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REPORT

on the Treaty of Nice and the future of the European Union
(2001/2022(INI))

Committee on Constitutional Affairs

Rapporteurs: Iñigo Méndez de Vigo and António José Seguro

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PROCEDURAL PAGE

At the sitting of 15 March 2001 the President of Parliament announced that the Committee on Constitutional Affairs had been authorised to draw up an own-initiative report, pursuant to Rule 163 of the Rules of Procedure, on the Treaty of Nice and the future of the European Union and that all the relevant committees had been asked for their opinions.

The Committee on Constitutional Affairs had appointed Iñigo Méndez de Vigo and António José Seguro rapporteurs at its meeting of 24 January 2001.

It considered the draft report at its meetings of 5 and 21 March, 2, 9 and 25 April and 3 May 2001.

At the last meeting it adopted the motion for a resolution by 22 votes to 4, with 2 abstentions.

In the voting chaired by Giorgio Napolitano,

the following voted in favour: Iñigo Méndez de Vigo and António José Seguro, rapporteurs; Teresa Almeida Garrett and Christopher J.P. Beazley, vice-chairmen; Margrietus J. van den Berg (for Enrique Barón Crespo), Guido Bodrato (for Luigi Ciriaco De Mita), Elmar Brok (for Lennart Sacrédeus), Carlos Carnero González, Richard Corbett, Giorgos Dimitrakopoulos, Andrew Nicholas Duff, Olivier Duhamel, Monica Frassoni, José María Gil-Robles Gil-Delgado, Jo Leinen, Cecilia Malmström, Gérard Onesta (for Johannes Voggenhuber), Jacques F. Poos (for Giorgio Napolitano), Alonso José Puerta (for Armando Cossutta), Ursula Schleicher (vice-chairman), The Earl of Stockton and Dimitrios Tsatsos;

the following voted against: Georges Berthu, Jens-Peter Bonde, Hans-Peter Martin and José Ribeiro e Castro (for Mariotto Segni);

the following abstained: Hanja Maij-Weggen and Marielle de Sarnez (for François Bayrou).

The minority opinion and the opinions of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, the Committee on Budgets, the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, the Committee on Industry, External Trade, Research and Energy, the Committee on Employment and Social Affairs, the Committee on Agriculture and Rural Development, the Committee on Fisheries, the Committee on Culture, Youth, Education, the Media and Sport, the Committee on Women's Rights and Equal Opportunities and the Committee on Petitions are attached. The Committee on Economic and Monetary Affairs, the Committee on Legal Affairs and the Internal Market and the Committee on Regional Policy, Transport and Tourism decided on 3 April 2001, 20 March 2001 and 25 April 2001 respectively not to deliver an opinion.

The report was tabled on 4 May 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

MOTION FOR A RESOLUTION

European Parliament resolution on the Treaty of Nice and the future of the European Union (2001/2022(INI))

The European Parliament,

– having regard to the Treaty signed in Nice on 26 February 2001,

– having regard to its resolutions of 19 November 1997 on the Amsterdam Treaty[1], 18 November 1999 on the preparation of the reform of the Treaties and the next IGC[2], 3 February 2000 on the convening of the Intergovernmental Conference[3], 13 April 2000 containing the European Parliament's proposals for the Intergovernmental Conference[4], and 25 October 2000 on the constitutionalisation of the Treaties[5] and on closer cooperation[6],

– having regard to the conclusions of the Tampere, Helsinki, Feira, and Nice European Councils,

– having regard to Rule 163 of its Rules of Procedure,

– having regard to the report of the Committee on Constitutional Affairs and the opinions of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, the Committee on Budgets, the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, the Committee on Industry, External Trade, Research and Energy, the Committee on Employment and Social Affairs, the Committee on Agriculture and Rural Development, the Committee on Fisheries, the Committee on Culture, Youth, Education, the Media and Sport, the Committee on Women's Rights and Equal Opportunities and the Committee on Petitions (A5-0168/2001),

A. whereas the Intergovernmental Conference that concluded in Nice on 11 December 2000 had been given the task of carrying out the necessary reforms to the Treaties and of satisfactorily dealing with the matters which had been left in abeyance at Amsterdam, in order to prepare the Union for enlargement,

B. having regard to Parliament's repeated calls for a reform of the Treaties as a whole in sufficient depth to satisfy the imperatives of democratising the institutions and improving their effectiveness in anticipation of enlargement,

C. whereas because the end result of enlargement will make for a more diverse spectrum of national interests, effective institutions and decision-making procedures will need to be in place in order to avert the risk of paralysis in European integration,

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[1] OJ C 371, 8.12.1997, pp. 99-104.
[2] OJ C 189, 7.7.2000, p. 222.
[3] OJ C 309, 27.10.2000, p. 85.
[4] OJ C 40, 7.2.2001, p. 409.
[5] Texts adopted, Item 7.
[6] Texts adopted, Item 8.

D. whereas responsibility for giving assent to accession treaties lies with Parliament,

E. whereas once monetary union has finally been attained, a counterweight in the form of political union will be indispensable,

F. whereas the Treaty of Nice failed to complete the process of political union set in motion by the Maastricht Treaty,

G. having regard to Declaration 23 annexed to the Treaty on the future of the Union, which stipulates that a fresh reform will be undertaken in 2004; whereas the Declaration opens the way to a new method for reforming the Treaties,

H. having regard to the speeches on the reshaping of Europe which preceded the Intergovernmental Conference and which prompted the discussions on the future of the Union,

I. having regard to the hearing with the national parliaments of the Member States and the applicant countries, held in Brussels on 20 March 2001,

1. Notes that the Treaty of Nice removes the last remaining formal obstacle to enlargement and reaffirms the strategic importance of EU enlargement as a step towards the unification of Europe and as a factor of peace and progress; realises that the Treaty has made improvements in certain areas but considers that a Union of 27 or more Member States requires more thoroughgoing reforms in order to guarantee democracy, effectiveness, transparency, clarity and governability;

2. Regrets profoundly that the Treaty of Nice has provided a half-hearted and in some cases inadequate response to the matters encompassed within the already modest Intergovernmental Conference agenda; hopes that the deficits and shortcomings with regard to the establishment of an effective and democratic European Union can be dealt with in the course of the post-Nice process;

3. Draws attention, amongst the most unsatisfactory aspects of the Intergovernmental Conference, to the fact that Union decision-making has become more confused and less transparent, that the principle of extending co-decision to cover all the matters in which legislation is adopted by a qualified majority has not been followed and that the Charter of Fundamental Rights has not been incorporated into the Treaties;

4. Considers that the preparations for and negotiations on the Treaty of Nice demonstrated, as in the case of the Amsterdam Treaty, that the purely intergovernmental method has outlived its usefulness for the purpose of revising the Treaties, as the governments eventually implicitly recognised when they adopted Declaration 23 (annexed to the Final Act of the Treaty);

5. Insists that the holding of a new IGC should be based on a radically different process which is transparent and open to participation by the European Parliament, the national parliaments and the Commission and which involves the citizens of the Member States and the applicant countries, as provided for in Declaration 23, and that the new IGC should initiate a constitutional development process;

6. Recognises that the Treaty of Nice marks the end of a progression that began in Maastricht and continued in Amsterdam and demands the opening of a constitutional development process culminating in the adoption of a European Union Constitution;

Fundamental rights

7. Notes the fact that the Charter of Fundamental Rights of the European Union, drawn up by the Convention comprising representatives of the governments, the national parliaments, the European Parliament, and the Commission was solemnly proclaimed in Nice; renews[1] its commitment to upholding the rights and freedoms recognised in the Charter; notes with satisfaction that the Commission and the Court of Justice of the European Communities have already declared that they will do likewise, and calls on the other Union institutions and bodies to give an undertaking to the same effect;

8. Renews its call for the Charter to be incorporated in the Treaties in a legally binding manner so that the rights which it grants to each and every individual may be fully guaranteed, and calls on the Union institutions to respect as of now in their activities the rights and freedoms acknowledged in the Charter;

9. Applauds the prevention and 'alarm' system now incorporated in Article 7 of the EU Treaty, which cements the Union's commitment to the values of democracy, freedom, human rights and the rule of law; welcomes the fact that, over and above the right of initiative, Parliament has to give its assent;

Institutional reform

10. Notes that the new qualified-majority voting system in the Council stems from a power-sharing agreement among the Fifteen which formally opens the door to enlargement but which, as regards the efficiency and the transparency of the decision-making process, is no improvement on the present system, a fact which gives cause for serious anxieties as to how it might operate in a Union of 27 Member States;

11. Regrets that no step has been taken to make Council proceedings more transparent, in particular when the Council is adopting legislation;

12. Considers the agreement on the composition of the Commission to be acceptable because it will enable the Commission to be constituted according to the needs of the enlargement process;

13. Welcomes both the introduction of qualified-majority voting for the designation and appointment of members of the Commission and the fact that the powers of the Commission President are strengthened, thereby emphasising the supranational and independent nature of the Commission;

14. Deplores the fact that the proposed make-up of the European Parliament does not follow any clear logic; expresses its surprise at the decision to exceed the limit of 700 Members laid down at Amsterdam; warns of the risks that might ensue if its membership were to rise too high during the transitional period, and calls on the

[1] Decision of 14 November 2000 approving the draft Charter of Fundamental Rights (Texts adopted, Item 3).

Council to pay careful heed to those risks when it lays down the accession timetable;

15. Calls, when the respective accession treaties are negotiated, for the number of representatives in the European Parliament specified for Hungary and the Czech Republic to be corrected to match the 22 seats allocated to Belgium and Portugal (countries with a similar population) and for this already to be taken as an opportunity to make the decision-making procedures more transparent, more effective and more democratic;

16. Regrets the fact that the pillar structure of the treaty has been retained and that, above all in the sphere of the CFSP, unnecessary duplicate structures have been established; calls for the tasks of the Commissioner with responsibility for external relations and the High Representative for the CFSP to be placed in the hands of a Commission Vice-President with specific obligations vis-à-vis the Council;

17. Notes the transitional system provided for in Declaration 20 on enlargement (annexed to the Final Act of the Treaty) to enable the institutions gradually to be adapted while the accessions are taking place; declares its intention of keeping those adjustments under careful review and taking them into account when it delivers its binding decision on the accession treaties;

18. Welcomes the fact that, under Article 230 of the EC Treaty, it is entitled to bring actions on its own initiative for review of the legality of acts adopted by the other institutions;

19. Expresses its satisfaction at the substantial reforms to the structure, operation and powers of the Court of Justice and the Court of First Instance which are intended to expedite the administration of justice in the Union and preserve the unity of Community law, thus consolidating the Union's judicial role;

20. Deplores the fact that the members of the courts will continue to be appointed by common accord of the Member States and that their case therefore constitutes the only exception to the general rule established by the Treaty of Nice whereby appointments are made by decision of the Council on the basis of a qualified-majority vote;

21. Considers that the provisions relating to the Court of Auditors will enable it to perform its role more easily and calls on its President swiftly to set up a contact committee in collaboration with the chairmen of the national audit institutions (as provided for in Declaration 18 annexed to the Final Act of the Treaty) in order to improve cooperation between the Court and those bodies;

22. Reiterates its view that an office of European public ministry should be established and that a European public prosecutor should be appointed with the task of combating fraud against the Union's financial interests;

23. Applauds the provisions relating to the Economic and Social Committee, which make it more representative of the various sectors of society, and to the Committee of the Regions, the democratic legitimacy of whose members is strengthened;

24. Welcomes the fact that the Treaty incorporates a legal basis that will enable a statute

for European political parties and rules governing their funding to be adopted under the co-decision procedure;

25. Recognises that progress has been made in the change from unanimity to the use of decision-making by qualified-majority vote to adopt the statute for MEPs, but deplores the fact that the latter rule has not been extended to cover tax matters;

Decision-making

26. Notes the change whereby decisions under 35 legal bases are to be taken by qualified-majority vote; expresses its dissatisfaction at the fact that vital issues will remain subject to the unanimity rule, leading to damaging obstruction to the political and social consolidation of the Union;

27. Draws attention, in this connection, to the pressing need for it to be more closely involved – as a factor for democratic participation and scrutiny – in the common trade and external economic relations policy, as regards both the framing of policy and the negotiation and conclusion of agreements; takes the view that its involvement is essential now that the national parliaments no longer have any powers in the sphere of EU trade policy;

28. Reiterates its view that wider use of decision-making by qualified-majority vote, going hand-in-hand with co-decision, is essential in order to achieve a genuine interinstitutional balance and is the key to the success of enlargement, and considers, therefore, that the changes brought about by the Treaty of Nice have fallen some way short of the desirable outcome; states once again that qualified-majority voting must, as regards legislation, go hand-in-hand with co-decision involving the European Parliament as a fundamental guarantee of the democratic nature of the legislative process;

29. Deplores the fact that the Intergovernmental Conference did not extend the co-decision procedure to cover those legal bases already providing (before and since Nice) for legislation to be adopted by qualified-majority vote; believes that the new Treaty has given insufficient recognition to the co-decision procedure, as set out in Article 251 of the EC Treaty, as the general rule governing Union decision-making;

30. Expresses its disquiet at the complications that the Treaty of Nice brings to many legal bases under which decisions are to be taken by qualified-majority vote and calls on the Council, before the accessions are completed, to pursue the opportunities for a change to qualified-majority voting and codecision under some of the amended articles, especially in Title IV of the EC Treaty;

Enhanced cooperation

31. Supports the changes relating to enhanced cooperation, made at its request and at that of the Commission, especially the abolition of the veto on grounds of national interest, and welcomes the fact that enhanced cooperation is to be regarded as a means to be employed as a last resort to advance European integration and the communitarisation of the areas concerned;

32. Considers the role assigned to it to be insufficient and undemocratic where authorisation of enhanced cooperation is concerned, especially in the vital areas in the first pillar where unanimity is retained in the Council;

33. Regrets that the intergovernmental method typically employed under the second pillar has also been laid down for enhanced foreign and security policy cooperation and that, consequently, a Member State may use its veto, its own role is reduced to a right to be informed and the Commission can do no more than express an opinion;

34. Deplores the fact that common strategies and defence policy are excluded from the scope of enhanced cooperation;

Declaration on the future of Europe

35. Endorses Declaration 23 on the future of Europe because it constitutes an innovation in the procedure for a reform of the Treaties based on efficient shared preparations and preceded by wide-ranging and thorough public debate;

36. Believes that the debate should take place at both European and national level; considers that the national governments and parliaments will be responsible for carrying on the debate and assessing the outcome, in particular at national level; recommends that Member States and applicant countries alike should each set up a committee consisting of government and parliamentary representatives and Members of the European Parliament to set the direction of and foster the public debate;

37. Takes the view that the debate must be open to society as a whole and must be accompanied by an appropriate information campaign in order to explain to Europeans what is at stake and to encourage them to participate actively in the debate; hopes that the debate will produce practical results, that all contributions will be taken into account in the preparations for the reform of the Treaties and that the debate will continue until the Intergovernmental Conference has ended, which means that the necessary budgetary funding will have to be made available in the 2002 and 2003 financial years;

38. Is of the opinion that the ultimate outcome of the next reform of the Treaties will depend crucially on the preparations; for this reason, advocates the establishment of a Convention (to start work at the beginning of 2002) comprising members of the national parliaments, the European Parliament, the Commission and the governments, the task of which would be to submit to the IGC a constitutional proposal based on the outcome of an extensive public debate and intended to serve as a basis for the IGC's work;

39. Takes the view that the accession countries should be involved in the Convention as observers until the accession treaties have been signed and as full members thereafter;

40. Takes note of the fact that the four subjects specified in Declaration 23 are not exclusive and maintains that a debate on the future of Europe cannot be limited, for which reason it will submit practical proposals in preparation for the Laeken European Council; will take due account of the issues which have already been raised by its specialist committees in the opinions which they drew up for the purposes of this

resolution and which are appended to the report by the Committee on Constitutional Affairs;

41. Believes that the IGC should be convened to meet in the second half of 2003 so as to enable the new treaty to be adopted in December of that year, thereby ensuring that, in 2004, the European elections can act as a democratic fillip to European integration and that it, together with the Commission, will be able to play its part in that process under the best possible conditions;

42. Believes that the future operation of the Union will depend on the outcome of the next reform and will take that factor into account when it is called upon to give its assent to the accession treaties;

43. Calls on the national parliaments, when expressing their views on the Treaty of Nice, to manifest their firm commitment to the convening of a Convention;

44. States that the Treaty of Nice will be seen in the light of the results of the Laeken summit, which could open a possibility for overcoming its weaknesses; decides, furthermore, to take into account the results of the Laeken European Council when it is asked for its views on the opening of the next IGC;

45. Instructs its President to forward this resolution to the Council, the Commission, and the governments and parliaments of the Member States and applicant countries.

EXPLANATORY STATEMENT

INTRODUCTION

When, after the horrors of the Second World War, Europe was at its nadir, a handful of visionaries regenerated it, proceeding from the bare bones of shared ideals such as peace as the supreme value, a democratic system of freedoms as the tool of coexistence, economic and social progress as the material bedrock of the system, and union as the long-term goal and the cement to bind the other parts together.

European integration is teleological and as such inseparable from its intrinsic element of process. Whereas a national constitution is drawn up with a view to its immediate entry into force, our continent has been built on Community institutions through a policy of taking practical steps to foster forms of real solidarity. These, in short, are the two components of what is termed the Community model whereby Europe is to be built in an ongoing process by means of common institutions.

This method, outlined in the Schuman Declaration of 9 May 1950, is expressly set out in the preamble to the ECSC Treaty and has constituted the reference point for Europe's progress over the last fifty years.

The failure of the European Defence Community and the European Political Community led to a rethink. Given that it was not possible to take a qualitative leap forward in political terms, the only option was to switch to integration of markedly economic sectors. Since the 1957 Treaties of Rome, European integration has confined itself to this economic blueprint as the Member States have increased from six to fifteen and Europe has expanded its powers.

The first extensive revision in depth of the Treaties establishing the Communities, the Single European Act, did much to advance economic integration, since the common internal market was set in motion, heralding the economic convergence project that was to crystallise into the launch of the euro in May 1998. This strong economic bias has prompted the celebrated definition of the European Community as ‘an economic giant and a political dwarf’.

The nature of the European integration process changed fundamentally as a result of the fall of the Berlin Wall and the ensuing collapse of the Soviet-inspired system. These political events were of momentous importance and consequently demanded a similarly far-reaching political response. Politics having thus made its dramatic entrance into European integration, the special Dublin European Council in April 1990 convened two intergovernmental conferences to be held in the early 1990s. One, for which the plans and preparations had been made long in advance, was intended to lay the foundations of economic and monetary union, and the other, stemming from the need to respond to the new challenges – the details of which, inevitably, had not been worked out as clearly as in the case of the conference initially scheduled – to define the terms of political union.

Despite the economic crisis of the mid-1990s and the complicated change-over from national currencies to the euro – a historic first – the economic integration process can be said to be proceeding according to the agreed timetable.

By contrast, what has rather pretentiously been dubbed political union has seen vicissitudes of a different kind. In the opinion of the rapporteurs, the unambiguously political nature of European integration, and in particular the stage reached in the 1990s, is a fact established beyond all doubt. However, the subject of political union has to be approached from a given angle in order to make for an accurate diagnosis. That is why its latest milestone – the Treaty of Nice – needs to be assessed and its progress discussed in more general terms, bearing in mind that the roots of the Treaty of Nice lie in the Treaty of Amsterdam, which itself derives from a commitment laid down in the Maastricht Treaty.

Regarding the components of political union, the Union's powers in the area of foreign and security policy were very modest before the Maastricht Treaty. Impelled by the fall of the Berlin Wall and German reunification, the crisis in former Yugoslavia, and the Gulf War, the 'second pillar' was incorporated into the EU Treaty, thus bringing the CFSP for the first time within the scope of the Treaties. Although it has remained within the sphere of intergovernmental cooperation, Union foreign policy has been boosted in political terms by the Treaty of Amsterdam, which has established the office of high representative and laid down institutional arrangements that should make the policy more effective.

However, to create offices and set out institutional arrangements cannot replace political will, and that is the key point. Not long ago the then ten Community Member States were incapable of agreeing on a statement condemning the Soviet Union for shooting down a South Korean passenger jet. Today a case of that kind could not possibly arise, because the Fifteen have achieved a sufficient degree of cohesion and also have the political will required to avoid such an indignity.

The same can be said of the breakthroughs as regards security and defence. It will suffice to recall the abortive European Defence Community or the debate on the independent nuclear deterrent or relations with NATO to measure the progress implied in the fact that the Petersberg tasks have been included in the Treaty of Amsterdam or a rapid reaction force was set up under the French Presidency in 2000. In the opinion of the rapporteurs, therefore, the achievements should not be undervalued, and second pillar matters should be tackled imaginatively as well as realistically. No one can expect States which have existed for hundreds of years to forgo their own foreign policy. But we can and must insist that they agree on the matters which they wish to deal with and resolve together and that they provide the wherewithal to attain their goals, without forgetting for a moment that their first goal is to secure peace.

Another political component, the third pillar of the EU Treaty, renamed the 'area of freedom, security, and justice', has made very significant progress. Whereas the Maastricht Treaty stipulated that one of the Union's objectives was to 'develop close cooperation on justice and home affairs', the Amsterdam Treaty has charted a course of integration through Communitarisation.

This decision has been quickly followed by deeds because the Vienna action plan, adopted in 1998, called for the Schengen system to be incorporated into the Union legal framework, free movement of persons to be boosted, Europol to be expanded, and measures to be taken to combat trafficking in human beings and organised crime.

The Tampere European Council, held in October 1999, was a further landmark in the Community control gradually being brought to bear on these judicial and police matters, which,

since the writings of Jean Bodin, have been placed at the heart of State sovereignty, because it produced proposals on common asylum and immigration policies and on a future European law-enforcement area in which Europe-wide search and arrest warrants will be a key means of fighting terrorists and criminals.

The Maastricht Treaty established political affairs on a formal constitutional footing at Union level, but the Treaty of Amsterdam, drawn up to meet the target date specified in Article N of the EU Treaty, has taken that process a stage further.

Signed on 1 October 1997, the Treaty of Amsterdam was welcome because it widened the extent of the Union's powers, laid down the principle of closer cooperation, and, for the first time, provided for a right entitling the national parliaments under the umbrella of COSAC (Conference of Community and European Affairs Committees of Parliaments of the European Union) to make contributions to the Union institutions.

However, the object of the Treaty of Amsterdam was to set the seal on a matter that had still to be resolved, namely institutional reform. The subject had long been on the table. The institutional triangle formed by the Council, the Commission, and Parliament had essentially remained unaltered since the founding Treaties, although notable changes have taken place in Parliament (which has developed from an assembly playing a subsidiary role to a Parliament elected by universal suffrage or from a consultative assembly to a Parliament exercising a share of decision-making power) and the European Council has been officially established not just as a prime mover of political debate, but also as a decision-taker.

Institutional reform was shelved in the first instance owing to the accession of Austria, Finland, and Sweden, but the need to reach a decision became inescapable once enlargement to include the countries of central and eastern Europe had been placed on the European agenda. The Heads of State or Government, however, proved incapable of solving the institutional questions, and the matter remained outstanding. An agreement setting out the lowest common denominators, the 'Protocol on the institutions with the prospect of enlargement', annexed to the Treaty of Amsterdam, laid down a review in two stages: the size of the Commission and weighting of votes within the Council would be dealt with before the first enlargement took effect, assuming that no more than five countries joined on that occasion; at the second stage, a year before the sixth enlargement, the institutional provisions would be comprehensively reviewed, although the Protocol gave no indication of what that task would entail.

In its resolution of 19 November 1997 on the Amsterdam Treaty[1], based on the Méndez de Vigo and Tsatsos report, Parliament rejected the two-step approach set out in the above Protocol and called for a more sweeping reform agenda.

The documents on enlargement – Agenda 2000 – submitted by the Commission under the presidency of Jacques Santer and Mr Prodi's proposals, endorsed at the Helsinki European Council, which seek to place all the applicant countries on the same negotiating footing, have undermined the objectives of the Protocol.

Coinciding with the proceedings of the Intergovernmental Conference, a Convention consisting of representatives of the Heads of Government, members of national parliaments, Members of

[1] OJ C 371, 8.12.1997, pp. 99-104.

the European Parliament, and the Commission drew up a Charter of Fundamental Rights of the European Union, as the Cologne and Tampere European Councils had instructed it to do, and submitted it in October 2000 to the Biarritz European Council, which endorsed it unanimously. The Charter, which meets one of Parliament's long-standing aspirations, as set out in paragraph 12 of its resolution on the Amsterdam Treaty, not only reflects the fact that the Union is founded on common values, but also provides clear evidence of the consolidation of political union. It was solemnly proclaimed by the Council, Parliament, and the Commission at the Nice European Council.

When considering the content of the Treaty of Nice, Parliament is aware that if integration is to have democratic legitimacy, the two levels of political representation of Union citizens, that is to say, Union and national level, must play their part. The fact that its Members are directly elected by Union citizens confers legitimacy on Parliament and obliges it to speak on the fundamental issues of European integration. That is why Parliament took a keen interest in the preparations for and proceedings at the Intergovernmental Conference[1].

In addition, the two representatives chosen from among its Members – Mr Brok and Mr Tsatsos – attended the Conference meetings.

Its President, Mrs Fontaine, vigorously defended its ideas throughout the Conference.

Furthermore, its Committee on Constitutional Affairs, chaired by Giorgio Napolitano, kept developments at the Conference under detailed review.

Having reached this point, and without detracting from the exhaustive assessment below of the significance of the Treaty amendments adopted in Nice, there is one comment that we should like to make. The Treaty of Nice is – for the time being – the latest means of giving clear-cut expression to political union and the logical extension of the two Treaties adopted in the 1990s.

The intergovernmental model is no longer suitable to tackle revision of the Treaties, and that is a reality which cannot be concealed even by its most ardent advocates. In its much-quoted resolution of 19 November 1997 Parliament spelled out the message. Having diagnosed the end of a historical era in which the work of European unification was undertaken stage by stage, using the methods of classic diplomacy (paragraph 18), it proposed that a new model – in reality, a variant of the Community method – be employed for the next revision of the Treaties (paragraph 19 ff.). The governments ignored our warnings as well as our proposals and confined themselves at Nice to conventional intergovernmental ways of proceeding.

The outcome failed to match our expectations, and, as if that were not enough, their impression of the 2000 IGC led the public to imagine that the government representatives had been securely closeted away for ten whole months, out of touch with citizens' demands and, above all, making

[1] Resolution of 18 November 1999 on the preparation of the reform of the Treaties and the next Intergovernmental Conference (Dimitrakopoulos and Leinen report), OJ C 189, 7.7.2000;
Resolution of 3 February 2000 on the convening of the Intergovernmental Conference (Dimitrakopoulos and Leinen report), OJ C 309, 27.10.2000;
Resolution of 13 April 2000 on the European Parliament's proposals for the Intergovernmental Conference (Dimitrakopoulos and Leinen report), OJ C 40, 7.2.2001;
Resolution of 25 October 2000 on the constitutionalisation of the Treaties (Duhamel report);
Resolution of 25 October 2000 on closer cooperation (Gil-Robles Gil-Delgado report).

no attempt to involve Europeans in the matters under discussion or the decisions adopted. This is not just the view of Parliament. The fact that the intergovernmental method has outlived its usefulness is implicitly recognised in the Declaration on the future of the Union annexed to the Treaty of Nice, the implication being that the governments are aware of the method's limitations and intend to explore other avenues for the 2004 IGC.

The rapporteurs have maintained that the Maastricht-Amsterdam-Nice sequence has served – when all is said and done, notwithstanding the vagueness and imperfections – to define the terms of political union based on the Community method. The next IGC, in the form that can be deduced from the Declaration set out in Annex IV to the Treaty of Nice, will apparently opt, as we shall consider in due course, for far-reaching change. At all events, whether or not our interpretation is correct, both the revolution entailed in the replacement of national currencies by a common currency and the challenge of welcoming Malta, Cyprus, and the central and eastern European countries in the near future demand a constitutional debate on Europe, in which Europeans must have their say, to bring about a more democratic, effective, and transparent Union.

ASSESSMENT OF THE TREATY OF NICE

I. Brief of the Intergovernmental Conference

The scope of the new Treaty or the matters to be covered by it – the two amount to the same thing – was the first subject of controversy to be occasioned by the Intergovernmental Conference and arose before the Conference had even begun.

The IGC was convened because the Treaty of Amsterdam had failed to complete the preparations for enlargement of the Union. Since no agreement could be reached in Amsterdam, as mentioned above, the Heads of State or Government laid down a further two-stage commitment in the Protocol on the institutions.

Their decisions in Helsinki opened the way to negotiations for 13 countries and enabled actual negotiations to be opened with virtually all of them, bringing the number of negotiating partners to 12, on the understanding that they would not be ranked in any order of priority but instead judged solely according to their progress in their accession preparations. These decisions superseded the two stages provided for in the Protocol and influenced the brief of the IGC, which, albeit ambiguously, afforded scope within the agenda for comprehensive reform by referring to 'other necessary amendments to the Treaties arising as regards the European institutions … and in implementing the Treaty of Amsterdam' and, as a further item to be included on the agenda, to the 'possible' extension of qualified-majority voting. In addition, the European Council instructed the Portuguese Presidency to propose other issues to be covered by the agenda.

In its above-mentioned resolutions of 18 November 1999 and 3 February 2000 Parliament proposed that the IGC agenda should encompass a comprehensive institutional reform. The Conference had to reform the Treaties in sufficient depth to satisfy two interrelated imperatives left unresolved since Amsterdam, namely democratisation of the institutions and the improvement in their effectiveness required in anticipation of enlargement. The Commission report issued on 26 January 2000 took the same line.

The IGC got under way, and the Portuguese Presidency, keeping its promise to Parliament, put forward a range of subjects extending beyond the ambiguous brief given at Helsinki. Despite the efforts of some Member States, most showed little enthusiasm for wider use of the qualified majority and were openly hostile to a broader Conference agenda.

From the outset it became obvious that the key to any agreement would be the qualified-majority voting system used in the Council. Every other matter would be determined according to the type of agreement, if any, reached on that subject. Those who were opposed to a comprehensive approach maintained in addition that if the agenda were unduly broad, the Conference might prove impossible to complete by the appointed deadline, thus jeopardising its success and hence even the accession timetable. Paradoxically, in the light of what happened at the Nice European Council, voting in the Council, out of all the matters dealt with by the Conference over the ten months, can be said to have been the subject for which the ground had been most poorly prepared.

To link the discussion on the voting system in the Council to the composition of the Commission and, to a lesser extent, the membership of Parliament implied a move to alter the relative weight of the individual Member States and their respective ability to exert influence, matters which no intergovernmental conference had tackled so resolutely since the Treaties of Rome.

Given the circumstances, the inherent difficulties of the intergovernmental system for Treaty reform were aggravated by the extreme complexity of the task, with the result that the discussion did not revolve around the institutional arrangements required to guarantee democracy and effectiveness in a Europe of 27 countries, but, raising a different question altogether, sought to determine what would have to change to make enlargement acceptable to every one of the fifteen Member States.

The Feira European Council finalised the Conference agenda on the basis of the report by the Portuguese Presidency, which accurately reflected the progress of the negotiations at the IGC. Along with the two unavoidable subjects mentioned in the Protocol on the institutions – voting in the Council and the size of the Commission – to which the Helsinki European Council had added wider use of the qualified majority, the agenda encompassed reform of Union institutions and bodies as a whole, closer cooperation, and the new wording of Article 7 on respect for fundamental rights in the Union.

I. Institutional reform

Council decision-making by qualified- majority vote

When it addressed itself to this matter the IGC was not starting from scratch. All the Member States had proved willing to abide by the agreement in principle reached in Amsterdam, as set out in the Protocol on the institutions: the new system had to compensate the larger Member States for the loss of their second Members of the Commission. Moreover, the specific terms in which the system would be couched, i.e. whether it would be based on a dual majority or weighting of votes, had still to be decided.

There are two elements implicit in any weighting system, the minimum number of Member States required to secure the votes needed to adopt a decision and the percentage of the population to which those countries correspond. Furthermore, a weighting system is in reality an 'adjusted' dual majority because the weighting, while taking account of population figures, does not correspond to relative population strength and is biased more heavily towards the 'Member State' element.

Under the current system (Article 205 of the EC Treaty) the 62 votes required to adopt a decision by a qualified majority (when the Council acts unanimously each Member State has 1 vote) signify that at least 8 Member States constituting 58% of the European population support the measure. From the opposite perspective, however, the implication is that there is a blocking minority or, and this is the same thing, 26 votes can prevent a decision being adopted and these can come from 3 large countries (accounting for between 42% and 52% of the population) or 7 small countries (accounting for just 12.3% of the population).

If the current system were applied to a Union of 27 countries, at least 14 Member States constituting about 50% of the population would be required for a decision to be adopted. A decision could be blocked by 4 large or 13 small Member States that would account for only 10% of the European population. The essential difference between the two situations lies in the population factor both as regards the adoption of decisions and as regards the blocking minority. The reason is that most of the applicant countries are small.

The end effect would be to weaken the relative position of the large Member States, but that eventuality would be at odds with the stipulation in the Protocol whereby they must be compensated for the loss of their second Members of the Commission. With these problems in mind, the large Member States were so nervous during the negotiations on the Treaty that some analysts have been prompted to talk of the Lilliput complex or the large countries' fear that the small countries might gang up on them.

Parliament and the Commission advocated a 'simple' dual majority system whereby a decision would be adopted if a majority of Member States constituting the majority of the population voted in favour of it. As has already been shown, this proposal produces almost the same result as the present system applied to a Union of 27 countries and had little prospect of success, given that the reform started in the first place because the situation described above was considered undesirable. The essential differences and advantages of the system proposed, compared with weighting, lay in the fact that it was simple, transparent, and easy to understand.

When it made its proposal, in the resolution of 13 April 2000, Parliament was proceeding from thinking based on the principle of the Union's twofold legitimacy. The definition of the qualified majority in the Council as a majority of Member States accounting for at least a majority of the Union population reflected, on the one hand, the nature of the institution representing the Member States and secondly was consistent with the realisation that the current decision-making system is dominated by the Council and consequently needs to be adjusted in the light of the population factor. In this way the rights of the countries making up the Union could be brought into balance with democratic requirements. As well as the definition, however, Parliament put forward a proposal seeking to make itself more representative, as befits an institution representing the peoples of the Union. Wider use of codecision and, in general, of Parliament's powers would lead to a better balance between the two arms of the Union's legislature, thereby bolstering the concept of a Council giving priority to the legitimacy of the Member States and a Parliament giving priority to the legitimacy of the peoples.

All that the IGC studied in its ten-month life were figures illustrating voting scenarios in the Council. There were even grounds for believing that the IGC deliberately chose to leave the Heads of State or Government to deal with the matter and hence also with the size of the Commission and the membership of Parliament, as in fact happened.

The discussions focused on the general parameters of the system. It was thus clear from the outset that virtually all of the small Member States favoured a dual majority system that would ensure that the support of a majority of countries would be required in order to adopt any decision. The large Member States advocated reweighting in their favour, even if it were to mean that a decision could be adopted by a minority of countries. The Conference was, however, invariably agreed on the need for support in population terms to be similar to the present percentage (58%, although no decision in the Union's history has ever been taken without support equivalent to at least 62% of the European population). On the eve of the Nice European Council the dual majority system (majority of Member States and approximately 60% of the population) was by far the preferred option.

Apart from the general parameters of the system as regards Member States and population and the ability of each individual Member State to exert influence on the body of States, another factor was instrumental in the selection of the system adopted, namely relative weight according to groups of Member States. Under the current weighting system, countries with populations of very different sizes are treated equally. The existing balances, which largely determine how far power can be seen to be shared, proved extremely difficult to alter at the IGC and were an important consideration in the final choice of method. This is the only possible explanation for the fact that France, for example, supported weighting, which, paradoxically, weakens its position in relation to the Member States as a whole: in the EU of 27, the 29 French votes account for 8.4% of the total, whereas in a dual majority system based on the parameters adopted in Nice (majority of Member States and 62% of the population), France's importance would be commensurate with its 12.31% of the population. France, of course, was not the only country to have this sort of concern in mind.

Distancing is required in order to analyse the decisions adopted at Nice. We must separate the tone of the discussions which like any struggle for the division of power has a nationalist element far removed from the overall vision, from the actual outcome of the negotiations. In the opinion of the rapporteurs, the voting method adopted at Nice is the result of reconciling

the desires of each individual Member State with an acceptable compromise which by definition has the merit of being the result of consensus.

Article 3 of the *Protocol on the enlargement of the European Union* amends, as of 1 January 2005, Article 205 of the EC Treaty and establishes a new qualified-majority voting system in the Council for the *current 15 Member States*. The distribution of weighted votes is changed in favour of the five largest countries by means of a broader range, from 4 votes for Luxembourg to 27 for Spain and 29 for Germany, France, the United Kingdom and Italy. The homogenous groups of countries are maintained, with the exception of the Netherlands, which with 13 votes is distinguished from Greece, Belgium and Portugal, which have 12 votes.

The Protocol establishes that *decisions shall be adopted* when 169 votes in favour are cast (71.30% compared with the present 71.26%) out of a total of 237. 169 votes in favour represents the support of a majority of countries (eight as in the current system) and of at least 60% of the population (under the current system a decision can be adopted with the support of 58.15%). The Protocol adds two more elements: the requirement that at least a majority of the countries must participate in the decision, which in EU 15 is completely pointless, since 169 votes already represent at least eight countries, and a non-automatic demographic verification clause by virtue of which a country may request verification that a particular vote represents 62% of the population. This clause is in actual fact a mechanism which will facilitate the possible blocking of a decision by Germany and is the compensation it obtained for its number of votes remaining the same as for France, the United Kingdom and Italy, despite the fact that it has approximately 20 million more inhabitants.

The new system makes it more difficult to block decision-making in the Union on the basis of a given percentage of the population, because at present seven States, representing 12.3% of the population (with 26 votes between them), may prevent the adoption of a decision, whereas under the new system eight countries representing 13.79% of the population are needed to obtain the 69 votes required. The minimum number of countries that can block a decision is the same under both systems, namely three, but the countries themselves are different. At present three large States (including Spain) may block a decision, whilst under the new system two large ones and one medium-sized one (for example Portugal) may do so, and by virtue of the demographic verification clause if one of the States is Germany, it may prevent the adoption of a decision together with another large country and any third country except Luxembourg.

From an analysis of the agreement adopted at Nice it emerges that, despite its complicated presentation, the new voting system is basically the same as the present one with a re-weighting in favour of the largest countries and explicitly highlighting the two factors – countries and population – which are now implicit in the system.

In two declarations the draft Treaty outlines the *changes in the voting system* during the process of enlarging the Union to reach a total of 27 States. Both the Declaration on enlargement and the Declaration on the qualified- majority threshold and the number of votes blocking a minority are merely political compromises and constitute, ultimately, the joint position which the 15 undertake to maintain in the enlargement negotiations. The fundamental elements of the process of adaptation envisaged are:

- The prior allocation to the new States of their respective weighted votes,

- The range for the decision-making threshold, which may vary between a percentage lower than the current one, 71.26%, and a maximum of 73.4%,
- The final result of the system in a Union of 27 States.

Furthermore, the two mechanisms established in the Protocol on enlargement – the minimum number of States and the demographic verification clause – may serve as safeguard clauses throughout the process. Apart from this, the system will have to be adapted with each new accession within the limits laid down in the Protocol and the two Declarations.

In a *Union of 27 States* (according to the Declaration on the qualified- majority threshold and the blocking minority) decisions shall be adopted when 255 votes (73.91%) in favour have been cast out of a total of 345.

13 Member States may reach this threshold of 255 votes, which means that with 27 States the clause requiring a majority of states to participate in the decision will come into play, which means that even with 255 votes the support of one more State would be necessary, and 14 states will also constitute a blocking minority although they may represent no more than 11.62% of the population.

255 votes also means a minimum of 58.39% of the population, which is corrected by the demographic clause, which will work in the same way as in the Union of 15.

To sum up, the parameters of the system are very similar to the present ones. The fact that the threshold is 73.91% of the votes, i.e. more than the current 71.26%, ceases to be significant in that it refers to a different distribution of the votes. It is not the votes which count but the countries which cast them. From this point of view, a majority of States (14) will be required in order to take decisions, as is already the case. The demographic requirements are also similar, 58.39%, and the demographic clause only changes the situation for Germany, as we have already seen.

In the opinion of the rapporteurs, the option advocated by Parliament would have facilitated decision-making. The formula eventually laid down is the result of the consensus required because any revision of the Treaties has to be adopted unanimously. Consensus has, to that extent, served to open the way to enlargement. Only time will tell whether the system is effective or ineffective.

The Commission

In all its resolutions the European Parliament has upheld the role of the Commission as the driving force behind European integration and, in particular, its key role in the exercise of the European Union's legislative function, by means of its monopoly in initiating and proposing legislation. Hence the European Parliament was interested in how the IGC dealt with the Commission in general and its composition in particular.

During the Conference the composition of the Commission encountered the same problems as qualified-majority voting in the Council. From the outset it was clear that most Member States rejected outright the possibility of losing a Commissioner, albeit only temporarily.

In response to the arguments concerning efficiency and the need to maintain the collective nature of the Commission put forward by those who wished to limit the number of Commissioners, mention was made of the need to ensure the visibility of the Union and legitimacy of the Commission in the eyes of the population. With regard to accession many also emphasised that the new Member States must in any case have a Commissioner immediately if the success of their integration was not be jeopardised.

Neither Parliament or the Commission openly supported either of these arguments, for obvious reasons. The debate on the number of Commissioners was inseparably linked to the issue of the weighting of votes in the Council; any compromise must tackle both issues. Since they were not negotiators in the IGC, neither the Commission nor, even less, the European Parliament was in a position to draft a 'compromise package'. Parliament and the Commission did insist on the urgent need to strengthen the role of the President and to carry out a process of internal reorganisation, if it were decided that the Commission should consist of one national from each Member State.

The Protocol on enlargement amends Article 213 in two stages:

- In the first stage, which will come into force on 1 January 2005, the Commission will have one Commissioner per Member State,
- In the second stage, which will enter into force when the Union has 27 Member States (after the signing of the last accession Treaty), the Council, acting unanimously, will set the number of Members of the Commission, which must be less than the number of States, as well as the arrangements for a rotation system based on the principle of equality. The Protocol adds that the rotation will be organised in such a way as to ensure that no State is absent from the college for more than one term of office at a time and that each successive college satisfactorily reflects the demographic and geographical range of the Union.

Whilst postponing its application, which many will deem to be appropriate, especially in view of the fact that it is the best way of ensuring that every new Member State has one Commissioner from the moment of accession, as the Protocol states, there is no doubt that the Conference was able to resolve all of the most difficult questions raised.

However, more important than the composition are the other amendments to the Treaty concerning the appointment of the President and the members of the Commission, as well as the strengthening of the powers of the President.

The nomination and appointment of the President by the Council meeting at the level of Heads of State or Government and acting by a qualified majority will, apart from ensuring that the selection is more rational and is not subject to vetoes, give greater importance to its approval by Parliament. The same can be said for the appointment of the Commissioners and the vote approving the college as a whole.

Equally important is the strengthening of the role of the President, on which Parliament has insisted:

- The President decides on the internal organisation of the Commission
- He can change the distribution of portfolios during the term of office
- He appoints Vice-Presidents after approval by the college

- He may ask a Commissioner to resign after obtaining the support of the college.

In essence, by virtue of the Nice agreements, the Commission enhances its identity as a supranational and independent institution, ruling out the danger inherent in some proposals that it might be turned into a mere secretariat of the Council. In our opinion, with the entry into force of the new Treaty, the Commission will be in a better position to define the Community interest with fully responsibility and impartiality.

The composition of the European Parliament

The composition of the European Parliament is currently based on a system of regressive proportionality. In its resolution of 13 April 2000, Parliament advocated distributing seats more in accordance with the demographic weight of the States. Without entering into a discussion of the distribution of seats per State, which, as was already mentioned in connection with the Council, is the outcome of consensus, it points out that it is impossible to find any logical explanation, either regressive or proportionate, why the Czech Republic and Hungary should be allocated fewer seats than others with similar demographic weight. This anomaly will have to be cleared up when the accession Treaties are negotiated, since the Declaration on enlargement, which shows the distribution of seats in a Union of 27, is merely a political compromise.

With regard to the process of enlargement, the adaptation of the composition of Parliament following successive enlargements is complex, possibly uncertain and not free of risks. The Protocol on enlargement, which amends Article 190 of the EC Treaty as of 1 January 2004 and will take effect in the 2004-2009 parliamentary term, establishes the number of Members to be elected in each Member State, but also says that until a total of 732 Members is reached, the number of seats per Member State will be increased on a pro rata basis with one limit: no State may have more representatives than it had during the current 1999-2004 parliamentary term, which means that if no accession treaty has been signed before 1 January 2004, the number of MEPs per country will be the same as at present.

As regards accessions which may take place during a parliamentary term, the new Member States will be allocated the number of MEPs to which they are entitled under the Declaration on enlargement, increased on the same pro rata basis as for the other Member States.
The ceiling of 732 may be exceeded temporarily until the end of the parliamentary term in question (Parliament accepted this in its resolution of 30 November 2000). This means that if there are no or very few accessions before 2004 and a large number between 2004 and 2009, the 732-MEP ceiling may be exceeded by a considerable margin, which would cause all kinds of problems.

It will be for the Council to decide the actual number of MEPs per country in each parliamentary term. Since the Protocol, surprisingly, has nothing to say on the matter, it is to be assumed that the Council will decide by a simple majority.

Under the system introduced under the Treaty of Nice it is impossible to calculate in advance either the number of MEPs per Member State or the total number of MEPs until the parliamentary term following that during which the accession process for the 12 countries

with which negotiations are being held is completed. It could perfectly well be the case that the table contained in the Declaration is not applied until 2014.

Whilst it is difficult to find any 'constitutional' criterion underlying the system of qualified-majority voting in the Council, it is even more difficult to guess what logic underlies the composition of the European Parliament, which in the opinion of the rapporteurs, has actually been used to counterbalance the decision regarding the weighting of votes. Probably for the same reason the ceiling for the number of MEPs established at Amsterdam has been raised to 732.

The Court of Justice and Court of First Instance

The reform of the Court of Justice is one of the undeniable achievements of Nice. The aim of the reform was to make the administration of Community justice easier whilst preserving the unity of Community law.

The reform affects both the Court of Justice and the Court of First Instance. It might even be said that the reform revolves round the new role of the latter.

The Court of Justice will consist of one judge per Member State which, in actual fact perpetuates the situation implicit in the current Treaty. The great innovation is the establishment, in addition to the plenary session, of a Grand Chamber, the detailed arrangements for which are laid down in the Statute annexed to the Treaty.

The Court of First Instance will also consist of one judge per Member State. The two great innovations for this Court are the possibility of creating specialist panels and the considerable increase in its powers, with the aim of lightening the workload of the Court of Justice. In addition to actions brought to ascertain legality, actions brought for failure to act, actions concerning the contractual liability of the Community and disputes between the Community and its staff, the Court may also have jurisdiction to deal with preliminary rulings. It will also be able to deliver judgement on appeals brought against decisions of the specialised judicial panels. These decisions may be re-examined exceptionally by the Court of Justice if there is a serious threat to the consistency or unity of Community law.

The great innovation from Parliament's point of view is that the Treaty now recognises its right to challenge the legality of acts (Article 230) of the Community institutions on an equal footing with the Member States, the Council and the Commission. It may also request the opinion of the Court of Justice as to whether an international agreement being drawn up is compatible with the Treaties (Article 300(6)).

In this reform, which by and large meets Parliament's demands, there is something which stands out: in view of the fact that the Members and President of the Commission will be nominated and appointed by the Council by a qualified majority, the two courts will, after the entry into force of the Nice Treaty, be the only Community institutions whose members will be appointed by common accord of the governments of the Member States. The judges on the specialised panels will, on the other hand, be appointed by the Council acting unanimously.

The Court of Auditors

The main changes introduced by the draft treaty concern:

- Its composition – the Court will consist of one national from each Member State, currently there are 15, which in practice amounts to the same thing. Although in its resolution of 13 April 2000 Parliament called for a set number of members, it did not specify what that number should be.
- The procedure for appointing members: the Council will decide by a qualified majority;
- The Court is authorised to set up specialised internal chambers;
- The Court itself will draw up its own rules of procedure which must be approved by the Council acting by a qualified majority;
- The statement of assurance, which may be supplemented by specific assessments for each major area of Community activity.

These changes represent a strengthening of the Court's position; and, in addition, a declaration annexed to the Treaty calls on the Court and the national audit institutions to improve their cooperation and to allow the President of the Court to set up a contact committee with the chairmen of national audit institutions, to a great extent in line with what Parliament called for in the above-mentioned resolution: strengthening the Court's powers to monitor national and regional administrations.

It should also be mentioned that the Commission proposal, supported by Parliament, to set up a European public prosecutor's office as an independent body specialised in combating fraud against the Union's financial interests *vis-à-vis* national governments, has not been incorporated to any extent in the new Treaty.

The Economic and Social Committee

The Commission proposal, supported by Parliament, to include representatives of civil society in the ESC, has been incorporated, albeit in a less ambitious form than we proposed, into the final wording of Article 257 of the EC Treaty, which states that the committee shall consist of the various 'economic and social components of organised civil society'. The various categories mentioned in the article now include consumers.

With a view to enlargement, the maximum number of members of the committee has increased to a total of 350, which means that the current number of representatives per Member State in the Union of 15 States will not change. The decision to maintain the number of members of the ESC was determined by the need to maintain unchanged the number of members of the Committee of the Regions, the composition of which is much more problematic. The procedure for appointing the members also changes, and will be decided by the Council acting by a qualified majority.

The Committee of the Regions

The changes introduced in the draft treaty are more significant as far as this committee is concerned.

Firstly, its members must from now on hold elective office in a regional or local authority or be politically accountable to an elected assembly. This is something which Parliament has repeatedly called for. The requirement is further strengthened by Article 263, according to which any member of the committee who loses his elective office must be replaced.

The number of Committee members representing each Member State has not been altered, and represents an increase in the total number of members after the accessions to a maximum of 350. This is a requirement imposed by the need to safeguard the representation of regions which are constitutionally recognised in a Member State with a federal or highly regionalised structure. it should be borne in mind that for the same reason Parliament, in its resolution of April 2000, advocated maintaining the current number of members.

The Council, acting by a qualified majority, will henceforward adopt the list of members of the COR.

It should be noted that the qualified-majority decisions on the appointment of members of the Court of Auditors and the two committees will be taken, in any case, in accordance with proposals put forward by each Member State. This detail, specified in the relevant articles of the Treaty, is somewhat puzzling and makes one wonder about the effectiveness of qualified-majority voting.

II. The extension of qualified-majority voting

A declaration annexed to the Amsterdam Treaty and signed by Belgium, Italy and France expressed the need to strengthen the institutions and, in particular, to broaden the qualified majority voting procedure. The declaration was in fact expressing the frustration of these countries at the results of the inadequate reform of the Treaties. Similarly, paragraph 14 of Parliament's resolution of 19 November 1997 bemoaned the inadequacies of the Treaty.

The issue was added to the agenda of the last IGC at first hesitantly and later more decisively, and became the subject which, at least statistically, involved most hours of work on the part of the personal representatives at the Conference.

The increase in the number of Member States to as many as 27 will mean a diversification of interests and more heterogeneous political cultures, which may paralyse decision-making in the spheres subject to voting by unanimity in the Council. Not only Parliament and the Commission were or are aware of this risk. Many Member States share their concern. Evidence of this is the interest shown and the efforts made in the IGC to facilitate the introduction of the mechanism of enhanced cooperation. Interest increased as the problems inherent in making significant progress in extending **qualified-majority voting** became clearer. Some acted as if enhanced cooperation might remedy the paralysis of the legislative procedure: if the integration of the whole could not go ahead it should not – so they appeared to be saying – prevent the integration of those who were more willing.

In Parliament's opinion the extension of **qualified-majority voting** should be part of a process of simultaneously rationalising and democratising the Union's decision-making

procedures. Still applying the fundamental (and consensus-based) principle of the Union's dual legitimacy to decision-making procedures, Parliament has advocated that the general rule in legislative matters should be qualified-majority voting in the Council, accompanied by codecision with Parliament. This would reconcile efficiency in the decision-making process with the democratic legitimacy of the procedures. Only issues of a constitutional nature defined as those needing ratification by the national parliaments should continue to be subject to the unanimity rule.

If the reform of the institutions has not always been guided by general principles, the decision-making procedures did not fare any better in the IGC, despite the efforts made by the Portuguese Presidency to rationalise the debate on the basis of a specific classification of the provisions of the Treaties. This attempt was unsuccessful and the Conference negotiated, case by case, the list – already in itself limited – of legal bases subject to discussion. Furthermore, Amsterdam was all too recent and many of the Member States were reluctant to reopen the debate. For example, the Portuguese Presidency, in the above-mentioned classification, had presented, under the heading 'institutional anomalies' the legal bases subject to unanimity in the Council and codecision with Parliament. A number of delegations maintained that if those cases were to be considered as anomalous, they could quite easily be resolved by replacing codecision with simple consultation of Parliament.

Furthermore, in trying to eliminate the cooperation procedure, which is still applied to four provisions in the monetary chapter of the EC Treaty, the unanimous view of the Conference was that it should be replaced by simple consultation of Parliament. It was ECOFIN which, barely two weeks before the Nice Summit, opposed it, calling it a retrograde step for the institutions. Whilst the thought that 'it might have been worse' was one of the criteria for assessing the draft treaty – which is by no means the view of the rapporteurs – the survival of the cooperation procedure would be a great source of satisfaction.

The Council has stressed the figures involved in extending qualified-majority voting. Qualified-majority voting will be applied to 35 new cases, 22 of them immediately following the entry into force of the Treaty and the others at a later date or after a unanimous decision by the Council, thus at least avoiding the need for a new Intergovernmental Conference.

But what does the reform encompass in qualitative terms? At least eight of the new articles to which qualified-majority voting applies are appointments, of which the most significant is the nomination and appointment of the President and the members of the Commission. The other articles are of varying importance. In the case of topics which might be described as 'meaty' the outcome also varies, partly on account of the fact that, in addition to case-by-case discussions, negotiations also began immediately on individual paragraphs. But what is really striking is the number of declarations, exceptions, safeguard clauses and postponements which are not simply valid for a limited period but are conditional upon the adoption of related decisions linked to most of the significant legal bases in respect of which decisions have actually been taken.

What we are again faced with here are the difficulties which stem intrinsically from the intergovernmental negotiating method. At the Conference those difficulties were compounded by the need to reach agreement on institutional matters, which opened the way to the many vetoes clashing with the extension of qualified-majority voting.

Codecision involving Parliament was a lesser concern during the Conference, and the results are plain to see. The draft treaty provides for six new cases of codecision (if we include the provisions of Title IV of the EC Treaty in which codecision combined with qualified-majority voting are conditional upon a unanimous decision by the Council). Among the new cases of qualified-majority voting, only three legislative ones remain outside the codecision procedure: financial regulations, internal measures for the implementation of cooperation agreements, and the Structural Funds and the Cohesion Fund, which will remain subject to Parliament's assent. These are particularly important issues on account of their major budgetary implications. The fact that they are excluded from codecision is perpetuating an indefensible mismatch between Parliament's budgetary and legislative powers. The political sensitivity of the Member States where budgetary matters are concerned is revealed most starkly with regard to the Structural Funds and the Cohesion Fund, since decision-making by qualified-majority vote is not only being postponed until a date after the Treaty has entered into force (1 January 2007), but will be made subject to an additional condition to the effect that the next financial perspective must first have been approved. The most serious thing is in fact that, in refusing even to consider switching matters already subject to qualified-majority voting to the codecision procedure, the Conference was rejecting a basic institutional principle on which significant progress had been made at Amsterdam: as a general rule, codecision should accompany qualified-majority voting in matters of a legislative nature.

Even though codecision is the most significant of the ways in which Parliament is involved in legislative procedures, it is not the only way. As will be seen later, only two new cases of assent have been added. Parliament had called for the assent procedure to apply to the majority of appointments and also to the ratification of international agreements, an area in which the confusion over powers and responsibilities is compounded by ambiguity in the proceedings, all of which tends to weaken the EU's position in the world (this applies especially obviously to commercial policy, since the amendments to Article 133 on that subject are plainly inadequate).

The rapporteurs believe that wider use of qualified-majority voting was one of the key issues at the IGC, from the point of view both of the enlargement process and of deepening European integration. To treat qualified-majority voting and application of the codecision procedure as two synonymous terms is a requirement of the democratic principle. In the light of the Nice agreements, the rapporteurs consider the outcome to be manifestly insufficient.

III. Enhanced cooperation

Despite the fact that it was a late addition to the Conference's agenda, enhanced cooperation became one of the key points of the reform exercise and it aroused a degree of interest which is unusual if we consider that, since it had been only recently incorporated into the Treaties, there has been no opportunity for it to be implemented.

As we have suggested above, enhanced cooperation could for a number of Member States make up for the inadequate extension of qualified-majority voting and prevent possible deadlock following enlargement. In its resolution of 25 October 2000 which was based on a report submitted by Mr Gil-Robles, Parliament did indeed warn against the illusory idea that forms of enhanced cooperation could be regarded as an alternative to qualified-majority voting.

The basic purpose of the reform was to facilitate application of the enhanced cooperation mechanism by removing the right of veto exercised by means of an appeal to the European Council. This objective has been fully achieved in the first and third pillars – the two areas in respect of which forms of enhanced cooperation had been devised under the Amsterdam Treaty.

Parliament's role in the authorisation procedure has been strengthened, although not as much as Parliament would have liked. It considered its assent to be a democratic guarantee which would compensate for the loss of the right of veto. Under the third pillar the right to be informed is converted into mandatory consultation. Under the first pillar, consultation continues to be the general rule, but Parliament's assent is required in cases where enhanced cooperation relates to a matter subject to codecision. Although this ensures a match between Parliament's 'ordinary' powers and responsibilities and its role in the authorisation of enhanced cooperation, there is none the less a paradox here since in its above-mentioned October 2000 resolution, Parliament proposed that matters subject to qualified-majority voting (and therefore to codecision) could not be the subject of enhanced cooperation.

The third satisfactory aspect of the reform is the fact that enhanced cooperation has been incorporated into the second pillar – even though that satisfaction needs to be qualified. Firstly, because it is restricted to 'the application' of joint actions and common positions; both the implementation of common strategies and – highly significantly – defence policy are left out. Secondly, because the possibility of vetoing Parliament's authorisation by means of an appeal to the European Council is provided for. Thirdly, because Parliament's role is reduced to no more than a right to be informed and, fourthly, because the Commission's role is reduced merely to expressing an opinion on the extent to which the planned instance of enhanced cooperation is consistent with the provisions of the Treaty.

Parliament had urged that the rules on the matter be grouped together and standardised differently in the first and third pillars. Although this was not done in the case of the procedures, the terms and conditions which have to be met for the purpose of authorising enhanced cooperation *have* been rationalised and made uniform. This is perhaps the moment to point out that although during this recent reform of the Treaties, Parliament has been in favour of facilitating the implementation of enhanced cooperation, it has repeatedly expressed reservations regarding this particular mechanism – reservations which may be summed up as

the desire to avoid ‘an à la carte Europe’. For this reason it has insisted that the terms and conditions already laid down in the Treaties remain in force.

In this, Parliament has been successful: those terms and conditions have indeed remained in force and two of them deserve a special mention. The number of Member States needed to initiate an instance of enhanced cooperation will be eight, a number which, although it currently represents half of the Member States (in accordance with the current rules), will represent, in a 27-member EU, fewer than a third (as called for by Parliament). The ‘last-resort’ clause which Parliament wanted to be legally binding remains within the political sphere but it has been given slightly greater substance through the addition of the proviso that enhanced cooperation may be authorised only in cases where it has been demonstrated that the objectives thereof may not be achieved ‘within a reasonable period of time’.

IV. Safeguarding fundamental rights

Since Amsterdam, Article 7 of the EU Treaty has made it possible to suspend the rights deriving from membership of the Union in the case of a Member State in which a serious and persistent breach of fundamental rights has been detected.

The fact that it proved impossible to act legally under the terms of the Treaty in the ‘Austrian case’ revealed a lacuna which the new Treaty fills by means of an ‘alarm’ mechanism which makes it possible to declare, by means of a Council decision taken by a four-fifths majority of its members, that there is a serious risk to the upholding of fundamental rights in an EU Member State. We should not overlook the fact that Austria (which found itself defenceless *vis-à-vis* the lacuna in the Treaty) was the first to place such a proposal on the table.

Not only does Parliament have the right of initiative; its opinion is also required and is secured by means of a two-thirds majority of the votes cast by a majority of its Members.

V. The Charter of Fundamental Rights of the European Union

The four component bodies of the Convention responsible for drawing up a Charter of Fundamental Rights of the European Union adopted by consensus a draft version which was considered by the Heads of State or Government at the Biarritz European Council on 14 October 2000 and which was adopted unanimously. Subsequently, in its resolution of 14 November 2000 (based on the Duff and Voggenhuber report), Parliament also approved the Charter, which was formally proclaimed by the three institutions on 7 December 2000 in Nice.

In the period since the Duff and Voggenhuber resolution of 16 March 2000, Parliament has spoken unequivocally in favour of incorporating the Charter into the Treaties. Parliament's position is based on logic: if the substance of the Charter is sound (and it should be, since the European Council adopted it unanimously), the best thing would be for it to exert full legal effect. However, logic does not always automatically prevail in the process of European integration and six governments – Denmark, Finland, Ireland, the Netherlands, Sweden and the United Kingdom – rejected the idea of incorporating the Charter into the Treaties and also the compromise advocated by Parliament, which called for a reference to the Charter to be

included in Article 6(2) of the EU Treaty. The refusal to allow such a reference was paradoxical since the article in question mentions the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which the IGC also refused to accede.

The fact that it is not incorporated into the Treaty does not in any way mean that the Charter will not have an effect: a political effect, as demonstrated by the references to the Charter in the report drawn up by Mr Ahtisaari, Mr Frowein and Mr Oreja on the situation in Austria; a legislative effect stemming from the firm commitment given by Parliament and the Commission to regard the Charter as an essential reference to be included in all their legislation; or jurisdictional effects as evidenced by the first judgements delivered by the German and Spanish Constitutional Courts, which use the Charter as a reference point.

The fact that the Charter has not been incorporated into the Treaty is a disappointment to Parliament. The 2004 IGC will afford an opportunity for further consideration of this issue, which was not resolved in Nice.

VI. Other Treaty amendments

As regards the common foreign and security policy and defence policy, the preparatory proceedings of the Intergovernmental Conference were confined to the use of qualified-majority voting to appoint special representatives (Article 23 of the EU Treaty) and conclude international agreements (Article 24 of that Treaty) and, secondly, to incorporation of the enhanced cooperation arrangement into the second pillar.

Coinciding with but separate from the IGC, a broader discussion took place in the General Affairs Council. The two reports submitted by the Portuguese and French presidencies resulted in fairly limited changes to the EU Treaty. Article 17 has thus been amended to delete the formalities for incorporating the WEU into the EU.

What is really significant, however, is the provision in Article 25 of the Treaty for the new Political and Security Committee, the tasks of which will be to monitor the international situation and help determine policy under the common foreign and security policy. It will likewise monitor the implementation of agreed policies ‘without prejudice to the responsibility of the Presidency and the Commission’. The Committee has had to be included in the Treaty for technical reasons because the existing provisions do not allow it to be given full powers to manage a crisis, but it will probably also enable decisions to be coordinated more effectively.

Declaration 1 adopted by the Conference on European security and defence policy refers to the texts endorsed by the Nice European Council and notes that the European Council will be called upon to adopt a decision to make the policy operational as soon as possible and at the latest in Laeken, referring for that purpose to the provisions of the Treaty on European Union on the understanding that entry into force of the Treaty of Nice will not constitute a precondition.

As far as judicial cooperation is concerned, **the European Judicial Cooperation Unit (Eurojust)**, consisting of national public prosecutors' offices, has been incorporated into the Treaty (Articles 29 and 31). In accordance with the new Treaty, its role will be: to help bring about the necessary coordination among the Member States' criminal prosecution authorities;

to assist in investigations into serious cross-border crime, and first and foremost organised crime, taking account in particular of analyses carried out by Europol; and to work in collaboration with the European Judicial Network, especially to facilitate the enforcement of letters rogatory and extradition requests.

It will certainly be useful for the Treaty on European Union to provide for a new form of judicial cooperation, but it is unfortunate that the new provisions fail to lay down specific administrative powers and that the unit will be run along intergovernmental lines.

On account of its significance to Parliament, mention should be made of the incorporation into the Treaty of a new legal basis which will enable a **statute for European political parties** and, in particular, the rules relating to the funding thereof to be adopted by a qualified majority and in accordance with the codecision procedure. The fact that adoption of the **statute for MEPs** is now subject to qualified-majority voting within the Council is also to be welcomed although, regrettably, the rules relating to the tax scheme will remain subject to unanimity.

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The Treaty of Nice covers other matters which, because of their specific nature, would need to be analysed in far more detail than is the case in this document.

THE DECLARATION ON THE FUTURE OF THE UNION

The Declaration on the future of the Union represents at one and the same time both the success and the failure of the Nice Intergovernmental Conference.

It signifies failure since the provisions of the Declaration are in practice a response to all that was lacking in Nice. Its very existence is a kind of *mea culpa* which reflects the dissatisfaction felt by the authors of the Treaty themselves. On the other hand it constitutes a success since it is a reaction which opens the doors to a new way of thinking about Europe. This will be seen in the analysis of the various aspects of the Declaration.

Nice signified the exhaustion of the intergovernmental approach to reforming the Treaties as a means of propelling the Union forward. The level of the discussions at the Conference demonstrated that the sum total of 15 national interests is not necessarily the common interest.

The Declaration proposes an IGC in 2004. It could not do otherwise since the Nice Treaty did not amend the treaty-revision procedure laid down in Article 48 of the EU Treaty, thereby perpetuating an institutional anomaly which Parliament has repeatedly condemned. At the current stage of political union it is not possible to continue regarding the European Union as though it were a traditional international body. At the same time, however, the Declaration states that the 2004 IGC will be preceded by an 'open process', the details of which it does not specify but to which it allocates specific tasks and whose participants it lists.

This open process means in any event that there will have to be a major public debate in order to prepare for the 2004 IGC. Is this an attempt to prevent the schizophrenia which the debate on European integration appears to have developed? Let us not forget that the two

conferences which prepared the Maastricht Treaty set out with ambitious objectives. At that time it was possible to speak of a strategy which the three 1990s Treaties have gradually 'patched up' here and there.

Curiously, starting in spring 2000 and running in parallel with an IGC which was modest in both scope and ambition, a searching debate on the future of the Union was going on at the highest level in various political forums (and was widely reported by the media). Senior political leaders leapt into the public arena in order to take up the challenges of European integration and to describe their vision of the future.

In the mean time the IGC carried on its business and demonstrated an obstinate indifference to the ups and downs of this public debate. Now let there be no mistake: those who had the major roles to play at the end of the Intergovernmental Conference were the same individuals who took part in that grandiose strategic debate.

Does the Declaration signify the end of the sort of schizophrenia which has been apparent since Maastricht and in which the strategic debate follows a course far removed from the vicissitudes of the successive reforms of the Treaties? The strategic nature of the topics selected (though not exhaustively) in the Declaration as the subject of the next reform appears to give an affirmative answer to the question.

The Declaration acknowledges the limitations of the reform exercise carried out in Nice by pointing out the latter's principal merit: to have opened the way to enlargement. The Declaration seems to be saying 'now that we have removed the remaining stumbling-blocks and that we have agreed on the essentials for accepting new Member States, let us really talk about the future'.

A future in which the applicant countries are already involved: the Declaration (and this is significant) already contains provision for them to attend the 2004 IGC as observers (obviously meaning those which have not yet joined the Union by that date). In addition, the necessary steps will have to be taken in order to optimise their involvement in the process prior to the 2004 IGC.

The Declaration's concern with the applicant countries may in some way be regarded as a political stance in favour of the implementation of a European project in which the most important thing is membership for all and not a predetermined constitutional structure which could exclude certain countries.

The Declaration is also concerned with the need to ensure transparency and democratic legitimacy and to bring the Union closer to ordinary people. This concern is to be understood in two ways: *vis-à-vis* the reforms undertaken but also *vis-à-vis* the actual process of open debate which must precede and prepare those reforms.

There can be no doubts regarding the democratic legitimacy of the participants at an IGC, namely the governments of the Member States. However, democratic legitimacy does not begin and end with those governments; the national parliaments and the European Parliament, which directly represent the people, are the depositories of a legitimacy which is essential to the progress of the European Union.

Although the Declaration already has the merit of acknowledging for the first time that the parliamentary dimension (both national and European) must be involved in any consideration of the Union's future, the IGC preparatory process which it inaugurates will have to devise ways of involving the parliaments in the drawing-up of proposals in a manner which is suitably dignified from both the political and the institutional points of view.

The parliamentary dimension implicitly involves bringing the process of preparing the reform closer to the people from whom the parliaments are a direct emanation. However, the Declaration does not stop there; it also outlines a process of broader public debate in which members of the general public (from economic, political and academic circles or from non-governmental organisations) should be able to take part. This type of bottom-up public discussion which is essential to the process of collective discussion must not be confused (the Declaration makes this mistake) with the formalised institutional role which the parliaments should play in the process.

Three points should be emphasised in connection with the reform process outlined in the Declaration. These are the agenda, the method and the timetable for the process.

1. The Declaration states the topics for the next reform but does so in open-ended rather than exhaustive fashion and makes it quite clear that the four specified topics may be supplemented by others. The four topics are already in themselves highly significant since the allocation of powers, the role of the national parliaments, the simplification of the Treaties and the status of the Charter of Fundamental Rights are issues which may profoundly affect the constitutional structure of the Union and even its founding principles. The rapporteurs believe that Parliament must seek to ensure, as a matter of principle, that no fixed upper limit is laid down in the agenda for 2004, because the debate on the Declaration would otherwise be reduced to a mere formality. In any event, these four topics, and two in particular, represent a complete turnabout in the process of European integration: the establishment of a clearer demarcation between the powers of the European Union and those of the Member States (in accordance with the subsidiarity principle) and the role of the national parliaments in the structure of the European Union.

   The first of these calls for the drawing-up of an inventory of powers which is characteristic of a federal system. If we undertook a similar exercise in the case of the Union, it would involve drawing up an exclusive list of powers to be conferred on the European Union, a second list relating to the Member States and a third list of shared powers, the exercise of which would in each specific case be determined on the basis of the subsidiarity principle.

   If this were to come about it would constitute a radical break with some of the basic features of the Community method since the gradual transfer of powers to the Union would be replaced by the establishment once and for all (in the manner of a frozen image) of the various spheres of competence. This is totally at odds with what has been done in the past and largely impracticable because it would in effect create a tricameral system.

   Parliament will have the opportunity to state its view on this key question in the report of the Committee on Constitutional Affairs to be drawn up by Mr Lamassoure.

This also applies to the second topic, namely finding a role for the national parliaments within the structure of the European Union. Historically, the Community's Parliamentary Assembly was made up of national MPs and only since 1979 has the European Parliament been elected by universal suffrage. Such a step reflects both the principle of democratic legitimacy and the fact that Parliament has developed from a purely consultative body into one with powers of codecision. The possible involvement of the national parliaments in legislative decision-making, as is being called for in some quarters, raises numerous questions that need to be discussed in depth. The report to be drawn up by the chairman of the Committee on Constitutional Affairs, Mr Napoletano, will provide the necessary formal basis for that debate.

Be that as it may, we want to draw the general public's attention to the radical change which the setting of these two objectives will make to the way in which Europe develops. A change of this kind calls for a major public debate regarding the type of European Union which its people want, and that is why the 2004 IGC, instead of involving revision of the Treaties like the previous revisions, will assume constitutional significance.

What we are faced with is a debate on the nature of European integration. Whatever topics are placed on the table (and we would point out once again that they are not restricted to the four topics mentioned in the Declaration) must provide answers to two questions: what do we want to do together and what role do we want Europe to play in the world?

2. The Declaration describes a three-stage process:

The **first stage**, which would be launched in the course of the 2001 Swedish and Belgian presidencies, would comprise a broad debate involving the EU institutions, the national parliaments and the general public. The European Parliament has unrelinquishable responsibility which is not restricted merely to involvement in such a debate; it also encompasses the organisation and orchestration of that debate in close cooperation with the successive Council presidencies and with the Commission.

The main objective of this initial stage (in addition to noting the opinions and the initiatives which emerge from the public debate) is to devise the strategy for the second stage, to which the conclusions of the Laeken European Council will give substance.

The **second stage** will both continue the public debate initiated in 2001 and formalise it. If the open process we are talking about is to constitute proper preparation for the 2004 IGC and be capable of altering the nature of this type of intergovernmental exercise, what we might call ‘a drafting and proposals forum’ must be formally established.

The Convention which drew up the Charter of Fundamental Rights strikes everyone as a possible alternative to purely intergovernmental negotiation.

The rapporteurs believe that the 'convention' model has many advantages. On the one hand, it enables representatives of the Member States (governments and national parliaments) to work together with representatives of the Community institutions (the European Parliament and the Commission). The Convention was thus constituted in a form serving to combine political representativity with legal training, for both are necessary in order to draw up a text intended to form part of the Treaties. It was consequently able to proceed as if the Charter were to be incorporated into the Treaties.

The convention system made it possible to do away with unanimity because its four component bodies acted collectively and could not veto each other's proposals. Furthermore, each body proceeded on a basis of consensus, paving the way for broad majorities that did not require the unanimous agreement of all participants.

The most powerful argument in favour of the convention model is the result that it managed to achieve. After just nine months of discussions the proposed Charter of Fundamental Rights was endorsed unanimously at the Biarritz European Council and by an overwhelming majority by Parliament in plenary sitting.

A critical analysis will have to be produced and this is also the purpose of the 'brainstorming' exercise in which we are already involved during this first stage and which is concerned with adapting the Convention's working method to the reform of the Treaties. The rapporteurs are currently considering two issues:

- The composition of this 'drafting and proposals forum' should be as uncontroversial as possible. If the major new contribution to be made by the open process is to increase democratic legitimacy, it should involve four parties: the national parliaments, the European Parliament, the Commission and representatives of the governments. This should not cause any great problems. Some thought should be given to its size and, in particular, to the possibility of increasing the number of parliamentary members (by comparison with the Convention which we are taking as a model) in order to ensure greater political pluralism.

- It should not play a decision-making role since that would not be allowed under the Treaty. There are two possibilities here: either to prepare for the IGC by pointing out alternatives within the various fields and therefore at least presenting a consensus *vis-à-vis* the agenda for the conference (this would be the Westendorp Group model) or to draw up an agreed project (this would be the model of the Convention which drew up the Charter of Fundamental Rights). The Laeken European Council will have to confer a clear mandate.

The **third stage** will be the 2004 Intergovernmental Conference, as provided for in the Declaration. If our intention is to devise an effective method for reform of the Treaties, the new IGC cannot merely repeat the arrangement for the previous conferences. It must mark the culmination of the groundwork carried out by a convention of the type of which we have speaking and to that extent reflect the outcome of the open public debate in the years leading up to the Conference.

3. As already indicated, the IGC which will conclude the reform process will have to take place, according to the Declaration, in 2004 and will coincide with elections to the European Parliament. An effective preparation process would ensure that the IGC is brief yet decisive. In the rapporteurs' view the IGC should be held in the second half of 2003 so that the electoral process can be made an opportunity for securing the general public's support for the European project, though in any event the necessary steps will have to be taken in order to ensure that the electoral process constitutes an impetus and never an obstacle to the reforms. The institutions must take part in the IGC under optimum conditions: the elections must not jeopardise the role of Parliament, nor must the forthcoming end of its term of office jeopardise the role of the Commission.

There remains the issue of involving the general public in the process as a whole. Such involvement must not be restricted to the first stage but must continue for the entire duration of the process. The major public hearing to be held by the Committee on Constitutional Affairs with representatives of the Member States' and applicant countries' national parliaments on 20 March is a first step which must be followed up. The priority will be to establish arrangements for cooperation with the Commission and the Swedish and Belgian presidencies.

However, in addition to organising major forums, Parliament and the other institutions too must endeavour throughout the 2004 IGC preparation process to appeal directly to the general public and to conduct grass-roots discussion and information campaigns relating to European integration. Appropriate budgetary funding should be provided for during the 2001 financial year.

MINORITY OPINION

by José Ribeiro e Castro

The European Parliament must take most of the responsibility for the frustration which many people have experienced in their attempts to follow on from Nice. For a period of almost a year (by means of the Dimitrakopoulos/Leinen reports and the resolutions to which they gave rise), Parliament devised scenarios relating to the institutional development of the Union without the slightest basis in reality. Certain members warned of what was really going on in the minds of the governments and what would form the substance of the Intergovernmental Conference. However, the majority preferred an inadequate methodology.

Parliament should not express any surprise since it declined to take any part in defining the powers and responsibilities which are laid down in Article 48 of the EU Treaty. Only those who are not prepared just to talk but are also willing to listen genuinely participate.

This report should represent recognition of this fact by Parliament and initiate on our part, prior to the proper implementation of Declaration 23 which is appended to the Nice Treaty, a useful methodology and a new approach to institutional reform.. This is certainly required of us by the esteem in which we hold democracy, which is best expressed at Member State level and by our colleagues within the national parliaments.

Unfortunately, the majority continue to prefer a discourse which often sounds like arrogance or which is injurious to European integration. If we persevere in our erroneous ways (a genuine 'dialogue of the deaf'), a poor outcome will be our own only reward.

Moreover, there is an insistence on turning the Union into a state, even though there is no such thing as a European people - only the peoples of the individual Member States. This is an extremely serious political blunder, a wrong turning on the road to European integration and a source of inequalities and tensions which should be dispelled.

10 April 2001

OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS, HUMAN RIGHTS, COMMON SECURITY AND DEFENCE POLICY

for the Committee on Constitutional Affairs

on the Treaty of Nice and the future of the European Union
(2001/2022(INI))

Draftsman: Elmar Brok

PROCEDURE

The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy appointed Elmar Brok draftsman at its meeting of 27 February 2001.

It considered the draft opinion at its meetings of 27 March and 10 April 2001.

At the latter meeting it adopted the following conclusions by 41 votes to 5, with 1 abstention.

The following were present for the vote: William Francis Newton Dunn, acting chairman; Catherine Lalumière, vice-chairman; Elmar Brok, draftsman; Alexandros Alavanos (for Andre Brie), Ole Andreasen (for Bertel Haarder), Danielle Auroi (for Daniel Marc Cohn-Bendit), Alexandros Baltas, Bastiaan Belder, Gunilla Carlsson, John Walls Cushnahan, Joseph Daul (for The Lord Bethell), Rosa M. Díez González, Andrew Nicholas Duff (for Paavo Väyrynen), Olivier Dupuis (for Francesco Enrico Speroni), Giovanni Claudio Fava (for Jannis Sakellariou), Francesco Fiori (for Franco Marini pursuant to Rule 153(2)), Monica Frassoni (for Elisabeth Schroedter), Michael Gahler, Per Gahrton, Gerardo Galeote Quecedo, Jas Gawronski, Vitaliano Gemelli (for Ingo Friedrich), Alfred Gomolka, Vasco Graça Moura (for Hugues Martin), Klaus Hänsch, Magdalene Hoff, Giorgos Katiforis (for Ioannis Souladakis), Efstratios Korakas, Alain Lamassoure, Pedro Marset Campos, José María Mendiluce Pereiro (for Hannes Swoboda), Philippe Morillon, Pasqualina Napoletano, Raimon Obiols i Germà, Arie M. Oostlander, Reino Paasilinna (for Jan Marinus Wiersma), Hans-Gert Poettering, Jacques F. Poos, Jacques Santer, Jacques Santkin, Jürgen Schröder, Ursula Stenzel, Ilkka Suominen (for José Ignacio Salafranca Sánchez-Neyra), Gary Titley, Johan Van Hecke, Geoffrey Van Orden, Christos Zacharakis.

SHORT JUSTIFICATION

I. THE TREATY OF NICE: RESULTS IN THE FIELD OF THE CFSP

1. A double distinction should be made when presenting the **outcomes** of Nice.

   On the one hand, we should remember that CFSP issues were only discussed at the IGC with regard to:

   - Article 23 of the TEU *(appointment of special representatives for the CFSP*). As an exception to the general rule of unanimity, *Article 23(2)* has been modified to provide for QMV for joint actions and for the *appointment of a Special Representative in accordance with Art.18 (5)*.

   - Article 24 of the TEU (*conclusion of international agreements in the CFSP* and JHA *areas*) has basically been replaced to require QM in the Council to implement a joint action or common position, but unanimity is needed when the agreement covers the adoption of internal decisions. This means that the new Treaty totally ignores the EP when agreements are being concluded in the intergovernmental sphere, including CFSP.

2. On the other hand, **parallel discussions** were held in the General Affairs Council in preparation of Nice. The French Presidencys' report set out guidelines on the need for changes to the Treaties. As a result:

   - *Article 17 TEU* was amended – i.e. the reference to the ultimate integration of the *WEU* into the Union was deleted;
   - *Article 25 TEU* on the *role of the Political and Security Committee* opens now the possibility for Council to authorise that Committee to take the relevant decisions concerning political control and strategic direction;
   - A *Declaration* annexed to the Final Act of the IGC, on ESDP stipulates that, in order to enable the European Union to become quickly operational, the European Council will take a decision in 2001 and no later than at its meeting in Laeken/Brussels, on the basis of the existing Treaty provisions. The entry into force of the Treaty of Nice does not therefore constitute a precondition.

3. In addition, the Treaty of Nice extends the scope of **enhanced co-operation in the field of the CFSP (second pillar).** Although this is a step forward compared with the previous situation, a number of very important shortcomings continue to exist:
   - the *scope* is too limited, *it will be confined to the implementation of joint actions and common positions, and it cannot be extended to security and defence policy*;
   - the *authorisation procedure* represents a step back in comparison with the procedure established under the first pillar, and in particular *no real democratic control via consultation with the EP* has been provided for;
   - the Council takes its decision on the basis of a qualified-majority vote but each Member State is granted a *right of veto*.

II. SPECIAL REFERENCE TO THE COMMON EUROPEAN SECURITY AND

DEFENCE POLICY (CESDP)

4. As requested by the EP, all but one reference to the WEU has been eliminated in the newly formulated Article 17 TEU, which specifies that CFSP will also include the progressive framing of a common defence policy. Nevertheless, since the Amsterdam Treaty, all decisions adopted by the European Council (Cologne, Helsinki, Feira, and Nice) refer to the military and civil instruments required to accomplish the Petersberg Tasks. Defence as such continues to be a national issue.

5. The "*Petersberg Tasks"* (humanitarian and rescue tasks, peacekeeping missions and tasks of combat forces in crisis management, including peace making) have been included in the EU Treaty under Article 17(2), and thereby become part of the CFSP/CESDP. Already in Helsinki it was decided that Member States, co-operating voluntarily in EU-led operations, must, by 2003, be able to deploy within 60 days military forces of up to 50,000-60,000 persons. It was also decided to establish *new political and military bodies and structures* within the Council and, as approved at Nice, the following bodies are gradually being established: a) *a standing Political and Security Committee (PSC); b) the Military Committee (MC) and c) the Military Staff (MS).*

6. The Presidency report on CESDP approved in Nice states that by developing "an autonomous capacity to take decisions and, where NATO as a whole is not engaged to launch and conduct EU-led military operations in response to international crises, the EU will be able to carry out the full range of Petersberg Tasks as defined in the EU Treaty", and that "this does not involve the establishment of a European Army". NATO remains the basis of the collective defence of its members.

7. The Feira European Council identified four priority areas (police, strengthening the rule of law, strengthening civilian administration and civil protection) where the Union must develop its capabilities in crisis management through civilian means, both in UN and OSCE operations and in the EU's own initiatives. The adoption of the Regulation on the Rapid Reaction Mechanism on 26 February 2001 is a first and very important step forward, designed to enhance the EU's civilian capacity for fast and effective intervention in crisis situations in third countries and will provide the flexibility to mobilise Community instruments to be deployed quickly.

III. THE FUTURE OF THE CFSP IN THE AFTERMATH OF NICE

8. Post-Amsterdam and Nice shortcomings demonstrate a clear lack of both political ambition and will on the part of most Member States. As previously suggested by the EP, the best way of enhancing the consistency of CFSP is undoubtedly by *incorporating it into the Community pillar*.
9. The negative outcome of Nice includes, in particular, a *right of veto* for Member States for important reasons of national policy in qualified majority votes, and referral to the European Council for decision by unanimity (Article 23(2)(2). As was the case before Nice, *unanimity plus constructive abstention* - instead of qualified majority voting as requested by the EP- *continues to be the general rule for the CFSP*, in spite of the exception above mentioned.

10. In the absence of a real budget co-decision on CFSP issues, it is necessary to call for *financial solidarity as* Article 28 concerns the financing of operational expenditure for the Petersberg Tasks. However, even if the costs of troops deployed in crisis management and their equipment are to be borne by participating Member States, the joint actions as a whole are funded from the Community budget.

11. As the expenditure arising from its future operations would not have military or defence implications but rather be of a civilian nature, it seems necessary that *administrative and operational expenditures for the future 5,000-strong police force for international missions are also charged to the Community budget (as non-compulsory expenditure)*. This would require Council to negotiate with Parliament an increase of the ceiling of Heading 4 of the financial perspectives for the period 2001-2006, to reinforce the existing Chapter for CFSP (B8-01).

IV. SOME REMARKS ON THE PARLIAMENTARY DIMENSION OF CFSP/CESDP

12. In general, Article 21 TEU clearly *provides for consultation by the Presidency on the main aspects and the basic choices of the CFSP (including matters with defence implications following Article 13 (1)*, with the obligation to ensure that the views of the EP are duly taken into consideration. Furthermore, the Presidency and the Commission must keep the EP *informed* of developments of CFSP. The EP may *put questions or make recommendations* to Council, and hold an *annual debate* on progress in to CFSP.

13. There is no doubt that the EP must exercise parliamentary control of the "Petersberg Tasks" at European level. In practice, this is satisfactorily exercised under the provisions of Article 21 TEU via regular reports by the Council Presidency after each GAC meeting, and by Mr. Solana's quarterly appearances before the Foreign Affairs Committee and the Plenary of the EP, as well as through the role of the EP as budget authority. Additional and reinforced parliamentary control is exercised by the EP via its own functions within the first pillar for civil crisis management.

14. Given the EP's clear budgetary and control competencies in ESDP/CFSP, there is no "gap" caused by the integration of certain WEU-tasks into the EU framework. Thus, and contrary to the views expressed by the WEU-Assembly, there is no need for a new "Interim" European Assembly for ESDP".

15. Obviously, *National Parliaments continue to keep and exercise their own competencies* as far as military spending and operational questions of its own armies are concerned. *A closer relationship with them on CFSP/CSDP issues* is therefore necessary.

CONCLUSIONS

The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following conclusions in its motion for a resolution:

1) As regards CFSP, the outcome of the Treaty of Nice is very disappointing, despite encouraging achievements taking place in the field of CESDP following the decisions of the European Councils of Cologne, Helsinki, Feira and Nice, but whose discussions have been and continue to be held without the participation of the EP;

   The refusal to allow the Parliament to play any meaningful part in international trade policy under Article 133 also damages the development of a coherent common foreign policy.

   The amendment of Article 300.6 to give the Parliament equal status with the Council and Commission in challenging the validity of international treaties at the Court of Justice is however to be welcomed;

2) The main goal for the **further development of the CFSP** is to obtain a major reform of the EU Treaty which should cover the following elements:

   a) The European Union's unconditional *recognition of the principles of the United Nations Charter* should be written into the Treaty;
   b) The *incorporation of the CFSP into the Community pillar*, bringing together within a *single chapter* all provisions relating to the various aspects of foreign policy;
   c) An *international legal personality for the Union* (for the three Communities and for the EU);
   d) The setting-up of *EU diplomatic representations* in non-member countries with fewer than four Member States having diplomatic missions with a view to the gradual setting-up of a EU-diplomacy;
   e) The current responsibilities of the High Representatives for the CFSP and those of the Commissioner for External Relations should be taken over by a single *Commission vice-president responsible for foreign affairs*;
   f) Creation of an *EU diplomatic corps* within the structure of the European Commission under the responsibility of the Commission vice-president;
   g) The establishment of a framework which will make *QMV the norm rather than the exception for CFSP*;

3) As regards **CESDP**, the provisions of Article 17 TEU should be reviewed to provide for:

   a) Institutionalisation of a *Council of Defence Ministers* to deal with technical and operational issues;
   b) Addition of the *mutual assistance clause* under Article V of the WEU Treaty to the EU Treaty in the form of a *protocol* to which each Member State would be free to adhere;
   c) Enhanced co-operation covering the *whole CFSP area, including security and defence policy*.

Article 296 TEC should be revised or suppressed in order to *promote the rationalisation of the European armaments industry* and to make it subject to the norms of EU single market and competition policy.

The establishment of an *EU Arms Procurement Agency* would promote standardisation and value for money;

4) Regarding the **parliamentary dimension of the CFSP/CESDP**:

   a) The EP should be *consulted beyond the current provisions of article 21(1) TEU* on all CFSP/CESDP instruments, including common strategies and main guidelines;
   b) With a view to full integration of the CFSP in the normal EU decision-making procedures, further measures should be taken to *ensure that the European Parliament is associated in the most important decisions* and has the possibility to contribute to the definition of the general guidelines of CFSP/CESDP;
   c) A *regular exchange of views between the EP and National Parliaments on CFSP/CSDP issues should be assured* (candidate countries and the non-EU NATO members could be associated).

5) In the meantime, and **regarding current discussions within the Council on CESDP issues**, we recommend that:

   a) NATO should agree to the EU's demands for 'guaranteed permanent access' (legally binding automatic access without an ad hoc North Atlantic Council decision) to the Alliance's military *planning capabilities* when conducting EU-led operations. If not, the EU should undertake the necessary steps to procure additional military capabilities under its own control;
   b) With regard to *other common NATO assets* (common-and control capabilities, AWACS planes, etc), a "guaranteed access" without a case-by-case decision by the NAC is desirable;
   c) All non-EU NATO Members should identify *national assets and capabilities* (including those of the US) to be available to the EU, subject to a case-by-case decision by the NAC;
   d) With regard to the *relationship between the EU, the UN and the OSCE* in this field, we support the view that once the Rapid Reaction Force is ready *the UN would be able to request assistance with a crisis operation*, a mandate would be issued and the EU could decide to participate. The RRF could be used outside the European area at the request of the UN or the OSCE in accordance with the UN Charter;
   e) *Administrative and operational expenditures arising from the future 5,000-strong police force to be set up for international missions* and used in conflict prevention and crisis management operations should be also charged to the *Community budget (as non-compulsory expenditure).*

25 April 2001

OPINION OF THE COMMITTEE ON BUDGETS

for the Committee on Constitutional Affairs

on the Treaty of Nice and the future of the European Union
(2001/2022(INI))

Draftsman: Joan Colom i Naval

PROCEDURE

The Committee on Budgets appointed Joan Colom i Naval draftsman at its meeting of 27 February 2001.

It considered the draft opinion at its meeting of 25 April 2001.

At this meeting it adopted the following conclusions unanimously, with modifications.

The following were present for the vote: Terence Wynn, chairman; Bárbara Dührkop Dührkop, vice-chairman; Joan Colom i Naval, draftsman; Jean-Louis Bourlanges, Carlos Carnero González (for Giovanni Pittella, pursuant to Rule 153(2)), Carlos Costa Neves, Den Dover, Göran Färm, Markus Ferber, Salvador Garriga Polledo, Catherine Guy-Quint, Jutta D. Haug, Anne Elisabet Jensen, John Joseph McCartin, Juan Andrés Naranjo Escobar, Bernhard Rapkay (for Constanze Angela Krehl, pursuant to Rule 153(2)), Heide Rühle, Kyösti Tapio Virrankoski, Ralf Walter and Brigitte Wenzel-Perillo.

SHORT JUSTIFICATION

1. The report by the Committee on Constitutional Affairs concerns Parliament's position on the Treaty of Nice. This opinion will restrict itself to the budgetary implications of the Treaty, which derive primarily from its provisions on **enlargement**. But other changes to the Treaty also call for short comments.

Reminder of Parliament's position

2. The rapporteur recalls that Parliament's proposals for the IGC[1] included codecision for all legislation (including financial regulations under Art. 279) as well as the proposals concerning the budget provisions of the Treaty (see Paragraph 51 of the resolution of 13 April).

3. **As regards the financial regulation**, the rapporteur notes that the Commission did propose codecision and qualified-majority (QMV) in Council, but that the Member States effectively refused any change. The adoption of the financial regulations will remain under the simple consultation procedure, in flagrant contradiction with the budget powers of the Parliament. And QMV will only be introduced from 2007 onwards, long after the current major re-casting of the financial regulation will have finished. The rapporteur can only repeat here the conclusions drawn in Parliament's guidelines for the 2002 budget procedure.[2]

4. **As regards Parliament's proposals in the budgetary sphere**, it is also regrettable that the Member States see no reason to seize the opportunity now to reform the system before enlargement. Parliament can be quite relaxed about this prospect. If the Member States do not want a dialogue on reform, so be it. Parliament's powers over the budget remain intact – whereas any reform might inevitably have led it into more power-sharing with the Council. It is to be recalled in this connection that non-compulsory expenditure already makes up 59% of the annual budget of the EU and that share will increase. The remaining 41% given over to CAP market expenditure can only continue to decrease – and there are many good arguments for saying that this part of the budget will have to be completely reformed before enlargement can work.

Status of the IIA and the Financial Perspective

5. The rapporteur laments **the continued ambiguous status of the Inter-institutional Agreement** on budgetary discipline and improvement of the budgetary procedure of 6 May 1999. He recalls that the Parliament proposed in its resolution of 13 April 2000 ((51.3) that the financial perspective should be integrated in the Treaty as a medium-term financial plan adopted by common agreement between Parliament and Council.

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[1] Resolution of 13 April 2000 containing the European Parliament's proposals for the Intergovernmental Conference OJ C 40, 7.2.2001, p. 409

[2] Minutes of the sitting of 3 April, Part II: Texts adopted, Item 9: European Parliament resolution on the guidelines for the 2002 budget procedure - Section III – Commission: *(12: " Recognises the significance of the Commission proposal on the recasting of the Financial Regulation; criticises the decision of the IGC not to introduce codecision for financial regulations, and to move to qualified-majority voting in Council only from 2007 onwards; takes this as a sign that the Member States are fundamentally unwilling to cooperate with Parliament in these matters, and deeply regrets the shadow that this casts over cooperation in the budget procedure; will not hesitate to reflect its position on the Financial Regulation in its budgetary decisions;"*

6. Here, again, the lack of ambition on the part of the Member States is frustrating. Parliament would have little to gain from such a reform, but the budget procedure as a whole could have benefited. Parliament can be quite happy to continue with a financial perspective expressed in the form of an inter-institutional agreement which legally-speaking is non-binding and which can be denounced by the parties at any time. If the Member States had only grasped the nettle of reform, the ambiguous question of the majorities required for decisions on the financial perspective could have been resolved.

7. As it is, the IGC has only added to the confusion. On the one hand, the Declaration on Article 10 of the EC Treaty allows the possibility of agreements being concluded between the institutions but confirms that such agreements may not *"amend or supplement"* the provisions of the treaties, i.e. including the provisions regarding the majorities required for decisions in Parliament and Council. But this has always been the greatest source of confusion about the financial perspective: it is supposed to be adopted by a simple majority, although it is expected to bind the institutions concerning their budget decisions and therefore determines budget matters normally subject to the majority requirements of Article 272.

8. Not content with this ambiguity, the Member States only make matters worse by adding, in Article 161, a reference to the financial perspective – the first time it has been mentioned in the treaties (although it is mentioned already in certain legislation[1]. The Committee on Budgets already had occasion the hear the views of Parliament's Legal Service on this innovation who confirmed[2] that it neither changed the legal status of the IIA/financial perspective, nor changed the situation regarding the majorities required nor made the adoption of the IIA/financial perspective in any way compulsory.

9. All that this reference in treaty to the financial perspective does is:

(a) to make it more difficult to revise the existing financial perspective, particularly on the extremely sensitive subject of heading 2 – the structural and cohesion funds; this applies both to revision before 2006 to cater for enlargement as well as to the negotiation of the new financial framework for the period after 2006;

(b) to continue the confusion regarding the majorities required to adopt or revise the financial perspective.

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[1] Council Regulation (EC) No 2040/2000 of 26 September 2000 on budgetary discipline, OJ L 244 29.09.2000 p.27; Decision No 182/1999/EC of the European Parliament and of the Council of 22 December 1998 concerning the fifth framework programme of the European Community for research, technological development and demonstration activities (1998 to 2002), OJ L 026 01.02.1999 p.1; and the Financial Regulation itself, Article 3, Paragraph 3.

[2] Legal Opinion SJ-037/01 of 21 February 2001.

[3] The rapporteur refers to his Working Document N° 6/2001 "Las Mayorias requeridas en Acuerdo Interinstitucional" of 4 April 2001, PE 300.047 drawn up in his capacity as rapporteur on the IIA.

Other issues with budgetary implications

10. The rapporteur refers to his Working Document N°4 / 2001 entitled *"Treaty of Nice in relations to the financial perspective"*,[1] drawn up in his capacity as rapporteur on the IIA, which already outlined the main questions about what the changes agreed in the IGC will cost in budgetary terms. In general terms, the rapporteur regrets the working methods of the IGC, which deliberates on changes which are inevitably going to cost money without effective scrutiny by any Parliament – national or European – in their capacity as guardians of the tax-payer's interests. **In this respect the results of the IGC as expressed in the Nice Treaty can be criticised in two general ways:**

(a) they make assumptions about the financing of new treaty arrangements, taking the agreement of the European Parliament, as one branch of the budget authority, as simply given;

(b) they propose new treaty arrangements with little regard about how they can be financed under the existing financial perspective; several of the innovations agreed clearly represent new needs which were not foreseen at the time of the Berlin European Council or of the conclusion of the IIA in 1999.

11. The Treaty changes to which this twin criticism can be applied are those affecting enhanced cooperation; CFSP/ESDP; Justice and Home Affairs cooperation (Third Pillar – Arts 29 and 31 of the EU Treaty creating EUROJUST); financial assistance to Member States in case of natural disasters (Art. 100, EC Treaty); social provisions (Art. 137, 144); structural actions (Art. 161); environment (Art. 175(2)); political parties (Art. 191); and the composition of the institutions in view of enlargement. The rapporteur refers to the working document mentioned above for more detail. **The only conclusion can be that these new initiatives require new financing under the financial perspective and imply a revision of the ceilings in the relevant headings.**

Enlargement and the composition of the institutions

12. Perhaps the most profound changes from a budgetary point of view are of course the changes in the composition of the institutions in order to accommodate an enlarged membership. The current financial perspective for the EU-15 (Annex 1 of the IIA) will have to be revised with a view to enlargement. The indicative financial perspective for a Union of 21 given in Annex 2 of the IIA would be taken as a guide for the revisions to be made, including for heading 5 – administrative costs. But of course this indicative annex was drawn up on the assumption of 6 acceding states.

13. Now that the Member States have "placed their order" in the Nice Treaty the rapporteur believes it is high time to examine the "bill" for what it is going to cost. Every institution is affected by enlargement and most, including the European Parliament need to begin preparing. **The rapporteur therefore supports the idea for high-level inter-institutional working group to be established to study the financing needs of the institutions and to make suitable proposals with regard to financial perspective.** The

[1] PE 294.071 of 17 January 2001

Nice Treaty and the IGC conclusions say nothing about how the impact of enlargement is to be financed, despite there being so many outstanding questions.

Weighting of votes in Council and net budget positions

14. The rapporteur would like to draw attention to one aspect of the IGC decisions concerning the weighting of votes in Council which has drawn little comment so far: **the relationship between the weighting proposed and the net budget positions of the Member States.** The table in Annex shows the net budget positions of the Member States according to the last published calculation (of 1998), beginning with the largest net contributors, and their relative voting strengths pre- and post-Nice. In accordance with the resolution adopted by Parliament in 1997 on the financing of AGENDA 2000,[1] the rapporteur has always opposed the principle of *"juste retour"* and he has made this calculation in the interests of establishing the facts, not in order to be polemical.

15. The facts show that, at least in the EU-15 scenario, **the Nice Treaty makes it easier for the largest net contributors to form a blocking minority.** Whereas before Nice the votes of the largest 4 net payers were necessary to form a blocking minority (29 votes, representing 44,2% of the population, with 33,33% of the votes), post-Nice, the votes of the largest 3 net payers alone will be sufficient (D, NL, UK) mustering 71 votes between them. The share of population and of votes which this represents has actually decreased (41,84% and 29,96% respectively).

16. In addition, the new "verification mechanism" whereby a Member State may request verification that a qualified majority comprises at least 62% of the EU population, particularly favours Germany as has been pointed out elsewhere, and this is no less true in the budget field. As largest net contributor, Germany need only assure itself of UK support, plus the votes of any other country except Luxembourg, in order to prevent a qualified majority from being obtained. Representing together 37,64% of the population, together the UK and Germany almost achieve the threshold necessary to prevent a majority representing 62% of the population being obtained.

17. These voting provisions will make the obtaining of a majority for many budget decisions more difficult and will strengthen the hand of the net contributors in budget negotiations. This is particularly unfortunate in view of the negotiations which will be necessary to adjust the financial perspective and the annual budget for enlargement.

[1] Resolution on the Communication from the Commission on Agenda 2000: the 2000- 2006 financial framework for the Union and the future financing system (COM(97)2000 - C4-0372/97), Minutes of the sitting of 4 December 1997.

18. On the other side of the coin, the new arrangements do not significantly alter the weighting of the 4 largest net beneficiaries, the four "cohesion" countries. Unable to muster a blocking minority before Nice (with only 21 votes), their situation does not change post-Nice, even though the percentage of total votes which they can muster actually increases (from 16,96% to 24,47%). The situation in both cases is different, however, if Italy were counted as an "honorary" member of the cohesion club whose interests often coincide with the "cohesion four".[1]

[1] Given the difficulty of predicting the net budget positions of the candidate countries, the rapporteur has not extrapolated the analysis made here, although this would be an interesting exercise.

Weighting of votes in Council in relation to net budget positions

Country	Net position €m	Net % GDP	population (millions)	% population	Pre-Nice		Post-Nice	
	(1997)	(1997)	(2000)	(2000)	Votes	% Votes	Votes	% Votes
D	-11076,20	-0,60	82.038	21,86%	**10**	11,49%	**29**	12,24%
NL	-2317,20	-0,73	15.760	4,20%	**5**	5,75%	**13**	5,49%
UK	-1882,70	-0,17	59.247	15,79%	**10**	11,49%	**29**	12,24%
blocking minority of largest net payers post-Nice			*157.045*	*41,84%*	***25***	*28,74%*	***71***	*29,96%*
S	-1144,70	-0,59	8.854	2,36%	**4**	4,60%	**10**	4,22%
blocking minority of largest net payers pre-Nice			*165.899*	*44,20%*	***29***	*33,33%*	***81***	*34,18%*
B	-1.137,60	-0,52	10.213	2,72%	**5**	5,75%	**12**	5,06%
F	-971,70	-0,08	58.966	15,71%	**10**	11,49%	**29**	12,24%
A	-735,80	-0,41	8.082	2,15%	**4**	4,60%	**10**	4,22%
I	-153,10	-0,02	57.612	15,35%	**10**	11,49%	**29**	12,24%
L	-52,40	-0,35	429	0,11%	**2**	2,30%	**4**	1,69%
DK	36,60	0,03	5.313	1,42%	**3**	3,45%	**7**	2,95%
FIN	42,30	0,04	5.160	1,37%	**3**	3,45%	**7**	2,95%
IRL	2663,90	4,82	3.744	1,00%	**3**	3,45%	**7**	2,95%
P	2710,80	3,11	9.980	2,66%	**5**	5,75%	**12**	5,06%
GR	4359,80	4,12	10.533	2,81%	**5**	5,75%	**12**	5,06%
E	5911,00	1,27	39.394	10,50%	**8**	9,20%	**27**	11,39%
minority of cohesion countries			*63.651*	16,96%	***21***	*24,14%*	***58***	*24,47%*

Total population	**375.325**					
total votes			**87**	100,00%	**237**	100,00%
QMV threshold	**232.702**	62,00%	62	71,26%	169	71,31%
blocking minority	***142.624***	38,00%	***26***	*28,74%*	***69***	*28,69%*

Sources: European Commission: *Financing the EU* , Com (1998) 560 of 7 October 1998 and documents of EP Committee on Constitutional Affairs

CONCLUSIONS

The Committee on Budgets calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

The European Parliament,

Regrets that the Member States have not seen fit to complete a reform of the EU budget procedure before the next enlargement; believes that, as far as the CAP is concerned, procedural reform must go hand-in-hand with policy reform; re-iterates its position that codecision over financial regulations, and the CAP, are indispensable pre-conditions for democratic legitimacy in an enlarged Union; deplores in particular the continued ambiguous status of the financial perspective, another uncertainty which it would be better to clarify before enlargement;

Notes the cost implications of the new initiatives launched in the Treaties including enhanced cooperation; CFSP/ESDP; Justice and Home Affairs cooperation (Arts 29 and 31, EU Treaty); financial assistance to Member States in case of natural disasters (Art. 100, EC Treaty); social provisions (Arts 137, 144); structural actions (Art. 161); environment (Art. 175(2)); and political parties (Art. 191); warns that the Member States cannot unilaterally take decisions about how these costs are to be financed, without the agreement of the European Parliament as the other branch of the budgetary authority; notes that most of these initiatives were not foreseen in the financial perspective agreed in 1999 and therefore could imply a revision of the relevant ceilings;

Calls for the establishment of a high-level inter-institutional working group, as regards the composition of the institutions in view of enlargement and the resulting costs, in order to study the financing needs of the institutions and to make suitable proposals with regard to financial perspective and the necessary adjustments thereof.

11 April 2001

OPINION OF THE COMMITTEE ON CITIZENS' FREEDOMS AND RIGHTS, JUSTICE AND HOME AFFAIRS

For the Committee on Constitutional Affairs

on the Treaty of Nice and the future of the European Union
(2001/2022 (INI))

Draftsman: Elena Ornella Paciotti

PROCEDURE

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Elena Ornella Paciotti draftsman at its meeting of 27 February 2001.

It considered the draft opinion at its meetings of 20 March and 10 April 2001.

At the latter meeting it adopted the following conclusions unanimously.

The following were present for the vote: Graham R. Watson, chairman; Robert J.E. Evans, vice-chairman; Elena Ornella Paciotti, draftsman; Niall Andrews, Alima Boumediene-Thiery, Carmen Cerdeira Morterero (for Adeline Hazan), Ozan Ceyhun, Carlos Coelho, Marcello Dell'Utri, Giuseppe Di Lello Finuoli, Giorgos Dimitrakopoulos (for Charlotte Cederschiöld), Daniel J. Hannan, Jorge Salvador Hernández Mollar, Anna Karamanou, Margot Keßler, Alain Krivine (for Pernille Frahm), Hartmut Nassauer, William Francis Newton Dunn (for Jan-Kees Wiebenga), Arie M. Oostlander, Timothy Kirkhope, Ingo Schmitt, Eva Klamt, Patsy Sörensen, Sérgio Sousa Pinto, Joke Swiebel, Anna Terrón i Cusí, Anne E.M. Van Lancker (for Gianni Vattimo) and Christian Ulrik von Boetticher,

SHORT JUSTIFICATION

1. In drawing up this opinion, account has been taken of the following documents:
- the declaration on the future of the Union approved by the Nice European Council,
- the Charter of Fundamental Rights of the European Union,
- the working document on the Treaty of Nice and the future of the Union provided by Mr Méndez de Vigo and Mr Seguro of the Committee on Constitutional Affairs,
- the European Parliament's earlier resolutions on preparations for the Intergovernmental Conference (18 November 1999 and 3 February 2000) and the Nice European Council (30 November 2000) and on the outcome of Nice (14 December 2000),
- Parliament's resolutions on the area of freedom, security and justice (13 April 1989, 16 September 1999 and 15 February 2000).

2. It must first of all be pointed out that the working document produced by Mr Méndez de Vigo and Mr Seguro is a very dense cultural and political analysis, which provides a wide-ranging and in-depth review of all aspects of the future of the Union. It is the task of the Committee on Citizens' Freedoms to suggest the measures necessary to ensure that the fundamental rights of European citizens are observed in a way that is consistent with realisation of the Area of Freedom, Security and Justice.

In this context, it should be noted that:
(a) The Nice European Council has demonstrated that the traditional method of intergovernmental conferences is unsuitable and preparations for the next reform of the treaties should therefore be entrusted to a 'Convention' or institutional Conference similar to the one which drew up the Charter of Fundamental Rights, including representatives of the candidate countries, and which would prepare a draft designed to reform, simplify and reorganise the treaties, while at the same time defining the fundamental principles of the Union and the powers of the institutions in a single, clear, concise and basically stable document (like a Constitution)[1] .

(b) The Charter of Fundamental Rights must be incorporated into the Treaties (in the 'Constitutional' section) as it is now paradoxical that Article 6 TEU refers to the European Convention for the Protection of Human Rights, to which the EU has not formally acceded, but makes no reference to the Charter, despite the fact that all the institutions of the Union have subscribed to it[2].

3. With regard to specific aspects of the Treaty of Nice directly affecting human rights, it should be noted that:
(a) the change in Article 7 TEU approved by Nice is to be welcomed in that it remedies a flaw by introducing a warning system where there may be a serious risk of a breach of fundamental rights in a Member State[3];
(b) the reforms concerning the Court of Justice, the Court of First Instance and the Court of Auditors are also to be welcomed, even if they do not go far enough.

In relation to judicial aspects, the following points should be taken into consideration:

[1] EP resolution of 14.12.2000.
[2] EP resolutions of 18.11.1999, 30.11.2000, 14.12.2000, etc.
[3] EP resolution of 14.12.2000.

- direct access to Community courts for all citizens in the event of violation of their fundamental rights[1];
- the Commission proposal, endorsed by Parliament, to create a European Public Prosecutor's office, an independent body specialising in the prosecution of fraud affecting the financial interests of the Union through the national administrations[2];
- the proposal to give the European Data Protection Supervisor - set up by Regulation EC 45/2001[3] - the power to bring proceedings in the European courts (Court of First Instance and/or Court of Justice)[4].

These proposals were approved by the Committee on Citizens' Freedoms when the opinion by Mrs Palacio Vallelersundi was adopted on 23 February 2000 (PE 285.880).

One year later, they have lost none of their relevance to the fundamental objective of construction of the European Union as an area of freedom, security and justice, and hence of reorganising the treaties, which is to put the citizen at the heart of the process. A better definition must also be found for the concept of an area of freedom, security and justice, which is currently confined to the measures provided for by Title IV TEC and Title VI TEU, to make it compatible with the definition of fundamental rights contained in the text of the Charter, particularly in areas where the Treaties already confer specific powers on the institutions of the Union. These areas include promoting an active policy against the discrimination set out in Article 13 TEC; the rights of citizens enshrined in Articles 17 to 22 TEC; the right to privacy, inferred by Article 286 TEC; the right to sound administration already recognised by the case law of the Court of Justice. In essence, what is at stake is clarifying the necessary interaction between the definition of fundamental rights and implementation of the measures required at European level to ensure that those rights are protected.

The definition of fundamental rights and the rights relating to European citizenship make it urgent to bring police and judicial cooperation in criminal matters (currently third pillar) within the Community pillar in order to endow the treaties with legislative coherence, provide for proper democratic control and safeguards of citizens' freedoms, eliminate unnecessary complications, ensure that EU policies in the areas of freedom, security and justice are genuinely interdependent and make the relevant legislation easy for citizens to understand. It is worth noting that consolidation of this kind need not necessarily involve a change in the current roles of Member States and the Union (since in the Community sphere it is also perfectly possible for certain areas to be under the jurisdiction of Member States alone and others to be shared between Member States and the Union or be exclusively under EU jurisdiction) and that the consolidation of the first and third pillars is also justified in that - unlike the second pillar – they concern policies that are primarily implemented within the Union[5].
Consolidating what are now third pillar matters in the first pillar also solves the problem of the lack of **judicial review** of activities impacting of the rights of citizens, repeatedly highlighted by the European Parliament. To ensure **democratic scrutiny** - the need for which has been pointed out on numerous occasions - these matters should in future be subject to the

[1] EP resolution of 18.11.1999.
[2] …
[3] OJ L 8, 12.01.2001, pp. 1-22.
[4] Palacio opinion.
[5] EP resolution of 16.09.1999.

codecision procedure involving the European Parliament[1].

Finally, appropriate institutional arrangements need to be found for Europol, and coordinated with Eurojust[2].
In view of the above considerations, many of the conclusions contained in the opinion of 26 February 2000 have been reproduced here.

CONCLUSIONS

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

1. Calls for the Charter of fundamental right of the EU to be included in the Treaties so to be legally binding and to reinforce the citizenship of the Union ,

2. Considers it essential to consolidate in the EC Treaty the fundamental rights (set out in Article 6 TEU and the EU Charter of Fundamental Rights), the rights of citizens and all the other provisions directly or indirectly related to action by the European institutions to assist persons who are holders of a fundamental right,

3. Notes that the development of the Union as an area of freedom, security and justice (AFSJ) requires the regulatory and institutional framework to be simplified substantially by:

   - merging, within the Community framework, judicial and police cooperation in criminal matters and judicial cooperation in civil matters and measures relating to the movement of persons,

   - recognising, in application of the principle of the rule of law (Article 6, first paragraph, TEU), that the Court of Justice has full jurisdiction over all measures relating to implementation of the AFSJ, the differentiation in legal protection in the third pillar being in breach of the principle of equality of European citizens before the law,

   - introduction of the codecision procedure and qualified majority voting for all measures relating to establishment of the AFSJ, coresponsibility of the European Parliament at Union level being the corollary of the role played by the parliaments of the Member States in the areas of freedoms and criminal law. However the principle of democracy requires that adoption of binding law in this area has to be done by elected representatives of the people.

[1] EP resolution of 15.02.2000.
[2] EP resolution of 13.04.1999 and later resolutions.

- regrets that Article 67(1) of the Treaty of Amsterdam was not modified, therefore calls on the Member States to give up their right of initiative, provided for during the five-year transitional period after the entry into force of the Treaty of Amsterdam, or at least to use it with the greatest possible restraint and to accept a coordinating role on the part of the Commission, so as to avoid a proliferation of initiatives and lack of coherence***;***

4. Registers the difficulties the field of visas, asylum and immigration and underlines the necessity to rapidly stipulate common European principles concerning measures in the field of immigration, asylum measures and the protection of exiles and refugees.

5. Calls for the introduction of rigorous judicial guarantees for all persons subject to the law of the Union, with a view to applying the principle of the rule of law fully within the Union (Article 6 TEU) and, consequently, for:

   - recognition that any natural or legal person has the right of recourse to the Court of Justice in the event of measures taken by the institutions or bodies of the Union violating their fundamental rights;

   - the establishment of appropriate judicial guarantees in relation to the activities of the future European Public Prosecutor's Office authorised to bring proceedings in connection with the protection of the Community's financial interests or in other cases laid down in the Treaties;

   - the authority provided for in Article 286 TEC, and the European Ombudsman, to have the right to apply to the Court within the framework of their competences.

6. Urges the change in the legal basis of Europol and its integration into the institutional framework of the Union so as to guarantee appropriate scrutiny by the European Parliament and judicial review by the European Court of Justice.

26 April 2001

OPINION OF THE COMMITTEE ON INDUSTRY, EXTERNAL TRADE, RESEARCH AND ENERGY

For the Committee on Constitutional Affairs

on the Treaty of Nice and the future of the European Union
(2001/2022 (INI))

Draftsman: Carlos Westendorp y Cabeza

PROCEDURE

The Committee on Industry, External Trade, Research and Energy appointed Pat the Cope Gallagher draftsman at its meeting of 27 February 2001.

It considered the draft opinion at its meetings of 20 March 2001, 27 March 2001, 10 April 2001 and 24 April 2001.

Prior to taking the final vote, Mr Pat the Cope Gallagher stated that given the fact that the amendments adopted had changed his initial position on the subject, he could not continue as draftsman. The committee then appointed its chairman, Carlos Westendorp y Cabeza, draftsman.

At the last meeting it adopted the following conclusions by 36 votes to 2, with 2 abstentions.

The following took part in the vote: Carlos Westendorp y Cabeza, chairman and draftsman; Nuala Ahern, vice-chairman; Konstantinos Alyssandrakis, Ward Beysen (for Willy C.E.H. De Clercq), Guido Bodrato, Massimo Carraro, Giles Bryan Chichester, Nicholas Clegg, Elisa Maria Damião (for Erika Mann), Harlem Désir, Concepció Ferrer, Colette Flesch, Glyn Ford, Pat the Cope Gallagher, Lisbeth Grönfeldt Bergman (for Marjo Matikainen-Kallström), Michel Hansenne, Roger Helmer, Hans Karlsson, Bashir Khanbhai (for Anders Wijkman), Helmut Kuhne (for Norbert Glante), Bernd Lange (for Rolf Linkohr), Peter Liese (for Werner Langen), Eryl Margaret McNally, Nelly Maes, Reino Paasilinna, Elly Plooij-van Gorsel, Samuli Pohjamo (for Astrid Thors), John Purvis, Alexander Radwan (for Peter Michael Mombaur), Bernhard Rapkay (for François Zimeray), Mechtild Rothe, Christian Foldberg Rovsing, Paul Rübig, Umberto Scapagnini, Konrad K. Schwaiger, Esko Olavi Seppänen, Helle Thorning-Schmidt (for Imelda Mary Read), W.G. van Velzen, Alejo Vidal-Quadras Roca and Myrsini Zorba.

I. Introduction

This draft opinion concentrates mainly on two aspects of the Nice Treaty. The first concerns the Protocol on the financial consequences of the expiry of the ECSC Treaty and the establishment and management of the Research Fund for Coal and Steel, and the second aspect is Article 133 on common commercial policy. A brief commentary will be made on Article 157(3) on specific support measures in the industrial field, and Article 181a on economic, financial and technical cooperation with third countries in the field of development cooperation.

We have received the opinion of the Legal Service of our Institution on the legal aspects of Articles 133, 300(2) and 300(6) as amended by the Nice Treaty. The draftsman concentrates on the political aspects of Article 133.

II. Protocol on the ECSC Treaty

The Protocol on the European Coal and Steel Community (ECSC) entails the following:
Firstly, all assets and liabilities of the ECSC shall be transferred to the European Community on 24 July 2001 (Art. 1(1)).
Secondly, all assets, upon liquidation of the ECSC, will be 'intended for research in the sector related to the coal and steel industry' and hence these Assets will constitute the endowment of the 'Research Fund for Coal and Steel' (Art. 1(2)).
Thirdly, a new Research Fund for Coal and Steel is thus set up, whose revenue will come from the management of the liquidated assets of the ECSC. The new RFCS will have its own assets which will be managed in such a way that they would earn income in order to finance research in the sector related to the coal and steel industry on the assumption that such research will be 'outside the research framework programme' (Art. 1(3)).
Fourthly, Article 2 stipulates the kind of decisions to be taken: the Council will act by unanimity. The Commission will draft the appropriate legal proposal, and the EP will simply be asked for its opinion.

Whereas the expiry date of the ECSC Treaty is set on 23 July 2002 (after a period of 50 years since the Treaty on the ECSC entered into force on 23 July 1952), there will be a prolongation for the ECSC statistic system. It will continue until 31 December 2002.

III. Article 133 on the Common Commercial Policy (CCP)

The draftsman concentrates on the meaning of the new additions:

Para 3, subpara 1 empowers the Council (alone) to 'authorise the Commission to open the necessary negotiations' for concluding an international agreement. However, the Nice Treaty added a new sentence to para 3: 'the Council and the Commission shall be responsible for ensuring that the agreements negotiated are consistent with internal Community policies and rules'. In other words, an international agreement cannot undo or should not lead to modifications of 'internal Community policies and rules'. This safeguard clause is important because its logic is repeated in the new paragraphs 5 to 7.

Para 3, sub-para 2 creates the secretive Committee 133 whose role is to 'assist the Commission in this task [conduct the negotiations with third countries].' However, the Nice Treaty has gone further by adding a new sentence: The Commission shall report regularly to the special committee on the progress of negotiations. This modification could be interpreted as strengthening the role of the Council because the Commission is held to account to the 133 Committee.

Para 3, sub-para 3 is maintained intact but the relevant provisions of Article 300 have not helped advance the CCP. And Para 4 is equally unchanged: 'Council shall act by qualified majority'.

Para 5 is new and of substance : 1st sub-paragraph stipulates that : a) Trade in services, and b) Commercial aspects of intellectual property are now covered by the legal provisions of Article 133(1) to (4), and hence QMV will apply but 'without prejudice to para 6'. Consequently, investment is only partly included insofar as mode 3 of GATS is defined as trade in services.

2nd sub-para immediately qualifies and limits QMV because unanimity will be applied under two cases, whenever a) Internal Rules are to be adopted, b) The Community is to be conferred upon new competence in a field not yet covered by the Treaty. Yet case b) could be dealt with by invoking Article 308 as a legal base and hence the EP will be consulted.

3rd sub-para stipulates that for the 'negotiation and conclusion of a horizontal agreement', the Council will act 'unanimously'. This is a very interesting case because we are to have a number of 'horizontal agreements' and we will need to examine them carefully. It is very likely that 'horizontal agreements' may cover more than one sector, implying more than one legal base. This situation will probably create a dilemma: for matters falling into the category of internal market the Council will decide by QMV and the EP will be co-legislator but the same matters, when treated as an external case, will be decided by unanimity without involving the EP.

4th sub-para grants to Member States the right to 'maintain and conclude agreements with third countries' provided that 'such agreements respect Community law'. Under the Treaty of Nice and the new provisions of Article 133, bilateral agreements are given a new lease of life. The task of the Commission would be to examine such agreements with meticulous care to find out whether they would contain provisions that do not respect Community law, or even contradict it.

In a case where the Commission concluded that a bilateral agreement between a Member State and a third country contained clauses that 'do not fully respect Community law', what would the Commission do ? Under paragraph 3, the Commission would have to submit a report to the 133 Committee. This report could then be accepted, rejected or dismissed as 'not well-reasoned or unfounded'.

Para 6 is new and particularly important because it invokes the case of parallelism :
1st sub-para prohibits the conclusion of agreements which might lead to harmonisation of Internal Market matters by obliging Member States to adjust internal market directives in conformity with trade agreements.
2nd sub-para is the case of shared competence (or mixed agreements*)* between the EC and Member States in the field of traded services for which a common accord of the Member States will be required. Hence trade in cultural and audiovisual services, educational services, and

social and health services will require for a decision the provisions of Article 300. And the negotiation of agreements in these three fields will be 'concluded jointly by the Community and the Member States' (i.e. shared competence).

This dual requirement (i.e. shared-competence and unanimity) is justified by the Commission because 'it is not possible to use trade negotiations to dismantle the cultural, educational or social policies of the Member States'. However, one may question the logic of the Commission's position over 'shared competence and unanimity' in the light of the determinants establishing global processes. Trade is one of four factors determining globalisation. The other three factors, such as investment, technology and financing, are more powerful in opening the back door for harmonisation in policy areas in which shared-competence and unanimity would apply. Regulatory barriers via trade negotiations and agreements cannot withstand the forces of investment, technology and capital markets.

3rd sub-para concerns 'the negotiation and conclusion of international agreements in the field of transport', under Title V and Article 300 of TEC. That is to say that Title V and Article 300 will possibly be used as a dual legal base for international agreements. We need however to be careful whether Article 71 (QMV and co-decision) in conjunction with Article 300(3) 1st sub-paragraph (QMV and possibly co-decision) will be used.

Paragraph 7 is new and interesting on two accounts **:** Firstly, it creates an option to extend the provisions of Article 133 to aspects of 'intellectual property' other than its 'commercial aspects'. Secondly, the usual type of procedure is invoked : 'Unanimity' at the Council level and 'consultation' at the EP level, after a proposal from the Commission.

IV. Article 157 on Industry

This article of the Treaty was introduced by the Maastricht Treaty containing three paragraphs, but they do not constitute an EC policy. The Nice Treaty only amended para 3 in one essential way. It now introduces codecision – while previously required unanimity, after consulting the EP – in order to decide on measures intended to attain the four objectives.
There is a second amendment to the Maastricht text, which is introduced by the Nice Treaty. It concerns 'fair competition'. There have been complaints that 'favourable tax measures' and 'substantial differences in rights and interests of employees in Member States' have created unfair competition. Hence by prohibiting them one may lessen distortions of competition, and this is the logic of the amendment to Article 157(3).

V. Article 181a on Relations with Third Countries

The Nice Treaty has introduced this new Title XXI via a new Article 181a. The objectives stipulated in this new Article partly touch on the competence of the following EP committees : Development, ITRE and AFET plus Budgets and Budgetary Control.

Para 1 stipulates the scope of this Article by stating that the Community will carry out measures that may have a three-fold nature : a) Economic, b) Financial, and c) Technical cooperation. And measures of this kind should, according to the Treaty, 'contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.'

Para 2 sets the procedure: QMV after consulting the EP for adopting the necessary measures. But, again, for the association agreements covered by Article 310, unanimity will be required. Para 3 formalises the Community cooperation agreements with third countries and international organisations. The legal base for their conclusion will be Article 300, relegating the role of the EP to a simple consultation.

VI. The Commercial policy compared with other EC common policies

The Rome Treaty that came into force in 1957, foresaw 4 common policies in 1. Agriculture, 2.Transport, 3. Competition, and 4. Commercial policy. The Maastricht Treaty added a fifth common policy, Economic and Monetary Union (EMU). The main legal bases used for attaining the scope and objectives of these five common policies as well as the role of the EP in each common policy and procedure are stated in **Table 1**, attached to this note, serves a purpose : 'to make comparison of the CCP with the other four common policies easier'.

The CCP was conceived in mid-1950s to deal with goods when there were only 6 Member States and when external trade was not significant. But since that time the world and the EU have changed.

Table 1[1]

Nice Treaty Provisions concerning Community Common Policies

Common Policies	Main Legal Base	European Parliament's Role
1. Agriculture	Art. 37 (2) and (3) - QMV on - making regulations - issuing directives - taking decisions - establishing common organisation	Consultation
2. Transport	Art. 71 (1) on common rules and conditions - QMV Art. 71 (2) on standards of living (as derogation from QMV) - Unanimity	Co-decision Consultation
3. Competition	Art. 83 on definition of prohibitions and detailed rules - QMV Art. 87 (3) on Categories of State Aids - QMV Art. 89 on application of aids granted - QMV	Consultation No role Consultation
4. EMU	Art. 99 (5) on multilateral surveillance - QMV Art. 100 on financial assistance - Unanimity Art.102(2) on access to financial institutions - QMV Art. 103 (2) on No guarantees, nor liability assumed by EC - QMV Art. 104 (14) on excessive deficits: - Unanimity on replacing the relevant Protocol - QMV on Rules and definitions Art. 105 (6) on prudential supervision - unanimity Art. 106 (2) technical specifications of euro coins - QMV Art. 107 (6) on the ESCB Statute - QMV	Cooperation To be informed Cooperation Cooperation Consultation Assent Cooperation Consultation

[1] Not to be translated

	Art. 111 (1) on International Agreements on an exchange-rate system - Unanimity - QMV if changes of euro central rates Art. 111 (2) on Orientations - QMV Art. 111 (3) and (4) on concluding an agreement on monetary and exchange policy with IMF - QMV Art. 111 (5) on EMU representation - Unanimity	Consultation To be informed No role No role No role
5. Common Commercial Policy	Art. 132 (1) on aid for exports - QMV Art. 132 (3) and (4) on mandate to Commission to open negotiations - QMV Art. 133 (5) to (7) **See section II,** which <u>also</u> comments on Art. 181 (new) that falls in the competence of Development Cooperation, and Art. 300 on the conclusion of agreements	No role No role

CONCLUSIONS

The Committee on Industry, External Trade, Research and Energy calls on Committee on Constitutional Affairs, as the committee responsible, to incorporate the following point in its motion for a resolution:

As regards Industry, External Trade, Research and Energy

1. Notes the Treaty of Nice, and, in particular, the amendments to Article 133 and 157, also Article 181a and the Protocol on the ECSC Treaty; deplores the fact that the governments could not agree to enhance the democratic legitimacy and accountability of the policies covered by these articles;

2. Welcomes the fact that the IGC took into account the European Parliament's proposals regarding Article 157 on Industry as expressed in its resolution of 13 April 2000;

3. Regrets the fact that the IGC did not take into account the proposals for enhanced legislative participation and more democratic control in the following areas:
   (a) decision-making, funding and management of the new Research Fund for Coal and Steel;
   (b) the new Article 181a incorporated into the Treaty lays down rules governing the conclusion of agreements on economic, financial and technical cooperation, but that, despite the substantial implications for the budget, stipulates only that Parliament should be consulted on such agreements, further widening the gulf between Parliament's budgetary powers and its involvement in policy-making;
   (c) the Treaty of Nice has failed to bring about the vitally needed improvements in the ability of the Community to take action in the sphere of the common commercial policy; regrets, in particular, that the requisite steps in the areas of investment, services and intellectual property have not been taken; such steps would be a prerequisite if the Community is to play an active role commensurate with its economic importance in the World Trade Organisation and multilateral trade relations; points out that the changes made to Article 133 of the Treaty could also have been adopted on the basis of a unanimous Council decision pursuant to Article 133(5) of the Treaty, after consultation of Parliament;
   (d) no provisions regarding the supply of information to and the involvement of Parliament in connection with the conclusion of international agreements pursuant to Articles 133 and 300 of the Treaty have been incorporated into the Treaty of Nice[1]; in this connection, calls on the Council to negotiate with Parliament a corresponding interinstitutional agreement on involvement and information in connection with the conclusion of international agreements (see Annex 1 of this Resolution);

4. Calls upon the European Commission to put forward proposals at the next Treaty revision for greater participation of the European Parliament in the four areas referred

[1] See paragraph 33 of the report on the European Parliament's proposals for the Intergovernmental Conference, A5-0086/2000.

to above.

5. Regrets the fact that the IGC did not incorporate in to the Treaty the changes required to establish a common energy policy, and calls for the incorporation of a new consolidated energy chapter in the Treaty.

Annex 1

Interinstitutional Agreement between the European Parliament and the Council on the Implementation of the Common Commercial Policy

The European Parliament and the Council,

(a) whereas the amendments to the EC Treaty, and in particular to Article 133, proposed by the Draft Treaty of Nice will increase the democratic deficit and change the institutional balance,

(b) whereas the Draft Treaty of Nice added a new Article 181a to deal with cooperation agreements mainly in three fields, economic, financial and technical cooperation, but made provision only for the consultation of the European Parliament, notwithstanding the serious budgetary implications of such agreements,

(c) whereas Article 133 as amended by the Draft Treaty of Nice essentially strengthens intergovernmentalism by holding the Commission to account to the 133 Committee, rather than to a Community institution, and whereas an amendment of this kind has protected both the Commission and Council from parliamentary scrutiny,

(d) whereas the amendments to Article 133 incorporated by the Draft Treaty of Nice have not made a common policy more open or more transparent than it was initially conceived as being under the Treaty of Rome in 1957, thereby failing to increase the credibility of an EC common policy, and whereas the amendments do not enhance the democratic legitimacy of the EU,

(e) whereas the Common Commercial Policy in its wider context (if Articles 133, 181a and 300 are taken together), if compared to the other four EC common policies, is a common policy in name only, since it retains all the important aspects of intergovernmentalism, a fact which negates the essence of a Community common policy and does not endow the EU with mechanisms or policies capable of dealing with global challenges,

HAVE AGREED AS FOLLOWS:

1. Under the Treaty system, the mandate issued to the Commission concerning the conclusion and implementation of international agreements, such as association agreements, cooperation agreements and trade agreements, shall follow, as far as possible, a Community approach defined by the relevant articles of the Treaty and existing Community legislation.

2. For all proposals from the Commission to the Council implementing Article 133(1), the procedure referred to in the first subparagraph of Article 300(3), guaranteeing the involvement of the EP, shall be used as a second legal basis.

3. The Council shall request the opinion of the European Parliament before granting a mandate to the Commission to open the necessary negotiations under Article 133(3). The European Parliament shall deliver its opinion within a time-limit which the Council may

lay down according to the urgency of the matter.

4. Briefs, reports and information documents, which the Commission shall submit to the 133 Committee, shall simultaneously be submitted to the European Parliament for information under the procedure provided for in Annex VII (on confidential documents) to Parliament's Rules of Procedure.
   The European Parliament may invite the chairman of the 133 Committee to appear before its committee responsible for external trade for an exchange of views, which may, if appropriate, be held in camera.

5. During the negotiations on a trade or cooperation or an association agreement, and whenever the Parliament considers it necessary, the Commission shall inform Parliament in camera of the progress of negotiations. Parliament may, in this context, decide to exercise the power granted by Article 8 of Council Decision 1999/468/EC.

6. The outcome of negotiations on goods and services covered by Article 133 shall be submitted to Parliament for its assent under the procedure stipulated in the second and third paragraphs of Article 300(3).

7. The procedure provided for by Article 300(3) shall be followed for all association agreements under Article 310 and cooperation agreements under various titles of the Treaty to be negotiated and concluded by the Community with third countries or competent international organisations, whenever such agreements have significant financial, economic and trade implications for the Community or the Member States.

8. The Commission shall inform the EP before asking the Council for authorisation to open the trade disputes procedure, whilst the Council shall inform the EP of the outcome of the decision.

25 April 2001

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

For the Committee on Constitutional Affairs

on the Treaty of Nice and the future of the European Union
(2001/2022 (INI))

Draftsperson: Elspeth Attwooll

PROCEDURE

The Committee on Employment and Social Affairs appointed Elspeth Attwooll draftsperson at its meeting of 15 February 2001.

It considered the draft opinion at its meeting of 24-25 April 2001.

At this meeting it adopted the following conclusions by 36 votes to 2, with 3 abstentions.

The following were present for the vote: Michel Rocard, chairman; Winfried Menrad, Marie-Thérèse Hermange and José Ribeiro e Castro, vice-chairmen; Elspeth Attwooll, draftsperson; María Antonia Avilés Perea, Regina Bastos, Philip Bushill-Matthews, Chantal Cauquil (for Arlette Laguiller), Alejandro Cercas, Luigi Cocilovo, Elisa Maria Damião, Proinsias De Rossa, Carlo Fatuzzo, Ilda Figueiredo, Hélène Flautre, Fiorella Ghilardotti, Marie-Hélène Gillig, Anne-Karin Glase, Ian Stewart Hudghton, Stephen Hughes, Karin Jöns, Piia-Noora Kauppi (for Rodi Kratsa-Tsagaropoulou), Ioannis Koukiadis, Jean Lambert, Thomas Mann, Mario Mantovani, Claude Moraes, Mauro Nobilia, Manuel Pérez Álvarez, Bartho Pronk, Tokia Saïfi, Herman Schmid, Peter William Skinner (for Jan Andersson), Miet Smet, Ilkka Suominen, Helle Thorning-Schmidt, Bruno Trentin (for Harald Ettl), Ieke van den Burg, Anne E.M. Van Lancker and Barbara Weiler.

SHORT JUSTIFICATION

The Treaty changes called for by the Committee on Employment and Social Affairs prior to the Nice Summit were effected only in relation to introducing codecision for incentives under Article 13. The Committee continues to be of the view that the changes it recommended are desirable ones and repeats them in the Conclusions.

In relation to the Declaration on the Future of the European Union, the Committee endorses the view that there should be wide-ranging discussions with all interested parties. In its opinion this should extend to those located in applicant countries. Where civil society is concerned, one major issue is its formal engagement in the decision-making processes of the European Union and the legal base that might be provided for this.

Of the four substantive issues for debate - delimitation of competencies, the status of the Charter, simplification of the Treaties and the role of the national parliaments - only the first three are of specialist concern to the Committee:

1) Matters relating to employment and social affairs are currently a shared competence between the European Union and Member States and it is considered that they should remain so.

2) It would be helpful for the development of social rights if the Charter were to become binding on European Union institutions and on Member States in the implementation of European Union law.

3) Before Nice, the Committee called for references to the revised Social Charter of the Council of Europe and certain core UN and ILO Conventions to be included in the Treaties. This could be effected during the simplification process. This process could also clarify the relationship between various objectives of the Union, for example between its economic policy and its social policy.

CONCLUSIONS

The Committee on Employment and Social Affairs calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

1. Call for a convention-type body to develop proposals for the next IGC, which would engage closely with the social partners and civil society; that Member States be also encouraged to provide for fora where citizens interact with their parliaments on the future of Europe;

2. Regrets that the Treaty of Nice did not extend qualified-majority voting to all areas of social policy, delete the exceptions under Article 137 (6) EC or put Parliament on an equal footing with the Council in all areas covered by Articles 13, 42, 138 and 139 EC; welcomes, however, the fact that this has happened in relation to the provision of incentives under Article 13 EC;

3. Regrets also that there has been no extension of equal treatment of men and women, as required by the principle of equal pay referred to in Article 141 of the EC Treaty, to all labour market matters and that no reference to the reconciliation of family and occupational responsibilities, both for men and women, has been inserted in Article 137 (1);

4. That the Treaty provisions (Art. 16) relating to Services of General Interest be strengthened to ensure that the European Social Model thrives in a pluralist economy;

5. Calls for future proposals for amending the Treaties to rectify these omissions;

6. Calls for the debate on the future of the European Union to include the issue of the provision of a legal base for the engagement of civil society in its decision making processes; calls, therefore, for the widest possible consultation on this issue both within the EU and within applicant countries;

7. Refers to Article 128 TEC as the legal base for the open coordination method in the employment policy and insists on the addition to the Treaty of a comparable legal base for the social protection policy;

8. Believes that a more precise delimitation of competencies between the European Union and the Member States, reflecting the principle of subsidiarity, must involve both an element of flexibility and a number of shared competencies, and that all existing Community measures must be used as far as employment and social affairs are concerned: legislation, the open method of coordination, the social dialogue, the Structural Funds, the support programmes, the integrated policy approach, analysis and research; takes the view that the European Parliament, as one arm of the European legislative authority, must be fully involved in the implementation of all these procedures and policy instruments;.

9. Deplores the fact that the Charter of Fundamental Rights of the European Union has not been incorporated into the Treaties; calls for the Charter of Fundamental Rights of the European Union, proclaimed in Nice, to be made binding on European Union institutions and on Member States in the implementation of European Union law; takes the view, therefore, that the Charter of Fundamental Rights must form an integral part of the future Treaty on European Union;

10. Asks for the revision of the Treaties to include references to the revised Social Charter of the Council of Europe and the core conventions of the ILO and the UN, including the UN Convention on the Rights of the Child of 20 November 1989;

11. Calls for a joint annual meeting of delegations of the committees on Employment and Social Affairs from the European Parliament, the Member State parliaments, the candidate country parliaments and the Council of Europe.

25 April 2001

OPINION OF THE COMMITTEE ON AGRICULTURE AND RURAL DEVELOPMENT

for the Committee on Constitutional Affairs

on the Treaty of Nice and the future of the European Union
(2001/2022(INI)

Draftsman: María Rodríguez Ramos

PROCEDURE

The Committee on Agriculture and Rural Development appointed María Rodríguez Ramos draftsman at its meeting of 27 February 2001.

It considered the draft opinion at its meetings of 21 and 27 March and 24 April 2001.

At the latter meeting it adopted the following conclusions unanimously.

The following were present for the vote: Friedrich-Wilhelm Graefe zu Baringdorf, chairman; Joseph Daul, vice-chairman; Vincenzo Lavarra, vice-chairman; Georges Garot (draftsman, for María Rodríguez Ramos), Gordon J. Adam, Danielle Auroi, Alexandros Baltas (for Bernard Poignant), António Campos, Giorgio Celli, Michl Ebner, Jonathan Evans (for Elisabeth Jeggle), Anne Ferreira (for Michel J.M. Dary), Christel Fiebiger, Lutz Goepel, Willi Görlach, María Izquierdo Rojo, Salvador Jové Peres, Hedwig Keppelhoff-Wiechert, Dimitrios Koulourianos, Albert Jan Maat, Jan Mulder (for Giovanni Procacci), James Nicholson (for Francesco Fiori), Neil Parish, Mikko Pesälä, Agnes Schierhuber, Struan Stevenson and Robert William Sturdy.

SHORT JUSTIFICATION

1. The Treaty of Nice and the Common Agricultural Policy

The Treaty of Amsterdam, the main aim of which was to adapt the institutions to the challenge of enlargement, failed in its purpose and did not respond to three key questions: the composition and size of the Commission, the extension of qualified-majority voting and the re-weighting of votes.

In this context, it is to be welcomed that in the end the Nice Conference, after difficult negotiations, was able to adopt an institutional reform which opens up the way to the forthcoming enlargements. Nevertheless, in the view of the draftsman of the Committee on Agriculture and Rural Development, this achievement is clouded by other elements:

(a) First of all, the negotiation of institutional aspects resulted in other issues simply being ignored, in particular the general extension of codecision to cover all decisions now subject to qualified-majority voting. The European Parliament submitted practical proposals for the extension of codecision in the spheres of the common agricultural policy, competition and state aids policy but they were not at any point included on the agenda of the Conference.

(b) The non-introduction of codecision for the CAP is one of the main issues outstanding after Nice, and thus perpetuates a degree of discrimination against agriculture compared with areas connected with it, such as public health, consumer protection, the environment or the internal market, which already come under codecision. This distinction is in itself artificial, it does not take into account the existence of an integrated agri-foodstuffs system in the EU, it goes against legal clarity and, finally, is a source of on-going institutional conflict (even within the European Parliament, as regards the distribution of legislative proposals between the various parliamentary committees responsible). On the other hand, it should be borne in mind that the recognition of codecision for the CAP would only concern legislative acts, and would mean that the executive and administrative aspects, would as is already the case, would continue to be under the competence of the Commission, in accordance with the rules of comitology.

(c) In this context it must also be borne in mind that contrary to the arguments sometimes put forward by the Commission, the introduction of codecision for *all legislative acts concerning agriculture* would not result in an intolerable increase in Parliament's workload. It should be remembered that in 1998, despite the submission of Agenda 2000, the European Parliament was consulted on 53 acts concerning agriculture. In 1999 the number was only 28, of which 16 could be considered as '*fundamental acts*' and 12 as *'non-fundamental acts'*. These figures are absolutely no justification for a prior and necessarily ambiguous distinction regarding the nature of agricultural legislation, resulting in the definition of two parallel procedures, a consultation and a codecision procedure, depending on the nature of each act, which poses the added risk of causing continual conflicts in interpretation. Furthermore, there are a large number of legislative acts (technical adaptations, extensions of the validity of regulations in force, etc.) which might be adopted systematically at first reading by means of a simplified procedure, in order to avoid possible delays in their implementation. In short, the European Parliament, as the highest representative of the peoples of Europe, must insist on the introduction of codecision for *all legislative acts concerning agriculture* at the next Intergovernmental Conference in 2004.

(d) Furthermore, the Treaty of Nice has made the decision-making process even more complicated - if that's possible - which may bring the forthcoming reforms of the common agricultural policy to a standstill and, at the same time, weaken the EU's position in the current WTO agricultural negotiations.

(e) This situation is particularly serious in that the Intergovernmental Conference concluded in Nice also revealed profound differences between the Member States on the future shape of the Union and officially confirmed the breakdown in the Franco-German axis which has traditionally constituted the driving force behind European integration.

(f) The outcome of Nice gave public opinion the impression that certain countries are primarily concerned with the mere distribution of power within the institutions and has aroused serious doubts about the Council's political ability and will to reach the agreements needed to adapt the CAP to the growing needs of European citizens (clearly demonstrated by the current 'mad cow' crisis) and the challenges resulting from the accessions and the current multilateral negotiations. This situation is jeopardising the protection of the European model of agriculture, a basic component of the European model of society, within an enlarged European Union.

2. Post-Nice: towards a common agricultural and rural policy with codecision

In view of all this, the debate on the future of the European Union envisaged in the *Declaration* included in the Final Act of the Nice Conference (point 3) should take account of the future role of a common agricultural and rural policy in European integration as well as agriculture's contribution to protecting the environment and the landscape, employment, spatial planning and the quality and safety of food. Furthermore, this debate, which may lead to a new division of powers between the European Union and Member States, as envisaged in point 5 of the Declaration, should guarantee the survival of the supranational nature of the future agricultural and rural policy.

Basically, all this means that the next Intergovernmental Conference should include an adaptation of the agricultural chapter of the Treaties (Articles 32-38) to ensure that, in

accordance with the conclusions of the Luxembourg European Council in December 1997, the European model for agriculture is maintained within an enlarged European Union. To achieve this, the Treaties must explicitly sanction the multifunctionality, sustainability and precautionary principles, and at the same time envisage specific support for small farmers and for goods and services of public interest produced by agricultural activity, which the market is at present incapable of rewarding.

In this context, the next reform of the Treaties, to emerge from the Intergovernmental Conference in 2004, must introduce codecision in the agricultural sphere, with a view to improving and guaranteeing the democratic legitimacy and transparency of the Union and bringing the citizens of the Member States closer together, as explicitly stated in paragraph 6 of the *Declaration on the Future of the Union* included in the Final Act of the Nice Conference.

CONCLUSIONS

The Committee on Agriculture and Rural Development calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

Conclusion 1

Notes the institutional reforms introduced by the Treaty of Nice, which open the way to the forthcoming enlargements; in this context, hopes that the Council will show consistency and in the short and long term adopt appropriate means and measures to ensure that the CAP is capable of guaranteeing sustainable, high-quality agriculture, thereby contributing to rural development and economic and social cohesion within an enlarged European Union;

Conclusion 2

Fears that the complexity of the decision-making procedure resulting from the Treaty of Nice will bring the forthcoming reforms of the common agricultural policy to a standstill and, at the same time, weaken the EU's position in the WTO agricultural negotiations; therefore calls on the members of the Council to demonstrate their political will to reach agreements which will make it possible to overcome all the obstacles and send a clear signal to the people of Europe that a reformed CAP will guarantee the rights of consumers, farmers and the rural world in general;

Conclusion 3

Regrets that, once again, the introduction of codecision in the CAP has been ignored, thereby maintaining discriminatory treatment compared with agriculture-related spheres (public health, consumer protection, the environment and the internal market) which already come under codecision, an artificial distinction which goes against legal clarity and is a source of on-going institutional conflict;

Conclusion 4

Requests that the debate on the future of the European Union envisaged in the Declaration

included in the Final Act of the Nice Conference should take into account the future role of a common agricultural and rural policy in European integration and the contribution of agriculture to protecting the environment and the landscape, employment, spatial planning and the quality and safety of food; considers it essential that the new division of competences between the European Union and the Member States emerging from this debate must not jeopardise the supranational nature of the policy;

Conclusion 5

Calls for the European Parliament and its specialist committees to be given an active role in the post-Nice process which is now starting and the planned discussions concerning a new EU Treaty; with regard to the procedure to be employed, calls on the European Parliament, the European Council, the European Commission and the applicant countries to set up a convention with a view to launching the debate on the future of the EU as soon as possible; in that connection, points out that at an early stage the European Parliament must make clear to its discussion partners the vital need for Parliament to be granted full codecision powers in all areas of agricultural policy and for Articles 32 to 38 of the EU Treaty to be revised in such a way as to provide an up-to-date definition of the European agricultural model;

Conclusion 6

Considers it essential that, taking into account the rights of consumers, farmers and the rural world in general, the next Intergovernmental Conference should include an adaptation of the agricultural chapter of the Treaties (Articles 32 to 38) to ensure the protection of the European model of agriculture within an enlarged European Union in accordance with the conclusions of the Luxembourg European Council of December 1997;

Conclusion 7

Considers, in this context, that the future reform of the Treaties must be used to sanction the multifunctionality, sustainability and precautionary principles, which form the basis for the European model of agriculture, and to outline an appropriate framework of specific support for small farmers and the goods and services of public interest produced by farming, which the market is at present incapable of rewarding;

Conclusion 8

In that connection, regards a radical overhaul of the CAP budget as essential so that rural development becomes the cornerstone and the priority of the much-needed reform of agricultural policy;

Conclusion 9

Requests that, as a result of the future reform of the Treaties to emerge from the Intergovernmental Conference in 2004, the codecision procedure *and full budgetary powers* should be applied to all legislative acts concerning agriculture, with a view to improving and guaranteeing the democratic legitimacy and transparency of the Union and bringing the citizens of the Member States closer together, as explicitly envisaged in the Declaration on the Future of the Union included in the Final Act of the Nice Conference.

24 April 2001

OPINION OF THE COMMITTEE ON FISHERIES

for the Committee on Constitutional Affairs

on the Treaty of Nice and the future of the European Union
(2001/2022(INI)

Draftsman: Brigitte Langenhagen

PROCEDURE

The Committee on Fisheries appointed Brigitte Langenhagen draftsman at its meeting of 6 March 2001.

It considered the draft opinion at its meetings of 21 March and 24 April 2001.

At the last meeting it adopted the following conclusions unanimously.

The following were present for the vote: Daniel Varela Suanzes-Carpegna, chairman; Rosa Miguélez Ramos and Hugues Martin, vice-chairmen; Brigitte Langenhagen, draftsman; Elspeth Attwooll, Arlindo Cunha, Pat the Cope Gallagher, Michael John Holmes (for Nigel Paul Farage, pursuant to paragraph 3 of Rule 166 of the Rules of Procedure), Ian Stewart Hudghton, Giorgio Lisi (for Antonio Tajani), John Joseph McCartin (for Carmen Fraga Estévez), Patricia McKenna, James Nicholson, Bernard Poignant and Catherine Stihler.

SHORT JUSTIFICATION

At the intergovernmental conference held in Nice in December 2000 the representatives of the governments of the Member States agreed on a series of reforms with far-reaching implications for the future of the European Union, and in particular for the institutional aspects that will pave the way for the future enlargement of the Union to embrace new Member States.

The IGC resulted in provisions in the form of the 'Treaty of Nice'. That document was signed by the foreign ministers of the Member States on 26 February 2001 and is currently undergoing ratification in all the Member States.

The IGC in Nice dealt with a limited agenda, the central plank of which was the reform required to enable the Community institutions to cope satisfactorily with future enlargement of the Union. In doing so it postponed global reform of existing Community policies and a review of the Community's regulatory framework and of the system under which powers are distributed between the Union and the Member States.

Viewed from this angle, then, the Treaty of Nice is simply a further step along the path towards European integration, an ongoing process whose development began with the Treaty of Rome and continues today.

Given that this situation has not stemmed from a change in circumstances and that the Nice Summit did not address the issues raised in the opinion delivered by the Committee on Fisheries before the intergovernmental conference convened, the committee stands by the premises contained in its opinion[1] and would like to see them addressed in the new process leading up to the intergovernmental conference to be convened in 2004. The next European Council in Gothenburg in June 2001 will mark the first stage in the preparations for the IGC. The Committee on Fisheries' expectations at the starting point of this new process are set out briefly below.

BASIC ISSUES TO BE ADDRESSED IN PREPARING FOR THE NEXT INTERGOVERNMENTAL CONFERENCE IN 2004

A. Specific mention in the constituent Treaties

One of the Community's few existing sectoral policies ought to be afforded more detailed attention in the constituent Treaties. Although initially it was considered to be an appendage of agriculture, the fisheries sector now has a well-developed policy of its own. Hence the need for the new Treaty to include a special 'fisheries' title setting out the aims of the common fisheries policy and the legislative procedures which should be applied in order to implement it.

B. Decision-making procedure

The fisheries sector is one of the few economic sectors where a Community policy under which the responsibility for taking major decisions falls to EU institutions can truly be

[1] A5-0018/00

said to operate. For that reason the European Parliament believes that, as the highest representative of EU citizens and the body which exercises supervisory powers over the Community executive - which, under the Community's specific institutional arrangements, may be the Council or the Commission - its involvement in determining the main issues affecting fisheries policy should extend beyond the current confines of the consultation procedure.

The Committee on Fisheries takes the view that, as a rule, those issues that influence the main thrust of the common fisheries policy and the basic regulations in the various sectors - organisation of the market, principles governing the conservation and management of resources, monitoring arrangements, technical conservation measures and structural policy instruments - should be subject to the codecision procedure or to a similar procedure to be provided for in future reform of the Treaties. That procedure should guarantee for Parliament a real say in the decisions taken on basic legal acts.

C. International fisheries agreements

When the previous parliamentary term began, Parliament found itself faced with a policy of *faits accomplis*. It was consulted on a document - by and large a protocol on renewal of a previous agreement negotiated unilaterally by the Commission on a mandate from the Council - which in many instances was already being applied on a provisional basis by the time it was forwarded to Parliament for consultation. As a result, the act of seeking Parliament's opinion amounted to a mere formality.

On 12 December 1996 Parliament, the Commission and the Council signed a joint statement on improving the provision of information to the budgetary authority on fisheries agreements[1]. This statement stipulates in particular that the Commission will 'keep the European Parliament regularly informed through its parliamentary committees regarding the preparation and conduct of the negotiations, including the budgetary implications' and that 'every quarter the Commission will present detailed information to the budgetary authority concerning the execution of ongoing agreements and the financial forecasts for the remaining part of the year'.

On 5 July 2000 the European Parliament and the Commission approved a framework agreement[2] governing relations between the two institutions, Annex II of which contains provisions on 'forwarding to the European Parliament information on international agreements and enlargement, and involvement of the European Parliament in this respect'. The provisions of this annex basically echo those agreed on in 1996.

Thanks to these provisions the Committee on Fisheries has seen a marked improvement in the information provided to it on the budgetary aspects of the agreements provided for in the statement and has received some details on the use of fishing rights. The Commission forwards the text of the fisheries protocol in the language available unofficially and without delay, as agreed during the negotiations. In this way Parliament can adopt its opinion before the first financial compensation payment provided for in the protocol falls due.

[1] OJ C 20, 20.1.1997, p. 109
[2] C5-0349/2000

Of late, however, this previously satisfactory arrangement has thrown up a number of difficulties. Unfortunately, the delays recently experienced by the Commission in adopting legislative proposals have undermined the improvements in this area.

As regards its influence on the decision-making process in the field of international agreements, Parliament has been making strenuous attempts on the legal and political fronts to ensure that its assent be required for the adoption of all international fisheries agreements as an ideal means of its acquiring a genuine decision-making capacity with regard to these agreements.

D. International organisations

Another area of external action in the fisheries sector in which Parliament's position is less than satisfactory is its involvement in international bodies which address regional issues, such as the General Fisheries Council for the Mediterranean (GFCM), the Northwest Atlantic Fisheries Organisation (NAFO) and the International Commission for the Conservation of Atlantic Tunas (ICCAT), all of which are acquiring an ever more prominent role in the conservation and rational use of fishery resources around the world. The framework agreement between the European Parliament and the Commission of 5 July 2000 reiterates the position outlined in the Code of Conduct of 15 May 1995 and is reflected in the provision of more ample information on the proceedings of these important bodies and the decisions adopted therein, many of which must be incorporated into Community law and thus shape the common fisheries policy.

The Commission facilitates the inclusion of MEPs as observers within the Community delegations that take part in the negotiations on multilateral agreements, but does not allow MEPs to participate directly in the meetings at which decisions are actually hammered out under any circumstances.

CONCLUSIONS

The Committee on Fisheries calls on the Committee on Constitutional Affairs, as the committee responsible, to take account of the following points in its report on the Treaty of Nice and the future of the European Union and the preparatory work for the next intergovernmental conference:

1. The European Parliament regrets the fact that a specific chapter for the fisheries sector has not been introduced into the Treaty of Nice to reflect the importance and scope of one of the few common policies in the Union. Such a chapter ought to set out the aims and principles of fisheries policy and the legal procedures applicable thereto;

2. In order to ensure that Parliament's role in the decision-making process evolves from that of an observer to that of a leading player, existing procedures will have to be altered through a change in the general approach under which Parliament's involvement in this area is subject to the consultation procedure. A different procedure must be envisaged under which Parliament plays a prominent role in shaping basic decisions, and this will entail the adoption of procedures such as the current codecision procedure;

3. To this end, and taking into account the procedure which has been opened for the revision of the common fisheries policy, the Community fisheries policy should be incorporated into the co-decision procedure pursuant to Article 308 of the Treaty.

4. Parliament's role in the field of international fisheries policy must be strengthened through the requirement that Parliament must give its assent to the conclusion of any international fisheries agreement;

5. The Commission's assistance should be sought in seeking the ideal means of securing the real involvement of MEPs in the work of decision-making bodies meeting within the international organisations that address regional fisheries issues and in the negotiations entered into by the Union on international fisheries agreements;

6. Calls for the common fisheries policy to be taken into account in the preparatory talks leading up to a fresh IGC, bearing in mind the role played by the fishing industry in environmental protection, regional planning, the fishing industry's contribution to food security and the economic and social cohesion of areas which depend on fisheries; the distribution of powers between the European Union and the Member States must not hamper the supranational character of the common fisheries policy.

25 April 2001

OPINION OF THE COMMITTEE ON CULTURE, YOUTH, EDUCATION, THE MEDIA AND SPORT

for the Committee on Constitutional Affairs

on The Treaty of Nice and the future of the European Union
(2001/2022(INI))

Draftsman: Barbara O'Toole

PROCEDURE

The Committee on Culture, Youth, Education, the Media and Sport appointed Barbara O'Toole draftsman at its meeting of 6 March 2001.

It considered the draft opinion at its meetings of 10 April and 24-25 April 2001.

At the latter meeting it adopted the following conclusions by 24 votes to 3.

The following were present for the vote: Vasco Graça Moura, acting chairman; Giorgio Ruffolo, vice-chairman; Ulpu Iivari, vice-chairman; Barbara O'Toole, draftsman; Pedro Ole Andreasen, Aparicio Sánchez, Rolf Berend, (for Mónica Ridruejo), Thierry de La Perriere, Raina A. Mercedes Echerer, Lissy Gröner, Cristina Gutiérrez Cortines (for Vittorio Sgarbi), Christopher Heaton-Harris, Ruth Hieronymi, Timothy Kirkhope (for Giuseppe Gargani), Maria Martens, Mario Mauro, Pietro-Paolo Mennea, Doris Pack, Roy Perry, Martine Roure, Dana Rosemary Scallon (for Christine de Veyrac), The Earl of Stockton (for Sabine Zissener), Kathleen Brempt, Luckas Vander Taelen, Eurig Wyn, Theresa Zabell, Myrsini Zorba (for Phillip Whitehead).

SHORT JUSTIFICATION

The Committee's opinion for the report of the Committee on Constitutional Affairs which was drawn up before the intergovernmental conference [1] called for the further development of the European Union in a number of areas. Your draftsman remains convinced that progress in these areas is important if enlargement is to be a success; and has taken that opinion as her starting point in preparing the Committee's opinion on the outcome of the intergovernmental conference, the draft Treaty of Nice and the future of the European Union.

Information and communication: The Committee - and, indeed, Parliament as a whole [2] - has consistently drawn attention to the need to establish an overall information and communication policy, based on pluralism and respect for cultural and linguistic diversity, to inform Europe's citizens about all aspects of the Union. A successful policy in this area would promote informed public debate about the future development of the Union and its policies. It would also strengthen the democratic credentials of its institutions and encourage that active participation in political life which is one of the characteristics of a democracy: young people - to whom conventional 'institutional' politics often appears unattractive - are a particularly important target group. In the cause of greater transparency and openness, the Council could set a good example by publishing full records of how individual Member States vote and by agreeing to public access to its meetings. Given that the Union will soon expand to include societies which have only recently emerged from decades of totalitarianism, greater transparency within the Union and the development of an effective information and communication policy should be regarded as a matters of urgency.

Media: Article 157(3 of the Amsterdam Treaty had provided for decisions in the field of industry to be taken in the Council by qualified majority following *consultation* of the Parliament: this was the procedure by which the MEDIA PLUS programme was introduced. The IGC provides for the introduction of *codecision* in this area: this is a welcome step towards democratic accountability in an important area of the Committee's activity.

Culture: In 1997, in its opinion for the Committee on Constitutional Affairs on the draft Amsterdam Treaty, the Committee expressed its unhappiness about the fact that qualified-majority voting had not been introduced in respect of culture; and predicted that the need for unanimity in Council would hamper the introduction of measures in this area [3]. This prediction was borne out by the difficulty with which the Culture 2000 framework programme was eventually agreed. Against this background the Committee once again called in its opinion on the IGC 2000 for a move from unanimity to qualified majority in this area. It is extremely regrettable that Parliament's call for the amendment of Article 151(5 to provide for qualified-majority voting in Council has been ignored.

Sport: Sport was added to the Committee's title only in 1999, but the Committee has long regarded sport as one of its areas of competence. The Committee has always emphasised the important health, educational and social aspects of sport; and has consistently called for the introduction of a legal basis making possible Community action in the field of sport - most

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[1] A5-0086/2000

[2] Most recently in B5-0174/2001 European Parliament resolution on the information and communication strategy of the EU (Minutes 14 March 2001)

[3] A4-0347/1997

recently in its opinion on the intergovernmental conference for AFOC. The Amsterdam Treaty included a Declaration on sport and the Treaty of Nice includes an Annex (Annex IV) on sport: neither of these, however, constitutes a legal basis for Community action.

Education: Article 149 of the Treaty was unchanged by the intergovernmental conference. This is unfortunate. An explicit reference to creating a European educational area would have underlined the desirability of establishing agreed reference points for comparison of different national and regional systems (bench-marking), of promoting exchanges of experience, and of encouraging the spread of best practice.

Institutional issues and 'Post-Nice': The European Parliament is the only one of the Union's institutions which is democratically-elected. It therefore has a right to more than a consultative role and to participate more fully in any future intergovernmental conference than it was able to do in the lead-up to the Nice summit.

The Treaty of Nice includes a Declaration which anticipates a deep and wide debate about 'the future development of the European Union'. The Swedish and Belgian Presidencies will launch the debate, in which national parliaments and public opinion across the Union will be consulted, and in which the applicant countries will also be involved. A report will be submitted to the Göteborg European Council in June 2001 and the Laeken European Council in December 2001 will adopt a declaration on the continuation of the process. One of the four core issues to be discussed is 'the establishment and monitoring of a more precise demarcation of powers between the European Union and the Member States in accordance with the principle of subsidiarity'.

This is an important issue for our Committee. A clearer demarcation of powers between the Union and Member States would render otiose decision-making in Council by unanimity in the field of cultural policy and remove the principal obstacle to a more vigorous cultural policy at European level; while offering a constitutional guarantee that the cultures of the Member States would be respected. Again, a clearer demarcation of powers would clear the way for the emergence of a genuinely European educational area, while simultaneously acknowledging - and guaranteeing - the responsibility of local, regional and national governments for educational systems at these levels.

Granted that further changes to the Union's institutional structure are necessary if enlargement is to succeed, it is important that substantial progress in this area be made by the end of 2003.

CONCLUSIONS

The Committee on Culture, Youth, Education, the Media and Sport calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

1. Reiterates its conviction that a European information and communications policy based on the principles of pluralism, openness and diversity would strengthen public debate and

awareness – especially among young people – on the benefits of European co-operation within the framework of the EU; believes that the key principles of the EU's information policy should be decentralised implementation, coordination (especially between the efforts of the Commission and of the Parliament), targeting, and the best use of information technology; continues to believe that greater co-operation between the EU and applicant countries in the field of information and communications policy would help to ensure that forthcoming enlargements are successful; and calls on the Commission to propose a multiannual information programme;

2. Welcomes the extension of qualified-majority voting, particularly to measures supporting the action of Member States in the industrial sphere (Article 157(3));

3. Regrets that qualified-majority voting still does not apply in each and every area to which the codecision procedure applies; deplores the fact that Council unanimity continues to apply to Article 151(5) and calls for the extension of qualified-majority voting to support measures in the field of culture in any future revision of the Treaty;

4. Believes that there are important educational, health and social aspects to sport; regrets that its long-standing appeal for the inclusion in the Treaty of a legal basis for Community action in the field of sport has once again been rejected, and calls for the creation of such a legal base in any future revision of the Treaty which recognises and safeguards the specific characteristics of sport;

5. Calls for the development of an EU common youth policy to ensure that issues specific to youth are addressed across the spectrum of EU policies and by all EU institutions;

6. Calls for the amendment, in any future revision of the Treaty, of Article 149(2) to include a reference to the goal of creating a European educational area based on the establishment of agreed reference points for comparison of educational systems, exchanges of experience and the spread of best practice;

7. Regrets the limited extent of the Parliament's involvement in the Intergovernmental Conference which preceded the Treaty of Nice; and, to achieve a more pluralistic and inclusive approach, calls for an enhancement of the role of the Parliament in future conferences along the lines of the convention for drawing up the Charter of Fundamental Rights of the European Union;

8. Calls on the European Council to incorporate the Charter of Fundamental Rights into the Treaty;

9. With a view to the enlargement of the European Union calls on the Commission to respect Article 22 of the Charter of Fundamental Rights in all the European Union's policies and programmes with special reference to the fields of information and communications technologies, audio-visual policy, education, culture and language learning;

10. Welcomes the commitment set out in the conclusions of the Nice summit to establish a more precise demarcation of powers between the European Union and the Member States in accordance with the principle of subsidiarity; calls on the Council and the Commission

to encourage a wide-ranging discussion of the aims of the European Union, as provided in Annex IV of the Treaty of Nice, involving all the citizens of the Member States and the applicant countries; and expects substantial progress towards the realisation of this goal to be made by the end of 2003;

11. Calls, as a complement to an effective information and communication strategy and in line with the Union's commitment to maximising openness and transparency, for an end to the secrecy surrounding voting in Council and for public access to Council meetings;

24 April 2001

OPINION OF THE OF THE COMMITTEE ON WOMEN'S RIGHTS AND EQUAL OPPORTUNITIES

for the Committee on Constitutional Affairs

on the Treaty of Nice and the future of the European Union
(2001/2022(INI))

Draftsman: Rodi Kratsa-Tsagaropoulou

PROCEDURE

The Committee on Women's Rights and Equal Opportunities appointed Rodi Kratsa-Tsagaropoulou draftsman at its meeting of 27 February 2001.

It considered the draft opinion at its meetings of 9 and 24 April 2001.

At the last meeting it adopted the following conclusions unanimously.

The following were present for the vote: Maj Britt Theorin, chairman; Anne E.M. Van Lancker, vice-chairman; Rodi Kratsa-Tsagaropoulou, draftsman; Lone Dybkjær, Ilda Figueiredo (for Armonia Bordes), Fiorella Ghilardotti, Lissy Gröner, Anna Karamanou, Christa Klaß, Thomas Mann, Emilia Franziska Müller, Christa Prets, Patsy Sörensen, Joke Swiebel, Helena Torres Marques and Sabine Zissener

CONCLUSIONS

The Committee on Women's Rights and Equal Opportunities calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

Treaty of Nice

1. Welcomes the fact that the Council may now, on the basis of Article 13, use the procedure set out in Article 251 to adopt by a qualified majority Community incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States with a view to combating all forms of discrimination, particularly discrimination based on sex;

2. Deplores the fact that no improvements have been made to Articles 137 and 141 as regards gender equality in all aspects of the labour market and that gender equality has not been underpinned by a legal basis extending beyond the bounds of the employment sector itself (equal participation of women in decision-making, reconciling work and family life);

3. Deplores furthermore the fact that the very necessary clarification of the legal implications of the references to gender equality contained in Articles 2 and 3 of the Treaty was not forthcoming; takes the view that during the entire post-Nice period and in preparing the next Intergovernmental Conference in 2004, the issue of gender equality must be included in all areas and provision must be made for the appropriate legal basis

4. Welcomes the incorporation into the Treaty of the European Judicial Cooperation Unit (Eurojust), but points out the need to complete Article 29 and 31, paragraph (e), on the action of this new international body in order to prosecute organised crime whose main victims are women;

Charter of Fundamental Rights

5. Welcomes Article 21 of the Charter, which prohibits all discrimination based among other things on sex, race or origin, and Article 23 thereof, which provides that gender equality must be ensured in all areas; deplores the fact that the principle of gender equality in respect of political, civil and social rights is not accompanied by an explicit obligation actively to promote gender equality; takes the view that for this reason a further improvement in the Charter is needed before it is incorporated in its final form in the Treaties;

6. Deplores the fact that the European Union Charter of Fundamental Rights was not incorporated into the Treaties; considers such incorporation essential in order for the Charter to exert full legal effect;

7. Considers that, in the interests of women's rights and equal opportunities, the Charter should be given full legal effect; considers that the 2004 Intergovernmental Conference must constitute an opportunity to review this issue;

8. Calls on all the EU Member States to:
   (a) act in accordance with the firm undertaking given by the European Parliament and the Commission to regard the Charter as a compulsory reference for all their legislation (legislative effect);

   (b) follow the practice adopted by the national constitutional courts of certain Member States of using the Charter as a reference point (jurisdictional effect); wishes the European Court of Justice to take into account the contents and provisions of the Charter in its jurisdiction and in exercising its powers;

9. Considers that the Swedish Presidency must immediately create genuine opportunities for an open public debate, as it is obliged to do by the Declaration on the future of the European Union

Declaration on the future of the European Union

10. Considers it essential to state clearly and precisely what means are to be used to ensure that the general public, civil society and the European Parliament and the national parliaments are involved in the preparations for the next IGC and in future intergovernmental conferences at all phases of the procedure, as provided for in the Declaration on the future of the European Union; in this connection calls for the balanced participation of men and women and also the involvement of representative networks of women's organisations from the European Union and the candidate countries.;

11. Stresses finally that during the process of preparing for the 2004 IGC public awareness and information campaigns directed particularly at women must be conducted;

17 April 2001

OPINION OF THE COMMITTEE ON PETITIONS

for the Committee on Constitutional Affairs

on the Treaty of Nice and the future of the European Union
(2001/2022(INI))

Draftsman: Eurig Wyn

PROCEDURE

The Committee on Petitions appointed Eurig Wyn, draftsman at its meeting of 6 March 2001.

It considered the draft opinion at its meetings of 21 March 2001 and 10/11 April 2001.

At the last meeting it adopted the following conclusions unopposed, with 1 abstention.

The following were present for the vote: Vitaliano Gemelli, chairman, Roy Perry, vice-chairman; Herbert Bösch, Jonathan Evans, Janelly Fourtou, Laura González Álvarez, Margot Keßler, Jean Lambert, María Sornosa Martínez and Christian Ulrik von Boetticher.

SHORT JUSTIFICATION

Introduction

The Treaty on the European Union, signed in Maastricht on 7 February 1992, came into force on 1 November 1993. In this Treaty the codification of the right to petition indicated the birth of European citizenship with precisely defined rights and duties. Nevertheless at the time no specific guarantees of fundamental rights were associated with citizenship of the Union. The Treaty of Amsterdam amended the Treaty on European Union. This process of ongoing development towards European Citizenship culminated in the Charter on European Fundamental Rights, signed in Nice in December 2000.

The Charter on Fundamental Rights of the European Union

A convention consisting of representatives of heads of governments, Members of national parliaments, Members of the European Parliament, and the Commission drew it up. Parliament approved the Charter, a fact that was solemnly proclaimed by the Council, Parliament, and the Commission at the Nice European Council where it has been applauded as the document that lays down the basis for a European Union founded on common values and constitutional traditions common to the Member-States. Some of its principles, such as new rights relating to bio-ethics, the environment and data-protection, go even beyond those contained in the European Convention of Human Rights. The explicit prohibition of discrimination and the affirmation of cultural diversity is of specific importance in the multicultural context of the EU.

The question now is: what should we do with the Charter and how will it affect the citizens of Europe and European Citizenship. Parliament is in favour of incorporating the Charter in the Treaty. Whether integrated or not, the approval of the Charter provides "a substantive point of reference for all those involved – Member States, institutions, natural and legal persons – in the Community context" (Opinion of Advocate General Tizzano in Case C-173/99, par. 28). Your draftsman takes the view that the Committee on Petitions should be able to take account of the Charter in determining whether a petition comes within the field of activity and in the interpretation of Community law.

The Charter and European Citizenship

The right to petition the European Parliament is an expression of European Citizenship. It is a right equally accessible for all citizens of the Union. Clarification on the constitutional status of the charter is of the utmost importance for the citizens of the European Union in order to involve Europeans in the matters of their concern. A Charter with a clear constitutional basis would enhance the legitimacy and relevance of the European institutions for European citizens. Clarification on the status of the Charter is also important with respect to enlargement. A considerable number of petitions received concern discrimination, often on the basis of nationality, race, sex, language etc. Given the problems with minority rights in the accession countries these new European citizens from the date of accession on should have the right to petition the European Parliament on issues of discrimination by making reference to the Charter.

Therefore the right to petition the European Parliament by making reference to the Charter is indispensable for real European Citizenship.

CONCLUSIONS

The Committee on Petitions calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

A. whereas, taking a lead from its Member States, the Union must define itself as a 'Community based on the rule of law',

B. considers that if the Union is to have a fully-fledged, written and formal Constitution comprising a clear and ordered set of fundamental principles, pride of place must be given to the rights enshrined in the Charter of Fundamental Rights,

1. Welcomes the Charter on Fundamental Rights, signed and proclaimed on 7 December 2000 in Nice, but deplores the lack of unanimity in the Council to give the Charter a clear constitutional status;

2. Takes the view that the Union cannot be based exclusively on purely economic considerations. It must be anchored on human and fundamental rights in order for all citizens to benefit from European integration;

3. Emphasises the importance of the right to petition the European Parliament on issues of fundamental rights and, in particular of discrimination by making reference to the Charter, and that consequently citizens of the new Member States should have this right as from the date of accession on;

4. Takes the view that the right to petition the European Parliament, the institution representing the citizens of Europe, by making reference to the Charter is a vital step towards the realisation of true European citizenship;

5. Calls for the importance of national and regional level debate on the post-Nice process, which engages the citizens of Europe directly, to be recognised by the Commission in the context of its communication strategy.