

The IGC grinds to a halt

After several days of drama and appeals to bring everything to a conclusion on 12 and 13 December, the Intergovernmental Conference failed. « There was deadlock, the debate was not ready for a conclusion, » said the president of the Council, Silvio Berlusconi, talking of the reasons for bringing the IGC to a halt. So the Italian Presidency has handed the IGC over to the Irish Presidency, which seems prepared to let things take their course. However, they still have to prepare a report for the Spring European Council on the chances of making progress.

Paradoxically, the IGC ground to a halt when the negotiations had barely begun. Even though he claimed to have a solution «up his sleeve » for the main institutional questions, Silvio Berlusconi took this decision on behalf of the European Council after a series of bilateral meetings, about which no information leaked out. A document circulated in English states that, « *The European Council noted that it was not possible for the Intergovernmental Conference to reach an overall agreement on a draft constitutional treaty at this stage. The Irish presidency is requested on the basis of consultations to make an assessment of the prospect for progress and to report to the European Council in March.* » This text reflects the statements made by several delegations expressing « collective failure », and saying that the responsibility does not lie with the Italian Presidency nor with the countries who went to the negotiating table having previously insisted on « red lines » beyond which they would not venture. The positions of Poland and Spain on keeping « *Nice and nothing but Nice* » are known, as are those expressed by Germany, supported by France who do not wish to call into question the qualified majority system which emerged from the work done by the Convention. How much credit can we give to the words of the Italian Prime Minister Silvio Berlusconi, according to whom agreement has been reached on some 80 points among those raised within the IGC? These negotiations are based on the principle that so long as there is no global agreement (on all of the subjects), there is no agreement at all. In other words, nothing can be decided until everything is. The European Parliament has

requested explanations on this very point (see below).

Final pressure put on the IGC by European and national MPs

During the ministerial conclave in Naples on 28 and 29 November, the question of qualified majority voting was already at the centre of everyone's concerns. The idea of a « *rendez-vous* » clause to decide later on how to move to the simplified qualified majority voting system did come up but gave rise to many negative reactions including that of the European Parliament.

At the beginning of December the European Parliament adopted a resolution on the IGC with 346 votes in favour, 106 against and 58 abstentions. It was submitted by the EPP-ED, PSE, ELDR and Greens/ALE groups (1). It appealed to the heads of state and government to continue their efforts and overcome their differences in order to achieve a « balanced and positive result » during the IGC meeting of 13 December 2003, which would then lead on to approving the final text of the Treaty creating a Constitution for Europe. The MEPs expressed concern that certain Member States were questioning the Convention's proposals on institutional reform, and highlighted a number of points to which they attach great importance (see annex 1). The Parliament also rejected (283 votes against, 213 in favour and 17 abstentions) the amendments supporting a reference in the preamble to Europe's Judeo-Christian heritage and a confirmation of the secular nature of the European institutions. As far as qualified majority voting is con-

cerned, the European Parliament mentioned « *room for compromise provided that it respects the principle of double majority and the lowering of the threshold fixed in Nice* ». The first point of the joint declaration adopted on 5 December and addressed to the European Council by the national and European MPs who participated in the work on the European Convention (2) was identical to this (see annex II). The first day of this two days session of MPs had taken place in the presence of the former president of the Convention Valéry Giscard d'Estaing, who as a final defence of the draft Convention stated that it would be better to have « *no Constitution at all than a bad one, that is a mutilated one* ».

The final governmental positions

Following the IGC session of the foreign ministers on 8 December, the positions of the delegations were confirmed: support for support for the Convention's draft by France and Germany who do not want the Convention's qualified majority voting system to be jeopardised. If the IGC were to fail, the solution of enhanced co-operation was to be proposed, without specifically mentioning the areas involved, apart from police and judicial cooperation or defence. The Nice treaty excludes this mechanism from the latter area, which has developed within the intergovernmental sphere in various ways since the Franco-German Saint-Malo initiatives in 1998 and the European Councils of Cologne and Helsinki in June and December 1999. The Nice Treaty only mentions the « Political and Security Committee » (article 25 of the EU Treaty), and the other bodies set up since 1999 are not in the treaties. The EU military Committee (EUMC) and the EU's military headquarters (EUMH) are the other permanent political and military structures. In Helsinki, the Union set itself a « general objective », i.e. that of deploying military forces of up to 50,000 – 60,000 people in sixty days and supporting them for at least a year. These forces would be capable of carrying out the Petersberg tasks. The Brussels European Council's agreement on defence, made possible because of the British joining France and Germany following the agreement of the United States, consists in reinforcing the planning and operational capacities of the European Union's military and civilian missions, with or without NATO (3).

The proposals of the Italian Presidency

The final texts circulated before the IGC session did not contain a new proposal on the qualified majority voting system: « *The presidency is continuing to reflect on how best to respond to the specific concerns expressed by some delegations, without losing the advantages of the Convention proposal and taking into account also the balance of the overall institutional framework* » (4). In fact the Italian Presidency decided to support the solution in the preamble proposed by the European Convention and to no longer propose to include a reference to a Christian heritage.

The Presidency's new compromise proposals on social security (article III-21), criminal justice (article III-171 and article III-172, minimum rules for the definition of criminal infringements), stipulated that in the event of a disagreement the European Council would be the final arbitration body (5). Regarding taxation, the Presidency has added a condition for the application of the qualified majority vote for the adoption of measures concerning administrative cooperation or the fight against tax fraud and tax evasion. These measures must not affect the member states' tax regimes. The Presidency has also introduced the possibility of the European Council adopting a European decision to extend the responsibilities of the European Prosecutor's Office to the fight against serious crime with a cross-border dimension (article III 175, new addition of a paragraph 4). This would be a decision taken unanimously following consultation of the European Parliament and the Commission.

The "passerelle" and review clauses have also been amended. New article IV-7a has been clarified (move from unanimity to qualified majority and move from the special legislative procedure to the ordinary legislative procedure). If a single national parliament opposes this within the six months following the notification, the European decision is not adopted. In the absence of any opposition, the European Council can unanimously adopt the European decision in question following approval from the European Parliament (opinion of the majority of its members). The amendments to title III

of part III would require a unanimous decision of the European Council (and no longer qualified majority as the document circulated before the Naples conclave suggested, see Tomorrow Europe 19). On the other hand the Italian Presidency has maintained in particular the proposal for a social clause and the reference to the principle of equality between men and women as one of the Union's values, as well as the text on services of general interest.

From an institutional point of view, the principle of a collective Presidency has been maintained, but adjusted to an 18 month period (no longer 12). The other major changes concern the Minister for Foreign Affairs and defence. In the event of the Commission resigning following a motion of censure from the European Parliament or at the request of the president of the Commission, the Minister for Foreign Affairs would resign his post within the Commission. He would resign his other tasks at the request of the president of the Commission, but with the agreement of the European Council. In this area the situation has now been clarified.

Budget

The fate of the budgetary procedures stipulated by the draft constitutional treaty is something that must not be forgotten, since changing the balance would provoke the opposition of the European Parliament, which in its resolution of December 4 rejects « *any attempt to weaken Parliament's current budgetary rights as this would be a major attack on Parliament's core principles* ».

The final proposals of the Italian Presidency partially took into account certain demands from the Ecofin Council, supported by several delegations at the IGC. They concern the Union's resources, the multi-annual financial framework and the Union's annual budget. The ceiling of resources, currently fixed at 1.27% of gross national product (GNP) can only be changed, according to the draft constitutional treaty, by a unanimous decision of the Council of Ministers following consultation of the Parliament. The Italian Presidency proposed a new text according to which the European Council could adopt a European decision with a qualified majority authorising the Council to unanimously rule on the adoption of the second multi-annual financial framework after the

entry into force of the draft constitutional treaty. The budgetary procedure has also been adjusted with more weight being given to Council, which may now reject the agreement of the MEPs and the Council representatives reached in the conciliation committee. This proposal is in particular a response to the demands made by France which has difficulties in accepting the deletion of the distinction between compulsory spending (CS) and non-compulsory spending (NCS), which means that the budgetary powers of the European Parliament extend to agricultural spending.

Qualified majority voting

Roberto Antonione, Secretary of State for Foreign Affairs, speaking to the European Parliament on December 3, mentioned the solution of a totally symmetrical double majority (60% of the states representing 60% of the population). Another alternative would consist in defining a 50-50 symmetrical majority, which was a solution originally advocated by the European Commission (6). Spain could have supported a solution based on increasing the percentage of the population (66%) in order to maintain greater influence in the decision-making process (the Nice treaty threshold is 62%). Finally, regarding extending the vote to qualified majority voting, the Belgian Prime Minister, Guy Verhofstadt, was willing to negotiate on the basis of a text about a superqualified majority (60% of the states representing 66% of the population) for areas still subject to unanimity such as justice, taxation and foreign policy (7).

Budgetary reprisals ?

Everyone starts to mull things over when crisis point is reached but does the suspension of the IGC have to trigger a reduction of the ceiling set for the Union's financial perspectives, which would be detrimental to Spain because of the transfers involved in enlargement of the Union, in particular in favour of the biggest new member, Poland? The main contributor countries to the Union's budget, Germany, France, UK, Netherlands, Austria and Sweden, took steps in this direction by sending a letter to the president of the European Commission two days after the failure of the IGC. The well-known proposals to limit the own resources ceiling to 1% of the Community's GNP (the

ceiling for current expenditure with a limit of 1.27%) have been advocated by these countries for some time now. After all, the French president Jacques Chirac and the German chancellor Gerhard Schroder mentioned the link between these negotiations and those in the IGC on many occasions, in order to send a clear signal to Spain.

The Sapir report

The preparation of the budgetary negotiations is also at the heart of the Sapir report circulated last July while the European Commission was involved in an internal seminar to prepare its proposals for these negotiations. Drafted by independent experts at the request of the European Commission's President, this report heightened the controversy. Its title is « *An agenda for a growing Europe : making the EU economic system deliver* », and the re-definition of the structure of the Union's budget that it proposes calls into question the principles underlying the Union's cohesion policy (8). In the system proposed, the Union's budget would be fundamentally restructured. According to the report, « *the purely economic and social objectives that are the focus of this Report can be funded by an amount similar to today's (about 1% of the EU's GNP), which, therefore, can be easily accommodated under the current budget ceiling for EU revenues (1.27% of GNP).* »

However the report stipulates it is outside its scope « *to examine whether this ceiling would also be sufficient for financing policies beyond narrow economic and social issues, such as policy towards neighbours, foreign and defence policy, development aid, justice and home affairs or those economic policies with a dominant external dimension, such as trade policy* ».

The budget would be divided into three funds destined to support economic growth, economic convergence between member states and economic restructuring. The growth fund would cover research and development, innovation, education, training and infrastructure. The convergence fund would help low-income countries to catch up with the others and also to develop their institutions and invest in human capital and equipment. The restructuring fund would facilitate the process of reallocation of resources. It would provide support to workers who lose their jobs and would contribute to restructuring the farming sector. In the event of an unchanged budget, a good part of the necessary additional funds would be taken from the common agricultural policy, which currently absorbs 45% of the Union's budget.

The answer from the Commission's President was circulated in the form of a press release dated 15 December (9). Romano Prodi noted that the states want to « *create*

the most competitive economy in the world », « *achieve better protection of our borders* » « *controlling migration more efficiently* » and develop « *a more effective foreign and security policy* ». While underlining the fact that these states also « *express solidarity with the poorer regions and wish to maintain cohesion in an enlarged Union* », Romano Prodi declared himself to be « *in favour of achieving all these goals* » and (...) will do his « *best to achieve them* ». *But miracles,* » (NDLR reference to Silvio Berlusconi's words a few days before the IGC opened) are not his speciality and « *don't seem to come easily to Member States either* ». The message also contains an initial response to the Sapir report : « *with only 1% of GNP it will simply not be possible to do what these Member States – and all others – expect from us.* »

Enhanced co-operation : an alternative to the failure of the 2003 IGC?

On December 4 the Belgian Parliament added to its vote adopting the enlargement treaty a resolution calling on its government « *do everything* » to ensure that the results of the Intergovernmental Conference « *consolidate the draft of the Convention, and if possible, improve it.* » Otherwise, « *there remains no choice other than to opt for enhanced co-operation between the members of the Union who share the will to progress towards greater integration, in particular in the economic and social areas.* »

Should resorting to enhanced co-operation as an alternative to adopting the Constitution be interpreted as a pre-negotiation strategy or, following the IGC's failure, a strategy to re-start negotiations? The French president Jacques Chirac both before and after the IGC session in December did not exclude the possibility of creating a « *pioneer group* ». Should it be made up of the six founding countries? Though he is from one of them the Italian Prime Minister rejected the proposal as did the Luxemburg Prime Minister. The German chancellor Gerhard Schroder would only consider it if the process of adopting the constitutional treaty were to fail. Speaking to the European Parliament the President of the European Commission, Romano Prodi, did not exclude the idea of reflecting on the possibility of a vanguard forging ahead (10). He felt that given the halt called in Brussels,

the « *idea of a vanguard of pioneering States* » being put forward by certain people required that we « *muster our courage* ».

Restarting negotiations in 2004?

Several MEPs rejected this possibility during the debate on the IGC on 16 December. The timing seems wrong for the six founding countries to start thinking about an alternative strategy which would consist in endorsing a split in the Union before its reunification. In a joint resolution adopted on 18 December with 344 votes in favour, 115 against and 23 abstentions, the Parliament concentrates on essential matters i.e. restarting negotiations without delay (11). It warns against the risks of a « variable-speed Europe », the re-emergence of intergovernmentalism, and even the fragmentation of the European Union, which would be the result of an inability to resolve the problem of how the enlarged Union can remain efficient. It invites the Italian Presidency to publish the detailed list of the agreements which would have emerged from the IGC on 12 and 13 December. It calls upon the coming Irish Presidency to reconvene the IGC at the level of Foreign Ministers in January 2004 with the intention of reaching agreement on a procedure which would enable progress to be made, and to consolidate all the texts adopted so far at the IGC. It calls upon the Irish Presidency to fix a date before 1 May 2004 for an IGC meeting at the level of Heads of State or government in order to decide on the remaining issues. Lastly it calls upon the Irish Presidency to submit an action plan for the completion of these tasks when it addresses the European Parliament in January 2004 in Strasbourg.

Finally, when presenting the programme of the Irish Presidency, the Irish foreign minister Brian Cowen was clear: the working basis of the Irish Presidency will be composed of the two texts which are currently on the table, i.e. the draft Convention and the compromise proposals of the Italian Presidency (12). The possible points of agreement emerging from bilateral meetings are not based on any decision of the IGC and cannot be deemed adopted. The British Prime Minister Tony Blair said he had obtained guarantees on his government's red lines (maintaining unanimity for foreign policy, for the revision of the treaties and in the areas of taxation, social security and de-

isions on the resources to maintain the repayment system granted to the UK). The Presidency will first consult its partners. On the basis of the consultations, it will draft a report to the spring European Council on the way the situation has developed (13). At this stage the Irish Presidency can only insist on the fact that the heads of state and government parted with the clear political commitment to pursue and complete the work as rapidly as possible.

As well as these uncertainties about the future of the draft constitutional treaty, the presentation of the Commission's financial perspectives in January is likely to exacerbate the political tension in Europe at a time when the European elections are beginning to loom on the horizon. The result may well reflect the inability of those in power to send out a message which is both outward and forward-looking.

Cécile Barbier

1. Joint Resolution B5-0513/2003 on the progress report on the work of the Intergovernmental Conference, 4 December 2003
2. Joint Declaration to the European Council by the parliamentary representatives in the European Convention, meeting in Brussels on Friday 5 December 2003.
3. European Defence: NATO/EU Consultation, planning and operations.
<http://ue.eu.int/newsroom/LoadDoc.asp?MAX=1&BID=75&DID=78414&LANG=1>
4. IGC 2003, Intergovernmental Conference (12-13 December 2003): ADDENDUM 2, IGC 60/03, ADD 2, PRESID 14, 11 December 2003.
<http://ue.eu.int/igcpdf/en/03/cg00/cg00060-ad02.en03.pdf>
5. IGC 2003- Intergovernmental Conference (12-13 December 2003): ADDENDUM 1 to the Presidency proposal IGC 60/03 ADD 1, PRESID 14, 9 December 2003.
<http://ue.eu.int/igcpdf/en/03/cg00/cg00060-ad01.en03.pdf>
6. Taken from COM (2002) 728 4 December 2002, page 15-16
7. Cf. Le Monde 16 December 2003.
8. « An agenda for a growing Europe », July 2003
http://europa.eu.int/comm/dgs/policy_advisers/experts_groups/ps2/high_level_study_group_index_en.htm
9. Statement by President Prodi following the initiative of six Member States, IP/03/1731 15/12/2003
http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/03/1731|0|RAPID&lg=EN&display
10. Romano Prodi, President of the European Commission, with passion and conviction, plenary session of European Parliament Strasbourg, 16 December 2003.
http://europa.eu.int/rapid/start/cgi/guestfr.ksh?p_action.gettxt=gt&doc=SPEECH/03/610|0|RAPID&lg=EN&display
11. Resolution of the European Parliament on the result of the Intergovernmental Conference, 18 December 2003.

http://www3.europarl.eu.int/omk/omnsapir.so/pv2?PRG=CALDOC&TPV=PROV&FILE=20031218&TXTLST=1&POS=1&LASTCHAP=21&SDOCTA=7&Type_Doc=FIRST&LANGUE=EN

12. Daily bulletin Europe n°8610 19 December 2003, p. 4.
13. Programme of the Irish Presidency of the Council of the European Union (1 January to 30 June 2004)
<http://ue.eu.int/newsroom/LoadDoc.asp?MAX=1&BID=950&DID=78488&LANG=1>

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European Parliament resolution on the progress report on the Intergovernmental Conference, 4 December 2003

Parliament welcomes the Presidency proposals, in particular with regard to introducing a horizontal clause on social policy (Article III-2a), recognising the competences of Member States in relation to services of general interest (Article III-6) and introducing in Article I-2 equality between women and men, which must, however, be recognised as a value and not merely as a principle

Qualified Majority

The MEPs reiterate their support for the Convention's proposals on the definition of '*qualified majority*.' There is a margin for compromise on the proposed figures, as long as this respects the principle of the double majority and the lowering of the threshold fixed at Nice. They welcome the Italian Presidency's proposals to extend qualified majority voting to the Common Foreign and Security Policy.

Legislative Council

Parliament deplores the decision to do away with the Legislative Council, which was intended to effect a clearer separation between the Council's law-making and executive functions, and to guarantee full transparency of the legislative process. It hopes that at least the option of introducing the Legislative Council at a later stage will be maintained.

European Parliament's budgetary powers

Considering that certain sectorial Council formations are bringing forward their own suggestions "*thereby undermining the basis for stable negotiations*," Parliament warns the IGC not to call into question the general balance achieved in the Convention on the financial and budgetary provisions and rejects any attempt to weaken Parliament's current budgetary rights as this would be a major attack on the institution's core principles.

Composition of the Commission

Parliament considers that appointing one Commissioner per Member State would risk giving it an intergovernmental character, and therefore reiterates its support for the Convention's proposals on the composition of the Commission. MEPs also support the compromise reached by the Convention whereby the proposed Foreign Minister, as a full Vice-President of the European Commission presides over a joint administration, comprising Commission, Council and national officials, within the Commission, and chairs the Foreign Affairs Council. Finally, MEPs state that the proposal to limit the remit of the public prosecutor to the fight against fraud affecting the Unions' financial interests must be accompanied by the application of the ordinary legislative procedure; that revisions to Part III of the Constitution should be made by a light and flexible procedure, and that a Euratom Treaty Revision Conference should be convened. Amendments calling for a reference to Europe's Judeo-Christian heritage were once again rejected.

Joint Declaration addressed to the European Council by Parliamentary members of the European Convention, reunited in Brussels on Friday 5 December 2003

Recalling the outstanding legitimacy of the European Convention and the richness of its work; Convinced that the Draft Treaty establishing a Constitution for Europe will enable the European Union to be at the same time successfully widened and deepened; Fearing the political consequences at home and abroad of a failure by the Intergovernmental Conference (IGC) to finalise the constitutional negotiations in line with the agreement reached in the Convention; Concerned that despite the efforts of the Italian Presidency and the progress made on certain issues, it is apparent that the IGC has been tempted to open up some of the key elements of the consensus achieved by the Convention; Noting that the IGC will be judged on its success in completing the institutional architecture of the Union now and not later; Therefore calls on the IGC to adhere to the Convention's constitutional package deal, and to finish its work at the European Council in Brussels on 12-13 December 2003;

And believes, further, that the following points are indispensable for the enlarged Union to act:

1. The formula for qualified majority voting (QMV) in the Council as drafted by the Convention is clear, simple and facilitates decision making. The eventual solution must respect the principle of double majority and lower the Nice threshold.
2. The re-organisation of the European Commission after 2009 must be designed to ensure first and foremost a strong and manageable executive in which all nationalities have an equal chance of access.
3. To undermine the financial settlement of the Convention, as proposed by certain governments, is a major attack on the core principles of parliamentary democracy and is totally unacceptable. A Constitution that failed to respect the budgetary rights of the European Parliament will not obtain the approval of either the European or national parliaments.
4. There must be no retreat from the Convention's already modest proposals for its extension of QMV in the fields of tax, social security or criminal justice. The passerelle provisions, triggered by a unanimous decision of the European Council, as well as in enhanced cooperation, must be maintained as a key element of the evolutive nature of the Constitution.
5. Development of common foreign and security policy will be helped by the introduction of a larger element of QMV. We support the proposals of the Italian Presidency to this end. We also welcome the emerging agreement in defence policy. We urge, nevertheless, that the role and standing of the Foreign Minister as established by the Convention should be wholly respected.
6. The Legislative Council will encourage transparency and the separation of the law making from the executive functions of the Council. We urge the IGC to keep open this option.
7. Reform of the constitutional revision procedure in Part IV, which was left unresolved by the Convention, is essential if the Union is not to be held ransom to the veto of one or two member states. In changes to Part III, where the competences of the EU are not extended, a lighter procedure should be agreed.
8. The independence of the European Central Bank must be guaranteed under the Constitution.
9. Any weakening of the constitutional validity of the Charter of Fundamental Rights is unacceptable.
10. We request that equality between men and women should be inserted as a value of the European Union.

The citizens of Europe expect their governments, acting collectively at the European Council, to shoulder their responsibility to build a more secure and democratic future. The time to act decisively is now.