

**Contribution by Minister Rupel to the meeting of the Convention
Brussels, 17 March 2003**

Mr Chairman,

In my statement I will limit myself to comments on Articles 25, 26 and 27 of the draft Constitutional Treaty.

Let me start with the latter regulating the question of delegated law in the EU. The central issue in delegating law is the key which allows for the differentiation between issues in respect of which the delegation is possible and those in respect of which it is not possible. The present formulation, according to which the delegation in respect of non-essential elements of an area is not possible is too open. I propose such a wording that would make it clear that delegation should not change the content and scope of fundamental rights and freedoms granted to legal entities by laws and framework laws. It should also be evident from the wording that it is not possible to impose new obligations on legal entities by delegated law. I therefore consider that delegation and control mechanisms should be clearly set out and I agree with the modified wording of this article as proposed by the ELDR.

There is a broad consensus in the Convention that a clear separation of legislative and executive competencies in the Union will contribute to greater clarity, transparency and democratic legitimacy of its activity. I therefore propose that Article 26 be renamed; instead of the title “non-legislative acts” I propose the title “executive acts”; in fact, what else can be understood under non-legislative acts? These acts are adopted by the institutions with executive competencies (including the European Central Bank), i.e. the Commission or the Council. What is important here is the conjunction “or” since the conjunction “and” would imply that executive acts are adopted jointly by the Commission and the Council.

With regard to Article 25 regulating the legislative procedure, I consider that the title should be appropriate too. I propose it should read “legislative procedure” and not legislative acts. In addition, it should be stated clearly that the Council and the European Parliament act jointly as legislators. A clear differentiation between the legislative and executive roles will enhance transparency and democratic legitimacy. It is therefore reasonable to define in this Article when the legislative procedure and legislative acts are used in the Union - i.e. for the enactment of normative rules relating to basic political choices which place rights and obligations on Member States and natural or legal persons.

Since the most important decisions in the Union will be adopted in the legislative procedure, Part I of the Constitutional Treaty should clearly state the basic provisions of the legislative procedure. What is even more important: with this Article we accept the fact that no legal act, adopted in the Union, can be the highest act, i.e. a law unless both co-legislators take part in the procedure on the basis of a legislative proposal by the Commission, as the legislator is the only one competent to adopt legislative acts. In view of specific characteristics of certain EU's fields of activity, it is clear that certain derogations or deviations from the basic legislative procedure will be allowed, which should be laid down in Part II of the Constitutional Treaty. These derogations – which should be as few as possible – should be defined prior to inserting in the Treaty a general provision on deviation from the legislative

procedure. In the opposite case too many derogations could be introduced. In the case of derogations it should be made clear that both co-legislators are involved in the legislative procedure. It is difficult to understand why a certain act adopted by the Council should be considered a law. I find the provision under Article 25.2 unclear and arguable and therefore propose that this paragraph be deleted.