

CONF 4119/97

LIMITE

**Report from the Presidency
on the proceedings of the
Friends of the Presidency Group
on the simplification and consolidation of the Treaties**

1. The Presidency conclusions from the Dublin European Council on 13 and 14 December 1996 asked the Conference "on the basis of the preparatory work already carried out, to continue to work to present a significantly simplified version of the Treaties with a view to making them more readable and comprehensible to the Union's citizens".

2. As instructed by the Conference (CONF 4100/1/97 REV 1), the Group's task was to examine the feasibility of simplifying and consolidating the Treaties without making any changes to the existing legal situation. The Group has met on a weekly basis and the outcome of its proceedings is to be found in CONF 4122/97 (merged Treaty), CONF 4123/97 (EC Treaty), CONF 4124/97 (ECSC Treaty) and CONF 4125/97 (EAEC Treaty) submitted to the Conference.

3. From the outset it was clearly established that the Group's task was technical in nature and that delegates' participation in this technical exercise did not prejudice their Governments' opinion as to the appropriateness of the operation. The simplification exercise is without prejudice to the texts from the Edinburgh European Council on 11 and 12 December 1992 entitled Denmark and the Treaty on European Union.

4. The Group examined first the simplification and then the consolidation of the Treaties.

SIMPLIFICATION

5. As regards simplification, the Group identified all the provisions of the EC, ECSC and EAEC Treaties that have lapsed and considered the consequences of their deletion. This would involve the complete or partial deletion of 56 articles, two long annexes to the EC Treaty and several protocols, 4 articles of the ECSC Treaty, the convention on transitional provisions, 21 articles of the EAEC Treaty and two annexes.

6. It emerged that three types of amendment could be envisaged:

(a) Most of the amendments arising from simplification involve the straightforward deletion of lapsed provisions. The Group has completed this task.

(b)The deletion of lapsed provisions sometimes involves drafting changes and adjustments to the Treaty. These changes are listed in CONF 4121/97.

(c)Some deletions and amendments give rise to political questions. These questions are mentioned below (see point 8).

7.The Group had to resolve some horizontal problems in order to ensure that the acquis was preserved in spite of the deletion of lapsed provisions. One of the problems related to the preservation of time-limits laid down by the Treaties for Member States or institutions to fulfil certain obligations. The solution adopted involves inserting a special clause on time-limits preserving their legal effects despite the deletion of the relevant provisions. The other problem concerned the status of secondary legislation adopted on the basis of lapsed provisions. Here again, a special clause will preserve the validity of the secondary legislation still in force that was adopted on the basis of those provisions. Finally, it will be stipulated that the simplification in no way affects the accession treaties.

8.During the discussions the Group encountered a number of issues which, although limited in scope, might be political in nature. The Group hereby refers these to the Conference.

(a)In connection with EMU, the Group felt that as the process of implementing the Treaty provisions was under way, extreme caution should be exercised. It must therefore be considered whether it is appropriate to delete provisions which would otherwise indisputably be regarded as having lapsed. In the interests of transparency it might perhaps be sufficient merely to delete the reference to the Committee of Governors, which no longer exists. The question also arose as to

whether, subject to further examination, the reference to the ecu should be replaced by a reference to the euro. It should however be noted that until the Regulation replacing the ecu by the euro has been adopted this is a question of substance and not of consolidation.

(b)Although there is general agreement on the deletion of references to time-limits now past while preserving their legal effects, some delegations feel that, given the particular nature of the internal market, the reference to 31 December 1992 in Article 7a should be retained. The same question arose in connection with the period referred to in Article 223 although here again the deletion of the period would not affect the list of products drawn up on the basis of the article (arms, munitions and war material).

(c)Article 44 of the Treaty, concerning the common agricultural policy, has lapsed. Paragraph 2 contains a reference to a "natural preference between Member States". The Court has found that since the end of the transitional period this reference has no legal character. The Court nevertheless accepted that it could be a principle of a political nature. Some delegations consider it important to maintain the political nature of this principle by means of a reference in Article 39 to natural preference as one of the aspects which the Community may take into consideration within the framework of the agricultural policy, particularly with regard to external relations.

(d)Should it be decided to include certain provisions concerning the European Parliament in the Treaties, it should be noted that an Annex to the Act on the election of the European Parliament by direct universal suffrage stipulates that these provisions apply solely in respect of the United Kingdom. In order to preserve the status quo, either these provisions should not be included or the Annex should be attached as an Annex to the Treaty.

9. In the light of the Group's discussions, simplification appears to be technically feasible without affecting the acquis.

CONSOLIDATION

10. In accordance with the programme drawn up by the personal representatives, the Group worked on the basis of the possible merging of the EC, ECSC and EAEC Treaties and the Treaty on European Union into a single treaty, thus also covering the difficulties involved in merging only the EC, ECSC and EAEC Treaties. Both options involve the merging of the legal personalities of the ECSC and the EAEC with that of the EC and the consequent disappearance of the 1965 Merger Treaty. A clause has been drafted to take account of the consequences of such a merger as regards the rights and obligations of the ECSC and the EAEC in relation to third parties.

11. The operation has been conducted in such a way that the specific nature of the pillars is preserved in the new, restructured Treaty (see CONF 4126/97). The solution examined was that of one treaty accompanied by two protocols, one for the ECSC, the other for the EAEC. The present structure of the EC Treaty has basically been retained, but with the institutional provisions grouped together at the beginning of the Treaty, after the general principles and citizenship. Special clauses preserve the specific nature of Titles V and VI of the TEU (2nd and 3rd pillars) and each of the Communities. The structure would be as follows:

- Common provisions**
- The European Community**
- Common foreign and security policy**
- Cooperation in the fields of justice and home affairs**
- Final provisions.**

12. The inclusion of the ECSC and EAEC Treaties in the operation gave rise to certain questions. As regards the ECSC Treaty, the proximity of the expiry date (23 July 2002) and its specific nature were mentioned. It was pointed out that both Treaties dealt with specific policy areas with which the general public was not very familiar.

13. In general, it emerged from the Group's discussions that consolidation is technically feasible without affecting the pillar structure. However, this depends on a political decision confirming the approach on which the Group has based its discussions, namely the merging of the four Treaties and of the three Communities. Needless to say, the decisions of the Conference on a possible legal personality for the EU and on the possible merging of the Union and the Communities will be of major importance for the Group's discussions.

14. The Group has not examined in detail the presentation of the results of simplification and consolidation at the end of the Conference. It would however be possible, as regards simplification, to draw up a new Treaty resulting from the substantive work of the Conference and the consequences of simplification. Another solution would be to amend the existing Treaties and attach the Treaty resulting from those amendments to the Final Act, with the amendments alone being subject to ratification. But the latter option would be conducive to neither the transparency nor the readability sought by simplification. If the first solution were adopted, an indicative list of the amendments to the Treaties could be drawn up to facilitate ratification discussions. If the Conference decides to merge the Treaties, a new Treaty would appear to be the more appropriate option.

CONCLUSIONS

15. Both options – simplification and consolidation – are technically possible. However, to assist the Group in its future discussions, it would be useful if the Conference could provide guidance on the following questions:

(a) if the work on simplification is to be taken to its conclusion, a reply is needed to the questions raised in point 8 (EMU, Articles 7a and 223, natural preference, provisions relating to the European Parliament);

(b) if the work on consolidation is to be taken to its conclusion, is the option of merging the four Treaties and the three Communities an acceptable basis on which to proceed?