, that improving the CFSP's functioning is listed as one of the IGC's priorities in most preparatory reports. Still, disagreement exists firstly on the relative importance to be attributed to the of the CFSP during the IGC, secondly on the role which the Union should play in the foreign policy and defense fields, and thirdly on the concrete steps which must be made to improve the CFSP's effectiveness.

#### A. *The relative importance of the CFSP*

With regard to the relative importance of the CFSP among the other topics for discussion during the IGC, two viewpoints stand out.

The first viewpoint is that most clearly expressed by the Belgian Minister of Foreign Affairs. According to the Belgian Minister, strengthening the economic and social dimension of the Union must be regarded as the IGC's top priority. "However", he added in a speech on 3 April 1995, "with preparations for the IGC under way, all eyes seem to be fixed on such problems as the restructuring of the Common Foreign and Security Policy (CFSP). Given our past experiences in for-

mer Yugoslavia and the justified media-attention for the CFSP, this is hardly surprising...But, considering what Richard Rosecrance describes as "The Rise of the Trading State", we must keep in mind that the international position of Europe in the medium to long term will be determined mainly by its economic power, rather than by classical diplomatic and military means. Moreover, I believe that the European citizens are much more interested in what Europe can do for them in terms of employment or social security, than in the power and influence projected by the European Union on the international stage. For these reasons, I insist that we should forget neither to reinforce economic and social integration, nor to improve the old European "Economic" Community's decisions-making capability" (Derycke, 1995, 2).

The opposite viewpoint is that of the United Kingdom (Rifkind, 1995, 17-31). For the UK, the CFSP is one of the few "safe" areas of cooperation. By taking a leading role during the IGC's preparations regarding European foreign and defense cooperation, the UK tries to ensure that the CFSP keeps its "harmless" intergovernmental character. At the same time, focusing on the CFSP distracts attention from the "deepening" exercise in the "Economic" Community pillar. Apparently, the UK has decided to make such a constructive contribution in the area of security and defense that, in counterpart, it hopes to extract concessions toward a reduced "centralism" or "federalism" in the other areas of integration. This reasoning is precisely what is feared by the integration-minded Member States that want to strengthen the decision-making capacity of the Union's "economic core" in preparation for a new enlargement round.

#### B. *The Union's role in foreign and defense policy: the Member States' substantive preferences*

The discussion on the relative importance of the CFSP must be distinguished from the debate regarding the form which the Union's foreign policy activities should take. At least five points of view can be distinguished regarding the latter problem.

First is the long-term and maximalist view, as expressed by the Belgian Minister of Foreign Affairs. "[A] genuine 'Euro-diplomacy'", he stated, "will only become possible through coherent action, in which external economic relations and classic foreign and security policies are integrated and implemented according to the same procedures." Although he realized that this maximalist point of view would not obtain a consensus during the IGC, the Belgian Minister insisted that "a European foreign policy would be better able to translate the full economic importance of Europe into political influence, if it, too, followed the Community method: i.e. the Commission takes the initiative, the Council decides by a qualified majority, the European Parliament exercises its democratic control and the Commission sees to the implementation of policies under the supervision of the Court of Justice and the Court of Auditors. Any other method," he added, "whether intergovernmental or mixed, is bound to be less efficient and will eventually fail the test of subsidiarity" (Derycke, 1995, 7).

The point of view expressed by the Belgian Foreign Affairs Minister is inspired by the experience of the small Member States that, on an individual basis, have lost all influence on the world stage. Through the Community method, however, the small Member States have experienced a relative power gain, at least in external trade matters. During the Uruguay Round, for instance, particular interests of countries like Greece and Portugal were defended with vigor by the Community

as a whole. Within the intergovernmental CFSP, on the contrary, the role of the small Member States is minimal. The EU's policy toward the former Yugoslavia, for instance, is determined by a "directoire", in the form of the so-called Contact Group in which only the large Member States are represented. Thus, for the small Member States, the creation of an efficient Euro-diplomacy in accordance with the Community method, looks by far the most attractive alternative.

A second viewpoint is defended by the Federal Republic of Germany. Germany too wants to move decisively in the direction of a powerful Euro-diplomacy which includes a common defense. Germany's interests are different from those expressed by a small country like Belgium. As the Parliamentary Group of the German Christian Democrats stated, referring notably to foreign and defense policy: "Owing to its geographical location, its size and its history, Germany has a specific interest in preventing Europe from drifting apart. If Europe were to drift apart, Germany would once again find itself caught in the middle between East and West, a position which throughout its history has made it difficult for Germany...to establish a stable and lasting balance in its external relations".

Under the current post-Cold War conditions, a further integration, in particular in the foreign policy and defense field, is seen as crucial to prevent a return to an unstable past: "If European integration were not to progress", the German Christian Democrats argue, "Germany might be called upon, or be tempted by its own security constraints, to try to effect the stabilization of Eastern Europe on its own and in the traditional way" (CDU/CSU, 1994, 2-3).

What the Party of Chancellor Kohl is striving for, is firstly a European foreign and security policy system that is an effective force in favour of stability on the entire European continent. The second characteristic aimed for by the CDU/CSU, is a CFSP capable of assuring "control over Germany by its partners" while allowing some degree of "control over these partners by Germany" (CDU/CSU, 1994, 2). In order to accomplish the purpose of binding Germany firmly to Europe and vice versa, the Federal Republic is looking for institutional structures that go well beyond pure intergovernmentalism. However, in a realistic effort to make concrete progress toward an effective "Euro-diplomacy", Germany's first objective is to find common ground with France. The Treaty of Maastricht's CFSP title too, found its basis in a joint initiative by Chancellor Kohl and President Mitterrand.

France's viewpoint on the CFSP, the third perspective examined in this chapter, does not exclude a further move toward closer foreign and security cooperation. For France, "deepening" the CFSP is important for two reasons.

First, CFSP-discipline should be strengthened in order to prevent that - in an enlarged Union - foreign policy coherence would dilute while Germany, as a centrally located and economically dominant player, would acquire far greater power and assume a dominant foreign policy position. Second, a strengthened CFSP is France's only hope to engrandize its position as a former "great power".

In order to achieve its "power projection" goal as a diminished player, France has - since the days of President Charles de Gaulle and his famous Fouchet proposals - played a leading role in the development of a European foreign and defense identity which would provide the Republic with a sounding board for its foreign and defense positions (Bloes, 1970). While it shares with Germany a substantial interest in the improvement of CFSP coherence, France's method is more directed toward intergovernmentalism than Germany's. Indeed, as a former "great power", France is not envisaging to decrease the traditional role of those nations with a "glorious" past. On the contrary, as a permanent member of the Security Council, France is looking favorably toward consolidation of a European foreign

policy "directoire" that would get its world-standing, however, by speaking on behalf of the European Union as a whole.

The fourth viewpoint on the CFSP is that expressed by the United Kingdom. With even more persistence than France, the UK has been arguing that Europe's action in the foreign, security and defense fields should first of all be "inter-Governmental, based on cooperation between nation states, and not dictated by supranational bodies" (Rifkind, 1995, 25). Also, the UK uses the prospect of enlargement to plead in favour of defense arrangements that will strengthen rather than weaken flexibility. Thus, the UK would like to increase the role of NATO partners Turkey, Norway and Iceland in the WEU. This last element is, obviously, linked to the UK's strategy aimed at preserving the leading foreign policy and defense role of the Atlantic Alliance. Through the NATO framework, the UK hopes to maintain a greater foreign policy role than would be possible in the EU system, where it is unable to rely on "the special relationship" with the United States.

Finally, the fifth perspective on the further development of the CFSP will be that of the Member States with a tradition of foreign policy restraint or neutralism. Obviously, all Member States have accepted the CFSP and the common defense goal. Also, upon their accession to the Union, Austria, Finland and Sweden formally agreed "to take on, in their entirety and without reservations, all the objectives of the Treaty, the provisions of its Title V [on the CFSP], and the relevant declarations attached to it" (Council, 1994, 44). Still, Denmark, Ireland, Sweden, Finland and Austria are not members of the WEU. While their attitude, in particular toward European defense cooperation has always been characterized by extreme reluctance, it is difficult to predict their stance during the IGC in view of the profound geo-political changes which have occurred on the European continent since 1989. The Danish government, for instance, requested a major study on the post-Cold War security situation and its consequences for the Danish position during the European Union's institutional debate on the CFSP and the common defense (Danish Commission, 1995).

### C. *The IGC and the CFSP: Concrete institutional options*

The disagreement on substantive policy preferences will, obviously, be reflected during the IGC's discussion regarding concrete institutional options for the CFSP. The following paragraphs give a brief overview of the main ideas which are currently being advanced to change the CFSP institutional structure.

When evaluating the EU's experience with the CFSP, the Council (1995, 25-29), in its report on the functioning of the Treaty on European Union, made a distinction between three stages of conducting a foreign policy: planning (the input stage), decision-making, and implementation (the output stage).

The CFSP's input stage has been characterized by fragmentation in planning and by the lack of a central "motor" equipped to provide a coherent view of the total political, economic and military security picture.

In order to remedy this defect, a consensus seems to be emerging in favour of the creation of a permanent central analysis and evaluation center in Brussels, that would prepare CFSP strategies to be discussed by the European Council and the Council. This central planning body could either be incorporated in the Commission or in the Council's General Secretariat. Alternatively, a number of Member States are thinking about the creation of a separate General Secretariat or High Authority for the CFSP which would work in close contact with Council and Com-

mission. Whether this new body should receive the (non-exclusive) right of initiative, and thus the right to act as "the motor" of the CFSP is also a point of controversy between the Member States.

The decision-making stage of the CFSP has been marked by rigidity. As the Council report evaluating the Treaty of Maastricht states: "Unanimity has been the rule. Neither the qualified majority, use of which is made possible by Article J.3(2) of the TEU, nor the possibility allowed for in Article J.3(7), has been used" (Council, 1995, 27). A report on the CFSP by a high-level group, drawn up at the request of Commissioner Hans van den Broek, proposed to make a distinction between CFSP decisions with military implications and those without. For decisions without military implications, the group suggested the introduction of qualified majority voting, though subject to a special ponderation of the votes which more accurately reflects the different political and military weight of individual Member States. In case of decisions with military implications, the decision would be taken only among those Member States effectively contributing to the EU's military resources (High-Level Group, 1994, 19). It is clear that the removal of the general consensus practice in the CFSP would be very difficult to accept for the adherents of the intergovernmental viewpoint.

With regard to the output stage, the Council's report identifies two important problems. The first problem concerns the EU's profile and representation on the international stage. While the EU is currently represented by the rotating Presidency or the Troika, some Member states advocate the need for a continuous high-profile presence on the international scene. For a federalist country like Belgium, the ideal solution would be to put the Commission in charge of CFSP policy-implementation, since that would also strengthen the link between the CFSP and external trade policy. An alternative idea which has been advanced by the intergovernmental-oriented members is the designation, by the European Council, of a prominent senior figure to personify the CFSP over a period of several years. France has shown particular sympathy for this idea. The name of former President Giscard d'Estaing has been informally advanced as a suitable candidate for the position.

The second problem with regard to the implementation of CFSP decisions is its financing. As the Council report stresses, "[t]he funding of the CFSP has given rise to controversy and has not yet been resolved" (Council, 1995, 28). One of the aspects of the problem is the European Parliament's attempt to increase its political control over the CFSP by exercising its budgetary powers. Giving the CFSP the necessary financial means to fulfil its tasks, without constant recourse to national contributions, is one of the main objectives of the integration-oriented Member States.

Finally, in the defense area, the UK has taken the lead by proposing a framework for discussion on the role of the Western European Union.

Integration-minded Member States such as Germany and the Benelux countries see the WEU as a subsidiary of the European Union. In this perspective, the WEU should be fully integrated in the Union. Under the Union's direction, the WEU's main long-term project should be the implementation of the common defense goal, as foreseen by the Treaty of Maastricht.

The UK's ideas regarding defense cooperation are of an entirely different nature (Rifkind, 1995, 17-32). The UK explicitly rejects the option of simply folding the WEU into the European Union. According to the Conservative Government, maintaining the WEU as a separate organization guarantees that its essential intergo-

vernmental nature would be preserved, with none of the involvement of the European Commission or the European Parliament which is provided for elsewhere in the European Union's structure. In order to strengthen the WEU's intergovernmental character, the UK proposes the creation of a new WEU body at Heads of State and Government level, involving the WEU's full members, associate members (Turkey, Norway, Iceland), and observers. This new body would meet "back-to-back" with the European Council. Also, the hierarchy between the Union and the WEU, foreseen in Maastricht, would be eliminated. As a result, the WEU would no longer receive political guidelines from the Union. Instead, the Union would merely be allowed to address "proposals" to the WEU Summit, thus subjecting all European decisions on defense to the separate approval of this new and intergovernmental body. In operational terms, the UK wants the WEU to focus on minimalist tasks, while the common defense in the strict sense should remain a matter for NATO. For a Member State like France, which tries to foster greater European self-sufficiency in defense, giving NATO's non-EU members such as Turkey, Norway and Iceland a decisive say in Europe's defense policy is likely to be unacceptable.

The concrete steps currently envisaged with regard to the CFSP are far from spectacular. This is not surprising in view of the substantive policy differences between the Member States. The main players, including the Commission, have apparently come to the conclusion that foreign policy, security and defense issues are "special cases" to which it is impossible artificially to apply "Community" formula. It is unlikely, therefore, that the IGC will be able to close the "gap between expectations and capabilities" in the CFSP area (Hill, 1993, 305-328). Also, through intergovernmental attempts at "power projection" via declarations and common positions, the CFSP is likely to play only a minor role in the economic and political stabilization of Central and Eastern Europe.

In Table 2, the main elements of this chapter are presented schematically.

TABLE 2

## The IGC and the EU's Foreign Policy Role

Foreign policy preferences	Institutional options
Creating a genuine 'Euro-diplomacy'	- Communautarization of the CFSP - Integration WEU in EU
Embedding German foreign policy in a European framework	- Strengthened CFSP, going beyond intergovernmentalism - Integration WEU in EU
Engrandizing France's 'grand power' status	- Strengthened, but intergovernmental CFSP ('directoire') - Long-term integration WEU in EU
Protecting the UK's position in an Atlantic framework	- Flexible, intergovernmental CFSP - No integration WEU in EU

Gradually overcoming neutralism	<ul style="list-style-type: none"> <li>- Preferences in evolution</li> <li>- Problems with common defense perspective</li> </ul>
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#### IV. The IGC and the European Union's Institutional Future

The previous chapters of this article have given an indication of the link between the Member States' substantive policy priorities and their institutional preferences. This section will examine more systematically the institutional ideas that are currently being advanced, in preparation for the IGC.

In his final intervention before the European Parliament, on 19 January 1995, former Commission President Jacques Delors (1995, 9) pleaded with passion in favour of "l'approche fédérale". According to Delors, the federalist method is the only guarantee against institutional confusion. Only the federalist approach combines efficiency with democratic control. Only the federalist approach ensures a correct equilibrium between rights and obligations of the Member States. Obviously, Delors' assessment is not shared with the same enthusiasm by all Member States. It is nevertheless interesting, to examine the proposals advanced by the federalists, as the starting point for a comparison with the suggestions made by the proponents of other institutional strategies.

The federalist approach toward institution-building in the European Union is characterized by five dimensions of political action:

- ensuring an effective decision-making capacity for the Union;
- maintaining the non-hegemonic character of EU decision-making;
- improving the Union's democratic nature;
- consolidating the Union's evolutive and integrative character; and
- maintaining a balance between rights and obligations within the Union.

##### A. *Effective decision-making capacity*

The importance of first dimension of the federalist approach to institution-building has been exhaustively examined in the previous section of this paper. Ensuring an effective decision-making capacity for the Union is seen as essential, firstly, to prepare the Union for future enlargements and, secondly, to strengthen the social market economy.

Most proposals to improve the Union's decision-making capacity focus on voting in the Council. As Jean-Louis Bourlanges (1995, 3 and 7) has suggested in his draft report on the IGC for the European Parliament's Committee on Institutional Affairs, "*the unanimity rule should be abandoned for all legislative acts in favour of*

- (a) a revised qualified majority whereby "the Council majority would be based on the principle of 'one state, one vote' with the proviso that the majority of states concerned must represent a majority of the population of the Union"
- (b) a reinforced majority, applicable to particularly sensitive legislation, "which would be deemed to have been secured where a quarter of the Member States or states representing one-third of the population of the Union were not against the proposal put to vote".

In order to prevent paralysis, the idea to impose a super-qualified majority has also been defended for "constitutional" issues such as Treaty revisions. Some, including German Christian Democrats, argue that the super-qualified majority should be accepted for the ratification of the IGC's results too. "It is essential",



they state, "that no country should be allowed to use its right of veto to block the efforts of other countries more able and willing to intensify their cooperation and deepen integration" (CDU/CSU, 1994, 4).

It is clear that the elimination of unanimous decision-taking will be a major bone of contention between the Member States. The United Kingdom has, indeed, announced that it would use its veto if the right of veto itself were challenged. In order to accommodate British objections, the European Parliament in its final vote on Bourlanges' proposal - while arguing that a "[f]urther extension of qualified majority voting is required if the European Union is to function effectively" - also stated that "[f]or certain areas of particular sensitivity, unanimity will remain necessary, i.e. Treaty amendment, 'constitutional decisions' (enlargement, own resources, uniform electoral system) and Article 235" (European Parliament, 1995, point 22 iii).

### B. *Non-hegemonic decision-making*

The decision-making rules of the original Treaty of Rome are characterized by the attempt to avoid overwhelming dominance by one or a few Member States. In order to construct a suitable climate for Franco-German reconciliation and to ensure the participation of the small Benelux countries, the Founding Fathers set up a delicate decision-making system that was intended to protect the participating members from a return to the power politics of the inter-war period. For instance, within the Council, the smaller Member States have traditionally received a relatively larger share of the votes than the big Member States. This, precisely to protect them against dominance by the larger members. In this sense, the Community voting method provides a much more congenial environment for the small members than the harsh power politics which is typical for purely intergovernmental deal-making. For example, Belgium has 5 Council votes for a population of 10 million inhabitants. Germany, with a population of 80 million, only got 10 votes.

With the recent accession of several smaller countries some of the larger members such as France, have argued that the current *ponderation of the votes* has led to an aberration: the "grand projects" supported by the big Member States, it is argued, can be blocked all too easily by a bunch of small members. This is the first element in the current discussion about the non-hegemonic character of EU decision-making. In order to tackle this problem, the influential proposal by French Member of European Parliament Jean-Louis Bourlanges for a revised and reinforced qualified majority attaches much importance to demographic criteria: proposals would have to be accepted by a majority of the Member States that also represent a majority of the population (or a two-thirds majority of the population for a reinforced majority).

The logic of the French argument is not entirely valid, however. Indeed, in actual Council practice, large Member States on the one hand and the small Member States on the other hand hardly ever find themselves neatly split on the two sides of an argument. Rather cleavages in the Council concern substantive policy interests. Free traders, for instance, face protectionist members. Poorer members try to obtain benefits from the net contributors. Federalist Member States oppose intergovernmental projects. Still, some of the larger Member States insist on the upgrading of the demographic element in Council decision-taking. On the double condition that unanimous decision-taking would be abolished in favour of majority voting, and that the threshold for obtaining a qualified majority would

not be harder to reach, some of the smaller integration-oriented Member States do not automatically reject this demand by the bigger members.

The European Parliament does not seem favorable to Bourlanges' double majority requirement for Council voting, involving a majority of the population in addition to a majority of states. As the Parliament declared: "it is in the Parliament that population is represented. Council represents States" (European Parliament, 1995, point 22 iii). Thus Parliament seems to be thinking in terms of a legislative system with a Council-Senate on the one hand and a European Parliament as the people's direct representative on the other hand.

A second element in the discussion about the non-hegemonic character of the Union concerns *the position of the Commission*. Calls to reduce the role of the Commission in policy-making are often presented as an essential element in the struggle against the huge anonymous bureaucracy in Brussels which is infringing the legitimate rights of democratic governments. For the smaller Member States, however, the Commission has become an important guarantee during the Community's legislative process. The Commission's exclusive right of initiative prevents individual Member States from trying to push through legislative initiatives which serve their exclusive interests. The Commission's right of initiative protects the small Member States against undue pressure and deal-making which is typical for intergovernmental structures where the right of initiative belongs to the Member States. To the smaller Member States, the alternative method, with a weak Commission merely "associated" to the policy process, does not inspire much trust. In this respect, the functioning of the Common Foreign and Security Policy serves as a warning. The Union's policy toward Bosnia, for instance, is determined by the Contact Group in which only France, Germany and the United Kingdom are represented. In such a primarily intergovernmental environment, without strong Commission involvement, the interests of the smaller members are hardly considered. In fact, the smaller members are hardly informed about the policy which is being pursued. This explains in large measure why the three small Benelux countries, for instance, refuse attempts to reduce the Commission's role. Since it is obliged to defend the interest of the Community as a whole, the Commission forms a crucial counterweight against the power of the big members.

Another, related issue concerns the composition of the College of Commissioners. Several scenarios have been suggested to reduce the number of Commissioners in view of future enlargement. These include the elimination of the second Commissioner for the big Member States or the appointment of adjunct Commissioners for those countries that would not obtain a full Commissioner. As long as the Union has not developed into a real federation, all Member States will remain keen, however, on being represented in the Commission.

### *C. Improving the Union's democratic nature*

With regard to the improvement of the Union's democratic nature, the core problem seems to be the continuing search for an appropriate role for the *European Parliament* (EP). The European Parliament itself is, naturally, trying to extend its competences.

The Parliament's main demand is the *generalization of the so-called co-decision procedure* for all legislative matters. In the co-decision procedure, the EP has the last word. It can reject, in last instance, legislative texts adopted by the Council.

Turning the co-decision procedure into the standard practice for the adoption of Community legislation requires two additional institutional changes.

First, many of the proposals currently dealt with by the EP are of a technical, implementing nature. For the EP, the generalization of the co-decision procedure should be reserved to acts of a truly legislative nature. This would be realized by introducing a new *hierarchy of legal acts* as foreseen by Declaration No.16 to the Treaty of Maastricht. Implementing acts would be the responsibility of the Commission, so empowered by the EP and the Council.

Second, the complex and time-consuming *co-decision procedure* should be *simplified* in order to make its generalization to all legislative acts operational. Here too, the EP has made a number of suggestions (European Parliament, 1995, point 32).

Member States as Germany, Italy and the Benelux countries have traditionally supported a larger role for the EP. The United Kingdom and, to a lesser degree France, have never been eager to extend the EP's powers. In his William and Mary Lecture at the University of Leiden, Prime Minister Major insisted that "[t]he European Parliament is not the answer to the democratic deficit". "The European Parliament sees itself as the future democratic focus for the Union", Major said, "[b]ut this is a flawed ambition, because the European Union is an association of States, deriving its basic democratic legitimacy through national Parliaments. That should remain the case". In Major's view, the EP is characterized by "an unrepresentative and rather incoherent range of parties" with an over-representation of "fringe, protest and opposition groups" (Major, 1994, 8). Some members of Major's Cabinet therefore declared that the UK would veto any extension of European Parliament competences (Kampfner, 1995).

While the federalists certainly reject attempts to increase the function of *national parliaments* in the European Union to the detriment of the European Parliament, most integration-minded Member States and the EP argue that "[d]emocratic control of EU matters would be best achieved by partnership between the European Parliament and the national parliaments". The ministers acting in the Council, for instance, cannot be adequately controlled by the EP. Only the national parliaments can effectively sanction their national ministers. The EP therefore proposes that specialist organs of national parliaments should "discuss major European proposals with their ministers prior to Council meetings" (European Parliament, 1995, point 24).

Another aspect of democracy that is currently being emphasized concerns *transparency* in decision-making. During the difficult debate over the ratification of the Treaty of Maastricht, several initiatives were taken to improve the Union's information and openness. For instance, the Council now systematically publishes the results of its votes when acting as legislator. As the Council report notes, however, some of the "practical arrangements for applying the principle of transparency are still the subject of differences of assessment among the Member States". Some have been urging the Council to open up its deliberations entirely. This does not seem appropriate to most Member States. Indeed, the Council is not only a legislative body where openness should be the rule. The Council also plays a crucial role during international negotiations. For instance, during the Uruguay Round the Council constantly issued directives to the Commission and determined the concessions that could be made. It would be an act of self-abnegation by the Union if it were to eliminate the confidentiality required for its international negotiators to be effective.

In light of the effort to improve the Union's democratic nature, it also seems difficult to change current *language practices* within the Union. Already, within the Commission and Council administrations and working groups, only French, English, and sometimes German are used. From a democratic point of view, it would be inconceivable, however, to impose language requirements to the Members of the European Parliament or the Ministers in the Council. Moreover, the European Union is much more than an ordinary international organization. The Union produces legislation that is directly binding in all Member States. Thus, the legislation must be available to citizens of those Member States in their own language.

#### D. Consolidating the Union's evolutive and integrative character

The evolution from the Coal and Steel Community toward an Economic and Monetary Union has required numerous small steps forward.

Consolidating the evolutive character of the Union is one of the main goals of the integration-minded Member States. Since they insist that the Union should be able to adapt to new needs, they argue in favour of the maintenance of the Treaty of Rome's *Article 235*. This provides for a procedure allowing the Council to take "the appropriate measures" (by unanimity) "if action by the Community should prove necessary to attain...one of the objectives of the Community [while the] Treaty has not provided the necessary powers". Article 235 was used, for instance, during the 1970s and early 1980s to provide the Community with a basis for action in environmental or consumer protection. At that time, environmental and consumer protection were not explicitly listed in the Treaty as Community competences.

Not surprisingly, those Member States wanting to restrict the Union's field of action attempt to repeal Article 235. Furthermore, proposals have been made, notably in the German Bundesrat, to include in the Treaty, a newly formulated and *limitative list of Union competences*. All other areas would be the responsibility of the Member States. If the IGC would, indeed, proceed with the negotiation of such a limitative list, fights can be expected between those members eager to curtail the "acquis communautaire" and those wanting to protect and expand the "acquis". According to the EP, "[e]stablishment of a fixed list of EU and Member State competences would be too rigid and too hard to achieve" (European Parliament, 1995, point 12 ii).

In view of the difficulty of negotiating a limitative list of Union competences, some have suggested that *the subsidiarity test* should be made more rigorous and subject to judicial review. One of the ideas which is being advanced in this regard is to give national parliaments the right to apply to the European Court of Justice with a view to enforcing the subsidiarity principle. The adoption of this proposal, included in Jean-Louis Bourlanges' draft report to the European Parliament's Institutional Committee (1995, 6) would have a double consequence.

First, the subsidiarity principle is an essentially political concept whereby the decision-makers have to assess whether the objective of a proposed action can be best achieved at the level of the Member States or at that of the Community. Obviously, the political decision on subsidiarity must take place with the same majority as is necessary for the adoption of the proposal itself. If an act, to be approved in the Council by a qualified majority, would be subject to a unanimous subsidiarity test, the Member States would, in practice, gain a veto-right which would render the qualified majority requirement meaningless. By asking the Court to become involved, however, a judicial institution would be requested to take a

purely political decision.

Second, one of the reasons for requests for appeal to the European Court of Justice by a national parliament is likely to be the absence of an appeal by its government. Thus, the European Court of Justice could in practice be asked to arbitrate between the institutions of particular Member States.

### E. *Maintaining a balance between rights and obligations within the Union*

The European Union is based on diffuse reciprocity. Union membership involves rights, but also entails obligations.

In an enlarged, and therefore increasingly diverse Union, maintaining the balance between rights and obligations will be one of the Union's main challenges. The Central and Eastern European countries, for instance, want to get access to the Internal Market as soon as possible. The state of their economies, however, renders a quick adaptation to the Union's environmental, social, health and consumer protection standards not entirely realistic.

The solution proposed by the UK is increasing flexibility and decreasing discipline. This comes as no surprise from a Member State that has opted-out of the Union's social dimension. The UK, thus, favours a "*Europe à la carte*" whereby each Member State can pick and choose those areas in which it wants to participate.

From the perspective of the Member States that insist on maintaining the equilibrium between EU-rights and obligations, a proliferation of opt-outs is soon likely to lead to the Union's demise. In a pick and choose Europe, there is little reason for the richer members, for instance, to continue their contributions to the Cohesion Fund. A "*Europe à la carte*" is therefore not only likely to undermine the balance between EU rights and obligations, it would also threaten EU-wide solidarity. As such, a "*Europe à la carte*" would strip the Union of all the characteristics that has made it more than a loose free trade area (See Chaltiel, 1995).

Another strategy to give structure to an increasingly diverse Union is often labeled the "*multi-speed*" approach. The main goal of the "*multi-speed*" Europe is to keep the momentum for integration while also maintaining discipline and solidarity. The German Christian Democrats, for instance, have insisted on the institutionalization of a "*multi-speed Europe*", that would be driven by "the existing hard core of countries oriented to greater integration and closer cooperation" (CDU/CSU, 1994, 5). The task of the hard core would be to give the Union a strong center that counteracts the centrifugal forces generated by constant enlargement. To that end, the countries of the hard core should participate in all policy fields, in particular in the monetary union. The core would not be closed to the other Member States, rather the benefits of belonging to the core should be available to every Member State willing and able to meet the criteria.

The "*multi-speed*" concept was further clarified in a speech by the Belgian Minister of Foreign Affairs. In the "*multi-speed Europe*", all Union members would have to adopt the same objectives from the start, including adherence to the entire "*acquis communautaire*". Only the rate of progress towards specific goals would be allowed to differ according to the real possibilities of each Member State.

Whereas previous enlargement treaties included transition periods with a fixed calendar, for future Member States, transition periods would be characterized by goals to be achieved. The transition period would have no fixed calendar, but a

set of criteria for each successive stage, laid down in the Treaty (by analogy to the criteria for admission to the third stage of EMU). The Commission, as guardian of the common interest, would be charged with supervising whether or not the Member States fulfil the conditions required for promotion to a "higher" level of integration. According to this viewpoint, the purpose of the "multi-speed Europe" would be to provide for an orderly integration of those countries that are willing, but unable to immediately become part of the core (Derycke, 1995, 10).

An entirely different matter is the treatment to be reserved for those Member States that are able but unwilling to participate to certain policy areas. In the current Union structure, this problem has been dealt with firstly by creating separate legal frameworks - outside the Union structure - accommodating those that wish to pursue the integration effort. The Schengen Convention, providing for the free movement of persons, is an example of this category. The drawback of this solution is the breakdown of the single institutional framework. Also, the Schengen-solution suffers from the weaknesses inherent to intergovernmentalism. The integration-minded Member States and the European Parliament have therefore been striving for the gradual inclusion of the Schengen Agreement into Union policy. Also, in order to overcome the paralysing effects of intergovernmentalism, the same Member States and the Parliament (1995, point 4) have taken the position that Cooperation in the field of Justice and Home Affairs - the so-called third pillar - should no longer be artificially distinguished from closely-related policies within the full Community domain, but should rather be progressively brought within the Community domain.

The second "solution" to the problem of the "unwilling" has been the opt-out formula. The Social Protocol is a case in point. While this solution safeguards the single institutional framework, it leads to extremely complex institutional arrangements since those countries which opt-out cannot be allowed to participate in decision-making whenever the opt-out applies. Also, opt-outs may threaten or can effectively undermine the common efforts by the other members. That is why the integration-minded Member States and the European Parliament (1995, point 10 ii) intend to abolish the social opt-out. Peter Ludlow (1994, 53 and 58) has proposed in this regard that the new Treaty should incorporate detailed *sanc-tion provisions* to deal with unacceptable or destabilizing behavior of the Member States that opt-out. It is highly unlikely, however, that those Member States enjoying opt-outs will agree with this solution.

Table 3 gives an overview of the main institutional questions which will be dealt with during the IGC.

TABLE 3

## Institutional options

<b>Characteristics of a federal EU</b>	<b>Main institutional issues at stake during the IGC 1996</b>
Effective decision-making capacity	- Elimination of unanimous decision-making (veto-right)
Non-hegemonic decision-making	- Council: weighting of the votes (demographic element) - Commission: role and composition
Democratic character	- European Parliament: role * Generalization co-decision * Simplification co-decision * Hierarchy of norms - National parliaments: role - Transparency - Use of languages
Evolutionary and integrative character	- Article 235 - List of competences - Subsidiarity test: role of Court of Justice
Equilibrium between rights and obligations	- 'Europe à la carte' - 'Multi-speed Europe' - Opt-out formula - Sanction provisions

## V. Conclusion

The IGC of 1996 is likely to become another landmark in the history of European integration. The IGC's first task will be to prepare the Union's institutional structure for a larger number of members. The negotiations for the Treaty of Maastricht, while taking place after the end of the Cold War division of Europe, had not adequately considered the implications of a potential enlargement of the Union toward the Central and Eastern European countries.

Changing the Union's structure in light of enlargement will be far from easy. This is not surprising since the Member States have widely divergent points of view on the Union's role in the new Europe. More in particular, differences of view between the Member States' ultimate economic and foreign policy preferences will weigh heavily on the IGC's institutional discussions. The IGC is, indeed, little more than a position game during which the Member States try to create a congenial institutional framework, that helps to advance their substantive policy objectives.

When looking at the current discussion in a historical perspective, the similarities with the debate about European integration during the 1950s is remarkable. The Founding Fathers of the Community were inspired by a double conviction

(See Brugmans, 1970; Gerbet, 1986; Spinelli, 1957). The first conviction was that the consolidation of European peace and stability did depend on close cooperation and integration rather than on nationalistic power projection. According to the second conviction, maintaining and improving Europe's economic standing and social welfare also required common efforts and common policies, since economic sovereignty was seen as a concept of the past. Moreover, economic integration did fit well in the framework of the first conviction.

Turning the double conviction into reality did, according to the writings of the Founding Fathers, depend on a successful method, that also contained two essential components. The first dealt with decision-making; the second with the element of coherence underlying the build-up of a Community.

With regard to the first element, the intergovernmental practices of the Council of Europe had demonstrated that inaction and passivity were the logical corollary of unanimous decision-making. As a disillusioned Paul-Henri Spaak (1951, 283) stated during a session of the Council of Europe's Assembly in 1951, "des formules d'unanimité...sont des formules d'impuissance" (unanimity formula are formula of impotence). For Spaak, the success of European integration therefore depended entirely on the willingness of the participants to leave ancient notions of sovereignty and unanimous decision-taking behind.

Secondly, one of the main goals of the Founding Fathers was "to ensure the economic and social progress" in Europe through the creation of a Common Market. The Common Market was supposed to go well beyond the level of a simple free trade area (See La Malfa, 1957). While the Spaak Report of 1956, which formed the starting point for the negotiation of the Rome Treaties of 1957, certainly put the emphasis on the free movement of the factors of production as a way to revitalize Europe's economy, it also contained an important chapter regarding the correction of market distortions and the harmonization of the laws of the Member States. This last element was seen as essential to prevent the Common Market from being undermined from within. Spaak was thinking in particular about the correction of distortions due to divergent tax and social security systems, and about the harmonization of a number of labour laws (Spaak, 1956, 60-66).

While the final version of the Treaties of Rome did not go as far as Spaak would have wished, the Community project - that had started with the Coal and Steel Community - was to give European integration a new dynamism after earlier attempts in the Organization for European Economic Cooperation and the Council of Europe had failed to overcome British and Scandinavian objections to eliminate the individual veto-right of every member. The Community adventure gave a chance to those countries that were willing to commit themselves "toward an ever closer union" to start with a coherent project, leaving the "unwilling" behind.

As long as the Member States adhered to the basic philosophy which formed the basis for Community integration, diversity among the participants could be regarded as much as a strength than as a weakness. Today's divergences between the Member States, however, put the Community method itself in question. Since the enlargement with the United Kingdom, the Community has lost the internal coherence that formed the basis for the participation by the six original members. In fact, the UK has been struggling against the Community method - from within - since the day it acceded on January 1, 1973. As Prime Minister Major has explicitly stated, the current prospect of enlargement offers a new chance to the UK to eliminate the legacy of the Founding Fathers. In Major's words: "The determination of the Founding Fathers...is outdated. It will not do now. We must all adjust our vision to meet the challenges of today and tomorrow" (Major, 1994, 4).



For the integration-minded Member States, the Union would lose much of its purpose if the IGC of 1996 would be prevented from pursuing the logic of the Community method, in preparation for a Union with more than 20 members. Because of the substantial policy interests involved, the integration-minded Member States see it as "essential" - as the German Christian Democrats have stated - "that no country should be allowed to use its right of veto to block the efforts of other countries more able and willing to intensify their cooperation and deepen integration" (CDU/CSU, 1994, 4). The European Parliament has issued a similar opinion (European Parliament, 1995, point 17).

Thus, in case the Member States fail to reach a unanimous decision on the amendments to be made to the Treaty on European Union, a new Schuman-like initiative could be called for. Such an initiative would reiterate the purpose and method of European integration, so as to guarantee the Union's decision-making capability and restore the equilibrium between the Member States' rights and obligations. On that basis, those countries sharing the coherent approach embodied in the initiative would be invited to give European integration a new dynamism, once again leaving behind the "unwilling". While such a scenario would be difficult to realize without a major crisis, it might be necessary to safeguard the European Union from drifting about as an uninspiring League of Nations.

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**Summary: The European Union's Future. A Preview of the Intergovernmental Conference of 1996.**

*During the Intergovernmental Conference (IGC) of 1996, the European Union's institutional structure should be adapted, most notably in preparation for the Union's enlargement with the Central and Eastern European countries. The IGC's institutional debate will be far from easy. This is not surprising since the institutional discussions during the IGC will reflect the grave substantive policy differences between the Member States on the Union's functions in the economy and on the Union's foreign policy role. The IGC is, indeed, largely a position game during which the Member States attempt to create a congenial institutional framework, favourable to their substantive policy preferences.*