Convening of the Intergovernmental Conference IGC: Parliament's opinion (Article 48 TEC)

2007/0808(CNS) - 26/06/2007 - Legislative proposal

The European Council agrees that, after two years of uncertainty over the Union's treaty reform process, the time has come to resolve the issue and for the Union to move on. It welcomes the report drawn up by the German Presidency following the mandate given to it in June 2006. To this end the European Council agrees to convene an Intergovernmental Conference and invites the Presidency without delay to take the necessary steps in accordance with Article 48 of the TUE, with the objective of opening the IGC before the end of July as soon as the legal requirements have been met.

The IGC will be conducted under the overall responsibility of the Heads of State or Government, assisted by the members of the General Affairs and External Relations Council. The Representative of the Commission will participate in the Conference. The European Parliament will be closely associated with and involved in the work of the Conference with 3 representatives. The General Secretariat of the Council will provide the secretariat support for the Conference.

The European Council invites the incoming Presidency to draw up a draft Treaty text in line with the terms of the mandate and to submit this to the IGC as soon as it opens. The IGC will complete its work as quickly as possible, and in any case before the end of 2007, so as to allow for sufficient time to ratify the resulting Treaty before the European Parliament elections in June 2009.

The IGC is asked to draw up a Treaty (the Reform Treaty) amending the existing Treaties with a view to enhancing the efficiency and democratic legitimacy of the enlarged Union, as well as the coherence of its external action. The Reform Treaty will contain two substantive clauses amending respectively the Treaty on the European Union (TEU) and the Treaty establishing the European Community. (TEC). The TEU will keep its present name and the TEC will be called Treaty on the Functioning of the Union, the Union having a single legal personality. The word "Community" will throughout be replaced by the word "Union".

The TEU and the Treaty on the Functioning of the Union will not have a constitutional character. The terminology used throughout the Treaties will reflect this change: the term "Constitution" will not be used, the "Union Minister for Foreign Affairs" will be called High Representative of the Union for Foreign Affairs and Security Policy and the denominations "law" and "framework law" will be abandoned, the existing denominations "regulations", "directives" and "decisions" being retained.

Likewise, there will be no article in the amended Treaties mentioning the symbols of the EU such as the flag, the anthem or the motto. Concerning the primacy of EU law, the IGC will adopt a Declaration recalling the existing case law of the EU Court of Justice.

There will in particular be an Article on the legal personality of the Union, an Article on voluntary withdrawal from the Union and Article 48 will be amended so as to bring together the procedures for revising the Treaties (the ordinary and the two simplified procedures). This Article, in its paragraph on the ordinary revision procedure, will make it clear that the Treaties can be revised to increase or reduce the competences conferred upon the Union. In Article 49, on conditions of eligibility and the procedure for accession to the Union, the reference to the principles will be replaced by a reference to the Union's values and the addition of a commitment to promoting such values, an obligation to notify the European Parliament and national parliaments of an application for accession to the Union and a reference to take into account the conditions of eligibility agreed upon by the European Council.

As regards the details of the amendments made to the existing treaty, they concern the following issues:

The respective competences of the EU and the Member States and their delimitation: the Article on categories of competences, placed at the beginning of the TEC, it will be clearly specified that the Member States will exercise again their competence to the extent that the Union has decided to cease exercising its competence.

A permanent Council presidency: a president of the European Council, to be elected by EU leaders for a two-and-a-half-year term, will replace the current system in which EU leaders rotate into the president's post every six months.

High Representative of the EU for Foreign Affairs and Security Policy: replacing the current EU High Representative for Foreign Affairs Javier Solana and the external relations commissioner. The Minister would also be a Vice-President in the Commission and chair the "General Affairs" Council. The Common Foreign and Security Policy shall be subject to specific procedures and rules. There will also be a specific legal basis on personal data protection in the CFSP area.

Charter on Fundamental Rights: the full text of the Charter of Fundamental Rights was replaced by a short cross-reference with the same legal value. However, due to strong British opposition, the Charter will not be legally binding in the UK.

Concerning national parliaments, their role will be further enhanced compared to the provisions agreed in the 2004 IGC: (a) the period given to national parliaments to examine draft legislative texts and to give a reasoned opinion on subsidiarity will be extended from 6 to 8 weeks (the Protocols on national Parliaments and on subsidiarity and proportionality will be modified accordingly; (b) there will be a reinforced control mechanism of subsidiarity in the sense that if a draft legislative act is contested by a simple majority of the votes allocated to national parliaments, the Commission will re-examine the draft act, which it may decide to maintain, amend or withdraw. If it chooses to maintain the draft, the Commission will have, in a reasoned opinion, to justify why it considers that the draft complies with the principle of subsidiarity.

New voting system: a double majority rule for Council decisions (55% of member states and 65% of the EU's population need to support a proposed EU legislation to pass by qualified majority). The new voting system will only apply from 2014 and will replace the system in force since the Nice Treaty of 26 February 2001. An extra transition period until 31 March 2017 when additional provisions making it easier to block a decision will apply.

Extending qualified majority voting: to 40 policy areas, especially those relating to as asylum, immigration, police cooperation and judicial co-operation in criminal matters. The common foreign and security policy is subject to specific procedures. It shall be defined and implemented by the European Council and the Council acting unanimously, except where the Treaties provide otherwise. In the area of police and judicial cooperation in criminal matters, a new mechanism shall be inserted enabling Member States to go forward on a given act while allowing others not to participate.

The **following modifications will be introduced compared to the results of the 2004 IGC**:

- a new article will state the purpose of the Treaty on the functioning of the Union and its relation with the EU Treaty. It will state that the two Treaties have the same legal value;
- the minimum number of Member States required for launching an enhanced cooperation will be nine;
- a Protocol will be annexed to the Treaties on the issue of services of general economic interest;
- in the Chapter on general provisions applying to the area of freedom, security and justice, insertion of a provision about cooperation and coordination by Member States in the field of national security;

- in the Chapter on judicial cooperation in civil matters, a paragraph will be modified so as to give a role to national parliaments in the "passerelle" clause on family law;
- in the Articles on mutual recognition of judgments, minimum rules on definition of criminal offences and sanctions, the European Public Prosecutor, and police cooperation, a new mechanism will be inserted enabling Member States to go forward with adopting measures in this field while allowing others not to participate. Moreover, the scope of the Protocol on the position of the United Kingdom and Ireland (1997) will be extended so as to include, in relation to the UK, and on the same terms, the Chapters on judicial cooperation in criminal matters and on police cooperation. It may also address the application of the Protocol in relation to Schengen building measures and amendments to existing measures. This extension will take account of the UK's position under the previously existing Union acquis in these areas. Ireland will determine in due course its position with regard to that extension;
- a reference to the spirit of solidarity between Member States and to the particular case of energy as regards difficulties in the supply of certain product will be inserted;
- as regards energy, a reference to the spirit of solidarity between Member States will be inserted as well as a new point on the promotion of interconnection of energy networks;
- the particular need to combat climate change in measures at international level will be specified.

After having consulted the President of the European Parliament, the European Council invited the European Parliament, in order to pave the way for settling the issue of the future composition of the European Parliament in good time before the 2009 elections, to put forward by October 2007 a draft of the initiative foreseen in Protocol 34 as agreed in the 2004 IGC.