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A BASIC TREATY FOR THE EUROPEAN UNION

In its contribution to preparations for the Intergovernmental Conference,¹ dated 10 November 2000, and subsequently in its Opinion on the amendment of the Treaties which it presented on 26 January 2000 in accordance with Article 48 of the Treaty on European Union,² the Commission stressed the benefits of reorganising the Treaties. It also saw "*considerable merit*" in dividing the Treaties into two separate parts. "*The Treaty texts would become simpler and more readable, something which is widely felt to be necessary. Such a distinction would also make it possible to introduce a less cumbersome mechanism for amending the implementing instruments than that currently in place for Treaty revisions and one better suited to the prospect of a doubling of the number of Member States*".

At the same time the Commission declared its intention of commissioning a feasibility study into reorganising the Treaties in this way and, depending on the results of this study, of presenting proposals to the Intergovernmental Conference.

On 15 May 2000, the Robert Schuman Centre of the European University Institute in Florence presented its report on the reorganisation of the Treaties to the Commission.³ Without going into the content and the scope of the provisions of the draft Basic Treaty and the annexes to it, the Commission believes that broadly speaking the technical work of the Florence Institute demonstrates the feasibility of a reorganisation of the Treaties. Although it is not realistic to expect this work to be completed in the course of 2000, the Commission nevertheless recommends that a procedural decision should be adopted by the Intergovernmental Conference so that future work on recasting the Treaties can start in due course, without interfering with the current enlargement process.

1. THE NEED TO REORGANISE THE TREATIES

1. Ever since the Treaty of Paris of 18 April 1951 establishing the European Coal and Steel Community, Europe has been continuously evolving, notably through the 1957 Treaties of Rome establishing the European Economic Community and the European Atomic Energy Community, the Single European Act, the 1992 Maastricht Treaty establishing the European Union and, lastly, the Treaty of Amsterdam. Four successive enlargements have increased the number of Member States from six to fifteen.

The "primary legislation" of the Union and the Communities is therefore made up of ten Treaties and a large number of Protocols. The four basic Treaties contain over 700 articles, some of them fundamental and others more technical. All these

¹ *Adapting the Institutions to make a success of enlargement*, contribution to preparations for the conference, Commission communication of 10 November 1999 (COM (1999) 592).

² *Adapting the Institutions to make a success of enlargement*, Commission Opinion of 26 January 2000 in accordance with Article 48 of the TEU (COM (2000) 34).

³ The report has been published on the Commission's Internet site:
in French: http://europa.eu.int/comm/igc2000/offdoc/repoflo_fr.pdf
in English: http://europa.eu.int/comm/igc2000/offdoc/repoflo_en.pdf
in German: http://europa.eu.int/comm/igc2000/offdoc/repoflo_de.pdf
The model for a Basic Treaty of the European Union can be found:
in French: http://europa.eu.int/comm/igc2000/offdoc/drafttreaty_fr.pdf
in English: http://europa.eu.int/comm/igc2000/offdoc/drafttreaty_en.pdf
in German: http://europa.eu.int/comm/igc2000/offdoc/drafttreaty_de.pdf

provisions, the fruit of fifty years of European integration, form a **complex and not very coherent whole**. As the Commission pointed out in its Opinion for the previous Intergovernmental Conference,⁴ the Treaties are becoming progressively less easy to read and to understand.

Simplifying the Treaties

2. Admittedly, the commitment of the people to Europe and their understanding of European issues do not depend solely, or even mainly, on the quality of the texts of the Treaties. But the fact remains that existing structures need simplifying. **It is very much in the Union's interests to have basic texts which reflect as logically and as accurately as possible the balances on which European integration is based.**
3. This question was raised at the last Intergovernmental Conference. The Amsterdam Treaty simplified the Treaties to **some extent by repealing and deleting provisions which had lapsed or were obsolete and renumbering all the articles.**

Consolidated versions of the two most important Treaties, the Treaty on European Union (EU) and the Treaty establishing the European Community (EC), were also drawn up, although they are only intended as a guide and have no legal force.

These operations helped to simplify the Treaties. However, they did not remedy the fact that the Treaties combine fundamental provisions with more technical provisions, sometimes differing greatly in importance, and the essential provisions are still scattered through different treaties.

The last Intergovernmental Conference also set in train an exercise aimed at consolidating the Treaties (cf. Declaration No 42 annexed to the Amsterdam Treaty), which also considered the possibility of **merging** them. This technical exercise revealed the scope for rationalisation. Eliminating redundant clauses in the various treaties and re-sorting their provisions on a more logical basis also helped to achieve greater readability. However, the treaties produced by this merger remain long and complicated,⁵ and still combine provisions of differing importance.

In favour of a Basic Treaty of the European Union

4. To go further, the Commission asked the European University Institute to analyse the provisions of the EU and EC Treaties and draw up a basic text containing only the essential clauses, without the implementing provisions. This operation leads to a Basic Treaty that is simple and easy to understand. The European Parliament has also called for the Treaties to be simplified and consolidated in a single text comprising two parts, the first containing constitutional provisions, the second the other areas covered by the existing treaties.⁶
5. The Commission notes, however, that **the reorganisation of the Treaties is justified regardless of changes to the amendment procedures.** For this reason, the Report

⁴ *Reinforcing political Union and preparing for enlargement*, Commission Opinion to the 1996 IGC, point 20.

⁵ Merging the EU Treaty and the EC Treaty alone would produce a text with 361 articles.

⁶ European Parliament Resolution A5-0086/2000 of 13 April 2000, point 31.1.

of the European University Institute does not consider the question of amendment methods.

2. REMARKS ON THE APPROACH PROPOSED BY THE EUROPEAN UNIVERSITY INSTITUTE

The Commission asked the Robert Schuman Centre of the European University Institute to look into the **legal feasibility** of restructuring the Treaties without departing from **the law as it stands**. The study concludes that such an operation is feasible. The method followed, of course, required the Robert Schuman Centre to make a number of choices. **The fact that the Commission broadly approves the approach taken by the Florence Institute does not prejudge its position on the choices made in order to meet the objective of maintaining the law as it stands, or on the content and scope of the provisions in the draft Treaty and the annexes to it.** The Commission is making only the following comments.

(a) Overall architecture

1. The report sets out the approach adopted in some detail. We shall confine ourselves here to describing the basic choices made:

- the operation is concerned solely with the EU and EC Treaties ;
- the present Treaty on European Union (the Maastricht Treaty, as amended by the Treaty of Amsterdam) is replaced by a **Basic Treaty of the European Union**;
- this Basic Treaty will include all the provisions of the EU and EC Treaties which are considered to be fundamental, arranged in logical order;
- the provisions of the current EU Treaty which are not included in the Basic Treaty (i.e. the provisions for implementing the common foreign and security policy and police and judicial cooperation in criminal matters) will be the subject of two Special Protocols annexed to the Basic Treaty;
- the EC Treaty, without the provisions included in the Basic Treaty, will continue to exist or may be annexed to this treaty in the form of a special Protocol in the same way as the two other Special Protocols mentioned above.

The Commission supports this approach which, in producing a new Treaty founded on the law as it stands, works on the assumption that the pillar structure will be kept.

2. The Commission is not, however, ruling out the possibility of extending the reorganisation of the Treaties **to all primary legislation**.

Leaving aside the ECSC Treaty, which expires on 23 July 2002, a comprehensive approach would involve also examining the Treaty establishing the European Atomic

Energy Community. Without expressing an opinion on whether it is politically appropriate to include the Euratom Treaty in the reorganisation exercise, the Commission notes that, from a technical point of view, the method applied after the last Intergovernmental Conference (cf. point 1.3. above) might conceivably be used. After the general institutional provisions set out in the Basic Treaty had been removed, the remaining clauses of the Euratom Treaty could be annexed to the Basic Treaty in the form of a Protocol, in the same way as the Special Protocols on the second and third pillars.

3. The reorganisation of the Treaties should also include the **accession treaties and the protocols attached to them**. Most of these provisions lapsed or became obsolete, of course, at the end of the transitional periods. The accession treaties nevertheless include a number of permanent provisions, such as the protocols relating to the application of Community law in certain territories.

Incorporating the still relevant provisions of the accession treaties into the revised Treaties of the future would allow the accession treaties to be formally repealed. Not only would this be simpler, it would also eliminate the need to translate these obsolete treaties into the languages of the new Member States as they joined. In the past, all the texts of primary law which existed legally were translated into the languages of acceding states, even if they no longer had any legal effect (cf. Article 176 of the Act of Accession of Austria, Finland and Sweden).

(b) The choice of provisions which should be included in the Basic Treaty

4. The choice of articles to be included in the Basic Treaty is, of course, a matter which merits the most careful attention. The authors of the report by the European University Institute in Florence concluded that it would be preferable to set out in the Basic Treaty the essential aims of each of the Union's policies.

Unlike a constitution, which merely defines the structure of the public authorities and their powers as well as the fundamental freedoms and rights of the people, the Treaties establishing the Communities and the Union include, sometimes in detail, the objectives of the policies which the European institutions are to follow. These policies thus form part of the basic pact between the Member States of the Union. The authors of the Florence report felt that they should have a place in the Basic Treaty.

5. The Report includes in the Basic Treaty only provisions relating to the composition and functions of the institutions and voting procedures. It might be possible, for example, to add the provisions on the powers of the Court of Justice, the operation of the codecision procedure or the conclusion of international agreements. The Commission also feels that the provisions on the territorial application of the Treaties, the languages to be used and the seats of the institutions should be included in the Basic Treaty.

(c) Limits of the law as it stands

6. The European University Institute's Report endeavours **to reorganise the Treaties in accordance with the law as it stands**. Despite the appeal of the attached model Treaty produced by the Institute, it must be acknowledged that the need to keep to existing law tends to make the text unwieldy, largely because the scope of certain

provisions originating in the EC Treaty must be limited when they are transferred to the Basic Treaty. Clause 13, for example, guarantees that a citizen who writes to an institution will have an answer in the same language, while stating that this right applies when the citizen is writing "within the framework of the EC Treaty"; Clause 52 states that the Economic and Social Committee and the Committee of the Regions will assist the Council and the Commission "in the tasks entrusted to the European Community". Clause 58 allows the European Parliament to adopt a motion of censure against the Commission in respect of its "European Communities" activities, etc.

In the Commission's opinion, the reorganisation of the Treaties should also make minor adjustments to improve the quality of the texts, but without altering their overall balance. The objective of maintaining the law as it stands is and will continue to be essential for the Commission.

3. CONCLUSION

The Commission proposes that the Conference should decide whether work should start on the reorganisation and simplification of the Treaties in the light of the technical work done by the European University Institute in Florence and the work on merging the Treaties carried out in accordance with Declaration 42 annexed to the Treaty of Amsterdam.

The Commission does not think it is realistic for the present Intergovernmental Conference to carry out this reorganisation of the Treaties in view of the timetabling constraints.

On the other hand, the political interest in this exercise is justification for the present Intergovernmental Conference to decide on a procedure and a timetable for completing this task. At all events this work should in no way interfere with the enlargement process.