

The European Parliament's Impact on the IGC Process

Paper presented at the ECSA Fifth Biennial Conference
Seattle, May 29 - June 1, 1997

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(The views expressed in this article are personal and do not
necessarily reflect the position of the European Parliament)

I The European Parliament's participation in the negotiations

The European Union is and will remain a Union of Member States. For this reason revision of its constitutional charter comes about by intergovernmental conference. Governments negotiate and finally agree the text that will be submitted to the internal ratification procedures of the Member States. On the one hand, the European Parliament does not have a position in the negotiations and - up to now - does not enjoy the position of somebody whose assent is legally necessary. On the other hand, the European Parliament is the expression of the peoples of the Member States. The voice of the people has to be heard. That is why the European Parliament has continuously been arguing for an increase in its own rôle in the intergovernmental conference.

In formal terms, the level of participation of the European Parliament in the proceedings has improved considerably. During the IGC which created the Single European Act a limited number of contacts with President Pflimlin and rapporteur Spinelli took place. During the elaboration of the Maastricht Treaty President Baron addressed all European Council meetings and two conclaves of the Foreign Affairs Ministers. Twelve meetings of a delegation of the European Parliament with the IGC took place in the form of interinstitutional conferences. A delegation from the European Parliament met all the members of the European Council in separate meetings. Participation in the Maastricht revision takes place on the basis of a formula adopted by the Turin European Council launching the IGC in March 1996. The President continues to address the European Council and intervenes at all IGC meetings at ministerial level. Two representatives of the European Parliament participate at least once a month in the meetings of the representatives of the ministers.

Further contacts of an informal nature take place at various levels. The President meets the members of the European Council, and especially the Presidency, on a regular basis; however, he meets more often with the Foreign Affairs Ministers - the official level of the IGC. The two representatives of the European Parliament - Mrs Guigou, a French Socialist, and Mr Brok, a German Christian Democrat, have participated in an important number of informal meetings with the representatives of the ministers. The European political parties meet at the level of the leaders including the

President of Parliament and the chairs of the corresponding groups in Parliament. It remains difficult, though, to evaluate the exact impact of all these contacts.

II Agenda setting

Jacques Delors, the former Commission President, said that the Single European Act would not exist without the European Parliament's draft Treaty establishing the European Union, the Spinelli Report¹.

The path to the IGC on Monetary Union was prepared by the Single Act itself. The IGC on Political Union which complemented the Monetary Union negotiations was finally imposed by the Mitterand/Kohl letter of March 1990, taking up Parliament's repeated requests to draw the necessary conclusions from the breakdown of the Soviet Union and looming German unification.

The current IGC and its timing were provided for by the Maastricht Treaty.

Another way to present the matter: remember the first shopping list of requests that the European Parliament voted for the Single Act IGC. You will find that through the various IGCs all the issues have been dealt with. One example of unexpected success: a provision on action in the event of a breach by a Member State of the principles on which the Union is founded is due to be entered in the new Treaty (new Article Fa). This article stems directly from Article 44 of the Spinelli Treaty. The IGC acknowledges this fatherhood. One observer asked how many IGCs it will need to accept all of Spinelli's draft!

III The concrete impact

Measuring the European Parliament's concrete impact at this stage encounters two main problems: first, the European Parliament's own position with regard to its definitive requirements, its bottom line, is not easy to describe. Its resolutions to this end are numerous and - quite normally - evolving throughout a large period accompanying preparation in the Reflection Group and the actual work in the IGC². Still, one can distill a certain number of priorities: with regard to social and policy

issues they are the establishment of an area of freedom, security and justice, an enhanced Union citizenship with an extended non-discrimination clause, fundamental rights protection, general equality, an employment title, the inclusion and improvement of the social protocol including measures against social exclusion, improved protection of the environment, and the objective of sustainable development. With regard to institutional issues, the priorities are threefold: first, efficiency, especially in view of future enlargements and mainly concerning qualified majority voting in Council; second, transparency and openness, concerning the reduction of decision-making procedures to three - assent, codecision and consultation -, the simplification and codification of the Treaties, openness of the Council in its legislative capacity and public access to documents; and third, democracy meaning Parliament's own rôle.

Second, it is virtually impossible to describe the results of the IGC a few weeks before its possible conclusion in the Amsterdam European Council on 16/17 June 1997. In such a negotiation procedure nothing is achieved until everything is achieved. Therefore, I will initially concentrate on what is on the table at this stage and then proceed to the issues which are most disputed where there is not even a formal presidency proposal, each time relating to Parliament's position in the various areas. Finally, I shall dare to stick my neck out with some predictions as to the result.

This is a highly speculative exercise and I must invite you once again to take my words as a purely personal view. Stressing again and again this caveat and proviso, I shall first address what is on the table:

Officially, there is nothing, nothing since the Irish presidency's general outline for a draft revision of the Treaties, presented to the Dublin II Summit: "Adapting the European Union for the benefit of its peoples and preparing it for the future" and the addendum presented by the Dutch presidency on 29 March 1997. Informally, since 15 May there has been a confidential non paper, a compilation of texts under discussion leaving three questions deliberately aside: qualified majority voting, composition of the Commission and reweighting of votes in the Council.

In addition, the following are likely to be included in the Treaty:

- The new Treaty on European Union (TEU) will confirm the attachment to fundamental social rights as defined in the European Social Charter and the Community Charter of Fundamental Social Rights of Workers. The European Parliament (EP) has repeatedly asked for this, but would prefer the formal inclusion of social rights in the Treaty.
- The Treaty on European Community (TEC) will contain a legal basis to combat discrimination based on sex, racial or ethnic origin, religion and belief, disability, age or sexual orientation. The European Parliament has been asking for this for a long time, but would oppose a decision-making procedure consisting of unanimity plus consultation and asks for codecision.
- Equality between men and women will become a general objective in the TEC. The European Parliament is in favour, asking for a general legal basis implementing this objective and not only limited to employment and occupation as proposed.
- The TEC will contain a legal basis with codecision on the application of data protection to the institutions. The European Parliament is in favour.
- The TEU will provide for the progressive establishment of an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures in respect of external border controls, immigration, asylum and the preventing and combatting of crime. The European Parliament is in favour, asking for concrete measures to be included under the first pillar, accepting transitional periods if they are not too long, and not to be extended. It also welcomes the inclusion of judicial cooperation in civil matters and of administrative cooperation. It will ask for stricter respect of the principle that any legislative activity should come under qualified majority voting and codecision. The special position of the UK and Ireland will be respected.

- Provisions on police and judicial cooperation in criminal matters including some form of making Europol operational will remain in the third pillar. The European Parliament is asking for an enhanced form of communitarisation via its own participation and control by the Court of Justice. Results will be modest.
- A protocol will integrate the Schengen acquis in the framework of the EU. The UK and Ireland, and possibly Denmark, will enjoy a special position, keeping them as close as possible. The European Parliament is in favour of the greatest possible integration.
- A high level of employment will come under the objectives of the TEU and find its corresponding title in the TEU, providing for coordination between employment policies of the Member States. The European Parliament has consistently asked for this. It would prefer more incisive measures to be adopted and like to see its own rôle strengthened via codecision for the adoption of the annual guidelines and setting up of the employment committee.
- The social protocol is integrated into the TEC. It is, however, only slightly reinforced (equality for men and women in matters of employment and occupation; dealing with social exclusion). The EP has always requested the integration and improvement of the protocol. It will ask for more efficient decision-making provisions reducing the still existing unanimities.
- Environment protection combined with the new objective of a balanced and sustainable development must be integrated into the definition and implementation of Community policies. The EP finds its requests taken up. It would prefer to reduce the exceptions in an efficient decision-making procedure.
- A high level of human health protection shall be ensured in the definition and implementation of all Community policies. The EP has asked for this and also is likely to obtain codecision in this area which, amongst others, extracts measures in the veterinary and phytosanitary fields from the common agricultural policy.

- The consumer protection provisions will be strengthened. They are subject to codecision.

- Citizenship will not be changed considerably. The question of political asylum to be granted against another Member State could be redefined. The EP wanted to see the possibility of the extension of citizens' rights in article 8e TEC to come under qualified majority voting plus codecision.

- The fight against fraud affecting the financial interests of the Community and the strengthening of customs cooperation are to come into the first pillar subject to codecision. The EP had asked for this and also requested qualified majority voting plus codecision for the adoption of the financial regulation.

- Services of public interest are declared part of the shared values of the Union. The EP wanted an efficient protection and guarantee of these services.

- The production of statistics where necessary for the performance of the Community becomes subject to codecision.

- A new protocol on the principles of subsidiarity and proportionality integrates parts of the conclusions of the Edinburgh European Council and the 1993 interinstitutional agreement. Requested especially by the Federal Republic of Germany this seems to have a more declaratory nature. However, the wording may still be modified.

- Transparency provides for a right of access to documents, the limitations to which are to be determined under codecision. The Council, acting in its legislative capacity, shall make public the results of votes and explanations of vote as well as statements in the minutes. The EP has also wanted the full publicity of Council's legislative meetings.

- The Common Foreign and Security Policy (CFSP) is still much under discussion. What seems to have been achieved is: a clarification of the nomenclature, the integration of the so-called Petersberg missions (humanitarian and rescue tasks, peacekeeping tasks and tasks

of combat forces in crisis management, including peacemaking), the establishment of a policy planning and early warning unit under the responsibility of the Secretary General of the Council drawn from the personnel of the Council, Member States, the Commission and the WEU, and the creation of a new form of Troika: Presidency, Secretary General of the Council and the Commission. Still at debate are the voting procedures: unanimity and constructive abstention, possibility of qualified majority voting and reference to vital national interests, possibly to be supported by a minority of Member States, the position of Mr/Ms CFSP as the Secretary General of the Council or a new Secretary General of the Union and the progressive integration of the WEU. CFSP expenditure would remain non-compulsory only if an interinstitutional agreement with the EP can be concluded. The EP wanted a more efficient CFSP. It has, however, become hesitant regarding the initial recommendations to move generally to qualified majority voting. It would consider a change to compulsory expenditure as a serious setback for its own powers.

- The extension of external economic relations to cover services and intellectual property rights as well as goods is not yet definitively achieved. The EP had asked for this and for codecision on the decisions of legislative nature. This seems to be excluded.
- The European Union shall replace and succeed to the European Community. The Union shall have legal personality. The EP asked for the merger including as well the other Treaties, namely the Coal and Steel and the Euratom Treaties.
- The EP obtains the right to formally approve the nomination of the President of the Commission. This corresponds to the EP's own proposals.
- The assent procedure is not extended. Assent for the Structural Funds becomes codecision (with unanimity). The same happens to free movement under Article 8a TEC. The EP had asked for assent as well as for revision of the Treaty (Art. N TEU), for own resources decision (Art. 201 TEC), for citizenship (Art. 8e TEC, if this is not be taken by qualified majority voting plus codecision) and for the triggering of closer cooperation (flexibility) in the TEU (Art. 5a).

- The scope of the codecision procedure will be extended to a certain number of provisions considered as essentially of a legislative nature. 22 legal bases will provide for codecision (8 new ones, 11 former cooperations, 2 former assents and 1 former consultation). All the current cooperation procedures (except EMU provisions) become codecision. The EP asked for all the provisions of legislative character to become subject to codecision combined with qualified majority voting in Council. This will not be achieved even if the debate on the proposed cases is not finished. The number of codecision cases may go either up or down.

- The codecision procedure will be simplified and put the European Parliament on an equal footing with the Council by the deletion of the so-called third reading. Though this deletion has been proposed by the three last presidencies, it is by no means guaranteed. It would probably not have a dramatic effect, but calm some anxieties that sometimes are visible in the procedures. It would, however, have a considerable impact on the ratification procedures in some Member States. A European Parliament on equal footing with the Council raises the legitimacy of Community acts adopted under codecision. The other simplifications concern - as proposed by the EP - the deletion of the stage of the intention to reject a common position and the possibility to adopt the proposed act in first reading if Council approves all the amendments contained in the EP's opinion. This new possibility has the potential to introduce completely new behaviour in the Council. In contrast to present procedure, the Council will take considerable interest in the EP's first reading and possibly even try to influence it in order to be able to come to a quick conclusion. The Commission will not be in a blocking position enabling EP and Council to come to an agreement disliked by the Commission.

- The number of members of the EP shall not exceed seven hundred, taking up a proposal by the EP itself. What will happen when the ceiling of 700 is broken - and that would happen already with enlargement by only Poland, the Czech Republic and Hungary - is not said. The accession treaties give an opportunity for changes to the Treaty. Here, like in other places, the next ICG looms.

- The rôle of national parliaments will be described in a new protocol improving their information and introducing a six-week period between a legislative proposal being made available and the date when it is placed on a Council agenda for decision. The Conference of European Affairs Committees (COSAC) may make any contribution it deems appropriate for the attention of the EU institutions. The EP welcomes these proposals. It would only oppose a collective rôle of the COSAC because this would imply the creation of a new institution.

- Closer cooperation - flexibility - between at least a majority of Member States would become possible via a general clause in the TEU and specific clauses in the three pillars. A number of conditions concern the respect of the principles of the Treaties, its use only as a last resort, the respect of the single institutional framework, the respect of the *acquis*, the respect of the rights, obligations and interests of those Member States which do not participate and the possibility for them to become parties to such cooperation at any time. The EP is in favour of the principle and of the conditions, asking for the trigger off mechanism to be via qualified majority, subject to its assent. The presidency non paper provides only for consultation, but full participation in the following decision making procedure. The trigger off mechanism has the options of unanimity or qualified majority.

If this description of the presidency's proposals and EP's appreciation is highly speculative and gives a rather mixed impression, the situation is even worse with regard to the three outstanding key questions³:

- On the future composition of the Commission, proposals range from 10 Commissioners to the definition of at least one Commissioner per Member State which would create a Commission of 26 if the pending accession demands are successful. A Commission compromise proposes to keep the principle of at least one Commissioner per Member State until the current number of 20 is reached and to modify the principle only then.

- On the question of reweighting the votes in Council in favour of the Member States with the largest populations there is understanding that the majority of the represented population should not be outvoted by a majority of smaller states. Given that with the exception of Poland, all the current accession candidates are smaller countries, this fear is not totally theoretical.

- On the move from the requirement of unanimity in Council to qualified majority voting, nothing is clear. Everyone agrees that here lies a major condition for the preparation for future enlargements. A Union with around 50 legal bases of legislative character with unanimity will simply stop functioning. This is the main efficiency question. The informal presidency proposals so far have all been met by such a variety of resistance from the various Member States interested that very little remained in place.

These three issues, combined with a flurry of different unresolved questions, are being dealt with at present and will go to Amsterdam. If Amsterdam comes up with a deal, with the Amsterdam Treaty, its acceptance will not be easy and will depend on the criteria mentioned.

I have speculated so much and I may be totally wrong on all accounts. I shall go as far as to predict a possible outcome. If Amsterdam presents a result, it will be the agreement of eight Social Democrat Prime Ministers and six Christian Democrat Prime Ministers plus Jacques Chirac. If the deal is struck and it does go in the right direction, even if it does not match all the expectations, if it does not contain major retreats, then the EP will again behave like the thirsty man in the desert⁴. Offer him a glass of water. He will not be concerned whether it is half full or half empty. He will drink it.

Endnotes

1. OJ C 77, 19.3.1984, p.33: resolution of 14 February 1984 on the Draft Treaty establishing the European Union (Spinelli)

2. OJ C 151, 19.6.1995, p.56. resolution of 17 May 1995 on the functioning of the Treaty on European Union with a view to the 1996 Intergovernmental Conference - implementation and development of the Union (Martin/Bourlanges).

OJ C 96, 1.4.1996, p.77: resolution of 13 March 1996 embodying (i) Parliament's opinion on the convening of the Intergovernmental Conference and (ii) on the evaluation of the work of the Reflection Group and a definition of the political priorities of the European Parliament with a view to the Intergovernmental Conference (Dury/Maij-Weggen).

OJ C 362, 2.12.1996, p.267: resolution of 14 November 1996 on the scope of codecision procedure (De Giovanni/Bourlanges)

OJ C 20, 20.1.1997, p.50: resolution of 11 December 1996 on the preparations for the meeting of the European Council on 13/14 December 1996 in Dublin.

OJ C 33, 3.2.1997, p.63 resolutions of 16 January 1997 on the Dublin European Council of 13 and 14 December 1996 and on the general outline for a draft revision of the Treaties.

OJ C ... resolution of 13 March 1997 on the Intergovernmental Conference

3. The EP had an additional priority for itself, the establishment procedure for the statute of its members which it would like to see by a Council decision following a procedure like the one for the statute of the ombudsman. There is no presidency proposal (yet).

4. See the introduction to the explanatory statement of the Martin report on the results of the intergovernmental conferences, doc. A3 - 123/92, resolution of 7 April 1992, OJ C 125, 18.5.1992, p. 81.