

CONF 3846/96

LIMITE

TRANSLATION OF LETTER

from : Portuguese delegation, signed by J. GREGÓRIO FARIA, Permanent Representative

dated : 11 April 1996

to ~~Jürgen TRUMPF, Secretary-General of the Council of the European Union~~

Subject: ~~Portugal and the Intergovernmental Conference for the Revision of the Treaty on~~
European Union

Sir,

I enclose a copy in Portuguese of the document setting out Portugal's official position for the intergovernmental conference.

(Complimentary close).

(s.) J. GREGÓRIO FARIA
Permanent Representative

Encl.

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

PORTUGAL
AND THE
INTERGOVERNMENTAL CONFERENCE
FOR THE REVISION OF THE
TREATY ON EUROPEAN UNION

Lisbon, March 1996

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

CONTENTS

*Introduction	4
*The Conference.....	7
*Objectives	9
*Process of revision, ratification and entry into force of the Treaties	12
*Possible changes of a structural nature.....	13
*Institutional reforms	15
(a)Council	16
(b)European Council	18
(c)European Parliament.....	18
(d)Commission.....	19
(e)Other Institutions and bodies	20
(f)Decision-making process	21
(g)Linguistic arrangements	23
(h)Hierarchy of Community legal acts	23
(i)Role of the national Parliaments in the European Union.....	24
*Deepening the Union.....	25
(a)Citizenship.....	25
(b)Employment	25
(c)Powers	26
(d)Subsidiarity.....	28
(e)Budgetary questions.....	28
(f)Financial aspects.....	29
*Common Foreign and Security Policy - Second Pillar.....	30
(a)Essential principles.....	31
(b)Decision-making process	32
(c)External representation.....	33
(d)Functional strengthening	34

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

(e)Security and defence..... 34

*Cooperation in the field of Justice
and Home Affairs - Third Pillar 37

*Summary 40

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

Introduction

The Treaty on European Union (TEU), which was both the beginning of a new phase in European integration and an important stage in the cycle of revision of the Treaties, set out in its own provisions the need for further revision.

Thus from 29 March 1996 a Conference of representatives of the Governments of the Member States will be convened in order to examine, in accordance with the objectives set out in Articles A and B of the Treaty, the provisions of the Treaty for which revision is provided.

Since the negotiation and signing of the Treaty on European Union the European scene has undergone marked development which has considerably changed the framework foreseen by the Maastricht negotiators: the dismantling of the Soviet bloc led the countries of Central and Eastern Europe to move ever closer to the European Union, which is seen simultaneously as a pole of stability and of development.

Aware of the strategic challenge which the new situation constituted for the European continent, the Union came out clearly in favour of its future enlargement to incorporate those countries which will also include, on its southern flank, Malta and Cyprus.

Portugal shares this vision and gives its support to the final objective of extending the process of integration to the East and South.

The prospect of these new accessions led to a reformulation of the scope and objectives of the revision of the Treaties; such revision is now also seen as a means of preparing the Union for a potential enlargement to take in a large number of States, which also makes this extension different in quality from previous enlargements.

At this juncture it would be useful to list the topics whose revision is provided for by the TEU itself and its annexed declarations and by some agreements concluded between the Council,

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

the European Parliament and the Commission:

- possible revision of the policies and forms of cooperation provided for in the Treaty with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community;
- provisions concerning the CFSP;
- role of the WEU and its relations with the EU;
- scope of the co-decision procedure;
- establishment of a possible hierarchy between the different categories of Community acts;
- possible introduction into the TEU of chapters concerning the areas of civil protection, energy and tourism;
- possible revision of the provisions of the Interinstitutional Agreement concerning the financial perspective;
- measures for implementing the acts decided on by the co-decision procedure when they are entrusted to the Commission.

To this group of topics the Brussels and Corfu European Councils added:

- examination of questions concerning the number of members of the Commission weighting of votes and qualified majority within the Council and the measures deemed necessary to facilitate the work of the institutions and to guarantee their efficient operation given the prospect of enlargement;
- other possible improvements, in a spirit of democracy and openness.

The report of the Reflection Group set up with the objective of preparing for the forthcoming Intergovernmental Conference (IGC), exploring ideas and identifying options for future negotiation, also enables some guidelines to be determined regarding possible additional topics to be examined in the context of revision of the Treaties, namely the inclusion of a chapter on employment and the strengthening of the environmental dimension.

It is not, however, possible to give an exhaustive list of the subjects subject to revision at this stage. Indeed, Article N of the TEU, like Article 236 of the Treaty of Rome before it,

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

provides that the Government of any Member State or the Commission may submit proposals for the amendment of the Treaties, which in practice leaves the IGC's agenda permanently open.

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

The Conference

The next IGC must essentially endeavour to guarantee efficient, cohesive and integrated action by a Union enlarged with a large number of new Member States and respond to the growing emergence of a range of different issues affecting European societies, for which it is considered possible and desirable to find solutions at Union level.

The persisting differences in the way the nature and objectives of European construction are understood, the uneven economic and social development between the various countries and regions, the phenomena of unemployment and social exclusion which weigh down on our societies and the pressure of the external challenges which increasingly face the Union make for circumstances which will require from everyone a strong political commitment, and only in a climate of trust and intra-Community solidarity will it be possible to successfully overcome them.

Neither can we forget in this context the problems facing all the Member States in the field of internal security, namely those associated with drug trafficking, organized crime and illegal immigration, which will not respond to piecemeal inter-State cooperation or exclusively national treatment but instead requires a global approach on a permanent basis, in some cases in a potential Community dimension.

At external level, the efficiency of the Union's political intervention will need strengthening, which will only be possible with a cohesive and institutionally strong Union. In this regard it is important to test in this Conference the degree of common political will that exists between the Member States and how that will can be projected into the field of institutional operability.

The nature and sensitivity of the subjects whose revision is already provided for point to the complexity of the exercise and how difficult it will be to bring it to a successful conclusion, in

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

particular owing to the risk of splits, which will doubtless arise.

Nor can we accept solutions which, based on distorted interpretations of the concepts of efficiency, transparency or subsidiarity, call into question the foundations of the Union itself and the consistency of its body of policies, disturbing the balance and distribution of powers between Member States or between Institutions.

The experience of previous revisions would not, moreover, appear to recommend, in principle, any commitments on results within a predetermined time frame, as such political conditioning could easily lead to a search for solutions agreed under pressure of time.

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

Objectives

We maintain that European integration should progress in a realistic way, in accordance with the method followed hitherto of gradual and pragmatic progress based on respect for the *acquis communautaire*, while consolidating the results obtained at each previous stage and respecting the essential interests and individual characteristics of each Member State.

European construction, pursued by States which have accepted the transfer of some sovereign powers in order to exercise them in the same institutional framework and according to common procedural rules, must, in our opinion, continue to be based on the basic principles which first inspired that enterprise and which have until now been the foundation of its success: the principle of the equality of all the Member States, respect for the cultural identities and national and institutional specificities of each and every one, respect for fundamental human rights, political, economic and social solidarity between peoples, regions and States and the principle of sufficiency of means.

Portugal considers it a matter of the utmost importance that any readjustment of the Institutions and of their mechanisms and procedures should preserve the essential institutional balance, the single institutional framework, and that it should respect the principle of the participation of all the Member States in the Union's decision-making process and in the Institutions which determine it, guaranteeing exactly the same status to all the national languages.

Deepening solidarity, not only between the States but also between their peoples, while respecting their diversity, constitutes an imperative and a basic element of the European Union. This concept assumes a dimension which will have to be at the same time both political and economic, as well as social.

Indeed, the Union's social dimension is of prime importance. In order to achieve balanced and sustained growth enabling problems of unemployment and social exclusion to be overcome, it is necessary that the social dimension accompany in full the strengthening competitiveness and that a parallel advance is made in developing economic and social cohesion.

We continue to believe that the European idea can only have meaning when built on an intra-Community solidarity which is reflected in all the areas covered by the Treaty.

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

Economic and social cohesion, which was recognized as one of the central vectors of the integration process and which constituted one of the positive values in the Union's image which encouraged new countries to join must remain an inseparable part of any reforms to be undertaken.

The experience of the Maastricht ratification process showed that the full approval of citizens is a basic condition for the success of the deepening of European integration. Thus, in order to ensure that the forthcoming exercise may prove positive, it is indispensable that the Union appear in the eyes of its citizens as the forum for its central concerns and that it should be perceived as a body able to sustain a stable and prosperous future.

Hence the importance of guaranteeing, within the Union, that growing attention is paid to questions of a social nature which are central to the concerns of the citizens of the Member States, thus giving a European dimension to policies for creating jobs and to the fight against social exclusion, as well as the search for new solutions at Community level with a view to increasing its citizens' safety, improving their quality of life and protecting the environment.

It should be stressed that the final result of the IGC will have to be fully acceptable to public opinion in the current 15 Member States, in which it will be necessary to carry out ratifications which, in some cases, will involve referenda. It is clear that trust in the European integration process is still suffering from worrying fluctuations in certain countries, so it is understandable that there should be doubts as to the likelihood of collective acceptance of any final result which could be presented as controversial and likely to cause divisions between those Member States, which would naturally make the entry into force of the revised TEU impossible.

In order for the revision process to be successful it is vital to guarantee that the model of integration which emerges from the revised Treaty is perceived by European citizens as corresponding clearly to their interests and concerns, respects national identities and is seen to preserve the principle of intra-Community solidarity in all respects.

The prospect of future accessions makes particularly clear in this context the need for a clear enunciation of the objectives and principles which governed and should continue to

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

govern the integration process. Such a statement would be positive in terms of raising the awareness of public opinion in the current Member States and would clarify, in the eyes of the candidate countries, all that derives, in terms of rights and obligations, from accession to the Union.

It will also be important to initiate at this stage, and to continue in parallel with the IGC, an assessment of the effects of enlargement, a study of its real impact on common policies and their financing, as well as an appraisal of the potential results of opening up the markets of future Member States. In accordance with the conclusions of the Madrid European Council, the Commission must carry out more in-depth assessments of that impact, with particular regard to agricultural and structural policies, and embark as soon as possible on an in-depth analysis of the system of financing of the European Union. Only in this way will it be possible to obtain results which are reasonably balanced, consistent and likely to obtain general acceptance within the Union to be enlarged. Parallel consideration of the results of the revision of the TEU and of the way the Union will equip itself, at all levels, to carry out the strategic imperative of enlargement will certainly be undertaken in the course of the national processes for ratification of the forthcoming IGC.

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

Process of revision, ratification and entry into force of the Treaties

Some have defended the need to change the requirement of unanimity for the revision of the Treaties, on the grounds that in an enlarged Union any possibility of future revision would in practice be blocked, owing to growing difficulties in obtaining a consensus. In this connection the possibility has been put forward of providing for alternative solutions for "crisis scenarios", in which impasse situations in the course of the forthcoming IGC could justify, in particular, changes at the level of ratification – i.e. entry into force of the revised TEU without the signature and/or ratification of all the Member States.

Portugal naturally considers that a strict application of what is laid down by the Treaty in this area should be maintained, without deviations from the procedure currently in force regarding its revision, either in the negotiating phase or in the framework of the ratification process. Indeed, we understand that that extreme scenario would look like a refounding of the Union, since it breaks with the contractual approach that has existed since the Treaty of Rome.

We also consider it essential to guarantee, throughout the Union, that the negotiating process is closely followed by public opinion, which is the only way to guarantee that the work of the Conference is shared and understood and does not create a rift between the political decision-makers and the citizens.

Regarding the possible changes to be introduced into the TEU, justified by the possible future increase in the number of Member States, Portugal naturally expects that they will only need to enter into force after the new enlargement process has begun.

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

Possible changes of a structural nature

It would seem important to reaffirm our attachment to the models of architecture which respect the basic principles which up to now have governed the common construction of a European Union, such as the equality of States, the preservation of their cultural identities, their institutions and own specific characteristics. These models should not call into question the principle of the establishment and progressive consolidation of institutional and structural solidarities between all the States of the Union.

For this reason we do not favour the use of models which institutionalize definitively the existence of different groups of States, each with their own methods and objectives, and progressing separately according to their own specific timescales.

In our view this would constitute a dilution of the Union, stimulating centrifugal tendencies, not only by denying the principles on which it is built, but also by abandoning the permanent search for conciliation between national and Community interests, which are a constant feature of the gradual and pragmatic method on which European integration is based.

The very idea of European construction, launched by its "founding fathers" and followed successfully throughout its history, is based on common progress, building and strengthening solidarities, and not on isolated advances made by the fittest or most developed.

For these reasons it was with dissatisfaction that we took note that in certain fields it has been necessary to resort to opting-out solutions (case of the Social Protocol and the EMU) or arrangements outside the structure of the Union, as in the Schengen Agreement. However, we see these mechanisms as exceptional and always temporary formulae, used to resolve individual impasses, that should certainly not be made into rules for the future of the Union.

The thesis according to which the indispensable future enlargements to the East can only be carried out through differentiated integration schemes – on the grounds that the new Member States will not be able to participate fully in all the policies or progress at the same rate as the current Member States – is based on the presupposition, erroneous in our view, that it is necessary to transform the character of the Union and the trajectory of its policies in order to

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

make enlargement possible. Making the accession criteria more flexible, opening the way to a non-assumption of the obligations and duties attached to the status of a fully-fledged Member State would be the first step towards a characterless Union, very different from the solid, cohesive and united Union which those States felt moved to join.

The Union has at its disposal sufficiently flexible schemes, such as transitional periods and temporary derogations which, in the past, made it possible to find solutions which did not involve risks of diluting or breaking up the Community, and did not call into question the integration process.

On the other hand, the institutionalization of a possible "hard core" of States which would continue the integration process, deepening it and broadening it, while others, unable or unwilling to advance in all fields at the same rate, were pushed aside would introduce a de facto dualism into the process which would not be compatible with the joint and united progress which the process of European Union has always presupposed.

A model of this type would only stand a chance of being viable if the final objective to be reached together were defined and agreed by all and only its implementation were phased over a period of time, while respecting always the single institutional framework of the Union. That would mean also that the whole system was governed by clear rules, established a priori and by all. For each of those fields in which asymmetrical progress might take place, criteria would be determined which, once met, would imply full and immediate participation in the areas in question. Special mechanisms could also be set up to support those States which were temporarily unable to commit themselves to all the policies.

This definition, somewhat along the lines of the criteria for moving into the third phase of EMU, would enable feelings of exclusion or frustration to be more easily overcome by those unable to participate in the more advanced group, simultaneously guaranteeing the exceptional and temporary nature of the system.

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

Institutional reforms

The forthcoming Conference will in particular have to analyse the measures deemed necessary to facilitate the work of the Institutions and guarantee their efficient operation. We consider it of great importance that the overall institutional balance is maintained inside the Union, which, by respecting the sovereign equality between States, has enabled Community interests to be defined and furthered while respecting the national interests of each Member State.

It will also have to be taken into account that it will not always be possible to solve merely through institutional changes the whole set of difficulties which will result from future enlargements, which will necessarily raise questions regarding political and economic homogeneity, the solution of which would imply structural changes by the Union in these fields.

In particular, Portugal considers that the institutional exercise in the framework of the IGC will have to be accompanied by and compatible with a parallel reflection on other aspects fundamental to the future development of the Union. Among these aspects are the assessment of the effects of enlargement on the operation of policies, financial perspectives and the system of own resources in order to weigh up, here again, the need to introduce possible changes which will guarantee the Union, together with the pursuit of the current rate of integration, the optimum conditions for exercising its new and increased responsibilities.

Furthermore, whatever institutional changes may be introduced, they will have to be based on the existence of common ground, a capacity for guaranteeing participation in Community policies and assuming the responsibilities and commitments arising from the Treaties, which would be difficult to achieve in the case of accessions which occurred without the necessary conditions being met.

On the other hand, as regards concern for the efficient operation of the institutional system, it must be borne in mind that this is seen in different ways in the Union.

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

Some people advance the thesis that this efficiency depends on reinforcing the larger States' position, so as to reflect more directly their demographic and economic weight, or on the possible establishment of "directory" systems. We recall that it is not a proven fact that the decision-making association of the larger or economically stronger States brings any added value to the solidity of the European project. Experience shows, on the contrary, that this scenario worsens the potentially conflictual factors of the system and that the smaller States constitute a moderating element in managing common interests. Their presence within the Union, supported by a political will and by an active voice in defining the European project, is becoming essential for the smooth operation of the system.

(a) Council

– Presidency

The rotation of the Presidency and the equal conditions for its exercise by all the States of the Union constitute a corollary of their sovereign equality, being one of the most important elements in the eyes of public opinion in the States.

The exercise of the Presidency constitutes in each country a rallying element for the European project and has shown itself equally enriching for the Union itself, since it enables the Institutions to absorb, regularly and periodically, the various administrative, political and cultural traditions of the Member States.

Experience shows that it is frequently the smaller States which manage to exercise the Presidencies of the Union most effectively.

In the course of revising the TEU, thought should be given in this connection to the best way of providing support to the rotating Presidencies in terms of continuity so that they can carry out their work.

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

-Weighting of votes and threshold for a qualified majority

The system of weighting of votes which is currently in force is already characterized by the recognition of the various weights of Member States in decisions by a qualified majority, has its origins in the founding Treaties of the Communities and results from the application of a combination of the principles of non-differentiated equality - which is designed to ensure legal equality between the States, deriving from their sovereignty - and of proportionality, which sacrifices absolute equality in order to take into account certain factors of power and size. Thus the principle of equality is amended and qualified by the introduction of weighting elements which, however, do not have absolute and mechanical repercussions on any of the factors of differentiation.

In our view this is a model which has proved itself over the years and its basic principles should be essentially maintained.

The qualified majority threshold, based on the current method of defining weightings for votes, has been situated throughout the history of the Communities at around 71% of the total number of votes. However, with the successive enlargements it gradually became possible for the qualified majority to be achieved by a block of Member States representing an ever-smaller percentage of the total population.

Given the prospect of the accession of new medium- and small-sized States, the larger Member States have declared their interest in not having their relative weight lessened, despite the fact that practice shows that voting blocks are never due to States of the same size voting together.

Various alternative mechanisms have been suggested, almost always based on a greater consideration of the demographic factor. We consider that, without abandoning the principles underlying the system in force, it is perfectly possible to attempt a compromise through models of vote-distribution which, in a balanced way, do not diminish the relative capacity of the States to form qualified majorities or to set up blocking minorities.

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

(b)European Council

The role of the European Council as definer of the great principles and general political guidelines for the Union must be enhanced, without changing its nature or its position with regard to the institutional framework.

In fact the European Council currently has a dual function as a political impulse and a political body of appeal vis-à-vis the Council, even for strictly Community questions. Thus the European Council, which is an organ of the Union but not of the Community, has the function of giving it the necessary impetus for its development and defining its general political guidelines.

Portugal considers that the essentially political nature of the European Council suggests that one should not allow its functions or powers to become too formal, which could lead to a development, so far avoided, towards its integration into the Community decision-making processes.

(c)European Parliament

The powers of the EP were substantially strengthened by the Maastricht Treaty in the area of legislative and budgetary procedures, in the appointment of the Commission and in the field of citizens' rights; at this point, many consider that all the potentialities of this significant extension of power have not yet been fully explored and implemented partly because of the short time since the TEU has been in force.

Other powers of a political nature, in particular in relation to the Commission, seem to represent a quite satisfactory compromise regarding the role of the European Parliament on the interinstitutional level.

The European Parliament is, moreover, the appropriate body to oversee, on the political level, the fight against fraud and to ensure a rigorous management of Community resources, which are principles of major importance for the credibility of the Union in the eyes of its citizens.

Practice in implementing the various procedures will have to be analyzed and, in the light of that experience, an evaluation will have to be made of the improvements that may be introduced and of the need to adjust the mechanisms, as well as revising their scope, without affecting the current institutional balance.

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

As to the co-decision process - one of the matters which the TEU provides should be analyzed at the IGC - we consider that its scope could be widened, in particular to cover cases which are currently subject to cooperation, and its procedure could be simplified.

There is also room for enhancing the EP's role and powers by recognizing the principle of systematic consultation in areas of the first Pillar in which this is currently merely optional, strengthening its activities in the field of citizens' rights and interests and improving application of the consultation procedures in areas covered by the Common Foreign and Security Policy (CFSP) and cooperation in Justice and Home Affairs.

Throughout this exercise it is important to avoid solutions involving a simplistic transposition into the Community institutional framework of arrangements based on national models of separation of powers, without paying attention to the fact that the Union is an original and sui generis system which does not include at the current state of integration the corresponding guarantees of national-type constitutional models, in particular those of a federal nature.

Regarding the future dimension of the EP in an enlarged Union, Portugal feels that it will have to be considered in a realistic and functional perspective, which is why our country tends to favour a maximum of 700 members, along the lines of proposals already on the table.

Our country considers furthermore that the current system of over-representation of the electors of the smaller States is the system that best corresponds to the need to ensure representation of the various national political forces in the institution which best reflects the diversity of the peoples of the Member States of the Union.

(d) Commission

Portugal continues to maintain that the principle of the presence of all the Member States in all the institutions of the Union means that each of those States should appoint at least one Commissioner. However, our country does not see any inconvenience in maintaining the current position of Vice-President.

Any formula that violated this principle would remove from the Commission its current legitimacy as an institution.

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

Regarding the appointment of the President of the Commission, Portugal would be prepared to consider the possibility that he or she be elected by the European Parliament from a list of names submitted by the European Council. We believe, however, that no change should be made to the current system of supervision of the Commission by the EP, and we reject any formulas involving any type of individual motion of censure against members of the college of Commissioners.

The Commission must continue to play a central role in interinstitutional balance between the Council and the Parliament, as it has the exclusive right of initiative and, as guardian of the Treaties, it has the necessary powers to ensure their implementation and that of the provisions adopted by the institutions in their implementation, in addition to the executive powers delegated to it by the Council. The procedures relating to the ways of exercising those implementing powers could, however, be simplified.

We consider it important that the nature and role of the Commission, whose composition and structure respect the aforementioned principles, should be maintained as provided in the Treaties - a collegial body, independent and dynamic, holding the exclusive power to submit proposals, with all the consequences that derive therefrom.

Portugal also considers it desirable to find ways of working together which enable the Commission to be more closely involved in the work of the second and third Pillars, in particular with a view to guaranteeing better coherence and coordination between the Community sphere and the predominantly intergovernmental dimension within the Union.

(e) Other Institutions and bodies

The Court of Justice, which is of fundamental importance in the context of enlargement, must continue to play a particularly important role in a Community based on the rule of law, and must play a greater part in matters concerning the protection of the individual rights of citizens of the Union. For this reason Portugal considers that the Court's capacity for action should reflect the deepening and broadening of the integration process, in particular in the area of the third Pillar. We thus consider that the powers and independence of the Court, as

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

well as the procedure for the appointment of its members, should not be called into question. We favour the possibility of extending the judges' term of office.

The strengthening of the fight against fraud and its prevention as well as of the control functions designed to ensure rigorous management of Community resources is an objective to be pursued and the measures at the disposal of the Court of Auditors should be improved. We also consider important in this context that it collaborate effectively with the Member States, in particular with the national Courts of Auditors. Portugal does not, however, see any advantage in making changes to the status of the Court of Auditors.

The status and consultative nature of the *Committee of the Regions* should be maintained, without prejudice to a possible extension of the areas of compulsory consultation and to the possible extension to the EP of the right to consult it.

The powers and nature of the Economic and Social Committee should also be maintained.

(f) Decision-making process

Making the decision-making process simpler, more efficient and transparent is an objective shared by all but interpreted in different ways.

Although we consider simplification and clarification of the decision-making process to be desirable, the difficulties of such an initiative must be weighed up, as it will be a delicate matter to find ways of doing so without disrupting the current balances.

Reducing the current number of procedures, in particular by abolishing the cooperation procedure, is one of the measures to be considered in this context, linked to a rationalization and simplification of the co-decision procedure.

In our view all solutions which do not take into account the specific natures of the various national cultures and traditions should be avoided, and a certain degree of complexity is thus to be expected.

As for efficiency, it should be measured by the appropriateness of the measures adopted to the needs and interests not only of governments, but also of their Parliaments, economic

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

operators and citizens in general, but also depends on correct and swift implementation.

It seems to us highly questionable that on the grounds of efficiency, fundamental principles and balances concerning the division of powers and responsibilities between the Institutions and between the Member States, or their right to be represented in all institutional bodies, may be called into question.

The extension of decisions by qualified majority seems to be the natural trend and the most reasonable way to increase the efficiency of the Council's operation, particularly with a view to future enlargements. In specific cases which are more delicate but where it can be accepted that unanimity is not essential, the option of the use of super-qualified majorities could be considered, in terms yet to be defined.

It should, however, be made clear that our country considers that unanimity should be preserved in specific matters of a highly sensitive nature. We could indicate, as non-exhaustive examples of matters requiring unanimity, the revision of the Treaties and other matters related to the structure of the Union, the system of own resources, taxation, etc.

Portugal supports transparency in the whole Community institutional system, as it believes that this will strengthen the democratic character of the Institutions and lead to greater involvement of the citizens in the European process. This principle should in our view guide the general behaviour of the Institutions and be enshrined in the Treaty as a safeguard of the right of citizens to information. The procedures laid down for guaranteeing transparency in the Council should ensure that the necessary confidentiality of the negotiation processes and greater openness as far as its operation as a legislative structure is concerned are made compatible.

We consider that the achievement of true transparency in the Council's work will depend on the observance of clear procedural rules at all the stages of decision-making and on the rigour of the methods used.

Transparency should also be considered via a more substantial approach, stemming from a clearer distribution of powers and from procedural simplification which will make the system more comprehensible to citizens.

The Treaty also includes a large number of obsolete or out-of-date provisions referring in

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

particular to transitional periods for various policies, which could advantageously be updated.

(g) Linguistic arrangements

Reducing the number of languages used by the Union is being held up by some as an indispensable measure for its future development in a context of institutional efficiency and of the viability of a system confronted with the prospect of new enlargements.

Portugal understands that this question can never be considered merely in a perspective of efficiency, logistical difficulties or costs, as the preservation of European cultural diversity is at stake along with the very principle of equality between the Member States. It also cannot be forgotten that the use of the national language is a factor of transparency in the operation of the Union, which is fundamental to legal security, greater participation by the national Parliaments and the acceptance and comprehension by public opinion of the whole process of European construction. The risks of alienating a great number of citizens and weakening European cultural diversity can never be assessed in terms of monetary considerations, so that all the languages of the Member States have to be guaranteed exactly the same status.

(h) Hierarchy of Community legal acts

At the previous IGC the majority of the Member States did not welcome the introduction of a new system of Community legal acts, classified into a hierarchical order, similar to that existing in some national legal systems.

As the structure of the Union's decision-making machinery has a very specific and complex nature, the status of Community legal acts also reflects the level of integration resulting from the political will of the Member States, which is an essential element in the integration process and has marked the gradual nature of the process. However, Portugal considers that it might be interesting for the Conference to address this question, particularly with a view to reflecting on the best way to organize the production of legislation, both in the interinstitutional framework and in the Union's relations with national law-makers.

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

(i) Role of the national Parliaments in the European Union

The need to guarantee for citizens an ever-wider participation of citizens in European Union matters leads us to support greater and more effective association of the national Parliaments in the Union's life. Portugal considers that in this way it will be possible to guarantee a closer relationship and involvement of all the representative structures of the Member States in the European construction process, in the terms provided for in the internal organization of each Member State. That will be a positive element and of the greatest importance in winning over the general public to the European idea and in making it more democratic.

We believe, however, that the fulfilment of this involvement at European level should take place in ways that do not entail changes to the Union's institutional machinery.

Portugal is, nevertheless, prepared to consider any models or formulae which, without disturbing the current interinstitutional balance and machinery, would guarantee a consultative intervention by national Parliaments. These forms of intervention should always take account of the specific parliamentary traditions and culture of the various Member States.

In particular, consideration could be given to ways of associating the national Parliaments which represent an extension of the model of the current CEAC/COSAC (Conference of European Affairs Committees) to other fields, especially with regard to the second and third Pillars, which involve more sensitive areas in terms of national sovereignty and citizens' rights.

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

Deepening the Union

(a) Citizenship

The Citizenship of the Union, created by the TEU, is an addition and a complement to the citizenship of every Member State, without prejudicing the rights and duties of each individual in respect of his or her country of origin.

The interest in motivating European citizens for the integration process seems to justify giving increased importance to citizenship of the Union in the revision of the Treaty, in particular as regards social and economic rights. The awareness that belonging to the Union gives citizens added value will undoubtedly contribute towards their greater involvement with the European idea. Portugal therefore supports the possibility of a revised Treaty including a European Citizenship Charter.

Portugal also considers that it would be a very positive step to widen and develop the provisions concerning human rights already existing in the Treaty. Bearing in mind that enlargement will certainly bring greater inter-penetration of political cultures, Portugal supports the inclusion in the TEU of a more detailed definition of the Human Rights dimension and more detailed treatment of issues such as the observance of the obligation to protect minorities and combating all forms of discrimination, and racism, xenophobia and intolerance in particular. Accession of the Union to the European Convention on Human Rights and its Protocols would also be a step to which Portugal would give its support. Furthermore, we consider that the revision of the Treaty should define the imperative nature of the democratic functioning of its Member States and respect for the rule of law within the Union.

(b) Employment

Awareness that the European Union can and must address the central concerns of its citizens demands, in our opinion, that the unemployment question be given an appropriate dimension in the revised Treaty which will confer upon the Union the necessary means of action to guide and intervene. Indeed, it is vital to guarantee that the levels of integration already

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

achieved or being achieved in the economic and monetary field are accompanied by a set of instruments capable of promoting active employment policies throughout the Union in forms which go beyond the piecemeal measures which the Union has agreed in the past. Such policies and instruments should be absolutely complementary to the continued effort towards socio-economic cohesion, which is a central element of intra-Community solidarity and an essential principle to be preserved in any future model for developing the integration process.

(c) Powers

Contrary to what happened in 1991, there does not currently seem to be, in the majority of the Member States and in the Institutions themselves, a desire to widen the range of powers of the Union. Rather, the prevailing trend seems to be in favour of restrictions, either through a negative application of the principle of subsidiarity, or even advocating the renationalization of some policies and areas in the name of imperatives of efficiency and adaptation to the future enlargements.

Portugal continues to favour the deepening of the European integration process and defends a positive and dynamic interpretation of the principle of subsidiarity, considering as fundamental the respect for the Community *acquis*, which new enlargements must not jeopardize.

Notwithstanding our feeling that the Union should maintain a permanent evaluation of the most appropriate dimension for its powers, our country would be prepared to consider at the next IGC the possibility of looking into increased Community treatment of areas such as energy, tourism and civil protection.

Moreover, and because we attach particular importance to the social dimension of the Union we consider that the revision of the Treaty must create the necessary mechanisms for the strengthening of this aspect, which is essential for the preservation of the principle of solidarity and for the creation of equitable conditions in the framework of the single market.

Indeed, we consider that the Community system is at present suffering from a degree of internal imbalance, which needs to be corrected, between the internal market and the respective flanking policies, which could advantageously be strengthened.

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

We also consider that the Union should pay increased attention to environmental issues, which are increasingly at the forefront of citizens' concerns, rendering them consistent with other dimensions of Union action and in particular dovetailing them with cohesion policies.

Portugal stresses that the economic aspect should not be subordinated to a "spontaneous" and anarchic approach and that it is essential that we continue along the road of ever-closer coordination of policies in this field in particular with a view to guaranteeing an effective, integrated approach, with a Community dimension, to combating all forms of marginalization and social exclusion.

We thus consider it essential that the forthcoming IGC try to find better ways of working to achieve the aim already enshrined in the Treaty of promoting balanced and sustainable job-creating growth.

Bearing in mind the specific problems affecting certain areas of the Union, by virtue of their peripheral location, and its effects on their development conditions, our country considers that the revised Treaty should pay more substantial attention to the Union's outermost regions.

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

(d) Subsidiarity

Portugal supports a dynamic and positive concept of subsidiarity which functions as a rational criterion for the definition of the right level for exercising shared powers, contributing to the natural evolution of the Community.

We believe that the provisions contained in the TEU, developed at the Edinburgh European Council and supplemented by the Inter-Institutional Declaration of November 1993, already contain all the ingredients to allow full implementation of this concept without needing recourse to new legal constructions.

We consider that subsidiarity must not be used like a brake on the development of the Union but, on the contrary, must be a rational criterion which enables powers to be exercised at the most efficient and appropriate level for the pursuit of the objectives set out.

The idea of introducing into the Treaty a "catalogue of powers" of the Union, listing them in an exhaustive and restrictive manner, seems less appropriate, not only because it results from the traditional logic of a federal State which does not exist, but also because it would end up limiting the way in which the Member States may wish to evolve in their future integration, it being a fact that at present it would be practically impossible to obtain a consensus on such a list.

(e) Budgetary questions

In the declarations annexed to the Inter-Institutional Agreement on Budgetary Discipline provision was made for the re-examination of the provisions on the budgetary process at the future IGC.

The EP, in the framework of preparing the report on the functioning of the Treaty, resumed the general lines of the positions which it defends and which, above all, aim at a reinforcement of its power of intervention in this field.

Portugal's position in this area comes within the general line of defending solutions which do not involve fundamental changes to the established balances, taking the line that rather the existing machinery should be fully used first. We would, however, be prepared to consider the possibility of increased powers for the EP in the budget procedure.

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

In addition, it appears a positive step to strengthen the prevention and fight against fraud, in all the Union's fields of action, while respecting the powers and independence of the institutions and bodies as well as the control functions designed to ensure a strict management of Community funds. It should, however, be recognized that the implementation of these objectives mainly depends on a practical concretization of operational solutions which do not involve changes to the Treaty.

(f) Financial aspects

Implicitly or explicitly underlying the questions of the deepening and the widening of the Treaty are those linked with the financing of its policies and actions; this problem is of particular relevance in the context of future accessions.

Portugal rejects all solutions which would involve renationalizing common policies and applying subsidiarity criteria in fields as important as economic and social cohesion.

Although these questions are outside the provisions of the Treaty and the financial perspective can only be renegotiated to come into force in 1999, the truth is that the problems of financing the enlarged Union cannot be ignored, at least as a frame of reference in a debate which aims to be objective, during an IGC which includes among its central aims that of preparing the Union for the accession of a considerable number of countries with economic and social conditions way below the current Community average. The reports which the Commission will have to present as soon as the work of the Conference is over, precisely at the time when the revised Treaty will come up for ratification by all the Member States, will have to present solutions guaranteeing financing arrangements which are capable of including the costs of future enlargements and which are compatible with maintaining the progress of the present intra-Community solidarity policies. Portugal is convinced that the commitment of the Member States to the strategic imperative that enlargement constitutes will certainly lead them to devise models which reconcile that dual requirement, which is the only way to ensure a generalized ratification process within the Union.

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

Common Foreign and Security Policy – Second Pillar

One of the main objectives of the last IGC was to provide the Community with the appropriate means to assume a political role more in line with its economic dimension. At that time, at the beginning of the 1990s, the idea was to react to the end of an international system marked by the Cold War and to respond to the changes which had taken place in Europe in the meantime, which had left the community facing a much more complex and uncertain international scene.

In what was then known as Political Union, the Member States tried to react effectively to the new situation. Title V of the TEU may not be ideal in terms of clarity and legal construction, but it constituted the compromise that was then possible given the quite divergent negotiating positions, and represented a relatively audacious and imaginative concept.

However, Title V of the TEU is a text which is dated and which does not take into account the prospect of the forthcoming enlargements; therefore an adaptation to new circumstances is needed, based on realism and sensitivity to public opinion in all the Member States.

In the debate on the revision of the TEU there seem to be two opposing view points: there are those who consider that the CFSP never came up to the expectations of Maastricht, and thus needs far-reaching changes, and those who, while not recommending major changes, defend CFSP on the grounds that it has not been in operation for very long and that its internal procedures are still being adjusted. The latter argue that the complete machinery provided for in the Maastricht Treaty has not yet been used and that the current evaluation is based on results obtained during the difficult crisis in former Yugoslavia, with which the Union was confronted from the beginning.

Portugal does not see itself completely in either of these camps, nor does it seek to strike a balance between those who defend the straightforward communitarization of the common foreign and security policy and those who only wish broadly to maintain the status quo.

Indeed, we deem it unrealistic to move towards the communitarization of the CSFP, since the EU's foreign policy cannot be tackled in the foreseeable future as if it were a mere

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

Community policy like the CAP or the Union's external trade relations. Foreign and security policy is linked to the essential core of sovereignty of the Member States of the EU and will therefore have to be basically confined to the intergovernmental framework in which it was created. Its limits must carry on being clearly demarcated by the political will of the partners. This principle must, in our opinion, guide the work of the IGC.

However, it seems to us equally unreasonable to try to reduce the Treaty's revision in this area to purely procedural changes or modifications of a cosmetic nature, which reveal a desire to avoid any kind of adaptation in the light of experience obtained in the meantime and the progress recorded in the economic integration chapter.

(a) Essential principles

In our view a few basic principles should guide any effort towards evolution which might be made in the area of the second Pillar.

Thus the principle of equality between the Member States must inevitably be fully respected. Indeed, it would be hard to understand how, in the field of Foreign and Security Policy, factors such as the population, economic or military power of the various Member States could be used as a basis for establishing the accuracy of the views defended or of the course to be plotted in this area for the European Union. In the same way it will be necessary to preserve the machinery designed to maintain the balance and equality of intervention between the Member States.

One must also always bear in mind the principle of the gradual deepening of the CFSP, as well as the paramountcy of political solidarity between the Member States, which has been one of the essential features of European construction and without which a Union project would necessarily lost its meaning.

We also consider it important in this field to maintain the institutional balances fixed in the Treaty, without reducing or eliminating the Commission's margin for manoeuvre in its share of the right to initiative with the Member States. Any progress in this field should always take into account the existing *acquis communautaire* and the single institutional framework,

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

together with the preservation of a pillar structure within the TEU, corresponding to different integration models.

(b) Decision-making process

In this regard it should be borne in mind that all the possibilities in the current TEU have not yet been duly explored; the reason for this somewhat blocked situation is the absence of political will and not the lack of instruments.

As far as the new provisions to be introduced into the Treaty are concerned we think it viable to provide for the introduction of the formal concept of "positive abstention", allowing, in very specific situations, a Member State to abstain from acting, not taking part in the action, but allowing it to be adopted and developed instead of blocking an action supported by the other States. However, it would also be important to fix a maximum number of Member States which could invoke positive abstention on each common action or position and rigorously define cases in which the non-generalized application of financial solidarity by the Member States may be justified.

In general terms, from Portugal's point of view it appears rather unrealistic in the current European context to move towards a straightforward extension of qualified-majority voting in the context of the second Pillar. Nevertheless, we could consider the possibility of the European Council adopting by consensus, specific "platforms" or topics, rigorously defined, to which a vote by qualified majority could apply at a later stage.

Outside this framework we consider that the use of the qualified majority could only be considered in other cases provided that, in decision-making, the absolute principle of equality between the Member States prevailed, i.e. the allocation of one vote to each State. In this circumstance, the minimum number of States to constitute a qualified majority would have to be established by analogy. In this way we could progress a little further than intergovernmentality while preserving the essential equality between States in such a sensitive area of their sovereignty.

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

(c) External representation

As far as the Union's external representation is concerned and provided that the central character of the Presidency is maintained, Portugal would be prepared to consider the ad hoc inclusion in "troikas" of other Member States which have special knowledge or experience which might be considered to be relevant for certain tasks. Any modifications of this kind could only be accepted, however, when approved on a case-by-case basis by consensus in the Council. Indeed, any options permitting arrangements outside the Union's institutional representation and facilitating informal activities which represented some kind of directory would have to be rejected.

The idea currently in vogue concerning the creation of an external figurehead for the Union – "Mr or Ms CFSP" – can be considered by Portugal, as we are interested in giving the Union's foreign policy greater continuity and visibility, while at the same time relieving the rotating Presidencies of any excessive commitments currently incumbent on them. It seems extremely important to us, however, that whatever the formula arrived at, it should be compatible with the existing inter-institutional balance. Thus, we consider that this figurehead must always assume only powers delegated by the Council – guaranteeing his operational subordination to the Presidency of the moment – and the capacity for initiative must be excluded from his powers. The coordination of his functions with the Commission should not be excluded as a possibility. As for the choice of this figurehead, Portugal is also open to various solutions, from the appointment of a personality who is not part of the institutional structure to the possibility of using in this capacity a figure within the General Secretariat of the Council, perhaps the Secretary-General himself, in that case with a necessary reformulation of the current profile of the post and its functional responsibilities. In either case, the appointment of this figurehead would have to be by consensus within the Council. "Mr or Ms CFSP" would thus be an element with powers to influence the agenda through proposals to the Presidency of topics for discussion, who could intervene in the consultation process between Member States and would be able to facilitate compromise solutions. The difficulty inherent in this idea lies essentially in the risk, which must be avoided, of "Mr or Ms CFSP" ending up restricting the Presidencies own room to manoeuvre and the need to find an appropriate model for linking him or her to the various decision-making authorities in the CFSP field.

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

(d) Functional strengthening

Another proposal which has been made concerns the creation of a unit for analysis, forecasts, planning and follow-up, whose objective would be to take advantage, in an effort to achieve coherent intervention of the distinct facets of the Union's external action, thus helping to overcome the current insufficiencies in the preparation and implementation of CFSP actions, for which it would also be able to call on the effective knowledge of the Member States. Portugal is in favour of the creation of such a unit, provided that it is located at the General Secretariat of the Council, incorporating elements from all the Member States, with a special role for the Presidency of the moment, and without excluding cooperation with the Commission. This unit would not have a right of initiative but would provide support for the action of the Presidencies, strengthening inter-institutional collaboration without calling into question the central role of the Member States in the field of the CFSP.

While continuing to be an intergovernmental policy, exercised in the on-going process of convergence of the foreign policies of the Member States in which the binding nature will have to remain limited, the CFSP could also be made more dynamic by the use of approaches such as "incentive measures", along the lines of what is provided for in the first Pillar concerning specific areas. From a practical point of view this might be achieved by the possibility of opening joint embassies in third countries in order to maximize resources and the organization of joint delegations to international conferences.

Portugal adopts an open position regarding the possibility of the European Union, like the Community, having legal personality and becoming a party to international Treaties. This is a lacuna which should be filled and which will reinforce the role of the Union as an international political player, enabling it to better respond to its own objectives.

(e) Security and defence

The central objective of building a European security and defence identity remains unchanged and the way in which the international situation is developing has demonstrated an increasing need for its implementation.

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

At present the security challenges facing Europe cannot be dealt with by the Member States of the EU alone, and not even by those with better equipped military forces.

We thus believe that NATO continues to be the fundamental instrument for the collective defence and preservation of the territorial integrity of the European countries belonging to it. Today, however, there are new security challenges which go beyond the traditional collective defense tasks and which involve the use of military forces for the maintenance of stability, understood in a broad sense (peace-keeping operations, humanitarian aid, etc). On the other hand we see the advantage of establishing a division of labour among the organizations active in Europe in the security and defence field, in which the OSCE, the EU, the WEU and NATO would each act in accordance with its own area of competence, composition or special preparation, within a concept of mutually reinforcing institutions.

We thus favour, in principle, the idea of extending the Treaty of Brussels, with the result that the WEU would be maintained as an autonomous organization beyond 1998. This would enable matters related to defence or security questions with a military component to continue to be dealt with in the context of the WEU, in its dual role of defence component of the European Union and the European pillar of NATO. Security questions would continue to be dealt with inside the Union, in the framework of the CSFP, and thereby also projected into the framework of the WEU.

Portugal considers that the IGC should opt for the deepening of the link between the EU and the WEU, without prejudice to the WEU's link with NATO, with a view to building a European security and defence identity and an effective European pillar within the Atlantic Alliance. With the strengthening of this relationship in the framework of a gradual convergence of the two organizations and the ultimate integration of the WEU into the European Union, it will be necessary to extend the WEU's operational capabilities so that we can have, in Europe, an effective military dimension.

In our view collective defence missions should remain with NATO, under Article V of the Treaty of Washington, together with crisis-management and peace-keeping operations which, by their size or complexity, would need a strong US participation. The WEU would have reinforced operational functions in European defence, especially as the European pillar of the

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

Atlantic Alliance, together with the use of military forces for peace-keeping tasks and to manage smaller-scale crises and support humanitarian action. This would justify the use by the WEU of real military capacities in the carrying out of such missions as well as deepening the organization's operational capacity and the decision-making mechanisms to carry them out. However, this process should not lead to an overlap of military structures with NATO but rather be based on the concept of separable but not separate forces.

Bearing in mind that the revision of the TEU should respect the development achieved by the WEU and the state of its relationship with the Atlantic Alliance, Portugal considers that more progress must be made along the path of improving the definition of the relations between the EU and the WEU. In doing this, it will be necessary to take into account the parameters already fixed by the Maastricht Treaty concerning the need to create a true European security and defence identity and for the Europeans to assume increased responsibilities in the field of defence. The increasing assumption of such responsibilities should not lose sight of the idea that the WEU is an integral part of the development of the European Union, as an essential component of the CFSP.

One of the ideas which may be raised in the IGC is the creation of a fourth Pillar devoted to defence. Portugal considers a solution of this nature premature. In any case, any discussion of these subjects will have to be based on the preservation of unanimity, which is a principle that we consider non-negotiable. However, such a solution would only have some meaning if it reflected a development in the decision-making mechanisms in the CFSP, in the form referred to above as capable of being accepted by our country. The dynamics of the debate on the CFSP raises the need to hold, within the Union framework, a comprehensive debate on the specific content of a European defence policy and a European common defence, compatible with the Atlantic Alliance.

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

Cooperation in the field of Justice and Home Affairs – Third Pillar

The third Pillar, concerning Justice and Home Affairs, is an area of the TEU whose functioning seems to warrant a unanimous negative judgment.

Various explanations could be put forward for this state of affairs but essentially they seem to derive from the excessive expectations created by the Treaty in a field about which public opinion is increasingly sensitive and from the inefficacy of the measures actually implemented. Indeed, problems such as the increase in international crime, drug trafficking, terrorism and illegal immigration are uppermost in European citizens' minds and represent concerns for which a collective response is increasingly required, due to the obvious impossibility of overcoming such problems at a purely national level.

In the course of the proceedings of the Reflection Group on the IGC it clearly emerged that if the Union wishes to appear credible to its citizens it has to show itself capable of dealing in an effective and creative way with the set of problems which today generate a general atmosphere of public insecurity in European societies.

For many this conclusion implies going beyond the intergovernmental framework towards "communitarized" models in the various fields covered by the third Pillar of the TEU. Others consider that the model created at Maastricht is not exhausted and that it is the impossibility of mobilizing the political will, and not the inefficiency of the instruments, which is the essential factor limiting the effectiveness of intervention in this area.

Portugal shares the view that experience in applying the machinery of the third Pillar, since the entry into force of the TEU, has resulted in a less positive message, particularly the way in which it is perceived by public opinion. We are also of the opinion that there has not been sufficient political will to explore the machinery for advancing in this field which is provided for in the Treaty itself. We believe that the visible lack of progress is also due to the complexity and sensitivity of the matters involved, which go close to the heart of national sovereignty as well as the sphere of the constitutional protection of citizens' rights, freedoms and guarantees. Also, the nature of the instruments available and the lack of functionality

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

of the work structure set up in this Pillar have created a framework which everything suggests needs to be reformulated, although in some cases this does not necessarily imply alterations to the TEU.

Portugal thus considers that, without calling into question the continuity of the third Pillar and the level of potential integration which characterizes it, it is becoming necessary to state in clearer terms the common objectives which the Member States are ready to pursue and to reinforce the most appropriate means to that end.

We deem it essential that the IGC consider how the Member States envisage realizing the free movement of persons in an area potentially without internal frontiers and that they agree explicitly on the instruments which they are prepared to put into practice together. We believe that such a debate will have to include a realistic consideration of the national constraints of a constitutional nature which obstruct specific integration moves and that it will have to take place in constant observance of specific legal cultures of each country, while at the same time continuing along the road towards their desirable harmonization.

The scale and scope of these objectives, once assumed as common objectives, call, in our opinion, for improvements in the efficiency of the system currently in force under the third Pillar. These improvements involve three types of measures: communitarization and/or strengthened cooperation in some fields, simplification of the decision-making procedures and the creation of strengthened measures for protecting citizens' rights.

Our country would, in this regard, be prepared to study the possibility of increasing Community treatment for areas which are currently part of the third Pillar. We thus consider that questions of asylum and the fight against clandestine immigration should be a priority in this field. We also consider it a matter of the utmost importance to study the impact of possible integration in areas such as the rules applicable to the crossing of external borders, conditions for the entry and movement of third-country citizens and questions regarding visa policy, which up until now have not been communitarized.

The possible difficulty of reaching a consensus as of now on a subject of such high political and legal sensitivity will perhaps oblige us to opt for a pragmatic alternative of applying to these subjects, gradually and according to the merits of each case, Community methods and

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

procedures via new legislative instruments, new powers for the institutions and extension of the rule of qualified majority voting. The hypothesis of using a super-qualified majority rule in cases to be defined on the basis of their possible very specific sensitivity could also be considered. Areas singled out as eligible for communitarization might constitute priorities for action.

For other fields seen as not eligible for immediate communitarization, such as cases of police and judicial cooperation, and in particular the fight against drug trafficking, a substantial strengthening of the existing intergovernmental mechanisms should be introduced.

On the institutional level it is also possible to introduce certain improvements to the system, especially through more frequent use of binding legal instruments. The method of entry into force of international Conventions could be revised and the Commission's right of initiative could be extended.

One of the reasons frequently advanced for the scant progress made in this field, the working structure of the third Pillar should also be reformed. Thus and in order to make it more efficient and operational, simplifications must be made and/or the four levels of preparing the Council's work should be reduced, clarifying their respective roles, with particular emphasis on the link between Coreper and the Article K.4 Committee. We see it as essential that a lighter and more operational institutional model be defined without which the dysfunctional factors which experience has shown constitute objective obstacles to the decision-making process will remain.

With regard to safeguarding citizens' rights, Portugal believes that the role of the European Parliament in the third Pillar should be strengthened, and favours the granting of wider powers to the Court of Justice in this area. With a view to achieving greater democracy in the work conducted in a field which is so sensitive and has so many implications for public freedoms, it would be highly appropriate to promote a bringing together of the national Parliaments and of these with the bodies of the Union, making it possible to exchange information and consultation mechanisms.

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

Summary

The new circumstances created by the collapse of the Soviet regime forced the European Community to reflect on its effective capacity to respond to this strategic challenge, in a way that went far beyond the reform which Maastricht had already foreseen. The 1996 Intergovernmental Conference (IGC) thus represents an attempt to match the structure of the Union to a new organizational model which can embrace a Europe enlarged to the East and to the South, while at the same time endeavouring to guarantee that these institutional mechanisms are judged according to criteria of efficiency, democracy and transparency. The new Europe which the IGC seeks to design should also reflect the major concerns of European citizens, particularly in terms of employment and public security, endeavouring to overcome through the public's support any indifference or scepticism regarding the European idea which has crept into public opinion throughout the Continent.

Portugal sees the IGC exercise as just one of the occasions on which the European debate will take place over the coming years. Indeed, it is not possible to detach the Conference from the whole complex European agenda which is approaching.

Though aware of the difficulty of guaranteeing full globalization of the debate, our country has insisted on the need to give consistency to the various steps in this comprehensive exercise, taking the view that the national interest will be better protected in a process in which it is possible to assess our role clearly at all the separate stages. As Europe is an idea which we want to deepen and realize, in a framework of consensus, mutual trust and solidarity, it will be important in our view to remain attentive to all the facets of a process whose momentary dynamics may make us lose sight of the essential matters at stake.

At this IGC Portugal will try to guarantee that its relative power to influence the European idea and therein affirm its specific interest does not emerge diminished. Hence our objective of guaranteeing that the institutional reform does not turn into an occasion for reducing the status of the small and medium-sized countries (voting in the Council, Commissioners, exercise of the Presidencies, status of languages), nor into a factor for diluting the Union's policies (correct interpretation of subsidiarity, temporary limited flexibility/differentiation).

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

We also consider it important that institutional reform should make the Union's machinery lighter (simplification and reduction of the number of decision-making procedures), give greater flexibility to the decision-making processes (extension of new criteria for qualified majority, with precise limits) and guarantee easier perception by citizens of the way the Union operates (simplification of the Treaties, transparency processes) and greater involvement of representative national structures in the Union's operation (national Parliaments).

On the institutional level we consider, furthermore, that the current balance between the various institutions should be essentially maintained, with the Commission holding its exclusive right of initiative in Community matters, enlarging the role of the EP through extension of the co-decision procedure, with the Council continuing to be the vital centre of the decision-making process. We also consider that it is important to ensure greater efficiency for the procedures for consulting the Economic and Social Committee and the Committee of the Regions and that the European Courts should be given more suitable means of action. In this regard we consider that the Court of Justice must be given a special capacity to act within the field of the third Pillar (Justice and Home Affairs).

Our country furthermore considers that the degree of integration achieved or currently in progress in the economic and monetary field (EMU) has not been accompanied by a much-needed social dimension, consistent with the concerns felt by public opinion and the need to sustain the European social model (which, in our opinion, depends in particular on integrating the Agreement on Social Policy into the TEU). Thus we consider that the adoption of measures leading to a coordinated policy to relaunch employment at Union level has become essential, and must be fully compatible with and complementary to the effort to achieve economic and social cohesion which constitutes a key element in intra-Community solidarity. In this last regard, Portugal will try to ensure that the revised TEU devotes more substantive attention to questions concerning the outermost regions of the Community.

This solidarity should also find expression in the desired strengthening of the Common Foreign Security Policy (CFSP), through greater efficiency for its machinery (planning unit, external representation figurehead) and decision-making procedures, without losing sight of the fact that foreign policy is one of the elements which mark out countries' identity and that the sharing of sovereignty in this area will always require careful weighing up of the national

MINISTRY OF FOREIGN AFFAIRS OF THE PORTUGUESE REPUBLIC

specificities involved. Moreover, we consider that the WEU should continue to strengthen itself and acquire its own means, in a way which ensures the compatibility of its potential future development into a defence structure of the Union with its essential function as the European pillar of NATO.

As to questions of Justice and Home Affairs, we consider that matters such as drug-trafficking, organized crime, terrorism and illegal flows of immigrants are today central concerns of European citizens and need to be better dealt with, possibly at Community level.

Finally, Portugal intends to pay particular attention at the IGC to the question of promoting human rights and combating all forms of discrimination (in particular racism, xenophobia and intolerance), as well as to the establishment of democratic values and the rule of law. We will also be concerned with a clearer formulation of European citizenship rights.

For Portugal the IGC will thus be a demanding and difficult exercise, at which we shall try to foster a pragmatic vision of Europe which stems from the perspective of a single and common course shared by the States which are part of the project, keeping it compatible at all times with the need to answer in as practical a way as possible the major questions facing the various European societies and the challenge of being able to demonstrate that the European area is definitely the place where suitable answers can be found for them.