

## Trumpf–Piris Report, Operation of the Council with an enlarged Union in prospect (10 March 1999)

**Caption:** Report by the working party set up by the Secretary-General of the Council, Operation of the Council with an enlarged Union in prospect, presented on 10 March 1999 in accordance with the conclusions of the Vienna European Council held from 11 to 13 December 1998. The report is known as the ‘Trumpf–Piris Report’ after Jürgen Trumpf, Secretary-General of the Council, and Jean-Claude Piris, Legal Adviser to the Council, respectively Chairman and Vice-Chairman of the working party responsible for the report.

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## Operation of the Council with an enlarged Union in prospect (Brussels, 10 March 1999)

Report by the Working Party set up by the Secretary General of the Council

### FOREWORD

European, not national, solutions to many economic, social and political problems are now demanded by a majority of the European Union's citizens. This is borne out by Eurobarometer opinion polls. The process of European integration, begun as a construction of governments and diplomats, has thus become the business of ordinary men and women.

That far-reaching political change is also reflected in the Amsterdam Treaty, Article 1 (ex Article A) of which stipulates that: "This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, *in which decisions are taken as openly as possible and as closely as possible to the citizen*".

This, of course, does not diminish the importance of the demands made of the European Union's institutions all along, that they act swiftly, effectively, consistently and thriftily.

The major challenges of enlargement and of the Union's new tasks in foreign, defence, justice and home affairs policy compel the Council of the European Union also to subject its structures and procedures to close scrutiny.

The smooth working of the Council will require greater political will on the part of Member States' governments. It will also call for a great deal of administrative and organisational imagination, while not losing sight of the democratic principles of openness and closeness to the public.

This report from the Secretary-General <sup>1</sup>, presented in accordance with the conclusions of the Vienna European Council, is intended to help the Council draw the necessary conclusions. I hope it will prove a stimulating contribution to the performance of that demanding task.

Jürgen TRUMPF

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### INTRODUCTION

*The process of European integration, set in motion by the establishment of the Communities in the early 1950s, will undergo its most significant development over the next decade with the enlargement of the Union to bring in many new members. The prospect of almost doubling its membership and the need to remedy certain weaknesses already apparent will oblige the Union to adapt its institutions and their operation to that fresh challenge.*

*When the Amsterdam Treaty, signed on 2 October 1997, was being drawn up, it did not prove possible to complete institutional reform ahead of that enlargement. Issues requiring revision of the Treaties are not addressed in this report. Clearly, however, if a Council comprising 25 to 30 members is to remain effective, those issues will require suitable solutions, for which the suggestions put forward in this report are no substitute. These suggestions should merely precede or accompany those solutions and fuel the debate on improving the Council's operation which the European Council in Vienna decided to hold at its Helsinki meeting, albeit in the knowledge that some of the suggestions, such as those on the role of the Secretary General of the Council/High Representative for the common foreign and security policy, would have to be considered at an earlier date.*

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*The purpose of this report, then, is to make a systematic, coherent analysis of the various aspects of the Council's operation with an enlarged Union in prospect and give an orderly presentation of the suggested improvements that do not require amendment of the Treaties.*

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*The Council has considered its operation on many occasions over the last twenty years. It has adopted several sets of measures, in 1975, 1988, 1992 and 1995. In recent months, however, the issue has come more sharply to the fore, particularly with the next enlargement in prospect<sup>2</sup>. The Council's present shortcomings stem from the combined impact of the increase in its membership and the expansion of its range of activities, both on the effectiveness of its deliberations and on the consistency of decisions taken in its various compositions, as well as on the workload of the Presidency.*

*Firstly, given the increase in its membership and activities, the Council has reached the absolute limits of its effectiveness in terms of the scope afforded by its present organisation and methods.*

*Secondly, the undeniable advantages of a single Presidency handling the Council in all its compositions and*

*all of its subordinate machinery impose a heavy burden on the Member State holding that Presidency, a burden set to increase further after enlargement; in addition, the six monthly Presidency system has significant drawbacks for continuity.*

*Thirdly, the Council comes in many compositions made up of different ministers. It is hard for the General Affairs Council and Coreper to play their cross sectoral role to the full as the specifically composed Councils have taken on a large measure of autonomy. Where there is inadequate national coordination between ministries, and in the event of difficulties between two Councils, it is very tempting to turn to the European Council as an arbiter. That is not its real job, however, except in particularly important cases. Its role is to provide the Union, at the highest level, with the necessary impetus for its development and to define the general political guidelines for this.*

*The European Parliament and the Commission are also heavily involved in the preparation and conduct of Council meetings. Even though not physically present, the European Parliament plays a growing part in the decision making process and the nature and intensity of its relationship with the Council have profoundly changed. The Commission has always been present as an active and key player at meetings of the Council and its preparatory bodies. Following the Amsterdam Intergovernmental Conference, the Commission stated that it would be preparing a report on its internal organisation and its operation with an enlarged Union in prospect. Clearly, the Council and the Commission, which have to work together, should keep one another informed of their planned overhauls of their organisation and operation.*

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*Without major reform, the stiff challenge posed by almost a doubling of the Council's membership would exacerbate existing weaknesses, with sheer weight of numbers compounding the increasing variety of interests at stake. Meeting that challenge calls for an overall approach involving a raft of measures, none of them decisive on its own, but their effectiveness increased by their combined impact and overall consistency. This report sets out to help prepare such reforms. Its aim is not so much to propose fresh ideas as to describe, order and sift those already put forward. The effectiveness of the reforms will depend on the resolve and resources put into making them work. Quite a number of measures decided on up to now have had little effect for want of practical observance. It will be important to ensure that the decisions of principle are accompanied by specific, detailed arrangements for ensuring that they are put into practice. It is not for this report to suggest what the follow up should be. Adoption of the solutions decided upon will be a matter for various authorities, from the Secretary General to the Council and even the European Council. It will therefore be important for each issue to be dealt with in due course in the most appropriate body. However, in order to maintain the overall consistency required for the success of the reforms to be undertaken, it would doubtless be advisable first to have the whole package examined by a single body reporting its findings to the appropriate political authorities*

## **PART I: STRUCTURE AND ROLE OF THE COUNCIL AND THE EUROPEAN COUNCIL**

### **1. EUROPEAN COUNCIL**

#### **BACKGROUND**

Although it is now the Union's most important political body, the European Council was not established by the original Treaties. Its creation, its development and the gradual strengthening of its authority have not been dictated by legal texts, but have emerged, step by step, from political practice.

Starting in 1961, the first meetings of Heads of State or Government showed that the European Communities were no longer the sole responsibility of Ministers for Foreign Affairs. Such meetings, held at irregular intervals up until 1974, were known as "summits". It was the Paris summit in December 1974 which decided that they would be held at regular intervals, three times a year, and that the Ministers for

Foreign Affairs could assist the Heads of State or Government. The next step was taken on 19 June 1983 in Stuttgart, where the Solemn Declaration on European Union defined and described the European Council's role. The European Council was finally given a legal identity in the February 1986 Single Act (definition) and then in the Treaty on European Union signed in Maastricht in February 1992 (definition and description of its role). It should be pointed out that the latter Treaty, as well as the October 1997 Amsterdam Treaty, gave the European Council specific (and even legal) duties in the fields of economic and monetary union (EMU), common foreign and security policy (CFSP), closer cooperation and respect for human rights.

## ANALYSIS

The European Council has now come to symbolise the European Union. It is the Union's most senior body, with its democratic legitimacy and its authority for ensuring consistency between the Union's various policies and activities accepted on all sides. As stipulated by the Treaty, it "*shall provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof*". In general terms it can be regarded as satisfactorily fulfilling its role in the smooth running of the Union, without encroaching upon the Council's responsibilities. The Community machinery is in fact founded upon complex political and legal rules safeguarding certain balances between Member States and between institutions as well as the democratic and legal legitimacy of the Union's policies and action.

### Role

The European Council acts as both:

- a source of political impetus, an arbiter and a final decision maker for key issues in the life of the Union: revision of the Treaties, enlargement, general guidelines for internal policies, medium term financial perspective, certain appointments and decisions specified in the Treaty (EMU, CFSP, employment, human rights and closer cooperation);
- the European Union's main point of contact with the mass media, with the "ordinary", six monthly European Council meeting attracting 2 000 to 3 000 journalists to the Presidency country, forming the highlight of each Presidency and its chance to show off to good effect the results achieved over the past six months; it also provides an opportunity to take stock of the state of the Union and discuss the issues of the day, particularly in foreign policy.

### Frequency, format and conduct of meetings

As regards frequency of meetings, the Treaty stipulates that "*the European Council shall meet at least twice a year*". In practice, since 1995 it has been meeting four times a year: twice during each Presidency. The number of meetings should not swell unduly, however, lest the Council in its various compositions be tempted to refer difficult agenda items to the European Council. Such a trend would have the effect of devaluing the role of the European Council and upsetting the institutional balance established by the Treaties.

On the format of meetings, the Treaty stipulates that the members of the European Council, being the Heads of State or Government and the President of the Commission, are to be assisted by the Ministers for Foreign Affairs and a Member of the Commission. Since Maastricht, the Ministers for Economic and Financial Affairs have often attended meetings in whole or in part. The Secretary General of the Council sits at the European Council table<sup>3</sup>. In a Union enlarged to 30 Member States, this would mean having as many as 63 people around the table, or 93 where there are two Ministers each.

The Heads of State or Government also sometimes assemble, under the Treaty, as a formal Council meeting at their level. Lastly, in the more recent past, the Heads of State or Government have on several occasions decided to meet informally on their own (in Paris and at Formentor in 1995, at Pörschach in October 1998 and at Petersberg in February 1999).

Finally, as regards the conduct of meetings, the present practice is that they normally last for a day and a half, with a first day spent on discussions and then a half day on adopting conclusions.

### **Preparation**

Since the 1983 Stuttgart Declaration, the General Affairs Council has been responsible for coordinating final preparations for European Council proceedings; preparations depend on the type of business:

- for EMU, employment and cooperation on justice and home affairs (JHA), substantive preparations are made by the Council in its specialist compositions;
- for multidisciplinary items affecting internal policies, such as the Delors packages and Agenda 2000, the General Affairs Council is responsible for coordination and overview, with other Council compositions playing an active part in preparations;
- foreign policy issues, whether economic or political, as well as institutional matters and work on intergovernmental conferences and Treaty revision are prepared for within the General Affairs Council.

Preparations for European Council meetings are also made informally by means of various personal contacts or political meetings and the traditional tour of capitals by the President of the European Council, in which the Secretary General of the Council is also involved. A few days before the meeting, the President of the European Council sends his colleagues a letter announcing the items he wishes to raise at the meeting and the order of business.

On the whole, European Council preparations as currently designed satisfactorily meet the twofold requirement of flexibility and confidentiality, thereby ensuring the effectiveness of proceedings. However, experience has shown that these rather pragmatic preparations can prove inadequate or even unsuitable when the European Council has to conduct direct negotiations on complex legal texts affecting the Union's basic foundations (Treaty revision) or on policy reform and the arrangements for funding it. Also, the tendency to send reports to the European Council has become excessive, since it has no time to discuss them, or even read them.

### **Outcome of proceedings: European Council decisions and conclusions**

Decisions taken by the European Council carry considerable political weight. That weight is not diminished by the fact that its conclusions have no legal status, that they are the Presidency's sole responsibility and that their wording is not negotiated collectively beforehand.

In more recent practice, such conclusions only partly reflect discussions on the first day of the meeting. The remainder is made up of texts on external relations, drawn up by the Ministers for Foreign Affairs, and a survey of topical issues in the Union, representing a record of the past six months' work, prepared by the Presidency, the idea being that the public expects the European Council to take a stand on all the issues of the day, particularly in the field of foreign policy. As a result, the conclusions have become too long (30 or 40 pages), it is sometimes hard to get them approved and some parts no longer have the political and media impact which they should.

Efforts are regularly made to increase their attractiveness and operational usefulness by employing less technocratic language and confining them to subjects actually discussed by the European Council. Such efforts have not yet borne sufficient fruit.

### **Intergovernmental conferences for revision of the Treaties**

Experience has shown that the preparation and conduct of an intergovernmental conference (IGC) for revision of the Treaties at the level of Heads of State or Government have been adequate where the

conference focuses on a limited number of topics (the Single Act in 1985). On the other hand, they have proved inadequate where the IGC covers a large number of topics and complex legal texts (Maastricht in 1991 and Amsterdam in 1997).

## AVENUES TO BE EXPLORED

### **Bringing the frequency and format of meetings more into line with requirements**

1. Consolidate current practice, with the systematic scheduling of two meetings in each half year, one of which may either be informal (see 2 below) or devoted to a single topic, like the one held in Luxembourg in November 1997 on employment and the one to be held in Finland in October 1999 on cooperation in the fields of justice and home affairs.
2. Allow scope for "informal" meetings of the 15 Heads of State or Government and the President of the Commission (possibly with Ministers for Foreign Affairs), either to pave the way for the next formal meeting or to air one or two discussion topics, even just over a working dinner; "informal" meetings should not produce any written conclusions.
3. Maintain the restricted, confidential format of formal meetings as at present; consider limiting the number of seats at the table to two per delegation.

### **Bringing preparations more into line with the nature of the decisions to be taken**

4. For "**ordinary**" **business**, keep the present flexibility of preparations (bilateral talks), while strengthening the coordinating role of the General Affairs Council (see Chapter 2) and Coreper (see Chapter 8), which need to be fully briefed on the Presidency's intentions regarding subjects discussed and the level of ambition. Except in special cases (see 6 below), continue to avoid any prior formal collective discussion of the conclusions in whole or in part.
5. Consider in some cases, in the light of the number of Member States, abandoning the traditional "tour of capitals" by the President of the European Council and instead arranging meetings in the capital of the country holding the Presidency, or even video conferences.
6. For **more complex business** culminating in the adoption of legal or operational decisions (Agenda 2000, revision of the Treaties, enlargement), arrange for special preparations (conclaves, the General Affairs Council, Coreper) on the basis of previously negotiated texts serving to focus the European Council's discussions on the crucial issues.
7. Make full use of the institutional machinery provided for in the Treaty to ensure that the discussions are adequately prepared and, therefore, do not formalise the role of the existing unofficial "European sherpas" network; this is useful for exchanging information, but assigning it more "operational" tasks would carry a serious risk of cutting the European Council off from the institutions and rules established by the Treaties and ultimately weakening the force of its conclusions.

### **Using the very limited time available at meetings as efficiently as possible**

8. Apply to the European Council, *mutatis mutandis*, the new working methods envisaged for the Council (see Chapter 9), i.e. avoid systematically going round the table in turn, designate "speakers" to present a topic (as done at Pörtlach) etc., while keeping arrangements informal.
9. Spend as much as possible of the time available on discussing issues of substance, avoiding events that are essentially a matter of protocol and limiting the time spent on drafting conclusions.

### **Cutting the length of conclusions and making them more operational**

10. *Keep the length of conclusions down to 10 15 pages; gear the conclusions more closely to the operational issues actually discussed at the meeting; present them in a way more readily comprehensible to the public, by confining them to the decisions taken and the timetable for implementing them and by relegating to annexes any other documents, such as the record of the outgoing Presidency, to be drawn up by it itself, and foreign policy statements, to be drawn up by the Ministers for Foreign Affairs.*

### **Upholding the European Council's role as defined by the Treaty**

11. *Ensure that excessive involvement in points of detail does not cause the European Council to interfere with the Council's decision making process, so as not to upset the institutional balances established by the Treaty.*

## **2. GENERAL AFFAIRS COUNCIL (HORIZONTAL QUESTIONS)**

### **BACKGROUND**

Like conventional international agreements, the Treaties establishing the European Communities in the 1950s were negotiated mainly, on behalf of each of the Governments of the six participating States, by their Ministers for Foreign Affairs. It was therefore natural enough for those Ministers to be given responsibility for implementation of the Treaties. As the Treaties established a "Council of Ministers", that Council was in the first place made up only of Ministers for Foreign Affairs, sometimes with the involvement of Ministers for Economic Affairs. The Council did not in fact meet very often, *being required to do so as a rule on the first Tuesday of each month*. Over the ensuing years, the Foreign Affairs Council, now known as the General Affairs Council, which has continued to meet every month, has had a dual role to play:

- a direct role in the Communities' external relations, as is natural for Ministers for Foreign Affairs, initially centring on trade policy and then extending after the Maastricht Treaty to all aspects of foreign policy; this side of the General Affairs Council's business is dealt with in Chapter 3 below;
- an institutional and coordinating ("horizontal") role for all policies of the Communities (and subsequently of the Union); that is the role considered in this chapter.

In fact the Council very soon split into sectoral or specialist compositions, the oldest of which are the Agriculture and the Economic and Financial Affairs (ECOFIN) Councils. Such diversification has increased with time and with the development of Community powers and responsibilities, resulting nowadays in a score of different compositions besides the General Affairs Council.

In spite of this diversification, however, the Council remains legally one. This means, firstly, that an act on any subject can be adopted by the Council in any composition and, secondly, that there is no hierarchy between the Council's different compositions. Having said that, in practice, each composition deals independently with matters which it considers to fall within its "responsibilities", although these have never been laid down.

The Ministers for Foreign Affairs have retained "horizontal" responsibility for conducting the Union's business, so that any matter not coming within the sphere of another Council composition falls to them. Similarly, they have on a number of occasions been acknowledged to bear responsibility for coordinating the work of the Council in its sectoral compositions.

That role is borne out by the "Villa Marlia" procedure <sup>4</sup>, adopted in 1975 and soon dropped in practice, whereby the General Secretariat of the Council drew up for each Foreign Affairs Council meeting a "summary note" reporting on the various Councils' proceedings. It is further borne out by the change in the Foreign Affairs Council's name to the General Affairs Council, by the recognition of its horizontal function by the Heads of State or Government in the 1974 Paris summit conclusions <sup>5</sup> and again in the 1983 Stuttgart



Solemn Declaration on European Union<sup>6</sup> and, lastly, by the provision in the 1992 Maastricht Treaty for the members of the European Council to be assisted by the Ministers for Foreign Affairs.

## ANALYSIS

Experience shows there to be a functional need for a generalist ministerial forum as an intermediary between the specialist Councils and the European Council. However, it is recognised in many quarters, including the General Affairs Council, that the Ministers for Foreign Affairs are finding it increasingly hard to fulfil that role.

There are a variety of reasons for the difficulties:

- Community activities can no longer be regarded as foreign policy activities; their implementation comes directly under various relevant Government Ministries;
- within their own Governments, except in foreign policy matters, Ministers for Foreign Affairs are not empowered to act as arbiters between the different Ministries and they do not always enjoy political authority over the latter, unlike Heads of State or Government;
- dealing in detail, when they attend the Council one day a month, with matters for which they are not responsible in their capitals is, to say the least, no easy task;
- the time spent by such Ministers on Union affairs, already scarce because of their heavy schedules, is increasingly taken up by their responsibilities in the Union's external relations, with the progressive development of the CFSP (see Chapter 3).

As a result, certain needs essential to the proper working of the Union are not being fully met. Those needs may be described as follows:

- a need for coordination and consistency; coordination between the proceedings of Council bodies and consistency of Union policies need to be ensured by a ministerial forum which has an overview of Union activities and enough time to discuss them; this role means playing a key part in preparations for European Council meetings;
- a need to deal with non sectoral items; a "generalist" ministerial forum needs to discuss issues to do with the Union's organisation and operation and issues which, by nature, do not come under a specialist Council; besides major multidisciplinary items, such as Agenda 2000 or economic and social cohesion, these include horizontal and institutional issues, preparation for European Council meetings as regards items which are neither foreign affairs nor EMU matters and also relations with the other institutions; they further include intergovernmental conferences for revision of the Treaties or the accession of new Member States to the Union;
- a need for an arbiter; the need for one of the Council's compositions to act as an arbiter with regard to the others is less evident. For one thing, that need is apparent at Union level only if each Member State's internal arrangements for the purpose break down (see Chapter 10). For another, where there is such a need, it should more properly be met by the European Council. Conferring real power to act as an arbiter on one Minister, thereby giving him supremacy over his colleagues, would be a matter for each Government's constitutional and political organisation. A Minister's job here should rather be to prepare effectively for the political judgments to be made by the European Council.

## AVENUES TO BE EXPLORED

### **Focusing the limited time available to the General Affairs Council on key issues**

12. Arrange the agenda according to the importance of the subjects to be discussed.

13. It has been suggested that the Council meeting should be divided into two successive parts: the first, dealt by junior Ministers or State Secretaries, would go over the entire agenda to prepare the ground and resolve the less thorny issues; the second part, taken by Ministers, would deal with major political issues.

#### **Arranging the agenda according to the nature of subjects: foreign affairs or horizontal questions**

This procedure has already been agreed by Ministers, following their informal meeting in Salzburg in 1998; it can conceivably take three forms:

14. An agenda presented in two parts, without any specific details of the pattern of proceedings; this has been current practice since the Austrian Presidency.

15. An agenda divided into two formally separate parts, with precise details of when subjects are to be discussed.

16. An agenda divided into two formally separate parts and two days, one dealing with institutional and horizontal questions and the other with foreign policy matters; this practice would have the merit of very significantly increasing the time available for the Council's discussions and decisions.

#### **Consider splitting the present General Affairs Council into two separate compositions**

17. It has been suggested that an Institutional and Horizontal Affairs Council should be established, composed, in principle, of Ministers coming under the Minister for Foreign Affairs or the Prime Minister and having a similar status to that of other members of the Government and power to commit their Governments in negotiations; the decision to establish such a ministerial role is naturally a matter for the constitutional and political organisation of Governments; those not wishing to follow such a course could continue to have their Minister for Foreign Affairs attend.

18. Some voices have also suggested establishing an Institutional and Horizontal Affairs Council composed of Deputy Prime Ministers, whom Governments would vest with sufficient authority over their colleagues to act as arbiters themselves. Even more so than in the previous case, such a decision would obviously be a matter solely for each Government's constitutional and political organisation.

### **3. GENERAL AFFAIRS COUNCIL (EXTERNAL RELATIONS)**

#### **BACKGROUND**

Originally, the European Communities' external action was confined to trade matters. With the establishment of the common commercial policy and the extension of its external powers, the Community, spurred on by the Commission in particular, became a force to be reckoned with in multilateral trade bodies and in bilateral trading relations. In 1970 the introduction of European political cooperation (EPC) marked the beginning of cooperation between Member States in the sphere of foreign policy. This was built up initially outside the structure of the Communities and then, as from 1987, alongside the institutional framework, under the Single European Act.

The political side of external relations was subsequently brought into the Treaty on European Union, coming into force in 1993, in a Title V concerning the CFSP. The fact that the CFSP provisions form a separate "pillar" from the European Community's sphere of competence (with the institutions not enjoying the same powers in that context) in no way detracts from the CFSP's inclusion in a single institutional framework for all the Union's activities. The Commission plays an important role in it and the European Parliament has, inter alia, budgetary power. The use of qualified majority voting is theoretically possible. There will be

substantially greater scope for it under the Amsterdam Treaty, particularly when it comes to implementing common strategies.

The Amsterdam Treaty's aim of increasing the CFSP's effectiveness was also reflected in the establishment of the post of CFSP High Representative, with the tasks of helping to frame, prepare and implement the Union's foreign policy decisions. In addition to the General Secretariat's other resources, he will have at his disposal a "policy planning and early warning unit" (PPEWU). The Treaty will also strengthen the legal instruments available to the Council: definition of common strategies, use of qualified majority voting to implement them, joint actions and common positions, and scope for the Union to conclude international agreements.

In its Vienna conclusions of December 1998, the European Council agreed *"that the Secretary General of the Council and High Representative for the CFSP will be appointed as soon as possible and will be a personality with a strong political profile"*.

## ANALYSIS

The proliferation of multilateral trade negotiations, the weaving of a tight knit web of bilateral agreements and the globalisation of economic relations have swollen the General Affairs Council's external relations workload. With its CFSP responsibilities thrown in, this poses a real challenge to a Council which sits only about one day a month.

### External economic relations

The driving force supplied by the Commission as Community trade policy initiator, negotiator and administrator has lent decisive weight to the Community's effectiveness here. This is all the more true since Member States decided to empower the Commission to negotiate on their behalf, even in areas which remain within their sphere of competence. As a result, the European Union has been able to speak with one voice, particularly in the World Trade Organisation (WTO). The Union as such is thus perceived as a player on the world stage, with the Commission as its "voice" in trade policy and, in practice more generally, in a substantial part of external economic relations.

In handling external economic relations, apart from conventional legislative and decision making work, the Council deals more particularly with two kinds of activity:

- firstly, the Article 113 Committee's preparation for and follow up to a decision; this a task which the Committee performs in addition to assisting the Commission in trade negotiations. The Committee's opinion is also sought on any moves which the Commission intends to make in relation to third countries. There is sometimes a tendency for the Commission, in response to favourable opinions from the Committee, to enter into political commitments binding upon the Community which have not first been approved by the Council. This practice could impair the overall consistency of Union policy;

- secondly, periodic meetings with third countries, under bilateral or multilateral agreements concluded by the Community. Existing association or cooperation agreements alone provide for 40 to 50 meetings a year to be held with third countries. As those agreements in some cases require all Council members to attend, meetings are timed to coincide with General Affairs Council meetings, thus in principle extending the length of Ministers' presence (which is by no means always a real one). Such meetings, often somewhat formal in tone, impose increasingly heavy burdens, particularly for the Presidency, which will have to shoulder increasing responsibilities in an enlarged Union. A similar problem arises in handling political dialogue under the CFSP.

### Common foreign and security policy

The Maastricht Treaty brought new impetus to the gradual formulation of a common foreign policy. The authors of the Treaty deliberately opted for a different form of cooperation from the Community method.

That choice is due, firstly, to a concern to safeguard Member States' interests in a sensitive area and, secondly, to a feeling that the Community method was ill suited to the requirements of external action in the diplomatic sphere.

However, having failed to devise new instruments to match its new responsibilities, the Union found itself lacking a permanent driving and handling capability for the CFSP comparable to that available to it through the authority which the Treaty of Rome conferred on the Commission in the sphere of external economic relations. As the Treaty gives the Presidency sole responsibility for representation and for implementation of the CFSP, the six-month rotation of the Presidency means a complete change of personnel (except for the Council Secretariat, which has a limited number of staff and no institutional responsibility).

The CFSP, which was supposed to bring significant gains compared with the old EPC, created a high level of expectation on the part of the general public and the media, but has not fully lived up to that expectation. The weaknesses of the CFSP, which prompted various provisions of the Amsterdam Treaty intended to remedy the situation, can be traced to a number of sources:

#### (1) Preparation for decisions

- lack of an initiating capacity with authority, continuity and sufficient resources (particularly in the area of information) to enable it to provide the necessary input for political decision makers (the Council) on the basis of analysis of the Union's interests and clearly defined political options;

- difficulty in moulding the various aspects of external action (political, economic, financial and, where applicable, other aspects such as immigration, crime fighting cooperation etc.) into a single, coherent approach. The integration of all facets of relations with third countries requires effective coordination of preparations for the Council, which involve separate channels, sometimes without any final overview at Coreper level.

#### (2) Council decision making

*The principal need is to enable the best possible use to be made of Ministers' limited time at their monthly meeting, so that they can concentrate on adopting operational decisions or guidelines. Despite successive attempts to improve its working methods, the organisation and conduct of the General Affairs Council's meetings do not allow it to discharge its responsibilities satisfactorily. These matters are discussed in Chapters 2 and 9. Specifically in the area of the CFSP, the main problems are as follows:*

- in substantive discussions, some difficulty in distinguishing between basics and side issues, for want of focusing talks on the main political issues and the various possible responses by means of serious analysis of the options available (*option papers*);

- when adopting texts, the temptation to agree, as in conventional diplomatic forums, to declarations of no great political significance, intended to show publicly that the Council has "dealt with" an issue, either because it was of topical relevance or because it appeared on the draft agenda, made public before having been adopted.

#### (3) Follow up to decisions and day to day management

*The Council Presidency, which changes every six months, is responsible for implementing the CFSP. There is no permanent authority, with continuity of staffing, responsible for acting on behalf of the Union over the long term, particularly in order to conduct negotiations at different levels. This cannot be done by a 15 member (still less by 25 to 30 member) Council, nor by a Presidency and personnel changing every six months, but clearly requires the delegation of authority, with a degree of latitude, to a body accountable to the Council and possessing a certain continuity.*

*In implementation on the ground of the different components of Union policy, there is sometimes a lack of*

coordination between the various parties involved (Council, Commission, Member States and WEU).

*In short, even though the speed of decision making and action of an organisation consisting of 15 Member States cannot compare with that of a single State acting on its own behalf (even less so once the Union has 25 to 30 Member States), the chances of effective action will be that much greater if the Union manages to establish a sustained leadership capacity throughout the process of formulating and implementing its foreign policy.*

## AVENUES TO BE EXPLORED

### **Establishing a genuine common initiating capacity by making full use of the scope afforded by the Amsterdam Treaty**

*19. Appoint a Secretary-General/CFSP High Representative with a strong political profile and give that person real responsibilities, in accordance with the spirit of the Amsterdam Treaty and the conclusions of the Vienna European Council.*

*20. Ensure constant close cooperation between the three components of the new initiating capacity (the Presidency, taking political responsibility for implementation of the CFSP, the Secretary-General/High Representative, providing continuity by way of the authority conferred on the holder of the post, and the Commission, making its contribution by virtue of its own responsibilities). Obviously, the three individuals directly involved (the President of the Council, the Secretary-General/High Representative and the Commission Vice President responsible for external relations) should meet one another on a very regular basis.*

*21. Make the new policy planning and early warning unit an effective tool for the Secretary General/High Representative, firstly by coordinating its work with that of the General Secretariat's other departments and secondly by ensuring that it has access to all relevant information in order for the Secretary-General/High Representative to play the driving and initiating role to the full.*

### **Improving continuity of action and consistency between the first and second pillars**

*22. Improve the continuity and consistency of foreign policy by assigning permanent chairmanship of the Political Committee to the Secretary General of the Council/CFSP High Representative (see Chapter 11).*

*23. Remedy the drawbacks of having separate "pillars" by combining, as already agreed, the working parties handling the economic side of external relations (first pillar) with their counterparts handling the CFSP side of external relations (second pillar).*

### **Improving the Council's decision-making effectiveness and capacity by better organising its meetings**

*24. Subdivide the General Affairs Council's agenda into two clearly separate parts (see Chapter 2).*

*25. Only place on the Council's agenda those items requiring an operational decision or political guidance and allow sufficient time for effective discussion of them and avoiding topics which could be dealt with by sending a document or at a level other than that of the Council; avoid issuing large numbers of unnecessary declarations, which detract from the effectiveness and force of that classic diplomatic device.*

*26. Focus the Council's discussions on major political issues, which means that those issues need to be clearly identified by preparatory bodies, by means of options papers presented by the High Representative in particular.*

*27. Make more systematic use of "restricted" or "highly restricted" sessions (particularly instead of lunches) to achieve more open and methodical discussion, without departing from procedures.*

28. *Adjust working and negotiating methods (see Chapter 9), in particular by cutting out the practice of going round the table and instead holding more spontaneous discussions in which Ministers would be called on to react directly to solutions put forward by the Presidency, with the same subject if necessary being considered a second time later the same day.*

29. *Draw up systematic schedules, covering a number of Presidencies, for "plannable" meetings with third countries and call such meetings only after proper preparation.*

### **Ensuring continuity of political action between Council meetings by using various forms of delegated authority**

30. *Assign to the Secretary-General/High Representative, alongside the Presidency, a genuine role of "delegated authority" in following up decisions politically, in cooperation with the new permanent body referred to below, and allow the holder of the post sufficient latitude to carry out the duties effectively, while remaining accountable to the Council.*

31. *Establish a permanent body at the Council in an appropriate form (e.g. a Political Committee at deputy level, whose members would belong to the Permanent Representations), which could be chaired by a senior official of the General Secretariat of the Council (see Chapter 11); that body would be responsible for monitoring day to day application of Council decisions in the light of political developments, could meet without delay and would provide a permanent political interlocutor for the Presidency and the Secretary-General/High Representative; it would also make it possible to reduce the number of working party meetings.*

32. *Make use of "special envoys", to come under the Secretary-General/High Representative's authority, wherever the situation warrants; depending on their availability, have them chair certain working parties responsible for discussing questions within their remit, assisted by a deputy chairman from the Member State holding the Council Presidency (see Chapter 11).*

33. *Ensure close coordination between the authority responsible for political and budgetary monitoring (Secretary-General/High Representative/Presidency, accountable to the Council) and the authorities responsible for practical application on the ground (Commission, WEU, Member States etc.).*

34. *Allow for the possibility of entrusting specific implementation tasks to one or more Member States, under the Council's authority and in close cooperation with the Presidency and the Secretary-General/High Representative.*

### **Streamlining the Council's task in the day to day running of external relations**

35. *Wherever possible, make use of the "new Troika" formula, i.e. the Presidency, assisted by the Member State next to hold the Presidency, the Secretary-General/High Representative and the Commission.*

36. *Assign to the Secretary-General/High Representative a formal representational role in political dialogue at ministerial level and in day to day contacts with third countries (see Chapter 12).*

37. *Draft future agreements between the Union and third countries in such a way as to allow streamlined representation in joint bodies; revise existing agreements accordingly.*

38. *Give consideration to possible ways of strengthening implementation of the Union's diplomatic action through better use of the networks of Member States' embassies and the Commission's delegations in third countries, in particular by making provision for these delegations to assist the Secretary-General/High Representative in carrying out his duties.*

## **4. ECONOMIC AND FINANCIAL AFFAIRS (ECOFIN COUNCIL)**

## BACKGROUND

The Council met in its Economic and Financial Affairs (ECOFIN) composition as early as the late 1950s. However, for many years economic, monetary and fiscal policies remained largely the preserve of the Member States. Only in recent times has the importance of the ECOFIN Council expanded, but over the last few years its role has become crucial. The arrangements for negotiating the Treaty on European Union formed a turning point in this development. Whereas, up until 1987, negotiations on the revision of the Community Treaties had always been left in the hands of Ministers for Foreign Affairs alone, preparations for that Treaty were made at two separate Intergovernmental Conferences meeting in parallel. One, for "political union", was composed of Ministers for Foreign Affairs. The other, for "economic and monetary union", brought together Ministers for Economic and Financial Affairs.

The outcome of those proceedings, the Maastricht Treaty, introduces special institutional features for EMU, in view of its peculiarities. For it, the Council is given a more important role, in that the act by which the Commission exercises its right of initiative is sometimes a "recommendation" rather than a "proposal" and the Council thus does not require unanimity in order to amend it. In some cases, too, it is for the Council rather than the Commission to act as "guardian of the Treaty", with the Council having responsibility for monitoring Member States' economic and budgetary policies and being able to penalise a Member State in the event of an excessive budget deficit.

For the first time, moreover, the existence of a specific Council composition, the ECOFIN Council, is recognised, admittedly in a text with no legal force <sup>7</sup>, and for the first time, too, the Council "in the composition of the Heads of State or Government" takes a decision, in some cases, on the basis of texts prepared by the ECOFIN Council.

There is also provision for ECOFIN Ministers to be invited to attend European Council meetings dealing with EMU matters <sup>8</sup> and, lastly, the role of the Economic and Financial Committee (formerly the Monetary Committee), the Council's main preparatory body for general economic policy issues, including multilateral surveillance, is expanded and strengthened.

## ANALYSIS

Developments under way since the entry into force of the Maastricht Treaty may be described under the following headings, stemming in large part from the peculiarities of EMU (transfer of sovereignty in an important area, links between monetary policy and economic policies, and financial markets highly sensitive to the matters dealt with):

### **Strengthening of the ECOFIN Council's role and authority**

In addition to adopting decisions implementing EMU, the ECOFIN Council is directly or indirectly involved in all major decisions in the economic and financial field including those affecting other policy areas such as relations with third countries, the Community budget etc. ECOFIN Ministers frequently attend European Council meetings. The Luxembourg European Council in December 1997 has also created an important informal body, bringing together Economics and Finance Ministers from the 11 Member States participating in the single currency ("Euro 11").

### **Efficient preparation of proceedings**

The Economic and Financial Committee (formerly the Monetary Committee) has a key role in preparing for major decisions on coordination of Member States' economic policies. In the case of legislation, preparations are also carried out by specialist groups, sometimes at high level (taxation, banking legislation) and then by Coreper; for non legislative business with no institutional implications, on the other hand, items prepared by

the Economic and Financial Committee are submitted directly to the Council. The direct links between that Committee's highly qualified members and their respective Ministers have in part provided the key to its success, as has its chairman's two year tenure, which gives him greater authority and at the same time ensures continuity of proceedings. The Chairman of the Economic and Financial Committee is, in particular, required to present the items under discussion at Council meetings. The Council and the Economic and Financial Committee have also, by showing considerable discipline and limiting the number of people present at meetings, managed to maintain the confidentiality essential in the matters before them.

### **Establishment of a separate channel**

Particularly in view of the compelling need for confidentiality, the ECOFIN Council and the Economic and Financial Committee tend to consider some of the matters before them on their own, which has in some – admittedly rare – cases (such as when EMU matters had institutional aspects) given rise to certain difficulties. Information flows between Coreper and the Economic and Financial Committee, for instance, are inadequate. It should be pointed out that Coreper has in principle responsibility for ensuring both consistency between the activities of the different channels and their compliance with the general institutional framework of the Union. The Economic and Financial Committee also has a separate secretariat (provided by Commission officials); it should be noted, however, that in recent times the General Secretariat of the Council and its Legal Service have been involved in its proceedings.

### **Extension of areas of ECOFIN Council involvement**

Given the need to ensure the single currency's stability against a sound economic background, the ECOFIN Council is of necessity involved in all prospective policies or activities which may have a significant economic and financial impact. Accordingly, it:

- examines Member States' economic policies and budgetary policies in order to ensure that they comply with the broad guidelines established at Union level; it also takes an interest in their fiscal policies, and even their employment policies or social policies, as well as in initiatives for harmonisation or coordination of such policies;
- is closely involved with the examination of the Union's medium term financial perspective, which itself is linked to the development of the major Community policies, particularly the common agricultural policy and the policy of economic and social cohesion;
- for the same reasons, keeps an eye on the financial aspects of the Community's external political activities: macro financial aid for third countries, action with regard to any particular third country in the event of a serious financial crisis and the implications of the single currency for the Union's external representation in international institutions, conferences and informal meetings (G7).

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\* \*

In general terms, the ECOFIN Council's role is bound to expand in future. The introduction of the single currency will have considerable repercussions and will probably require greater cooperation. Some voices have thus been heard to suggest considering whether the ECOFIN Council should act as an arbiter in any matter with significant implications for the Union's budget.

### **AVENUES TO BE EXPLORED**

#### **Considering clearer demarcation of areas to be dealt with by the ECOFIN Council**

*39. It has been suggested that there be clarification of the areas in which the ECOFIN Council has the leading role and takes decisions itself, where appropriate after obtaining the opinion of another Council,*



and areas in which it does not take decisions but expresses its opinion.

40. It has been suggested that consideration be given to whether the ECOFIN Council should have the right to scrutinise – or even act as arbiter in – the arrangements for financing the European Union, as well as any matter with significant implications for the Union's budget.

### **Better preparations for Council meetings**

41. Ask the Presidency and the General Secretariat of the Council to keep Coreper regularly briefed on work in hand coming in substance under other bodies (such as the Economic and Financial Committee) while observing the necessary confidentiality (see Chapter 12).

42. Ensure that Coreper continues to perform its role in full for institutional and legislative aspects of items coming under the ECOFIN Council (see Chapter 8).

### **Closer coordination at national level**

43. Encourage Member States to ensure that appropriate coordination arrangements are established between the relevant Ministries in their capitals (see Chapter 10); such a precaution appears all the more advisable since Ministries of Economic and Financial Affairs generally enjoy a large measure of autonomy.

## **5. SPECIALIST COUNCILS**

### **BACKGROUND**

Very soon the diversification of Community activities was reflected in the organisation of the Council's business, with the appearance of its first specialist compositions. The process has subsequently intensified, in line with the extension of the Community's and later the Union's scope, to the point that there are now a score of "specialist Councils" meeting in addition to the General Affairs and ECOFIN compositions. This development merely mirrors the reality that Community and Union activities have progressively diversified and the areas covered by the Treaties are nowadays extremely broad.

### **ANALYSIS**

The General Affairs and ECOFIN Councils are at present flanked by the following specialist Council compositions: Justice and Home Affairs; Agriculture; Internal Market; Labour and Social Affairs; Industry; Research; Transport; Environment; Fisheries; Telecommunications; Energy; Budget; Development; Consumer Affairs; Education; Health; Cultural and Audiovisual Affairs; Tourism; Youth Affairs; Civil Protection. The General Affairs, ECOFIN and Agriculture Councils meet most frequently, as a rule once a month. The number of meetings held each year by the other compositions is about four for the environment, transport, social affairs and fisheries, three for justice and home affairs, the internal market; industry, research and telecommunications, and two for the others (budget, consumer affairs, cultural affairs, development, education, energy and health). The Council meets only very infrequently in some compositions (youth affairs and tourism), or even hardly ever (civil protection).

The existence of most of the various Councils is due to objective functional needs related to the diversification of European Union activities. Obviously, regular meetings of the national Ministers responsible for agriculture, transport, the environment, social affairs or justice and home affairs, to give but a few examples, are necessary for the proper conduct of those activities at Union level. These specialist compositions also serve to bring national Ministers into personal contact and make them aware of the European dimension, even in areas in which the Union is only very slightly involved. They have, lastly, made it possible to round off within a few years the very sizeable body of legislation entailed by the completion of the internal market in 1993.

Today, however, attention is turning more to the operation of that market and the adjustment of economic structures to bring greater competitiveness. Here, the proliferation of specialist Councils may give rise to artificial activity not meeting any real need, particularly at a time when the Commission has sharply reduced the amount of legislation it proposes.

That proliferation furthermore results in excessive fragmentation of Union activities and, owing to the overlapping agendas and discussions of different Councils, a risk of insufficient heed being paid to links between the various policies and to their consistency. Coordination becomes more difficult where the same item of business is being approached from different angles and with different concerns in mind by Ministers whose responsibilities do not coincide. For instance, the same issue may be considered primarily in environmental protection terms, while also presenting aspects of international competitiveness and foreign policy aspects (relations with certain third countries) and requiring the honouring of the Community's international commitments to be taken into account as well. Encouraging the development of small and medium sized businesses can likewise be viewed in different ways by various Council compositions (Industry, ECOFIN and Internal Market).

The tendency for Councils to become compartmentalised and the creation of separate preparatory channels, reflecting the structure of some Member States' Governments and the Commission's Directorates General, lends weight to the misconception of there being a watertight institutional separation between the Council's compositions, thereby calling into question the principle of a single Council. Each of the Councils tends to consider itself free to act within a sphere of responsibility forming "its preserve".

The actual existence of a Council composition brings pressure for it to meet once every six months. There is a real risk of that meeting (with a draft agenda made public before it has even been adopted) being called without any objective need and giving rise to excessive expectations in the press and among public opinion, thus creating an artificial need to achieve "results". It is then very tempting to arrange for the adoption of unnecessary or lightweight acts (resolutions, declarations and conclusions). The adoption of such texts may on occasion be desirable where the aim is to avoid adopting mandatory rules or to mark an intermediate stage in negotiations. However, it may detract from legal clarity where such texts are presented as if containing provisions with legal or semi legal force. Moreover, the arranging of unnecessary Council meetings often results in calls for the Commission to produce a report, which in turn leads to adoption by the Council of conclusions or other non essential texts.

Similarly, too, there is a risk of legislative inflation, undermining the principles of subsidiarity and proportionality, for the separate channels machinery reinforces the tendency of experts in working parties to clutter texts with details which should be left to the authorities responsible in the Member States, as experts each wish to have Community legislation incorporate arrangements found in their own national laws or regulations.

These reasons, among others, explain why, in order to limit the number of specialist Councils, the General Affairs Council twice, in 1988 and 1992, adopted conclusions requiring its prior approval for the establishment of any new specialist Council compositions.

## AVENUES TO BE EXPLORED

### **Discontinuing some Council compositions**

44. Some Council compositions which do not meet regularly (Tourism, Civil Protection or Youth Affairs) could be discontinued and matters dealt with by them transferred to other compositions.

### **Combining some Council compositions to give them broader coverage**

45. *Combine some Council compositions, with the entire agenda taken under the same chairmanship, but*

Governments free to be represented as they wish and agendas arranged so as to allow different Ministers to attend. Among the possible combinations put forward, mention may be made of the following, while noting that they have met with criticism:

(a) General Affairs and Development;

(b) ECOFIN and Budget;

(c) under a heavyweight Internal Market and Competitiveness Council, all or part of the Council compositions dealing with micro economic policy: Industry, Telecommunications, Energy and Research;

(d) General Affairs (horizontal questions) and Internal Market;

(e) consumer protection issues could be discussed either by the Internal Market Council or by the Health Council.

### **Listing the Council's various compositions in its Rules of Procedure**

46. The Rules of Procedure could give an exhaustive list of compositions in which the Council may meet, amendable only by a qualified majority.

### **Encouraging specialist Council compositions to concentrate on more operational activities**

47. Limit artificial activities and adoption of purely declaratory texts, which give rise to work out of all proportion with their impact and may also sometimes cause legal difficulties. The adoption of resolutions should be confined to intermediate stages of negotiations, where they serve to set out the broad lines of prospective agreement.

### **Avoiding the establishment of ad hoc preparatory channels**

48. Save where good reason is given, refrain from setting up "high level working parties" which by pass conventional preparatory channels (in particular Coreper), with the attendant risks for consistency of Union action.

### **Avoiding the practice of joint Council meetings**

49. The practice of holding a joint meeting of two Council compositions, introduced in the 1970s, to try and arrive at a coordinated approach to certain problems, is not very productive and should be ruled out with a 25 to 30 member Council in prospect.

## **6. LEGISLATIVE ROLE**

### **BACKGROUND**

The Council performs both a legislative role and an executive or governmental role. The specific demands of the legislative role, however, have emerged only as the Community's sphere of responsibility has expanded and new procedures involving the European Parliament more closely in decision making have been adopted.

Up to the time of the Single European Act, the Council held sole decision making power, alone or after merely consulting the European Parliament. The Single Act, at the same time as expanding the Community's sphere of responsibility, established the "cooperation procedure", which involves the European Parliament more closely in decision making, while leaving the Council the final say. The Maastricht Treaty introduced a "co decision procedure", making the European Parliament a genuine co legislator, a role to be considerably

extended and strengthened by the Amsterdam Treaty. Once the Amsterdam Treaty is in force, over half of the Articles in the Treaties providing a legal basis for Community action will concern legislative business, with over 40% of these requiring the co decision procedure. The Council also enacts legal provisions in the JHA field.

## ANALYSIS

The Council is criticised for not paying sufficient attention to drafting quality in its legislation, with the resulting adverse effects on user friendliness, uniform application and legal certainty more generally. Measures were taken back in 1993 and stepped up, following a declaration in the Final Act for the Amsterdam Treaty, with the adoption in December 1998 of an Interinstitutional Agreement on common guidelines for the quality of drafting of Community legislation. The quality problem is particularly acute for acts adopted under the co decision procedure, the final version of which is often the result of two sets of compromises, first between members of the Council and then with the European Parliament.

The development of the Council's legislative business has also revealed the need to improve public information. Various measures have been taken since 1993 to meet that need, albeit aimed at increasing such information rather than improving its quality: public broadcasting of some debates, the making public of voting records, voting explanations and statements for the minutes etc. The Amsterdam Treaty requires that *"decisions are taken as openly as possible"* and creates a right of access to documents, with the Council having to identify cases in which it is acting in its legislative capacity *"with a view to allowing greater access to documents in those cases, while at the same time preserving the effectiveness of its decision making process"*. The authors of the Treaty bore in mind that a general opening up to the public of the Council when acting in its legislative capacity could impair the effectiveness of negotiations, driving them outside the Council chamber, which would run counter to the object of the exercise. Experience shows that application of the Council Decision of 20 December 1993 on public access to Council documents necessitates cumbersome administrative procedures.

Lastly, the co decision procedure imposes an increasingly heavy workload on "legislative" Councils, Coreper (especially Coreper, Part One) and those chairing them. Between January 1994 and September 1998 over 130 acts were adopted under that procedure, after some sixty Conciliation Committee meetings between the European Parliament and the Council. Such meetings are attended by about a hundred participants, working in 11 languages; a 25 to 30 member Union would bring the number of participants to around 200. The average length of time taken to adopt an act under the co decision procedure is two years with conciliation and a year and a half without conciliation. The Amsterdam Treaty will greatly increase the number of legislative acts coming under the co decision procedure. The Council and Coreper will have to adjust to that new situation.

Experience shows here that the way in which the Council follows the European Parliament's first reading could usefully be improved. Inadequate briefing of the Council on the Parliament's proceedings might impede the scope for adopting an act at the end of the first reading, as will be possible under the Amsterdam Treaty. Similarly, a greater acquaintance with Parliament's views would make it possible to prevent disputes over the second reading and hence cut out conciliation, or at any rate to prepare for the second reading more effectively by limiting the number of issues outstanding.

As from the second reading, the co decision procedure is subject to fairly short deadlines, which will be made even tighter by the Amsterdam Treaty. Planning the timing of co decision procedures, in particular so as to have the Council and the European Parliament proceed to some extent in parallel, for the first reading at least, will therefore be essential if the system is to work smoothly.

## AVENUES TO BE EXPLORED

### **Ensuring that proper legislative practices are followed**

50. *Maintain the nature of Directives, which must leave up to national authorities the form and means to be used in order to achieve the result sought.*

51. *With the Commission's cooperation, avoid an excessive increase in the number of legislative procedures by as far as possible combining proposals.*

52. *Step up work on official consolidation of current legislation and give consideration, together with the European Parliament and the Commission, to making greater use of the technique of recasting legislation, whereby an act can be both consolidated and amended by a single text.*

53. *Ask the Council Legal Service, before the Council adopts a final policy decision, to check on drafting quality and make drafting suggestions, in accordance with the December 1998 Interinstitutional Agreement; such suggestions could be considered by the relevant working party.*

### **Greater openness by the Council when acting in a legislative capacity**

54. *Make public, upon request and at a later time, which might be the date of entry into force of a Regulation or the deadline for transposing a Directive, all documents relating to "preparatory work" on legislation.*

55. *Open some of the Council's legislative debates to the public (see Chapter 7).*

56. *Improve public information on the role and work of the Council (see Chapter 7).*

### **Making the co decision procedure more effective**

57. *Ensure that European Parliament first readings are regularly followed by the Council Presidency and the General Secretariat, by means of meetings between secretariats or between the chairman of the Council working party and the chairman or rapporteur of the relevant parliamentary committee.*

58. *Allow the Chairman of Coreper (or the Deputy Chairman, see Chapter 11) to present the Council's common position orally to the relevant European Parliament committee and allow the chairman of the parliamentary committee or its rapporteur to present the outcome of Parliament's second reading on the occasion of a Coreper meeting.*

59. *Ensure proper planning and synchronisation of European Parliament and Council proceedings by drawing up target timetables, with the inclusion of conciliation and preparatory meetings.*

60. *Revise the division of labour between the two parts of Coreper for items involving the co decision procedure, e.g. by submitting to Coreper, Part Two, social affairs and employment items, at present taken by Coreper, Part One, or other matters coming under the co decision procedure, or on the other hand accept and consolidate the sole use of Coreper, Part One, to keep track of the procedure.*

61. *As a more efficient means of preparing for conciliation and reducing the length of the procedure, increase preparatory talks between a small number of individuals, e.g. representatives of the relevant parliamentary committee (chairman and/or rapporteur), of the Council Presidency or Vice Presidency or Coreper's Chair or Deputy Chair, of the Commission and of the General Secretariat of the Council; such informal meetings should serve in particular to prepare draft compromises for subsequent formal submission in plenary; they could be preceded by exploratory talks at the level of officials.*

62. *Consider simplified procedures for adoption of a joint text by the Conciliation Committee, e.g. by means of an exchange of letters between the Co Chairmen or a confirmation procedure without discussion.*

## **7. EXTERNAL COMMUNICATION**

## BACKGROUND

Up until a short time ago, information on Council proceedings, as for a diplomatic conference, was provided mainly by the Member States and the Commission. The need for a higher profile for the Council as such and for greater openness in its business has only fairly recently been felt.

The risk of failure to get the Maastricht Treaty ratified was in part put down to an uninformed or an ill informed public. It thus became apparent that the Council, as the Community's chief legislation and decision maker, was suffering from a "communication gap" vis à vis the general public. Back in 1992 the European Council pointed out that openness in the decision making process would help strengthen the Union's democratic standing and win public confidence. The measures taken as of 1993 (access to documents, open Council meetings, advance information on preparations for Council proceedings and efforts to make texts more user friendly), however, have had only limited impact on the general public. The Amsterdam Treaty will enshrine the principle of openness and public right of access to Council documents.

## ANALYSIS

Generally speaking, the fact is that public opinion either is unaware of the Council's existence or sees it as a closed, secretive institution, whose role in the European Union's decision making process remains somewhat obscure.

The Council's information and public relations shortcomings can be seen both in current affairs (presentation and explanation to the media and the general public of the issues at stake in and significance of decisions taken by the Council) and in general knowledge (the Council's existence, organisation and role, and its relationship with the other institutions and the Member States).

In the case of current affairs reporting of a Council meeting, the fifteen Ministers, the Commission and their spokesmen are all eager to relate the course taken by discussions, which are thus aired in public daily. They do so, of course, according to their own perception and their particular interests. Such spinning of information is only natural. However, it could usefully be supplemented by substantially stepping up the information provided by the Presidency and the General Secretariat of the Council. For the information fed out by delegations may in some cases result in claiming "positive" Union decisions as a national political triumph, while the blame for results less favourable to national interests is placed on "Brussels". The European relevance of decisions taken is insufficiently explained to the general public, thus exposing Union policy to incomprehension and criticism, often without good reason.

Moreover, as such policy is, more often than not wrongly, attributed to the Commission alone, the Commission is sometimes made a scapegoat for decisions in reality taken by the Council. This strengthens the preconception that decisions are all being taken by the Commission ("civil servants") and not by the Council ("politicians").

In the case of general knowledge, the fact is that the general public are to a large extent unaware of the Council's work and even of its existence. This is probably due both to a lack of suitable information prompting the media to cover Council business differently (i.e. looking beyond special links between national media and national Ministers) and to inadequate "mass audience" information on the Council's role, operations and relationship with the other institutions and the Member States. It should be noted that the resources available to the Council bears no comparison with the sizeable public information budgets of the European Parliament and the Commission.

Over 85% of the public say that their only source of information on European affairs is television. The public should therefore be able to "visualise" the Council and its role in European decision making, through suitable channels. Yet the debates at present broadcast on television are for the most part academic set

pieces, unrelated to the Council's real political or legislative business. They are thus of limited interest to the media and do not properly answer the purpose for which they were introduced.

## AVENUES TO BE EXPLORED

### **Adopting a coherent communication strategy for the Council, to publicise its decisions and explain their context and significance**

*63. Step up the Council Presidency's action in the field of communication.*

*64. Consider the appointment of a spokesman by the Secretary General/High Representative.*

*65. Continue to develop the information provided by the General Secretariat of the Council, in cooperation with the Presidency: factual background notes and press releases, giving technical explanations of items of business, the issues at stake in them, their context, their outcome and the prospects they hold out for the public.*

### **Making the Council's existence and role in the Union's institutional system better known**

*66. Encourage the recent policy by the General Secretariat of the Council of producing publications on the Council's organisation, operation and role in decision making, notably by developing use of the Internet.*

*67. Replace the current practice of open Council debates by opening genuine debates to the public e.g. at the initial stage of discussing a major legislative proposal or on presentation of a Commission report assessing implementation of a Community policy (see Chapter 6).*

*68. Equip the Council's headquarters with the necessary technical infrastructure to supply Member States' television channels with pictures, in particular the press conference room and other conference rooms.*

*69. Rationalise and automate procedures for public access to documents, using modern technology (the Internet) and avoiding excessive bureaucracy.*

### **Developing an interinstitutional approach to information**

*70. Within the Council, begin considering the establishment of a general framework for a Union information policy in order, where justified, to improve coordination of the institutions' communication activities (publications and information campaigns etc) more effectively; similarly, coordinate the work of the respective information offices of the European Parliament and the Commission in the Member States, which should provide information on Union action as a whole, including information supplied to them by the Council on its activities (particularly in the CFSP and JHA spheres).*

*71. Ask the Commission to look more closely into the proposal to set up in Brussels a joint European Parliament, Council and Commission information centre, to receive visitors and supply them with all relevant documentation, so as to make better use of available resources and ensure more consistent presentation of information intended for the general public.*

## **PART II: PREPARATION AND CONDUCT OF COUNCIL MEETINGS**

### **8. PREPARATION OF COUNCIL MEETINGS: COREPER AND THE OTHER COMMITTEES AND WORKING PARTIES INVOLVED**

#### **BACKGROUND**

Each Council meeting is the – relatively short lived – culmination of lengthy preparatory work undertaken by many specialised working parties and committees once a proposal has been submitted to the Council, and completed by Coreper, which has the task of making a final summary of proceedings before the matter is placed before the Council.

The number of committees and working parties has risen from about fifteen in the early sixties to 90 in the mid seventies and to over 250 today; their number has greatly increased with the advent of the CFSP and JHA. They are composed of staff from the Permanent Representations and/or national experts from the capitals and meet at the headquarters of the Council in order to prepare the latter's proceedings. Some have a very broad remit, while others have a highly specialised one. In principle, the outcome of their work is submitted to Coreper.

Coreper was created when the Communities were set up. Under the Treaty, it is "*a committee consisting of the Permanent Representatives of the Member States (...) responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the Council*". All the items entered on the agenda for a Council meeting, whatever its formation, are in principle submitted to Coreper, the last stage in the process of preparatory work. With some exceptions, Coreper's members are in practice diplomats, but speak on behalf of their Government as a whole, whatever the subject and whatever the formation of the Council meeting in question. Since 1962 Coreper has been divided into two parts, each of which meets once or twice a week. Coreper Part 2 (Permanent Representatives) prepares the proceedings of the General Affairs, Development, ECOFIN, JHA and Budget Councils. Coreper Part 1 (Deputy Permanent Representatives) prepares the proceedings of the Council in its other formations. Members of both Coreper Part 1 and Coreper Part 2 directly assist Ministers at Council meetings.

Coreper thus provides the requisite intermediary link between, on the one hand, the proceedings of some 250 working parties and committees – even where they are composed of very senior officials – and, on the other hand, the proceedings of the 22 Council formations composed of one representative of each Member State at ministerial level.

## ANALYSIS

### High level working parties and committees

High level working parties and committees (SCA and committees set up by the Treaties) play an essential role in preparing the proceedings of the Council in its various formations; they provide the possibility for technical examination of dossiers among experts, which is necessary for effective processing of the dossiers by the higher authorities. Their very existence and smooth operation are therefore essential. To the Council and the Union, they are an undeniable asset to be preserved, in the knowledge that the same persons will often subsequently ensure that the policies and measures decided at Union level are implemented at national level.

A large proportion of the texts or measures placed on the Council's agenda for adoption have already been provisionally agreed by Coreper, in most cases following prior finalisation by so called "vertical" committees and working parties. Although no working party or committee has decision making power, these texts are often adopted by the Council without discussion. That practice has many advantages: in particular, that of lightening the Council's workload. It should therefore be preserved, and even encouraged, while ensuring that the agreements reached at expert level genuinely reflect the political will of the governments.

In general, the current system operates satisfactorily. Some improvements could, however, be sought by standardising reports according to the types of dossier (see Chapter 9), introducing greater continuity regarding the chairmanship of working parties (see Chapter 11), and reducing the number of working parties. Many working parties still exist de jure but no longer meet. Some committees or working parties set up too many subgroups (CFSP, JHA, EMU, including the Economic and Financial Committee).



## Coreper

Coreper, whose existence and role are enshrined in the Treaty, is the only Council body of a permanent nature which is based in Brussels and meets each week. It is also the only Council body on which the Treaty has expressly conferred "horizontal" powers. Its members have a thorough knowledge of the Treaties and of the complex rules and procedures to be followed by the Council. As Ministers are able to devote only a very limited proportion of their time to the affairs of the Union and, apart from the members of the General Affairs Council, deal only with specific ("vertical") matters, Coreper's role is irreplaceable for ensuring the coherence and continuity of Union action. Moreover, the permanent presence of its members in Brussels affords it great flexibility in organising its work: emergency meetings which can be very brief, simplified language arrangements, the ability to work without interpreters if need be, etc.

Coreper's effectiveness has remained relatively intact, at least until the last few years but, unless measures are taken, could be jeopardised by the Union's enlargement to 25 or 30 members.

In practice, it has to be said that Coreper's coordinating role has already begun to weaken over the last few years. On the one hand, Coreper can no longer handle everything because of the increase in the areas within the Union's sphere of competence. On the other hand – and above all – the specific, or even technical, nature of some of the Union's new areas of competence has led to the emergence of high level specialised committees which are becoming increasingly powerful. The highly qualified members of those committees quite naturally tend to turn directly to "their" minister, with whom they work daily on national matters. Some of those committees have already existed for a long time (e.g. the Article 113 Committee for the common commercial policy and the Special Committee on Agriculture (SCA) for the common agricultural policy). Others have been set up by the Treaties, such as the Economic and Financial Committee for EMU, the Political Committee for the CFSP, the K.4 Committee for JHA, and the Employment Committee. Further committees have been added, some of which are standing committees and others on ad hoc basis (composed of Chief Veterinary Officers or of Directors General concerned with transport, education, taxation, etc.).

The efficiency of the bulk of those preparatory bodies is beyond doubt. However, sometimes an *esprit de corps*, or even a kind of a club spirit, has developed. The various Council formations and their specialised bodies are just as many "channels" enjoying a broad measure of autonomy. Those "channels", with their own direct contacts at the Commission and a secretariat provided by specialised departments of the General Secretariat of the Council, are jealous of their "responsibilities". Members of "vertical" committees tend to consider the members of Coreper solely as representatives of the Ministers for Foreign Affairs. They are not always convinced that Coreper is capable of contributing added value to their work.

The coordination of the work and the coherence of the policies of the Union may suffer as a result of those channels' autonomy, which for some years has increased rapidly. Moreover, some dossiers, by their "multidisciplinary" nature, do not lend themselves well to this system of autonomous channels: the problems of the contemporary world make no allowance for boundaries between "pillars" or "channels". It is difficult to make a single "vertical" committee responsible for examining them coherently and fully. Yet once such a committee considers that a matter falls within its "responsibilities", it will seek to deal with it entirely and try to prevent it being assigned in parallel to other fora. Consequently, certain subjects in areas coming under different channels are not given sufficient attention. Here Coreper may, and should, intervene as an "assembler", a role which it will need to assume in any event in preparing the "common strategies" provided for by the Amsterdam Treaty. The basic rule that all decisions must transit via Coreper before their adoption by the Council is not always observed. Thus, the SCA's drafts intended for the Agriculture Council are not submitted to Coreper. Rarely will the Economic and Financial Committee's drafts for the ECOFIN Council be placed before it. It is sometimes "forgotten about" by the Article 113 Committee. In practical terms, it is not possible to refer to it issues which are due to be examined by the Political Committee when it meets on the same day and at the same time as a meeting of the General Affairs Council.

This situation is unsatisfactory. It is essential to restore Coreper's coordinating role, otherwise consistency between the action of the Council in its various formations might suffer. This being said, Coreper's *raison d'être* does not in itself imply the possibility for that body to re open questions of substance and advisability

agreed upon by a high level committee, except where they involve a "horizontal" problem or the high level committee itself leaves it to the Council to choose between two options. In fact, the respective responsibilities of the various high level committees have never been determined and this lack of demarcation is a source of friction.

## AVENUES TO BE EXPLORED

### **Improving the working methods of committees and working parties and reducing the number of their meetings**

*72. Revise the list of working parties with the aim of reducing their number, and confirm that a new working party or subgroup can be created only with the agreement of Coreper (in accordance with the current Rules of Procedure), which would set its precise terms of reference, where appropriate limited in time.*

*73. Reduce the number and/or duration of meetings by applying, mutatis mutandis, to Coreper, the committees and the working parties the suggestions for improving the Council's working methods (see chapter 9): no more sounding out of delegations' views ("tours de table"), limitation of speaking time, a more active role for the Presidency between plenary meetings, a single seat per delegation at the meeting table, greater recourse to restricted sessions, etc.*

*74. For dealing with "inter pillar" dossiers, introduction of appropriate procedures which, while enabling the various experts to express their views, ensure that the final decision is taken in a single forum on the basis of an overview of the various aspects involved; procedural suggestions in this respect should be submitted, in particular, by the General Secretariat of the Council.*

### **Rationalising Coreper's organisation**

*75. Rule out the possibility of creating a specialised Coreper Part 3 (e.g. for JHA matters) which would prejudice the aim of consistency.*

*76. Consider whether to reallocate tasks differently between the two parts of Coreper: in this respect, the transfer to Coreper Part 2 of the social affairs and employment dossiers has been mentioned (see Chapter 6).*

*77. Broaden and develop the tasks performed by the direct assistants of the Permanent Representatives ("Antici Group") and of the Deputy Permanent Representatives ("Mertens Group"), by increasing their role in the organisation of work, procedural decision making, the editing of certain texts and the preparation of specific dossiers; the Chairmen of the "Antici" and "Mertens" Groups should be in permanent contact with their Presidency colleague responsible for planning working party meetings in collaboration with the General Secretariat (see Chapters 9 and 11).*

### **Extending Coreper's role**

*78. Make better use of the advantages of the permanent presence of Coreper members in Brussels by convening ad hoc meetings at short notice to discuss specific urgent matters, particularly in the area of external relations.*

*79. Systematically confer on Coreper the work of assembling the preparatory work carried out by various "vertical" bodies (multidisciplinary dossiers).*

### **Delimiting more clearly the respective responsibilities of Coreper and of the high level vertical committees**

*80. Issue a reminder that the rule whereby any Council decision must first be submitted to Coreper applies*

to all decisions, whatever the Council formation involved and whatever the high level committee or working party which has prepared them, except in the case of a unanimous Council decision in an emergency.

81. Specify in the Council's Rules of Procedure that in the case of dossiers where preparation by a high level committee (SCA and committees set up by the Treaties) has enabled agreement to be reached on a draft, Coreper should confine itself to ensuring that the following principles and rules are observed:

(a) principle of legality in the light of international and Community law, including the principles of subsidiarity, proportionality and of providing reasons for acts;

(b) responsibilities of the other Union institutions;

(c) budgetary provisions;

(d) rules on procedure, transparency and the quality of drafting of legislation;

(e) consistency with other Union policies and measures.

### **Confirming and reinforcing Coreper's inter ministerial nature**

82. Consider any measures likely to highlight more clearly the fact that the Permanent Representative is the representative of the entire Government and of its Prime Minister, and not solely of the Minister for Foreign Affairs.

83. Examine the possibility of establishing closer (organic or operational) links between the Permanent Representative and the national government body responsible for coordination, insofar as the Member State's constitutional situation and political practice so permits.

84. Ensure that the Permanent Representative attends inter ministerial meetings in his capital devoted to the coordination of European policy; it should be noted that some Member States are already following this practice at the moment (see Chapter 10).

### **Imparting a political dimension to the task of preparing Council meetings**

85. It has been suggested that Coreper members should be political figures. This suggestion has been the subject of criticism, as it would be difficult to reconcile with the present system, which clearly separates the level of officials (who do not take decisions) from that of politicians (who do take decisions).

86. It has also been suggested that there should be a new Council formation composed, in accordance with the Treaties, of representatives of the Member States at ministerial level authorised to commit their government, but which would theoretically be in permanent session at the Council headquarters: in practice, Ministers or State Secretaries who were members of such a formation could attend their government's meetings in their capitals; in Brussels they would then state the positions decided on by their government. This suggestion has also been criticised; it should be seen in conjunction with points 17 and 18 (Chapter 2).

## **9. WORKING AND NEGOTIATING METHODS**

### **BACKGROUND**

The negotiating methods which have come about at the Council draw upon those of traditional multilateral diplomacy, despite the distinctly original character of the Community venture. How to direct and organise proceedings has been long left to the appreciation of the successive Presidencies, a process not entirely devoid of improvisation. Yet the improvisation has not impaired the Communities' development, as long as

priorities arose by themselves and the number of participants was limited.

Nowadays, although the number of Council members has more than doubled, working and negotiating methods have hardly evolved, apart from the introduction of six monthly programming which has somewhat improved the spread of activities over a Presidency term. The processes typical of traditional international negotiations are still in use and examination of dossiers still follows the route leading from working parties to high level committees and Coreper, and then to the Council. That machinery, which is simple but smooth running, owing in particular to the key role played by the Commission, the more important role assumed these days by the Presidency and more widespread qualified majority voting, has hitherto preserved the effectiveness of the Council for the most part.

## ANALYSIS

In contrast to this relative continuity regarding methods, the conditions in which Council deliberations take place have undergone profound changes which will speed up with future enlargements:

- the constant increase in the number of members of the Council will render plenary sessions increasingly more cumbersome and less and less suited to the effectiveness of deliberations and negotiations;
- the constant extension and growing complexity of the Union's responsibilities necessitate a global vision of medium term political priorities, which is largely lacking at the moment;
- the amount of time available at ministerial meetings, which is necessarily very limited and will have to be shared among a larger number of participants, must be used with maximum effectiveness;
- working methods have not adapted to the growing diversification of the Union's activities; the Council's ways of negotiating and acting are necessarily different depending on whether it is conducting the legislative co-decision procedure or implementing a foreign policy decision.

In the absence of new methods, the ratio of the activity deployed by the Council to the results achieved – its performance, so to speak – will continue to deteriorate, eventually leading to deficiencies which are likely to become widespread in a Council with 25 to 30 members.

As of now, therefore, it is necessary to safeguard the effectiveness of the Council's decision making process by improving and rationalising its working and negotiating methods along the following three lines:

(1) Experience with the six monthly indicative programming of the Council's work, which has been taking place for several years now, has amply demonstrated its merits. It enables some discipline to be introduced upstream in the preparations for each Presidency term by the various national administrations. Downstream, it makes for easier identification of foreseeable activities and better planning of meetings, even if, on this latter point, much progress still has to be made. This positive experience suggests, therefore, that the programming of the Council's work should be intensified and more widely applied.

(2) The multiplicity and variety of the Council's activities whether in terms of their nature or their purpose, make it difficult to lay down general rules concerning negotiating methods. It is clear, however, that the traditional method, based exclusively on a succession of plenary meetings, from the working party to Coreper and then from Coreper to the Council, seems increasingly unsuited and will not make it possible to face the new constraints of a Council with 25 to 30 members. The repeated presentation of national positions in the various fora, which is peculiar to this type of preparation, is likely to lead to a genuine logjam in the decision making process. Going around the table to sound out views, with each delegation being allowed 10 minutes speaking time, would take five hours! More effective methods therefore need to be considered, which might draw on those used in international fora composed of more than 20 members, and also on certain informal practices already in use today.

(3) Lastly, conducting a meeting attended by 25 to 30 delegations will require tightening up discipline in order to make best use of the time available, which will become increasingly precious.

Ministers occasionally have recourse to the practice of "informal" meetings, involving meeting outside the headquarters, in the State holding the Presidency, to debate freely on subjects of common interest, either on their own or with very few collaborators present, in principle without an agenda, any decisions or any conclusions. As this practice has proved useful, the number of such meetings has multiplied, the number of participants has increased, agendas have made their appearance and conclusions are sometimes adopted. Neither the provisions of the Treaties nor the rules of procedure apply to these meetings, which are intergovernmental by nature and are held without the logistical and legal support available for Council meetings. That is why, in 1988, the General Affairs Council endeavoured to adopt rules, both to limit the number of such meetings and to preserve their informal and restricted nature.

## AVENUES TO BE EXPLORED

### Stepping up and generalising the programming of the Council's work

*87. Bolster the scope of six monthly programming and broaden it to include all "programmable" activities, i.e. those not dependent on the latest political developments. Such systematic programming will be needed for legislative activities in view of the constraints of the co decision procedure (see point 61). It would also have the advantage of making further margins of flexibility available for activities which, by definition, cannot be planned, notably in the field of external relations.*

*88. Where possible, extend programming to cover two, or even more, six monthly periods: indicative and dynamic programmes would in particular help to reduce the activity peaks occurring at the end of each six month period.*

### Changing the ways in which the Council is prepared and how it negotiates

*89. More systematic use, along side the traditional "vertical" channel (working party – Coreper), of an ad hoc "horizontal" body tasked, under Coreper's responsibility, with considering the multidisciplinary aspects of an issue (see, for example, the experience gained with the "Friends of the Presidency" Groups).*

*90. Whenever this may facilitate the search for a solution, notably in the field of legislative activity, organise consultations among a select group of delegates to examine particular aspects of a question under the Presidency's responsibility and with the assistance of the Commission and the General Secretariat of the Council, with the Presidency reporting back to the plenary meeting within a given time limit.*

*91. Encourage the Presidency, assisted by the General Secretariat, to undertake bilateral or multilateral contacts on an unofficial basis to enable it to identify problems better and thus to devise more balanced compromises, which will save time at plenary meetings.*

*92. Improve the allocation of responsibilities between working parties, Coreper and Council so as to avoid as far as possible fruitless policy discussions in working parties and, conversely, tiresome drafting sessions in Coreper or the Council; avoid issues being referred back and forth too frequently between the Council, Coreper and the working party.*

*93. Allow sufficient time between meetings so as to take full advantage of the added value contributed at each level (Council–Coreper–working party).*

*94. Consider recourse to a written procedure at the preliminary stage of examination of a complex dossier, for instance in the form of an exchange of written statements which would facilitate initial discussion, with the General Secretariat being tasked with drawing up a summary.*

## **Ensuring more orderly and efficient conduct of the various sessions and plenary meetings of the Council and its preparatory bodies**

95. *Reduce the size of meeting rooms and tables by giving delegations only one seat at the meeting table for all Councils and all preparatory bodies (see Chapter 13): otherwise, current practice would result in an outside table around which about a hundred people would be seated, making any negotiation impossible.*

96. *Supplement the Council's Rules of Procedure with more specific provisions relating to the role of the Presidency, in order to give it greater authority, e.g. to lay down and enforce a rule on delegations' speaking time.*

97. *Make more frequent use of written communications which can be officially recorded in the minutes and, where appropriate, issued to the Press.*

98. *Reduce the number of Council agenda items to those on which a decision or political guidance are necessary, and replace the others (general statements, "other business" items, etc.) by written communications.*

99. *In principle replace unstructured, unproductive and very time consuming "tours de table" with other methods: written questionnaires, spontaneous debates, advance allocation of contributions among "spokesmen" or rapporteurs for a particular question; every meeting should, in principle, be aimed at discussing guidelines, a solution or options suggested by the Presidency.*

100. *Provide for more systematic recourse to working parties meeting informally in the margins of a Council or Coreper meeting, under instructions to propose a compromise on a particular issue the same day; where an agreed political solution has to be framed, the General Secretariat should be asked to do so in parallel with the meeting.*

101. *Arrange for more "restricted" and "super restricted" meetings at which the numbers present in the meeting room are drastically limited in order to allow Ministers to discuss the more sensitive questions more freely; reduce the time spent on lunches, the outcome of which is often ambiguous and interpreted differently by the participants.*

102. *Convene restricted "conclaves" of the Council as necessary, devoted to a single important and sensitive issue.*

103. *Enforce the existing rules on informal meetings of Ministers, notably as regards their restricted nature, so that they do not de facto replace the Council by taking "decisions" on specific dossiers.*

## **10. THE MEMBER STATES**

### **ANALYSIS**

The members of the Council represent national governments, speak on their behalf and defend the positions prepared by national administrations. The smooth functioning of the Council thus depends directly on that of the national authorities, whether the political authority or the administration, involved in the Union's decision making process. The Council's principal role is to transform into the common will of the Union the views of all the Member States, which of necessity are divergent at the outset. Its effectiveness in carrying out that task naturally depends on the quality of the initial proposal from the Commission – which tries to anticipate the common interest – but also, and to a very large extent, on each member's political and administrative capacity to help the negotiations along towards their conclusion.

For this process to run smoothly:

- Member States must have determined a starting position, having carried out the requisite internal arbitration;
- they must be in a position, in the course of the negotiations, to allow for the margins of manoeuvre essential for final agreement, which implies that the internal arbitration exercise should continue throughout at the level of the national administrations;
- the official position to emerge from such arbitration must be defended clearly and unequivocally in all Council formations and their subordinate bodies.

Where national governments have conducted the necessary internal arbitration in a clear cut fashion, less political arbitration will be required of the Council itself. Arbitration between two Council formations mostly arises when government solidarity breaks down or, much more frequently, where the organisation or functioning of the administrative apparatus responsible for the preparations becomes flawed.

A genuine substantive difference of views between two Council formations – going beyond a mere difference of emphasis due to Ministers' particular sensitivities, e.g. between Employment and ECOFIN – is fairly rare, even though it now tends to occur more frequently than in the past. This situation should first and foremost be seen as reflecting an operational shortcoming within the Member States rather than a more or less accepted – or even normal – phenomenon which ought to be remedied by trying to conceive of a systematic power of arbitration at Union level other than that exercised on an exceptional basis by the European Council. In the debate on the role of the General Affairs Council, too much importance is being attached these days to a hypothetical power of arbitration, insofar as this implies the power of that particular Council to impose decisions upon other Councils. Such power has never really existed. In fact, in the debate two concepts have often been confused, namely arbitration in the strict sense, which involves deciding between substantive positions adopted by two different formations of the Council, and coordination, which involves ensuring consistency between the various policies of the Union.

Accordingly, at least to some extent, the effectiveness of the Council decision making process does not depend upon new initiatives to be taken at Union level, but upon a critical review to be undertaken by the Member States themselves of the methods used by them in preparing the Council's proceedings. Naturally, this issue falls primarily within the sphere of competence of the governments.

It is a fact that Member States sometimes find it difficult to impose a consistent political line on the positions taken by their different Ministers in Brussels, or even by different departments in the same Ministry (Political Committee, - Coreper). Governments have not yet adjusted to the broader scope of the Union's activities since the Maastricht Treaty (currency, economy, foreign policy, internal security, justice, police, immigration, etc.). Currently, the reactions of the different governments to this fresh challenge vary considerably with the history, constitutional structure (unitary or federal), political situation (coalition or majority government) and administrative traditions of each Member State. Without encroaching on an area of national jurisdiction, it might be desirable to do some combined thinking, on the basis of experience, on the best way of preparing "upstream", i.e. at Member State level, discussions in the Council and its subordinate bodies.

Given that all the Member States have different kinds of coordination and arbitration bodies or fora to prepare for Community negotiations, thought might be given to the following points: whether such bodies or fora are in the right place in the government machine; whether they have adequate administrative and political weight; whether the relay procedures work well; and whether they are capable of making a sustained contribution throughout the decision making process.

#### AVENUES TO BE EXPLORED

*104. Arrange an informal meeting of those responsible at national level for coordinating, preparing and monitoring Community negotiations in order to make a comparative examination of the methods used by*

*Member States: produce a list of "good practices" to inspire governments wishing to make changes.*

*105. Give particular consideration in this context to the question of the form and the place in the government structure of the body which is to act as arbiter on European questions.*

*106. Ensure that the necessary room for manoeuvre is established at a sufficiently early stage in the negotiating process so that ministers can be relieved of less important matters in order to concentrate on the key questions. There is nothing new in asking our political masters to furnish their representatives in the preparatory bodies with a sufficiently flexible negotiating mandate, but it has to be admitted that such requests have so far often remained a dead letter; however, changes in current practice are vital if the policy making body (i.e. the Council) is not to be paralysed.*

*107. Increase the status and powers of members of Coreper, which should become the preferred forum for the "intermediate" political negotiation which will become increasingly necessary; in this connection, examine the scope for involving the Permanent Representatives more directly in internal arbitration and decision making processes, as is already the practice in certain Member States (see Chapter 8).*

## **11. THE PRESIDENCY**

### **BACKGROUND**

The Treaties do not define the tasks of the Presidency, although there are a number of specific indications to which the Council's Rules of Procedure add various procedural and technical details.

The rule that "the office of President shall be held in turn by each Member State in the Council for a term of six months..." has remained unchanged since it was established for six Member States, which means that a Member State now has the Presidency once every seven and a half years instead of once every three years; this will become every 12 to 15 years in a Union of 25 to 30 Member States. Whereas before Presidencies succeeded each other in alphabetical order, since the Maastricht Treaty the Council unanimously decides on the order to be followed, which provides greater flexibility in adapting to circumstances or requirements.

The function of the Presidency is to serve the Community and the Union. It is neutral and impartial and must not be used to pursue national objectives. Purely formal and semi honorary at the outset, its role since the 1970's has become increasingly substantial and "institutional" with successive enlargements and the expansion of powers, accompanied by a proliferation of formations for the Council and its subordinate bodies and hence an increased need for coordination and leadership. There has furthermore been a parallel expansion in political cooperation, the functioning as well as the practical framework of which has depended on the administrative apparatus of the Presidency.

In the Treaty on European Union, Member States, in establishing the CFSP and JHA as new areas for Union action, opted to confer on the Presidency a series of tasks which would have been entrusted to the Commission under the Community system. Thus the Presidency is now responsible for representing the Union in CFSP matters, implementing common measures and expressing the Union's position in international organisations and at international conferences. The Amsterdam Treaty will strengthen this role by enabling the Council to instruct the Presidency to negotiate an international agreement on behalf of the Union and by entrusting to the Presidency the same tasks in JHA cooperation areas as in CFSP cooperation areas.

Save for a very few Council bodies which elect a chairman from among their members, the Presidency is a single entity, both horizontally (all EC and EU areas of jurisdiction) and vertically (the Council, Coreper and all the Council's subordinate bodies). Its exclusive vertical role is not formally provided for in the Treaty, which confines itself to laying down a six monthly rotation only for the Council itself. Every six months, not only does the Presidency of some 20 different Councils change, but so too does the chairmanship of some 250 committees and working parties.



## ANALYSIS

### **Role of the Presidency**

The role of the Presidency has diversified over the years and its importance as a vital cog in the workings of the Union has been confirmed as its volume of work has intensified.

The Presidency is the Council's "political motor". It drives things forward and has a policy planning role. By drawing up a programme and provisional agendas for the different Councils, it can lay down the order of priorities in the selection and discussion of particular topics. It is the Presidency which sets the direction for the Council's work and ensures that it is completed within reasonable deadlines. The six monthly changeover creates an obligation to take stock, which provides the impetus for taking matters forward.

The Presidency has a "good offices" role, which consists in suggesting compromises, particularly by close contact with delegations outside meetings and with representatives of the Commission and the European Parliament. It also has available a number of procedural mechanisms such as the decision to take a vote and de facto control of meeting schedules and agenda content.

The Presidency has an internal representation role. It represents the Council vis à vis the other institutions. This task is becoming increasingly onerous in relations with the European Parliament. In the case of heads of government or ministers, it involves appearing at plenary sessions (programme, report, statements, oral questions) and before parliamentary committees, taking part in political and budgetary dialogues and in legislative procedures – particularly in the preparation and conduct of conciliation committee meetings under the codecision procedure – and consulting and briefing the Parliament on the main aspects of the CFSP and JHA as well as on the negotiation and conclusion of international agreements.

The Presidency has for a long time been responsible for representation vis à vis third countries and international organisations. It rarely represents the European Communities in the sphere of external economic relations, as this is generally a matter for the Commission. However, in CFSP matters the Presidency always represents the European Union and where appropriate expresses the Union's common positions. When the Amsterdam Treaty comes into force, the Council will be able to ask the Presidency to negotiate international agreements on behalf of the Union and its current external representation role in CFSP matters will be extended to the JHA sector. The Presidency is also responsible, together with the Commission, for ensuring the consistency of the Union's action at international level.

Finally, the Presidency has a practical role to play in coordinating and organising work. In six months it chairs two or three meetings of the European Council and about 45 Council meetings, 60 Coreper meetings and 1 400 committee and working party meetings.

The increase in the Presidency's tasks has led to a number of weaknesses, particularly in the coordination and organisation of the proceedings of the Councils and their preparatory bodies. There are also differences in the level of preparation and expertise of the people appointed to chair working parties, and their technical knowledge and experience of the way the Council works are sometimes inadequate. There is a danger that these weaknesses might become more marked with the increase in the number of Council members. One of the worrying problems for the future is that of sufficient availability of the 250 or so chairmen of committees and working parties at a time when more intense activity by chairmen between plenary meetings will become essential.

### **Advantages and disadvantages of six monthly rotation**

The system of the six monthly rotating Presidency has its advantages, but it also has serious disadvantages which will become accentuated in a Union of 25 to 30 Member States.

One advantage of six monthly rotation is that it places the Member States on an equal footing, giving each of them the opportunity of influencing the course of Union business. The system also generates an impetus which concentrates the energies of each successive Presidency and thus provides the essential drive for making progress and achieving results. Another advantage of six monthly rotation is that each Member State is periodically closely involved in Union business, giving members of the government, civil servants, national media and public opinion the opportunity of becoming familiar with the process of European integration. Lastly, it enables policies to be more consistent as a result of single political control over the whole Community machine.

However, despite these advantages, six monthly rotation represents a major handicap for the continuity of the Council's work, and particularly for the committees and working parties. The examination of specific topics frequently stretches over a longer period than six months and calls for a technical expertise which can only be acquired with time. In addition, the Council is confronted with institutions more permanent than itself in three ways: both the European Parliament and the Commission have five year mandates, and their members work full time for the Union; their sphere of competence is also horizontal, whereas the Council Presidency is split up into numerous specialist components.

The pressure of having to take stock at the end of each six month period sometimes causes a rush which can lead to the adoption of makeshift decisions or a proliferation of badly drafted or non compulsory acts (resolutions, conclusions) when the Union's interests would have been better served by the adoption of a more binding act, but one which would have required more lengthy negotiations stretching over several Presidencies.

Finally, the rotating Presidency tends to blur the outside world's image of the Union by impairing the visibility and effectiveness of its external representation, particularly in CFSP matters, for which the Treaty has conferred major responsibilities on the Presidency.

All in all, it is to be feared that retaining the principle of a six monthly rotating Presidency for all the Council's preparatory bodies within an enlarged and increasingly complex Union might on the one hand lead to serious difficulties for the efficiency and continuity of the Council's work and on the other hand increase the workload to an overwhelming extent for some Member States, particularly future Member States whose administrations have no experience of the Community machine and are relatively undeveloped.

## AVENUES TO BE EXPLORED

### **Improving the transition between Presidencies**

*108. In appropriate sectors, set up work programmes stretching over two six month periods or more and in general provide for closer cooperation between the incumbent Presidency and the one(s) following.*

*109. During the months of May June and November December, allow the next Presidency to chair working parties preparing for meetings of certain Councils to be held at the beginning of that next Presidency (in accordance with the existing Rules of Procedure).*

### **Asking the Member States exercising the Presidency to provide the necessary means**

*110. Ensure the greater availability of those chairing committees and working parties, by avoiding, as a general rule, a situation where one person has to chair several working parties or committees with a large workload, in order to facilitate contacts with the General Secretariat, Commission, European Parliament and delegations between meetings.*

*111. Endeavour to second the people who will be chairing committees and working parties with a heavy workload to the Permanent Representations in Brussels, not only for the six months of the Presidency but also, if at all possible, during the preceding months so that they can already take part in the proceedings of*

*the committees or working parties for a reasonable period, to familiarise themselves with the matters in hand and with the other members and the operating procedures.*

*112. Ensure that those chairing committees and working parties are adequately trained and have prior experience, particularly with regard to the Council's decision making procedures and working methods.*

*113. Ensure, particularly during the Presidency, the best possible allocation of responsibilities between the capital and the Permanent Representation in Brussels; the latter is closer to the other delegations and the Commission and is better placed to understand their positions and rapidly point the Council in the right direction; it should have as much room for manoeuvre as possible.*

*114. Give a Presidency official sufficient authority to plan working party meetings in close cooperation with colleagues from the "Antici" and "Mertens" Groups and with the General Secretariat of the Council (see Chapters 8 and 9).*

### **Developing the Presidency's external support mechanisms**

*115. Establish the formal office of Vice President for each Council formation, with responsibility for relieving the President of the Council of certain representational duties (relations with other institutions, chairing committees set up under cooperation and association agreements, etc.), helping the President to find compromise solutions and acting as a replacement should the President be unavailable; the Vice President could be either the Minister of the Member State due to hold the next Presidency or be chosen by the Council from among its members (excluding the Minister of the Member State holding the Presidency) for a period of two or three years.*

*116. Strengthen the role of the General Secretariat of the Council in assisting the Presidency (see Chapter 12), specifically in order to ensure the continuity, coordination and consistency of work.*

### **Introducing a degree of continuity in the Presidency by spreading more evenly tasks which become too onerous for a single Member State**

With due regard to the Treaty rules on the six monthly rotation of the Council Presidency, changes could be made to the practice of extending the rotation system to every one of the 250 or so committees and working parties, in order to achieve greater continuity of work and a more rational allocation of tasks while still preserving the political impetus given by the rotating Presidency. This could be done in the following ways:

*117. Entrust the chairmanship of certain temporary working parties dealing with a specific subject covered by a well defined political brief to a person appointed for the time it takes to complete the work.*

*118. In the area of the CFSP (see Chapter 3):*

*(a) appoint the future Secretary General/High Representative for the CFSP to the chair of the Political Committee;*

*(b) appoint a senior official in the General Secretariat to chair any permanent body (for example the Political Committee at deputy level) responsible for monitoring the day to day implementation of Council decisions;*

*(c) appoint General Secretariat officials to chair the European Correspondents' Group and the Policy Planning Working Party;*

*(d) give the chair of certain geographic working parties to any "special envoys" there may be.*

*119. In general, consider the possibility of giving the chair of committees and working parties to persons elected by their peers for a period of two or three years with due regard for geographical balance (under*

Coreper supervision). However, to avoid fragmentation, which would dilute the political authority of the incumbent Presidency:

(a) the six monthly rotating Council Presidency would retain political responsibility for and control over the organisation of work (timetable, agendas, etc.);

(b) six monthly rotation would be retained for all the Council's preparatory bodies based in Brussels which act as feeders to the political level or which play a vital part in the coordination of work (Coreper I and II, SCA, Friends of the Presidency, etc.);

(c) each person elected (or appointed permanently) to chair a working party would be assisted by a deputy representing the rotating Council Presidency, in order to ensure the overall coordination of work in the light of the Presidency's political priorities.

120. For the Council preparatory bodies, the chairmanship of which would remain subject to six monthly rotation, establish the office of Vice Chairman (to be chosen from among the members but excluding the member from the Member State holding the Presidency); this function of Vice Chairman would be particularly useful in the case of Coreper I as a means of dealing with the growing obligations arising under the co decision procedure.

121. Give the chair of certain working parties in technical or administrative areas, such as the Working Parties on Information, Consolidation, Premises, Electronic Links, Legal Data Processing, etc., to an official of the General Secretariat of the Council, who would also be assisted by a deputy from the Member State occupying the Council Presidency.

### **Giving the Presidency legal status**

122. Ask the Council's Legal Service to prepare a draft text listing the responsibilities and powers of the Presidency, for incorporation in the Council's Rules of Procedure.

## **12. THE GENERAL SECRETARIAT**

### **BACKGROUND**

Set up when the ECSC Treaty came into force, the General Secretariat at the time consisted of a handful of officials who were basically responsible for the practical organisation of Council meetings. Subsequently, it provided secretariat services for the conferences which prepared the Rome Treaties. In 1958 it became the Joint Secretariat for the Councils of the three Communities, with a staff then of less than 250. In 1980, the Council inserted into the Decision appointing its new Secretary General a series of recitals which marked a major turning point in the conception of the role of the General Secretariat. From that moment on it would be helping to ensure greater continuity and better coordination of work and, under the aegis of the Presidency, helping to prepare draft compromises to facilitate Council business.

The duties of the General Secretariat have continued to evolve on that basis:

- the logistic and linguistic functions have become increasingly important with the increase in the number of Member States, meetings and languages; these functions involve in particular managing the Council budget, which gives the Secretariat certain responsibilities for organising interpretation, refunding delegates' travel expenses, etc.;

- the advisory function of the Presidency and of the institution in general has also evolved: from having a passive notary/registrar role the General Secretariat has taken on a more active role in assisting the Presidency not only in the application of procedures, but also in preparing for substantive negotiations; at the same time, the role of the Legal Service has become established and has developed to encompass

intergovernmental conferences; in general, the six monthly rotating Presidency with its increased role has made it more and more necessary to call upon the General Secretariat's assistance in ensuring continuity and efficiency of work by giving successive Presidencies the benefit of the experience it has accumulated over the years;

- in the CFSP and JHA areas the role of the General Secretariat has changed completely; the Maastricht Treaty, which in 1993 gave the Union greater powers in these areas, refrained from giving the Commission the same duties as those it fulfils in the Community sphere; the General Secretariat is accordingly called upon to assist the Presidency in carrying out a number of tasks which would normally fall to the Commission, particularly in respect of its right of initiative and external representation (see Chapter 3).

Nowadays, the General Secretariat of the Council, which was given formal recognition in the Treaty in 1993, remains a small administration with only 0,35% of the Union budget. Although it has more than 2 500 officials, most of them work on the translation, production and distribution of documents. Only 10% of them belong to category A.

## ANALYSIS

Like the Council's other subordinate bodies, the General Secretariat has had to, and must constantly, adapt its structures and working methods to the requirements of the new situation since the Maastricht Treaty and the prospective enlargement:

- there is little doubt that the General Secretariat's operating procedures have not been adequately reformulated to deal with the profound changes in their nature and scope. Appointing a politician to head the General Secretariat should be an opportunity for thoroughgoing reform. The General Secretariat's officials are not always involved as they should be in the preparation and conduct of negotiations, alongside the Presidency. This more prominent role, which is particularly necessary in the case of the CFSP but also in other sectors of activity, presupposes a change in "culture" both on the part of the Council which has to accept it, and the staff, which must be more adequately trained to meet these new responsibilities;

- the increase in the number of Council members, together with the parallel increase in the Presidency's responsibilities, will necessitate greater and more effective support from the General Secretariat;

- the General Secretariat's existing structures have been built up in layers with the successive increases in the powers of the Communities, and then the Union, and also with the enlargements. The legitimate desire to ensure some geographical balance was undoubtedly the reason why the Council established a hierarchical structure which is not always suited to actual requirements; future enlargements should not lead to any further fragmentation of responsibilities;

- staff policy would gain by being more flexible and more dynamic in order to give the staff greater motivation and adjust swiftly to the Council's changing needs, while respecting the independence and values of the European public service. As things stand, the Secretary General does not possess all the instruments and means which would enable him to pursue such a policy: an evolving and indicative establishment plan of posts to be filled at A1, A2 and A3 levels, adaptation of promotion methods, particularly at grade A3, and greater compliance with the Staff Regulations, but abolishing the excessively rigid rules which have been superimposed on them, particularly those concerning mobility and transfer in the interests of the service.

## AVENUES TO BE EXPLORED

### **Strengthening the traditional role of the General Secretariat**

123. Involve the General Secretariat more closely in the Presidency's decisions on the organisation of work (schedule of meetings and agendas, procedural decisions on discussion of specific topics).

124. Give the General Secretariat special responsibility for the coordination of work; thus the General Secretariat should systematically brief each Council preparatory body on current discussions in the other bodies; it should also ensure that certain "cross pillar" matters are dealt with more efficiently than at present.

125. Recognise the General Secretariat's responsibility for the nature and drafting of the documents and reports which provide the basis for negotiations; in this regard, the long records of meetings which repetitively describe the delegations' positions should in future be replaced by brief option papers which summarise the key issues to be discussed, the main options available and possible avenues for compromise.

126. Give the General Secretariat a more active role in assisting the Presidency in its "good offices" function and greater responsibility in searching for compromise solutions.

127. Acknowledge that the Secretary General has full responsibility for managing the Council budget.

### **Giving the General Secretariat new responsibilities**

128. *Call on the Secretary General or senior officials of the General Secretariat more frequently, in certain cases and under certain conditions, to represent the Presidency in the European Parliament (in accordance with the existing Rules of Procedure).*

### **Adapting the structures and resources of the General Secretariat to the Council's operational requirements**

129. *Reorganise the General Secretariat by adapting its structures to the operational requirements of the Council and ensuring more efficient coordination of services.*

130. *Strengthen the auditing function in order to assess the cost effectiveness of the Council's departments, and secure, on an ongoing basis, the best possible match between the Council's requirements and the human and material resources available in the General Secretariat.*

131. *Ensure that staff are adequately trained so that they can discharge their new responsibilities efficiently; such training should correspond directly to the needs of the institution (management of human, material and financial resources, drafting of reports, knowledge of procedures, legal drafting, etc.); consider the possibility of exchanges with national administrations as part of the training.*

132. *Put in place appropriate instruments to enable the Secretary General to manage the General Secretariat more effectively, thanks to a flexible and dynamic staff policy designed to give staff greater motivation and to adapt the General Secretariat rapidly to the changing requirements of the Council (indicative and evolving establishment plan, adaptation of promotion and transfer methods, abolition of strict rules not laid down in the Staff Regulations), while observing the independence and values of the European public service.*

## **13. THE PRACTICAL FRAMEWORK**

### **ANALYSIS**

The logistical support, linguistic function and management of the infrastructures required for the work of the Council and its preparatory bodies have always been a matter for the General Secretariat. At the beginning of the 1960s, about thirty Council meetings had to be organised each year, together with about 600 other meetings a year for six Member States working in four languages. Today, the number of Council meetings is three times that figure, the number of other meetings is seven times more, and there are practically three times the number of languages. A European Union of 25 to 30 members would involve such an increase in requirements as to make the Council infrastructure possibly unmanageable unless appropriate adjustment

measures were promptly taken.

### **Adaptation of human and budget resources**

The General Secretariat of the Council is first and foremost a large conference centre and hence has special characteristics by comparison with other institutions:

- the majority of its staff (about 1 800 out of 2 500) are assigned to linguistic work or logistical support relating to the preparation, conduct and follow up of meetings of the various Council bodies (translation, production and distribution of documents in the official languages; provision of conference rooms with interpretation, security, etc.); this is why the practical effects of any enlargement have a more direct and significant effect on the Council than on other institutions;
- its activity directly depends on the sometimes very tight schedule of Council meetings (often entailing night or weekend work); hence the Presidency's organisation of the Council's work (planning, observance of deadlines) has a direct impact on the quality of the Secretariat's services.

Part II, Chapter 13: The practical framework

Despite advances in technology and the development of new technologies, successive accessions have increased the complexity and volume of the Secretariat's work to a point where its ability to provide an adequate practical framework for the Council's proceedings is reaching its limits. It follows that further accessions will necessitate major adjustments, with considerable budgetary implications, both with regard to premises and to the use of languages (some of these questions are already being examined by the Antici Group and have been the subject of a Group report to Coreper).

### **Adaptation of premises**

The Council and its General Secretariat currently occupy the Justus Lipsius building, which was designed for a Community of 12 Member States working in nine languages. Since 1995, the building has undergone the necessary conversion work to meet the needs of enlargement to 15 Member States. Nonetheless, for lack of space, a number of General Secretariat departments have already had to move to another building. Implementation of the Amsterdam Treaty – new duties of the Secretary General/CFSP High Representative, establishment of a deputy Secretary General, integration of the Schengen Secretariat, CFSP Planning Unit – will mean that more room has to be found, although this is still possible within the existing buildings at the cost of moving more departments out of the Justus Lipsius building. However, it is obvious that the latest round of conversion work will exhaust the possibilities offered by the present building and that any further requirements will have to result in appropriate extensions.

### **Conversion of conference and meeting rooms**

The Council currently possesses 17 rooms, of which three are "conference" rooms<sup>9</sup>, 13 "meeting" rooms<sup>10</sup> for working parties and an overflow room: 16 of these rooms are fitted with 10 to 12 interpreters' booths; two reserve areas could be converted into meeting rooms in the Justus Lipsius building. The dimensions and fitting out of these rooms have already proved not to be ideal for effective discussions. It will be necessary, after the next enlargement, to consider adapting these rooms to take account of the increase in the number of members. This could lead to an increase in space requirements. The size of the increase will depend on how marked the change is in the Council's working methods as well as on the layout of the rooms, which itself depends on the arrangements for interpretation, the number of interpreters' booths in each meeting room and the number of persons taking part in meetings.

### **Translation of documents**

Documents are translated into 11 languages in the case of those having general circulation. A number of them with more limited circulation (working documents, meeting documents, preparatory documents) are not translated into every language, but as required. The volume of translation has grown sharply with the

increase in the Council's activities, particularly in the JHA sector which generates a considerable number of documents.

### **Interpretation at meetings**

Meetings of the Council itself always have interpretation from and into the 11 official languages. However, this has never been the case for all meetings of committees and working parties made up of national officials. On most of the 4 500 or so meeting days per year, the interpretation arrangements vary considerably with actual requirements and the resources available. A number of meetings are held without interpretation, particularly for reasons of confidentiality (CFSP, EMU). In any event, the multiplicity of possible language combinations, the space available in the rooms for interpreters' booths, the budget availabilities<sup>11</sup>, and the human resources required for the interpreting service are objective limitations to any extension of the interpreting service. This is why a realistic arrangement has been developed pragmatically which, generally speaking, seems to satisfy the requirements of the officials working in the Council's preparatory bodies. Managing this arrangement is the responsibility of the Secretary General, in his role as manager of the Council budget, and is conducted in close cooperation with the Presidency with the aim of meeting the needs of all the delegations as fully as possible.

The increase in the number of languages arising from the coming enlargements will mean an increase in the human and budget resources required for translation and interpretation. To control this increase, maximum use should be made of certain new technological possibilities and a study made of possible developments in interpreting methods and conditions, such as the systematic use of relay or intermediate languages, of the "both ways" method of interpreting or teleworking.

### **General Secretariat working methods**

The working methods of the General Secretariat departments responsible for organising and managing the Council's practical environment should be adapted to deal with the increase in and diversification of its work. The more intensive use of modern technology, particularly in the use of computers, the more rational and flexible management of human resources and more up to date document production and transmission techniques would appear to be essential for the future.

### **AVENUES TO BE EXPLORED**

#### **Assessing the Council's requirements regarding premises in good time**

*133. Define possible requirements for meeting rooms and offices early enough for all the necessary decisions (e.g. the acquisition of land, either built on or not) to be taken in time to satisfy those requirements at the time of the next enlargement of the Union; the evaluation of new needs will have to take into account changes in the Council's working methods, the new configuration of meeting rooms and new methods of interpretation (in this connection see the abovementioned report by the Antici Group to Coreper).*

#### **Planning the conversion work on meeting rooms**

*134. Restrict the number of persons seated round the table to one person per delegation (two for the Presidency, three for the General Secretariat and three for the Commission) and thus improve the layout of rooms with a view to more effective discussions and negotiations; a second row, with two seats per delegation, should be very close to the main table since the people seated there have to be able to communicate easily with the person seated at the table; a third row could include two or three seats per delegation. Reducing the number of delegates would limit the impact of enlargement on the size of the rooms which would enable the Council and its preparatory bodies to hold discussions and negotiations in better conditions.*

*135. Envisage interpretation by interpreters outside the room, with exceptions (e.g. European Council*



meetings), which would enable room sizes to be reduced as they are largely determined by the space occupied by the booths.

136. Draw up in good time a timetable for the work envisaged to implement the above three points.

### **Managing the increase in document translation requirements**

137. In order to contain the foreseeable increase in the number of documents produced, take action at three levels:

(a) with Presidency assistance, plan the work schedule in greater detail, in order to identify priorities clearly and ensure compliance with the necessary production deadlines;

(b) impose greater discipline as regards the number, nature and length of documents in order to restrict demand at source;

(c) establish a classification of documents with different arrangements according to their recipients: translation into all languages of documents relating to legislative acts or documents intended for the political level; possibly simplified arrangements in line with requirements for urgent meeting documents, documents with a short life-span or those for internal use.

138. Analyse the various options for increasing the translation capacity of the General Secretariat, such as:

(a) exploiting modern technology: use of teleworking, either at home or in satellite translation centres, for example in the new Member States (thus limiting further requirements for office space);

(b) the use of new translation methods: "both ways" (the translator no longer translates solely into his/her mother tongue, but also from it), "relay languages" (translation from a translation into a language known by the translator), "intermediate languages" (translation from a pre designated language), all of which are ways of controlling the increase in the numbers of translators;

(c) in certain cases, using external translation services (documents of lesser sensitivity or urgency and which are not directly linked to meetings).

### **Resolving interpretation problems while taking account of real requirements**

139. Continue to ensure full interpreting cover at the political level (Council), except in the case of special arrangements by common consent of all the members of the Council for meetings held outside the headquarters.

140. At Committee and Working Party level, continue the pragmatic policy the Council has always followed, taking into account budget resources and objective operational requirements on a non discriminatory basis; confirm the responsibility of the Secretary General of the Council for making the best use of the budgetary resources available to him.

141. Draw conclusions from the survey currently being conducted in the General Secretariat on the optimum interpretation arrangements for a particular need in the light of developments in interpreting methods and conditions: teleworking, relay languages, intermediate languages and "both ways" techniques.

### **Modernising the working methods of the General Secretariat's services responsible for the organisation and management of the Council's practical environment**

142. Improve the organisation and working methods of the relevant services of the General Secretariat by making provision in particular for:

- (a) improved use of the data processing and electronic means available;
- (b) adapting procedures and the document production and transmission circuit in order to improve its efficiency;
- (c) staff training targeted on the needs of modernisation.

143. Examine modern communication techniques, such as video conferences, that the General Secretariat could make available to the Presidency and delegations.

## CONCLUSIONS

*The increase in the number of Member States, together with the wider scope of the Union's action, could well slow the Council down, and ultimately even paralyse it. The risk, which is already perceptible now, represents a threat to the smooth operation of the Union, given the central role which the Council plays in the decision making process. The issue therefore needs to be addressed rapidly and, although it has a content and logic of its own, it must of course take its place within the general context of institutional reform.*

*The Treaty has given the Council powers to govern and powers to legislate.*

*In using its powers to govern, the Council must at all times have an overview of all Union policies. For that purpose, there must be available at the heart of the system a single chain of coordination capable of ensuring that the Union action conforms to the will of its political leaders. This chain of command, around which all the different actors and activities must position themselves, starts at Member State level with effective inter Ministerial coordination and arbitration bodies and extends through the Union via Coreper, the General Affairs Council and finally the European Council. The Council's ability to meet the new challenges that lie ahead will largely depend on maintaining and strengthening the effectiveness of this channel – the backbone of the system.*

*The Council must also ensure that its decisions are acted upon and that its day to day business operates smoothly. To ensure continuity of the Union's action in areas such as the CFSP, there is a need for bodies endowed to varying degrees with "delegated authority" and able to act rapidly and effectively under the Council's supervision. First and foremost there is the Presidency, which should see its role formally established and its backup strengthened; it should also have greater permanence, but without calling into question the six monthly rotation of the Council and the European Council Presidency.*

*More generally, the Council will have to adapt its working methods – particularly in its legislative activity, which is more and more subject to the co decision process. It will be vital here to see systematic development of all the preparations that go on in connection with meetings, under the auspices of the Presidency, the General Secretariat and the Commission. In the absence of such preparation upstream and greater discipline in plenary debates, discussions in a Union of 25 or 30 members risk becoming completely ineffective.*

*The Council will, finally, have to tackle matters which on the surface seem more mundane, such as the layout of rooms, translation, interpretation and document production. Far from being minor matters, these practical issues are crucial to the smooth operation of the Council, and new, imaginative and pragmatic solutions must be sought if the Council is to continue to be effective in an enlarged Union.*

*For various reasons, the scale and intensity of the challenge posed by the coming enlargements is particularly great in the case of the Council. This challenge will not be met unless, once the problems have been identified and carefully analysed, major coordinated reform is initiated at every level in order to preserve the Council's "capacity for action" on which, in the final analysis, the capacity of the Union itself largely depends.*

- <sup>1</sup> The report was drawn up by a Working Party chaired by the Secretary-General of the Council, Mr Trumpf, with Mr Piris as its deputy chairman and Boixareu Carrera, Mr Crowe, Mr Elsen, Mr Sliben, Mr Schwaiger and Ms Stifani as its members; Mr Cuntz and Mr Keller-Noëllet acted as rapporteurs and Mr Maganza, Mr Galloway and Ms Blanchet as deputy rapporteurs.
- <sup>2</sup> *The European Parliament adopted a Resolution on this subject on 11 February 1999, on the basis of a report by Mr Bourlanges.*
- <sup>3</sup> There are no other officials present in the room, except for a new senior officials from the Presidency State and from the Secretary-Generals's Private Office plus the Council's Legal Adviser.
- <sup>4</sup> The procedure emerged from discussions held by the Ministers for Foreign Affairs at an informal meeting on 18 and 19 October 1975 and confirmed by the Council on 5 and 6 November 1975.
- <sup>5</sup> *"In order to ensure consistency in Community activities and continuity of work, the Ministers of Foreign Affairs, meeting in the Council of the Community, will act as initiators and coordinators."*
- <sup>6</sup> *"The consistency and continuity of the work needed for the further construction of European Union as well as the preparation of meetings of the European Council are the possibility of the Council (General Affairs) and its members."*
- <sup>7</sup> In declaration No 3 annexed to the Final Act for the Maastricht Treaty, the Conference "affirms" that, for the purposes of the EMU provisions, "the usual practice, according to which the Council meets in the composition of Economic and Finance Ministers, shall be continued".
- <sup>8</sup> See declaration No 4 annexed to the same Final Act: "The Conference affirms that the President of the European Council shall invite the Economic and Finance Ministers to participate in European Council meetings when the European Council is discussing matters relating to economic and monetary union."
- <sup>9</sup> "Conference" room: three seats at the table per delegation and three behind (Council, Coreper, high level Committee).
- <sup>10</sup> "Meeting" room: two seats at the table and two behind (working parties).
- <sup>11</sup> For example, the cost of a day's full interpretation into and out of 11 languages, irrespective of the cost of the necessary infrastructure, would be about EUR 40 000 or approximately EUR 640 000 per day were 16 meeting rooms to be occupied.