

AMENDMENT FORM

Suggestion for Part III

Article : A

By Mr Hannes FARNLEITNER
Mr Reinhard Eugen BÖSCH

Mr Gerhard TUSEK
Mr Eduard MAINONI

Status : - Members

- Alternate Members

Article A: Repeal of earlier Treaties

The Treaty establishing the European **Economic** Community of 25 March 1957, **the Treaty establishing the European Atomic Energy Community of 25 March 1957**, ~~the Single Act of 17 February 1986, the Treaty on European Union of 7 February 1992, the Treaty of Amsterdam of 2 October 1997 and the Treaty of Nice of 26 February 2001,~~ **and the Treaties amending these Treaties** shall be repealed as from the date of entry into force of the Constitutional Treaty **to the extent foreseen in the Annex to this Constitutional Treaty**. The acts and treaties listed in the Annex shall also be repealed as foreseen therein.

The provisions of the acts of the Institutions of the Union, adopted by virtue of the treaties and acts mentioned in the first paragraph, shall remain in force with their original legal effect. However, the European Court of Justice may - in accordance with the procedure laid down in Art. XYZ [current 234 and 241 EC-Treaty] - determine that they are not compatible with this Constitutional Treaty.

The case-law of the Court of Justice of the European Communities shall remain relevant for the interpretation of the Constitutional Treaty and acts taken prior to its entry into force.

Explanation (if any) :

For systematic reasons, only the original Treaties should be mentioned here explicitly while referring to the Annex listing their subsequent amendments. As there will be a large number of provisions in these Treaties which can/ will not be repealed, the Annex will contain lists of these provisions which will remain in force. This should be explicitly mentioned here for the sake of clarity and legal certainty. The last sentence of para. 1 deserves further consideration as to the question whether it is necessary (which acts or treaties would fall within this category (e.g. acts and treaties in the framework of Schengen)?).

We consider it to be imperative for the Convention to address the question as to which role should be played by the European Atomic Energy Community and the underlying Treaty within the context of a future system of European integration and cooperation. The role of EURATOM must have its place precisely in the comprehensive debate on the future of the Union which we are conducting at the present time. In this context we refer to the Contribution by Mr. Hannes Farnleitner, Mr. Caspar Einem and Mr. Reinhard E. Bösch, members of the Convention : " A single legal personality - On the future of EURATOM " (CONV 358/02) and to the Contribution by Mr Caspar Einem and Mr Hannes Farnleitner, members of the Convention, and Ms Maria Berger, Mr Reinhard Rack and Mr Gerhard Tusek, alternate members of the Convention: "Praesidium's suggested approach for the

Euratom Treaty (CONV 621/03)" (CONV 666/03).

Para 2 and 3 are – to a large extent - taken from Art. B. The wording “with their original legal effect” inserted should make it clear that the legal instruments shall have the same legal effects they have been given under the former legal regime of the EC-Treaty and EU-Treaty. This is esp. important for legal acts which will not exist any more (see eg. framework decisions, specific acts taken within the current “Second Pillar” etc.). The proposed last sentence of paragraph 2 should make it clear that it is the European Court of Justice to determine whether or not a provision of an act is compatible with the Constitutional Treaty.

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Suggestion for Part III

Article : B

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Status : - Members

- Alternate Members

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

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

~~The provisions of the acts of the Institutions of the Union, adopted by virtue of the treaties and acts mentioned in the first paragraph, shall remain in force insofar as they are compatible with the Constitution. The case-law of the Court of Justice of the European Communities shall be maintained as a preferential source of interpretation of the Constitution and acts prior to its entry into force.~~

Explanation (if any) :

The title should refer to the European Communities as the provision itself also refers to the European Communities - thereby including the European Atomic Energy Community.

The heading refers to “legal continuity”, the provision should as well foresee a “continuation” of rights and obligations and not a “succession”.

Para 2 is moved to Art. A as it refers to “the acts of the Institutions of the Union, adopted by virtue of the treaties and acts” mentioned therein.

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Suggestion for Part III

Article : F

By **Mr Hannes FARNLEITNER**
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Status : - Members

- Alternate Members

Article F: Procedure for revising the Constitutional Treaty

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

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

The Conference of the Representatives of the Governments of the Member States may be preceded by a preparatory Convention convened by the President of the European Council and composed of representatives of the national Parliaments, the Heads of State or Government of the Member States, the European Parliament and the Commission. At the close of its proceedings, the Convention shall adopt by consensus a final document comprising either different options, indicating the degree of support which they received, or recommendations if consensus is achieved. This final document, where appropriate together with the outcome of dialogue with representative associations and civil society on European and national level, shall provide the basis for deliberations in the subsequent Conference of the Representatives of the Governments of the Member States referred to in paragraph 2.

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

Explanation (if any) :

We welcome the proposal of the Praesidium in its comments to Art. F (CONV 647/03) to insert a provision defining a possible role for a preparatory Convention in the future procedure revising the Constitutional Treaty. We have however inserted some changes taking into account the wording of the “Laeken Declaration”. The rule that an IGC “may” be preceded by a Convention should open the possibility not to foresee such a Convention for the preparation of only minor amendments to the Constitutional Treaty.

The possibility of an amendment of the Constitutional Treaty by the Council –acting unanimously -

instead of a Conference of Member States might also be considered. It is of course crucial that this Council decision has to be ratified by all Member States in accordance with their respective constitutional requirements.

We do not see any role for a “Congress”.

The political problem of having one or more Member States failing to ratify a revision has to be solved with political means on a political level. Therefore no specific provision needs to be inserted here in this context.

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Suggestion for Part III

Article : G

By **Mr Hannes FARNLEITNER**
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Status : - Members

- Alternate Members

Article G: Adoption, ratification and entry into force of the Constitutional Treaty

1. The Constitutional Treaty shall be ratified by the ~~High Contracting Parties~~ **Member States** in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the Italian Republic.
2. The Constitutional Treaty shall enter into force on ..., provided that all the instruments of ratification have been deposited, or, failing that, on the first day of the month following the deposit of the instrument of ratification by the last signatory State to take this step.
3. ~~If, two years after the signature of the Constitutional Treaty, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter shall be referred to the European Council.~~

Explanation (if any) :

The applicability of the provision of para 3 depends – from a legal point of view – on the entry into force of the Constitutional Treaty. In such a case there is of course no need for it any more as all Member States have ratified the Constitutional Treaty. The provision consequently has no legal relevance and should therefore not be included in the Constitutional Treaty. The political problem of having one or more Member States failing to ratify the Constitutional Treaty has therefore to be solved with political means on a political level.

Instead we could imagine having a political agreement by the Heads of State or Government e.g. in the margins of the signatory ceremony of the Constitutional Treaty that there may be a reference to the European Council if such ratification problems may occur.