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# Bringing the Citizen Back In: The Case of the IGC 1996

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INSTITUT FÜR HÖHERE STUDIEN  
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Editor:

**Josef Melchior**

## **Abstract**

The study investigates how the European Council, the Commission, the European Parliament, the Reflection Group and the Intergovernmental Conference (IGC) 1996 conceptualised the relationship between the European Union and the citizens. Given the vague and undefined goal of "bringing the European Union closer to its citizens" the study identifies and compares the strategies of the different actors in this respect.

The study shows that quite different approaches were adopted by the actors involved. Tensions exist between strategies which put emphasis on input in contrast to output oriented measures and between approaches which aim at promoting a single "community of European citizens" in contrast to a "European community of national citizens".

The study argues that, although these approaches seem to conflict, in fact, they could be reconciled. The last part of the study substantiates this claim by exploring the potentials and limits of strategies of promoting a European community of citizens in the societal, political, and cultural spheres.

## **Zusammenfassung**

Die vorliegende Studie untersucht, wie die Beziehung zwischen der Europäischen Union und ihren Bürgern in den Vorschlägen zur Vertragsreform vom Europäischen Rat, der Kommission, dem Europäischen Parlament, der Reflexionsgruppe und der Regierungskonferenz 1996 konzeptualisiert wurde. Ausgehend vom vagen und wenig aussagekräftigen Ziel, die "Europäische Union näher zu den Bürgern zu bringen", werden die Strategien der verschiedenen Akteure identifiziert und verglichen.

Die Studie zeigt, daß sich die Strategien der untersuchten Akteure wesentlich voneinander unterscheiden. Es besteht ein Spannungsverhältnis zwischen Strategien, die eher auf "input" orientierte Maßnahmen setzen und auf die Verwirklichung einer einheitlichen "Gemeinschaft von europäischen Bürgern" zielen und solchen, die "output" orientierte Maßnahmen bevorzugen und deren Ziel es ist, eine "europäische Gemeinschaft von Staatsbürgern der Mitgliedsländer" zu formen.

Es wird argumentiert, daß diese sich scheinbar widersprechenden Strategien teilweise miteinander in Einklang gebracht werden können. Dieser Anspruch wird im letzten Teil untermauert, in dem die gesellschaftlichen, politischen und kulturellen Möglichkeiten und Grenzen der Förderung einer europäischen Gemeinschaft von Bürgern analysiert werden.

**Note**

This study is part of the project “On a European Union of Citizens”, commissioned by the Austrian Federal Chancellery.



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## Zusammenfassung

Die vorliegende Studie untersucht, wie der Europäische Rat, die Europäische Kommission, das Europäische Parlament, die Reflexionsgruppe und die Regierungskonferenz von 1996/97 auf die Legitimationsprobleme, die nach Maastricht offensichtlich geworden waren, reagierten. Im Zentrum stehen dabei die Versuche, die EU "bürgernäher" zu gestalten. Die Regierungskonferenz 1996/97 schien dafür eine Möglichkeit zu bieten. Die Europäischen Institutionen waren aufgerufen, ihre Vorstellungen über die Weiterentwicklung der EU vorzulegen. Von allen Akteuren wurde der Verbesserung der Beziehungen zwischen der EU und den Bürgern große Aufmerksamkeit geschenkt, weshalb sie sich besonders dafür eignen, die vorgeschlagenen Reformen auf ihre Nachhaltigkeit und ihr Potential hin zu untersuchen, die EU in Richtung auf eine "Gemeinschaft von Bürgern" weiterzuentwickeln. Der Begriff der "Bürgernähe" blieb jedoch weitgehend unbestimmt, so daß kaum abschätzbar war, ob ein solcher Ansatz das entstandene Legitimationsdefizit überbrücken könnte, und welche Konsequenzen sich daraus für die Beziehungen der EU zu ihren Bürgern ergeben würden.

Der erste Teil widmet sich einer detaillierten Rekonstruktion der Vorschläge der verschiedenen Akteure, wie das Ziel einer größeren Bürgernähe der EU erreicht werden soll. Die Analyse ergibt sehr unterschiedliche akteursspezifische Profile, wobei sich die Vorschläge sowohl in der Zielvorstellung und im Umfang als auch hinsichtlich der vorgeschlagenen Mittel wesentlich unterscheiden. Sieben Kernelemente konnten identifiziert werden, die in den verschiedenen Strategien eine jeweils unterschiedlich große Rolle spielen:

1. Gemeinsame Werte, Prinzipien und Ziele
2. Die Absicherung öffentlicher Dienstleistungen und nationalstaatlicher Praktiken
3. Effektivität und Effizienz
4. Populäre Politiken
5. Rechtsstaatlichkeit
6. Transparenz
7. Bürgerschaft

Um die Strategien der verschiedenen Akteure vergleichen zu können, wurde zwischen Input- und Output-bezogenen Strategien einerseits, zwischen nationalstaatlich und europäisch orientierten Ansätzen andererseits unterschieden. Input bezogene Maßnahmen spielten insbesondere in den Strategien der Europäischen Kommission und des Europäischen Parlaments eine große Rolle, während die Output-Orientierung beim Europäischen Rat und in der Regierungskonferenz selbst dominierte. Eine ähnliche, wenngleich weniger stark ausgeprägte Differenzierung war hinsichtlich der Orientierung entweder auf die nationalstaatliche bzw. europäische Ebene zu bemerken. Die Vorschläge der Kommission und des Europäischen Parlaments zielten stärker auf die Weiterentwicklung von direkten

Beziehungen zwischen der EU und den Bürgern als die der übrigen Akteure. Die Wahl der bevorzugten Strategie spiegelt die institutionelle Rolle und das Eigeninteresse der jeweiligen Institutionen deutlich wider, sowohl hinsichtlich der Bevorzugung von Input oder Output-orientierten Maßnahmen als auch im Hinblick auf die Berücksichtigung der nationalen oder der europäischen Ebene.

Ein Vergleich der eingebrachten Vorschläge mit den Ergebnissen des Amsterdamer Vertrages zeigt, daß das Ergebnis deutlich die Präferenzen der unmittelbar beteiligten Akteure wider gibt, während Vorschläge von anderen Akteuren wenn überhaupt, dann nur in abgeschwächter Form Eingang in den Vertragstext gefunden haben. Angesichts der deutlich unterschiedlichen Schwerpunktsetzungen aller Akteure heißt das, daß das gesamte Spektrum an Möglichkeiten, die EU "bürgernäher" zu gestalten, keineswegs ausgeschöpft wurde. Das gilt selbst, wenn man lediglich im Rahmen der vorgebrachten Vorschläge bleibt und weiterreichende Alternativen außer Acht läßt.

Im letzten Teil der Studie werden die bisher verfolgten Strategien des Aufbaus einer Europäischen Gemeinschaft von Bürgern unter Berücksichtigung der gesellschaftlichen, politischen und kulturellen Dimension analysiert, um unausgeschöpfte Ressourcen und Optionen zu identifizieren. Die bisherige Integration war auf die gesellschaftliche Dimension der Gemeinschaftsbildung konzentriert, deren Potentiale sich allmählich erschöpfen. Die wichtigste Ressource war dabei die Herstellung der Freizügigkeit der Personen. Obwohl die rechtlichen und administrativen Hindernisse beinahe beseitigt sind, stößt die Mobilität der Personen auf schwer überwindbare kulturelle Barrieren. In der kulturellen Dimension besteht für die EU lediglich die Chance, sich als "zivilisierender" Faktor zu etablieren, wobei sie nicht nur auf die Erhaltung der nationalen Identität, sondern auch von regionalen bzw. Identitäten von nationalen Minderheiten Bedacht zu nehmen hätte.

Das größte und bislang noch weitgehend unausgeschöpfte Potential für die Entwicklung einer Europäischen Gemeinschaft von Bürgern wird in der politischen Dimension geortet. Eine Reihe von Maßnahmen zur stärkeren politischen Beteiligung der Bürger am Integrationsprozeß und zur Erhöhung der Verantwortlichkeit der europäischen Institutionen werden vorgeschlagen wie z.B. verschiedene Formen von europäischen Referenden bzw. Volksinitiativen, die Beteiligung nationaler Parlamente und des EP an der Bestellung des Kommissionspräsidenten, die Förderung der Entstehung einer europäischen Öffentlichkeit durch öffentlich zugängliche politische Informationsnetzwerke und eine europaweite Verfassungsdebatte.

## Introduction

The aim of this study is to explore and assess the approaches developed by the European Council, the Commission, the European Parliament, the Reflection Group, and the Intergovernmental Conference (IGC) 1996/97 towards the aim of “bringing the European Union closer to its citizens”. In the first part, we analyse the proposals put forward by the mentioned institutions in the run up to the IGC with the aim of highlighting the characteristics and different understandings of the respective actors of the problem and of the solutions concerning the relationship between the EU and the citizens.

The second part is devoted to the comparative analysis of the strategies of the European actors in this respect. By isolating core elements and by developing an analytical framework which allows to assess the adopted strategies we expose the critical choices and the different conceptions of a European Union of citizens which informed the IGC 1996 and which determined its outcome.

The third part draws on findings of some other studies undertaken in this project and assesses from a normative point of view the options available in order to develop a “European community of citizens”. By distinguishing between the societal, political, and cultural dimension of community the achievements of European integration and the potentials for further development are examined.

## 1. Addressing the Citizens

The Maastricht Treaty (Art. N (2) TEU) envisaged the convening of another Intergovernmental Conference in 1996 which was supposed to find solutions to problems which had not been solved or dealt with in a satisfactory way during the Maastricht negotiations. While the examination of some of the provisions of the Maastricht Treaty was already foreseen by the Maastricht Treaty the agenda for the conference had yet to be developed. A number of Member States pushed for institutional reforms which should address the problem of future enlargement of the Union and of making the Union more efficient and effective in its capacity to act. A third major theme for the IGC emerged out of the diminishing public support for European integration following the ratification of the Maastricht Treaty: the quest for how to make the EU more appealing to the European citizens. Yet it was rather unclear how and by which means this could be achieved.

The European Council meeting in Corfu (24.–25. 6. 1994) agreed to set up a “Reflection Group” that was given the mandate to prepare the agenda for the IGC 1996. Its work was going to be based on reports from the institutions of the EU on the functioning of the Treaty on European Union and should explore “possible improvements in a spirit of democracy and openness” (Presidency Conclusions 24.–25. 6. 1994). The involvement of the European institutions and the composition of the Reflection Group with two representatives of the European Parliament and a personal representative of the President of the Commission also taking part alongside the personal representatives of the Foreign Affairs Ministers signalled that the preparatory phase was open to opinions and perspectives other than those of the Member governments alone. At this time no special emphasis was put on questions relating to the citizens. The situation changed when the “Reflection Group” started its concrete work after having been set up at Messina, 2<sup>nd</sup> June 1995.

### 1.1 The Approach of the European Council

Meeting in Cannes and discussing the tasks for the “Reflection Group” the European Council for the first time – in regard to the IGC 96 – stated its intentions concretely of how to make the EU more appealing to its citizens. It identified “a number of priorities to enable the Union to respond to its citizens’ expectations:

- to analyse the principles, objectives and instruments of the Union, with the new challenges facing Europe;
- to strengthen common foreign and security policy so that it can cope with new international challenges;

- to provide a better response to modern demands as regards internal security, and the fields of justice and home affairs more generally;
- to make the institutions more efficient, democratic and open so that they are able to adjust to the demands of an enlarged Union;
- to strengthen public support for the process of European integration by meeting the need for a form of democracy which is closer to the citizens of Europe, who are concerned at employment and environment questions;
- to put the principle of subsidiarity into practice more effectively.” (Presidency Conclusions 26.–27. June 1995).

At the meeting of the European Council in Madrid (15.–16. December 1995) the heads of governments outlined in more detail what they had in mind when speaking about a “citizen-friendly Europe”.<sup>1</sup> They identified five broad priorities which should help to redefine the relationship between “Europe” and its “citizens”: a) subsidiarity; b) policy areas which are of a major concern for the citizens; c) the area of justice and home affairs; d) fraud and protection of financial interests; and e) simplification of law and administrative practices.

- Concerning **subsidiarity** the Heads of states confirmed the guidelines for the implementation of the principle of subsidiarity as they had been defined in their meetings in Birmingham and Edinburgh. They received the second report of the Commission on the practice of subsidiarity and asked the Commission to scrutinise existing and pending legislation according to the principles of subsidiarity and proportionality.
- The European Council identified the following policy issues as being close to the citizens’ concerns: the fight against **social exclusion**; **equality of men and women** (the 4<sup>th</sup> programme in this field was accepted); the importance of political action in the field of **culture** (promoting the conclusion of the RAPHAEL-Programme on the conservation of the common cultural heritage; renewal of the Media-Programme, and concluding a directive on “Television without frontiers”); and the **promotion of health protection** through studies, research programmes, information campaigns, and further education in the health services.

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<sup>1</sup> The German version speaks of a “bürgernahes Europa” (Europe close to its citizens). The English terminology refers to a relationship in which “Europe” is treating its citizens friendly. The question then is: “Who represents ‘Europe’?” To suggest that it is the European institutions which should treat the citizens “friendly” does not seem to be far off. Both the English and the German terminology make clear that “Europe” and the citizens cannot be identified and that “Europe” either represented by the European institutions or the Member States are the ones who should be the active part and should act differently in dealing with the “citizens”.

- Under the same heading the European Council dealt with the **transparency** question in relation to the work of the Council which adopted a “code of conduct” which should make it easier for the public to gain **access to protocols and declarations which the council passed in its capacity as legislator**. It also welcomed that a growing number of public debates had been televised.
- The last policy area which came under this heading was **consular protection** where two decisions had been adopted.
- The field of **justice and home affairs** was given special treatment since it aims at creating “an area of freedom and security” for the citizens. The European Council urged the Council to intensify co-operation and the Commission to prepare concrete measures in order to put the joint declarations into practice and to draw effective conclusions from the various reports and conferences which dealt with the respective issues of **terrorism, drug trafficking, judicial co-operation, immigration, asylum, and visa policy, and the fight against racism and xenophobia**.
- Fighting the wasteful use of European funds, improving the financial management of the EU budget, and a common approach to the treatment of corruption as a criminal offence were the main points in the European Councils approach to secure the **financial interests of the Community**.
- The aim of **simplification of legislative and administrative regulations** was primarily directed at easing the bureaucratic burden for business. The Commission as well as national authorities were urged to give priority to these concerns.

In March 1996 the Turin European Council presented the agenda for the IGC in more detail and with a somewhat broader approach towards institutional reform including concerns for democracy and legitimacy. Nevertheless, the distinction between matters concerning the citizens which focused on certain principles and policies on the one hand and institutional reform as a precondition for enlargement on the other hand was held up. Consequently, the European Council named three key priority areas: 1. “A Union closer to its citizens”, 2. “The institutions in a more democratic and efficient Union” and 3. “A strengthened capacity for external action of the Union” (Presidency Conclusions 29. March 1996). The chapter concerned with the citizens consisted of the following proposals which had not yet been addressed:

- The IGC was asked to look for possibilities to **strengthen fundamental rights** and their **protection** in the Union.
- A second new point was to improve co-operation and co-ordination of the national policies concerning **employment**.



- A third new element consisted in the wish to examine the compatibility of the principle of undistorted competition with **access to fundamental public services**.
- **Environmental protection** should be made more effective and coherent at the level of the Union, with a view to a **sustainable development**.

It is important to note that the European Council finally did not relate the question of institutional reform to the aim of bringing the Union closer to its citizens. Instead, the questions of “weighting of votes, the threshold for qualified majority decisions, number of members of the Commission and any other measure deemed necessary to facilitate the work of the Institutions” were explicitly directed at their “effective operation in the perspective of enlargement” (Presidency Conclusions 26.–27. June 1995).

### **1.1.1 Assessing the European Council’s Approach**

The following table gives an overview of the European Council’s suggestions grouped by categories which help to identify the main aims and means of “bringing the European Union closer to its citizens” and which allow for a comparison of different approaches. The categories used to group the proposals were chosen to grasp the symbolic dimension of attachment to the EU (values / principles and objectives), the legal dimension of the citizen’s relation to the EU (rights; rule of law), the institutional dimension (institutions; procedures), and the performance dimension (practices, effectiveness; policies). Such a grouping allows for a differentiated analysis of the different strategies since it takes into account the concrete meaning and the degree of specificity of the proposals. Therefore, the same nominal proposals may show up in different categories if the context and the actual meaning so deserve.

**Changes Proposed by the European Council**

values and principles	– compatibility of the principle of undistorted competition with the principle of access to fundamental public services
objectives	– fight against social exclusion – fight against racism and xenophobia
rights	– strengthening fundamental rights and their protection
rule of law	– common approach on treating corruption as a criminal offence – simplifying legislative and administrative regulations
institutions	-----
procedures	-----
practices	– fighting wasteful use of European funds
effectiveness / efficiency	– code of conduct concerning access to documents which the Council passed in its capacity as legislator in order to improve transparency – guidelines for applying the principles of subsidiarity and proportionality – improving financial management of the EU budget – efficiency of working methods of the Commission – making consular protection work
policies	– co-operation and co-ordination of national employment policies – programme on enhancing equality of men and women – programmes in the field of culture – promote policies on terrorism, drug trafficking, judicial co-operation, immigration, asylum, visa policy – promotion of health protection

The strategy of the European Council to address the citizens is derived from an explicit statement of what the European Council regards as the citizen's expectations in the given situation. The strategy is based on the assumption that the EU would move closer to the citizens if it fulfils their expectations better. This is clearly reflected in the emphasis on developing policies at the European level which address the presumptive concerns and priorities of the citizens in the Member states (employment, internal security, crime, migration, etc.). The same is true in regard to the principle of universal public services. Its introduction would help the Member state's to protect their public services from being privatised or even having to be suspended. Accepting the principle of universal public services would balance the given doctrines of free competition and it would help to change the public image of the EU as being on the forefront of deregulation and unlimited competition which might undermine its

acceptance at least in some of the Member states. Furthermore, such a principle would enhance the Member states' scope for political regulation and its capacity for the domestic production of public goods.

A second focus is on enhancing the effectiveness and efficiency of the workings of the EU. Demanding a more efficient application of the subsidiarity principle is directed against fears that the EU would further undermine the sovereignty of the Member states and their regions and that an unwanted centralisation of competencies may occur. A sound financial management of the EU and measures on corruption and fraud are requested in order to avoid resistance against financial transfers between regions and as a precaution against the erosion of the willingness particularly on behalf of the net-payers in the Union to contribute large amounts to the EU's budget who might suspect that huge amounts of their money are spent inadequately or wasted. The aim to simplify regulations addresses also primarily practical concerns of enterprises obliged to comply with them.

A third but rather weak focus is on the citizens as bearers of rights and members of a community. The fight against social exclusion, racism and xenophobia is merely stated as an aim. The proposal to strengthen fundamental rights and their protection goes without any qualification of which rights should be included, how they should be protected, and to whom these rights may apply. There is only one very specific and limited proposal which addresses the relationship between the citizens and the Council. By adopting a "code of conduct" the public should gain improved access to certain documents adopted by the Council.

What is striking in the European Council's approach is its primarily instrumental view of the relationship between the citizens and the EU. It is instrumental in so far as the proposals are designed to improve the performance of the European Union in order to meet given expectations of the citizens in terms of the provision of certain goods (via new policies and a better functioning of the EU's machinery). The citizens are perceived as consumers of European decisions and outcomes with no stake in their production. The EU and the Member states are supposed to act on the citizens' behalf taking their concerns as seriously as possible but no attempt is made to change the EU's position as a benign "care-taker" of the citizen's concerns towards a more direct involvement of the European citizens.

Consequently, the proposals of "bringing the European Union closer to its citizens" are separated from those which aim at institutional reform. A more democratic and transparent institutional set-up of the EU is regarded as a prerequisite for an efficient interplay between the institutions particularly in face of enlargement, not as a means of representing the citizens' interests better or of bringing the Union institutions under public control. Such an approach corresponds to the view that the legitimacy of the European Union is dependent on serving the interests of the Member state's nationals and that these interests are best met when the

European Union adapts to the preferences identified and mediated by the Member states' representatives.

## 1.2 The Approach of the European Commission

On the 10<sup>th</sup> May, 1995 the European Commission published its "Report on the Operation of the Treaty on European Union". Starting from the proposition that the Maastricht Treaty ratification debate had revealed widespread scepticism about European integration among the European population the Commission concluded that the first challenge is "to make Europe the business of every citizen". This should be achieved by making the Treaty's objective of a Community closer to the citizen the "overriding principle which guides its actions". This intention is reflected in the report which evaluates the Treaty under the premise that the Union must act "democratically, transparently and in a way people can understand". While democracy is seen by the Commission as the essence of the Union, acting "effectively, consistently and in solidarity" is seen as the precondition for its future functioning. According to these principles the report is divided in two parts: the first part highlights the question of "Democracy and transparency in the Union" while the second part focuses on "Effectiveness and consistency of the Union's policies". It is the first part which addresses the citizens directly.

The approach of the Commission consists of two elements: a) it aims at promoting the sense of belonging to the Union and at enhancing the Union's legitimacy, and b) it stresses the need for transparency. "A Union that is closer to the people has to be a Union where decisions are easier to comprehend, whose actions are better justified, whose responsibilities are clearer, and whose legislation is more accessible" (Commission Report 10. 5. 1995, 29). These objectives should be made operational by a number of concrete measures:

- Starting from the premise that **Union citizenship** has created a direct link between the European institutions and the citizens the Commission argues that it should be developed to the full by writing a list of fundamental rights into the Treaties. This claim is deduced from the assessment that Union citizenship has only conferred fragmented and incomplete rights to the citizens which are subject to restrictive conditions. Only developed citizenship would be able to make belonging to the Union more tangible for the citizens.
- Strengthening the legitimacy of the European institutions is another concern of the Commission. Although its assessment of the improvements introduced by the Maastricht Treaty is positive concerning the enhancement of democratic legitimacy the Commission criticises the nearly complete lack of **democratic control in the second and third pillars** where intergovernmental relations and procedures dominate.

- The complexity and inconsistency of the decision-making procedures introduced by the Maastricht Treaty are criticised. In particular, the application of different procedures regarding the budget and legislative acts is found to be unwarranted as well as the lack of logic in the choice of the various procedures and the different fields of activity where they apply. These shortcomings lead to unnecessary arguments between the institutions concerning the legal basis of specific measures and acts to be taken and it delays the decision-making process. The Commission concludes that both **the budget and the legislative procedures should be radically simplified** and a **hierarchy of acts** should be introduced. Although these proposals are primarily aimed at enhancing the effectiveness of decision-making and at smoothening the co-operation between the institutions such a reform is also expected to make the legislative processes more comprehensible to the citizens and thus furthering their legitimacy.
- Improving **judicial review** and enhancing the role of the European Courts and the Community is another point made by the Commission in this context. In the **second** and, particularly, in **third pillar** the minor role of the European Courts and the **lack of transparency** – due to the intergovernmental practices applied – cannot adequately guarantee the protection of individual rights and freedoms.
- Concerning the **fight against fraud** the Community is reported to lack an adequate legal basis and effective instruments while the responsibility to secure the **protection of the financial interests of the Community** is said to rest primarily with the Member states.
- The principle of **subsidiarity** should be used to clarify the exercise of powers thereby contributing to more transparency in the Union. Although the principle has been applied successfully according to the report of the Commission it seems difficult to achieve a coherent approach to its application. The wish to protect special national interests leads to excessively detailed legislative texts “flying in the face of the search for clarity and simplicity that subsidiarity implies” (Commission Report 10. 5. 1995, 30). Besides this subsidiarity suffers from different interpretations on behalf of the Member states which make it difficult to apply it coherently. Thus, subsidiarity should be regarded and treated rather as a **practical obligation in the day-to-day work of the institutions** than as an abstract tool of dividing the competencies between the Member states and the Community.
- **Access to information** is considered by the Commission as an important instrument of improving transparency. The Commission reports about the activities of the Council and itself concerning better access of the public to debates within the Council, publication of voting outcomes, and the possibility to give reasons for its decisions. The Commission reports about its new strategy of publishing policy proposals in various forms and of consulting interested circles before the decision is taken. A second element is improved

access to unpublished documents of all institutions for which a “code of conduct” was agreed between the Council and the Commission and implementing decisions were taken by the respective bodies. A final assessment of the success of these approaches and of possible improvements is not given because of lack of experience with these mechanisms. Slight improvements are indicated like e.g. **abolishing the possibility of not publishing voting outcomes** if the Council so decides.

- Clarity of legislation should make it easier for those being bound by it and for the public in general to access and understand the legal texts. Clarity should be achieved by **recasting, simplification, consolidation, and better drafting of the legal texts**.
- Comprehensibility of the Treaty should be achieved by **merging the three Communities** into one unity and by rewriting the respective treaties into a **single text**.
- The national authorities are asked for their part to ensure transparency in the **transposal and application of Community legislation**.

In its opinion on the convening of the IGC (published 28<sup>th</sup> February, 1996) entitled “Reinforcing Political Union and Preparing for Enlargement” the Commission added some further elements. Arguing for a “People’s Europe” the Commission sets out three major objectives:

- The support of the Community for the “European social model” should be strengthened and made more explicit. This could be achieved by a clear **statement of the shared values** of democracy, human rights, and the rule of law, an open economy underpinned by market forces, internal solidarity and cohesion. These values – according to the Commission – include the **access for all members of society to universal services or to services of general benefit**, thus contributing to solidarity and equal treatment.
- The commitment of the Community to **human rights** should be espoused either by incorporating fundamental rights into the Treaty or by signing the European Convention for the Protection of Human Rights and Fundamental Freedoms. In addition, provisions **banning discrimination of any kind** particularly on the basis of sex and **condemning racism and xenophobia** should be made part of the new Treaty.
- The Commission demanded that the “social dimension” should be made a central theme of the IGC 96. It should consist of a common base of **social rights** for all Union citizens, the **fight against marginalization and poverty**, and the **involvement of sections of civil society** capable of developing initiatives and new forms of solidarity.
- A specific provision on **employment** should be written into the Treaty.

- **Sustainable development** is believed to stand high among the priorities of the Union citizens. The Commission therefore argues that the right to a healthy environment and overall respect for the environment should be incorporated into all policies of the Union.
- Establishing an **area of freedom and security** should be made a priority. This could best be achieved by transferring justice and home affairs into the Community framework.
- The Union should be made **more democratic** which implies – besides openness and comprehensibility which have already been mentioned – a more profound role for the EP by reducing the number of decision-making procedures to three (assent, co-decision, and consultation), extending the co-decision procedure to all legislative acts and extending the assent procedure to all “constitutional acts”, and simplifying them. National parliaments should be better informed about policy initiatives at European level.

### 1.2.1 Assessing the European Commission’s Approach

The EC takes a different approach to the question of how to appeal to the European citizens. The European Commission starts from the distinction between “Democracy and transparency in the Union”, the chapter which consists of those proposals which the Commission believes to be important in order to address the citizens, and the proposals dealing with the Union’s policies and their effectiveness. By doing so the Commission centres its approach around structural and procedural considerations on the one hand, questions of values, objectives and rights on the other hand. In sharp contrast to the European Council it does not consider the effectiveness and efficiency of the various Union policies as crucial for bringing the EU closer to its citizens.

**Changes Proposed by the European Commission**

values and principles	<ul style="list-style-type: none"> <li>– the Treaty should spell out more clearly the shared values of democracy, human rights, the rule of law, an open economy underpinned by market forces, solidarity and cohesion</li> <li>– access for all members of society to universal services</li> <li>– condemning racism and xenophobia</li> <li>– sustainable development</li> </ul>
objectives	<ul style="list-style-type: none"> <li>– fight against marginalisation and poverty</li> </ul>
rights	<ul style="list-style-type: none"> <li>– list of fundamental rights</li> <li>– incorporating human rights into the Treaty or signing the European Convention on Human Rights and Fundamental Freedoms</li> <li>– provisions banning discrimination of any kind</li> <li>– common base of social rights for all Union citizens</li> </ul>
rule of law	<ul style="list-style-type: none"> <li>– introduction of a hierarchy of norms</li> <li>– clarity of legislation by recasting, simplification, consolidation and better drafting of legal texts</li> <li>– merging the different Treaties into one single text</li> <li>– improving judicial review and enhancing the role of the ECJ in the 2<sup>nd</sup> and 3<sup>rd</sup> pillar</li> </ul>
institutions	-----
procedures	<ul style="list-style-type: none"> <li>– simplification of the budget and legislative process</li> <li>– simplifying and reducing decision-making procedures to three (assent, co-decision, consultation)</li> <li>– extending co-decision to all legislative acts and assent to all “constitutional acts”</li> </ul>
practices	<ul style="list-style-type: none"> <li>– involvement of sections of civil society</li> <li>– Member states should ensure transparency in the transposal and application of Community legislation</li> <li>– better information of national parliaments about policy initiatives</li> </ul>
effectiveness / efficiency	<ul style="list-style-type: none"> <li>– improved access to information</li> <li>– communitarise justice and home affairs</li> <li>– better application of the principle of subsidiarity</li> <li>– improving the legal basis and the instruments to fight fraud</li> <li>– extending democratic control to the 2nd and 3rd pillar</li> </ul>
policies	<ul style="list-style-type: none"> <li>– employment chapter</li> </ul>



The strategy of the European Commission consists of two main elements. The first element focuses on the streamlining of the European Union in accordance with the structures of the Community pillar (a), and the second element is concerned with various aspects of developing Union citizenship (b).

- a) The strategic aim of the European Commission is to establish a system of rule of law throughout the Union's pillar structure. This should be achieved by transferring justice and home affairs into the Community pillar and by extending judicial review and democratic controls to all pillars of the Union thereby enhancing the role of the ECJ and the European Parliament. In addition, the Commission argues for a radical simplification of the Treaty, of the decision-making procedures and of all legal texts. Such changes should not only enhance legal protection for the individual and democratic accountability but also would make the decisions taken at European level more transparent and comprehensible for the citizens since they would be taken according to similar rules and in a comparable institutional setting in all pillars.
- b) The second element in the Commission's strategy is to develop Union citizenship with a view to create direct links between the institutions of the Union and the European citizens and to open new avenues for citizen participation and involvement. This should be achieved by granting fundamental civil and social rights to EU citizens and by guaranteeing human rights and equal treatment to all Union residents. In addition, the Commission asked for the incorporation of certain common values and principles that are perceived as important concerns of the public in many countries like the demand of securing universal services, access to information, sustainable development or the fight against social exclusion. There were only a few provisions which asked for more competencies for the EU or a more efficient use of existing policy instruments as in the case of the principle of subsidiarity or the new employment chapter.

By focusing its attention on those structural and primarily legal questions the European Commission follows a strategy which attempts to improve the coherence of the institutional framework along the lines of the first pillar applying standards of parliamentary democracy and the rule of law, but putting more emphasis on open government, the involvement of groups of civil society and national parliaments in the process of European integration.

### **1.3 The Approach of the European Parliament (EP)**

Based on the assessment of the functioning of the Maastricht Treaty the EP issued two resolutions concerning its priorities for the IGC. The first was based on the so-called

Bourlanges-Martin report and the second on the Dury-Maij-Weggen report. The first resolution<sup>2</sup> was adopted in March 1995 in view of the convening of the Reflection Group which was going to prepare the negotiations by sorting out issues and positions relevant to the IGC and by proposing an institutional framework and time-table. In its resolution the EP addressed the citizens explicitly in the preamble and the sections on **“A treaty for the citizens of the Union”**, **“More rights for EU citizens and improved protection of the fundamental rights of all EU residents”** and **“An area for cooperation among European peoples”** whereas the latter contained proposals on action in various policy fields and the distribution of competencies according to the subsidiarity principle.

- The EP stated that the new treaty should directly address the citizens of the Union. In order to achieve this the EP proposed to **reformulate the preamble of the treaty** and to **restructure it** by moving the citizenship chapter to the beginning, by distinguishing clearly between institutional matters and policies and by deleting outdated paragraphs.
- The EP asked for **more rights for citizens of the Union** and improving the **protection of fundamental rights for all persons** living in the Union. The chapter on Union citizenship should be substantiated by: a) **accession of the Union** to the Council of Europe’s **Convention on Human Rights and Fundamental Freedoms**; b) a new **right of all EU citizens to information on EU matters**; c) inclusion of an explicit reference in the Treaty to the **principle of equal treatment irrespective of race, sex, age, handicap or religion** (including mentioning the **fundamental social rights of workers** set out in the Charter, enlarging upon them and extending them to all citizens of the Union); incorporation of an article specifically referring to a **ban on capital punishment**; d) **bringing together** within a single article the **economic rights** that are scattered throughout the Treaty (such as the right to free movement and establishment of labour and of the professions), and reinforcing these rights; e) the development of **political citizenship**, inter alia through measures that **facilitate participation in political life in a Member State of Union citizens** residing in that State; f) the strengthening of provisions needed to **achieve fully the free movement of persons**; g) the preservation of Europe’s diversity through special **safeguards for traditional national minorities** in terms of human rights, democracy and the rule of law; h) the application of the provisions in the Treaty on **equal rights** not only to economic rights but **to all aspects of equality for women**. i) a clear **rejection of racism, xenophobia, sexism, discrimination** on grounds of a person’s sexual orientation, anti-semitism, revisionism and all forms of discrimination and guarantee adequate legal protection against discrimination **for all individuals** resident within the EU.

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<sup>2</sup> EU Resolution on the functioning of the Treaty on European Union with a view to the 1996 Intergovernmental Conference – Implementation and development of the Union. Henceforth cited as EP Resolution 17.5.1995.

- The principle of **equal opportunities should be extended** to include all aspects of employment and social security.
- In order to develop the means of expression for citizens at European level **European political parties** should be developed.
- Concerning policies relevant to the citizens the EP demanded a) to **make social policy a key area of Union activity**; b) to create a legal basis for developing **consumer protection**; c) to secure “universal services” guaranteeing each citizen the right to **equal access to services of general interest**, and ad hoc provisions taking account of the specific nature of public service undertakings; d) to focus attention on the **rights and interests of children and young people** and to provide for account to be taken of the consequences that current policies can have on children and **young people and their families**.
- The EP asked for paying attention to the **representation and participation of women in the Union organs**.
- In the section on institutions the EP demanded that a) the **principle of openness should be explicitly stated** in the Treaty, and **detailed implementing mechanisms** should be established; b) **access to EU-documents should be improved** by establishing a two-thirds majority requirement in each institution for its denial; and c) **drafts and proposals should be accessible to the public** as soon as they are adopted or handed over to other bodies or persons; d) all **meetings on proposed legal acts are to be held in public** unless a specific and duly justified exception is decided by a two-thirds majority.

The second resolution<sup>3</sup> was adopted by the EP a fortnight before the IGC started and it already reacted to the results of the Reflection Group. It stressed the priorities contained in its first resolution, included more specific provisions, and made some modifications. In particular, it enumerates eight priorities and three of which are directed towards either the European citizens or the public which is composed of European citizens. These priorities are: a) **an improved definition of European citizenship and enhanced respect for human rights**, b) **a more effective response to the concerns of the public over internal security**, and c) **a positive response to the public’s desire for greater openness and transparency**. The other priorities also contained provisions relevant to the citizens but did not refer to them directly. Interestingly enough, the demand for more democracy is not made in the name of European citizens but stands on its own. The substance of those demands consists of wishes

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<sup>3</sup> Resolution on (i) Parliament’s opinion on the convening of the Intergovernmental Conference; and (ii) evaluation of the work of the Reflection Group and definition of the political priorities of the European Parliament with a view to the Intergovernmental Conference. Henceforth cited as EP Resolution of 13.3.1996.

to strengthen the EP's role and to enhance the efficiency of the decision-making process. In the substantive part of the resolution one can nevertheless identify a number of proposals targeted at the citizens which had not yet been included or specified to that extent:

- The “**communitarisation**” of the field of justice and home affairs was now justified by the concerns of the citizens for their security.
- Improvements in the **fight against fraud and the management of financial resources** were now demanded in order to secure the **Union's credibility**.
- The Treaty should make it **incumbent on the Member States to protect fundamental and human rights**;
- A **catalogue of fundamental rights** should be incorporated relating to the transposition and application of the law of the Union and of the Communities. This should take account of the **cross-border aspect** of protection of fundamental rights (e.g. **protection of the freedom of association and protection of the family**).
- The adoption of a **uniform electoral system** with a deadline for implementation and a **single statute for Members of the European Parliament** should form part of the fundamental **political rights** of EU citizens.
- The EP wanted the EU to promote the development of **common policies in the sphere of youth**.
- To encourage a feeling of belonging to the Union and of solidarity between the Member States, in particular amongst young people, a **Voluntary European Peace Corps should be set up**, for example for humanitarian missions within and beyond the European Union.
- The EU should explicitly **recognise, protect and support the languages and cultures of minorities**.
- The EU should **promote cultural and linguistic understanding** both within and outside the Union.
- **Third-country nationals** legally resident in the Union should be given guarantees regarding respect for **human rights, equality of treatment and non-discrimination** with regard to social, economic and cultural rights and the **right to vote in local elections**, in accordance with the Council of Europe's Convention.

- **Comprehensive legal protection** should be guaranteed **within the scope of the European Union (including Europol)**.
- **Sport** should be included in the Treaty, in the context of education, training and employment policy, as well as cultural policy. The Union should encourage in particular transnational initiatives, while respecting national sporting identities.
- The Union should develop a **pro-active policy for employment**.
- Obstacles for the **exchange of information and citizens' access to information** should be facilitated.
- The EU shall **protect pluralism in the media and the arts**.
- The fundamental **principles of public service**, i.e. accessibility, universality, equality, continuity, quality, transparency and participation within the framework of the single market, and with respect to the principle of subsidiarity, should be written into the Treaty proving that the Union promotes the **general interest**.
- Given the enormous interest shown by European citizens, the question of **animal welfare** should be given greater prominence and included as a new Title.
- The work of the Reflection group is criticised in failing to respond to **popular demands for more openness and transparency**. The EP asks for the principle of openness of the European institutions and access to EU documents to be written into the Treaty.
- **The simplification of the Treaty** so as to make it clearer and more motivating for the public is advocated.
- The EP demanded that **European citizens** and their elected representatives at both national and Union level are **directly informed of the progress and substance of the IGC**. In addition the EP asks the Member States to open a public debate about the questions of the IGC as it did itself by organising public hearings in October 1995 and February 1996.

### 1.3.1 Assessing the European Parliament's Approach

The most comprehensive and detailed proposals for reform in relation to the European citizens were tabled by the EP. This is partly due to its limited role in the negotiations of the IGC so that the EP tried to influence the outcome by stating its positions in advance. Its proposals

combined the approaches of the European Council and the Commission and added a number of far-reaching and detailed suggestions for Treaty reform.

**Changes Proposed by the European Parliament**

values and principles	<ul style="list-style-type: none"> <li>– rejection of racism, xenophobia, and sexism</li> <li>– equality of men and women in all respects</li> <li>– principle of openness of the EU institutions</li> <li>– protecting pluralism in the media and the arts</li> <li>– stating principles of public service provision (accessibility, universality, equality, continuity, quality, transparency, participation, subsidiarity)</li> <li>– ban on capital punishment</li> </ul>
objectives	<ul style="list-style-type: none"> <li>– development of European political parties</li> <li>– taking into consideration consequences of policies for young people and their families</li> </ul>
rights	<ul style="list-style-type: none"> <li>– accession of the EU to the European Convention on Human Rights and Fundamental Freedoms</li> <li>– right on information on EU matters</li> <li>– principle of equal opportunities extended to employment and social security</li> <li>– equal treatment irrespective of race, sex, age, handicap or religion</li> <li>– fundamental social rights of workers</li> <li>– developing political citizenship through measures that facilitate political participation of EU citizens in the political life of a Member state (e.g. freedom of association; uniform electoral system; single statute for MEPs)</li> <li>– safeguards for national minorities in terms of human rights, cultural and linguistic rights, democracy, and the rule of law</li> <li>– legal protection against discrimination for all EU residents</li> <li>– right to equal access to universal services</li> <li>– rights of children, young people and families</li> <li>– rights for third-country nationals legally residing in the EU (human rights, equality of treatment, non-discrimination with regard to social, economic, and cultural rights, right to vote in local elections)</li> <li>– bringing together under one heading all economic rights and reinforcing them</li> </ul>
rule of law	<ul style="list-style-type: none"> <li>– simplification of the Treaty</li> <li>– address the citizens directly in the preamble of the Treaty</li> <li>– restructuring the Treaty by moving the citizenship chapter to the beginning, separating institutional and policy issues</li> <li>– oblige Member states to protect fundamental and human rights</li> <li>– comprehensive legal protection (including Europol)</li> </ul>

institutions	– voluntary European Peace Corps
procedures	-----
practices	<ul style="list-style-type: none"> <li>– strengthening the representation and participation of women in the Union organs</li> <li>– Member states should open a public debate about the IGC</li> <li>– European citizens and parliamentarians should be directly informed about the progress and substance of the IGC</li> <li>– drafts and proposals accessible to the public as soon as they are adopted or handed over</li> <li>– debates on legal acts should be held in public</li> <li>– facilitating exchange and access to information</li> </ul>
effectiveness / efficiency	<ul style="list-style-type: none"> <li>– communitarisation of justice and home affairs</li> <li>– improved fight against fraud</li> <li>– improvement of financial management of the EU's budget</li> <li>– measures to ensure free movement of persons</li> <li>– measures to implement the principle of openness of EU institutions</li> <li>– improving access to EU documents (2/3 majority to deny it)</li> </ul>
policies	<ul style="list-style-type: none"> <li>– developing social policy</li> <li>– common policies in the sphere of youth</li> <li>– promoting cultural and linguistic understanding</li> <li>– sport policy</li> <li>– pro-active employment policy</li> <li>– policy on animal welfare</li> </ul>

The first element of the EP's approach is to rearrange the Treaty thereby bringing it closer to the structure of a traditional constitution. This should be achieved primarily by moving the citizenship chapter to the beginning and by separating institutional and policy issues accompanied by a consolidation of these sections. In addition, the Treaty should state explicitly a number of values, principles, and objectives to which the Union adheres ranging from the principle of equal opportunities, openness of the EU institutions, to the rejection of racism, xenophobia, and sexism, principles for public service provision or the development of European political parties. Those principles and objectives are partly of a symbolic, partly of a normative nature which could have important legal and political implications like the principle of equal opportunities. They both are intended to demonstrate that the EU cares about citizen's concerns and interests. Furthermore, such values and principles should confer legitimacy to



future demands to live up to the expectations raised which could lead to a further expansion of and an enhanced role for the EU.

The second element of the EP's approach consists of expanding and extending citizenship far beyond its current state. The EP does not only intend to develop Union citizenship by incorporating a list of fundamental social, economic, and political rights for EU citizens. It also asks for the EU to join the European Convention on Human Rights and Fundamental Freedoms, the incorporation of safeguards for national minorities, and – most important – the extension of most of the fundamental rights to third-country nationals. In addition, the EP identifies target groups like children, young people, families, and women which the EU should take into account when drafting new laws, formulating new policies, or, in the case of women, when filling the ranks of its organs. In order to stimulate loyalty towards the Union the EP also asks for a voluntary European Peace Corps to be established.

The third element is the emphasis on securing openness and transparency with a view to improve citizen's access to and public scrutiny of the EU's operations. This should be achieved by strict guidelines and obligations for the organs to hold more public debates, to improve access to all kinds of policy-papers, and to involve the public even in the proceedings of IGCs.

The fourth element is the demand of the EP to develop more popular policies at the EU level. While the focus is on developing social policy and employment, the EP also wants to establish common policies in the sphere of youth, animal welfare, sports, and culture.

Combining all these elements the EP's strategy of Treaty reform adds up to a refocusing of the EU's orientation putting the citizen not just in the position of a recipient of decisions but of an active citizen taking responsibility and relating directly to political developments at European level.

## **1.4 The Approach of the Reflection Group**

In December 1995 the "Reflection group" presented its report which was judged by the European Council as a sound basis for the work of the Intergovernmental Conference. Its recommendations were based on reports from the Community institutions but its proposals for treaty reform reflected mainly the different positions of the Member States. The final report presented to the European Council in December 1995 addressed three main areas entitled "The citizen and the Union", "An efficient and democratic Union", and "External Union action". Concerning the Union citizens the aims of treaty reform were threefold: a) to strengthen and emphasise the common values; b) to address the issues that matter to most of them such as greater security, solidarity, employment and the environment, and c) to make the Union more transparent and closer to the citizens. To achieve these ends a number of proposals and options were presented to the European Council:

- Human rights should be guaranteed more clearly by the EU either by its accession to the European Convention on Human Rights and Fundamental Freedoms, the incorporation of a catalogue of rights, or a provision allowing for the possibility of sanctions or even suspending Union membership in the case of any state seriously violating human rights and democracy.
- European values as equality between men and women, non-discrimination on grounds of race, religion, sexual orientation, age or disability should be proclaimed by the Union and the Treaty should also include an express condemnation of racism and xenophobia and a procedure for its enforcement.
- Establishing a Community service or European “peace corps” for humanitarian action could serve as an expression of Union solidarity and could also be used in the event of natural disasters in the Union.
- The recognition of the importance of access to public service utilities could also be used to attach the citizens to the Union.
- Including the Social Agreement into Union law would underpin the commitment to shared social values in the Union.
- People’s security is not sufficiently protected on a European scale. This requires further use of common institutions and procedures, as well as common criteria to fight terrorism, drug trafficking, money laundering, exploitation of illegal immigration and other forms of internationally organised crime.
- To act more efficiently matters concerning third country nationals, such as immigration, asylum and visa policy, as well as common rules for external border controls should be put fully under Community competence.
- A more far-reaching approach also would include combating drug addiction, fraud on an international scale, and customs co-operation.
- A clearer commitment on the part of the Union to achieving greater economic and social integration and cohesion geared to promote employment, as well as provisions enabling the Union to take co-ordinated action on job creation were proposed as well as stronger co-ordination of economic policies.
- Since environmental pollution has cross-border effects the Union should improve its capacity to act more efficiently where such action is needed.

- The right of access to information should be recognised in the Treaty as a right of the citizens of the Union and public access to Union's documents should be improved.
- The process of policy formulation should be made more open. Prior to any legislative act information should be gathered from the sectors concerned, experts and society in general and the studies leading up to the proposal should be made public.
- National parliaments should be duly informed and documents supplied to them in their official languages and in due time to allow proper discussion from the beginning of the legislative process.
- The Treaty should be simplified.
- Essential provisions of the Edinburgh Declaration on subsidiarity should be given Treaty status in order to reinforce its proper application.

The proposals of the Reflection Group were positively received by the European Council and made the basis for the IGC.

#### **1.4.1 Assessing the Approach of the Reflection Group**

Due to its composition and mission the Reflection Group had not only to sort out possible options for reform but also possible compromises between the Member states. Therefore, the proposals submitted by the Group reflected not a final set of proposals but a set of options which fed into the intergovernmental negotiations. Nevertheless, the options presented by the Reflection Group gave already some hints concerning the direction and overall approach the governments would explore during the IGC.

**Changes Proposed by the Reflection Group**

values and principles	<ul style="list-style-type: none"> <li>• condemnation of racism and xenophobia</li> <li>• equality between men and women</li> <li>• non-discrimination on grounds of race, religion, sexual orientation, age or disability</li> <li>• access to public services</li> <li>• commitment to greater economic and social cohesion</li> <li>• promotion of employment</li> <li>• sanctions or even suspending EU membership in the case of any state seriously violating human rights and democracy</li> </ul>
objectives	<ul style="list-style-type: none"> <li>• -----</li> </ul>
rights	<ul style="list-style-type: none"> <li>• human rights protection by the EU accessing the European Convention on Human Rights and Fundamental Freedoms or by incorporating a catalogue of rights</li> <li>• right of access to information</li> </ul>
rule of law	<ul style="list-style-type: none"> <li>• simplification of the Treaty</li> </ul>
institutions	<ul style="list-style-type: none"> <li>• establishing a Community Service or a European Peace Corps</li> </ul>
procedures	-----
practices	<ul style="list-style-type: none"> <li>– national parliaments should be informed and documents supplied in their official language in due time</li> <li>– publication of studies leading to proposals of legal acts</li> <li>– more extensive consultations with sectors concerned, experts, and society prior to legislation</li> <li>– improving public access to the Union's documents</li> </ul>
effectiveness / efficiency	<ul style="list-style-type: none"> <li>– transferring immigration, asylum, visa policy and external border control into the Community pillar</li> <li>– measures for banning racism and xenophobia <ul style="list-style-type: none"> <li>• applying common criteria, institutions and procedures to the fight on terrorism, drug trafficking, money laundering, exploitation of illegal immigration and internationally organised crime</li> <li>• improved customs co-operation</li> <li>• more efficient actions on environmental pollution</li> </ul> </li> <li>– essential provision of the Edinburgh Declaration on subsidiarity should be incorporated into the Treaty</li> <li>– transferring the Social Agreement into the Treaty</li> </ul>
policies	<ul style="list-style-type: none"> <li>– combating drug addiction, fraud on an international scale</li> <li>– co-ordinated action on job creation</li> <li>– co-ordinated action on economic policies</li> </ul>

A major decision was taken by the Reflection Group separating its proposals relating to the citizens from the proposals which dealt with efficiency and democracy on the one hand, and with foreign and security co-operation on the other hand. This distinction signified that the Reflection Group wanted the pillar structure of the Union to stay mainly intact and questions of democracy and institutional reform to be separated from the question of how to bring the Union closer to the citizens.

The strategy then consisted of three elements: First, common values should be strengthened by condemning racism and xenophobia, a commitment to economic and social cohesion, access to public services, concern for employment, and equality between men and women. Most notably, the Reflection Group also proposed to impose sanctions or even to suspend membership if a Member state violates human rights or democracy – a measure which was clearly directed towards future members of the Union. In addition, the Group proposed to improve the protection of human rights or to incorporate a catalogue of rights without specifying them, to include the Social Agreement and to establish a right to access of information. Although these proposals also addressed the same category of problems as did the other EU organs the number and scope of them were rather limited.

The second element of the strategy adopted by the Reflection Group was to address issues which were perceived as most important to the citizens. In order to meet the expectations of the citizens the Group heavily emphasised the need to improve the effectiveness of the working methods of particular institutions and of existing policies like policies on terrorism, drug trafficking, immigration, asylum, or on culture, the environment and health protection. Only very narrowly circumscribed new policy areas should be added to the range of competencies of the EU like more co-ordination on job-creation and economic policies.

The third element is the claim to make the Union more accessible and transparent which should be achieved by improving access to information and documents of the Union for the citizens and national parliaments alike, by simplifying the Treaty structure, improving the application of the subsidiarity principle, a more open preparation phase and more consultations of particular groups prior to new legislative initiatives.

In preparing the agenda for the IGC 1996/97 the Reflection Group had taken up some of the concerns of the other Union organs while at the same time the options had been reduced to only a few. The work of the Reflection Group made clear that the Member states were not prepared to change the Union's outlook in a fundamental sense by concentrating on a better functioning of the Union and some popular programmes. In the face of such strategic considerations the negotiations on Treaty reform started in Turin in March 1996 and ended in June 1997 in Amsterdam.

## 1.5 The Approach of the IGC 96/97

After three months of negotiations during which the Member governments primarily had tabled their initial positions and proposals the European Council meeting in Florence summed up its expectations for the IGC. Concerning the aim of bringing the Union closer to its citizens the European Council set out the means by which this should be achieved. Six points were highlighted:

1. living up to their expectations as regards the fulfilment of the objective of a high level of employment while ensuring social protection, examining how to provide the Union with the basis for a better co-operation and co-ordination in order to strengthen national policies; it should also be examined how the efforts of the governments as well as the social partners could be made more effective and better co-ordinated by the Treaty;
2. making environmental protection more effective and coherent at the level of the Union in order to secure sustainable development;
3. providing transparency and openness in the Union's work;
4. strengthening European citizenship, without replacing national citizenship and while respecting the national identity and traditions of the Member States;
5. respecting their fundamental rights;
6. meeting their need for security, which implies improving substantially the means and the instruments against terrorism, organised crime and drug trafficking, as well as the policies on all aspects of asylum, on visas and on immigration with a view to a common judicial area in this context.

In order to analyse whether and how the IGC 96/97 lived up to its goal of bringing the Union closer to the citizens we have to look at the draft version of the Amsterdam Treaty because it reflects the context, the major themes and priorities of the conference. Two major chapters of the draft version of the Amsterdam Treaty directly address the European citizens. The first one is entitled "Freedom, Security and Justice" and contains provisions on fundamental rights and non discrimination and the progressive establishment of an area of freedom, security and justice. The second one is entitled "The Union and the Citizen" and consists of provisions on employment, social policy, the environment, public health, consumer protection, other community policies (like Union citizenship, culture, sport, countering fraud and affecting the financial interests of the Community, strengthening customs co-operation, outermost regions, Island regions, overseas countries and territories, services of general economic interest, public service broadcasting, public credit institutions in Germany, voluntary service activities, animal

welfare, trans-european networks, and statistics), subsidiarity, transparency, and quality of community legislation. This extensive but heterogeneous list sums up those proposals which were fuelled into the negotiations by the Member governments and which were jointly identified as important to make the EU more appealing to their citizenry. The chapter on freedom, security, and justice exposes an area which moved into the centre of considerations during the intergovernmental conference and considerable achievements were attained (see Draft Treaty of Amsterdam Conf/4001/97; Thun-Hohenstein 1997, 21–61, 81–102; Hummer 1998, 71–101; Stein 1998, 141–157; Hailbronner 1998, 179–196; Runggaldier 1998, 197–217; Koenig 1998, 219–236):

The chapter on “Freedom, Security and Justice” included the following elements:

- Fundamental rights were strengthened by declaring that liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law are common principles of all Member States and that Membership in the Union is conditional on respecting these principles. Sanctions for breaching them were also included.
- Respect for human rights as formulated by the European Convention on Human Rights and Fundamental Freedoms was reiterated, but no new competencies for judicial review were created. Only indirectly, by enlarging the scope for legal review in certain respects of the second or third pillar by secondary legislation would the ECJ also be entitled to apply human and fundamental rights in these areas.
- The Council was given the possibility to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion, belief, disability, age or sexual orientation within the Community.
- The principle of equality and the aim of eliminating inequalities between men and women were stated and the possibility of preferential treatment of women legally secured.
- Obliging the Community organs and institutions to apply the regulations on personal data protection to their operations and setting up of an independent control agency.
- Declarations on the ban of capital punishment, securing the status of churches and non confessional organisations in the Member States, and on the Community’s concern for disabled people were adopted.
- The common attachment of the Member States to social rights as defined by the European Social Charta and the Community Charta of Fundamental Social Rights of Workers was acknowledged in the preamble and in Art. 136 of the Treaty on European Community.

- The stepwise and controlled transfer of competencies concerning the freedom of movement of persons, control of external borders, immigration, asylum, rights of third-country nationals from the third to the Community pillar is envisaged.
- Improving judicial and administrative co-operation in matters of civil law.
- Improving judicial, police and customs co-operation in fighting crime (including terrorism, trafficking in persons, offences against children, drug and arms trafficking, corruption and fraud) within the third pillar including approximation of laws, operational powers for Europol, application of legally binding instruments (like directives and decisions), relaxation of the unanimity requirement in taking decisions, powers of judicial review and jurisdiction for the ECJ if the single Member State so declares.
- Including the legal and institutional system of the Schengen-protocol into the Union thereby extending the “*acquis communautaire*” for new entrants and creating an area of closer co-operation between certain Member States.
- Including a protocol on asylum regulating the admissibility and treatment of applications for asylum made by a national of a Member State.

The chapter on “The Union and the Citizen” contained the following provisions:

- Establishing the aim of a **high level of employment** by developing a **co-ordinated strategy** for employment.
- **Including the Social Agreement** into the Community framework thereby stating its concern for fundamental social rights. Improvements include the application of the co-decision procedure and the need to consult the Committee of the Regions, the competence to fight social exclusion and to take action in order to secure equal opportunities for men and women in matters of employment and occupation, equal treatment and equal pay for men and women for equal work and work of equal value as well. In addition, Member States are allowed to adopt measures providing specific advantages to the disadvantaged sex to ensure full equality in practice.
- The principle of **sustainable development** is stated and **environmental protection** shall be made part of all sectoral policies. The Commission declares to rely on environmental impact assessment studies when making proposals which may have significant effects on the environment. Furthermore, **Member States** are allowed to **maintain or introduce higher environmental standards** even in the case of harmonisation of respective legislation.



- The aim of securing a high level of **health protection** shall be ensured by all Community policies and activities. Concerning human organs and substances of human origin the EU was given new standard setting and quality control competencies.
- **Consumer protection** is also made a principle to which the EU commits itself in all policy areas but it is limited to complement and contribute to the efforts of Member States. Other Policies:
- Concerning **Union citizenship** the Treaty specifies that it only complements but not replaces national citizenship, that any changes require unanimity in the Council and the co-decision procedure is applied. The only substantial innovation concerns the **possibility to write to the institutions or bodies of the Union in one of the twelve languages** and have an answer in the same language.
- Concerning **culture** the Community confirms its respect for the diversity of its cultures which it will take into account in its other policies.
- The EU commits itself to **listen to sports associations** when important questions affecting sport are at issue.
- **Countering fraud** is made a common concern for the Community and the Member States as well allowing the Community to adopt measures in the field. Closer co-operation between the competent authorities is also required.
- A new article is added to the TEC asking the Council to take measures in accordance with the co-decision procedure to **strengthen customs co-operation**.
- Chapters on **outermost regions, Island regions and overseas countries** and territories emphasise the difficult situation faced by those regions and lay the ground for special treatment either in the application of Treaty provisions, better integration into the common market, or regarding the review of the association arrangements with the overseas territories.
- The Community and the Member States each within its given powers should secure that **services of general economic interest (public services)** are enabled to fulfil their missions while respecting the principles of equality of treatment, quality and continuity of such services.
- In a protocol Member States are allowed to **fund public service broadcasting** in so far as it is related to democratic, social and cultural needs and the need to preserve media pluralism but such funding may not be contrary to the common interest.

- **Public credit institutions** in Germany (and also in Austria and Luxembourg) **can be compensated for their public services** particularly concerning the maintenance of a financial infrastructure at local level in so far as these compensations are in proportion to the value of their services.
- The Community declares to **promote voluntary services** and the participation of young and elder people within them.
- The Community and the Member States are asked to take **animal welfare** into consideration when formulating and implementing policies in the fields of agriculture, traffic, the single market, and research but in accordance with the particular traditions in the Member States.
- The article on **trans-European networks** was slightly modified to allow the Community to support projects of common interest which are also partly, but not completely supported by Member States and which are identified in the guidelines.
- A new article on **statistics** the Community is entitled to produce statistics which conform to impartiality, reliability, objectivity, scientific independence, cost-effectiveness, confidentiality, and which shall not entail excessive burdens on economic operators.
- A protocol on the application of the **principles of subsidiarity and proportionality** was agreed which transferred the substance of the Edinburgh guidelines of 1992 into the Treaty without amending the substance. It is expected that the judiciability of the subsidiarity clause will be enhanced by this step.
- The question of **transparency** is addressed in the Treaty by stating that decisions should be taken “as open as possible” (Art. 1 TEU). A new article is added in the TEC which establishes the **right of access** to European Parliament, Council and Commission documents. This right comes with some **stringent qualifications**: the general limits of this right will be determined within two years after entry into force of the Treaty by the Council using the co-decision procedure, each institution will establish its own specific rules for access to its documents, and each Member State will have the right to ask for its consent before Community organs would be allowed to pass on documents originating from it to third parties. When the Council acts in its legislative capacity the results of votes and explanations of votes as well as statements in the minutes have to be made public.
- The Community institutions by common accord are asked to adopt guidelines on the **quality of Community legislation** and they should accelerate the codification of legislative texts to make them more accessible by the public and business.

### 1.5.1 Assessing the IGC's Approach

Bringing the European Union closer to its citizens had been identified as one of the major aims of the IGC by the European Council. Two of six chapters of the draft Treaty of Amsterdam dealt with the corresponding issues. The chapters on institutional reform, external policy, closer co-operation (“flexibility”), and simplification and consolidation of the treaties had a different focus and were not discussed as part of a strategy of bringing the EU closer to its citizens. Quite a number of related issues were addressed by the IGC which were concentrated in the first two chapters of the draft treaty which indicates that the Member governments were aware of the importance of these issues. Looking at the substantive matter of the new provisions we find that many of them belong into the category of values, principles, and objectives and that their legal status often is weak. The extensive use of declarations instead of Treaty articles, and statements of intention and aims rather than procedural or substantial provisions also indicates that the Member governments were involved in “symbolic politics” by drafting the respective chapters. The particular use of symbolic politics in the draft treaty does not mean that those chapters are either irrelevant or only a matter of rhetoric. By declaring to act towards a stated end and to commit the Member States and the Community to certain principles and values rather implies that one intends to change the future course of action. While showing a strong commitment by dealing with the issues now it opens up the possibility to continue with the given practices for a while. Only after a certain period of time – in some cases up to 5 years – changes have to be decided on which also means that one could decide eventually not to change the way the Union works. This gives ample space for accommodating to new circumstances and makes any prior assessment of results of intended changes almost impossible. On the other hand, such vague commitments could be criticised from the very beginning that they would not deliver the expected gains in legitimacy.

**Changes proposed by the IGC**

values and principles	<ul style="list-style-type: none"> <li>– respect for liberty, democracy, human rights, rule of law even allowing for sanctions</li> <li>– principle of equality between men and women</li> <li>– common attachment to social rights</li> <li>– principle of sustainable development</li> <li>– clarifying that Union citizenship complements national citizenship</li> <li>– furthering and securing services of general economic interest</li> <li>– subsidising public service broadcasting is allowed if related to certain social and cultural needs</li> <li>– public credit institutions can be compensated for certain public tasks they fulfil</li> <li>– decisions should be taken as open as possible</li> <li>– eliminating inequalities between men and women allowing for preferential treatment</li> <li>– possibility to take action to combat discrimination<sup>4</sup></li> <li>– ban on capital punishment</li> <li>– Community respect for the status of churches and nonconfessional organisations</li> <li>– concern for disabled people</li> <li>– high level of employment</li> <li>– environmental protection shall be part of all policies</li> <li>– securing a high level of health protection in all policy areas</li> <li>– aim of considering the interests of consumers in all policy areas</li> <li>– respect for cultural diversity in all policy areas</li> <li>– take animal welfare into account in all relevant policy areas</li> </ul>
objectives	<ul style="list-style-type: none"> <li>– taking into account the particular interests of outermost regions, Island regions, and overseas countries and territories</li> </ul>
rights	<ul style="list-style-type: none"> <li>– obliging the Community organs to apply regulations on personal data protection</li> <li>– possibility to write to the Union institutions in one of twelve languages</li> <li>– right to access to Community documents (EP, EC, Council)</li> </ul>

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<sup>4</sup> The new provision does not have direct effect and does not directly constitute new individual rights but it enables the Community to create them among other measures it might take, if it so decides. Given this particular outlook of the new article which is neither compelling the Union to act nor enhances the legal security enjoyed by citizens it is regarded in this respect merely as an objective.

rule of law	<ul style="list-style-type: none"> <li>– improving the quality of Community legislation</li> <li>– regulating the admissibility and treatment of asylum applications made by Union nationals</li> </ul>
institutions	-----
procedures	-----
practices	<ul style="list-style-type: none"> <li>– promotion of voluntary services</li> <li>– commitment to listen to sports associations in matters directly affecting them</li> </ul>
effectiveness / efficiency	<ul style="list-style-type: none"> <li>– stepwise transfer of competencies from the third to the first pillar (movement of persons, control of external borders, immigration, asylum, rights of third country nationals)<sup>5</sup></li> <li>– improving judicial and administrative co-operation in matters of civil law</li> <li>– improving judicial, police and customs co-operation in matters of criminal law</li> <li>– including the Schengen-protocol into the Treaty</li> <li>– inclusion of the Social Agreement into the Treaty</li> <li>– countering fraud at Community and Member State level</li> <li>– strengthening customs co-operation</li> <li>– rules for the production of statistics</li> <li>– guidelines for the implementation of the principles of subsidiarity and proportionality</li> </ul>
policies / competencies	<ul style="list-style-type: none"> <li>– developing a co-ordinated strategy for employment</li> <li>– financial Community support for certain trans-European networks</li> </ul>

The approach of the IGC towards the citizens is distinguished by three elements:

First, there is a strong emphasis on taking into account popular concerns in everyday policy making at European level without establishing new competencies or policies and without losing control about the measures and steps that might be taken. A number of new cross-cutting objectives were established which should be taken into account in all policy areas like the elimination of inequalities between men and women, environmental protection, health protection, consumer protection, or animal welfare. These newly stated and reinforced

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<sup>5</sup> In the long run the transfer from the third to the first pillar will also have repercussions concerning the transfer of competencies from the national to the EU level. Yet, this transfer is controlled by the Member States and is dependent on the development of new policies at European level which spring from the general competencies of the Union in this area which were established by the Maastricht Treaty (see Hailbronner 1998, 193–195). Therefore, and in conjunction with the gains in terms of legal and democratic control which such a move entails these changes are primarily perceived at enhancing the effectiveness and efficiency of the Communities policies.

commitments often do not only address the European Community but also the Member States which are equally obliged to fulfil them.

Second, improving the effectiveness and efficiency of the Community was the intention of some of the most widely noticed reforms proposed by the IGC. The transfer of competencies from the third to the first pillar, the inclusion of the Schengen protocol and the Social Agreement stand out among them. One could argue whether the new chapter on employment is more about new Community competencies enhancing the responsibility of the Community to devise new policies, or a new instrument to enhance the effectiveness of Member State policies. From a formal point of view, the new chapter establishes new competencies, seen from a substantial point of view it is more about effectiveness and efficiency. However, the improvements which may accrue from these changes are contested and will depend on steps that will or will not be taken in the future. Nevertheless, it is clear that the IGC sought to enhance the Community's and the Member States' capacity to decide and act more effectively in order to reach the proclaimed objectives of guaranteeing security and to prove to the public that the European Union functions properly even in its given institutional set up.

Third, the objective of broadening and preserving the competencies and capacities of the Member States to take appropriate action is emphasised by a number of provisions. Particularly in regard of the principle of free and undistorted competition and the prohibition of state subsidies some reservations were introduced which allow the Member states to fund services of general economic interest, to uphold public enterprises and to compensate private enterprises for certain services in specified areas like banking and broadcasting. The new provisions on Community respect for the status of churches and nonconfessional organisations and for cultural diversity in a similar vein are devised to protect given practices in the Member States against intrusive Community regulation. In this respect these new measures complement the principles of subsidiarity and proportionality in their uses for securing Member State sovereignty in sensitive policy areas.

In addition, the IGC's approach spelled out and emphasised the Community's attachment to the principles of liberty, democracy, human rights, and the rule of law. The sanctions envisaged for breaking them are clearly directed against (future) Member States which won't respect these principles. It is hardly conceivable albeit possible that these new principles could also be applied to the Union itself. In any case they are surely not intended to provide the citizens with legal means to secure that the development of the Union is in line with these principles although this might have been taken for granted by the drafters of these provisions. The only new provisions which directly address the people in their capacity as citizens is the right to access to Community documents and the right to write to the Union institutions in one of the twelve officially recognised Community languages. Of some importance is also the obligation of the Community organs to personal data protection and the possibility that the Union will take action on fighting discrimination of different kinds. Concerning individual rights, the rule of law,

clarity of legislation, transparency, and procedural enhancements the approach of the IGC lacks behind of what had been proposed by other institutions of the Union.

## **2. Comparing the Approaches of Building a Community of Citizens**

### **2.1 The Strategic Elements**

Although there is some overlap in the proposals concerning the topics and themes which are addressed each institution under examination developed its own strategy concerning the relative importance of these topics and particularly in regard of the means of operationalising and transposing them into concrete measures of reform. Looking at all presented strategies we can identify some core elements:

#### **2.1.1 Common Values and Principles**

A more clear and outspoken statement of the values which are common to all Member States was proposed by all European institutions. Differences are to be found in the number of issues addressed and in the way the Community should be committed to them. Prior to the start of the IGC the European Council had proposed that the compatibility of the principle of access to fundamental public services with the principle of undistorted competition should be secured and that the Union should fight social exclusion, racism and xenophobia. The European Commission added the values of democracy, human rights, the rule of law, and the commitment to an open economy underpinned by market forces, solidarity, and cohesion and the principle of sustainable development. The EP which presented the most comprehensive list also asked for the principle of equal opportunities between men and women to be extended to all employment and social security matters, a general principle of equality of men and women, the principle of openness of the EU institutions, and a ban on capital punishment. The Reflection Group took up many of these proposals adding the aim of promoting employment and the employment of sanctions in the case of any serious violation of the principles of democracy and human rights.

If we compare the demands with the results agreed by the IGC we find that on the one hand, many of the proposals were catered for in the Amsterdam Treaty, while on the other hand, the conference failed in many cases to make binding commitments and to state these values and principles visibly and clearly in the Treaty. Nevertheless, the list of enhancements incorporated into the Treaty is impressive. The more directly applicable principles are the respect for liberty, democracy, human rights, and the rule of law where concrete procedures were agreed upon of how to deal with violations by Member States. The principle of equality between men and women was embodied in Art. 2 TEC, and Art. 3 commits the Community to work towards the

elimination of inequalities between the sexes. The new Art 13 TEC enables the Community to take appropriate action to fight discrimination based on sex, race, ethnic origin, religion, ideology, disability, age, or sexual orientation, but its invocation is dependent on the will of the Council to act unanimously. Other principles were installed in the form of cross-sectional tasks or goals like the principle of sustainable development (preamble and Art. 2 TEU and Art. 2 TEC), environmental protection (Art. 6 TEC), a high level of health protection (Art. 152 TEC), consumer protection (Art. 153 TEC), and respect for cultural diversity (Art. 141 TEC). Common values were emphasised by committing the Community to respect the welfare of animals (protocol attached to the TEC); the promotion of a high level of employment has become an explicit objective of the Union (Art. 2 TEU) in conjunction with a high degree of competitiveness (Art. 2 TEC). The weakest form of commitment to common values and objectives is laid down in declarations referring to a ban on capital punishment, a concern for disabled people, and the societal relevance of sports.

These common values and principles are spread all over the Treaty text which may undermine their symbolic value and the potential impact on the public and the citizens. The various forms in which these values have been implemented may also confuse their practical application and their use in the everyday operation of the Union.

### **2.1.2 Securing Public Services and given (Cultural) Practices**

All institutional actors agreed in securing access to public or universal services although the motives for doing so may have been different. The European Commission explicitly stated that access for all members of society to such services forms part of the peculiar “European social model” and that it contributes to solidarity and equal treatment of citizens. The EP intended to demonstrate that the regulative activity of the Community is not only directed towards competition, but also includes services which are in the common interest. In this respect the EP named the tasks of strengthening economic and social cohesion and consumer protection. By underlining the importance of public and universal services the EC and the EP also foresaw an enhanced role for the Community in the provision of such services and in regulating them. The EP, for instance, proposed that the Treaty should not only take notice of the importance of public services by including them in the general aims of the Union, the chapters on public and monopoly-like enterprises, and on legal harmonisation, but it should also state the principles on which such services should operate and which should be binding throughout the Union. These principles included open access, universal character, equality, continuity, quality, transparency, and participation in the framework of the common market and in respect of the principle of subsidiarity. In contrast, the European Council had in the first instance only asked for making public service provision compatible with the principle of undistorted competition. The Reflection Group merely stated that some members consider to introduce a provision relating to public service which would include a definition of universal services opening up a new policy field.



If we look at the outcome of the IGC we find that the scope and direction of the discussion had changed now focusing on safeguarding the national provision of public services and national autonomy in certain areas. The new Art. 16 TEC reads that “given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Community and the Member States, each within their respective powers and within the scope of application of this Treaty, shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions”. Given that the same article underlines the validity of those articles of the Treaty which regulate public subsidies (Art. 76 and 87 TEC) and the operation of undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly (Art. 86 TEC) it is doubtful whether the new article really broadens the scope of action for the Member States in this regard. In a declaration attached to the Treaty the Member States commit themselves to fully respect the jurisdiction of the ECJ in the implementation of this new article. The declaration which confirms that certain subsidies to German banks are in line with the competition rules of the Community and the protocol on public broadcasting outlining the conditions for subsidising them may therefore only be taken as a political safeguard against action by the Commission or the ECJ in these cases and may not signify a reweighting of the principle of undistorted competition.

Although the new provisions may have little legal significance they clearly express a growing concern among Member States that the provision of public services funded by the state should be considered to be compatible with common market rules and that the Community – and particularly the Commission and the ECJ – should respect the role such services play for guaranteeing social cohesion at national level. In a similar vein the declaration forging the Community not to interfere with the status of churches and nonconfessional organisations can be read as a pre-emptive bid to respect Member State autonomy albeit only in a very specific and limited sphere.

### **2.1.3 Improving Effectiveness and Efficiency**

For the European Council and the Member governments during the IGC the enhancement of the effectiveness and efficiency of certain policies became of utmost importance. It is in this field that the most noticeable reforms were achieved. The emphasis on transferring key competencies from the third to the first pillar, improving judicial, administrative, police, and customs co-operation, including the Schengen-protocol in the Treaty, and even the inclusion of the Social Agreement is directly related to the completion of the common market and the problems that come with it (movement of persons, control of external borders, immigration, asylum, rights of third country nationals, fighting international organised crime, etc.). A smooth functioning of the common market which not only secures the free movement of persons but which guarantees the security of persons who do not move across borders – which is the vast majority of the people – was perceived as a condition by most governments for winning the

approval of their national audiences for moving on with the project of opening borders and Eastern enlargement as well. The incorporation of the guidelines for the implementation of the principles of subsidiarity and proportionality is also meant to enhance its working but may primarily serve to signal to the national audiences that there are safeguards which hinder a further erosion of national autonomy. The Reflection Group followed the same line adding the demand for more efficient actions on checking environmental pollution and improving public access to information and Union documents which lead to proposals of legal texts. The reform proposals of the Commission only peripherally addressed effectiveness and efficiency concerns by asking e.g. for an improved legal basis and better instruments to fight fraud. It also was in favour of “communitarising” justice and home affairs but it primarily was motivated by gains in procedural efficiency and in power for the Community institutions. The EP focused more on democratic and citizenship aspects of effectiveness and efficiency by demanding a better implementation of the principle of openness of EU institutions, improved access to documents, better access to policy debates and information for the public. It also asked for measures to ensure the free movement of persons, and a better financial management of the EU’s budget.

Examining the results of the IGC we find that mainly the proposals of the European Council were taken up. A stepwise transfer of certain competencies from the third to the first pillar is intended to help the development of a coherent immigration and asylum policy at community level. Nevertheless, the 5 year long interim period and the unanimity requirement, national differences of interest, uncertainties concerning the legal nature of some of the new regulations, the opt-ins and opt-outs of Great Britain, Ireland, and Denmark make it doubtful whether major achievements in this areas will soon be achieved (see Hailbronner 1998, 195–196). The same is true for the Schengen protocol which aims at abolishing border controls and which poses difficult legal and juridical questions particularly concerning judicial control and review, its coherent integration into the Community legal system, and its further development (see Epiney 1998, 122–124). The inclusion of the Social Agreement made an end to the opt out of Great Britain and opened at least the perspective of a more coherent and efficient social policy in the Community but did not enhance the scope of measures that can be taken under this heading (no competencies in the field of income regulation, freedom of association, strike, or lock-out) or of qualified majority voting with the exception of certain measures which aim at fighting social exclusion and guaranteeing equal opportunities for men and women (see Runggaldier 1998, 210; Thun-Hohenstein 1997, 84–85). Including a protocol on subsidiarity also was intended to improve the effectiveness and efficiency of its application particularly in relation to its “judiciability” although it may not change the given practices which already follow agreed guidelines that now partly have been integrated into the Treaty.

#### **2.1.4 Developing Popular Policies at EU Level**

Making the EU more popular by addressing issues which are of concern for many people in Europe was an important element in the strategies of the European Council and particularly the

EP. The difference between the two approaches primarily was that the European Council had policy areas in mind which were already placed at the European level while the EP also intended to expand the competencies of the EU beyond its present scope. The European Council started from the supposition that the EU only suffers from a legitimacy deficit because it shows too little profile and does not adequately take into account the expectations of the citizens. These expectations had been identified primarily as lying in the field of employment, internal security, crime, migration, and the environment. Looking at the concrete proposals put forward for the IGC it becomes evident that the European Council was very cautious not to create any new competencies for the EU but was rather aiming at improving the effective use of those competencies which the Union had already been given. Even in the case of employment policy the new provisions are designed rather to co-ordinate national policies than enabling the Community to act. The EP in contrast also wanted the Community to become active in various new policy fields like youth, sports, and animal welfare, and to broaden the scope of action in the field of social, cultural and employment policy. The Reflection Group followed the line of the European Council whereas the Commission did not focus on policy issues but on structural questions.

The outcome of the IGC mainly confirmed the position of the European Council because only in a few cases the competencies of the Union were enlarged while the expectations of the citizens shall be met by more effective and efficient policy making. Any more far-reaching goals were downgraded to objectives which the Union should take care of in exercising its given competencies which is true for instance in regard of environmental protection, consumer and cultural policy, and animal welfare.

#### **2.1.5 Strengthening the Rule of Law**

In the centre of the European Commission's strategy of moving the European Union closer to its citizens was the quest for a more comprehensible and simplified legal system, the introduction of a hierarchy of norms, extended judicial control and oversight in all pillars, and a more streamlined Treaty guaranteeing the rule of law throughout the Union. A similar approach was adopted by the EP which also wanted the chapters which are of direct concern for the citizens to figure more prominently in the Treaty. The ambitions of the European Council were more modest and oriented at pragmatic improvements which would benefit the fight against corruption and the application of Community regulations.

In the end the IGC could only agree on some technical revisions of the Treaties which includes a renumbering of all Treaty articles by leaving out outdated provisions. In a declaration the governments agreed to work out guidelines for the improvement of the quality of legal texts as a precondition for their comprehensibility and proper implementation. The most substantive improvement in this regard is the enhanced role of the ECJ in the third pillar although its role

falls short of the degree of legal protection and control guaranteed in the first pillar (see Müller-Graff 1998, 271–275).

### 2.1.6 Transparency

Although improving transparency had been declared to be a primary goal by all of the EU's institutions only the Commission and the EP made it a priority in their reform proposals. The Commission interestingly linked the question of transparency with the decision-making procedures which were found to be complex and inconsistent. It asked for radically simplified legislative procedures, a hierarchy of acts to be introduced, a recasting, simplification, consolidation, and better drafting of legal texts, merging the three Communities into one unity and rewriting the Treaties into a single text, more transparency in the transposal and application of Community legislation in the Member States, and better access to information for citizens. In this last instance the Commission pointed towards already introduced reforms like e.g. its new strategy of publishing policy proposals and consulting interested circles before a decision is taken, the “code of conduct” agreed by the Commission and the Council for improved access to unpublished documents, and a higher number of public debates in the Council. The only concrete proposal reaching beyond the status-quo in this respect was the proposal to abolish the possibility of not publishing voting outcomes if the Council would so decide. The EP even went further in its demand for more transparency by asking for a whole range of concrete measures. The principle of openness should be established and detailed implementing mechanisms provided, a two-thirds majority requirement should be introduced for the denial of any request for EU-documents, drafts and proposals of political measures should be made public early on, and all meetings on proposed legal acts should be held in public. Furthermore, the Treaty should be radically simplified, and the citizens and their national and European representatives should be directly informed and involved also in IGCs. The Reflection Group also underlined in its statement the importance of a more transparent Union but only included the proposal to establish a right of access to information in its report to the European Council which wanted the right of access to be limited to documents which the Council passed in its capacity as legislator.

The IGC only resulted in a modest improvement of the given situation. The introduction of a right of access to documents of the Commission, the Council, and the EP is accompanied by the requirement that within a period of two years the Council shall pass general guidelines of its implementation particularly concerning the conditions of access and denial of access to documents on grounds of private or public interest (new Art. 255 TEC). In addition, the Council now is obliged to publicise voting results, explanations of voting behaviour, and protocol declarations when it meets as legislator. What is critical in these cases is that the institutions will decide on their own whether and under what circumstances citizens will get access to which documents which runs the risk that future practice even will be more restrictive than the given situation under the “code of conduct” regulations and related jurisdiction (see Rat 1996).

Furthermore, the right of access only covers the three mentioned institutions leaving out the others. The provision that the Council will decide on its own whether it meets as legislator or not will in all likelihood fence off judicial control by the ECJ of requests to access to Council documents. Given the established individual right of access it will depend on the (national) courts whether these new regulations will yield more transparency or less (see Stein 1998, 155–157). The Commission's proposal for a simplified legislative procedure was successful although the IGC discussed this issue under a different heading. The co-decision procedure was shortened and streamlined opening the possibility of passing a law only after the first reading in Parliament (see Meng 1998, 170–173; ). The gains in terms of transparency will nevertheless be limited because the co-decision procedure is only one out of four decision making procedures, the co-operation procedure – although cancelled out in other areas – will still be applied in the important field of monetary and economic policy, and there is no general principle concerning which procedure applies in which case.

### **2.1.7 Citizenship**

A radical difference in the approaches of the institutions can be detected in relation to citizenship. While the European Commission and particularly the EP heavily emphasised the development of citizenship the European Council and the Member governments in the IGC were rather reluctant. Although the European Council had proclaimed that it aims at strengthening fundamental rights and their protection the way how to achieve it had not been specified. The Commission proposed to incorporate a list of fundamental rights for EU citizens including a common base of social rights, to either also incorporate human rights into the Treaty or to sign the European Convention on Human Rights and Fundamental Freedoms, and to ban discrimination of any kind. The EP even went further in three important respects: first, it asked for fundamental political rights which would facilitate political participation of EU citizens in all Member States; second, it wanted specific rights aimed at protecting national minorities; third, it proposed to draft rights which third-country nationals would enjoy throughout the Union. Together with a number of other special rights like a right on information, equality of men and women in all respects (and not limited to the economic sphere), a right to equal access to universal services, and specific rights for children, young people, and families the EP intended to develop citizenship to the full extent.

Although the Reflection Group also had proposed to incorporate at least human rights into the Treaty or to join the European Convention the IGC could not agree on these issues. It only agreed to provide a legal basis in the Treaty for the enforcement of human rights through the ECJ albeit the enforceability of these rights in the second and third pillar is quite restricted while in the first pillar it will not make a great difference. Stating the principles of freedom, liberty, human rights, and the rule of law may help the ECJ to develop its jurisdiction in the area of fundamental rights further but their major objective is to secure Member States' adherence to these principles which is proven by the sanctions to be applied in the case of their breach by

any Member State (new Art. 7 TEU). The importance of social rights is underlined in the Treaty (preamble of TEU, Art. 136, Art. 137, Art. 139 TEC) and in several declarations (no. 27, 27, and 38) but they do not establish any new social citizenship rights. Some improvements can be found in the area of equal treatment of men and women. The scope of its application has been slightly extended covering equal pay not only for equal work but for work of equal value as well, and the adoption or maintenance of measures of positive discrimination of women are permitted in order to facilitate their participation in the workforce (Art. 141 TEC in conjunction with Declaration 28). In addition, the Community has been given the mandate to devise measures to fight social exclusion (Art. 137 TEC) and discrimination of various types (Art. 13 TEC) although these provisions fall short of a fully fledged anti-discrimination clause which is only underlined by Declaration 22 which asks the Community institutions to pay attention to the needs and interests of persons with disabilities when promoting legal harmonisation in the common market area. Of some importance is the provision that the Community institutions have to observe the regulations on personal data protection. Concerning Union citizenship certain slight improvements were initiated: the right to use any one of the official languages in written conversations with the Community organs and expect a response in one's own language, and the already mentioned right to access to documents (Art. 255, Declaration No. 35) stand out among them. Nevertheless, the outcome of the IGC in respect of citizenship falls short of the maximalist approach of the EP and the Commission, and – more surprisingly – even of the minimalist approach of the Reflection Group and the European Council.

## 2.2 Comparing the Strategic Choices

Given the strategic elements proposed by the European institutions<sup>6</sup> to bring the Union closer to its citizens we now face the question what the strategic choices were which had to be made in order to advance one's cause and how we can compare the different approaches adopted by the European institutions.

The analytical framework used to identify the strategic choices involved consists of two dimensions. In the first dimension we distinguish between input and output related elements of democratic governance and in the second dimension between the national and the European level of community. Input related elements of democratic governance are those which are intended to "bring the citizens closer to the Union" by opening access for the citizens to the Community, to its organs, to the process of policy formulation and decision making. Any measure which addresses the first stages in the policy cycle (agenda setting, policy formulation, decision making, see Héritier 1987; Howlett/Ramesh 1995) and which are related to improve the involvement and participation of citizens is classified as input related.

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<sup>6</sup> For the purpose of this study and for the reason of simplicity the IGC is treated in this context as if it were a corporate actor and a European institution although it is not in the legal sense of the term. Since we are interested in the outcome of the IGC and since the Treaty forms the basis for any further action of the Union it seems justified to analyse the new provisions as part of a strategy which was devised by the IGC.

Conversely, any measure which aims at “bringing the Union closer to its citizens” by improving the output of the Union and the Member States in terms of decisions, public goods, services, and policies which are oriented at satisfying citizens’ needs and interests will be said to be output related.<sup>7</sup>

The second dimension is whether the national or the European level is the focus of attention. Measures which, for example, aim at enhancing the performance of the Member States in coping with perceived social or economic challenges address the national community of citizens whereas measures which are designed to improve the effectiveness of the European institutions or to invoke a feeling of attachment and belonging to the European Union are directed towards an imagined European community of citizens. Applying these categories to the above identified strategic elements of community building proposed in the run up to the IGC 96 we can sort out the various approaches.

Promoting common values and principles can address either the national or the European level of community or both and, according to the specific content, they can be either input or output related. For instance, the principle of democracy and liberty addresses both levels at the same time although – given the particular content of the provision in the Treaty – the emphasis is on securing liberal democratic practices at the national level. The principle of access to information at the EU level is input oriented whereas the principle of sustainable development or of equality between men and women is output oriented since it is intended to guarantee a certain effect in social reality, namely that men and women are treated equally by enterprises and public authorities alike.

The second element which aims at the preservation of public service provision and unique practices in certain areas could in principle be used to address both the national and the European community of citizens. In its given shape and in the given situation (subsidising public services and broadcasting, respecting the status of churches at national level and no Community competencies in this fields) it is directed at the national community of citizens and linked to output related functions.

Improving effectiveness and efficiency are objectives which could in principle be applied to the workings of national and European institutions as well and are definitely output oriented. The same is true for the aim of developing more popular policies. In fact, the reforms agreed in the IGC are oriented at improving the effectiveness and efficiency of certain European policies (e.g. in some of the fields of justice and home affairs, or in social policy) whereas the new policy area which was established (employment policy) aims primarily at improving the effectiveness of the Member States’ policies.

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<sup>7</sup> A similar distinction between input and output legitimation of European politics was introduced by Fritz Scharpf 1998.

The aim of strengthening the rule of law could be applied to the national and the European level and it is a predominantly input related concept. This is so because the rule of law predetermines any measure taken by public authorities and the scope of action of the EU is circumscribed by the Treaty enhancing its predictability, reliability and enforceability. The single most important measure in this respect was the introduction of a clause that Member States which do not adhere to the principles of – among others – the rule of law will have to face sanctions. With regard to the supervising functions of the ECJ the new provisions address primarily the European level and only slightly enhance the role of the ECJ. In the third pillar, for instance, it depends on the will of the individual Member States whether the ECJ will be granted jurisdiction or not. This is why the box in diagram 1 (see below) representing the position and importance of the goal of ensuring the rule of law in the Amsterdam Treaty stretches from the sector which represents the national level to the sector which stands for the European level.

The promotion of transparency is a typically input related concept which could be used to address the national and the European level as well. The IGC, nevertheless, applied it primarily to the workings of the European institutions.

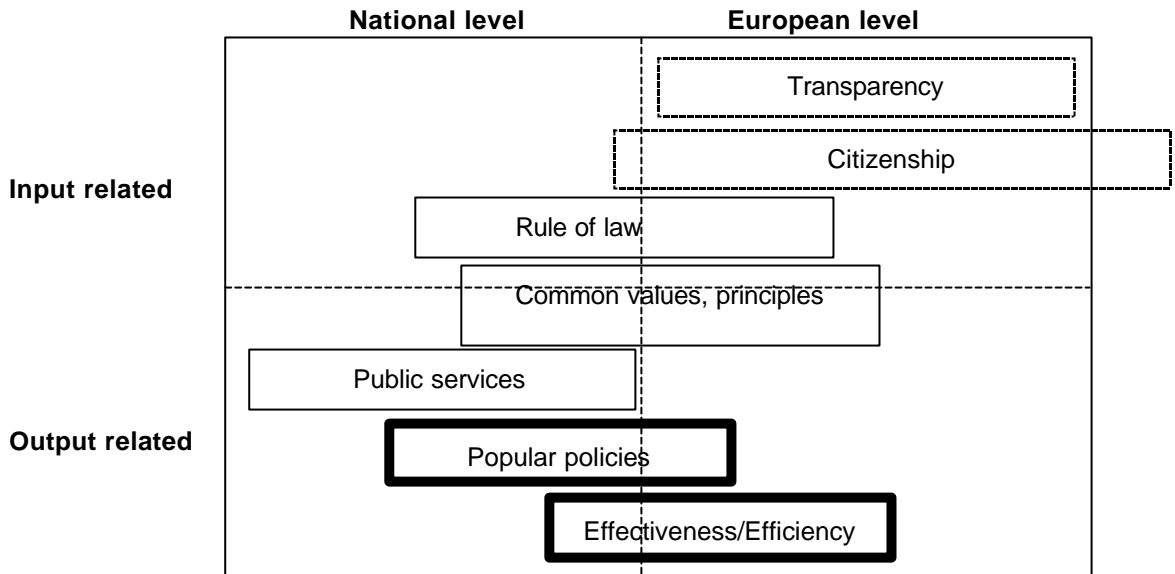
Citizenship is an input oriented element of community building which could be used to address both the national and the European community of citizens with the exception of Union citizenship which clearly addresses the European level alone. The provisions on fundamental and human rights included in the new Treaty, nevertheless, will benefit all people living and working in the EU irrespective of their holding the citizenship of the Union, a Member State or a third country. Diagram 1 gives an approximate graphical representation of how the examined elements of community building figure in the Amsterdam Treaty according to the strategic space circumscribed by the input/output and the national/European dimension.<sup>8</sup>

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<sup>8</sup> The assessment relies on judgments which are partly of a subjective nature. The use of this approach is to point out the principal choices which have been made in selecting and designing the strategic elements of community building.



**Diagram 1: The locus of the strategic elements of community building according to the Amsterdam Treaty**



The picture above indicates how the strategic elements of building a community of citizens have been used either to address the national or European level and whether they serve primarily an input or output oriented mode of governance. The weight of the surrounding boxes indicates the relative amount of attention given to the different elements. A broken line indicates that only minor reforms have been achieved in the given area, a thin line indicates some achievements, and a thick line indicates that considerable reforms have been introduced by the Amsterdam Treaty. If one box reaches beyond the outlined space it indicates that also the reach of the given measure is not confined to either the national or the European level.

The overall conclusion which can be drawn is that the Amsterdam Treaty adopted a strategy of “bringing the Union closer to its citizens” by focusing on measures that should improve the performance of the Member States and the European Union in the provision of certain policies and public goods which are perceived as most important to the European citizens. The beneficiaries of these measures will partly be the national communities and partly the European citizenry as a whole.

The picture above does not tell anything about the strategic choices made by different actors in this respect which finally led to the outcome sketched above. So let us now turn to this question by locating the European institutions in this framework. Only those elements will be considered which have been depicted as key elements in the approach of the respective actor. Given that most actors combined elements which are placed in different areas of the categorical space it is the difference of emphasis which decides where the actors are located.

The European Council's approach has been characterised by the weight put on fulfilling the expectations of the citizens in various policy areas, an aim which became closely connected to improving effectiveness and efficiency in the production of certain public goods (employment, internal security, the regulation of migration, the fight against crime). These proposals addressed primarily the European level – with employment policy probably being a border case – and were strictly output oriented. The application of the principle of subsidiarity, the wish to secure the Member states' capacity to uphold public services, to secure their autonomy in cultural and religious matters, and closer judicial, administrative and police co-operation between Member States clearly aimed at the national community and its integrity and were also primarily output related. The same is also true for the claim to improve the financial management of the EU's budget because mismanagement, fraud, and corruption at European level were quite sensitive topics particularly in some of the Member States which are net-payers. In comparison there was only a weak focus on citizenship rights, transparency, and common values and objectives.

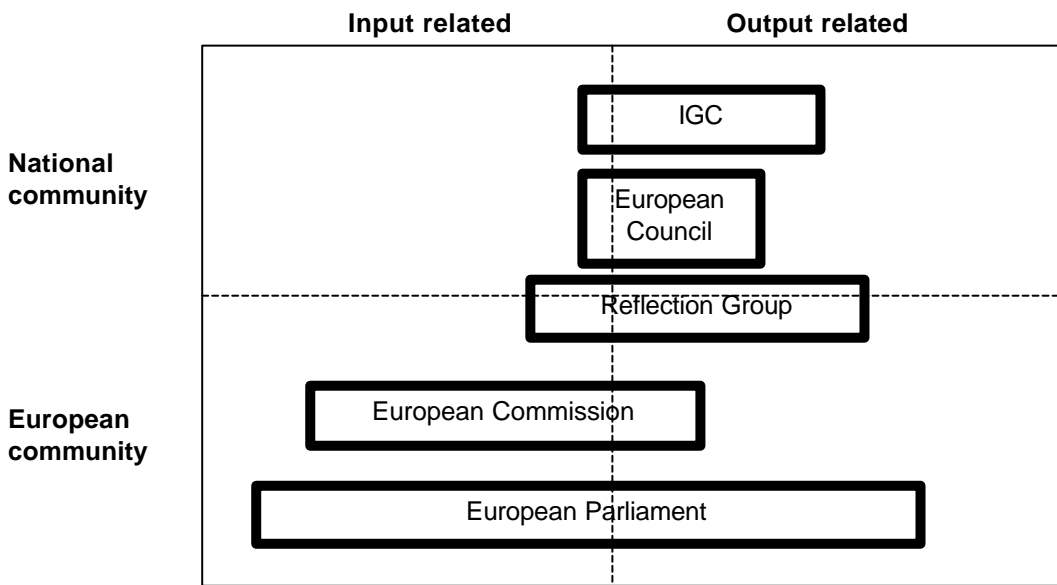
The Commission adopted a quite different strategy which was centred around the claim to provide the European Union with a unified legal and democratic structure (by transferring justice and home affairs into the community pillar, extending judicial review and democratic controls to the second and third pillar, by simplifying the Treaty, the decision-making procedures and legal texts, and by enhancing the role of the EP). These proposals were partly input oriented, particularly those which aimed at democratic reform, partly output oriented. The same is true for the proposed values, principles and objectives which should be stated in the Treaty and which addressed such different topics as transparency, universal services, sustainable development, the fight against social exclusion, racism and xenophobia. In contrast, the emphasis on citizenship development (e.g. fundamental civil and social rights, human rights, equal treatment of all Union residents, and access to information) was clearly input oriented. The substance of the Commission's proposals expressly aimed at improving the Union's legitimacy and were directed towards the European level.

The European Parliament's strategy represents the most extreme case among those analysed of an input oriented reform programme aimed at a European community of citizens. This is due to its heavy emphasis on citizenship development covering not only human, political, and social rights for Union citizens but also addressing national minorities and third-country nationals. The proposed values, principles, and objectives which the EP wanted to incorporate into the Treaty combined input and output oriented demands like openness of the EU institutions, the development of European political parties, more open public debates about the IGC, and a better representation of women in the Union's institutions on the one hand, with the principles of equal opportunities, cultural pluralism, public service provision, and the concern for young people and their families on the other hand. The third focus of the EP was on improving the Union's output performance by strengthening existing and devising new policies at the Union level ranging from security and social policy to cultural, youth, sport and employment

policy. The overarching goal of the EP’s strategy was to win the loyalty and attachment of the European citizens and was therefore clearly addressing a would-be European citizenry.

The Reflection Group took an intermediate position between the Member governments represented at the IGC and the European Council on the one hand, the European Commission and the European Parliament on the other hand. With the former two institutions the Reflection Group shared the concern for improving the effectiveness and efficiency of existing policies and with the latter the concern for enhancing citizenship and transparency in the Union. On both accounts the demands put forward by the Reflection Group tended to be less numerous and less ambitious being targeted at striking a balance between input and output related proposals and proposals which addressed the national level and the European level as well. Diagram 2 locates the strategies of the different institutions and adds the approach worked out by the IGC.

**Diagram 2: The locus of the strategies of the European institutions**



The graphical representation<sup>9</sup> of the different strategies shows that each of the institutions had to find a balance between input and output oriented measures and between the national and the European community as the community of citizens which it wanted to address. The left-right extension of the boxes indicates the scope and importance of input and output related measures that were proposed. The wide box representing the strategy of the EP signals that the EP covered a whole range of measures which also addressed many substantial issues

<sup>9</sup> Because of technical reasons and the need to distribute the strategies along the axis of input-output orientation the two axis have been switched in diagram 2 compared to diagram 1.

related both to input and output performance whereas the relatively narrow box of the European Council indicates a comparatively limited agenda in terms of scope and ambition as well.

The diagram points out that different choices were made by different actors. We find that the European Commission – in comparison with the other actors – favours input over output related measures which is due to its emphasis on structural reform of the working of the European Union and procedural changes which aim at an improved policy formulation and decision making process and an enhanced citizenship status. The European Parliament even went further in both dimensions and presented a more balanced approach combining output and input related measures. At the opposite end of the spectrum we find the European Council and the IGC. Their approaches are clearly targeted at improving output performance. While the agenda of the European Council concerning the European Union and the citizens was quite limited the IGC expanded this agenda to include the proposals tabled by the Member governments during the negotiations.

Turning to the national versus European dimension we have first to point to the limitations of the given graphical representation. They are threefold: First, two actors cannot take the same place in the diagram even when their strategies are quite similar. Therefore we had to order actors along the national versus European axis which results in overestimating given differences. Second, also because of technical reasons each actor is located either at the national or the European end of the spectrum. This is not to say that in a single strategy one cannot combine measures which address both the national and the European level as well. In fact, almost all strategies analysed include measures which do so. The given ordering therefore primarily reflects the balance within each strategy between measures which are oriented to the national or the European level. Third, analysing the approaches of the different actors according to the national versus European dimension requires to take into account the context and the intentions of the actors because not every measure can easily be located at the national versus European dimension. Therefore, only those measures which spring from a definite orientation either to the national or the European level of community are counted while the others are disregarded.

The ordering of the different actors along the national versus European dimension may not come as a surprise. In the European Parliament's strategy the European level of community figures prominently which is due to its heavy emphasis on Union citizenship, the demand for more competencies for the European Community, and a whole range of measures which are aimed at promoting positive feelings among the citizens towards the European Union and its institutions. The European Commission is ranked second. Although it shares with the EP the desire to develop the European Union into a unified institutional system which is democratically governed, which offers a broad range of citizenship rights and opportunities for participation of transnational civil society, the Commission did not propose to increase the competencies of the Community massively. Therefore, it largely seems to respect the given distribution of

competencies between the national and the European level and takes the interests of the Member States seriously which is underlined by its demand for a better practical application of the subsidiarity principle.

At the other end of the spectrum we locate the strategy adopted by the IGC. Creating direct links between the citizens and the European institutions and developing citizenship, transparency and more European policies were rather low key issues. A number of provisions which were meant to satisfy particular demands of Member States (like the clauses on public service provision or respect for peculiar national cultural practices) and favouring co-ordination and information over “communitarisation” and European regulation in many areas show that the Member governments in the IGC tried to use the European level for national purposes. In this respect the IGC’s approach is even more oriented towards the national level of community than the European Council’s approach which focused on common goals leaving little room for special national interests. The Reflection Group also in this respect takes an intermediate position. While its proposals for reform are close to those of the European Council it put more emphasis on establishing common values and principles and also included demands to attach citizens to the European Union (e.g. by proposing the establishment of a Community Service or a European Peace Corps).

In concluding the analysis of the strategies of how the question of “bringing the European Union closer to its citizens” was interpreted and moulded into a reform strategy by the IGC 1996 we find the following:

- The strategies adopted clearly reflect the respective institutional mission and the institutional self-interests of the different actors. Governmental actors or actors with executive functions which are responsible for carrying out policies and for everyday decision making tend to favour output related elements in their strategic approaches. Institutional self-interest is reflected by a more or less European minded approach. The EP and the Commission which derive their legitimacy from the European level tend to favour measures which are intended to strengthen the European Community. While the former group strives to bring “the Union closer to the citizens” the latter is seeking to bring “the citizens closer to the Union”.
- The strategic space of input versus output orientation and national versus European dimension generally has been used by the European actors to favour one end of the spectrum over the other. These strategic choices result from the above mentioned institutional properties and positions but are not derived from any inherent logic of building a community of citizens. Community building is dependent on the combination of input and output oriented measures with measures which address both the national and the European level. Only from the point of view of an interested actor in the field of European politics it seems that they are mutually exclusive.

- The outcome of the IGC in terms of the self chosen aim of bridging the gap between the Union and the citizens is biased towards the strategic choices of those institutional actors who dominate the process of Treaty reform, namely the Member governments in whatever configuration they may meet (in the form of the European Council, the Intergovernmental Conference, or the Reflection Group). Given the analysed choices made by them we find that even the given options of bridging the gap between the Union and the citizens have not been exploited to the fullest potential.

Having analysed the given practices and approaches to building a European community of citizens by the European institutions and actors we will finally take a look at concepts which may provide some clues where the European Union is moving and what options are available for any further development of a European community of citizens.

### 3. Three Dimensions of a European Community of Citizens

The literature on nation-building and citizenship examined in other parts of the project<sup>10</sup> has shed light on three fundamental dimensions of community which we will use to develop a tableau of options for building a community of citizens in the European Union which goes beyond the proposals already put forward in the discussions of the IGC 1996.

#### 3.1 The Societal Dimension

The societal dimension of community<sup>11</sup> refers to the self-regulating capacities of modern systems of human association. There are two main institutions which constitute such communities: markets and civil associations. Markets are often treated as if they were universal entities which are just givens. In fact, markets are constituted and dependent on institutions which guarantee their functioning: money, banks, civil law, and in the last instance, a public authority which upholds order when the former institutions fail to function properly like in the case of hyper-inflation, the breakdown of the banking system, or corruption in the courts system. This is the reason why the process of market integration is inherently linked to what I have called polity integration (see Part B of this volume). Because markets are dependent on institutions which uphold and regulate them they deserve legitimation. Markets do not just “function” but they are embedded in a social environment which leaves its marks on the

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<sup>10</sup> See Cowen/Shenton I, Melchior I and Bauböck in this volume.

<sup>11</sup> The following account does not adhere to the German dichotomy of “Gemeinschaft” versus “Gesellschaft” but uses the term community to signify any form of human association in general which then is specified according to the institutional or other resources it is dependent on. Such a use circumvents the deep ambiguity of the notion of “society” which is often used to denote either some state of “nature”, any form of human association, or a particular form of nation-state and/or market regulated system.

structures and practices of production, consumption and distribution. This is the reason why market integration in the European Union had to overcome resistance and why the project of monetary and economic integration is still contested.

The legitimacy of the European Central Bank is of critical importance in this respect. The institutional design of the ECB puts heavy emphasis on independence, autonomy, and price stability as the ultimate goal. The design is derived from the need to build up credibility for the new currency in the international (financial) markets and to solve the problem of time-inconsistency and it is based on the assumption that monetary policy has no impact on economic growth and employment. Critics point out that the ECB lacks accountability and is not sufficiently involved in co-operative relationships with democratically accountable actors in the field of economic policy which would probably enhance the instrumental rationality of the policy choices taken by the ECB and it would create synergy between different areas of economic policy in regard of economic growth, employment, distributional justice, and even price stability at lower costs (see Proske 1995, Hickel 1994). It may be too early to judge whether the legitimacy of the ECB is in danger. Nevertheless, demands for more transparency in the workings of the ECB (like making public the protocols of its meetings) and better economic policy co-ordination have been made by various governments. One step in this direction has already been taken by establishing the so-called “euro-11” group of finance ministers from countries taking part in the single currency. Its meetings are prepared by the Economic and Financial Committee (EFC). The latter is made up of top officials from the EU’s finance ministries, national central banks, the European Commission and the European Central Bank. Most intergovernmental negotiations before ministerial meetings and summits are carried out by the committee (see *European Voice*, 21 January 1999). Since it meets in secrecy it may not help to enhance the legitimacy of European economic and monetary policy from the viewpoint of European citizens. In the case that monetary policy may be challenged in the future further measures might be considered such as

- broadening the catalogue of goals for the ECB (including the goal of contributing to growth and employment)
- giving reasons for its decisions and showing how its decisions affect real economic development including growth and employment
- publication of the results of its meetings
- exchange of information with interested political agents
- public discussion of monetary policy issues (see BEIGWUM 1996, 25–28).

Given the legitimacy of the basic institutions markets are dependent on certain minimal conditions which are not easily fulfilled and cannot be taken for granted. The three main requirements in this respect are that individuals should enjoy the right of free movement, they should be treated equally, and they should respect each other as equal participants in the market. While free movement is granted in principle there are a number of limitations and

obstacles which hinder settlement, access to work, and the transfer of social benefits. Although equal treatment is a basic principle granted by the TEC there remain certain areas like, for example, taxing, the recognition of some professional qualifications and experiences and a broad interpretation of public sector employment which do not live up to the principle. The requirement of mutual respect of individuals in the market place is largely fulfilled in view of Union citizens but not in regard to third-country nationals (see Bauböck in this volume). Improvements in these areas could include the following (see Report of the High Level Panel 1997):

- better information to raise people's awareness of their rights;
- a new type of residence card for people temporarily in another Member State such as students, volunteers, and artists;
- more flexible interpretation by Member States of rules on residence requirements particularly concerning the proof of sufficient resources and the status of self-employed people;
- easier access to employment in other Member States through general legislation to enable recognition of professional experience and ensure that periods of working abroad in the EU is not detrimental to one's career;
- narrower definition of public service posts reserved for Member States' own nationals;
- a need to modernise social rights concerning the preservation and export of private supplementary pensions and pre-retirement benefits;
- more flexible rules to allow regrouping of families by including non-dependent children of more than 21 years, non-dependent relatives in the ascending line, and unmarried partners;
- more emphasis on language training and cultural exchanges;
- greater equality in tax treatment by adopting a common definition of residence for tax purposes, better co-operation of public authorities to avoid double taxation, and particular provisions concerning cross-frontier workers;
- improving the situation of legally resident third country nationals by including them in the co-ordination of social security arrangements, easier reunion of families where some part holds a third-country nationality, the right to take up an activity as self-employed for



these family members, and the right of residence for divorced spouses of Union citizens who are third-country nationals;

- new means of redress for individuals with problems applying their rights and improved access to existing channels like the Ombudsman, the Petitions Committee, and individual MEPs;
- a single Commissioner responsible for free movement of persons to enhance the visibility and responsibility of the Community for securing the right of free movement.

When the individual rights to free movement, settlement, and access to work are fulfilled the moving individual still remains a foreigner and atomised. Participation in society cannot be reduced to living a private life and participating in the market. Participation in social life includes socialising, cultural and associational activities which only partly can be undertaken in private. Therefore, it follows that social integration is dependent not only of realising to the fullest extent possible the societal dimension of community but it has to be supported and accompanied by integrative steps in the political and cultural dimension of community as well.

### **3.2 The Political Dimension**

Interest formation and articulation, political discourse and collective decision making are indispensable elements of participation in a community. Taking collective decisions democratically and involving the citizens is a key element in developing a political community of citizens in Europe. The political rights of Union citizenship have been analysed in various parts of this study (see Melchior I, Bauböck).

The present provisions of the Treaty merely grant voting rights without mentioning other political rights such as the right of association and freedom of expression. Yet the latter are intrinsically pre-conditions for the meaningful exercise of the former. International law itself and the European Convention on the Protection of Human Rights and Fundamental Freedoms grant the freedom of expression, of peaceful assembly and of association to everybody, irrespective of nationality. Yet its Article 16 allows the contracting parties to impose restrictions on the political activities of aliens. Some Member States have corresponding rules in their legislation. These rules subject the political activity of non-nationals to a number of conditions, such as the prohibition of becoming a member of a political party for example or a general obligation of political neutrality as far as policy questions in the host Member State are concerned. The link between voting rights and the participation in the political debate is all the more clear if we consider that in some Member States only political parties are entitled to present candidates for European Parliament and local elections (see European Commission 1997). Therefore, accession of the EU to the ECHR would have been a step forward because it would have guaranteed to all citizens of the Union that they can effectively exercise their political rights

granted by the Treaty on European Community. Of course, opening routes for non-nationals to electoral positions in European and local elections is also a matter national parties are responsible for and which cannot and should not be enforced.

Promoting political participation in European politics is not only a matter which is important in regard of non-nationals but of national citizens as well. Given the difficulties of mobilising citizens to vote in European elections alternative ways of political participation at the European level should also be explored. The Austrian and Italian delegations to the IGC, for instance, had proposed to introduce a right of non-nationals residing in a Member State to participate in local referendums. In addition, proposals of legal acts signed by 10% of the electorate in at least three Member States should be considered by the EP (see CONF/3941/96). Other forms of direct democracy might also help to promote a European political community.

One option is to establish a system of veto rights in the form of referendums of various kinds (see Abromeit 1998). Whenever an EU policy is decided by the given representative institutions a previously defined set of groups or units (Member States, federal provinces or regions, and sectoral units) would have a right to contradict it if a qualified majority of their members reject it in a referendum. The rejection of the respective European policy would prevent it from coming into force and would relegate the question to the national level.

In the case of treaty reform and other “constitutional decisions” (own resources, enlargement, major international agreements) we could think of a mandatory constitutional referendum linked to a double majority of votes cast and Member States constituencies agreeing based on a minimum participation rate. Opening the opportunity for a certain portion of MEPs or the blocking minority in the Council to launch a European wide voluntary referendum could help to overcome deadlocks in the decision-making process.

One of the major deficiencies in the European policy process is its remoteness from the citizens, its opacity and the lack of adequate information. The Amsterdam Treaty will only slightly reduce the problem by implementing the transparency principle which largely confirms the given practice concerning access to Community documents and may even limit access to documents which originate from Member States. A more pro-active and interactive form of exchange between the Community institutions and citizens could be initiated by building a Europe-wide communication network which offers public access to political information on policy documents, legislative proposals, or voting records and which also would offer the possibility to cast one’s own views (see Weiler 1997). Promoting a European public space is of utmost importance and could be facilitated by the establishment of European parties with individual membership and Union support. But it is not only a European party system which can promote public debate on European issues. More Europeanised parties could also fulfil this task.

Opportunities for citizen participation is one side of the coin, responsive and accountable European political institutions is the other side. Most of the reform proposals presented to the IGC tried to separate these issues. In effect, the institutional reforms introduced by the Amsterdam Treaty do go in the right direction but only very slowly. It was agreed that the EP will have to give its assent to the next president of the commission proposed by the Member Governments thus furthering his democratic legitimation. Establishing an effective system of accountability and responsibility between the EP and the other Union organs remains on the agenda. One important element of such a strategy concerns the accountability of the Commission vis a vis the EP. One option to establish such a relationship of accountability would consist in joining together the European and national parliaments in the election of the Commission President. A proposal recently put forward asks for national parliaments to propose candidates for the position of the Commission president among which the European Parliament would chose the winning candidate (see Attina 1998). In addition, the EP could also be given the right to recall individual commissioners probably on the basis of a public petition signed by a certain number of European voters (see Nentwich 1998).

The last element of developing a political community of citizens is the re-launch of an open and wide spread constitutional debate. In the past the discussion about a European constitution was hindered by a federalist bias and evident institutional self-interest on the side of the European Parliament which proposed two constitutional texts 1984 and 1994. In the meantime the opinion has spread that a constitutional process will not necessarily lead to the transformation of the Union into a federal state nor will it result in a single constitutional text. Particularly in face of Eastern enlargement a constitutional process could help to prepare the Union for the accession of new Member States and to overcome the Member States resistance to institutional reform (see Die Union 1998/4). A constitutional debate could provide the opportunity to streamline the decision-making procedures and their application in various policy fields, to devise a new balance between the institutions of the Union and to adapt their composition and voting rules, to consolidate and develop the institution of citizenship, and, probably, to clarify the division of competencies between the national and the European level. The involvement of the public would help to win the citizen's approval for the major reform steps that lie ahead and would help to legitimise its outcome. The German Presidency's aim to initiate an EU Charter of Fundamental Rights could be a starting point for such a constitutional debate (German Presidency 1999).

As the analysis has shown the IGC 1996 could not agree on dealing seriously with the sensitive issues of building a political community of citizens albeit the potential for advancing a European Union of citizens seems greatest in this dimension of community – at least in the long run. “Europeanising” the vertical dimension of political community by improving the interlocking and co-operation of national and European political institutions at state level, at party level, at the level of the intermediate structure of interest representation, concerning citizenship and the public political space is less likely to be hindered by the limitations

imposed upon the unification of the European peoples which accrue from the low level of personal mobility and the multinational nature of the European Union. None the less, even the process of building a European political community cannot neglect the cultural conditions of integration.

### 3.3 The Cultural Dimension

Cultural communities represent the “thickest” form of large scale human association. Groups which are bound together by ethnic origin, a common language, traditions, history, and/or religion may more easily establish community among themselves. This is the reason why nation-states either were built on core populations who shared certain of the mentioned characteristics or heavily invested in acculturating their population into a given or constructed cultural community of citizens. As has been demonstrated in other parts of this study (see Melchior I, Bauböck) the European Union cannot and should not follow the course the nation-states have taken in developing community. This implies that a community of European citizens will have to rely less on emotional and affective bonds among its peoples than on loyalties which derive at best from democratic principles and republican passions – should the EU ever come closer to its proclaimed democratic ideals – and at least from rational self-interest in living peacefully in an European area of prosperity and security.

But even this limited, but nevertheless ambitious vision of a multinational and multicultural community of peoples is dependent on overcoming national prejudice, on developing language and communicative skills to participate in social and political exchange, and on respect for different cultures to which ever more portions of the population are exposed either by European or global migration. To work towards these ends should be seen as a duty owed to the common European project and carried out by the European Union and particularly by the Member States.

The EU has been active in these areas by developing and funding various programs in the fields of education and research. Since the coming into force of the Maastricht Treaty the Community implemented three programs encouraging cultural cooperation in the arts (Kaleidoscope), literature (Ariane) and heritage (Raphael); it started preparations for the first framework program in support of culture for the period 2000–2004, and it has outlined an approach to consider cultural aspects in all policy areas (see Communication 1999). The Commission thereby anticipated the entering into force of the Amsterdam Treaty which adds a new cross-cutting provision that the Community in all its activities should take account of the cultural dimension with a view to the preservation and promotion of its given cultural diversity (Art. 151 (4) TEC).<sup>12</sup> Nevertheless, the funds available are marginal and the priorities are on promoting co-operation

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<sup>12</sup> In fact, the Commission had already in 1996 presented its “First report on the consideration of cultural aspects in European Community action” (COM(96) 160 final).

in cultural and artistic production and dissemination. Therefore, the responsibility for furthering cultural tolerance and mutual understanding sticks largely with the national level.

Although the national (majority) cultures are protected by a number of provisions of the Treaties (ranging from the preamble to Union citizenship and specific clauses in various policy related articles) and mutual interest of the Member States this is not necessarily the case in regard of national or ethnic minorities and immigrant cultures. Thus, a Community approach to preserving cultural diversity could include a more extensive interpretation of the principle of non-discrimination, but particularly the firm and determined implementation of the new Article 13 TEC (see Europaforum Wien 1999) and the development of minority rights also at European level (see Bauböck in this volume). Trying to tie together nations and states under the roof of the European Union in the cultural dimension would amount to the effort “to retain the Eros of the national its demonic aspects under civilizatory constraints” (Weiler 1997a). In any case, the European Union will not and does not need to develop into “a” cultural community but will stay a “community of cultural communities” which are bound together in this respect by the mutual will to sustain “cultural diversity” in the Union. The emphasis on “cultural diversity” at the European level does not go easily together with traditions of nationalism which developed by eradicating “cultural diversity” at the state level. Spreading the awareness and knowledge of the implications of European unification for the accommodation of the diverse European nations may be a valuable task of educational and cultural policies both at European and particularly at Member State level.

Having explored the potentials and restrictions of building a community of citizens in the European Union we may conclude that European unification cannot proceed by relying only on one of the three identified dimensions of community. The prospects of developing a community of European citizens hinges – in the understanding explored in this study – on the re-combination of and progress along all three dimensions of community: the societal, the political, and the cultural. European integration started with developing the societal dimension of community and its potential now starts to run low, partly because of its success and partly because the lack of cultural resources – as we can see in the case of the free movement of persons. The potential of developing a cultural community of citizens is rather restricted given the multinational composition and the value attributed to national identity. This is not an disadvantage but an asset if national identities are not only kept separate but articulated in a new fashion at the European level. Developing a community of citizens in the political dimension has great potential which, in our understanding, has not yet been exploited. Whether this is seen as a challenge or a danger is itself a political decision which will have to be taken at the national level.

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