Treaties, amendment: draft constitutional Treaty, intergovernemental Conference IGC for October 2003

2003/0902(CNS) - 17/09/2003 - Document attached to the procedure

The Commission welcomed the draft Constitution with particular reference to the following: -it fundamentally changes the structure of the Union - in particular, the draft bestows a single legal personality on the European Union and hence merges the Union and the European Community; it gets rid of the 'pillar' structure of the Union; and it incorporates the Charter of Fundamental Rights into the Constitution and gives it binding legal force; -it introduces a large number of reforms, which improves the way in which the EU works. The Commission specifies, inter alia, the extension of the scope of the codecision procedure and the democratic formula of the double majority; -it strengthens the Union's means of action: in particular, it extends the Community method to the entire area of freedom, security and justice and it creates the office of Minister for Foreign Affairs, who will be both a Member of the Commission and the recipient of a Council mandate, which will enable the Union to develop more consistent and more effective external action and external representation. The Commission feels that it is essential for the forthcoming IGC not to disturb the overall balances built into the draft Constitution and not to start rediscussing all the questions that the Convention has already looked at in detail and on which it has reached a consensus. The IGC cannot, however, be deprived of its political responsibility which is to allow the Heads of State and Government to present the Constitution for ratification. It is the Commission's view that the IGC's task should consist of improving, clarifying and finalising the draft Constitution. It is possible to improve the draft Constitution on a limited number of points without upsetting the general balance. Three areas are emphasised: -the approach advocated for the composition of the Commission, which does not appear to be viable in the light of the way the Commission really operates, should be modified by the IGC, but without reopening other institutional themes. -IGC should further reduce the unanimity requirement. -it will be vital to establish procedures for more flexible revision of the less essential provisions of the Constitution. In the sphere of economic governance, the Constitution should allow those Member States whose currency is the euro to coordinate their economic policies more closely via Union procedures. 1) Commission : composition and Decision · making: The Commission feels that the specific response advocated by the draft Constitution - having a Commission made up of one Member from each Member State with different voting rights - is complicated, muddled and inoperable. It may threaten the basis of collegiality, which is equality for all Members of the Commission. This approach is liable to be poorly received by the public and to make ratification more difficult. Additionally, as regards the status of non voting Members, the draft Constitution leaves open a large number of questions which are essential in terms of the day-today functioning of the Commission. For example, if the members without voting rights manage a portfolio, one cannot see how they could effectively exercise their responsibilities without being able to participate to the collective decision. And if they don't have a portfolio, one wonders what their role within the College could be. The Commission's fear is that the solution proposed by the draft Constitution, with first' and 'second'-category Members of the Commission, might affect the legitimacy and effectiveness of the Commission. The draft Constitution must be improved and the changes must be based on maintaining the principle of equality of all Members of the Commission in terms of preparing proposals and taking decisions. The Commission goes on to proffer possible solutions. One is to structure the College into a number of Groups of Commissioners, while taking whatever steps are necessary to guarantee collegiality and consistency of policy. The College, embracing all the Members of the Commission, would address only the most important issues and would therefore have only a limited number of decisions to take. Other Commission decisions would be taken by the Groups of Commissioners, each of them acting in fields which are proper to their competencies within the general guidelines laid down by the College. 2) Reducing unanimous voting in the enlarged Union: It is the Commission's duty to issue a clear warning to the IGC that the progress made

is not enough to enable the Union to attain all the aims set by the draft Constitution. The Commission sets out various options for reducing unanimous voting, depending on the nature of the legal bases concerned. The Commission also hopes that the IGC will manage to further reduce the use of the veto. There will no doubt be cases where this will not be possible, especially in the institutional domain. It is understandable that certain decisions require universal agreement, such as determining the composition of the European Parliament or the language rules for the institutions. Nevertheless, the Commission requests the IGC to do what is necessary to prevent the enlarged Union being paralysed by a national veto. Several options are conceivable: replacing unanimity by reinforced qualified majority voting or a new definition of unanimous voting according to which, after a certain period of deliberation by the Council and discussion within the European Council, opposition from one or two Member States could no longer prevent the Council from adopting a measure for which the Constitution specifies unanimity. The Commission points to budgetary provisions in particular. It noted the strong opposition of some governments' representatives at the Convention to abandoning unanimous voting on own resources and the first financial framework to be adopted after the Constitution enters into force. However, it is clear that maintaining unanimity, even provisionally, is liable to quickly make negotiations extremely difficult. A fair outcome for everybody could be arrived at by qualified majority voting. The Commission therefor takes the view that the veto should be abolished in this area. 3) Revision of the Treaties : The Convention has made no change to the current rule underlying the Treaties, which is that any revision, even a minor one, of a primary law provision requires unanimous agreement from the governments of the Member States and subsequent ratification by all the Member States according to their respective constitutional rules. This state of affairs could lead to total paralysis of the Union and eventually to a loss of interest on the part of the Member States and citizens as regards this form of integration, in favour of less effective models of cooperation or even cooperation between only some Member States. The Commission feels that it is crucial for the IGC to open the way towards procedures for revising the Constitution which are more flexible, albeit subject to clearly defined definitions. The Commission also makes the following points: -the term of office of a President of a Council formation should be limited to one year. -a public debate must be promoted on the future of the EU, at both local and regional levels.