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Madrid, 30 October 2007

RESULTS OF THE INTERGOVERNMENTAL CONFERENCE AND VIEWS ON THE FUTURE FOR THE EUROPEAN UNION

The latest Intergovernmental Conference (IGC) dedicated to negotiating the reform of European Union primary law came about as a result of the negative outcome of the referenda on the so-called constitutional Treaty held in 2005 in France and the Netherlands. Once it had become clear that it would not be possible to successfully conclude the ratification process that had been begun, the member states of the European Union decided to allow a two year pause for reflection.

After this period, the states came together to negotiate a new "traditional" reform text which would incorporate the principal advances of the constitutional Treaty. To this effect, the Council of Europe approved, at a meeting held in Brussels in June 2007, a mandate allowing an Intergovernmental Conference to adopt a Treaty which would reform the current Treaty on European Union and Treaty establishing the European Community (which will henceforth be called the Treaty on the functioning of the European Union).

Consequently, unlike the situation foreseen for the constitutional Treaty, the current Treaties will remain in force and will only be amended (similar to what occurred at the time with the Treaties of Amsterdam and Nice). That is, the changes which came out of the 2004 IGC as specified in the mandate adopted with the Conclusions of the Council of Europe in June 2007 would be integrated into the existing treaties.

In accordance with this mandate, the Reform Treaty contains two substantive clauses which modify the Treaty on European Union (TEU) and the Treaty establishing the European Community (TEC), respectively. It is stipulated that both Treaties constitute the founding Treaties of the Union and that the Union replaces and succeeds the Community. The technical modifications to the EURATOM treaty and the current protocols agreed at the 2004 IGC will be made via protocols attached to the Reform Treaty.

The Intergovernmental Conference began work on the 24 July and presented its results at the Informal Summit / Session of the Intergovernmental Conference held in Portugal on 18-19 October. At this meeting, the heads of State and Government adopted the text proposed by the IGC and finalised those issues which had been left open, either because they referred to questions which fell outside the mandate of the IGC or because



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they were requests which had been raised by member States after the technical work of the Conference had been concluded.

The final text of the Reform Treaty will be signed on 13 December, with the modifications adopted by the Heads of State and Government at the Lisbon meeting, at which point the process of national ratification will begin.

It is planned that the Reform Treaty will come into force, after having been ratified by all the member States, on 1 January 2009, prior to the European elections due in June 2009.

We can express satisfaction with the results of the Intergovernmental Conference, as the new Treaty, the Reform Treaty of the Union, recognises the most important innovations that the constitutional Treaty brought to the European Union. It will thus allow the Union to be better prepared to face the challenges of the new century, giving it more and better tools to act legitimately and effectively. Legitimacy and effectiveness are the two key factors, in the light of which the changes to the current legal texts introduced in the Reform Treaty should be evaluated.

Firstly, the Union needs to raise its legitimacy and, further, needs its citizens to regard it as more legitimate. To that end, many of the reforms introduced by the new Treaty aim to bring the Union closer to its citizens and to ensure it will serve their interests.

One example of this is the inclusion in the Reform Treaty of certain fundamental principles regulating the relationship between the Union and its member states. Although some of these principles are already implicit in the current treaties, they are now expressly and clearly written into the reformed texts. Of particular importance is the principle of conferral of competences, under which the Union may only act within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. The principle of respect on the part of the Union for the fundamental political and constitutional structures of the Member States is also important, as is the principle of sincere cooperation between the States and the Union.

The principle of primacy of Union Law over that of the member states has been expressed in a declaration which refers to the jurisprudence of the Court of Justice of the EU.

In order to give the Union greater, and more visible, legitimacy, the competences of the Union have been set out in three clearly delineated areas: exclusive, shared, and



supporting. While the list of areas considered as exclusive competences¹ of the Union and that of questions which may fall under the area of supporting competences² are exhaustive in nature, the list of issues considered to be shared competences³ between the Union and the member states is only indicative, being defined by default as those areas of activity which are neither exclusive nor supporting. All of this, together with the so-called "flexibility clause", constitutes a minimum guarantee to allow the Union to develop and adapt to new needs arising from social and economic circumstances.

In the final analysis, the Treaty is a collection of measures intended to guarantee respect for the principle of subsidiarity, under which the Union may only act if the Member States are not able to do so and if the action of the Union adds value.

Thus the modifications made to the current Treaties to establish the role of national Parliaments in ensuring that the principle of subsidiarity is respected are of great importance. It is well known that the Reform Treaty provides for a mechanism colloquially referred to as the "Yellow Card" system, under which European Commission proposals of a legislative nature must be forwarded directly to national Parliaments so that they can issue a reasoned opinion addressed to the Commission, the Council and the European Parliament. If at least one third of the national Parliaments (one quarter in the case of proposals concerning issues of justice, liberty and security) issue reasoned opinions stating that they believe the principle of subsidiarity is not being respected, the Commission must re-evaluate its proposal, which it may maintain, revise, or withdraw. If the reasoned opinions in question represent at least a simple majority of national Parliaments and the Commission decides to maintain the proposal, 55% of the members of the Council (15 states in the Union at present) or a simple majority of the European Parliament may vote to halt the legislative procedure.

Putting this control mechanism into practice will require great efforts on the part of national Parliaments, and also of regional Parliaments, in the case of States with a decentralised structure, such as this one. It does, however, guarantee that community regulations will conform strictly to the principle of subsidiarity which must guide all the Union's actions.

¹ Customs union, competition in the internal market, monetary policy in the Euro zone, conservation of marine biological resources and common commercial policy.

² Health, industry, culture, tourism, education, youth, sport and vocational training, civil protection and administrative cooperation.

³ Internal market, aspects of social policy, cohesion, agriculture and fisheries (except for conservation of marine biological resources), environment, consumer protection, transport, trans-European networks, energy, area of freedom, security and justice, certain aspects of common safety concerns.



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Similarly, in order to raise the legitimacy of the decision-making process in the Union, the current co-decision procedure between the European Parliament and the Council is being extended to become the normal legislative procedure in the Union. It will be used to create rules governing regulated matters for around 50 areas of law, both newly created and subject to procedures other than that of co-decision under existing primary law. Areas of particular importance are, among others, immigration, judicial co-operation on criminal issues, Europol and Eurojust, intellectual property rights, energy (excluding fiscal measures), the citizens' legislative initiative, culture, tourism and sport. The adoption of legal regulations in the Union will, therefore, normally require the agreement of both the Council and the European Parliament.

In the spirit of giving citizens a greater role to play in the life of the Union, the Reform Treaty includes one of the most important elements of the constitutional Treaty, that of the popular legislative initiative. The procedure established for this practice sets out that the signatures of least one million citizens who are nationals of a number of Member States may be collected to invite the Commission to submit a determined proposal for approval.

Another fundamental advance that the new text provides is that of recognising the judicial value of the Charter of fundamental rights of the European Union. The Reform Treaty provides for the inclusion in the Treaty on European Union of a clause referring to the text of the Charter, which will be formally announced by the three Institutions prior to the signing of the Treaty, making it legally binding. An enabling clause will also be introduced into the TEU allowing the Union to adhere to the European Convention on Human Rights, if the Member States unanimously agree to do so. This will put the Union in a similar position to that of the member states, being subject to the external control of the European Court of Human Rights in Strasbourg.

As was noted earlier, we must not forget that in addition to endowing it with greater legitimacy in the eyes of its citizens, the Union needs to be more effective. This requires it to be more flexible, to be able to respond well and quickly to increasingly rapid and unpredictable changes in social and economic circumstances. This is why some of the modifications to the current Treaties included in the Reform Treaty, which at first sight seem to be purely technical changes, are so important, being in practice significant changes to the way the Union and its Institutions function.

This is the case, for example, of the recognition of a single legal personality for the European Union and of the disappearance of the structure of "Pillars" created by the 1992 Maastricht Treaty, with their various working and decision-making procedures, which were



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not always viable when dealing with the construction of the internal market or the European area of freedom, security and justice.

The existence of an “elected” President of the Council of Europe, with a two and a half year mandate, renewable once, will give greater continuity to the work of the Council of Europe, which will in turn become a fully legal Institution of the Union, and will make the Union more visible to the outside world, given that the “face” of the European Union will not change every six months, as at present, with all that this implies. The reform of the system of half-yearly Presidencies of the Council will also contribute to these aims. Although the essential features of the current system will be maintained, the reforms highlight the importance of and options for co-ordination within the “presidential teams” made up of a number of Member States (three).

The establishment of the figure of the Union’s High Representative for the Common Foreign and Security Policy should be viewed in the same way. This person will at the same time lead the Council on foreign policy (CFSP) and defence (ESPD) issues and will be a vice-president of the Commission responsible for external relations and will preside over the Union’s Foreign Affairs Council. The role will be further supported by a European External Action Service, comprising officials from the Union’s Institutions and from the Member States.

The streamlining of the decision-making process in the extended Union will also be aided by the extension of qualified majority voting to new areas. This is one of the traditionally most debated questions at Intergovernmental Conferences on Treaty reform, due as much to the fear that they may be “minoritised” in a vote, as to the mistaken interpretation, from a legal point of view, that switching in a specific area from a requirement of unanimity for decisions to be adopted to one of qualified majority represents a transfer of competences to the Union.

The new Treaty will extend qualified majority voting to around 50 new areas of law, largely coinciding with those areas which will be subject to ordinary or co-decision legislative procedures. Unanimity will continue to be the normal requirement in areas of especial sensitivity to Member States, such as foreign policy, fiscal policy, social policy, the financing of the Union or the revision of Treaties, among others.

Finally, apart from the legitimacy and effectiveness of the Union, we must not ignore the fact that the Reform Treaty takes into account many of the issues which concern European citizens today. For example, it contains new legal structures recognising the major role fulfilled in our societies by public services and general interest groups, others which will allow the Union to produce better policies on issues of security and the fight against organised crime, on immigration issues, or on the fight against climate change.



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Others refer to solidarity between Member States, whether in terms of responding to natural disasters, or of guaranteeing minimum energy supplies, as one of the identifying signs of European integration.

To summarise, the Treaty which the representatives of the Member States will sign on 13 December, although it falls short of the ideal which firm supporters of European integration would have wished for, constitutes a solid base which gives the Union the tools it needs to face future challenges with the support of its citizens, who, once the Reform Treaty comes into force, will perceive with greater clarity the benefits of what we may call "Project Europe".