

11.4.2003

Comments on draft Articles 33-37: (Title VI: The democratic life of the Union, part I of the Constitution), draft Article 42: (Title IX: The Union and its immediate environment, part I of the Constitution), Articles 43-46: (Title X : Union membership, part I of the Constitution) as well as Part Three: General and final provisions, by Dr. Teija Tiilikainen, Mr. Antti Peltomäki, Mr. Kimmo Kiljunen, Mr. Matti Vanhanen and Ms. Riitta Korhonen, Finnish representatives in the Convention (*except for article 46, where only Dr. Tiilikainen, Mr. Peltomäki and Ms. Korhonen support the comment*).

ARTICLES 33-37 (TITLE VI: THE DEMOCRATIC LIFE OF THE UNION, PART I OF THE CONSTITUTION)
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Article 33: The principle of democratic equality

The Union's operation shall be founded on the dual principle of the equality of its citizens and its Member States., ~~who shall receive equal attention from the Union's institutions.~~

Explanation:

The scope and purpose of this article is unclear. As a starting point for title VI it should, however, cover also the other leading principle in this respect namely that of equality between Member States. In this way, a necessary recognition is given to the dual nature of the Union as the Union of citizens and Member States.

Article 36: Transparency of the proceedings of the Union's institutions

1. In order to promote good governance and ensure the participation of civil society, the Union institutions shall conduct their work as openly as possible.
2. The European Parliament shall meet in public, as shall the Council when it is discussing a legislative proposal.
3. Any citizen of the Union, ~~man or woman,~~ and any natural or legal person residing **or having its registered office** in a Member State, shall have a right of access to ~~European Parliament, Council and Commission documents in whatever form they are produced, and to those of the Union institutions, agencies and bodies created by those institutions..~~
4. General principles, ~~conditions~~ and limits ~~which,~~ on grounds of public or private interest, governing the right of access to documents shall be determined by the European Parliament and the Council in accordance with the legislative procedure **within two years of the entry into force of the Constitutional Treaty.**

5. Each institution, agency or body referred to in paragraph 2 3 shall determine in its own Rules of Procedure specific provisions regarding access to its documents.

Explanation:

Paragraph 3 should cover the right of access to documents of not only agencies and bodies created by the European Parliament, Council and Commission but also Union institutions and bodies established directly by the Constitution. Furthermore, there is no reason to define that citizens are either men or women.

In paragraph 4 the word "conditions" is superfluous. There should also be a time limit for the act concerned.

As regards paragraph 5, it is not certain whether this paragraph is necessary. More specific rules on access to documents of each institution, agency or body can in any case be made in accordance to jurisdiction given to each institution, agency or body in the Constitution to adopt its Rules of Procedure.

Ms. Teija Tiilikainen also supports the proposal made by Lena Hjelm-Wallén to include a specific provision about good administration as a new Article 36 b of the Constitutional Treaty.

Article 37: Status of churches and non-confessional organisations

1. The European Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.
2. The European Union equally respects the status of philosophical and non-confessional organisations.
3. The Union shall maintain an **open, transparent and** regular dialogue with these churches and organisations, recognising their identity and their specific contribution.

Explanation:

We take a critical view as regards the need for a separate article in the Constitution concerning churches and non-confessional organisations. In our view, these could well be included in Article 34 paragraph 3, together with representative associations and civil society.

If, however, the Convention should choose to retain the provision, the dialogue envisaged in paragraph 3 should be based on the same principles as the dialogue in Article 34 paragraph 3.

**ARTICLE 42 (TITLE IX: THE UNION AND ITS IMMEDIATE ENVIRONMENT,
PART I OF THE CONSTITUTION)**

Article 42

1. The Union shall **endeavour to** develop a special relationship with its neighbouring States, aiming to establish an area of prosperity and good neighbourliness characterised by close and peaceful relations based on cooperation.
2. ~~For this purpose, the Union may conclude and implement specific agreements with the countries concerned in accordance with of Article X on Part Two of the Constitution. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation.~~

Explanation:

We have serious doubts whether the proposed title IX is necessary in part I of the Constitution. A more natural place for the content of Article 42 paragraph 1, taking into account its political nature, would be the beginning of the text under the title "The Union's External Action" (title B of part II of the Constitution), which would also contain the principles and objectives of external action. Furthermore, the first sentence should be rephrased so as not to sound too paternalistic; the union cannot simply decide to develop special relationships, but it can endeavour to do so.

Paragraph 2 of Article 42 will be sufficiently covered by the provisions relating to international agreements - corresponding the present articles 300 and 310 - in the title of External Relations (Chapter 5 of title B, part II of the Constitution). The substance of paragraph 2 does not create significant added value and might even give the impression of a hierarchy among the treaties the Union concludes with third countries.

**ARTICLES 43-46 (TITLE X : UNION MEMBERSHIP, PART I OF THE
CONSTITUTION)**

A comment supported only by Ms. Tiilikainen, Mr. Peltomäki and Ms. Korhonen:

Article 46: Voluntary withdrawal from the Union

1. Any Member State may decide to withdraw from the European Union in accordance with its own constitutional requirements **and international law**.
2. A Member State which decides to withdraw shall notify the Council of its intention. Once that notification has been given, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be concluded on behalf of the

Union by the Council, acting **unanimously** ~~by a qualified majority~~, after obtaining the assent of the European Parliament.

The withdrawing State shall not participate in the Council's discussions or decisions concerning it.

- 3- This Constitution shall cease to apply to the State in question as from the date of entry into force of the withdrawal agreement. ~~or, failing that, two years after the notification referred to in paragraph 2.~~

Explanation:

We wonder, whether the proposed article is necessary, as paragraph 1 only spells out what already follows from the basic principles of international law.

If, however, the Convention should choose to retain the provision, the safeguarding of the rights of natural and legal persons should always be a precondition for withdrawal from the Union. For this reason, withdrawal should always be based on an agreement containing the modalities related to the withdrawal and to the withdrawing state's relations with the Union. We therefore propose to delete the proposed provision in paragraph 3 whereby the application of the constitution would in any case be terminated two years after the notification envisaged in paragraph 1.

Moreover, the decision-making procedure for concluding an agreement between the Union and the withdrawing state should require unanimity in the Council.

PART THREE (GENERAL AND FINAL PROVISIONS)

Article A: Repeal of earlier Treaties

The Treaty establishing the European Community of 25 March 1957, the Single Act of 17 February 1986, the Treaty on European Union of 7 February 1992, the Treaty of Amsterdam of 2 October 1997 and the Treaty of Nice of 26 February 2001 shall be repealed as from the date of entry into force of the Constitutional Treaty. The ~~aets and~~ treaties, **protocols and acts** listed in the Annex shall also be repealed.

Explanation:

The drafting suggestion is a purely technical improvement. As to the technique of bringing over those protocols which are not repealed we propose that they be annexed directly to the Constitution.

Article B: Legal continuity in relation to the European Community and the European Union

The European Union shall succeed to all the rights and obligations of the European Communities and of the Union, whether internal or resulting from international agreements, which arose before the entry into force of the Constitutional Treaty by virtue of previous treaties, protocols and acts, including all the assets and liabilities of the Communities and of the Union, and their archives.

The provisions of the acts of the Institutions of the Union **referred to in Protocol X**, ~~adopted by virtue of the treaties and acts mentioned in the first paragraph, shall remain in force insofar as they are compatible with the Constitution.~~ The **existing acquis communautaire, including the** case-law of the Court of Justice of the European Communities, **established on the basis of the treaties, protocols and acts referred to in Article A**, shall be maintained as a ~~preferential~~ **primary** source of interpretation of **Union law** ~~the Constitution and acts prior to its entry into force insofar as it is compatible with the Constitution.~~

Explanation:

The amendments are intended to guarantee legal certainty and to preserve the *acquis communautaire*, insofar as compatible with the Constitution, as a primary source of interpretation of Union law.

Article C: Scope

1. The Constitutional Treaty shall apply to the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland, ...
2. The Constitutional Treaty shall apply to the French overseas departments, the Azores, Madeira, ~~and the Canary Islands~~ **and the regions of the Republic of Finland and of the Kingdom of Sweden with an extremely low population density**, in accordance with Article ... of Part Two.
3. The special arrangements for association set out in Part [Four of the TEC] of the Constitutional Treaty shall apply to the overseas countries and territories listed in [Annex II to the TEC].

The Constitutional Treaty shall not apply to overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not included in that list.

4. The Constitutional Treaty shall apply to the European territories for whose external relations a Member State is responsible.

5. The Constitutional Treaty shall apply to the Åland Islands in accordance with the provisions set out in Protocol **Y to the Constitutional Treaty** ~~2 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.~~
6. Notwithstanding the preceding paragraphs:
 - (a) the Constitutional Treaty shall not apply to the Faeroe Islands;
 - (b) the Constitutional Treaty shall not apply to the sovereign base areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus;
 - (c) the Constitutional Treaty shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community, signed on 22 January 1972.

Explanation:

In the Accession Treaty of Austria, Finland and Sweden (Protocol 6) it was agreed to give the peripheral regions of Finland and Sweden with an extremely low population density a special status (Objective 6) in the framework of the Structural Funds. The eligibility of the regions for assistance from the Structural Funds was re-examined in 1999 simultaneously with the framework Regulation (EEC) No 2081/93 on Structural instruments and policies.

The regions of Finland and Sweden with an extremely low population density were assigned Objective 1 status (Council Regulation 1260/99, Article 3) equivalent to that of the ultra-peripheral regions as defined in Article 299, paragraph 2, of the EC Treaty. As the conditions which formed the basis for the special treatment of the regions of Finland and Sweden with extremely low population density have not improved, Finland proposes that the treatment of northern regions with an extremely low population density would be recognised in the new Article C. This would also take account of the need to reduce the number of special exceptions in the acquis. This treatment would be restricted to access to assistance from Structural Funds and state aid.

It follows from our comments on draft Articles A and E that the Protocol on the Åland Islands referred to in paragraph 5 should be annexed directly to the Constitutional Treaty.

Article E: Protocols

The protocols annexed to this Treaty shall form an integral part thereof.

Explanation:

With reference to our comments on draft Article A and C we think that the protocols to annexed to this Treaty shall include not only the protocols annexed to the EU and EC Treaties but also the pro-

protocols annexed to the Acts of Accession (e.g., the Protocol on the Åland Islands referred to in paragraph 5 of draft Article C).

Article F: Procedure for revising the Constitutional Treaty

The government of any Member State or the Commission may submit to the Council proposals for the amendment of the Constitutional Treaty. The national Parliaments shall be notified of these proposals.

If the Council, after consulting the European Parliament and, where appropriate, the Commission, delivers an opinion in favour of calling a conference of representatives of the governments of the Member States, the conference shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to the Constitutional Treaty. The Council of the European Central Bank shall also be consulted in the case of institutional changes in the monetary area.

The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.

Explanation:

We do not support the suggestion, made in the Praesidium's comments, on inserting an express provision to draft Article F on the possibility of convening a preparatory Convention. In our view it would not be appropriate to lay down in the Constitution one particular method that might be used for preparing for an Intergovernmental Conference. The system should rather be kept as flexible as possible, which of course in no way rules out the possibility that in future recourse is also had to a preparatory Convention. In that case, however, the Convention should be convened by the European Council and not by its "President", as suggested by the commentary. The reference to "Council" is also inappropriate as it is representatives of the Heads of State or Government of the Member States, and not representatives of the Council, that are members of the Convention.

We welcome the invitation to the Convention to consider a procedure other than that referred to in Article 48 TEU for amending those parts of the Constitution that are not constitutional in nature. This could, for instance, mean that such amendments could be approved by a common accord of representatives of the Governments of the Member States, rather than ratification. Or, as an alternative, amendments could be approved by Union institutions or by representatives of Member States' Governments by a reinforced qualified majority, and then ratified by each Member State. However, it is clear that before any definite view can be taken in this respect, we need to know precisely to which provisions such a simplified procedure would apply.

As to the question of what to do if any Member State fails to ratify a Treaty revision, we think that this is a political question that should be dealt with along the lines proposed in draft Article G, paragraph 3.