

CHECK AGAINST DELIVERY!

**POSITION OF THE BULGARIAN GOVERNMENT
ON DRAFT ARTICLES 1-16
OF THE FUTURE CONSTITUTIONAL TREATY
Intervention by Mrs. Nelly Kutzkova,
Alternate Representative of the Bulgarian Government to the European Convention
Brussels, 27-28 February 2003**

Ladies and Gentlemen,

Let me start by making a general remark on the idea behind the amendments to draft Articles 1-16 of the Constitutional Treaty submitted by the Bulgarian Government. The amendments are based on the understanding that, firstly, we should keep in mind the texts of the existing treaties as well as the texts, agreed by consensus within the Convention, and that, secondly, we should make the formulations more concise, clear and understandable to the citizens.

I would mention here our main concerns regarding draft articles 1 to 4.

We are of the opinion that it is essential to preserve the formula of “ever closer Union” being central to the development of the European Union. This formula has for the last 50 years proven its vitality and inspired many Europeans in their efforts to create a more coherent and efficient Union. There is no reason in changing the core objective of ever-closer Union, as defined by the founding fathers. The EU enlargement in particular constitutes by no means such a reason – on the contrary it would rather contribute and give additional impetus to the achievement of this goal.

The formula of ever-closer Union is also linked to the notion of ‘federation of nation states’, a definition of the European Union that we suggest. Our view is that this definition best reflects the present reality as well as the vision for the future development of the Union.

As for the second paragraph of Art. 1 concerning the respect for national identities, it would be useful to make more precise and clear the text by including here the provision of Art. 9, paragraph 6, and in addition evoke the coexistence of different regimes as well as their fundamentals – religious or civic.

Concerning Art. 2 (Union’s values) we consider it preferable to keep the notion of ‘principles’, typical for the *acquis communautaire*, used in Art. 6 of the Treaty on the EU. In addition, we suggest the inclusion of a reference to fundamental freedoms as presently found in Art. 6, paragraph 1 of the Treaty on the EU.

Our amendments to Art. 3 (Union’s objectives) are based on the list of objectives provided for in both the present Treaties and the conclusions of Convention’s working groups on social Europe and defense. The objective of promoting high degree of social protection should be underlined by introducing fight against poverty, social exclusion and any form of discrimination. Solidarity as well as Member States’ mutual assistance in the face of common threats to their security deserve special place among the objectives of the European Union.

Thank you for your attention.

On the catalogue of competences:

As already implied in the different proposals it would be extremely difficult to agree on an exact list of areas falling under the different categories of competencies. I would call for a greater flexibility here. We should better include indicatively only the consensual areas and leave open to the Council to decide in each specific case, according to the existing procedures (as defined in part II), whether the area falls under the rules of the exclusive, shared or complementary competencies;

Article 10: Categories of competence

1. When the Constitution confers on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union.

*2. When the Constitution confers on the Union a competence shared with the Member States in a specific area, the Union and the Member States shall have the power to legislate and adopt legally binding acts in this area. **Where the Union has exercised its competence in a specific area, the Member States may not exercise theirs without prejudice to the limits and obligations defined in the present Constitution and in the acts adopted by the Union.***

3. The Union shall have competence to coordinate the economic policies of the Member States.

*4. The Union shall have competence to define and implement a common foreign and security policy, including the progressive framing of a common defence policy, **which may lead to a common defense, should the European Council so decide. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.***

5. In certain areas and in the conditions laid down in the Constitution, the Union shall have competence to carry out actions to coordinate, supplement or support the actions of the Member States, without thereby superseding their competence in these areas.

6. The Union shall exercise its competences to implement the policies defined in Part Two of the Constitution in accordance with the provisions specific to each area which are there set out.

We suggest those amendments in order to achieve greater clarity of the definition on shared competences. As for the amendment proposed in paragraph 4, we consider it essential to preserve the balance achieved under the provision of Art. 7(1) TEU.

As far as Articles 11, 12 and 15 are concerned, we would like to raise a general reservation on the adoption of a catalogue of competences, an idea, which was rejected by the majority of the Convention members.

Article 13: The coordination of economic policies

1. *The Member States shall conduct their economic policies, taking account of the common interest, so as to contribute to the achievement of the objectives of the Union.*
2. *The Member States shall coordinate the economic policies within the framework of the Union, in particular by establishing broad guidelines for these policies.*
3. *Specific provisions shall apply to those Member States which have adopted the euro.*

The economic policy remains within the national sphere of competence. Therefore, it seems logical to evoke the role of the Member States in this respect.

Article 14: The common foreign and security policy

*1. The Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy. Member States shall actively and unreservedly support the Union's common foreign and security policy in a spirit of loyalty and mutual solidarity. **The Member States shall work together to enhance and develop their mutual political solidarity.** They shall refrain from action contrary to the Union's interests or likely to undermine its effectiveness.*

The proposed amendments are extremely important with a view to taking due account of all aspects presently provided for in Art. 11(2) TEU.

On the Flexibility clause:

I would like to stress that the flexibility formula will remain very important in the future as well. It should represent a clear and democratic, and at the same time very efficient and non-bureaucratic mechanism to solve problems not foreseen in the Constitution or appearing as a result of unpredictable developments.

*1.If action by the Union should prove ~~necessary within the framework of the policies defined in Part Two~~ to attain one of the objectives set by this Constitution, and the Constitution has not provided the necessary powers, the Council, acting **by qualified majority voting** on a proposal from the Commission and after obtaining the assent of the European Parliament, shall take the appropriate measures.*

2.~~Using the procedure for monitoring the subsidiarity principle referred to in Article 9, the Commission shall draw Member States' national parliaments' attention to proposals based on this Article.~~ (phrase deleted)

3.~~Provisions adopted on the basis of this Article may not entail harmonisation of Member States' laws or regulations in cases where the Constitution excludes such harmonisation.~~ (phrase deleted)

(1) We consider the phrase ‘*within the framework of the policies defined in Part Two*’ not necessary for the reason that the text of the same paragraph specifies itself that the action in question is undertaken to attain one of the objectives set by the Constitution. In addition, the principle of conferral is defined as a constitutional principle in Art. 8.

(2) The role of the national parliaments regarding the control of the principle of subsidiarity will be defined in the Protocol on the subsidiarity principle as already mentioned in Art. 9. Therefore, it does not seem necessary to explicitly indicate that role in the text on the flexibility clause.

(3) The existence of that exemption according to the jurisprudence of the European Court of Justice is sufficient enough and it appears unnecessary to explicitly introduce it within the first part of the Constitution.
