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# Institutional Reform in the European Union

The Intergovernmental Conference in 1996-97 that gave rise to the *Treaty of Amsterdam* did not resolve issues such as the future size of the European Commission, the weighting of votes in the Council of Ministers and the extension of Qualified Majority Voting. A Protocol to the Amsterdam Treaty provided for temporary solutions to the first two issues, and for an Intergovernmental Conference to carry out a “comprehensive review” of Treaty provisions on the composition and functioning of the institutions.

The resignation of the Commission in March 1999 has given the impetus for the implementation of internal reforms to make appointment and operational practices more open, democratic and accountable. The system of pay and allowances for Members of the European Parliament has given rise to criticism, debate and to proposals for reform.

This Paper considers the future reform of the three main decision-making institutions.

Vaughne Miller

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## Summary of main points

The EU Member States are committed to tackling institutional reform in three main areas: the future size of the European Commission, the weighting of votes in the Council of Ministers and the use of Qualified Majority Voting (QMV). The 1996-97 Intergovernmental Conference (IGC) negotiations aimed to find a satisfactory solution to these issues and various proposals were submitted to the Conference. The IGC did not in the end resolve the vexed questions of the future size of the Commission and weighted voting in the Council of Ministers, although the *Treaty of Amsterdam* records in a *Protocol on the Institutions with the Prospect of Enlargement of the European Union* two temporary reform measures. The Protocol also provides for a future IGC to consider more extensive reforms to the Commission and Council.

The extension of QMV in the Council was also discussed at the 1996-97 IGC and a number of areas that had been decided by unanimity were made subject to QMV under Amsterdam. Other items were dropped from the final negotiations and might be taken up again in the continuing debate on QMV and unanimity.<sup>1</sup>

On 16 March 1999 the European Commission resigned as a body following the publication on 15 March of a report by a Committee of Independent Experts on fraud, mismanagement and nepotism in the Commission. This has precipitated the rapid conclusion of a Commission reform programme that was already in progress and has highlighted the general need for internal reforms to make the EU's institutions more democratic, transparent and accountable. The European Parliament (EP) and the Council have also been criticised for their lack of openness and democracy. Internal reforms have been proposed to remedy these shortcomings in both institutions and are in the process of being finalised.

The *Treaty of Amsterdam* came into force on 1 May 1999, thereby bringing into effect institutional provisions agreed in 1997, and also, in the above-mentioned Protocol, setting a timetable for the launch of a new IGC. The European Council in Cologne on 3-4 June 1999, marking the end of the German Presidency of the EU, is expected to set the agenda for future reforms and for the next IGC to prepare for enlargement. The Finnish Presidency will take over in July and carry on the process.

Treaty Articles given in this Paper refer to the *Treaty Establishing the European Communities* (TEC) or the *Treaty on European Union* (TEU), as amended by the *Amsterdam Treaty*. Both old and new Articles may be given.

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<sup>1</sup> See Library Research Paper 97/112, *The European Communities (Amendment) Bill: Implementing the Amsterdam Treaty*, 5 November 1997, for further information on the areas of QMV and unanimity.

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## I Institutional Reforms: historical overview

There have been relatively few major institutional reforms since the Common Market was established in 1957. One of the main early reforms was the establishment of a single institutional structure for the three distinct Communities – the European Coal and Steel Community, the European Economic Community and the European Atomic Energy Community - in July 1967.<sup>2</sup> This provided a common structure for the hitherto separate Councils and Commissions (or their equivalents) for the three Communities.<sup>3</sup>

Another significant reform was the introduction of the co-operation procedure, the dramatic increase in Qualified Majority Voting (QMV) and the reduction of unanimous voting in the Council of Ministers as a result of the Single European Act in 1987.<sup>4</sup> This made it possible to adopt some 280 measures required for completion of the single market in 1992, which might otherwise have been impossible or considerably delayed because of the application of national vetoes.

Other major reforms have concerned the role of the European Parliament (EP). These include the introduction of direct elections in 1979 and the increase in the powers of the EP in legislative decision-making procedures in 1987, 1993 and in the Amsterdam Treaty. These reforms were largely an attempt to remedy the so-called “democratic deficit” in EC law-making procedures. At the IGC that led to the adoption of the *Treaty on European Union* (Maastricht Treaty) in 1993, the complicated co-decision procedure was introduced which gave the EP an ultimate right of veto in certain circumstances.<sup>5</sup> The “democratic deficit” was taken up again at the 1996-97 IGC. Again the EP benefited from the reforms in so far as the Treaty now allows for a number of new areas of Community competence that include a greater role for the EP. It also replaces almost all decisions made under the co-operation procedure<sup>6</sup> with a simplified co-decision procedure.

Other reforms have been made to internal institutional practices and procedures that have not required Treaty amendments, but have been effected by changes to the *Rules of Procedure* of the institutions, and, increasingly, by means of Codes of Conduct and Inter-institutional Agreements. Examples include the Inter-institutional Agreement of 13 October 1998 on the legal bases and implementation of the budget; the Inter-institutional

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<sup>2</sup> The Merger Treaty, *Treaty Establishing a Single Council and a Single Commission of the European Communities*, OJL 152, 13 June 1967. The Merger Treaty has been repealed by Article 9.1 of the *Treaty of Amsterdam*.

<sup>3</sup> The European Assembly (Parliament), Court of Justice and Economic and Social Committee were already common institutions by virtue of the 1957 *Convention on Certain Institutions Common to the European Communities*.

<sup>4</sup> OJL 169, 29 June 1987.

<sup>5</sup> See Research Notes 91/68 and 92/46 on the TEU institutional reforms.

<sup>6</sup> Introduced by the Single European Act, it gave the EP a role in decision-making, but no right to reject a proposal.

Agreement of 29 June 1998 on budgetary discipline and improvement of budgetary procedures and the Inter-institutional Agreement of 20 December 1994 on an accelerated working method for official codification of legislative texts.<sup>7</sup> There is currently a draft Inter-institutional Agreement concerning internal investigations by the Fraud Prevention Office. Some recent Codes of Conduct are discussed below.

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<sup>7</sup> See Jörg Monar, “Inter-institutional Agreements: the phenomenon and its new dynamics after Maastricht”, *Common Market Law Review*, Vol.31, No.4, August 1994.

## II The Need for Reform

### A. Enlargement

The European Union is set to increase its membership in the next few years to include in two 'waves' a number of Central and Eastern European countries (CEECs), the Baltic States, Cyprus and Malta (which has re-activated its application). Several other countries are likely to apply or to re-apply. Possible enlargement scenarios also include Turkey, the Ukraine, Iceland, Norway, Switzerland, Albania and the countries of the former Yugoslavia, which could increase the EU to 36 members in the next 25-30 years.<sup>8</sup>

The present institutional structures of the Union have been adapted only superficially to accommodate previous enlargements, and still operate more or less as they did when the EEC consisted of only six Member States. There is no exact date yet for the first wave of enlargement, for which the accession process began on 30 March 1998.<sup>9</sup> However, the leader of the Commission taskforce negotiating terms of entry for prospective members, Klaus van der Pas, has said that the EU will be ready for new members in the next 2-3 years.<sup>10</sup> Other sources estimate that the next enlargement will take place in the next 3-4 years.<sup>11</sup>

There is a general consensus that institutional reforms are necessary to take account of the increasing number of Member States and applicant Members. The prospect of a future Union of over 25 Member States in the next 10-15 years raises a number of questions. One concerns the fundamental issue of whether the institutional structure of the EU itself should be adapted to accommodate a larger and more diverse membership. It has been argued that the demands of enlargement point to the need for a looser, less integrated structure, with a greater role for individual Member States and a stricter application of the principle of subsidiarity,<sup>12</sup> while others have called for a more integrated, federal Union, with clearly defined competences for the EU and the Member States. Another view defines a different structure altogether with more tiers, flexibility and a "variable geometry"<sup>13</sup>. The *Treaty on European Union*<sup>14</sup> introduced the three-pillared structure, including both Community and intergovernmental action, while the *Treaty of Amsterdam* formalised for the first time the concept of flexibility in providing for special

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<sup>8</sup> For examples, see Jim Northcott, *The Future of Britain and Europe*, 1995.

<sup>9</sup> See Research Paper 98/55, *EU Enlargement: The Political Process*, 1 May 1998.

<sup>10</sup> *Frankfurter Allgemeine Zeitung*, 28 January 1999, reporting evidence to the German *Bundestag* Committee on Europe.

<sup>11</sup> See Foreign Affairs Committee Third Report, *European Union Enlargement*, HC 86, 1998-99, p. xxiv.

<sup>12</sup> The assumption that action will be taken at the national level unless there is sufficient evidence that action at Community level would be better and more efficient.

<sup>13</sup> A model whereby some Member States participate in certain activities, with a number of 'core' activities in which all Member States participate.

<sup>14</sup> Came into force in November 1993.



arrangements among some Member States to pursue aims not necessarily followed by the whole Community.

A further issue concerns the balance of power and influence between the large and small Member States in institutional structures and powers. As one author has commented: “The common factor linking the main issues is the uneasy balance of representation in the institutions between the large and the small EU member states”.<sup>15</sup> This defines one of the most sensitive issues that enlargement reforms will have to take into account.

The *Treaty of Amsterdam* records two reform measures in a *Protocol on the Institutions with the Prospect of Enlargement of the European Union*:

Article 1

At the date of entry into force of the first enlargement of the Union, notwithstanding Article 157(1) of the Treaty establishing the European Community, Article 9(1) of the Treaty establishing the European Coal and Steel Community and Article 126(1) of the Treaty establishing the European Atomic Energy Community, the Commission shall comprise one national of each of the Member States, provided that, by that date, the weighting of the votes in the Council has been modified, whether by reweighting of the votes or by dual majority, in a manner acceptable to all Member States, taking into account all relevant elements, notably compensating those Member States which give up the possibility of nominating a second member of the Commission.

The Protocol also provides for a future IGC to consider more extensive reforms to the Commission and Council:

Article 2

At least one year before the membership of the European Union exceeds twenty, a conference of representatives of the governments of the Member States shall be convened in order to carry out a comprehensive review of the provisions of the Treaties on the composition and functioning of the institutions.

The next IGC will no doubt revisit and build upon earlier proposals for the future structure of the Union and the Cologne European Council on 3-4 June is expected to set the scene for this debate.

## **B. Administrative and Organisational Transparency**

There is another factor in the institutional reform debate, not unrelated to enlargement, but more directly linked to recent events in the institutions themselves. The collective resignation of the European Commission on 16 March 1999, following a Committee of

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<sup>15</sup> Stuart Croft, John Redmond, G.Wyn Rees and Mark Webber, *The enlargement of Europe*, 1999, pp 68-69.

Experts investigation into fraud, corruption and nepotism, has highlighted the need to make the internal procedures of the institutions more democratic, and to improve practices in the areas of financial control, staff appointments, transparency and efficiency.<sup>16</sup> The European Council meeting in Berlin on 24-25 March 1999 called on the future Commission to:

... speedily put into effect the necessary reforms, in particular for the improvement of its organisation, management and financial control.

In order to do this, the next Commission ought to give urgent priority to launching a programme of far-reaching modernisation and reform. In particular, all means should be used in order to ensure that whenever Community funds, programmes or projects are managed by the Commission, its services are suitably structured to ensure highest standards of management integrity and efficiency.<sup>17</sup>

The salaries and expenses paid to MEPs have also given rise to public and political criticism, particularly in the light of recent revelations that some MEPs have claimed higher travel expenses than they actually incurred, in some cases thereby supplementing their salaries quite considerably. This practice was attributed partly to the vastly differing salaries of MEPs from the fifteen Member States.<sup>18</sup>

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<sup>16</sup> See Library Research Paper 99/32, *The Resignation of the European Commission*, 16 March 1999.

<sup>17</sup> Berlin European Council Conclusions, 24-25 March, <http://eu.eu.int/Newsroom/>.

<sup>18</sup> An MEP is paid the same salary as a national member of parliament in each Member State.

### **III The European Commission**

The Commission is usually described as the EU's executive, although it is a hybrid body with executive, legislative and also legal functions. It has the sole right of initiative to issue proposals. It is the 'guardian' of the Treaties and of EC law in so far as it monitors their application by Member State governments, and acts on breaches and allegations of breaches.

#### **A. Enlargement Issues**

##### **1. The size of the Commission**

The larger Member States (Britain, France, Germany, Italy and Spain) currently have two Commissioners, while the remaining States have one. If this allocation were to be maintained with the next wave of enlargement to include, say, Poland, Hungary, Slovenia, the Czech Republic, Estonia, Cyprus and Malta, Poland would qualify for two Commissioners and the others for one. This would bring the total to 27 Commissioners. A further enlargement to include the other CEEC and Baltic countries could bring the Commission membership to well over 30, an unwieldy number for the tasks with which the Commission is entrusted.

The Amsterdam Treaty Protocol represents only a temporary resolution of the issues. By allowing only one Commissioner per Member State the Commission would increase to 21 members if all six first-wave applicants join in the next enlargement. For subsequent enlargements, more long-term, practical solutions will have to be found.

Papers submitted for consideration during the 1996-97 IGC included proposals on the future size of the Commission. A Presidency Note on 10 September 1996 summarised various possible future structures, some of which may not be mutually exclusive:

- at least one Commissioner per Member State;
- one Commissioner for each of the large states, with the smaller states sharing a Commissioner;
- a reduction to a maximum of 15 or 20, corresponding to a rational distribution of responsibilities in a college;
- one Commissioner per Member State, with an increased number of Commission vice-presidents;
- a restricted college of Commissioners with special responsibilities, supported by deputy Commissioners and/or Commissioners without portfolio.<sup>19</sup>

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<sup>19</sup> EC/IGC/CONF/3900/96, 10 September 1996

'Full' Commissioners would adopt proposals by simple majority for submission to a plenary college of full and deputy Commissioners, which could amend or reject them by QMV.<sup>20</sup>

A Declaration to the Amsterdam Treaty *on the organisation and functioning of the Commission* indicates that some of these proposals could be considered in any future debate on Commission reform. The Declaration notes the Commission's intention "to prepare a reorganisation of tasks within the college ... in order to ensure an optimum division between conventional portfolios and specific tasks"<sup>21</sup>.

Although Commissioners are not nominated to represent their own countries but to serve the wider interests of the EU as a whole, the larger Member States are reluctant to give up a Commissioner in the "one Commissioner per Member State" scenario, while the smaller Member States do not want to lose their one Commissioner if a smaller College or a two-tier system of full and deputy Commissioners were introduced. One analysis of the problem is as follows:

... the enlargement process also creates a variety of more pragmatic difficulties for the Commission's internal working processes. Staying with the top tier of the Commission, it becomes progressively more difficult to create enough meaningful portfolios as the number of commissioners increases. Moreover, even if portfolios can be found for everyone, they are not balanced: some are clearly more important than others and this leads to there being 'first-class' and 'second-class' commissioners. This undermines the collegiality of the Commission by creating a hierarchy of commissioners. Furthermore, it is not only the number of commissioners that increases but also that of directorates-general, which only serves to increase the complexity of the Commission's activities. Any enlargement also brings with it the need to take on new staff from the acceding countries quite rapidly, and the absorption of a relatively large number of new recruits will not be easy when they lack experience in dealing with EU affairs and may have quite different administrative practices and traditions; moreover, it could play havoc with the career prospects of existing staff (with consequently adverse effects on morale). Finally, there is concern in the Commission about the proliferation of official languages (which is also a problem for the other institutions).<sup>22</sup>

## **2. The nomination and composition of the Commission**

The Commission is composed of twenty Commissioners who are senior statesmen nominated by the Member State governments, approved by the European Parliament and appointed by the Council of Ministers. They are chosen "on the grounds of their general

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<sup>20</sup> EC/IGC/CONF/3818/96, 18 April 1996.

<sup>21</sup> Declaration 32, Cm 3780 p 103.

<sup>22</sup> Croft, p69.

competence and whose independence is beyond doubt" (TEU Article 156, Amsterdam 212). National governments have until now nominated Commissioners in consultation with the President of the Commission (TEU Article 158.2) with both President and Commissioners subject *as a body* to a vote of approval by the EP. Under the Amsterdam Treaty the final appointments will still be made *by common accord of the governments of the Member States* (Amsterdam Article 214.2) after receiving the approval of the EP. The governments of the Member States will *by common accord with the nominee for President* nominate Commissioners, whereas previously under the TEU they were nominated *in consultation with* the nominee for President. The Commission President is therefore subject to two votes of approval by the EP: first, a vote to approve his or her nomination, and then a vote to approve the President and the other members of the Commission as a body. The EP can vote to dismiss the whole Commission in a motion of censure (Amsterdam Article 201), an authority that was exercised in the vote on 14 January 1999 as a result of fraud allegations concerning certain Commissioners.<sup>23</sup>

## **B. Internal Reforms**

### **1. Repercussions of the Commission Resignation**

The report by the Independent Experts (also known as the Committee of the Wise) and the subsequent mass resignation of Commissioners gave the impetus for internal reforms in the areas of staff management and structures, and for a code of conduct for Commissioners. The Independent Experts' mandate has been extended until September 1999, during which time it will prepare a second report on the functioning and administration of the Commission. Areas of investigation will include procedures for granting financial contracts and employment contracts for part time or temporary work to implement programmes; coordination between Commission services responsible for detecting and dealing with alleged and actual fraud, irregularities and financial mismanagement; redefining the status of officials in order to make them more responsible for cases of fraud and mismanagement.<sup>24</sup>

It has been generally accepted that there have also been positive repercussions from the institutional crisis brought about by the Commission resignation. It has presented an opportunity to concentrate on the political and democratic dimensions of the EU in general, and the Commission in particular. Many critics and commentators have called for transparency and accountability in the EU in the new millennium. An editorial in the *Observer* commented:

With a vigorous and democratic reform programme, this event might even prove an important stimulus to returning legitimacy to Europe's governing institutions;

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<sup>23</sup> The EP voted by 293 to 232 not to dismiss the entire Commission. The Commission's resignation on 16 March was not the direct result of a censure motion, but a voluntary collective decision.

<sup>24</sup> *Agence Europe*, No 7431, 24 March 1999.

without it there's a danger that the European endeavour could become mired in cynicism and disaffection.<sup>25</sup>

The crisis has also signalled a shift in the balance of power towards the European Parliament, which demonstrated its political responsibility by more or less forcing the Commission action.<sup>26</sup> Some have been sceptical of the EP's potentially more powerful role in the EU institutional triangle. Quentin Peel, writing in the *Financial Times*, says:

If the Parliament emerges from the present upheaval as a serious player on the European stage, two member states above all others are likely to be concerned: Britain and France. For both are the most effective exploiters of the national interests in the EU (although Spain has now joined the band), and both are the most congenitally suspicious of the European Parliament, and have consistently resisted any big extension of its powers.<sup>27</sup>

While the EP's powers have finally been tested against the Commission, the need for a strong Commission has long been acknowledged, particularly by the smaller Member States. With its sole right of initiative in drafting legislation, the Commission is perceived as the only one of the EU's three main institutions able to protect individual States against domination by the larger States or by ad hoc groupings of Member States with shared interests. Some governments would therefore oppose any undermining or diminution of the Commission's authority, although the need for a more efficient, open and democratic Commission bureaucracy is widely accepted.

## **2. The Conduct and Responsibilities of Commissioners**

The nomination procedure for the Commission President and individual Commissioners has been thrown off course by the mass resignation of the Commission in March, a situation for which the EC Treaty does not provide. Although it was hoped that a new Commission would be in place as quickly as possible, so as not to leave the EU with a lame-duck executive at a time of conflict in Europe and trans-Atlantic trade disputes, other political realities have predominated. The Council of Ministers decided on 22 March that the new Commission would be appointed under the Amsterdam procedures and not those of the TEU, giving the EP powers of approval of both the Presidential nominee and the other Commissioners. Since Amsterdam did not come into force until 1 May, this has inevitably delayed the process. The EP elections (see section on EP), which are due to be held in mid-June, have presented a further obstacle. The new Commission is expected to be approved by the newly elected EP some time after 20 July 1999, when the EP meets for its first session.<sup>28</sup>

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<sup>25</sup> *Observer*, 21 March 1999.

<sup>26</sup> Some might argue that it should have done this in January by dismissing the whole Commission in a censure motion, see section on EP.

<sup>27</sup> *Financial Times*, 20 March 1999.

<sup>28</sup> Most predictions are that the Commission will be formally appointed in September 1999.

Then, the new MEPs will conduct formal hearings on all the Commission nominees and there will probably be a separate vote to extend their mandate from 2000 to 2005.

At the Berlin European Council on 24-25 March 1999, the Member State governments nominated the former Italian Prime Minister, Romano Prodi, as the next Commission President to replace Jacques Santer for the rest of the Commission's present term of office, i.e. until the end of 1999. The EP approved his nomination on 5 May by 392 to 72 with 41 abstentions. He will not be formally appointed until later, when the whole Commission is approved.

The Commissioners are continuing in a caretaker capacity, carrying out essential tasks only and undertaking no major new initiatives. Although Mr Prodi and the Member State governments have agreed not to nominate new Commissioners until after the EP elections, the Commission President-elect has already appointed David O'Sullivan, a high-ranking Commission official from Ireland, to be his *chef de cabinet*, the head of his private office. This is an influential position and Mr Prodi has already broken the institutional tradition of appointing a fellow national to the post.

It has been suggested that many of the Commissioners could be re-appointed. EP President, José-María Gil-Robles, told heads of government at Berlin that the replacement of a large part of the College of Commissioners was "politically indispensable".<sup>29</sup> Of the two British Commissioners, Sir Leon Brittan and Neil Kinnock, Sir Leon intended to stand down in January 2000 in any case, and press reports have suggested that the British nomination for his replacement might be the former Conservative Party Chairman and Governor of Hong Kong, Chris Patten.<sup>30</sup>

### 3. Romano Prodi's Proposals

The Commission President is given more powers than hitherto under the Amsterdam Treaty, including the freedom to reshuffle portfolios of Commissioners during his term.<sup>31</sup> Mr Prodi has already made clear that he intends to use the powers granted to the President under Amsterdam to reform the Commission and its role in the EU institutional processes. In a speech to the EP on 13 April 1999 he pledged that:

... the next Commission will make all possible efforts to lead Europe into a time of major reforms and change. A time of major reforms and change. The European institutions - and I mean all of them - must renew and reform themselves, both in terms of their policies towards the outside world and to the forms and methods of organisation within. As I say, it is time for reform for all the European

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<sup>29</sup> *Agence Europe*, No 7432, 25 March 1999.

<sup>30</sup> At the time of writing this Paper, Mr Patten's nomination had not been officially confirmed.

<sup>31</sup> Declaration 32 to Amsterdam Treaty on "the organisation and functioning of the Commission", Cm3780, p 103.

institutions. The Commission, of course, but also the Council and Parliament itself.<sup>32</sup>

Mr Prodi was clearly conscious of his role in re-establishing the credibility of the Commission when he addressed the EP on 4 May and set out proposals for redefining the role of the Commissioner:

There are two problems which must be addressed regarding the redefinition of the role of the Commissioner:

- the definition of the institutional role of the Commission in relation to the Council and Parliament;
- a clearer definition of the relationship between politics and administration in the workings of the Commission. I am firmly convinced that increasing the efficiency and accountability of the Commission in future largely depends on greatly reducing the grey areas which currently tend to blur demarcation lines of autonomy and responsibility between those performing more political tasks and those more involved with administration.

The most important way to make this division more transparent is to increase the Commission's scope for political involvement.

While respecting the Treaties and the powers of Parliament and the Council, the Commission needs to produce a major political programme, focusing above all on certain key priorities.

Defining priorities is one of the main tasks of politics and must be the direct responsibility of the President and the Commissioners as a team.

Mr Prodi suggested two "partial solutions" to reforming organisational methods, emphasising responsibility, transparency and teamwork, the lack of which had been criticised in the Independent Experts' report:

The success of this project will depend to a great extent on the professional and political attributes of the individual Commissioners and their attitude to teamwork.

Secondly, the Vice-Presidents could co-ordinate strategic areas for the Commission's activities.

Lastly, I believe that there should be an examination of the idea of creating departments dealing with portfolios which require integration and cooperation, entrusting the Commissioners responsible for these areas with the task of increasing coordination.

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<sup>32</sup> [http://europa.eu.int/comm/commissioners/prodi/speeches/130499\\_en.htm](http://europa.eu.int/comm/commissioners/prodi/speeches/130499_en.htm)



The Commission I have in mind will have the powers, the political awareness and the will to work as a team, to improve efficiency and transparency and to express a strong political programme.

Once we have increased the Commission team's capacity to provide political direction, we will be able to set about increasing the transparency, efficiency and accountability of their departments, as required by the Treaty of Amsterdam and demanded by European public opinion.

Mr Prodi also made other, potentially controversial, comments, linking future institutional reform with moves towards a common defence policy:

In the future, a new design for the institutions, mapped out at a new Conference, will be needed to exploit to the full concerted efforts in the field of defence, possibly based on the gradual and progressive model which has already been used for monetary union.<sup>33</sup>

#### **4. The British Government's Proposals**

In the initial aftermath of the Commission resignation the Prime Minister, Tony Blair, suggested ways in which the Commission might be reformed:

In the short term, reform must include at least the following: a complete overhaul of the approval and auditing procedures for financial control; a new system of financial management and spending programmes; an entirely new procedure for the awarding of contracts for the provision of services with a new management system to oversee it; reworking of the whole disciplinary procedure so that staff in the Commission know exactly what is expected of them and what will happen if they fall short of those expectations; and a new system of accountability in the bureaucracy of the Commission so that each individual holding a position of responsibility is fully accountable for the budget and the measures that he or she manages.

In addition, we also need an entirely new framework for fighting fraud and financial irregularities. We have long been advocates of the appointment of an independent fraud investigation office which has full access to documents and officials, and the powers that it needs. That appointment should now be made.<sup>34</sup>

The leader of the Opposition, William Hague, suggested that the following reforms should be considered:

... a binding code of conduct for the appointment of senior officials to prevent personal appointments by Commissioners and to stamp out nepotism in the

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<sup>33</sup> From Commission Internet website: <http://www.europa.eu.int/comm/com>.

<sup>34</sup> HC Deb 16 March 1999, cc 887-8.

Commission; an agreement that the European Parliament should be able to sack individual Commissioners who are guilty of misconduct; strengthened and publicly available declarations of financial interest by Commissioners and by their senior staff; and the immediate introduction of a systematic career management system for senior Commission staff, so that they rotate between responsibilities, as would be normal in any other Administration[?]<sup>35</sup>.

Menzies Campbell for the Liberal Democrats called for radical reform of the EU institutions with a “set of clear political rules by which to manage the affairs of the European Union” and a constitution for the EU.<sup>36</sup>

On 21 March the British Government, with the support of Gerhard Schröder, the German Chancellor, put forward proposals for reform of the Commission. These included a complete revision of the pay system for Commission staff; rewards for good performance; a new "structure of accountability" with provisions for dismissing officials with poor performances; greater mobility within and between the ranks of the Commission and promotion based on "proven ability"; the amalgamation of the top grades for officials (A1 and A2) and a reduction of top posts.

In subsequent parliamentary answers the Government has continued to insist that it is in favour of a Commission that is “efficient, transparent and accountable ... carries out its functions more effectively and makes much better use of taxpayers’ money”<sup>37</sup>.

## 5. Other Proposals

The Swedish foreign minister, Anna Lindh, also presented proposals to the Council on institutional, particularly Commission, reform. These were that:

- It should be mandatory for all the institutions to keep records of all documents not exclusively working documents. Records should include information about those documents not available to the public on account of their content;
- The confidentiality of certain documents should be specific and not stated in ambiguous or vague terms (e.g. ‘special grounds’);
- Documents dealt with by Commission committees should also be covered by the rules in the Treaty relating to openness.<sup>38</sup>

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<sup>35</sup> HC Deb 16 March 1999, cc 888-9.

<sup>36</sup> *Ibid*, c 891.

<sup>37</sup> HC Deb 20 April 1999, c 686.

<sup>38</sup> From *Agence Europe*, No 7431, 24 March 1999.

## 6. Codes of Conduct

The preparation of three Codes of Conduct “for a European Political and Administrative Culture” that form part of the overall reform of the Commission administration set in motion in 1995 has been speeded up in the light of the Independent Experts’ report. They aim to respond to many of the criticisms of the Experts’ report. The first Code lays down rules of conduct for Members of the Commission, the second governs relations between Commissioners and Commission departments, and the third sets out a code of ethics for officials. The two Codes concerning Commissioners have been approved, while the third, concerning officials, requires further consultation. The first Code is summarised as follows:

The Treaty articles on the Commission make special reference to the complete independence enjoyed by the Members of the Commission, who are required to discharge their duties in the general interest of the Community. In the performance of their duties they must neither seek nor take instructions from any government or from any other body. The general interest also requires that in their official and private lives Commissioners should behave in a manner that is in keeping with the dignity of their office. Ruling out all risks of a conflict of interests helps to guarantee their independence. The object of this code is, first and foremost, to address this concern, particularly by setting limits to Commissioners’ outside activities and interests which could jeopardise their independence. It also responds to the need to codify certain provisions relating to the performance of their duties.<sup>39</sup>

The principles of the second Code are as follows:

Relations between Commissioners (their Offices) and departments shall be based first and foremost on loyalty and trust.

Commissioners shall assume full political responsibility. Directors-General shall be answerable to their Commissioner for the sound implementation of the policy guidelines laid down by the Commission and the Commissioner. They shall be responsible for the efficient operation of their Directorate-General in compliance with the distribution of powers and responsibilities laid down in the Staff Regulations, the Financial Regulation, the Commission’s Rules of Procedure as well as SEM 2000 and MAP 2000.<sup>40</sup>

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<sup>39</sup> From texts of Codes of Conduct, *Agence Europe Documents*, 24 March 1999.

<sup>40</sup> *Ibid.* These are two initiatives to improve Commission management. SEM 2000 is the Sound and Efficient Management initiative and MAP 2000 is the Modernisation of Administration and Personnel Policy for the year 2000. The procedures were adopted in 1997.

## 7. Comitology

'Comitology' is used to describe the subordination of the Commission's executive powers under Articles 145 and 155 of the Treaty (Amsterdam Articles 202 and 211) to a variety of committees of civil servants from the Member States. Committees of national civil servants have been involved in the process for the adoption of secondary legislation for as long as Council delegating powers have existed. In 1962 the management committee formula was first introduced in various Council Regulations on the organisation of the market in agricultural products, and in 1968 the EP Legal Affairs Committee established the three committee types that are still used today. The number of committees and the procedures by which they operate have increased substantially since the 1960s. The term 'comitology' was apparently coined by the European Parliament around 1986, although the proliferation of the system was by then already well-known.<sup>41</sup>

In practice, comitology is a way of delegating to committees the task of implementing large numbers of technical, regulatory and management matters, many relating to aspects of the Common Agricultural Policy and the *Single European Act*. The principle and substance of the measure will already have been adopted by the Council as primary legislation following the full, formal legislative procedures.

In 1987 the so-called "Comitology Decision" set out the principles and rules to be followed where the Council is obliged to confer executive powers on the Commission. It lays down three main types of procedure, each involving committees composed of representatives of the Member States. These are the Advisory Committee, the Management Committee and the Regulatory Committee.

Article 189(b) of the TEU on the 'co-decision procedure' gave the EP a greater role in the decision-making process, but no amendment was made to Article 145. To remedy what the EP saw as an ever-increasing democratic deficit, it adopted a resolution on 16 December 1993<sup>42</sup> calling for the existing comitology arrangements to be revised to give the Parliament a scrutinising and amending role in the delegation of implementing powers under acts adopted by co-decision. The EP has continued to fight for a greater role in the comitology process.

The process of comitology and proposals for reform are discussed in detail in a report by the House of Lords Select Committee on the European Communities, *Delegation of Powers to the Commission: reforming comitology*.<sup>43</sup>

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<sup>41</sup> Comitology has also variously been written as 'commitology', 'committology' and even 'cometology'. 'Comitology' was used by the European Court of Justice in its ruling in the so-called 'Comitology Case', *European Parliament v Council* [1988] ECR 5616, 5627.

<sup>42</sup> *OJC* 20, 24 January 1994, p.176.

<sup>43</sup> HL Paper 23, 1998-99.

## IV The European Parliament

### A. Enlargement Issues

#### 1. Size of the European Parliament

The EP currently has 626 Members, directly elected by the Member States. Membership is calculated only very roughly according to the size of the country and favours the smaller States. The number of representatives for each Member State is laid down in Amsterdam Article 190(2). Germany, the largest Member State, has 99 Members, which translates roughly to one MEP per 800,000 of the population. Luxembourg, the smallest State, has 6 MEPs, or approximately one per 71,000. The UK has 87 MEPs, or roughly one per 680,000. The following table shows how the number of MEPs corresponds to the size of population and the size of the electorate in the fifteen Member States<sup>44</sup>:

#### Population, electorates and MEPs

	MEPs	Population (millions) at 1/1/98	Population per MEP	Electorate (millions) 1994	Electorate per MEP
Germany	99	82.1	828,900	60.5	610,800
United Kingdom	87	59.1	679,100	43.4	499,400
France	87	58.7	675,000	39.0	448,800
Italy	87	57.6	661,600	47.5	545,900
Spain	64	39.3	614,800	31.6	493,100
Netherlands	31	15.7	504,800	11.6	374,800
Greece	25	10.5	420,300	9.5	379,400
Belgium	25	10.2	407,700	7.2	288,500
Sweden <sup>(b)</sup>	22	8.8	402,200	6.6	297,800
Portugal	25	10.0	398,300	8.6	342,600
Austria <sup>(a)</sup>	21	8.1	384,500	5.8	276,200
Denmark	16	5.3	330,900	4.0	249,600
Finland <sup>(a)</sup>	16	5.1	321,700	3.8	239,100
Ireland	15	3.7	246,200	2.6	175,400
Luxembourg	6	0.4	70,600	0.2	37,300

(a) elections were held in October 1996

(b) elections were held in September 1995

*Eurostat: Statistics in Focus: Population and Social Conditions, 1998:9*

*Elections to the European Parliament: 1994, Eurostat*

*The 1994 Elections to the European Parliament, Lodge, 1996*

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<sup>44</sup> Table compiled by Bryn Morgan, Social and General Statistics Section.

Amsterdam Article 189 states that the “number of Members of the European Parliament shall not exceed seven hundred.” This limitation means that future enlargements will require a reduction in the allocation of seats to current Members.

## 2. Increasing the Powers of the EP

One of the EP’s main ambitions is to become an equal co-player with the Council of Ministers in the decision-making process. EP proposals to successive IGCs have stated this aim, which has been met with varying degrees of success. The introduction of the co-decision procedure in the TEU (Article 189b) gave the EP its most influential position to date. Co-decision was introduced in a number of significant areas, notably the internal market. Under the TEU it was an extremely complex procedure, although this has been simplified by the Amsterdam Treaty under new Article 251. Co-decision brought in a process of conciliation at which the EP could reject the Council's common position and, by an absolute majority, prevent legislation from being adopted.

Although it was thought by some national governments, including the British Government at the time, that the EP would make considerable use of its new powers to extend its influence over the legislative process, the evidence shows that the conciliation procedure has been used relatively rarely and the EP has used its ultimate power of veto on only one occasion. The EP’s role of co-legislator has been strengthened under the Amsterdam Treaty by the extension of co-decision to eight new Treaty Articles and 15 existing ones that were formerly subject to the co-operation procedure. The following is one commentator’s assessment of the role of the EP in co-decision and its potential use under Amsterdam:

Of the 49 draft laws successfully completing the procedure, 30 were agreed in second reading without the Conciliation Committee ever being convened. The other 19 cases witnessed the Committee reaching agreement on a text which was then approved by both the Council and Parliament. By contrast, in only *one* instance in the first two and a half years of the operation of the procedure did the Council attempt to reaffirm its common position after failure in the Conciliation Committee, and thus seek to present the EP with a "take-it-or-leave-it" proposition. The EP's response was to reject the legislation (on a proposal to liberalise European voice-telephony regulations) by an overwhelming majority.

The Amsterdam Treaty transfers a number of areas currently subject to the cooperation procedure to co-decision, thus potentially increasing the EP's scope for using its power of veto. It is impossible to predict the extent to which the EP might use its powers in this process. It could be argued that while the potential for greater EP influence certainly exists, empirical evidence so far does not indicate that it has exerted this influence very often. The simplification of co-decision under Amsterdam might lead to greater use of the conciliation procedure,

whereas there is currently perhaps more incentive to reach agreement without convening the conciliation committee and thus prolonging the process.<sup>45</sup>

The EP's assent is now needed before sanctions can be imposed on a Member State (Amsterdam Article 7) and the EP must also give its approval of the nomination by Member States of the Commission President, as well as other members of the Commission (see above). An EP Working Document by the Directorate-General for Research gave a mixed view of the outcome for the EP in the Amsterdam Treaty:

The outcome of the 1996/97 IGC for the EP was somewhat ambiguous. In particular, the parliamentary ambition of enlarging the codecision procedure was not fully successful, although 23 new cases were introduced. The budgetary division between obligatory and non-obligatory expenditures was not overturned, as requested by Parliament. The EP did not receive any formal rights in changes of the TEU and – as other considerable examples – it did not obtain any specific titles in the common agricultural policy and in the second pillar. On the other hand the simplification of the codecision procedure was a major achievement according to the Parliament's demands. The new procedure for investiture of the Commission, the incorporation of the social protocol into the ECT and the new title on employment policy were other examples of new powers for the Parliament. Summarising these outcomes, the success of the IGC is respectable. Of course, not every demand was fulfilled and the EP still lacks substantial rights in the institutional development of the EU. However, in comparison with former IGCs, the European Parliament has increased its role in system development, both in its participation in the IGC and in the results achieved by the conference.<sup>46</sup>

The rapporteur, Andreas Maurer, suggests further areas in which the EP might press for reform, either by inter-institutional agreement, amendments to the EP's Rules of Procedure where Treaty changes are not necessary, or by Treaty amendments at the next IGC:

- An informal implementation mechanism in the EP's approval of the candidate for President of the Commission that would bring the Commission and Parliament together in a more "political relationship";
- A role (either assent or consultation) in the appointment procedures of the Court of Auditors, the European Central Bank and the European Court of Justice;
- New inter-institutional agreements to remedy perceived shortcomings of the Amsterdam Treaty;

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<sup>45</sup> Roger Scully, "The European Parliament and the Co-Decision Procedure: A Reassessment", *The Journal of Legislative Studies*, Vol.3, Autumn 1997.

<sup>46</sup> EP Directorate-General for Research, Working Document, Andreas Maurer: *(Co-)Governance after Maastricht: The European Parliament's institutional performance 1994-98*, POLI 104.EN, October 1998.

- Inter-institutional agreements to ensure the smooth running of the codecision procedure;
- Inter-institutional agreement on key EMU-related issues (e.g. excessive deficit procedure, international agreements on monetary or foreign exchange regimes, mutual assistance procedures, decision-making procedures linked to the growth and stability pact, the EP's position with regard to the temporary committees of inquiry);
- An informal agreement with the Council of Ministers on how to adopt the decisions on move from unanimity and consultation of EP to codecision in Justice and Home Affairs (JHA) areas and inter-institutional agreement to enable the EP to monitor the "communitarisation process" in JHA and the Schengen *acquis*;
- Looking to the next IGC, the EP may act as a "broker for Member States interests in order to settle potential elements of conflict (weighting of votes and number of Commissioners) at an early stage";
- An EP right to approve Treaty amendments.<sup>47</sup>

In line with the last point, the EP adopted a resolution on 6 May 1999 calling for EP participation in the next IGC. The EP:

17. Considers it essential, given the importance of the Union's democratic legitimacy, that a new formula be found for the participation of the European Parliament to allow its representatives to take part in, and address, all meetings, which was not previously the case;

18. Calls for the European Parliament to be accorded the right to ratify any new treaty, and considers that it should be accorded this right, by means of an ad hoc formula, as soon as the forthcoming reform gets under way.<sup>48</sup>

## **B. Internal Reforms**

### **1. MEPs' Pay and Allowances**

MEPs are paid at the same rate as national MPs, unless they have a dual mandate, in which case they are paid an additional one-third of their parliamentary salary. British MEPs are currently paid £47,008 (following an increase in April 1999). MEPs' pay and pensions are paid by the national governments in the Member States. The main allowances – general expenditure, flat-rate travel allowance, travel allowance, subsistence allowance and secretarial assistance allowance – are paid by the EP.<sup>49</sup>

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<sup>47</sup> EP Working Document, pp 42-5.

<sup>48</sup> Minutes of 6 May 1999, *Preparation for the 3-4 June European Council in Cologne-Institutional reform*, B4-0428/99, "Resolution on the method and timetable of the forthcoming institutional reform".

<sup>49</sup> See Library Research Paper 98/86, *Parliamentary Pay and Allowances: Current Rates*, 21 August 1998.



The controversy over the way MEPs are paid expenses arose as a result of a Court of Auditors' preliminary report in 1998. The main criticism was of the practice of reimbursing MEPs' travel costs rather than providing them with advances that had to be accounted for with receipts. Some reform of the system had already been taken in November 1997, when MEPs were required to produce clear evidence of journeys actually made (e.g. train tickets or boarding cards) before being reimbursed. Participation by MEPs in debates has also improved since new rules were introduced in March 1997 linking the payment of allowances to roll call votes. Before this, "average participation was running at a little under two-thirds."<sup>50</sup>

MEPs' travel allowances are flat-rate allowances for business-class fares to and from the Parliament. This can be claimed regardless of whether the Member travels business or economy class. Many MEPs took advantage of the generous expenses system rather than not claim at all. Pauline Green, the British leader of the European Socialist Party (PSE), led moves to reform the system of allowances and expenses. Another British MEP, Richard Balfe (PSE), submitted a report to the EP Bureau calling for an end to the lump sum system for expenses and proposing *inter alia* reimbursement only on the production of tickets or receipts. Other flat-rate allowances were not singled out for reform.

The Court of Auditors document<sup>51</sup> was discussed at a meeting of the EP bureau on 27 May 1998 and the EP voted to reform the system in June 1998. The matter was also raised at the Cardiff European Council in June 1998, chaired by the British Prime Minister under the UK Presidency of the EU. Mr Blair urged the EP to speed up the introduction of new rules to curb abuse of the system.

One of the arguments raised against the proposed reform is that the generous expenses compensate MEPs from the poorer Member States, who earn considerably less than other European colleagues because the salaries of MEPs are the same as those of national parliamentarians and are paid from national, not EU, budgets. Thus, the Greek, Portuguese and Spanish MEPs earn much smaller salaries than their Italian or German colleagues. The salary of British MEPs corresponds to the average among the 15 Member States. The EP suggested that, as well as tackling allowances and expenses, it would look seriously into the possibility of standardising the salaries of MEPs, which would be paid by the EU budget.

In a vote on 22 October 1998 an amendment tabled by the EP's Committee on Budgets relating to the reimbursement of "actually incurred costs" was not adopted.<sup>52</sup>

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<sup>50</sup> *European Voice*, 4 June 1998.

<sup>51</sup> Special Report No. 10/98, 15 July 1998, published in OJC 243, 3 August 1998.

<sup>52</sup> Amendment 899, Budget 1999, Part 2. The amendment was voted on in parts: the first four paragraphs concerned expenses, and the fifth concerned the common terms of an MEPs' Statute, which would propose a salary for MEPs. On the first roll-call vote, out of 516 members who voted, 224 were in favour, 74 against, with 218 abstentions. 313 votes were needed for the amendment to pass. The fifth

The EP adopted a Draft Statute for Members of the European Parliament on 3 December 1998 which it submitted to the Vienna European Council on 11-12 December 1998.<sup>53</sup> The Draft Statute was adopted, on the basis of a report from the EP's Committee on Legal Affairs and Citizens' Rights, by an absolute majority of MEPs by 327 to 120. The new system would apply to all new MEPs elected in EP elections in June 1999, with existing MEPs who are re-elected given the right to choose between the new and the present system for the next parliamentary term.

The Council of Ministers reached a compromise agreement on the Statute on 26-27 April. It proposes that the same salary for all MEPs should be based on the average of the current national salaries paid to MEPs from the fifteen Member States. This would amount to roughly □68,000 per year or □5,677 per month (approximately £54,600 and £4,005 respectively), paid by the Community and updated annually in line with inflation. Salaries would be subject to Community taxation with an option for Member State governments to impose an additional top-up national tax. Travel costs would be based on actual expenses incurred and reimbursement given only on the production of tickets for air and rail travel. First-class rail travel and business-class air travel would still be allowed, but it would no longer be possible to claim for a first-class fare, having travelled economy class. There would be a new Community pension scheme, new social security provisions and a register of MEPs' interests available to the public.

British Conservative MEPs did not support the proposals. The leader of the UK Conservatives in the EP, Edward McMillan-Scott, argued against the need for a European MEP salary on the grounds that MEPs do not work for the EU but for the British people in the EU, and should therefore "be paid for by the British people and taxed at the same rate as the British people."<sup>54</sup> Differences remain between the Council and the Parliament over aspects of the Statute. These concern:

- the proposed legal basis for the Statute (Article 190(5) of Amsterdam);
- taxation: the principle of imposing Community taxation on the parliamentary allowance and other income and emoluments disbursed by the Communities should be laid down in the Statute.
- the Statute should also cover incompatibilities and the determination criteria in areas such as the independent mandate, immunity, the verification of credentials and validity of mandate, vacant seats, substitution, practical arrangements for reimbursement of costs actually incurred, end-of-service allowance, retirement pensions, invalidity pension, survivor's pension, sickness, pregnancy and accident cover and a register of Members' interests.

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paragraph was also rejected. Out of 507 Members, 219 voted in favour, 175 against with 113 abstentions.

<sup>53</sup> EC Draft 13978/98; EP A4-0426/98.

<sup>54</sup> *Irish Times*, 30 December 1998.

On 5 May 1999 MEPs voted by 376 to 140 with 31 abstentions in favour of a resolution instructing an EP working party to pursue negotiations with the Council to settle outstanding differences over the Statute, with a view to reaching an agreement before the end of 1999, and if possible before the end of this Parliament.<sup>55</sup> It was hoped that the Statute could come into force at the new EP's first meeting on 20 July.

### C. EP Elections and Reform of the Electoral System

Elections to the European Parliament are to take place in the 15 Member States from 10-13 June 1999<sup>56</sup>. Amsterdam Article 190(3) provided for the EP to draw up a proposal for elections “in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States.” Until recently Britain has been the only EU Member State not to elect MEPs by a system of proportional representation (PR), but the *European Parliamentary Elections Act 1999*<sup>57</sup> provides for British MEPs to be elected by a regional closed-list form of PR.<sup>58</sup>

The EP adopted a Resolution in July 1998 on a draft electoral procedure incorporating common principles for the election of MEPs, including in a draft Act consideration of a proposal that “a certain percentage of the total number of seats within the European Parliament shall be filled by means of list-based proportional representation relating to a single constituency comprising the territory” with effect from the EP elections in 2009.<sup>59</sup> The draft Act rules out dual mandates and allows for Member States to set campaign expenditure limits.

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<sup>55</sup> A4-0267/99. Minutes of 5 May 1999, *Resolution on the draft Statute for Members of the European Parliament*.

<sup>56</sup> The EP election is on 10 June in the UK.

<sup>57</sup> PGA Chap 1 1999.

<sup>58</sup> See Library Research Paper 98/102 on the EP Elections Bill.

<sup>59</sup> EP *Minutes*, 15 July 1998, OJC 21 September 1998, pp 66-68.

## V The Council of Ministers

The Council of Ministers is the ‘intergovernmental’ EU institution in so far as it is composed of ministers from the Member States. It has legislative and decision-making powers; it generally coordinates EU activities, including those in the so-called second and third ‘pillars’ of the Union, the Common Foreign and Security Policy (CFSP) and Justice and Home Affairs (JHA). The Treaty established cases in which the Council acts by a simple majority, by a qualified majority or unanimously, although there is an increasing tendency, particularly in the Community ‘pillar’, to act by QMV. In the Council each Member State has an allocation of votes ranging from 10 for the larger States to 2 for the smallest ones (Amsterdam Article 205, former Article 148).

### A. Enlargement Issues

The two main issues facing the next IGC will be the re-weighting of votes in the Council and the extension of Qualified Majority Voting. Re-weighting will at least partly take into account the Amsterdam Protocol provision that the larger Member States should be compensated for the loss of one Commissioner. Modification of the weighting of votes will also have to achieve an appropriate balance between the larger and smaller Member States and a blocking minority that will be politically acceptable.

#### 1. Weighted Votes and the Blocking Minority

During the enlargement negotiations in 1994-95 to include Austria, Sweden and Finland (Norway was included in the negotiations but did not join), the issue of the number of votes granted to Member States in the Council of Ministers and the number of votes needed to block legislation (the ‘blocking minority’, roughly a third of the votes) was a main obstacle to agreement. The British Conservative Government objected to the formula by which the blocking minority was to be increased in absolute terms, since this would limit its powers (that is to say, the powers of the large Member States) to block certain proposals in an enlarged Union. The then Government argued vigorously for a system that preserved the *status quo* as far as the blocking minority was concerned. The Accession Treaty was finally agreed, but only with the so-called “Ioannina Compromise”, which was later formalised in a Council Decision reflecting the British point of view. The compromise was to the effect that in circumstances where there was a clear indication of a dissenting minority representing 23-25 votes (out of a total of 87), negotiations should continue in order to “facilitate a wider basis of agreement in the Council”.<sup>60</sup> A satisfactory solution would be sought on the basis of at least 65 votes.

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<sup>60</sup> 95/1/EC, Euratom, ECSC, *OJL 1*, 1 January 1995.

Croft *et al* suggest how Council votes might be distributed under the present system of allocation, which favours the smaller states, if twelve new states were to join the Union:<sup>61</sup>

<b>Current Members</b>	<b>Population (millions)</b>	<b>Weighted Votes</b>
Belgium	10.1	5
Denmark	5.2	3
Germany	81.5	10
Greece	10.4	5
Spain	39.2	8
France	58.0	10
Ireland	3.6	3
Italy	57.3	10
Luxembourg	0.4	2
Netherlands	15.4	5
Austria	8.0	4
Portugal	9.9	5
Finland	5.1	3
Sweden	8.8	4
UK	58.5	10
<b>Prospective Members</b>		
Poland	38.3	8
Czech Republic	10.3	5
Slovakia	5.3	3
Hungary	10.3	5
Slovenia	2.0	3
Bulgaria	9.0	4
Romania	22.8	7
Lithuania	3.7	3
Latvia	2.6	2
Estonia	1.5	2
Malta	0.3	2
Cyprus	0.7	2
<b>Total</b>	<b>478.2</b>	<b>134</b>
<b>QMV</b>		<b>95</b>
<b>Blocking minority</b>		<b>40</b>

In this scenario the small countries voting together with one large country and two medium-sized countries (e.g. Poland and Romania) could form a blocking minority with a combined population of only half of the total EU population. A combination of Malta, Cyprus, Estonia, Latvia and Slovenia would have 11 Council votes representing 7.3 million inhabitants, while Germany has 10 votes and represents over 80 million

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<sup>61</sup> Croft, p 71.

inhabitants. Also unacceptable for the large Member States would be a blocking minority formed from the combined vote of all the small Member States (i.e. those with two to four votes), representing only 12 per cent of the EU population. In practice it is probably fair to say that there is no alliance of small states against larger ones, but varying coalitions of large and smaller States on almost all issues.

If the present pattern of weighting is changed, a range of options might be considered, some of which were considered in the preparatory stage of the last IGC. These included a system of weighted voting that reflected, at least in part, the population of each Member State. Croft *et al* summarise some of the possible systems:

... a weighting system based on population but with upper and lower limits which still produce a bias in favour of the smaller countries (otherwise Germany would have 240 times as many votes as Malta, the UK 39 times more than Estonia, and so on). This essentially removes the ‘anomalies’ described above. The fourteen small countries that could form a blocking minority under the present system could only muster just over half (seventeen) the votes required under this revised system. Conversely, it would take only three of the large countries, or even two of them and one ‘near-large’ country, to produce a blocking minority. This would have a degree of political legitimacy, since these various combinations would always represent at least 32 per cent (and up to 41 per cent) of the EU’s population. However, it may arguably redress the balance too far in favour of the large member states and would be politically unacceptable for small members, particularly the Benelux countries.

Between these two extremes are various compromise positions. For example, it might be possible to have a variable qualified majority that was set higher for the more politically contentious issues. An alternative approach might be to require a double majority (and presumably a double blocking minority): in terms of the weighted voting system (the current version) and of population.<sup>62</sup>

## **2. Extension of Qualified Majority Voting**

Declaration 6 to the Amsterdam Treaty “on the Protocol on the Institutions with the Prospect of Enlargement of the European Union”, of which the Conference took note, states:

Belgium, France and Italy observe that, on the basis of the results of the Intergovernmental Conference, the Treaty of Amsterdam does not meet the need, reaffirmed at the Madrid European Council, for substantial progress towards reinforcing the institutions.

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<sup>62</sup> Croft, p 72.

Those countries consider that such reinforcement is an indispensable condition for the conclusion of the first accession negotiations. They are determined to give the fullest effect appropriate to the Protocol as regards the composition of the Commission and the weighting of votes and consider that a significant extension of recourse to qualified majority voting forms part of the relevant factors that should be taken into account.<sup>63</sup>

It is generally accepted among the Member States and in the EP that a further extension of QMV is needed if the EU is to operate effectively in the future with some 20-30 Members. It is likely that the guiding principle will be that matters which are not constitutional should be decided by QMV, although this raises the question of what is and is not constitutional. In January 1999, in his outline to the EP of proposals for the six-monthly Presidency, the German foreign minister, Joschka Fischer, called for the national veto to be abolished in most EU decision-making. He told the EP:

The next target area after the conclusion of Agenda 2000 will be the EU's institutional reform. This reform is urgent with a view to enlargement to avoid institutional collapse. If the European Union is to maintain its ability to act with 21 or more members, appropriate reforms must be carried out. The key question here is the Union's readiness to accept majority decisions in as many areas as possible. The new Federal Government advocates limiting the need for unanimity in the EU in the longer term to questions of fundamental importance such as treaty amendments.<sup>64</sup>

In a memorandum annexed to the Foreign Affairs Committee Report on EU enlargement, the Government said that it was “too early to say in what areas, if any, QMV might be extended” and that it was “committed to retaining unanimity on key matters of national interest, such as taxation, defence, future financing and Treaty changes”.<sup>65</sup> The extension of QMV at the expense of unanimity is seen by some as a direct challenge to the sovereign state. Although the Labour Government has been less opposed in principle, it has argued, like the previous Government, in favour of retaining unanimous decision-making in particularly sensitive areas.

## **B. Internal Reforms**

### **1. Bourlanges Report**

The French Christian Democrat MEP, Jean-Louis Bourlanges, of the EP's Committee on Institutional Affairs, prepared a report *on the decision-making process in the Council in an enlarged Europe*<sup>66</sup> which called for a radical overhaul of the Council of Ministers.

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<sup>63</sup> Cm 3780, p 108.

<sup>64</sup> Speech to EP, 12 January 1999; [www.eu-presidency.de/ausland/englisch/03/0302/00098/index.html](http://www.eu-presidency.de/ausland/englisch/03/0302/00098/index.html)

<sup>65</sup> HC 86, Appendix ii, p 42.

<sup>66</sup> A4-0049/99, 28 January 1999.

The report is critical of the main Council, the General Affairs Council, which it describes as being “fragmented into specialist groupings, in what has been called a spirit of ‘sectoral corporatism’.” The report continues:

The cohesiveness of the Council’s actions is being undermined by the centrifugal effect of new policies, particularly in the field of economic and monetary union and the common foreign and security policy, the ever-closer inter-meshing of European and national policies, the proliferation of specialist Councils and the increasing powers of the Ecofin Council. These developments need to be resolutely combated.<sup>67</sup>

The report called for the abolition of two committees: the political committee and the K4 committee. The former was set up under Article J.8(5) of the TEU to “monitor the international situation in the areas covered by the common foreign and security policy” and the latter deals with justice and home affairs matters. Both are known to be highly secretive and the report accuses them of “bypassing normal EU procedures and of lacking the ‘*communautaire* philosophy’ needed to provide ministers with genuine joint proposals”<sup>68</sup>. The EP’s view is that the work of these committees could be handled by the Committee of Permanent Representatives (Coreper).

### C. Other Appointments

The Cologne European Council is due to confirm various appointments, including the Secretary-General of the Council of Ministers (to replace Jürgen Trumpf) whose mandate will include that of High Representative for the Common Foreign and Security Policy (CFSP), and the Deputy Secretary-General of the Council.<sup>69</sup>

The High Representative to assist with the formulation, preparation and presentation of CFSP policy decisions was agreed under Article 18 (former Article J.8) of the Amsterdam Treaty. The German nomination for the post of “Monsieur PESC”, the French acronym, is Günther Verheugen, the current Minister for Europe; the French candidate is the present Foreign Minister, Hubert Védrine. The former British Ambassador to the UN, Sir David Hannay, has been nominated for the post of Deputy Secretary-General of the Council. Chris Patten and Paddy Ashdown have also been mentioned in this context, although it has recently been suggested the Mr Patten might be nominated to become a Commissioner. The Swedish Prime Minister, Carl Bildt, and the NATO Secretary-General, Javier Solana, the (Spanish) High Representative to Bosnia, Carlos Westendorp,

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<sup>67</sup> A4-0049/99, 28 January 1999, p 15.

<sup>68</sup> *European Voice*, 4 February 1999; see also page 17 of report.

<sup>69</sup> The President of the European Investment Bank, and the EU’s High Representative for Bosnia will also be appointed.



and the former Irish foreign minister, Dick Spring, have also been cited as candidates.<sup>70</sup> The new High Representative will begin to assemble a policy planning team and early warning unit, composed of diplomats from Member State governments which “could form the embryo of a future European foreign ministry”.<sup>71</sup>

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<sup>70</sup> *Guardian*, 6 May 1999.

<sup>71</sup> *Ibid.*

## VI A European Forum for National Parliaments

In an interview with the *New Statesman* in August 1998, the Foreign Secretary, Robin Cook, called for a strengthening of the link between the national parliaments of the EU Member States by setting up a new European Forum. The idea is not new and has been discussed at the last two IGCs, so far resulting only in the granting of a somewhat higher profile to the Conference of European Affairs Committees, known as COSAC (its French acronym), in the form of a Protocol to the Amsterdam Treaty. The *Protocol on the Role of National Parliaments in the European Union* gives COSAC the role of commenting to the EU institutions on legislative texts, with particular regard to subsidiarity, or on proposals concerning the area of freedom, security and justice that might affect the rights and freedoms of individuals.<sup>72</sup> Mr Cook emphasised that there was a need to explore ways of bringing national parliaments together. He continued:

For instance, if there were to be a code of subsidiarity, it surely would be logical for a forum to be created in which national parliaments could meet to make sure these principles of subsidiarity were being observed and scrutinise the details. At the moment there is not an adequate basis for representation from the national parliaments to come together to discuss Europe – and somewhere within the broad family of European institutions there should be room for that. If we do want Europe to thrive, if we do want popular support for Europe, we must develop some way to link in the parliaments of the member states.<sup>73</sup>

An editorial in the *Times* on Mr Cook's proposals was not convinced by the suggestion for a European Forum, voicing some of the counter-arguments that have been raised in the past against such a body:

The idea of a European Forum for national parliaments is prehistoric. The original European Parliament consisted of such delegations until direct elections were introduced 20 years ago. This democratic legitimacy, it was presumed, would enable the [European] Parliament to become a popular and effective institution. It has not succeeded on either dimension. The Westminster Parliament remains the body best placed to examine European proposals.<sup>74</sup>

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<sup>72</sup> See pages 89-90 of Cm 3780.

<sup>73</sup> *New Statesman*, 14 August 1998.

<sup>74</sup> *Times*, 14 August 1998.

## VII Conclusion

Institutional reform is only one of many tasks considered to be essential for a wider EU. The EU agenda is heavy with difficult and sensitive issues. Reform of the Common Agricultural Policy (CAP) and the EU's budget and financial perspective are among other matters that the Member States will again have to address, in spite of a compromise agreement in Berlin in March. The success of Economic and Monetary Union will remain a matter of concern for those inside and outside the EU (and for those EU Member States such as Britain, Sweden and Greece that have not yet joined). The status of the Western European Union in relation to the EU is also on the agenda and is perhaps of greater interest given the present conflict in Kosovo.

Institutional reform has a fairly constrained timetable if it is to be operational in time for the next EU enlargement. The German Presidency ends on 30 June and the incoming Finnish Presidency will have the task of resolving some of the most serious constitutional, institutional and foreign policy issues that have faced the EU for some time. The Amsterdam Treaty requirement that Treaty reforms to accommodate new Member States must be agreed before the next enlargement means that the Finnish Presidency will probably launch preparations for the next Intergovernmental Conference to revise the Treaty. Plans for a new IGC are likely to be formalised at Cologne. Preparations for the negotiations would then be launched by the Finns, probably with the creation of a Reflection Group, with the IGC itself opening at the Helsinki European Council in December 1999. If a Treaty revision can be agreed by the end of 2000, this would still allow at least two or three years for ratification by all Member States before the applicant States become Members.