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NOTE

from :	Presidency
to :	European Council
Subject :	European Council (19 and 20 June 2008) Progress report from the Presidency to the European Council - Preparatory work in view of the entry into force of the Lisbon Treaty

Delegations will find attached the progress report from the Presidency to the European Council on preparatory work in view of the entry into force of the Lisbon Treaty.

cf. Démocratie part / Justice citoyenne
 Protect. données perso.
 CDT / Composition de la Cour
 " / Nomination juges
 Comptologie / PRAE
 - Hive en service dée.
 - Révision décision
 PE / Procédure de codécision
 Parlement nationaux / Rôle UE
 JAI / Mécanisme nationale
 Budget / procédures budg.
 Program. lég. / Prog. annuelle et pluri.
 CS / Fonctionnement / Régl. 100.
 CS / Rôle et fonctionnement
 PEIC / Service europ action ext.

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PROGRESS REPORT FROM THE PRESIDENCY TO THE EUROPEAN COUNCIL

PREPARATORY WORK IN VIEW OF THE ENTRY INTO FORCE OF THE LISBON TREATY

Introduction

1. On 14 December 2007, the European Council agreed that it

"will take stock of progress on necessary preparatory work when appropriate so as to ensure the full functioning of the Treaty as soon as it enters into force. It underlines the comprehensive nature of this exercise and the consequent need for a single framework as well as political guidance at the highest level. Technical work will start in Brussels in January on the basis of a work programme which will be presented under the authority of the incoming President of the European Council."

The purpose of this report drawn up under the Presidency's responsibility is to provide the European Council with an overview of the work undertaken over the last six months in response to this mandate.

2. Preparatory work has taken place against the background of the ratification process for the Lisbon Treaty, which is still underway. It is clear that decisions can only be taken once the Lisbon Treaty has entered into force after ratification by all 27 Member States.
3. Over the last six months, the Presidency has convened a series of meetings of Permanent Representatives (including a Commission representative) to examine the various issues linked to the entry into force of the Lisbon Treaty (See Annex). This report contains a summary of the main points covered in this context.

4. In view of the fact that a number of issues related to the entry into force of the Lisbon Treaty will require some form of agreement with the European Parliament (EP), the Presidency has had regular informal contacts with the EP since the beginning of the year. These have remained exploratory in nature, but have enabled the Parliament to provide some useful information on the issues which are of particular interest to them, and which they consider will require a common understanding between the institutions.

5. The main point of contact has been with EP President Pöttering and his cabinet, but there have been separate meetings with representatives of the LIBE committee (on the issue of transition to co-decision in JHA areas) and regular budgetary trilogue meetings which have covered some budgetary aspects related to the entry into force of the Lisbon Treaty.

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State of play

1. Citizens' initiative (Article 11 TEU and Article 24 TFEU)

Article 11 (4) TEU introduces the possibility of citizens' initiatives inviting the Commission to submit any appropriate proposal on matters where at least one million citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties. The procedures and conditions required for such a citizens' initiative will have to be determined by a regulation based on Article 24 TFEU. Delegations had a preliminary exchange of views on questions such as what is meant by "nationals of a significant number of Member States", whether there should be a minimum number of signatories from each of these Member States, and some of the practical aspects of how such an initiative should be presented. The Commission will have to address these issues when drawing up its proposal for a regulation.

2. Data Protection (Article 16 TFEU and Article 39 TEU)

Delegations considered that the existing rules on data protection will continue to apply for as long as the new provisions in the Lisbon Treaty have not been implemented. The latter will be adopted on the basis of a Commission proposal in accordance with the ordinary legislative procedure, once the Lisbon Treaty has entered into force. Specific rules in the CFSP field will have to be adopted by the Council in line with Article 39 TEU.

3. Advocates-General (Declaration n° 38 of the 2007 IGC and Article 252 TFEU)

In Declaration n° 38, the Conference declared that the Council would agree on an increase of the number of Advocates General if the Court of Justice requests this. In view of the fact that this declaration was an important element of the overall compromise on institutional matters, such a request from the Court of Justice is expected very soon after the entry into force of the Treaty.

4. Consultative Panel for nomination of judges (Article 255 TFEU)

The initiative here lies with the President of the Court of Justice. It was underlined that decisions establishing the Panel will be required as soon as possible after entry into force of the Treaty, since the Panel will need to be functioning as early as possible given that a number of appointments to the Court are foreseen in the course of 2009.

5. Delegated and Implementing Acts (Articles 290 and 291 TFEU)

On delegated acts (i.e. non-legislative acts of general application to supplement or amend certain non-essential elements of a legislative act), delegations agreed that there was no legal requirement for horizontal rules, such as an Inter-Institutional Agreement, to implement the provisions of Article 290. However it would be useful if the Commission could propose standard language for insertion into new legislative proposals after the entry into force of the Treaty, and that this be agreed between the three institutions. In the meantime, the ongoing work on aligning existing legislation with the Regulatory procedure with scrutiny would continue.

On implementing acts (i.e. acts conferring implementing powers on the Commission, or in some cases, on the Council), it was widely accepted that there is no urgent legal need to adopt a new "comitology" decision (on the basis of Article 291 (3) TFEU) since the existing decision is compatible with the new Treaty and can continue to apply (with the exception of the Regulatory procedure with scrutiny - which will in future be covered by the provisions on delegated acts).

6. Transition to co-decision

As a result of the entry into force of the Lisbon Treaty, the procedure for adopting legislative acts will change in a certain number of areas. This raises the question as to how to handle proposals that are currently pending (or that may still be issued under the existing Treaty rules) and to ensure that legislative activity is not unduly disrupted as a consequence of the transition to the new Treaty. Delegations examined this question on the basis of lists setting out outstanding proposals in the areas of JHA, divided into various categories. There was general agreement that proposals on which political agreement will have been reached before the summer break or shortly afterwards, and on which the EP will have delivered its opinion, should in principle be adopted before the end of the year. Contacts with the EP should be used to sound out its readiness to deliver its still outstanding opinion on urgent dossiers, so as to allow adoption before the end of the year. In the case of dossiers that cannot be adopted before the entry into force of the Lisbon Treaty, there was agreement to follow the approach used in the past for the entry into force of new Treaties. This means that in these cases the Council could invite the EP to accept that wherever it has already delivered its opinion the latter could be considered as a first reading under co-decision.

Concerning the involvement of national parliaments introduced by the Lisbon Treaty, it was confirmed that legally the new provisions would only apply to new proposals submitted after the entry into force of the Treaty. One delegation felt that national parliaments should nevertheless be consulted on legislative proposals still pending on 1 January 2009, at least on the most recent proposals and where there is no particular urgency. More generally, several delegations underlined the importance of ensuring that documentation reached national parliaments in good time and in their own languages.

7. Committee structures in the area of JHA (Article 71 TFEU)

Discussions covered both the role of COSI (the internal security committee) as well as the wider aspects of the future committee structure.

There was a broad measure of agreement that COSI should ensure effective operational cooperation and coordination, identify possible shortcomings or failures and make appropriate recommendations to address them. It should not be involved in the legislative process, but due account of operational needs would be taken in the legislative process. It was recognised that the Committee would need to be capitals-based, but provided with adequate Brussels-based support. It was accepted that there would no longer be a need for a formal role for the Police Chiefs Task Force.

The outcome of the discussions will serve as the basis for the future decision establishing the Committee.

There were some differences of view over future structures in the JHA area. Many delegations saw the new treaty as an opportunity to streamline the existing structures. In their view, SCIFA should therefore be abolished, and CATS (no longer foreseen in the new Treaty) not be recreated. Other delegations however said they wanted to maintain SCIFA, and a few of them also wanted to keep CATS, albeit in a slimmed-down version. This point will need to be the subject of further discussions.

8. Budget for 2009

The budget for 2009 has to be prepared according to the procedures under the current treaties, but will need to include some provision for the resources needed as a consequence of the entry into force of the treaty. Various options were examined as to how this might be done. Concerning the budgetary needs of the European Council, an addendum to the budget estimates will be presented to set aside a contingency amount on which the Council will take a decision in accordance with the normal budgetary procedures. As part of the discussions on this point, several delegations underlined the need to cater for the budgetary needs of both the EEAS and the European Council. (Concerning the EEAS, see point 12).

9. Budget Procedure

Following a preliminary discussion amongst Permanent Representatives, the Budget Committee was invited to carry out an analysis of the implications of the Lisbon Treaty for the budget procedures. The Committee subsequently identified issues which it considered needed to be addressed in order to allow for the smooth entry into force of the Treaty. It also established a provisional list of those provisions in the Inter-Institutional Agreement and Financial Regulation which will be affected or rendered obsolete by new provisions of the Treaties. It was agreed that the Budget Committee should continue its work on these issues.

In the light of the outcome of discussions at a trilogue meeting on 16 April, a provisional calendar for the 2010 budget process was agreed by Permanent Representatives.

10. Programming (Declaration n° 9 of the 2007 IGC and Article 17 TEU)

There was broad agreement that the current arrangements function satisfactorily and that the overall aim should be to streamline existing procedures and avoid duplication. The general view was that the multi-annual programme of the Council referred to in Declaration n° 9 would be the same as the 18 month programme prepared by the group of three Member States holding the Presidency. There was broad agreement that overall responsibility for programming should rest with the three Presidencies and that the President of the Foreign Affairs Council should take part in the process. The issue of the involvement of the President of the European Council in the preparation of the 18 month programme was also raised.

As regards the inter-institutional agreements on programming referred to in article 17 TEU, delegations considered that they should not be binding, and that each institution must retain responsibility for the organisation of its own work.

11. Rules of Procedure of European Council and Council (Articles 235 and 240 TFEU)

On the basis that the Council's Rules of Procedure should only be modified to the extent that this was needed as a result of the entry into force of the Lisbon Treaty, Permanent Representatives examined possible amendments to the existing Rules. Broad consensus was reached, subject to the inclusion of several provisions related to the division of labour between the GAC and the FAC and the preparation of European Council meetings, which it was agreed would be examined at a later stage.

Considerable progress was made on technical aspects of the European Council's Rules of Procedure; some other issues, related in particular to the preparation of European Council meetings, will require further work. A preliminary exchange of views focussed on the respective roles of those involved in the preparation of European Council meetings. There was broad support for the need for all of them to work closely together. A significant number of delegations underlined the need to ensure an adequate role in European Council meetings for the Head of State or Government of the Member State holding the Council presidency. These issues will require further work.

12. European External Action Service (Article 27 (3) TEU and Declaration n° 15 of the 2007 IGC)

In line with the terms of Declaration n° 15 of the IGC, discussions began on the EEAS, with reference to the very useful work already undertaken in 2005. There was broad consensus that the EEAS should be in place and operating from the beginning (even though the attainment of full operational capability would inevitably take some time). This meant that the decision on the organisation and functioning of the EEAS foreseen in Article 27 (3) TEU should be taken as soon as possible after the entry into force of the Treaty. This requires the main elements of the decision to be the subject of political agreement before the end of 2008. In particular, further technical discussions are needed to translate the *sui generis* nature of the EEAS (being separate from both the Council and Commission but with close links to both) into operational terms. It was underlined that administrative support could be provided to the EEAS from both the Council and the Commission. A number of delegations underlined the need for a draft organigramme of the future EEAS.

Delegations agreed that the EEAS should not only assist the High Representative in fulfilling his mandate, but should also provide support for different institutions as appropriate, as well as the Member States.

On the scope of the EEAS, preliminary views tended towards the inclusion of the Policy Unit and the relevant services of DGE (GSC) and DG Relex (Commission), constituting single geographical and thematic desks. There was consensus that trade should remain in the Commission. Most delegations considered that enlargement as such should stay in the Commission, but accepted that relations with candidate countries had important foreign policy aspects that should also be covered by the EEAS. There was a feeling that more work was required on areas such as development cooperation or ESDP structures and crisis management.

On staffing issues, it was recognized that primary responsibility lay with the High Representative. The importance of ensuring an adequate number of diplomats from the Member States participating in the Service at all levels from the outset was underlined. There was broad consensus that they should be temporary agents rather than national experts, and that Member States' diplomats and staff coming from the institutions should have equivalent status and roles. A significant number of delegations referred to the need for adequate geographical balance. Appropriate arrangements should be made to ensure staff mobility.

There was broad agreement that under the Treaty, the High Representative would be responsible for the management of the EEAS as well as budgetary and staff matters. This means that the legal status of the EEAS will have to provide an adequate degree of autonomy in these matters. In a preliminary discussion on how to achieve this, a number of different options were examined. It was generally agreed that more work was urgently needed on the detailed implications of these options.

Some delegations underlined that the establishment of the EEAS should aim at budget neutrality.

13. Chairmanship of preparatory bodies in the area of External Relations (Declaration 9)

It was recognised that the timing of this issue was closely linked to the establishment of the EEAS. There was broad support for addressing this issue on the basis of dividing up working groups into different categories. There was consensus for working groups in the area of trade and development to stay with the rotating Presidency. Likewise, delegations agreed that ESDP-related working parties should have a stable chairmanship. Differences however arose over geographical and horizontal working groups. Most delegations wanted the geographical groups to continue to be chaired by the rotating Presidency. Some considered this should be a permanent arrangement; others preferred combining this either with a review clause or a fixed transition to permanent chairs after a pre-determined period. Concerning horizontal groups, there was an openness to accept permanent chairs, but several delegations felt that this should be done on a case-by-case basis. The issue of the method for selecting permanent chairs was addressed and will require further discussion.

14. Issues relating to the General Affairs Council (Article 16 TEU)

Concerning Council configurations, there was a broad consensus that at this stage the existing configurations should be maintained (except for the separation between the GAC and the FAC, as foreseen in the new Treaty), without however excluding having a fresh look at this question at a later stage.

Concerning the scope of work of the GAC, there was general support for taking the description in the current Rules of Procedure of the division between the two parts of the GAERC as a useful basis for future decisions. This means apart from being in charge of preparations for the European Council and general coordination, the GAC would deal with institutional questions (in the broad sense, including possibly questions such as subsidiarity, better regulation, relations with other institutions), financial perspectives, programming and enlargement as well as follow cross-cutting issues such as the Lisbon Strategy. There was significant support for trade being covered by the FAC, but some saw this as more appropriate for the GAC. Some wanted the GAC to handle budget issues, but this was strongly opposed by a number of delegations. Differences of view were expressed on where the solidarity clause and civil protection should be covered.

As to the coordinating role of the GAC, there was consensus that this needed to be strengthened. There was general recognition of the importance of the role of the GAC in the preparation and follow-up of European Council meetings and the consequent need for close cooperation between the President of the European Council and the rotating chair of the GAC as well as the Commission. There was general feeling that the composition of the future GAC should reflect the importance of its role; at the same time, everybody accepted that it was for each Member State to decide on how best to achieve that objective.

Treaty implementation

calendar of meetings

- 16 January** : Presentation by Presidency on calendar and handling
- 24 January** : a) Citizens initiative
b) Data protection
c) Advocates-General
d) Consultative Committee for the nomination of Judges
e) Implementing and delegated acts
f) Financial Regulation
g) Transition to co-decision
- 20 February** : a) Committee structures in the JHA area
b) Implementing and delegated acts (report from Antici)
c) Transition to co-decision (report from Antici)
- 6 March** : Council budget for 2009
- 19 March** : a) Council Budget 2009 (follow-up discussion)
b) Budget procedure
- 2 April** : a) Issues related to the Rules of Procedure of European Council and Council
b) Programming (report from Antici)
- 9 April** : Budget procedure (follow-up discussion on basis of report from Budget Committee)

- 10 April** : Preliminary discussion on European External Action Service
- 16 April** : a) Assessment of progress + presentation of updated work programme
b) Council Rules of Procedure (mandate for Antici)
- 24 April** : a) Follow-up discussion on COSI
b) Budget (debrief from Presidency on 16 April trilogue)
- 30 April** : a) Chairmanship of preparatory bodies in Relex
b) Scope of work of GAC and FAC
- 7 May** : Follow-up discussion on European External Action Service
- 13 May** : EEAS : scope
- 20 May** : a) Transition to co-decision : presentation of list of pending proposals
b) Follow-up discussion on COSI
- 21/22 May** : a) Report on Antici discussions on the Council's Rules of Procedure
b) European Council Rules of Procedure
- 28 May** : a) Issues relating to the General Affairs Council
b) Report from Budget Committee on discussions on pragmatic calendar and other budgetary procedure issues
- 4 June** : Chair of Working Groups in Relex area
- 9 June** : Rules of Procedure of the European Council
- 11 June** : a) EEAS: budget and legal status
b) Follow-up discussion on COSI
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