

AMENDMENT FORM

Suggestion for amendment of Article: 20, Part II – Title B

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Status: Members and alternate members.

1. The Member States ~~listed in Declaration X annexed to the Constitution, which fulfil high military capability criteria and wish to enter into more binding commitments in this matter with a view to more demanding tasks, hereby~~ establish structured cooperation between themselves within the meaning of Article 30(6) of Part One of the Constitution shall address a request to the Council to the effect. Authorisation shall be granted by the Council, acting by a qualified majority and in accordance with the second subparagraph of Article 9 (2) of this Title and in compliance with [Articles XX to XY]. ~~The military capability criteria and commitments which those Member States have defined are set out in that Declaration.~~
2. If a Member State wishes to participate in such cooperation at a later stage, and thus subscribe to the obligations it imposes, it shall inform the European Council of its intention. ~~The restricted Council on structured cooperation shall decide on the Member State's request.~~
3. Only Member States taking part in such cooperation shall adopt decisions relating to the development of military capability criteria ~~matters covered by it.~~ The Minister for Foreign Affairs shall attend the deliberations. Other Member States shall be duly and regularly informed by the Minister for Foreign Affairs of developments in cooperation.
4. ~~The Council may ask the Member States participating in such cooperation to carry out at Union level a task referred to in Article 17 of this Title~~ Structured cooperation in the area referred to in this article shall be aimed at safeguarding the values and serving the interests of the union as a whole by asserting its identity as a coherent force on the international scene. It shall respect the principles, objectives and general guidelines and consistency of the common foreign and security policy and the decisions taken within the framework of that policy.

Explanation:

The proposed structured (enhanced) cooperation on military capabilities as well as their deployment gives rise to fundamental questions and may risk dividing the Convention as well as the Member States. The Praesidium's draft text makes clear that the authorisation to embark upon the closer cooperation is given by the concerned Member States themselves. The Praesidium's comments also make clear that the closer cooperation extends to the launching of operations involving the deployment of those capabilities presumably on the basis of a decision by a restricted Council on structured cooperation (though none of this is clear on the basis of the proposed text alone).

This differs significantly from present CFSP arrangements on enhanced cooperation which (1) do not relate to matters having military or defence implications; (2) require the authorisation of the Council acting with a qualified majority (cf. Article 27 C TEU). Furthermore, if a member of the Council declares that, for important and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. The Council may, acting by a qualified majority, request that the matter be referred to the European Council for decision by unanimity.

There may be a need to accommodate the Member States who wish to further the development of enhanced military capabilities in Europe by means of a structured cooperation. An argument could be made that an enlarged Union needs to be flexible enough to allow for the different ambitions of its Member States in respect of military capabilities.

At the same time, great care should be taken to ensure that the structured cooperation serves the interests of the Union as a whole and safeguards its identity as a coherent force on the international scene. We must avoid institutionalising a division of the ESDP. The structured cooperation should therefore be rooted clearly within the Union structures and processes and build on an inclusive approach open to all Member States.

One way to achieve this while safeguarding sufficient flexibility would be to extend present Treaty arrangements on enhanced cooperation to the field of military capability criteria, including their deployment in crisis management actions.

The proposed amendments aims to achieve this. The reference to Article 9 (2) is intended to retake the provision on referral to the European Council for important and stated reasons of national policy found in the existing Treaty provision on structured cooperation in CFSP (TEU 27 C). The square bracket is meant as a reference to general CFSP relevant provisions on enhanced cooperation, cf. Article 32 in the preliminary draft of 28 October 2002 (CONV 369/02). The proposed amendment to paragraph 2 intends to underline the open and automatic access to all Member States complying with the criteria. The original paragraph 4 as proposed by the Praesidium is unnecessary as it duplicates Article 18 . The proposed new paragraph 4 is based on TEU 27 A