

AMENDMENT FORM

Part Three: General and final provisions

Suggestion for amendment of Article : F

By Members: Mr Andrew Duff, Mr Lamberto Dini, Mr Paul Helminger, Mr Karel De Gucht, Mr Peeter Kreitzberg, Mr Algirdas Gricius, Mr Puiu Hasotti, Mr Jelko Kacin, Mr Zekeriya Akçam, and Mr Eugenijus Maldeikis; **and Alternate Members:** Ms Lone Dybkjaer, Mr Valdo Spini, Mr Willem Van Eekelen, Lord MacLennan of Rogart, Mr Nesrin Uzun, Mr Marios Matsakis, Mrs Androula Vassiliou, Mr Istvan Szent-Ivanyi, Mr Péter Eckstein-Kovacs, Mr Patrick Dewael, Mr Ibrahim Ozal and Mr Gintautas Sivickas.

Status : Members and alternate members.

Article F: Procedure for revising the *Constitution*

1. Any Member State, the European Parliament or the Commission may submit to the European Council proposals for the amendment of the Constitution. The national parliaments shall be notified of these proposals.

2. The European Council, acting by a majority of its members, after consulting the European Parliament and, where appropriate, the Commission, may call a Convention composed of a President, representatives of the Member States, the Commission, the European Parliament and Member State parliaments. The Convention shall consider the proposals for constitutional amendment and, on the basis of a consensus, make proposals to a conference of representatives of the governments of the Member States. The conference shall be convened by the President of the Council for the purpose of determining the amendments to be made to the Constitution. The Council of the European Central Bank shall also be consulted in the case of institutional changes in the monetary area.

2 bis. As far as Part One of the Constitution is concerned, the conference shall decide by a five-sixths majority of the Member States.¹ The amendments shall enter into force after having received the assent of the European Parliament acting by a two-thirds majority of the votes cast, representing a majority of its Members, and after being ratified by five-sixths of the Member States in accordance with their respective constitutional requirements.

2 ter. As far as Part Two of the Constitution is concerned, the conference shall decide by a five-sixths majority of the Member States. The amendments shall enter into force after having received the assent of the European Parliament acting by a two-thirds majority of the votes cast, representing a majority of its Members.

Explanation:

¹ We assume that the Charter of Fundamental Rights will appear as Chapter Two of Part One.

1. *The Praesidium's faithful reiteration of Article 48 TEU and the reference to the governments of Member States in this context is a pity. Who else represents the Member States but their governments? We propose the ironing out of this anomaly and the reversion to the normal terminology.*

If it is to be accredited with the legitimacy to take part in the Convention (and ratification procedures, as proposed below), the European Parliament must also be included in the list of those who can propose constitutional amendments. MEPs have a vested interest in and enormous experience of the workings of the Constitution.

We should surely specify that we mean the European Council here and throughout the constituent procedure, and also that it must act to call the Convention by a simple majority.

2. *Thankfully, it is unthinkable that the Union should now or ever again revert merely to the classical intergovernmental conference method of revising the treaties. The legitimacy of the Convention method is proven and any regression from it would be a decisive step backwards for Europe. We insert therefore the use of the Convention as a prerequisite for all future constitutional amendment (although the precise definition of the purpose, composition and working method of the Convention might be better placed in the title on institutions¹).*

It is sensible, however, to stick with the present formula of Article 48 TEU with respect to the triggering of the constitutional revision process. Although no revision can be allowed to take place without the holding of a Convention, it is up to the European Council to consider the timing of the process.

2 bis. *In the light of (1) the enlargement of the Union, (2) the problematic history of previous Intergovernmental Conferences, and (3) the constitutional settlement with which the Convention is now engaged, we are convinced that this is the time to adapt the revision procedure from that provided for in Article 48 TEU.*

The treaty revision process has already been held to ransom twice in a Union of 15 member states, once by Denmark (Treaty of Maastricht) and once by Ireland (Treaty of Nice). Other referenda, such as the French over Maastricht, have only just acquired the necessary popular assent. In a number of cases, notably the UK over Maastricht, the passage of the treaty amendment through national parliaments has been too close for comfort. The Convention must therefore pose the question about whether it is right that the opposition of a small minority of voters or parliamentarians in one or two member states - often acting for reasons only loosely connected with the politics of the European Union - should be sufficient to veto the constitutional reform required and supported by the rest of Europe.

The changes we propose, therefore, have three elements:-

First, the consensus needed in future IGCs to amend the Constitution (Parts One and Two) will be defined as five-sixths of Member States.

Second, the European Parliament will be asked to give its assent to the conclusions of the IGC. The voting formula proposed here is the same as the Parliament already uses for

¹ As in CONV 234/02.

solemn votes, such as the sanction of an errant member state (Rule 108 of the Parliament's current Rules of Procedure).

The proposed installation of the European Parliament in the constituent process is the other important change we propose. As far as Part One is concerned, the role of the European Parliament complements and does not replace national constitutional requirements. To maintain the exclusion of the Parliament from sharing in the ratification process is unjustifiable if the Convention is serious about improving the democratic life of the Union. The only directly-elected institution of the Union must have an enhanced standing in its constituent work. Otherwise the Convention's claim to a genuine 'constitutionalisation' will be very thin and its commitment to democratisation risible.

Third, as far as Part One of the Constitution is concerned, the revisions as agreed by the heads of government at the IGC and approved by the European Parliament will come into force before all member states have ratified them. We again propose the threshold of five-sixths (21 member states in an EU of 25; 24 member states in an EU of 28).

2 ter. As far as Part Two is concerned, a lighter ratification procedure is required if the Union is not to be mired in endless constitutional crises. The policy chapters of the Constitution must be made more susceptible to reform than the hard and fast rules entrenched in Part One.

Although the decision making in the IGC will be the same for both Parts of the Constitution, the ratification procedure for Part Two will stop with the assent of the European Parliament acting according to the same high threshold.

Please note that our proposals to modify the procedures for constitutional revision are reflected in our amendments to Article G in the present Title and to Title X (Union membership).