

## AMENDMENT FORM

### Suggestion for amendment of Article 5:

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on behalf of the EPP Convention Group

Status: Members and Alternates

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*Text of the Praesidium*

*Proposed Amendments*

### Article 5: Fundamental rights

### IMPORTANT STRUCTURAL AMENDMENT:

1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out [in the second part of/in a Protocol annexed to] this Constitution.

*The Charter should be inserted in its full text at the very beginning of the Constitution, in Part One, in a Title I "Charter of Fundamental Rights and Citizenship of the Union".*

2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.

*The Constitution would then start with "Human Dignity" as Article 1, would include Citizenship of the Union (Article 17 EC) as Article 51 of the Charter and would end with Article 55 (Prohibition of abuse of rights).*

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

*As a consequence, Title I of the Praesidium text should become Title II. The Articles of the Praesidium text should be renumbered accordingly.*

*For a full-text example, see the EPP Discussion Paper (Frascati text, as amended, 27 January 2003).*

### Article 5: Fundamental rights

- ~~1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out [in the second part of/in a Protocol annexed to] this Constitution.~~

2. The Union may *shall request to* accede to the European Convention for the Protection of Hu-

man Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.

~~3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.~~

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## Explanation:

### **Para 1:**

– The insertion of the Charter as a **full text** and **at the very beginning of the Constitution** was **clearly the preferred option of Convention Working Group II “Charter”** (see page 3 of its Final Report, where “insertion of the text of the Charter articles at the beginning of the Constitutional Treaty“ is presented as the first of three options. It is then said: „a large majority of the Group would prefer the first option in the interest of a greater legibility of the Constitutional Treaty“. We share this recommendation of the Working Group for the following reasons:

- (1) To integrate the full text of the Charter into the Constitution makes its rights and duties **clearly visible to the citizens of the Union** which, according to the Charter, should be placed at the heart of the Union’s activities.
- (2) To start the Constitution with the Charter would stress that the Union is a **“Union of values”**. It would reflect the fundamental respect of the Union for human dignity (which would figure prominently as Article 1 of the Constitution) and thereby give the best possible evidence of the Christian origins of European civilisation. It should be recalled that the Constitutions of Finland, the Netherlands, Portugal and Germany also start with Fundamental Rights (the latter did so after the historic experience of a barbaric and inhuman regime which had come to power under a Constitution which had placed the Fundamental Rights Chapter in an Annex to the Constitution of Weimar ...).
- (3) The full-text integration of the Charter at the beginning of the Constitution also **would make the drafting of the rest of the Constitution simpler and shorter**. In particular, it would make numerous Articles of the current *acquis* superfluous as they are already fully integrated into the Charter. For example: the Charter already includes all rights related to Union citizenship (Articles 39-46 Charter; today Articles 18-21, 255 EC of the Treaty), which therefore would not have to be repeated in the Constitutional Text, as currently suggested by the *Praesidium* text in Article 7; the Charter also includes the prohibition of discrimination on grounds of nationality (Article 21(2) Charter), equality between women and men (Article 21(1), 23 Charter; today Article 141 EC Treaty) as well as a number of economic rights granted by the EC Treaty, such as the right of free movement of workers, of services and the freedom of establishment (Article 15(2) Charter; today Articles 39, 43, 49 EC Treaty); the Charter includes furthermore a number of the important transversal objectives of the EC Treaty, such as a high level of human health protection (Article 35 Charter; today Article 152(1) EC Treaty), a high level of environment protection (Article 37 Charter; today Article 2, 6, and 174 EC Treaty) and a high level of consumer protection (Article 38

Charter; today Article 153 EC Treaty); and finally, the Charter already guarantees access to services of general interest in order to promote economic and social cohesion of the Union (Article 36 Charter; see today Article 16 EC Treaty). Following inclusion of the full Charter at the beginning of Part One of the Constitution, all these provisions would not have to be repeated in the remaining text of the Constitution. Their legal importance would be beyond doubt, in view of their prominent location.

- It is no counter-argument to a full-text integration of the Charter that such an integration could lead to problems regarding its **Preamble**. The essential elements of the preamble of the Charter can easily be integrated into the Preamble of the Constitution which should take over the main elements of the Charter. For an illustrative example, see the Preamble in the EPP Discussion Paper (Frascati text, as amended, 27 January 2003), which combines the Preamble of the Charter with elements of the ECSC Treaty, the EU Treaty and the EC Treaty. See also our amendment proposing integration of such a Preamble in the Constitutional Text.
- The Charter states, in its Article 51 (2) that it **does not extend the scope of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks defined by this Constitution** (text of the Charter, as clarified by the recommendations of Convention Working Group II “Charter”).

**Para 2:**

- **Enabling clause for ECHR accession:** could better be integrated either as an additional provision at the end of the Charter or, alternatively, in the constitutional provisions on the treaty-making power of the Union. As an example for the latter, see Article 124(2), subpara 2, 5<sup>th</sup> indent of the EPP Discussion Paper (Frascati text, as amended, 27 January 2003).

**Para 3:**

- is a superfluous provision if the Charter is integrated into the Constitution. It is the very purpose of the Charter to reaffirm the fundamental rights as integral parts of primary law as they result from the ECHR and from the constitutional traditions of the Member States (as well as from other sources) – see the fifth paragraph of the Preamble of the Charter.