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REPORT

from : Presidency

to : Council/European Council

Subject : Pursuing the treaty reform process

Delegations will find attached a report from the Presidency on pursuing the treaty reform process, as requested by the European Council at its meeting in June 2006.

REPORT FROM THE PRESIDENCY TO THE EUROPEAN COUNCIL

PURSUING THE TREATY REFORM PROCESS

Introduction

This report from the German Presidency is a response to the mandate which it was given by the European Council at its meeting in June 2006. As requested at the time, the Presidency, in the light of very extensive consultations held over the last six months, provides an assessment of the state of discussion with regard to the treaty reform process and explores possible ways forward.

After two years of uncertainty following the problems encountered in the process of ratification of the Constitutional Treaty, it is clear that there is now a general desire to settle this issue and move on. All Member States recognise that further uncertainty about the treaty reform process would jeopardise the Union's ability to deliver.

Settling this issue quickly is therefore a priority. This was agreed when Heads of State or Government, together with the President of the European Parliament and the President of the Commission, met in Berlin on 25 March to celebrate the fiftieth anniversary of the signature of the Treaties of Rome. All were united in the aim of placing the European Union on a renewed common basis before the European Parliament elections in 2009.

The way forward clearly needs to take into account the concerns expressed by citizens during the ratification process on the future direction of the European Union and the effects of globalisation on its core values and policies. At the same time, there is a very strong demand for the Union to increase its efficiency, to enhance its democratic functioning and to improve the coherence of its external action.

Overall Assessment

In line with the mandate given to it in June 2006, the Presidency has conducted extensive bilateral consultations with the Member States as well as the European Parliament and the European Commission, both at the level of designated "focal points", and between the President of the European Council and her opposite numbers. In addition to these bilateral contacts, the Presidency organised a meeting of "focal points" in Berlin on 15 May, and a further meeting is due to take place on 19 June. Foreign Ministers have also had the opportunity to take stock of developments at meetings of the General Affairs and External Relations Council.

These consultations have proved very useful in giving the Presidency a clear idea of the various concerns of individual Member States.

The issues raised during the consultations can be grouped around a number of themes:

A different approach on structure

A certain number of Member States underlined the importance of avoiding the impression which might be given by the symbolism and the title "Constitution" that the nature of the Union is undergoing radical change. For them this also implies a return to the traditional method of treaty change through an amending treaty, as well a number of changes of terminology, not least the dropping of the title "Constitution".

Such an approach is not incompatible with the demand from those Member States which have already ratified that as much of the substance of the Constitutional Treaty as possible should be preserved. They are ready to consider the alternative method of treaty change if it helps to reach a result acceptable to everyone and thus to overcome the present stalemate. They have made it very clear however that this would represent a major concession. They insist on the need to preserve the substance of the innovations agreed upon in the 2004 IGC and to ensure as far as possible the readability and simplicity of the new Treaty.

Reinforcing the capacity of the Union to act, whilst preserving the identity of Member States

It is generally recognised that a strengthening of the institutions will help reinforce the capacity of the Union to act, and that the Union therefore has every interest in ensuring that the current Treaties are adapted in order to introduce the set of institutional reforms agreed in the 2004 IGC.

At the same time, there is concern to underline the respect for the identity of the Member States and to introduce greater clarity over the delimitation and definition of the competences of the Union and of the Member States. Furthermore, there is a clear demand from some delegations to further enhance the role of national parliaments.

Some delegations have requested that the text of the Charter of Fundamental Rights be removed from the Treaty. Others strongly oppose this move. Most of the latter could however accept it, provided that the legally binding character of the Charter is preserved by means of a cross-reference in the body of the Treaty.

Addressing other concerns

A few delegations have suggested that in several cases the text of the Treaties should be amended in order to reflect more recent developments. Many delegations would be ready to examine such amendments if considered helpful by others and provided that no new competences are conferred upon the Union. Specific suggestions include the need to address energy security and climate change. It has also been proposed that greater prominence be given to the "Copenhagen criteria" on enlargement.

The Way Forward

On the basis of its assessment of the positions of different delegations, the Presidency recommends that the June European Council agree to the rapid convening of an IGC. It suggests that the European Council give a precise and comprehensive mandate (on structure and content) to the IGC, thus allowing it to finalise its work on a new Treaty before the end of this year.

The Presidency proposes a return to the classical method of treaty change. The IGC would therefore be asked to adopt a Reform Treaty amending the existing Treaties rather than repealing them. The Treaty on the European Union as modified would keep its present name, while the Treaty establishing the European Community would become the "Treaty on the functioning of the Union", containing all the detailed implementing provisions, including the legal bases. Both Treaties would have the same legal value. The Union would have a single legal personality.

The mandate for the IGC should set out how the measures agreed upon in the 2004 IGC with a view to a more capable and democratic Union should be inserted into the Treaty on the European Union and the Treaty on the Functioning of the Union. The consultations of the past 6 months show that a number of changes will be needed to reach an overall agreement. To that end there should be further discussions with regard to the following issues:

- The question of the symbols and of the primacy of EU law
- Possible terminological changes
- The treatment of the Charter in Fundamental Rights
- The specificity of the CFSP
- The delimitation of competences between the EU and the Member States

The role of national parliaments **Conclusion**

The Presidency submits this report to delegations as a basis for reaching agreement on the way forward at the European Council on 21-22 June 2007.