

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 5

Déposée par Monsieur Olivier Duhamel

Qualité : - Membre

Article 5 Para 2 - modifier comme suit :

2. L'Union peut adhérer à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales. Cette adhésion(trois mots supprimés) ne modifie pas les compétences de l'Union telles que définies par la présente Constitution.

Explication éventuelle :

AMENDMENT FORM

Suggestion for amendment of Article : I-7

By Ms: Danuta Hübner

Status : - Member

<u>Article I-7: Fundamental rights</u>	<u>Article I-7: Fundamental rights</u>
<p>1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes the Second Part of this Constitution.</p> <p>2. The Union shall seek accession 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 in this Constitution.</p> <p>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.</p>	<p>1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes the Second Part of this Constitutional <u>Treaty</u>.</p> <p>2. The Union shall seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms <u>and to other human rights conventions</u>. Accession to the seat Convention shall not affect the Union's competences as defined in this Constitution.</p> <p>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.</p>

Explanation (if any) : It seems indispensable to assure at the Treaty level that the Union will have access to other conventions on human rights.

FICHE AMENDEMENT

Proposition d'amendement à l'Article I-7

Déposée par Monsieur de Villepin

Qualité : - Membre

Article I-7: Droits fondamentaux

1. L'Union reconnaît les droits, les libertés et les principes énoncés dans la Charte des droits fondamentaux qui constitue la deuxième partie de la présente Constitution.
2. L'Union ~~s'emploie à~~ **peut** adhérer à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales. L'adhésion à cette Convention ne modifie pas les compétences de l'Union telles que définies dans la présente Constitution. **A cette fin, est annexée à l'acte final une déclaration fixant les conditions de cette adhésion.**
3. Les droits fondamentaux, tels qu'ils sont garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et tels qu'ils résultent des traditions constitutionnelles communes aux États membres, font partie du droit de l'Union en tant que principes généraux.

Explication éventuelle :

Lors de la discussion par la Convention du projet d'article 5 de la future constitution, le représentant des autorités françaises à la Convention a présenté un amendement ne contestant pas l'introduction d'une base juridique permettant l'adhésion de l'Union à la CEDH, mais indiquant que cette adhésion ne devait être mentionnée que comme une possibilité. Etant donnée la nouvelle proposition du Præsidium, qui n'a pas retenu notre amendement, les autorités françaises souhaitent que l'adhésion de l'Union à la CEDH soit explicitement subordonnée à l'adoption d'une déclaration annexée à l'acte final de la CIG qui permettrait d'entourer cette adhésion de toutes les garanties nécessaires. La formule employée par le Præsidium selon laquelle « L'adhésion à cette Convention ne modifie pas les compétences de l'Union telles que définies dans la présente Constitution » n'est pas suffisante.

AMENDMENT FORM

Title II: Fundamental Rights and Citizenship of the Union

Suggestion for amendment of Article : Article I-7: Fundamental Rights

By Members: Mr Andrew Duff, Mr Lamberto Dini, Mr Paul Helminger, Mr Rein Lang, Mr Dimitrij Rupel, Lord MacLennan.

TITLE II: FUNDAMENTAL RIGHTS AND CITIZENSHIP OF THE UNION

Article I-7: Fundamental rights

1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes the Second Part of this Constitution.
2. The Union shall seek accession 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 in this Constitution. ***The Union may also seek accession to other international human rights conventions.***
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.

Explanation:

7.2 Although the ECHR is the principal human rights convention, and in the light of the jurisprudence of the European Court of Justice may need a specific mention in the Constitution, it is by no means the only one. We need to provide for EU activism in the field of human rights.

AMENDMENT FORM

Suggestion for amendment of Article I – 7:

By Ms Sandra Kalniete

Status : Member

The Charter shall be annexed to the Constitutional Treaty as a Protocol.

1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out in a Protocol annexed to this Constitutional Treaty.

Explanation (if any) :

The Union is a specific entity which is legally based on several Establishing treaties. Taking into account that the constitutional issues in the EU are decided on the basis of the agreement between the Member States in the form of treaties, the new Treaty should be defined as a Constitutional Treaty.

The Charter of Fundamental Rights itself consists of more than 50 articles and it is thus not practical to include the entire text of the Charter into the body of the Constitutional Treaty text. Given the orderly structure of the Constitutional Treaty and the laconic nature of its text, the Charter of Fundamental rights should be annexed to the Treaty as a protocol.

To provide a unified implementation of the provisions of the Charter, the Commentary should be elaborated.

AMENDMENT FORM

Suggestion for amendment of Article I-7.1:

By Mrs Lena Hjelm-Wallén and Mr Sven-Olof Petersson, government representatives and Mr Sören Lekberg, national parliament representative.

Status : - **Members: Hjelm-Wallén and Lekberg**
 - **Alternates: Petersson**

1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights ~~which constitutes the Second Part of~~ **in a Protocol to** this Constitution.¹

Explanation

¹ To have the Charter as a Protocol would be more in line with the overall constitutional architecture.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : I-7

Déposée par Madame ou Monsieur : Gianfranco Fini / Francesco Speroni

Qualité : - Membre - Suppléant

Articolo I-7: Diritti fondamentali

1. L'Unione riconosce i diritti, le libertà e i principi sanciti nella Carta dei diritti fondamentali che costituisce la parte II della Costituzione. **Nello spirito del “commentario alla Carta” e sulla base degli articoli 51 e ss della II parte, le istituzioni, gli organi e le agenzie dell'Unione rispettano tali diritti e libertà e osservano tali principi promuovendone l'applicazione secondo le rispettive competenze.**
 2. L'Unione persegue l'adesione alla Convenzione europea di salvaguardia dei diritti dell'uomo e delle libertà fondamentali. L'adesione a tale Convenzione non modifica le competenze dell'Unione definite nella Costituzione.
 3. I diritti fondamentali, garantiti dalla Convenzione europea di salvaguardia dei diritti dell'uomo e delle libertà fondamentali e risultanti dalle tradizioni costituzionali comuni agli Stati membri, fanno parte del diritto dell'Unione in qualità di principi generali.
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Explication éventuelle :

AMENDMENT FORM

Suggestion for amendment of Article : 7

By Ms / Mr : mr. Gijs de Vries and mr. Thom de Bruijn

Status : - Member - Alternate

Article I-7: Fundamental rights

1. The Union shall recognise the rights, freedoms and principles ~~set out in~~ of the Charter of Fundamental Rights ~~which constitutes the Second Part of~~ that is set out in a Protocol annexed to this Constitution.
2. The Union shall seek accession 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 in 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.

Explanation (if any): Firstly, the Dutch Government would like to point out that many articles (especially the articles of title VI, part I of the Constitution) are a repetition of what is already laid down in the Charter of Fundamental Rights. If the Charter would become a part of the Constitution, such a repetition is obviously undesirable. Therefore, if the Charter would become a part of the Constitution, which the Dutch government does not support, these articles will have to be deleted and/or adjusted. See for further background information the relevant declaration of the Dutch Government Representative (CONV 659/03).

Furthermore, the articles 14, 15, 29 and 35 of part II of the Constitution should not be legally enforceable. A declaration attached to the Constitution should make this very clear.

FICHE AMENDEMENT

Proposition d'amendement à l'ArtI-7.Demiralp.doc

Déposée par ~~Madame ou~~ Monsieur Oğuz DEMIRALP

Qualité : ~~Membre~~ - Suppléant

Article I-7: Droits fondamentaux

- Remplacer le terme « s'emploie » par « accomplit tout ce qui lui incombe afin de » :

2. L'Union ~~s'emploie~~ accomplit tout ce qui lui incombe afin à d'adhérer à la Convention européenne de sauvegarde des droits de l'Homme et des libertés fondamentales. L'adhésion à cette Convention ne modifie pas les compétences de l'Union telles que définies dans la présente Constitution.

Explication éventuelle :

Avec l'incorporation de la Charte des droits fondamentaux dans le Traité constitutionnel l'Union franchit un pas considérable dans le domaine de la protection des droits fondamentaux. Par ailleurs, dans le cadre de la Convention européenne de sauvegarde des droits de l'Homme et des libertés fondamentales, qui a valeur constitutionnelle, il y a un processus dynamique qui a permis un développement sans précédent en ce qui concerne la protection de ses droits et libertés depuis 1950. Compte tenu du fait que tous les Etats membres et les futurs Etats membres de l'Union sont aussi partie à cette Convention, il conviendrait d'éviter toute duplication et concurrence entre le système communautaire et européen en ce qui concerne les droits fondamentaux. En outre, l'adhésion de l'Union à la Convention européenne permettrait d'éviter une nouvelle division en Europe sur la base des droits fondamentaux.

AMENDMENT FORM

Suggestion for amendment of Article : I-7

By Mr : Hain

Status : - Member -

-
1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes ~~the Second Part of a~~ Protocol annexed to this Constitution.
 2. The Union ~~shall~~ may seek accession 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 in this Constitution.
 3. *OK.*
-

Explanation (if any) :

1. Repeated amendment: *The Charter should be included only as a Protocol.*
2. Repeated amendment: *The first draft of this Article had 'may' rather than 'shall' – we prefer the original wording.*

FICHE AMENDEMENT

Proposition d'amendement à l'Article : Artigo 5, n.º3 bis, novo

Déposée par Monsieur : Luís QUEIRÓ

Qualité : Suppléant

3. L'Union européenne donnera une priorité particulière à l'intérêt des enfants dans toutes les décisions prises dans les limites des dispositions du Traité, et comme prévu dans la Convention sur les droits de l'enfant.

Explication éventuelle :

Les droits des mineurs doivent être considérés comme fondamentaux et inclus dans le nouveau Traité. Jusqu'à maintenant, les bébés sont seulement considérés comme d'éventuelles victimes, des personnes à charge et interdites de travail. Ou encore exclusivement comme objet de protection plutôt que comme sujets de droits. Ceci est en contradiction avec l'esprit et la lettre de la Convention sur les droits de l'enfant de 1989.

L'ajout permettra entre autre de :

1. garantir que la politique et la législation de l'Union n'auront plus un impact négatif sur les mineurs ;
2. reconnaître la transnationalité des droits des enfants, évident aussi dans le fait qu'une série de directives européennes ont un impact sur les mineurs, comme celles en matière de media et de politique pour les consommateurs, de réglementation de l'asile ou du combat contre les phénomènes du trafic et de l'abus de mineurs ;
3. garantir que l'UE respecte et prend en considération les droits des mineurs dans l'approbation des lois qui peuvent avoir un impact direct ou indirect sur les enfants. Les besoins et les droits des mineurs diffèrent de ceux des adultes, et ceci est amplement exprimé dans la Convention sur les droits de l'enfant, ratifiée par tous les États-membres de l'Union comme par les pays candidats.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : Article 5, paragraphe 3 bis, nouveau

Déposée par Monsieur : Luís QUEIRÓ

Qualité : Suppléant

3. L'Union européenne donnera une priorité particulière à l'intérêt des enfants dans toutes les décisions prises dans les limites des dispositions du Traité, et comme prévu dans la Convention sur les droits de l'enfant.

Explication :

Les droits des mineurs doivent être considérés comme fondamentaux et inclus dans le nouveau Traité. Jusqu'à maintenant, les bébés sont seulement considérés comme d'éventuelles victimes, des personnes à charge et interdites de travail. Ou encore exclusivement comme objet de protection plutôt que comme sujets de droits. Ceci est en contradiction avec l'esprit et la lettre de la Convention sur les droits de l'enfant de 1989.

L'ajout permettra entre autre de :

1. garantir que la politique et la législation de l'Union n'auront plus un impact négatif sur les mineurs ;
2. reconnaître la transnationalité des droits des enfants, évident aussi dans le fait qu'une série de directives européennes ont un impact sur les mineurs, comme celles en matière de media et de politique pour les consommateurs, de réglementation de l'asile ou du combat contre les phénomènes du trafic et de l'abus de mineurs ;
3. garantir que l'UE respecte et prend en considération les droits des mineurs dans l'approbation des lois qui peuvent avoir un impact direct ou indirect sur les enfants. Les besoins et les droits des mineurs diffèrent de ceux des adultes, et ceci est amplement exprimé dans la Convention sur les droits de l'enfant, ratifiée par tous les États-membres de l'Union comme par les pays candidats.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : Artigo 5, n.º1

Déposée par Monsieur : Luís QUEIRÓ

Qualité : Suppléant

1. A Carta dos Direitos Fundamentais **fica anexa ao presente Tratado** e consta...;

Explication éventuelle :

FICHE AMENDEMENT

Proposition d'amendement à l'Article : Article 5, paragraphe 1

Déposée par Monsieur : Luís QUEIRÓ

Qualité : Suppléant

1. La Charte des Droits Fondamentaux **figure dans une annexe du Traité.**

Explication:

AMENDMENT FORM

Vorschlag für die Änderung von : Art. 5 Abs.1

von Herrn/Frau: Prof. Dr. Jürgen Meyer, Delegierter des Deutschen Bundestages

Status: - Mitglied -

Ziel:

Einfügung der Charta der Grundrechte mit Präambel am Anfang, zumindest aber als Teil II der Verfassung

Begründung:

Mit der Charta der Grundrechte hat die EU unmissverständlich ihr Selbstverständnis als eine über die reine Wirtschaftsgemeinschaft hinausgehende europäische Werteunion dokumentiert. In einem einzigen Text fasst die Charta unter den Kapiteln Menschenwürde, Freiheitsrechte, Gleichheitsrechte, Solidarität, Bürgerrechte und justizielle Rechte einen ausgewogenen und modernen Katalog von spezifischen Rechten, allgemeinen Freiheiten, Werten und Grundsätzen zusammen. Gleichzeitig bekräftigt sie die gemeinsamen Verfassungsüberlieferungen der Mitgliedstaaten und das weltweit einzigartige europäische Sozialmodell. Die europäischen Bürger haben bereits begonnen, sich in ihren Petitionen an das Europäische Parlament und in ihren Beschwerden an den Europäischen Bürgerbeauftragten auf die Charta zu berufen. Die durch die Charta sichtbar gemachte Bindung der EU an die Achtung der Grund- und Menschenrechte gehört an den Beginn der künftigen europäischen Verfassung. Das gilt insbesondere für die Präambel, die das Ergebnis intensiver Debatten und eines ausgewogenen politischen Kompromisses im ersten Konvent ist.

Für den Fall dass die Charta als Teil II der Verfassung eingefügt wird, wird die Änderung von Artikel 5 wie folgt vorgeschlagen :

Artikel 5 : Grundrechte

(1) Die Grundrechte der Unionsbürger ergeben sich in Übereinstimmung mit der

EMRK und den gemeinsamen Verfassungstraditionen der Mitgliedstaaten aus der Charta der Grundrechte im zweiten Teil dieser Verfassung.

- (2) Die Union kann der Europäischen Konvention zum Schutz der Menschenrechte und Grundfreiheiten und anderen internationalen Übereinkommen zum Schutz der Menschenrechte beitreten. Der Beitritt zu diesen Übereinkommen berührt nicht die in dieser Verfassung festgelegten Zuständigkeiten der Union.

AMENDMENT FORM

Suggestion for amendment of: Article 5 (1)

By: Professor Jürgen Meyer, delegate of the German Bundestag

Status : - Member -

Aim:

To incorporate the Charter of Fundamental Rights, including the preamble, at the beginning, or at least in the second part, of the Constitution

Explanation :

With the Charter of Fundamental Rights, the EU has made it unmistakably clear that it considers itself to be a European union of values going beyond a purely economic community. The Charter incorporates, in one single text, in chapters on human dignity, freedoms, equality, solidarity, citizens' rights and justice, a balanced and up-to-date catalogue of specific rights, general freedoms, values and principles. At the same time, it reaffirms the constitutional traditions common to the Member States and the unique European social model. The European citizens have already begun to invoke the Charter in their petitions to the European parliament and their complaints to the European Ombudsman. The commitment to safeguarding fundamental and human rights demonstrated by the EU in the Charter belongs at the beginning of a future European Constitution. This applies in particular to the preamble, which is the result of intense debates and a balanced political compromise in the first Convention.

In case the charter should be integrated in the second part of the constitution, Art. 5 should read as follows :

Article 5: Fundamental rights

- (1) The fundamental rights of the citizens of the Union, 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 derive from the Charter of Fundamental Rights in the second part of this Constitution.
- (2) The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms and to other international agreements safeguarding human rights. Accession to these agreements shall not affect the Union's competences as defined by this Constitution.

Amendement proposé à : l'art. 5, al. 1

Par M./Mme : Prof. Dr. Jürgen Meyer, délégué du Bundestag allemand

Qualité : - Membre –

But :

Insertion de la Charte des droits fondamentaux et de son Préambule au début ou tout au moins à la Partie II de la Constitution

Exposé des motifs :

Avec la Charte des droits fondamentaux, l'UE a témoigné sans équivoque son autodéfinition en tant qu'union européenne des valeurs allant au-delà d'une simple communauté économique. La Charte présente en un seul et même texte aux chapitres Dignité humaine, Libertés, Égalité, Solidarité, Citoyenneté et Justice un catalogue équilibré et moderne de droits spécifiques, libertés, valeurs et principes généraux. Elle réaffirme en même temps les traditions constitutionnelles communes des États membres ainsi que le modèle social européen unique au monde. Dans les pétitions adressées au Parlement européen et les plaintes présentées au Médiateur européen, les citoyens européens se réfèrent d'ores et déjà à la Charte. Le ralliement de l'UE au respect des droits fondamentaux et aux droits de l'homme, qui s'exprime à travers la Charte, doit s'inscrire au début de la future Constitution européenne. Ceci s'applique tout particulièrement au Préambule, qui est le résultat de débats approfondis et d'un compromis politique équilibré à la première Convention.

Si la Charte est insérée en tant que Partie II à la Constitution, il est proposé de modifier l'article 5 comme suit :

Article 5 : Droits fondamentaux

(1) Les droits fondamentaux des citoyens de l'Union, en accord avec les dispositions de la Convention européenne des droits de l'homme et les traditions constitutionnelles communes

des États membres, résultent de la Charte des droits fondamentaux figurant en tant que Partie II dans le texte de la présente Constitution.

- (2) *L'Union peut adhérer à la Convention européenne des droits de l'homme et des droits fondamentaux ainsi qu'à d'autres accords internationaux ayant pour objet la protection des droits de l'homme. L'adhésion à ces accords n'affecte en rien les compétences de l'Union définies par la présente Constitution.*

FICHE AMENDEMENT

Proposition d'amendement à l'Article: 5

Déposée par Monsieur: Erwin Teufel

Qualité: Membre

Texte du Praesidium

Amendement proposé

- | | |
|---|--|
| (1) Die Charta der Grundrechte ist integraler Bestandteil der Verfassung. Die Charta ist [im zweiten Teil dieser Verfassung/in einem dieser Verfassung beigefügten Protokoll] wiedergegeben. | (1) Die Union bekennt sich zu den nachstehenden Grundrechten. |
| | (2) Die nachstehenden Grundrechte begründen weder neue Zuständigkeiten oder neue Aufgaben für die Union noch ändern sie die in diesem Verfassungsvertrag festgelegten Zuständigkeiten oder Aufgaben. |
| (2) Die Union kann der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten beitreten. Der Beitritt zu dieser Konvention berührt nicht die in dieser Verfassung festgelegten Zuständigkeiten der Union. | (3) Die Union kann der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten beitreten. Der Beitritt zu dieser Konvention berührt weder die in dieser Verfassung festgelegten Zuständigkeiten der Union noch die Zuständigkeitsverteilung zwischen der Union und den Mitgliedstaaten. |
| (3) Die Grundrechte, wie sie in der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten gewährleistet sind und wie sie sich aus den gemeinsamen Verfassungsüberlieferungen der Mitgliedstaaten ergeben, gehören zu den allgemeinen | (4) Die Grundrechte, wie sie in der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten gewährleistet sind und wie sie sich aus den gemeinsamen Verfassungsüberlieferungen der Mitgliedstaaten ergeben, gehören zu den allgemeinen |

Begründung:

Der Text der Grundrechtecharta sollte in den ersten Teil übernommen werden. Die Grundrechte sind wesentlicher Bestandteil einer jeden Verfassung. Durch eine Vollintegration ist eine bessere Sichtbarkeit für den Bürger gewährleistet. Der Wortlaut des Art. 51 Abs. 2 der Grundrechtecharta sollte aus systematischen Gründen bereits an dieser Stelle (Abs. 2) erscheinen.

FICHE AMENDEMENT

Proposition d'amendement à l'Article: 5

Déposée par Monsieur: Erwin Teufel

Qualité: Membre

Texte du Praesidium

Amendement proposé

- | | |
|--|---|
| (1) La Charte des Droits Fondamentaux fait partie intégrante de la Constitution. La Charte figure [dans la deuxième partie de / dans un protocole annexé à] de celle-ci. | (1) L'Union reconnaît les droits fondamentaux énumérés ci-après. |
| | (2) Les droits fondamentaux énumérés ci-après ne créent aucune compétence ni aucune tâche nouvelles pour l'Union et ne modifient pas les compétences et tâches définies par ce Traité constitutionnel. |
| (2) L'Union peut d'adhérer à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales. L'adhésion à cette Convention ne modifie pas les compétences de l'Union telles que définies par la présente Constitution. | (3) L'Union peut adhérer à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales. L'adhésion à cette Convention ne modifie ni les compétences de l'Union telles que définies par la présente Constitution ni la délimitation des compétences entre l'Union et les Etats membres. |
| (3) Les droits fondamentaux, tels qu'ils sont garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et tels qu'ils résultent des traditions constitutionnelles communes aux Etats membres, font partie | (4) Les droits fondamentaux, tels qu'ils sont garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et tels qu'ils résultent des traditions constitutionnelles communes aux Etats membres, font partie |

du droit de l'Union en tant que principes
généraux.

du droit de l'Union en tant que principes
généraux.

Explication:

Il conviendrait de reprendre le texte de la Charte des droits fondamentaux dans la première partie. Les droits fondamentaux sont un élément essentiel de toute Constitution. Leur intégration entière garantie une meilleure visibilité pour le citoyen. Pour des raisons systématiques le texte de l'article 51 (2) de la Charte des droits fondamentaux devrait être placé déjà ici (al. 2).

AMENDMENT FORM

Suggestion for amendment of Article : 5 (1)

By Ms / Mr : Representatives of the Assembly of the Republic - Portugal

Members Maria Eduarda Azevedo, Alberto Costa

Alternates António Nazaré Pereira, Guilherme d'Oliveira Martins

Status :

Article 5

Fundamental Rights

1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union, which shall be an integral part of the present Constitution.

2. (...)

3. (...)

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 5

Déposée par Madame ou Monsieur : Représentants de l'Assemblée de la République - Portugal

- **Membre:** Maria Eduarda Azevedo, Alberto Costa

- **Suppléant:** António Nazaré Pereira, Guilherme d'Oliveira Martins

Article 5

Droits fondamentaux

1. L'Union reconnaît les droits, les libertés et les principes énoncés dans la Charte des droits fondamentaux de l'Union européenne, qui fait partie intégrante de cette Constitution.

2. (...)

3. (...)

Proposition d'amendement à l'Article 5

Déposée par Madame Elena Paciotti et Monsieur Valdo Spini, Suppléants

EN Version

Articolo 5: Diritti fondamentali

1. *I diritti fondamentali dell'Unione europea sono enunciati nella Carta dei diritti fondamentali che costituisce la prima parte della Costituzione (resto soppresso).*

[2. L'Unione può aderire alla Convenzione europea di salvaguardia dei diritti dell'uomo e delle libertà fondamentali, *ai trattati e alle organizzazioni internazionali che assicurano la protezione dei diritti fondamentali. Tali adesioni* non modificano le competenze dell'Unione definite dalla presente Costituzione.]

3. *Soppresso*

Explication éventuelle:

1. *La Carta dei diritti fondamentali non costituisce un'aggiunta alla Costituzione, ma una sua parte.*

2. *Il paragrafo potrebbe anche essere soppresso perché l'attribuzione della personalità giuridica all'Unione e l'integrazione della Carta dei diritti fondamentali nella Costituzione dovrebbero superare gli ostacoli all'adesione individuati dalla Corte di Giustizia (che ha rilevato la mancanza di competenza dell'Unione nel campo dei diritti fondamentali). Ove così non fosse bisognerebbe aggiungere analoga facoltà di adesione ai trattati e alle organizzazioni che assicurano la protezione dei diritti fondamentali affinché la specifica autorizzazione ad aderire alla CEDU non appaia come limitativa.*

3. *Il paragrafo è superfluo e fonte di possibili equivoci. Esso ripete la formula dell'articolo 6 paragrafo 2 del Trattato UE che è superato dall'avvenuta approvazione della Carta dei diritti fondamentali e dalla sua integrazione nella Costituzione. Infatti, sia i diritti derivanti dalle tradizioni costituzionali comuni, sia quelli sanciti dalla CEDU sono già inclusi nella Carta, come risulta dal preambolo e dagli articoli 52 e 53 della stessa. Poiché i cataloghi dei diritti fondamentali presenti nelle costituzioni non sono mai interpretabili come esaustivi, non c'è bisogno di citare queste fonti per consentire un'eventuale interpretazione evolutiva della Carta. Al contrario, poiché nel preambolo della stessa sono indicate altre fonti da cui sono tratti i diritti fondamentali vigenti nell'Unione, la menzione di sole due fonti rischia di avere un significato limitativo.*

Proposition d'amendement à l'Article 5

Déposée par Madame Elena Paciotti and Monsieur Valdo Spini, Suppléants

EN Version

Article 5: Fundamental rights

1. *The fundamental rights of the European Union are stated in the Charter of Fundamental Rights which constitutes the first part of the Constitution.*

2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms, *and to international treaties and organisations that ensure the protection of fundamental rights*. Accession to *these* shall not affect the Union's competencies as defined by this Constitution.

3. *Suppressed*

Explication éventuelle:

1. *The Charter of Fundamental rights is not an appendage of the Constitution but a part of it.*

2. *The paragraph could be suppressed because the attribution of legal status to the Union and the integration of the Charter of Fundamental Rights in the Constitution should overcome the obstacles to accession noted by the Court of Justice (it noticed the Union's lack of competence in the area of fundamental rights). Where this is not the case, an analogous provision for accession to treaties and organisations that ensure the protection of fundamental rights should be added, so that the specific authorisation given for accession to the ECHR is not considered a limiting factor.*

3. *The paragraph is superfluous and a source of possible misconceptions. It repeats the words of article 6 paragraph 2 of the EU Treaty, which was superseded by the approval of the Charter of Fundamental Rights and its integration into the Constitution. In fact, both the rights that derive from common constitutional traditions, and those sanctioned by the ECHR are included in the Charter, as can be seen in the preamble and articles 52 and 53 of the same. Since the catalogues of fundamental rights present in the constitutions can never be interpreted as exhaustive, there is no need to quote these sources in any future elaboration of the Charter. On the contrary, since the preamble to the same indicates other sources for the fundamental rights in force in the Union, to mention just two sources could be seen as a limiting factor.*

AMENDMENT FORM

Suggestion for amendment of Article : 5 (2)

By Mr : **R. VAN DER LINDEN** (member)
 F. TIMMERMANS (member)
 W. VAN EEKELEN (alternate member)
 J.J. VAN DIJK (alternate member)

The Union **wants to** 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.

Explanation (if any) :

The reasons why the EU should accede to the ECHR have been adequately and convincingly set out in the final report unanimously adopted by Working Group II and largely endorsed by the Plenary Convention, where a very strong tendency in favour of accession emerged.

It is therefore essential to ensure that accession is not only made *legally possible* in the future EU-Constitution, but also *effectively pursued* as an option agreed upon by the Convention, in order to maintain the parallelism which was expediently established by the Laeken Declaration between the Charter and the ECHR.

The most appropriate way to secure this is to lay down an obligation to this effect in the future Constitution, as proposed by the amendment above. Alternatively, and in any event, a clear statement to the effect that the EU should accede to the ECHR should be made by the Convention, either in the introduction or in the explanations to the Constitutional Treaty.

AMENDMENT FORM

Suggestion for amendment of Article: 5§1

By Mr: Paraskevas AVGERINOS

Status: Member

Ο Χάρτης των Θεμελιωδών Δικαιωμάτων αποτελεί συστατικό τμήμα του Συντάγματος. Ο Χάρτης περιλαμβάνεται [στο δεύτερο μέρος του/ σε πρωτόκολλο προσαρτώμενο] στο Σύνταγμα.

Ο Χάρτης των Θεμελιωδών Δικαιωμάτων αποτελεί συστατικό τμήμα του Συντάγματος. Ο Χάρτης περιλαμβάνεται **στο δεύτερο μέρος του Συντάγματος.**

Explanation:

Ενώ η νομική ισχύς είναι η ίδια για τις δύο περιπτώσεις [δεύτερο μέρος ή πρωτόκολλο], για τους ευρωπαίους πολίτες έχει πολιτική σημασία ο Χάρτης να βρίσκεται στο σώμα του Συντάγματος.

AMENDMENT FORM

Suggestion for amendment of Article : 5

By Ms / Mr : Marie Nagy

Status : - Member - Alternate

TITLE II: Fundamental rights and citizenship of the Union

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]~~ **in the second part** of this Constitution.

 2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms **and to other international agreements for the protection of Human and Fundamental Rights**. Accession to that Convention or to other **international agreements** 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.
-

Explanation (if any) :

FICHE AMENDEMENT

Proposition d'amendement à l'Article 5

Déposée par Monsieur Dominique de Villepin

Qualité : Membre

Article 5: Droits fondamentaux

1. La Charte des Droits Fondamentaux fait partie intégrante de la Constitution. La Charte figure **dans la deuxième partie de celle-ci.**
 2. [L'Union peut **décider d'adhérer** à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales. L'adhésion à cette Convention ne modifie pas les compétences de l'Union telles que définies par la présente Constitution.]¹
 3. Les droits fondamentaux, tels qu'ils sont garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et tels qu'ils résultent des traditions constitutionnelles communes aux Etats membres, font partie du droit de l'Union en tant que principes généraux.
-

Explication éventuelle :

¹ Le paragraphe 2 du projet d'article 5, qui constituerait la base juridique d'une éventuelle adhésion de l'Union à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, trouverait davantage sa place dans la seconde partie du traité constitutionnel.

AMENDMENT FORM

Suggestion for amendment of Article : 5.2

By Lord Tomlinson

Status : - Alternate

2nd sentence - change word "affect" to "extend"

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : 5.1

By Lord Tomlinson

Status : Alternate

The House of Lords has broadly supported HM Government concerning their view of the Charter of Fundamental Rights and I do not support the Charter as being an integral part of the Constitution.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article 5

By **Mr Andrew Duff, Mr Dimitrij Rupel, Mr Paul Helminger, Lord MacLennan, Mr István Szent-Iványi, Ms Teresa Almeida-Garrett and Mr Lamberto Dini.**

Status : **Members and alternate members.**

Article 5: Fundamental rights

- 5.1 The Charter of Fundamental Rights, *as set out in Chapter Two*, shall be an integral part of the Constitution.
- 5.2 The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms *and other international human rights conventions*. Accession *to them* shall not affect the Union's competences as defined by this Constitution.
- 5.3 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.

Explanation:

5.1 *Of the options available for the installation of the Charter in the Constitution, its publication as a second chapter of Part One would seem to offer the greatest visibility and comprehension. Its annexation as a Protocol would be equivalent in legal terms, but it would in that case be necessary to spell out (and therefore repeat without divergence) some of the Charter's key points in this Title II.*

The Chapter Two solution proposed here would allow the Convention to shorten radically Article 7 on citizenship.

5.2 *Although the ECHR is the principal human rights convention, and in the light of the jurisprudence of the European Court of Justice may need a specific mention in the Constitution, it is not the only one.*

FICHE AMENDEMENT

Proposition d'amendement à l'Article : Article 5

Déposée par ~~Madame ou~~ Monsieur : Oğuz DEMIRALP

Qualité : ~~-Membre-~~ - Suppléant

Article 5 (2) :

Ajouter dans la deuxième phrase : « **la répartition des compétences entre l'Union et les Etats Membres** ».

La nouvelle deuxième phrase se lit comme suit :

L'adhésion à cette Convention ne modifie pas **la répartition des compétences entre l'Union et les Etats Membres telles que définies par la présente Constitution.**

Explication éventuelle :

Cette modification semble nécessaire, car la phrase « l'adhésion à cette Convention ne modifie pas les compétences de l'Union » ne reflète pas correctement le but recherché, tel que défini dans la note explicative (p.13), qui est d'empêcher la répartition des compétences entre l'Union et les Etats Membres de pâtir de l'adhésion.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : Art. 5 par. 1

Déposée par Madame Cristiana MUSCARDINI

Qualité : Membre

Il paragrafo 1 è sostituito dal seguente paragrafo:

"Il Trattato costituzionale fa riferimento alla Carta dei diritti fondamentali."

FICHE AMENDEMENT

Proposition d'amendement à l'Article : Article 5

Déposée par ~~Madame ou~~ Monsieur : Oğuz DEMIRALP

Qualité : ~~-Membre-~~ - Suppléant

Article 5 (1) : Les droits fondamentaux :

Retenir la formule « **La charte figure dans un Protocole annexé à celle-ci** ».

Ainsi l'article 5(1) devient comme suit :

La charte des droits fondamentaux fait partie intégrante de la Constitution. **La charte figure dans un Protocole annexé à celle-ci.**

Explication éventuelle :

Le but de la Convention est de rédiger un texte constitutionnel simple et lisible pour les citoyens. Intégrer la Charte telle qu'elle est, conduirait à un texte constitutionnel nécessairement volumineux. En outre, son intégration textuelle dans le futur Traité nécessiterait la modification de certains de ses articles. Matériellement, il serait difficile pour la Convention de se livrer à un tel exercice.

Fiche amendement

Proposition d'amendement à l'article : 5

Déposée par MM. Santer, Helminger, Fayot

En qualité de MEMBRES

Il est proposé de reprendre la Charte dans un Titre Ier de la Constitution. Il faut noter que la plupart des dispositions du Titre II consacré aux « droits fondamentaux et à la citoyenneté de l'Union » se retrouvent déjà dans la Charte. L'actuel Titre Ier deviendrait le Titre II. Le nouveau premier titre pourrait être complété par les dispositions ne figurant pas dans la Charte, telles que la définition de la citoyenneté de l'Union et l'adhésion de l'Union à la Convention européenne de sauvegarde des droits de l'Homme et des libertés fondamentales. Cette disposition devrait être formulée de la manière suivante :

« L'Union s'engage à adhérer à la Convention européenne de sauvegarde des droits de l'Homme et des libertés fondamentales. L'adhésion... »

Explication :

L'Union possédant dorénavant la personnalité juridique a vocation à adhérer à la CEDH. L'amendement vise à prendre un engagement ferme à cet égard, indispensable dans un souci d'unicité et de cohérence de la future interprétation et jurisprudence en matière de droits de l'Homme et de libertés fondamentales.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : Art. 5

Déposée par Madame Cristiana MUSCARDINI

Qualité : Membre

Aggiungere un par. 4 :

"L'Unione europea darà una considerazione preminente all'interesse superiore del fanciullo in tutte le decisioni prese nell'ambito delle disposizioni del Trattato, così come sancito dalla Convenzione sui diritti del fanciullo."

Motivazione:

I diritti dei minori devono essere compresi tra quelli fondamentali e devono essere inclusi nel nuovo Trattato. Fino ad ora i bambini sono considerati solo come eventuali vittime, persone a carico o impedimenti al lavoro. Dunque ancora esclusivamente come oggetto di tutela piuttosto che come soggetti di diritto, E ciò in contrasto con lo spirito e la lettera della Convenzione sui Diritti del Fanciullo del 1989. L'inserimento contribuirebbe inoltre a:

1. garantire che le politiche e la legislazione dell'Unione non abbiano più un impatto negativo sui minori;
2. riconoscere la transnazionalità dei diritti dei minori, evidente anche dal fatto che una serie di direttive europee hanno un impatto sui minori, come quelle in materia di *media* e di politiche per i consumatori, o politiche per regolare l'asilo o per combattere il fenomeno del traffico e di abuso di minori;

garantire che l'UE rispetti e tenga in considerazione i diritti dei minori nell'approvazione delle leggi che possono avere un impatto diretto o indiretto sui minori. I bisogni e i diritti dei minori differiscono da quelli degli adulti, e ciò è ampiamente espresso nella Convenzione sui diritti del fanciullo, ratificata da tutti gli stati membri dell'Unione, così come dai Paesi candidati all'adesione.

AMENDMENT FORM

Suggestion for amendment of Article 5.1, Title II

By : Mrs Sandra Kalniete (LV Gov., Member), Mr Roberts Zile (LV Gov., Alternate), Mrs Liene Liepina (LV Parl., Member), Mr Rihards Piks (LV Parl., Member), Mr Arturs Krisjanis Karins (LV Parl., Alternate), Mr Guntars Krasts (LV Parl., Alternate).

- Replace the title “Constitution” by the “Constitutional treaty” (in the whole text);
- Delete the following part of first sentence “*shall be an integral part of the Constitution*”;
- The Charter shall be annexed to the Constitutional Treaty as a Protocol.

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 Constitutional Treaty.

Explanation (if any) :

The Union is a specific entity, which is based on the several establishing Treaties. Taking into account that the constitutional issues in the EU are approved on the basis of the agreement between the Member States in form of the treaties, the new Treaty should be defined as the Constitutional Treaty.

The Charter of Fundamental Rights itself consists of more than 50 articles and it is thus not practical to include the entire text of the Charter into the body of the Constitutional Treaty text. Given the orderly structure of the Constitutional Treaty and the laconic nature of its text, the Charter of Fundamental rights should be annexed to the Treaty as a Protocol.

Insertion of the Charter as a Protocol should allow the Member States when they decide on the entering into force of the Constitutional Treaty to decide separately about the entering into force of the Protocol. This would allow the Member States to negotiate a time schedule that will determine when the given rights will become binding.

AMENDMENT FORM

Suggestion for amendment of Article 5.1 and 5.2:

By Mrs Lena Hjelm-Wallén and Mr Sven-Olof Petersson, government representatives and Mr Sören Lekberg, Mr Göran Lennmarker and Mr Kenneth Kvist, national parliament representatives.

Status : - **Members: Hjelm-Wallén, Lekberg and Lennmarker**
 - **Alternates: Petersson and Kvist**

1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out [~~in the second part of~~¹ /in a Protocol annexed] to this Constitution.²

2. The Union [may accede] **shall seek accession to**³ 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.

Explanation

¹ The Charter should not be set out in Part II of the Treaty (The Charter does not provide any legal basis for the implementation of policies).

² The Laeken Declaration rightly established parallelism between “incorporation of the Charter” and “accession to the ECHR”, not only in substance but implicitly also as regards the timing of their respective implementation.

³ An enabling clause must be combined with a clear commitment by the high contracting parties in favour of accession.

AMENDMENT FORM

Suggestion for amendment of Article : 5

By Ms : Giannakou Marietta

Status : - Member

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 this Constitution*.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article 5 :

By Mr Joschka Fischer

Status : - Member

Artikel 5: Grundrechte

(1) Die Charta der Grundrechte ist ~~integraler Bestandteil der Verfassung. Die Charta ist [im zweiten Teil dieser Verfassung/ in einem dieser Verfassung beigefügten Protokoll]~~ wiedergegeben.

1

(2) Zusätzlich zu den in der Grundrechtecharta anerkannten Rechten achtet die Union die Grundrechte, wie sie in der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten gewährleistet sind und wie sie sich aus den gemeinsamen Verfassungsüberlieferungen der Mitgliedstaaten ergeben.

(3) Die Union kann der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten beitreten. Der Beitritt zu dieser Konvention berührt nicht die in dieser Verfassung festgelegten Zuständigkeiten der Union.

~~(3) Die Grundrechte, wie sie in der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten gewährleistet sind und wie sie sich aus den gemeinsamen Verfassungsüberlieferungen der Mitgliedstaaten ergeben, gehören zu den allgemeinen Grundsätzen des Gemeinschaftsrechts.~~

¹ {Der vollständige Wortlaut der Charta wird mit sämtlichen redaktionellen Anpassungen, die im Schlussbericht der Gruppe II (CONV 354/02) aufgeführt sind, an herausgehobener Stelle in diesem Verfassungsvertrag aufgenommen, ~~entweder in einen zweiten Teil der Verfassung oder in ein Protokoll zur Verfassung aufgenommen~~; die Entscheidung hierüber liegt beim Konvent.}

Explanation (if any) :

Das Wort "integral" in Absatz 1 ist überflüssig. Die Charta sollte an herausragender Stelle des Verfassungvertrags erscheinen (am besten unmittelbar nach der Präambel der Verfassung). Die Protokolllösung scheidet aus, da sie nicht der Würde und dem Stellenwert der Charta als Ausdruck der europäischen Werteordnung entspricht. Der neue Absatz 2 übernimmt die Formulierung aus Art. 6 (2) EUV. Der bisherige Absatz 2 sollte aus systematischen Gründen Absatz 3 werden.

AMENDMENT FORM

Suggestion for amendment of Article: 5

By Ms / Mr : Mr. Ms. Irena Belohorska – member, Jan Zahradil – member, Mr. Jens-Peter Bonde - member, Mr. David Heathcoat-Amory - member, Mr. William Abitbol - alternate, Mr. Peter Skaarup - member, Mr. Per Dalgaard - alternate, Mr. Esko Seppänen – alternate, and Mr. John Gormley - alternate.

Article 5: Fundamental rights

1. The Charter of Fundamental Rights binds the European institutions. The Europe of Democracies respects the European Convention for the Protection of Human Rights and Fundamental Freedoms and the basic rights of the national constitutions.¹
2. The Europe of Democracies may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

¹ [The full text of the Charter, with all the drafting adjustments given in Working Group II's final report (CONV 354/02) will be set out either in a second part of the Constitution or in a Protocol annexed thereto, as the Convention decides.]

AMENDMENT FORM

Suggestion for amendment of Articles 1.1., 3.2. and 5.2

By Alexander Arabadjiev

Status: Alternate Member (Bulgarian Parliament)

(a) In Article 1.1. *citizens* of the EU – along with peoples and States- should be mentioned;

(b) In Article 3.2. *socal market economy* should ebe added as EU objective;

(c) In Article 5.2. **in stead of:**

The Union ‘may’ accede

The Union **shall** accede

Explanation:

With respect to (c) above - The question of accession is of “constitutional significance” and the Convention must pronounce itself clearly in favour of accession. Under the conclusions of Working Group II accession is regarded as a complementary (to incorporation of the Charter) and not an alternative option.

AMENDMENT FORM

Suggestion for amendment of Article 5:

By Elmar BROK, Jozsef SZAJER, Erwin TEUFEL, René VAN DER LINDEN, Frantisek KROUPA, John CUSHNAHAN, Teresa ALMEIDA GARRETT, Peter ALTMAIER, Jan FIGEL, Piia Noora KAUPPI, Hanja MAIJ-WEGGEN, Reinhard RACK, Joachim WÜRMELING

on behalf of the EPP Convention Group

Status: Members and Alternates

Text of the Praesidium

Proposed Amendments

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 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.

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.

IMPORTANT STRUCTURAL AMENDMENT:

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".

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).

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.~~

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, 5th 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.

AMENDMENT FORM

Suggestion for amendment of Article : 5

By MM : Kiljunen and Vanhanen

Status : - Members

1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out **in a Protocol annexed** to this Constitution.
 2. The Union **shall take the necessary steps to** 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.
 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.
-

Explanation (if any) :

*It is clear that the Charter of Fundamental Rights belongs to provisions that are constitutional to their nature. It follows that the Charter should be annexed to the Constitution as a protocol with a status equivalent to that of Part I.
Since the Charter and the ECHR are complementary to each other, there should a clearer commitment by the Union to bring about the accession to the ECHR*

Amendments submitted by Teija Tiilikainen and Antti Peltomäki 17 February 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 a Protocol annexed** to this Constitution.
2. The Union **shall take the necessary steps to** 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.
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.

Commentary:

It is clear that the Charter of Fundamental Rights belongs to provisions that are constitutional to their nature. It follows that the Charter should be annexed to the Constitution as a protocol with a status equivalent to that of Part I.

Since the Charter and the ECHR are complementary to each other, there should a clearer commitment by the Union to bring about the accession to the ECHR.

AMENDMENT FORM

Suggestion for amendment of Article 5

By Mr. Ivan Korčok (SK)

Status : - Member

Article 5: Fundamental rights

1. The Charter of Fundamental Rights shall be ~~an integral part of the Constitution~~ a legally binding document. The Charter is set out ~~[in the second part of]~~ in a Protocol annexed to ~~this Constitution~~ Constitutional Treaty.
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~~ Constitutional Treaty.
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.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article 5 :

By Mr : Ingvar SVENSSON

Status : - Alternate

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]~~ in this Constitution.

2. The Union ~~may accede~~ **shall seek accession** 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.

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.

Explanation:

Article 5.1

The Charter of Fundamental Rights should be a part of the Constitution, but is not necessary to state where in the Constitution the Charter can be found. That will be obvious when the Constitution is complete.

Article 5.2

It is important that the Union seeks accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 5

Déposée par Madame ou Monsieur : Mme PALACIO

Qualité : - Membre - Suppléant

Article 5: Droits fondamentaux

- 1- ~~L'Union respecte les droits, les libertés et les principes énoncés par la Charte des Droits Fondamentaux figurant dans la Partie Ibis de la Constitution. [La Charte des Droits Fondamentaux fait partie intégrante de la Constitution. La Charte figure dans la deuxième partie de / dans un protocole annexé à] de celle-ci.~~
 2. L'Union peut adhérer à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales. L'adhésion à cette Convention ne modifie pas les compétences de l'Union telles que définies par la présente Constitution.
 3. Les droits fondamentaux, tels qu'ils sont garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et tels qu'ils résultent des traditions constitutionnelles communes aux Etats membres, font partie du droit de l'Union en tant que principes généraux.
-

Explication:

Il faut que la pleine valeur constitutionnelle de la Charte soit absolument claire.

AMENDMENT FORM

Suggestion for amendment of Article : 5

By Mr : Gianfranco FINI

Status : - Member

Articolo 5: Diritti fondamentali

1. La Carta dei diritti fondamentali ~~é,~~ parte integrante della **presente** Costituzione, **è contenuta in un Protocollo allegato**. ~~Il testo della Carta è contenuto in un protocollo [nella seconda parte della / in un protocollo allegato alla] stessa.~~
2. ***L'esercizio dei diritti delineati nella Carta si esercita in quanto compatibile con l'ordinamento giuridico di ciascuno Stato membro***
3. L'Unione può aderire alla Convenzione europea di salvaguardia dei diritti dell'uomo e delle libertà fondamentali. L'adesione a tale Convenzione non modifica le competenze dell'Unione definite dalla presente Costituzione.
4. I diritti fondamentali, garantiti dalla Convenzione europea di salvaguardia dei diritti dell'uomo e delle libertà fondamentali e risultanti dalle tradizioni costituzionali comuni agli Stati membri, fanno parte del diritto dell'Unione in qualità di principi generali.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : 5

By Ms / Mr : Johannes Voggenhuber, Eva Lichtenberger

Status : - Member - Alternate

TITLE II: Fundamental rights and citizenship of the Union

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]~~ **in the second part** of this Constitution.

2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms **and to other international agreements for the protection of Human and Fundamental Rights**. Accession to that Convention or to other **international agreements** 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.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article 5, paragraph 1

By Ms : Hildegard Puwak

Status : - Member

“ The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out in the second part of this Constitution.”

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : 5

By Mr Kirkhope MEP

Status : Member

DELETE

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : 5, 6 and 7

By Mr : Georgios Katiforis

Status : - Member

TITLE II: Fundamental rights and citizenship of the Union

Option a: insert the articles of the Charter under Title II

Option b:

Article 5: Fundamental rights

1. All fundamental rights referred in this Constitution shall bind the institutions and bodies of the European Union regarding all their actions and the Member States when they are implementing Union law.

~~1-~~ **2.** 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-~~ **3.** 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.

~~3-~~ **4.** 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.

(If option a retained, delete paragraph 2, integrate appropriately paragraphs 1, 3 and 4)

Article 6: Non-discrimination on grounds of nationality

In the field of application of this Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

(If option a retained, delete article 6)

Article 7: Citizenship of the Union

1. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship; it shall not replace it. All citizens of the Union, women and men, shall be equal before the law.

2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in this Constitution. They shall have:

- the right to move and reside freely within the territory of the Member States;
- the right to vote and to stand as a candidate in elections to the European Parliament and in municipal elections in their Member State of residence under the same conditions as nationals of that State;
- the right to enjoy, in the territory of a third country in which the Member State of which they are a national is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;
- the right to petition the European Parliament, to apply to the Ombudsman, and to write to the institutions and advisory bodies of the Union in any of the Union's languages and to obtain a reply in the same language.

3. These rights shall be exercised in accordance with the conditions and limits defined by this Constitution and by the measures adopted to give it effect.

(If option a retained, delete paragraph 2, integrate appropriately paragraphs 1 and 3)

AMENDMENT FORM

Suggestion for amendment of Article 5/2:

By Mr. Jozsef Szajer

Status: Member, National Parliament, Hungary

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

Explanation

The adhesion to the **Framework Convention** would solve an important deficiency of the present acquis, which is missing an effective protection of national and ethnic minorities. The Central European part of the continent, which is about to join the EU brings into the union a great number of national and ethnic minorities. However the Copenhagen democracy criteria give clear guidelines for the candidate countries for safeguarding national minority rights, unfortunately neither the present acquis nor the Charter of Fundamental Rights deal sufficiently with national minority rights. This would mean, that after adhesion the level of national minority rights protection would considerably fall due to the lack of clear guidelines in these areas.

AMENDMENT FORM

Suggestion for amendment of Article : 5

By Mr Poul Schlüter:

Status : Alternate

1. The Union respects the rights, freedoms and principles in the ~~The~~ Charter of Fundamental Rights ~~shall be an integral part of the Constitution. The Charter is as~~ set out ~~[in the second part of/~~in a Protocol annexed to~~] this Constitutional~~ Treaty.
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 Constitutional Treaty.
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.

Explanation:

- 1) A reference to the Charter as an “integral part” of the Constitutional Treaty is not in line with the recommendations from WG II.
- 2) There was general agreement in the Convention that the Charter should be made legally binding through a direct reference in the first part of the Constitutional Treaty and annexed to the Treaty in a protocol.

AMENDMENT FORM

Suggestion for amendment of Article 5

By: **Danuta Hübner**

Status: **Member**

<i>Text of the Praesidium</i>	<i>Proposed Amendments</i>
<u>Article 5: Fundamental rights</u> 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 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. 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.	<u>Article 5: Fundamental rights</u> 1. <u>As a reflection of the political unity reached among the Member States, citizens of the Union are endowed with the rights set out in the</u> The Charter of Fundamental Rights <u>which is</u> 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 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. 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.
Explanation: 1. The including of the Charter of Fundamental Rights directly into the Treaty was supported by the vast majority of the Convention and of the Working Group II. The proposed wording is of a more solemn nature. 2. The enabling clause for ECHR accession should be put in the Final Provisions of the Constitutional Treaty.	

AMENDMENT FORM

Suggestion for amendment of: Article 5

By: Lamberto Dini

Status : - Member

Aim:

Reformulate Article 5.1:

"The Charter of Fundamental Rights, **as set out in Chapter Two**, shall be an integral part of the Constitution.

Explanation :

It would be better for the Charter of Fundamental Rights to be inserted as a second part of the Constitution rather than annexed to it as a Protocol. In this respect, it is worth recalling that the American Bill of Rights was added two years after the adption of the US Constitution, with the enactment of the first ten amendments. Consequently, articles 8-9 ought to be redrafted, to avoid any redundancy.

AMENDMENT FORM

Suggestion for amendment of Article 5

By : G.M de Vries,

Th. J.A.M. de Bruijn,

J.J. van Dijk,

Status : Member, Alternate Members

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.~~¹
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.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Charter of Fundamental Rights, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Explanation (if any) :

We can only consider integration of the Charter of Fundamental Rights into the Constitution, provided that this does not thereby become substantive EU law which could result in direct claims by citizens against their government.

¹ ~~[The full text of the Charter, with all the drafting adjustments given in Working Group II's final report (CONV 354/02) will be set out either in a second part of the Constitution or in a Protocol annexed thereto, as the Convention decides.]~~

AMENDMENT FORM

Suggestion for amendment of Article : 5

By Mr : CUSHNAHAN

Status : - Alternate (European Parliament Delegation)

Article 5: Fundamental rights

1. The Charter of Fundamental Rights *shall be fully integrated into the Constitution.* The Charter is set out *in the second part of this Constitution.*

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article: 5

By Mr Péter Balázs

Status : **Member** - **Alternate**

Article 5: Fundamental 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.”

Explanation (if any) :

The appropriate enforcement necessitates the clear division of competencies between the two Courts (Luxembourg, Strassbourg).

AMENDMENT FORM

Suggestion for amendment of Article : 5

By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann

Status : - Member ~~Alternate~~

Artikel 5: Grundrechte

(1) Die Charta der Grundrechte ist integraler Bestandteil **dieser** Verfassung. ~~Die Charta ist [im zweiten Teil dieser Verfassung/in einem dieser Verfassung beigefügten Protokoll] wiedergegeben.~~

(~~32~~) Die Union kann der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten **und anderen internationalen Konventionen zum Schutze der Menschenrechte** beitreten. ~~Der Beitritt zu dieser Konvention berührt nicht die in dieser Verfassung festgelegten Zuständigkeiten der Union.~~

(~~23~~) Die Grundrechte, wie sie in der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten gewährleistet sind und wie sie sich aus den gemeinsamen Verfassungsüberlieferungen der Mitgliedstaaten ergeben, gehören zu den allgemeinen Grundsätzen des ~~Gemeinschaftsrechts~~ **Verfassungsrechts der Union**.

Explanation (if any) :

Abs. 1:

Die vollständige Wiedergabe des Wortlautes der Grundrechtecharta ist unverzichtbar. Darüber hinaus ist ein redaktioneller Verweis auf den Zweiten Teil unnötig und in einer Verfassung unüblich.

Absatz 2 und 3 sollten getauscht werden, da es sich bei Absatz 2 - anders als bei Absatz 1 und 3, die materielle Gewährleistungen enthalten - um eine Ermächtigungsgrundlage handelt.

Abs. 3 (ex-Abs. 2):

Die Union sollte die Möglichkeit haben, auch anderen Verträgen zum Schutz der Menschenrechte beizutreten.

FICHE AMENDEMENT

Proposition d'amendement à l'Article 5:

Déposée par M. Olivier DUHAMEL
Mme Linda McAVAN
M. Luis MARINHO
Mme Anne VAN LANCKER
M. Klaus HÄNSCH

Qualité: - Membres

Mme Pervenche BERÈS
Mme Maria BERGER
M. Carlos CARNERO
Mme Helle THORNING-SCHMIDT

Qualité: - Suppléants

Article 5: Droits fondamentaux

1. **Les droits fondamentaux de l'Union européenne sont énoncés dans la** Charte des droits fondamentaux **qui** fait partie intégrante de la Constitution. Elle **constitue** la deuxième partie de la Constitution.
 2. **A supprimer**
 3. **A supprimer**
-

Explication éventuelle:

La Charte des droits fondamentaux ne constitue pas un ajout à la Constitution, elle en sera une partie.

Sur la suppression du paragraphe 2 de l'article 5: l'attribution de la personnalité juridique à l'Union prévue dans l'article 4 et l'intégration de la Charte des droits fondamentaux dans la Constitution prévue dans l'article 5 paragraphe 1 devrait surmonter les obstacles à l'adhésion à la Convention européenne des droits de l'homme. Ceci répondrait aux exigences de la Cour de Justice.

Sur la suppression du paragraphe 3 de l'article 5: ceci devient superflu et source d'éventuels équivoques. Il répète le contenu de l'article 6 paragraphe 2 du Traité de l'UE qui deviendra obsolète après l'intégration de la Charte des droits fondamentaux dans la Constitution. En effet, les droits qui résultent des traditions constitutionnelles communes aux Etats membres ainsi que ceux qui sont garantis par la Convention européenne des droits de l'homme font déjà partie de la Charte, voir dans son préambule et dans ses articles 52 et 53.

AMENDMENT FORM

Suggestion for amendment of Article 5

By: Mr Józef Oleksy

Status: Member

Proposed Amendments:

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 this Constitution.

3. *delete*

Explanation:

It is assumed that the Charter will become the second part of the Treaty. In addition to this, the deletion of para. 3 confirms the treaty legitimacy of the Charter of Fundamental Rights and not the European Convention on Human Rights (ECHR), which the Union may (or may not) choose to adapt . As the Charter of Fundamental Rights is raised to an act of constitutional rank and includes basic rights, including those, which the Court of Justice articulated in the form of general legal rules, questions arise as to why provisions on basis rights are kept as general rules.

AMENDMENT FORM

Suggestion for amendment of Article 5 para 2

By Mr : MacCormick, Neil

Status : - Alternate

Article 5 para 2: insert 19 words :

The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms *and to other international agreements for the protection and promotion of human rights..* Accession to *the European* Convention *or other like Conventions* shall not affect the Union's competences as defined by this Constitution.

Explanation (if any) : *It is particularly urgent for the Union to accede to the European Convention, but there are other instruments to which it may be or become desirable to accede.*

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 5

Déposée par Madame ou Monsieur : Rt Hon David Heathcoat-Amory, MP

Qualité : - Membre *X* - Suppléant

5.1 Delete

Explication éventuelle

The integration of the Charter overturns the consensus reached by its authors. Integrating the text establishes a new legal hierarchy. It sets European law against established national practice, and creates immense legal uncertainty which can only be settled through the ECJ acting as a constitutional arbiter, a role for which it was manifestly not established.

5.2 Delete

Explication éventuelle

This creates ambiguity of institutions, between the ECJ and the ECHR.

5.3 Delete

Explication éventuelle

As the explanatory note explicitly states, this article is intended to expand Union competences by case law, and not through the treaties. This is most undemocratic. A better and simpler solution would be to require members of the Union to be signatories of the European Convention on Human Rights.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 5

Déposée Monsieur : Hannes FARNLEITNER

Qualité : - Membre

5. 1

[..]

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

Explication:

In accordance with the recommendations of Working Group II (see pages 3 and 6 of CONV 354/02) the text of the Charter Articles should be inserted “at the beginning of the Constitutional Treaty” (therefore into the **first part** of the Constitution). If the Plenary intends not to follow this recommendation of “a large majority of the Group” the Charter should be annexed to the Constitution as a Protocol.

Art. 5 para 2 should in any case remain in part one of the Constitution.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 5

Déposée par Madame ou Monsieur : **M. Louis Michel, M. Karel de Gucht, M. Elio di Rupo, Mme Anne Van Lancker, membres de la Convention et M. Pierre Chevalier et Mme Marie Nagy, membres suppléants de la Convention**

Qualité : - Membre - Suppléant

1. La Charte des Droits Fondamentaux fait partie intégrante de la Constitution. La Charte figure **dans la deuxième partie** de ~~/dans un protocole annexé à/~~ de celle-ci.
 2. L'Union peut adhérer à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales **ainsi qu'à d'autres accords internationaux de protection des droits fondamentaux**. L'adhésion à cette Convention **ou à ces accords** ne modifie pas les compétences de l'Union telles que définies par la présente Constitution
 3. Les droits fondamentaux, tels qu'ils sont garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et tels qu'ils résultent des traditions constitutionnelles communes aux Etats membres, font partie du droit de l'Union en tant que principes généraux.
-

Explication éventuelle :

1. Même si l'intégration de la Charte dans une deuxième partie ou dans un Protocole n'emporte pas en elle-même des implications juridiques, il reste que la Charte doit, en raison de son importance, être intégrée dans le corps même de la Constitution et ne peut donc être reléguée dans un document annexée à celle-ci.
2. Outre la possibilité d'une adhésion de l'Union à la Convention européenne des droits de l'homme, la Constitution devrait prévoir que l'Union puisse adhérer à d'autres instruments de protection des droits fondamentaux.

FICHE AMENDEMENT

Proposition d'amendement à l'Article 5

Déposée par Monsieur Eckstein-Kovács Péter

Qualité : - Membre suppléant

Article 5 nouvelle Para 2b) :

L'Union peut adhérer à la Convention-cadre pour la protection des minorités nationales, à la Charte des langues régionales ou minoritaire du Conseil de l'Europe et à la Charte européenne de l'autonomie locale. L'adhésion à cette Convention ne modifie pas les compétences de l'Union telles que définies par la présente Constitution.

AMENDMENT FORM

Suggestion for amendment of Article 5.1, Title II

By : Mr.V.P.Andriukaitis (LT Parl., Status-Member), Mr.A.Gricius (LT Parl., Status-Member), Mr. O.Jusys (LT Gov., Status-Alternate), Mr. R.Martikonis (LT Gov., Status-Member)

Insert the text of Charter:

Propose full insertion of the text of the Charter articles in Title I or II.

Explanation (if any) :

Fundamental rights should go first reflecting adequately the constitutional status.
Follow majority agreement in the Working Group II.

AMENDMENT FORM

Suggestion for amendment of Article : 5

By Mr Hain

Status : Member

-
1. The Union recognises the rights, freedoms and principles in the Charter of Fundamental Rights. The scope, applicability and legal effect of the Charter are described in Part VII of that Charter.
 2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not extend the Union's competences as defined by this Constitution.
 3. See comment below.
-

Explanation (if any) :

We cannot accept the Charter of Fundamental Rights being ‘an integral part of the Constitution’ as it stands.

In paragraph 2, I have replaced ‘affect’ by ‘extend’ for clarity. The paragraph confers a power upon the Union to accede to the ECHR but it does not address the issue of the Union procedures applicable to ECHR accession. The modalities of accession would need to be discussed in detail at a later date, at which time we would need to ensure our derogations were protected. The agreement of the Contracting Parties to the ECHR to an amendment to the ECHR to enable Union accession would also be needed.

The point in paragraph 3 is currently a principle of Community case law – and would be better remaining as such. Its formalisation here could have implications for CFSP, as it is extended from a principle of the Community to a principle of the Union.

AMENDMENT FORM

Suggestion for amendment of Article 5: Fundamental rights

By Mr Dick Roche, Representative of the Government of Ireland

Status : Member

Article 5: Fundamental rights - paragraph 1

1. The Charter of Fundamental Rights shall be an integral part of the Consitution. The Charter is set out ~~[in the second part of /~~ in a Protocol annexed to] this Constitution. **The Charter shall not affect the Union's competences as defined elsewhere in this Constitution.**

Explanation (if any) :

Without prejudice to the political decision to be reached as to *whether* the Charter is to be incorporated, if it is to be incorporated, for reasons of simplicity and clarity, it should be included in a Protocol to the Treaty.

Article 5.1, in keeping with the wording of Article 5.2, should reflect the fact that incorporation of the Charter shall respect the limits of the powers of the Union as conferred on it by other parts of the Treaty.

The question of the standing of the commentary drawn up by the Praesidium of the Charter Convention must also be addressed in a satisfactory way in the drafting of the relevant further part of the Constitution.

AMENDMENT FORM

Suggestion for amendment of Article : 5

By Mr. Lennmarker

Status : ☒ Member

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 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.~~

3. Neither the Charter, nor an accession to the European Convention, shall affect the Union's competences as defined by this Constitution.

4. ~~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.

Explanation:

The competences of the Union are defined by the Constitution and neither the Charter of Fundamental Rights nor an accession to the European Convention should affect these competences. It should not be possible to use the Charter or the European Convention as means to expand the competences of the Union.

AMENDMENT FORM 3

Option in Article 5

By: M.J.CHABERT

M.M.DAMMEYER

M.P.DEWAEL

Ms. C.du GRANRUT

M. C.MARTINI

M.R.VALCARCEL SISO

Status : - ~~Member~~ - ~~Alternate~~ - Observer

"FUNDAMENTAL RIGHTS"

The Committee of the Regions prefers the incorporation of the Charter of Fundamental Rights *in the second part* of this Constitution.

Explanation:

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 5

Déposée par Monsieur : Danny Pieters

Qualité : - Suppléant : Kamer van Volksvertegenwoordigers - België

Vraag

Explication éventuelle :

2.1. Artikel 5 combineert eigenlijk 3 grondrechtencatalogi: is dit niet wat veel en gaat het resultaat geen juridisch kluwen geven? Hier lijkt verduidelijking geboden.

2.2. Wat bv. als de diverse catalogi andere beperkingen van deze grondrechten toelaten? Gaan we dan de meest verregaande of de minst verregaande toepassen?

AMENDMENT FORM

Suggestion for amendment of Article : 5 (2)

By Mr : SÖDERMAN

Status : Observer

The Union may accede to ~~the European Convention for the Protection of Human Rights and Fundamental Freedoms~~ **international agreements for the protection and promotion of human rights**. Accession to ~~that Convention~~ shall not affect the Union's competences as defined by this Constitution.

Explanation (if any) :

The possibility for the Union to accede to the ECHR is greatly to be welcomed. As currently drafted, however, this Article would prevent the Union from acceding to international human rights agreements developed by, for example, the United Nations and the ILO. Nor could the Union accede to other Council of Europe conventions.

The question of whether the Union should accede to international human rights agreements is a matter of policy. The Constitution should leave the matter open, to be debated on a case-by-case basis, as is the situation in the Member States.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 5

Déposée par M. Hubert HAENEL, membre, et M. Robert BADINTER, suppléant.

Article 5 : Droits fondamentaux

1. La Charte des Droits Fondamentaux *est* partie intégrante de la Constitution. ~~La Charte figure dans la deuxième partie de / dans un protocole annexé à] de celle-ci.~~

2. Supprimé.

3. Supprimé.

Explication éventuelle :

2. Dès lors que l'Union dispose de la personnalité juridique, elle peut adhérer à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales. Il est donc inutile de le préciser dans la Constitution.

3. Dès lors que la Charte est intégrée dans la Constitution, cet alinéa n'est plus nécessaire.

AMENDMENT FORM

Suggestion for amendment of Article : Artículo 5

By Ms / Mr : Borrell (miembro), Carnero y López Garrido (miembros suplentes)

Status : - Member - Alternate

En el punto 3, suprimir "como principios generales"

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : Artículo 5

By Ms / Mr : Borrell (miembro), Carnero y López Garrido (miembros suplentes)

Status : - Member - Alternate

El punto 1 quedaría así: "1. La Carta de Derechos Fundamentales forma parte integrante de la Constitución. Esta Carta figura en su segunda parte."

Explanation (if any) :

FICHE AMENDEMENT

Proposition d'amendement à l'Article 5

Déposée par Monsieur William ABITBOL

Qualité : Suppléant

Titre II : De la citoyenneté de l'Union

Article 5 :

L'Union respecte la Charte des droits fondamentaux, annexée au présent traité, et la Convention européenne de sauvegarde des Droits de l'Homme et des libertés fondamentales.

Explication éventuelle :

Ce texte remplace l'ensemble du texte original de l'article visé

AMENDMENT FORM

Suggestion for amendment of Article : 5

By Mr : František Kroupa

Status : Alternate

The 2nd sentence in para. 1 sounds :

1.The Charter is set out in a Protocol annexed to this Constitution.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : I-7

By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann

Status : - Member - ~~Alternate~~

Artikel I-7: Grundrechte

(1) Die ~~Union erkennt die Rechte, Freiheiten und Grundsätze an~~ **Bestimmungen**, die in der Charta der Grundrechte als dem zweiten Teil dieser Verfassung enthalten sind, **stellen unmittelbares Recht dar**.

(2) Die Union strebt den Beitritt zur Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten an **und kann anderen internationalen Konventionen zum Schutze der Menschenrechte beitreten**. Der Beitritt zu dieser Konvention berührt nicht die in dieser Verfassung festgelegten Zuständigkeiten der Union.

(3) Die Grundrechte, wie sie in der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten gewährleistet sind und wie sie sich aus den gemeinsamen Verfassungsüberlieferungen der Mitgliedstaaten ergeben, gehören zu den allgemeinen Grundsätzen des Unionsrechts.

Explanation (if any) :

Absatz 1:

Die bloße Anerkennung der Bestimmungen des Teils II der Verfassung durch die Union wird dem Stellenwert, der der Grundrechtecharta eingeräumt werden soll, nicht gerecht. Diese Rechte sollen gerade keine bloßen Programmsätze der Union darstellen. Die Bestimmung muss vielmehr unmissverständlich zum Ausdruck bringen, dass die Grundrechtecharta unmittelbar geltendes Recht darstellt, das von der Union strikt einzuhalten ist.

Absatz 2:

Die vom Präsidium vertretene Auslegung, wonach dem Gutachten 2/94 des EuGH zu entnehmen sei, dass es für den Beitritt zu anderen internationalen Menschenrechtskonventionen keiner besonderen Rechtsgrundlage bedarf, ist keineswegs zwingend. Um der Union dies unzweifelhaft zu erlauben, sollte Absatz 2 deshalb um diese Möglichkeit ergänzt werden.

