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## THE STRUCTURE, DECISION-MAKING PROCESS AND ACTORS IN THE EU INTERGOVERNMENTAL CONFERENCE

### ABSTRACT

The subject of the analysis is the structure, decision-making process and actors of the intergovernmental conference as an instrument for the revision of the European Union's political system. The author divides intergovernmental conferences into constitutional conferences and conferences *ad hoc*. The analysis leads the author to two main conclusions. Firstly, an intergovernmental conference is a diplomatic conference where representatives of the governments of the European Union member states negotiate to prepare a founding or revision treaty of the EU. However, an intergovernmental conference differs from a classical international conference within the meaning of the Convention on the Law of Treaties of 23 May 1969. Secondly, the greatest influence on the course and outcome of an intergovernmental conference is exerted by the governments of the Member States and the intergovernmental institutions of the EU, while the role of the supranational institutions of the EU is limited.

**Keywords:** constitutional conferences, conferences *ad hoc*, EU founding treaties, EU revision treaties, EU intergovernmental institutions, EU supranational institutions

## INTRODUCTION

The Intergovernmental Conference (IGC) is a legal instrument for treaty changes in the European Union. Looking at intergovernmental conferences from the perspective of the entire process of European integration, it should be noted that in the history of the European Communities and the European Union to date, there have been a total of 15 intergovernmental conferences, 10 of which were constitutional and five of which were conferences *ad hoc*. There were, however, two fundamental differences between them: (1) whereas constitutional conferences were generally devoted to the creation of new international organisations or the profound constitutional reform of existing organisations, conferences *ad hoc* were limited to a restricted number of constitutional changes in the latter organisations; (2) whereas constitutional conferences lasted from several months to a year or even a little longer, conferences *ad hoc* lasted for a short period, sometimes even only a day. The constitutional Intergovernmental Conferences either concluded with the signing of the relevant founding treaties, such as: the Treaty establishing the European Coal and Steel Community (ECSC Treaty) of 18 April 1951, the Treaty establishing the European Defence Community (EDC Treaty) of 27 May 1952, the Treaties establishing the European Economic Community and the European Atomic Energy Community (EEC Treaty, Euratom Treaty) of 25 March 1957, the Treaty of Maastricht of 7 February 1992,<sup>1</sup> and the Treaty establishing a Constitution for Europe of 29 October 2004; or their result thereof was the conclusion of the relevant revision treaties, such as: the Single European Act (SEA) of 17/28 February 1986, the Treaty of Amsterdam of 2 October 1997, the Treaty of Nice of 26 February 2001, and the Treaty of Lisbon of 13 December 2007. It must be stressed, however, that the only IGCs that comprehensively dealt with reforming the system of the European Union, that is to say, introduced changes to all (described below) horizontal and to most sectoral components of the EU system, were the 2003–2004 Intergovernmental Conference, preceded by the Convention of 2002–2003 which prepared the Treaty establishing a Constitution for Europe, and the 2007 Intergovernmental Conference on the elaboration of the Treaty of Lisbon, codifying about 90% of the provisions of the Treaty establishing a Constitution for Europe. As regards the Intergovernmental Conferences *ad hoc*, these were devoted to negotiating the Merger Treaty of 8 April 1965, the Budget Treaties of 22 April 1970 and 22 July 1975, amending Article 136(3) TFEU by unanimous decision of the European Council of 25 March 2011 on the basis of a simplified revision procedure (Article 48(6) TEU)), and the concluding on 13 June 2012 of the so-called Irish Protocol under an ordinary revision procedure (Article 48(2) to (5) TEU)<sup>2</sup>.

<sup>1</sup> The Maastricht Treaty was the result of two Intergovernmental Conferences held in parallel: one devoted to the creation of a Political Union and the other – to the establishment of an Economic and Monetary Union. It was both a founding treaty, since it established the European Union, and an amending treaty, as it amended the ECSC Treaty, the EEC Treaty, and the Euratom Treaty.

<sup>2</sup> For more on the new typology of intergovernmental conferences after the entry into force of the Lisbon Treaty, cf. J.J. Węc, “Reforma procedur rewizji traktatów Unii Europejskiej na mocy traktatu

The primary research objective of the paper is to analyse an intergovernmental conference from the point of view of its structure, decision-making process and participating actors. The author formulates two research hypotheses. The first is based on the assumption that an intergovernmental conference is a diplomatic conference in which representatives of the governments of the European Union member states negotiate to prepare a founding or revision treaty of the EU. The second hypothesis states that the greatest influence on the course and results of the IGC is exerted by the governments of the member states and the intergovernmental institutions of the EU, while the role of the supranational institutions of the EU is limited. Following this, the author formulates two research questions: first, how does an EU intergovernmental conference differ from a classical international conference within the meaning of the Convention on the Law of Treaties of 23 May 1969?; second, why do member state governments and EU intergovernmental institutions exert the greatest influence on the course and results of an intergovernmental conference? The author used the institutional-legal method in the work and referred to the theory of neoliberal institutionalism, which treats international organisations as an instrument of policy implementation by member states and for which institutions are both international organisations and legal norms and international procedures.

## 1. THE STRUCTURE OF THE INTERGOVERNMENTAL CONFERENCE

In principle, each IGC consists of two phases, the first of which includes preparatory work and the second comprises actual diplomatic negotiations, the latter being divided into three stages. The first phase includes preparing the negotiations and defining the terms of reference for, or a recommendation to, the conference of representatives of the Governments of the Member States. The Presidency, the Governments of the Member States, the European Commission and the European Parliament are involved. Experience to date from the proceedings of 10 constitutional Intergovernmental Conferences has shown that there are at least five models for the implementation of the preparatory phase, depending on the participants. In theory, these could be as follows: (1) the expert committees which prepared the deliberations of the three Intergovernmental Conferences dealing with the drafting of the Treaties of Rome (1956–1957) and of the Maastricht Treaty (1990–1991); (2) the Reflection Group which worked for the IGC on the Treaty of Amsterdam in 1996–1997; (3) the Group of Wise Men whose objective was to prepare the IGC on the Treaty of Nice in 2000; (4) the Convention which performed the preparatory work for the deliberations of the Intergovernmental Conference on the Treaty establishing a Constitution for Europe in 2002–2003; and (5) the Sherpas' Group whose objective was to prepare the IGC on the signing of the Treaty of Lisbon in 2007. Among the five models listed above, the most democratic

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lizbońskiego. Nowa typologia konferencji międzyrządowych” [“The Reform of the Procedures for the Revision of the European Union Treaties under the Treaty of Lisbon. A New Typology of Intergovernmental Conferences”], *Politeja*, vol. 22, no. 2 (2025), pp. 25-52.

mandate was that of the Conventions, i.e. assemblies composed of representatives of the Heads of State or Government of the Member States, of the national parliaments, of the European Parliament and of the European Commission.<sup>3</sup> They have been convened twice so far. The first Convention was held in 1999–2000 and drafted the Charter of Fundamental Rights, subsequently proclaimed by the European Parliament, the European Commission and the Council of the European Union on 7 December 2000. The second Convention, referred to as the Convention on the Future of Europe, met in 2002–2003 and prepared the draft Constitutional Treaty. The work of the Convention on the Future of Europe was particularly intensive. It comprised debates in working groups and then in plenary sessions. It should be stressed, however, that the development of the draft of the Treaty establishing a Constitution for Europe by the second Convention gave rise to criticism in some Member States of the European Union as the assembly had exceeded the terms of reference defined for it by the European Council, namely to only serve as the framework for drawing up a recommendation for the Intergovernmental Conference. Both Conventions were based solely on ‘political legitimacy’ since they had neither a legal basis in secondary legislation nor treaty status at that time. That status of the institution of a Convention was not obtained until the Lisbon Treaty of 13 December 2007 (Article 48(3) TEU). In contrast to the Convention, the work of expert groups, the Reflection Group, the Group of Wise Men and the Sherpas’ Group was limited to identifying the problems to be discussed by individual Intergovernmental Conferences.

As mentioned above, proper diplomatic negotiations involve three stages: Community-intergovernmental, intergovernmental and national. In the Community-intergovernmental step, the European Parliament, the European Commission or the Governments of the Member States submit proposals for the amendment of the Treaties (Article 48(2) TEU). The European Council then consults the Community institutions: the Parliament and the Commission as well as the European Central Bank (if the proposed changes concern monetary policy) on the need for an intergovernmental conference. As mentioned before, the European Council, after obtaining these opinions, decides by a simple majority to examine the proposed amendments. If the European Council adopts such a decision, the President of the European Council convenes a Convention. The assembly then examines the proposals for amendments and adopts

<sup>3</sup> It should be added that the work of the Convention on the Future of Europe also involved representatives of the Governments and of the national parliaments of candidate countries for accession to the European Union, including Poland’s delegates. In addition, observers, including the European Ombudsman and members of the Committee of the Regions, of the Economic and Social Committee and of social partners, were invited to participate in the activities of both Conventions, whereas representatives of the Court of Justice, of the Council of Europe and of the European Court of Human Rights also attended the first Convention. Cf. S. Hamburga, “Karta Praw Podstawowych Unii Europejskiej” [“The Charter of Fundamental Rights of the European Union”], *Przegląd Sejmowy*, vol. 12, no. 2 (61) (2004), pp. 98–99. T. Astramowicz-Leyk, “Geneza Karty Praw Podstawowych i jej znaczenie dla wspólnotowego porządku prawnego” [“The Origins of the Charter of Fundamental Rights and Its Relevance to the Community’s Legal Order”], in W. Waclawczyk (ed.), *Karta Praw Podstawowych UE. Nowa szansa dla praw człowieka? [The Charter of Fundamental Rights of the EU. A New Chance for Human Rights?]*, Warszawa 2010, pp. 13–14.

by consensus a recommendation to an intergovernmental conference. In the case of few amendments being proposed, the European Council may decide not to convene/to forgo convening a Convention, subject to obtaining the consent of the European Parliament. In such an event, the European Council itself defines the terms of reference for an IGC (Article 48(3) TEU).

The intergovernmental step includes actual diplomatic negotiations at the level of the Heads of State or Government within the European Council, Foreign Ministers or European Affairs Ministers within the General Affairs Council and representatives of Foreign Ministers or European Affairs Ministers within the Council of the European Union, or ambassadors and deputy ambassadors of the Member States to the EU within the Committee of Permanent Representatives (Coreper II or Coreper I), or other committees of the Council of the European Union. An intergovernmental conference is convened by the Presidency or, more specifically, by the President of the Council of the European Union, for the purpose of determining by common accord the amendments to be made to the Treaties (Article 48(4) TEU). However, the relevant negotiations take place outside the EU's institutional framework; therefore, the EU decision-making procedures and rules do not apply to them. The objective of the negotiations is for the representatives of the Governments of the Member States to agree, by consensus, on the text of the founding treaty or the amending treaty, with all the Governments participating in the IGC on an equal footing. Representatives of the Parliament and of the Commission attend the meetings of the conference, but they cannot prevent the adoption of proposals which have received the support of the Governments of all the Member States. In legal terms, an intergovernmental conference is a diplomatic conference during which representatives of the Governments of the EU Member States negotiate with a view to drafting a founding or amending Treaty. Any exemptions from the general obligations of the parties take the form of protocols in the European Union and require the consent of all Member States. The possibility of varying relations between the parties to a treaty, which could result from the Convention on the Law of Treaties of 23 May 1969, which allows the possibility of lodging reservations to treaties, accepting and objecting to reservations to treaties, has therefore been ruled out (articles 19 to 23 of the Convention).<sup>4</sup>

The national step involves the ratification of a new founding or amending Treaty as agreed, by consensus, at the relevant Intergovernmental Conference. The Treaty is ratified by the Member States in three ways: ratification is carried out by the national

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<sup>4</sup> In accordance with article 21(1) to (3) of the Vienna Convention, a 'reservation established with regard to another party in accordance with articles 19, 20 and 23: (a) modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and (b) modifies those provisions to the same extent for that other party in its relations with the reserving State (article 21(1)): 'The reservation does not modify the provisions of the treaty for the other parties to the treaty *inter se*' (article 21(2)). 'When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.' (article 21(3)). Cf. United Nations, *Vienna Convention on the Law of Treaties*, completed at Vienna on 23 May 1969, pp. 8-9, at [https://legal.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf), 19 May 2024.

parliament (e.g. in Romania, Finland and Bulgaria), by the Head of State after obtaining the consent of the parliament (e.g. in Poland and in most EU Member States), or by referendum (e.g. in Ireland). The Treaty amendments only enter into force after the ratification process has been completed by all the Member States (Article 48(4) TEU). In contrast to the accession or association treaties, the consent of the European Parliament is not required for the entry into force of a new treaty. Its resolutions on this matter are of political significance only. However, if, two years after the signature of a treaty, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter is referred to the European Council (Article 48(5) TEU).

## 2. THE DECISION-MAKING PROCESS AT THE INTER-GOVERNMENTAL CONFERENCE

Basically, there are four levels of decision-making at each IGC: firstly, the level of the Heads of State or Government within the European Council (political level); secondly, the level of Foreign Ministers or European Affairs Ministers within the General Affairs Council (political level); thirdly, the level of representatives of Foreign Ministers or European Affairs Ministers within the Council of the European Union or of the ambassadors and deputy ambassadors of the Member States to the EU within Coreper II or Coreper I, or other committees of the Council of the European Union (technical level); fourthly, the level of legal experts within the relevant working groups (technical level). Whereas actual decisions are taken by the Heads of State or Government, the Foreign Ministers or the European Affairs Ministers, ministerial representatives and experts only perform advisory functions. As regards the first political level of decision-making, the European Council defines the terms of reference for the Intergovernmental Conference (the inaugural meeting) and then adopts a comprehensive package of arrangements resolving all the fundamental issues between the participants in the negotiations (the final meeting). Additional meetings of the European Council are convened during the IGC as necessary. The principle of any intergovernmental conference is that all issues unresolved at lower levels of the negotiations are referred to higher levels and the final decision on such matters must be taken by the Heads of State or Government. Meetings of Foreign Ministers or of European Affairs Ministers, the second political level of the decision-making process, are usually held once a month within the General Affairs Council, the Foreign Affairs Council or the European Council. Some meetings of Foreign Ministers are closed, of a little longer duration, and referred to as 'Conclaves'. These tend to serve to identify differences of opinion and to reach agreements on specific issues.<sup>5</sup>

<sup>5</sup> P.W. Thurner, F.U Pappi, *European Union Intergovernmental Conferences. Domestic Preference Formation, Transgovernmental Networks and the Dynamics of Compromise*, New York–London 2009; A. Podraza, "Konferencja międzyrządowa jako metoda reformowania Unii Europejskiej" ["Inter-Governmental Conference as a Method to Reform the European Union"], *Rocznik Integracji Europejskiej*, no. 1 (2007), pp. 15-17.

As for the third and fourth technical levels of decision-making, the meetings of representatives of Foreign Ministers or of European Affairs Ministers are held several times a month. These include Permanent Representatives (ambassadors) (Coreper II) or Deputy Permanent Representatives (Coreper I), Political Directors or senior officials in the Foreign Ministries, and sometimes members of the European Parliament. The purpose of such meetings is making technical rather than political arrangements. However, their contribution is not entirely small. In fact, during the 1996–1997 Intergovernmental Conference, as many as 60 to 70% of the provisions of the subsequently adopted Treaty of Amsterdam were developed at this level. During the 2003–2004 Intergovernmental Conference, representatives of Foreign Ministers directly participated in the second phase of the discussions held under the auspices of the Irish Presidency, constituting the so-called Focal Points.<sup>6</sup> The principle of strict compliance with the provisions of the negotiation mandate applies during deliberations of any working group of legal experts. This does not mean, however, that its activities are limited only to introducing editorial corrections to a draft Treaty. As a matter of fact, such a working group often deals with issues not covered by the mandate but still indispensable for the development of a new founding or amending Treaty. One of the best examples to support this opinion was the work of a group of legal experts at the 2007 Intergovernmental Conference.<sup>7</sup>

### 3. PARTICIPANTS IN THE INTERGOVERNMENTAL CONFERENCE

As regards the role of the various actors in the decision-making process at the IGC, the Presidency and the Governments of the Member States perform the most significant functions. The Presidency plays the most important role in the sense that, in exercising its formal and informal powers, it has a fundamental influence on the proceedings of the IGC. The formal competences of the Presidency arise from the powers conferred on it by the Treaties and the Rules of Procedure, constituting the basis for the Presidency to perform the following five functions: mediation (honest broker), planning, coordination, representation, and administration.<sup>8</sup> At the same time, informal opportunities

<sup>6</sup> A. Podraza, “Konferencja międzyrządowa jako metoda reformowania...”, p. 17.

<sup>7</sup> For more on the subject, cf. J.J. Węc, *Traktat Lizboński. Polityczne aspekty reformy ustrojowej Unii Europejskiej w latach 200-2015. Orzecznictwo sądów konstytucyjnych wybranych państw członkowskich UE oraz proces implementacji traktatu lizbońskiego* [The Treaty of Lisbon. The Political Aspects of the System Reform of the European Union in 2007-2015. The Case-Law of the Constitutional Courts of Selected Member States of the EU and the Implementation of the Lisbon Treaty], Kraków 2016, pp. 92-99; T. Dörfler, K. Holzinger, J. Biesenbender, “Constitutional Dynamics in the European Union: Success, Failure, and Stability of Institutional Treaty Revisions,” *International Journal of Public Administration*, vol. 40, no. 14 (2017), pp. 1237-1249.

<sup>8</sup> This division was also introduced in the author’s monograph on the first Polish EU presidency. Cf. J.J. Węc, *Pierwsza polska prezydencja w Unii Europejskiej. Uwarunkowania – Procesy decyzyjne – Osiągnięcia i niepowodzenia* [Poland’s First Presidency in the European Union. Conditions – Decision-Making – Successes and failures], Kraków 2012, pp. 17-30.

for influence include the capability to form coalitions with other EU Member States, the ability to link the Presidency's own national interests with the European interest, effective information and promotion policy, concern for consensus between the political parties on its domestic political scene as well as good coordination of activities between the various authorities and ministries responsible for European policy.<sup>9</sup>

The most important formal competence is the mediation function, reflected in seeking consensus among the Member States on all issues in dispute. It boils down to activities such as sounding out positions and conducting bilateral consultations with the Governments of the Member States, the European Parliament, the European Commission and, sometimes, third countries as well; seeking a positive climate for consultations; identifying, formulating and proposing compromise solutions; attempting to win allies for the Presidency's own proposals; acting as a mediator (honest broker) between the various actors in the decision-making process. The exercise of the Presidency's mediation function is facilitated by its privileged position in access to information and by its procedural control over negotiations and deliberations. The success of any intergovernmental conference largely depends on the capacity and skills of the Presidency Member State. On the other hand, in performing this function, each Presidency faces formal and informal constraints. Whereas formal restrictions stem from the rules on decision-making, informal limitations include the principles of neutrality and efficiency.<sup>10</sup> Respect for the principle of neutrality gives the greatest credibility to the mediation activities of the Presidency. To perform this function well, the Presidency Member State's Government must be able to neutralise the concerns of the other Member States that it intends to represent, or where it represents mainly its own national interests. This does not imply that the Governments of the Member States pursue no such interests. However, large Member States have greater capacity to do so, especially in the areas covered by the qualified majority decision-making procedure. At the same time, medium-sized and small Member States must rely more on searching for allies. On the other hand, the experience of all the previous presidencies has shown that medium-sized and small Member States can also succeed in the pursuit of their national interests. Even 'routine' documents prepared and drafted by such Presidency Member States can be highly political in nature and oriented towards pushing their national interests. This is largely facilitated by the prominent position of the Presidency as the spokesperson, representative and President of the Council of the European Union, often allowing decisions to be taken in the Council in accordance with the will of the Presidency. The effective linking of national interests to the European interest on the Presidency agenda is easiest in two cases. One is the appearance of a new diplomatic initiative on the agenda.

<sup>9</sup> For more on the subject, cf. J.J. Węc, "Formalne i nieformalne możliwości oddziaływania prezydencji na funkcjonowanie Unii Europejskiej po zmianach przewidywanych w traktacie lizbońskim" ["The Presidency's Formal and Informal Possibilities to Influence the Functioning of the European Union after the Amendments Provided for in the Treaty of Lisbon"], in K. Szczerski (ed.), *Prezydencja w Unii Europejskiej. Analizy i doświadczenia* [*The Presidency in the European Union. Analyses and Experiences*], Kraków 2009, pp. 45-46.

<sup>10</sup> Ibid.



It is then all the easier for the presidency to push its own national interest the more ambiguous are the positions and opinions of the governments of the other member states towards the new initiative of the presidency. The other case could be a proposal to include in the Presidency agenda, and then to give new political impetus to, an initiative that failed to be implemented during the previous presidency or presidencies.<sup>11</sup>

The remaining functions of the Presidency are not as important as the mediation function, but they have a real impact on the proceedings of the IGC. Thus, the planning function consists in the development of a 6-month programme by the Member State holding the Presidency during the period concerned (the national Presidency programme) and of an 18-month common programme by all the three Member States holding the Group Presidency, called the Trio (the Group Presidency programme). The coordination function is mainly expressed in ensuring the consistency and continuity of work within the Council of the European Union itself, as well as in synchronising the cooperation of the Council of the European Union with the European Council, the European Commission and the European Parliament. The administrative function consists, *inter alia*, in drawing up the calendar of meetings of the Council of the European Union, in proposing the provisional agenda of the Council in cooperation with the General Secretariat of the Council, in preparing and implementing the agenda of the Council, Coreper I, Coreper II, and of some two hundred and seventy committees and working groups on the basis of the 18-month and 6-month programmes of the Presidency (of the Trio), and in chairing the proceedings within a period of six months. Finally, the representation function is divided into internal and external representation. Internal representation consists in the following: participation in plenary sessions of the European Parliament, during which the Presidency submits the programme and a review of its activities, issues declarations on behalf of the Council of the European Union and answers questions from MEPs (Article 26 of the Council's Rules of Procedure); participation in European Parliament committee meetings (Article 26 of the Council's Rules of Procedure) and in trilogue meetings on legislative and budgetary matters.<sup>12</sup> In addition, the function of internal representation is also reflected in communicating and promoting the activities of the Presidency to public opinion in the Member States. As regards external representation tasks, these consist primarily in representing the European Union towards third countries and international organisations during negotiations on the conclusion of international agreements. The Council of the European Union then acts on a recommendation from the Commission or from the High Representative of the Union (if the agreement concerns the common foreign and security policy). The Council takes a decision authorising the opening of negotiations, adopts negotiating directives, nominates the head of the negotiating team (with the exception of agreements on the common commercial policy, negotiated by

<sup>11</sup> Ibid., pp. 51-52; A. Biondi, P. Eeckhout, S. Ripley (eds), *EU Law after Lisbon*, Oxford–New York 2012; T. Oppermann, C.D. Classen, Nettesheim M., *Europarecht. Ein Studienbuch*, München 2014; W. Frenz, *Handbuch Europarecht*, vol. 6: *Institutionen und Politiken*, Heidelberg–London–New York 2011.

<sup>12</sup> J.J. Węć, *Pierwsza polska prezydencja...*, pp. 28-30.

the European Commission) and concludes international agreements after they have been negotiated (Article 218(1) to (5) TFEU). As another form of external representation, the Presidency represents the European Union at international conferences held by international organisations or various forums for political and economic dialogue.<sup>13</sup>

In addition to the Presidency, the Governments of the other Member States play a central role in the proceedings of the IGC as they are the only entities with the authority to make decisions. All decisions are taken unanimously, which further strengthens the role of the Member States. Formally, each Member State has the same right to make decisions. In practice, however, much also depends on the economic, military, political and demographic potential of a given country, its international activity, integration traditions and ability to form alliances. The greater influence of the strongest Member States, in particular Germany and France, on the proceedings of the Intergovernmental Conferences, so far mainly resulted from the so-called Monnet method used since the 1950s as a method of deepening the integration process. This consisted in preparing and developing key integration projects based on confidential contacts and informal agreements between the Governments of the two Member States, involving representatives of the European Commission, of the European Parliament and even of the Court of Justice. Such projects were subsequently discussed by Intergovernmental Conferences. This is why the Monnet method is treated by some researchers, alongside the Intergovernmental Conference and the Convention (starting from the first Convention held in 1999–2000), as one of the three integration methods.<sup>14</sup> Very often arguing that the process of European integration should be deepened because of real or perceived geopolitical, economic, financial or institutional challenges, Germany and France have used this method, frequently presenting their own agreements as accomplished facts to the medium-sized and smaller Member States and then, sometimes with great success, seeking to push them through during the meetings of Intergovernmental Conferences.

The IGC is also attended by representatives of the European Commission, of the European Parliament and of the General Secretariat of the Council of the European Union. The influence of supranational institutions, i.e. the Commission and the Parliament, or of the supranational body of the Council of the European Union, i.e. the General Secretariat, on the proceedings and outcome of the IGC is limited. On the other hand, they are not entirely devoid of influence. Among the supranational institutions, the European Commission and the European Parliament have the greatest impact on the proceedings and outcome of the Intergovernmental Conference as they submit proposals for Treaty changes to the Council of the European Union and issue opinions on the need for a conference (Article 48(2) to (3) TEU). The President of the Commission is

<sup>13</sup> Ibid., pp. 24–28. Cf. also: J.J. Węc, “Nowe zasady sprawowania prezydencji w Radzie Unii Europejskiej. Bilans prezydencji belgijskiej” [“New Rules for Presiding over the Council of the European Union. Taking Stock of the Belgian Presidency”], *Przegląd Zachodni*, no. 3 (2011), pp. 3–20.

<sup>14</sup> Cf. W. Wessels, A. Faber, “Vom Verfassungskonvent zurück zur ‘Methode Monnet’? Die Entstehung der ‘Road map’ zum EU-Reformvertrag unter deutscher Ratpräsidentschaft,” *Integration*, vol. 30, no. 4 (2007), pp. 370–371, 376–377.

a member of the European Council and the President of the European Parliament is invited to attend meetings of that institution; thus, they influence the proceedings of the IGC. The Commission's positions are shaped by the EU interests rather than by national interests. However, much also depends on the personality of the President of the Commission. If he or she enjoys high prestige, the Commission greatly influences the course of the deliberations, as in the case of the IGCs drafting of the Single European Act or the Maastricht Treaty, much to the credit of the President, Jacques Delors (France). If the European Commission is experiencing a leadership crisis, its impact on the course of the IGC is much smaller. Further, the more the Commission's proposals for reform resonate with the proposals from Member State Governments, the greater its influence.<sup>15</sup> Until the 2003–2004 Intergovernmental Conference, the Parliament had observer status; since the 2007 Intergovernmental Conference, the EP has enjoyed a status similar to that of the European Commission. The impact of the European Parliament on the proceedings of the IGC is even more limited than the influence of the European Commission, as the largest Member States, mainly France and the United Kingdom (until 2020), often opposed strengthening its role<sup>16</sup>.

The General Secretariat of the Council of the European Union cooperates closely with the Presidency and serves as the non-treaty secretariat of the Intergovernmental Conference, thus having considerable influence on the preparation, conduct and outcome of the IGC. It provides information to the Presidency and prepares expert opinions on the preferences and negotiating positions of the Governments of particular

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<sup>15</sup> For more on the role of the European Commission, of the European Parliament and of the General Secretariat of the Council of the European Union in the deliberations of Intergovernmental Conferences, cf. D. Kietz, A. Maurer, "The European Parliament in Treaty Reform: Predefining IGCs Through Interinstitutional Agreements," *European Law Journal*, vol. 13, no. 1 (2007), pp. 20-46. T. Christiansen, "Intra-Institutional Politics and Inter-Institutional Relations in the EU: Towards Coherent Governance?," *Journal of European Public Policy*, vol. 8, no. 5 (2001), pp. 747-769; T. Christiansen, K.E. Jørgensen, "Negotiating Treaty Reform in the European Union. The Role of the European Commission," *International Negotiation. A Journal of Theory and Practice*, vol. 3, no. 3 (1998), pp. 435-452; T. Christiansen, "The Role of Supranational Actors in EU Treaty Reform," *Journal of European Public Policy*, vol. 9, no. 1 (2002), pp. 33-53; G. Falkner, "EU Treaty Reform as a Three-Level Process," *Journal of European Public Policy*, vol. 9, no. 1 (2002), pp. 1-11; U. Sverdrup, "An Institutional Perspective on Treaty Reform: Contextualizing the Amsterdam and Nice Treaties," *Journal of European Public Policy*, vol. 9, no. 1 (2002), pp. 120-140; W. Wessels, "Nice Results: The Millennium IGC in the EU's Evolution," *Journal of Common Market Studies*, vol. 39, no. 2 (2001), p. 198. A. Ott, "The European Parliament's Role in EU Treaty-Making," *Maastricht Journal of European and Comparative Law*, vol. 23, no. 6 (2016), pp. 1009-1039; A. Podraza, "Konferencja międzyrządowa jako metoda reformowania...", pp. 25-31; P. Kozub, "Parlament Europejski wobec reformy systemu instytucjonalnego w trakcie obrad Konwentu w sprawie przyszłości Europy" ["The European Parliament in the Face of Institutional Reform during the Proceedings of the Convention on the Future of Europe"], *Rocznik Integracji Europejskiej*, no. 5 (2011), pp. 180-181.

<sup>16</sup> Cf. J.J. Węc, *Spór o kształt ustrojowy Wspólnot Europejskich i Unii Europejskiej w latach 1950-2010. Między ideą ponadnarodowości a współpracą międzyrządową* [The Dispute over the Constitutional Status of the European Communities and the European Union in 1950-2010. Between the Idea of Supranationality and Intergovernmental Cooperation], Kraków 2012, pp. 39-52, 91-113, 209-249, 273-291, 314-332. J.J. Węc, *Traktat Lizboński...*, pp. 207-209, 358-359.

Member States. It advises the Presidency on negotiation tactics, which is extremely important because of its extensive knowledge of the 'kitchen' of diplomatic negotiations, acquired during previous Intergovernmental Conferences. One can say that it acts as an 'invisible hand' and an 'institutional memory' of the Intergovernmental Conference. If the General Secretariat of the Council cooperates closely with the Presidency, the impact of the former is greater, and *vice versa*. In any case, it plays a more prominent role than its status would imply. The General Secretariat of the Council exerted the most significant influence on the proceedings of the 1996–1997 and 2007 Intergovernmental Conferences. It had the least impact during the 2000 IGC as both the Portuguese and French Presidencies limited its scope for influence. During the 2003–2004 Intergovernmental Conference, the role of the General Secretariat was also small because the Italian Presidency made no use of its assistance at all, whilst the Irish Presidency did so only to a minor extent.<sup>17</sup>

## CONCLUSIONS

The analysis of the available source material enabled the author to realise the primary research objective and confirmed the two research hypotheses formulated in this work. Answering the first research question, it is necessary to formulate the opinion that the IGC of the European Union differs from a classical international conference, among other things, in that any exemptions from the general obligations of the parties to a new international agreement are in the nature of protocols and require the unanimous consent of all member states. The possibility of varying relations between the parties to a treaty, which could result from the Convention on the Law of Treaties of 23 May 1969, which allows the possibility of lodging reservations to treaties, accepting and objecting to reservations to treaties, has therefore been ruled out. To answer the second research question, it should be noted that the greatest influence of Member State governments and EU intergovernmental institutions on the outcome of each IGC is due to three reasons: First, the principle of any IGC is that all issues unresolved at the lower levels of negotiation must reach a higher level and the final decision on them must be taken by the Heads of State or Government within the framework of the European Council; second, all decisions of the IGC are taken unanimously, which further strengthens the role of Member State governments; third, the mandate of the IGC is in most cases set by the European Council, unless the relevant diplomatic negotiations are preceded by the deliberations of a Convention, which draws up recommendations for the Conference.

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<sup>17</sup> T. Christiansen, "The Role of Supranational Actors in EU Treaty Reform...", pp. 33-53; A. Podraza, "Konferencja międzyrządowa jako metoda reformowania...", pp. 31-33; J. Lewis, *Where Informal Rules Rule: The Council General Secretariat and Presidency in Everyday EU Decision Making*, paper prepared for the 2006 International Studies Association Conference, San Diego, CA, 22-25 March 2006; F. Laursen, "Enter the Member States. An Analysis and Evaluation of the Intergovernmental Conference 2003-2004," *L'Europe en Formation*, no. 4 (2004), pp. 31-52.

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