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Θέμα : **Εισήγηση του κ. Elmar Brok, μέλους της Συνέλευσης :**
«Το Σύνταγμα της Ευρωπαϊκής Ένωσης»

Ο Γενικός Γραμματέας της Συνέλευσης έλαβε την επισυναπτόμενη εισήγηση του κ. Elmar Brok, μέλους της Συνέλευσης, η οποία αποτελεί αναθεωρημένο κείμενο της εισήγησής του που είχε διανεμηθεί στις 6 Δεκεμβρίου 2002.

THE CONSTITUTION OF THE EUROPEAN UNION

– Discussion Paper –

Revised Version,
also including Part Two

27 January 2003

INTRODUCTION

This informal discussion paper is based on

- *the existing **acquis communautaire** (to which footnotes refer);*
- *the structure of the Preliminary draft Constitutional Treaty presented by the Convention Presidium on 28 October 2002. References to the Preliminary draft Constitutional Treaty of the Convention Presidium are included in the footnotes (bold and underlined);*
- *the deliberations of the Convention Working Groups and in the Convention plenary sessions;*
- *the European Parliament Resolution based on the Report by Alain Lamassoure on the division of competences between the European Union and the Member States;*
- *the EPP Congress Document "A Constitution for a Strong Europe", as adopted at the EPP Congress in Estoril on 18 October 2002;*
- *the deliberations of the EPP Convention Group study days in Frascati on 8-10 November 2002;*
- *numerous comments received from Convention members and academics.*

This revised version of the discussion paper includes a preliminary draft of the specific and implementing provisions of Part Two of the Constitution. In line with the deliberations of the EPP Convention Group study days in Frascati, all power issues (main political principles, competences, relationship between the institutions) are settled already in Part One of the Constitution.

*This discussion paper is designed to help ensure that the work in the Convention will result, in the end, in a concrete constitutional text. It is not intended to anticipate the final results, but should serve as a basis for further discussions within the EPP and in the Convention. Part Two – which is included for the first time in a full-text version in this discussion paper – is meant to illustrate the details which would be determined therein on the basis of the existing **acquis**. This*

should allow for a general discussion of the content and scope of Part Two in the Convention.

THE CONSTITUTION OF THE EUROPEAN UNION

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PREAMBLE¹

The Member States and the Citizens of the European Union,

RESOLVED to share, in creating an ever closer union among them, a peaceful future based on common values²,

CONSCIOUS of their history and their common spiritual and moral heritage, of the indivisible, universal values of human dignity, freedom, equality and solidarity³, and of what Europe owes to its religious heritage⁴,

CONFIRMING their attachment to the principles of liberty, democracy and the respect for human rights and fundamental freedoms, tolerance and for the rule of law⁵,

DETERMINED to place the individual at the heart of the activities of the European Union, in particular by a Charter of Fundamental Rights of the European Union, by establishing the citizenship of the Union and by creating an area of freedom, security and justice⁶,

DETERMINED to preserve and to develop these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels⁷,

IN REMEMBRANCE of the original purpose of the foundation of the European Communities,

¹ The preamble combines the essential elements of the preamble of the Charter of Fundamental Rights of the European Union (OJ 2000 C 364/1) and of the preambles of the EU and Communities Treaties. Cf. also the Final Report of Convention Working Group II “Charter”, p. 9, which proposes to use the Charter Preamble as the Preamble of the Constitution or to use the elements of general importance to be found in the Charter Preamble for the drafting of a new Treaty preamble. **The Preliminary draft Constitutional Treaty of the Convention Presidium also mentions a preamble.**

² Cf. preamble of the Charter of Fundamental Rights of the European Union, recital 1.

³ Cf. preamble of the Charter of Fundamental Rights of the European Union, recital 2.

⁴ Cf. para 1 and 20 of the EPP Congress Document “A Constitution for a Strong Europe”.

⁵ Cf. preamble of the EU Treaty, recital 3.

⁶ Cf. preamble of the Charter of Fundamental Rights of the European Union, recital 2.

⁷ Cf. preamble of the Charter of Fundamental Rights of the European Union, recital 3.

namely to substitute for age old rivalries the merging of their essential interests; to create, by establishing an economic community, the basis for a broader and deeper community among peoples long divided by bloody conflicts; and to lay the foundations for institutions which will give direction to a destiny henceforward shared¹,

RECALLING the historic importance of the ending of the division of the European continent and the need to create firm bases for the construction of a permanently united Europe²,

RESOLVED to develop, through the European Union, a common project of civilisation, which in the era of globalisation combines an open market economy with free competition with solidarity and respect for the environment (social market economy)³,

BASED UPON the achievements of the European Communities, in particular the internal market and economic and monetary union in the third stage of which the Community entered irreversibly on 1 January 1999 and which has hitherto led to the introduction of a single currency, committed to the primary objective of price stability; as well as upon the achievements of the European Union as expressed in the common foreign and security policy as well as in police and judicial cooperation in criminal matters, as established by the Treaty of Maastricht, and further developed by the Treaties of Amsterdam and Nice,

WITH REGARD to the Charter of Fundamental Rights of the European Union as drawn up by the Fundamental Rights Convention set up by the Cologne European Council of 3/4 June 1999, with the purpose to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter¹,

RECALLING that the Charter of Fundamental Rights of the European Union reaffirms the rights as they result, in particular from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case-law of the Court of Justice of

¹ Cf. preamble of the ECSC Treaty, recital 5.

² Cf. preamble of the EU Treaty, recital 2.

³ Cf. para 2 of the EPP Congress Document “A Constitution for a Strong Europe”.

the European Communities and of the European Court of Human Rights; recalling that enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations²,

WITH REGARD to the findings of the Convention on the Reform of the European Union created by the Laeken European Council on 15 December 2001 and in session in the European Parliament in Brussels from February 2002 to [] 2003, which were confirmed by the subsequent intergovernmental conference which ended in Rome on [] 2003,

FULL OF RESPECT for the special procedure, unprecedented in history, under which these two Conventions have laid the foundations for this Constitution of the European Union with the participation of representatives of the European Parliament, the European Commission as well as the Parliaments and Governments of the Member States,

RECALLING that the representatives of the Parliaments and Governments of the applicant countries were fully participating in the proceedings of the Convention on the Reform of the European Union,

RECALLING that the Court of Justice of the European Communities has qualified the Treaty establishing the European Community as constitutional charter of a Community based on the rule of law³,

HAVE DECIDED to complete the European Union as a Constitutional Union by merging the reformed Treaties which form the foundations of the European Communities and the European Union into a Single Constitutional Document.

¹ Cf. preamble of the Charter of Fundamental Rights of the European Union, recital 4.

² Cf. preamble of the Charter of Fundamental Rights of the European Union, recital 5 and 6.

³ Cf. Case 294/83, *Parti écologiste “Les Verts” v. European Parliament* [1986] ECR 1339, para 23; Opinion 1/91, *European Economic Area I* [1991] ECR I-6079, para 21.

1.

1.1. Title I: Charter of Fundamental Rights and Union Citizenship¹

1.1.1.

1.1.2. Chapter I: Human Dignity

Article 1 (Human dignity)

Human dignity is inviolable. It must be respected and protected.

Article 2 (Right to life)

(1) Everyone has the right to life.

(2) No one shall be condemned to the death penalty, or executed.

Article 3 (Right to the integrity of the person)

(1) Everyone has the right to respect for his or her physical and mental integrity.

(2) In the fields of medicine and biology, the following must be respected in particular:

- the free and informed consent of the person concerned, according to the procedures

¹ As suggested by Convention Working Group II “Charter”, the Charter of Fundamental Rights of the European Union (OJ 2000 C 364/1) is taken over **“in toto”** by this Constitution (only editorial changes and drafting adjustments in the horizontal articles, now all marked in *italics*). With regard to the question of the location of the Charter in the Constitution, this Discussion Paper follows the proposal of a large majority of Working Group II, namely to insert the Charter **“at the beginning of the Constitutional Treaty”**. Only such a prominent location reflects adequately the superior nature of the Charter, which is binding on all Union activities. After the firm and well-reflected decision of the Human Rights Convention to enshrine “human dignity” in Article 1, it would hardly be acceptable now to insert “human dignity” only as Article 6 or 7 of the European Constitution. **Cf. also the Preliminary draft Constitutional Treaty of the Convention Presidium, where incorporation of “all the articles of the Charter” is mentioned as one of three alternatives in the summary**

laid down by law,

- the prohibition of eugenic practices, in particular those aiming at the selection of persons,
- the prohibition on making the human body and its parts as such a source of financial gain,
- the prohibition of the reproductive cloning of human beings.

Article 4 (Prohibition of torture and inhuman or degrading treatment or punishment)

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5 (Prohibition of slavery and forced labour)

(1) No one shall be held in slavery or servitude.

(2) No one shall be required to perform forced or compulsory labour.

(3) Trafficking in human beings is prohibited.

1.1.3.

1.1.4.

1.1.5. Chapter II: Freedoms

Article 6 (Right to liberty and security)

Everyone has the right to liberty and security of person.

description of Article 6.

Article 7 (Respect for private and family life)

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8 (Protection of personal data)¹

(1) Everyone has the right to the protection of personal data concerning him or her.

(2) Such data must be processed fairly for specified purposes on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

(3) Compliance with these rules shall be subject to control by an independent authority.

Article 9 (Right to marry and right to found a family)

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article 10 (Freedom of thought, conscience and religion)

(1) Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

¹ “This Article is based on Article 286 of the Treaty establishing the European Community and Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995) as well as on Article 8 of the ECHR and on the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which has been ratified by all the Member States. The right to protection of personal data is to be exercised under the conditions laid down in the above Directive, and may be limited under the conditions set out by Article 52 of the Charter.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

(2) The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article 11 (Freedom of expression and information)

(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

(2) The freedom and pluralism of the media shall be respected.

Article 12 (Freedom of assembly and of association)

(1) Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.

(2) Political parties at Union level contribute to expressing the political will of the citizens of the Union¹.

Article 13 (Freedom of the arts and sciences)

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

¹ “Paragraph 2 of this Article corresponds to Article 191 of the Treaty establishing the European Community.” – Cf. the explanations prepared at the instigation of the Presidium of the

Article 14 (Right to education)

- (1) Everyone has the right to education and to have access to vocational and continuing training.
- (2) This right includes the possibility to receive free compulsory education.
- (3) The freedom to found educational establishment with the due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article 15 (Freedom to choose an occupation and right to engage in work)

- (1) Everyone has the right to engage in work and to pursue freely chosen or accepted occupation.
- (2) Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State¹.
- (3) Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article 16 (Freedom to conduct a business)

The freedom to conduct a business in accordance with *Union* law and national laws and practices is recognised.

Article 17 (Right to property)

- (1) Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired

Fundamental Rights Convention.

¹ “The second paragraph deals with the three freedoms guaranteed by Articles 39, 43 and 49 et seq of the EC Treaty, namely freedom of movement for workers, freedom of establishment and freedom to provide services.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.

(2) Intellectual property shall be protected.

Article 18 (Right to asylum)¹

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with *Union law adopted under Article 71 paragraph 1 (e) of the Constitution*.

Article 19 (Protection in the event of removal, expulsion or extradition)

(1) Collective expulsions are prohibited.

(2) No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subject to the death penalty, torture or inhuman or degrading treatment or punishment.

1.2.

1.2.1. Chapter III: Equality

Article 20 (Equality before the law)

¹ “The text of the Article is based on TEC Article 63 which requires the Union to respect the Geneva Convention on refugees. Reference should be made to the Protocols relating to the United Kingdom and Ireland annexed to the Treaty of Amsterdam and to Denmark to determine the extent to which those Member States implement Community law in this area and the extent to which this Article is applicable to them. This Article is in line with the Protocol on Asylum annexed to the EC Treaty.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

Everyone is equal before the law.

Article 21 (Non-discrimination)

(1) Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited¹.

(2) Within the scope of application of *Part Two of this Constitution*, and without prejudice to the special provisions *thereof*, any discrimination on grounds of nationality shall be prohibited².

Article 22 (Cultural, religious and linguistic diversity)³

The Union shall respect cultural, religious and linguistic diversity.

Article 23 (Equality between men and women)

(1) Equality between men and women must be ensured in all areas, including employment, work and pay⁴.

¹ “Paragraph 1 draws on Article 13 of the EC Treaty, Article 14 of the ECHR and Article 11 of the Convention on Human Rights and Biomedicine as regards genetic heritage. Insofar as this corresponds to Article 14 of the ECHR, it applies in compliance with it.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

² “Paragraph 2 corresponds to Article 12 of the EC Treaty and must be applied in compliance with the Treaty.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

³ “This Article is based on Article 6 of the Treaty on European Union and on Article 151(1) and (4) of the EC Treaty concerning culture. It is also inspired by declaration No 11 to the Final Act of the Amsterdam Treaty on the status of churches and non-confessional organisations.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

⁴ “The first paragraph is based on Articles 2 and 3(2) of the EC Treaty, which impose the objective of promoting equality between men and women on the Community, and on Article 141(3) of the EC Treaty. It draws on Article 20 of the revised European Social Charter of 3 May 1996 and on point 16 of the Community Charter on the rights of workers. It is also based on Article 141(3) of the EC Treaty and Article 2(4) of Council Directive 76/207/EEC on the

(2) The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article 24 (The rights of the child)

(1) Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

(2) In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

(3) Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article 25 (The rights of the elderly)

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article 26 (Integration of persons with disabilities)

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

1.2.2.

1.2.3.

1.2.4. *Chapter IV: Solidarity*

Article 27 (Workers' right to information and consultation within the undertaking)

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by *Union* law and national laws and practices.

Article 28 (Right of collective bargaining and action)

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interest, including strike action.

Article 29 (Right of access to placement services)

Everyone has the right of access to a free placement service.

Article 30 (Protection in the event of unjustified dismissal)

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

Article 31 (Fair and just working conditions)

(1) Every worker has the right to working conditions which respect his or her health, safety and dignity.

(2) Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article 32 (Prohibition of child labour and protection of young people at work)

(1) The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be favourable to young people and except for limited derogations.

(2) Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article 33 (Family and professional life)

(1) The family shall enjoy legal economic and social protection.

(2) To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 34 (Social security and social assistance)¹

¹ "The principle set out in Article 34(1) is based on Articles 137 and 140 of the EC Treaty and on Article 12 of the European Social Charter and point 10 of the Community Charter on the rights of workers. The Union must respect it when exercising the powers conferred on it by Article 140 of the Treaty establishing the European Community. The reference to social services relates to cases in which such services have been introduced to provide certain advantages but does not imply that such services must be created where they do not exist. "Maternity" must be understood in the same sense as in the preceding Article. The second paragraph is based on Article 13(4) of the European Social Charter and point 2 of the Community Charter of the Fundamental Social Rights of Workers and reflects the rules arising from Regulation No 1408/71 and Regulation No 1612/68. The third paragraph draws on Articles 30 and 31 of the revised Social Charter and point 10 of the Community Charter.

(1) The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by *Union* law and national laws and practices.

(2) Everyone residing and moving legally within the Union is entitled to social security benefits and social advantages in accordance with *Union* law and national laws and practices.

(3) In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by *Union* law and national laws and practices.

Article 35 (Health care)¹

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Article 36 (Access to services of general economic interest)²

The Union recognises and respects access to services of general interests as provided for in national

The Union must respect it in the context of policies based on Article 137(2) of the Treaty establishing the European Community, particularly the last subparagraph.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

¹ “The principles set out in this Article are based on Article 152 of the EC Treaty and on Article 11 of the European Social Charter. The second sentence of the Article takes over Article 152(1).” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

² “This Article fully respects Article 16 of the Treaty establishing the European Community and does not create any new right. It merely sets out the principle of respect by the Union for the access to services of general economic interest as provided for by national provisions, when those provisions are compatible with Community legislation.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

laws and practices, in accordance with *Part Two of this Constitution*, in order to promote the social and territorial cohesion of the Union.

Article 37 (Environmental protection)¹

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article 38 (Consumer protection)²

Union policies shall ensure a high level of consumer protection.

1.3.

1.4.

¹ “The principles set out in this Article are based on Articles 2, 6 and 174 of the EC Treaty. It also draws on the provisions of some national constitutions.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

² “The principles set out in this Article are based on Article 153 of the EC Treaty”. – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

Article 39 (Right to vote and to stand as a candidate at elections to the European Parliament)¹

(1) Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.

(2) Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Article 40 (Right to vote and to stand as a candidate at municipal elections)²

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that state.

Article 41 (Right to good administration)

(1) Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

(2) This right includes:

- the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

¹ “Article 39 applies under the conditions laid down by the Treaty, in accordance with Article 52(2) of the Charter. Article 39(1) corresponds to the right guaranteed in Article 19(2) of the EC Treaty and Article 39(2) corresponds to Article 190(1) of that Treaty. Article 39(2) takes over the basic principles of the electoral system in a democratic State.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

² “This Article corresponds to the right guaranteed by Article 19(1) of the EC Treaty. In accordance with Article 52(2) of the Charter, it applies under the conditions set out in the Treaty.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

- the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
- the obligation of the administration to give reasons for its decisions.

(3) Every person has the right to have the *Union* make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

(4) Every person may write to the institutions of the Union in one of the languages *of the Constitution* and must have an answer in the same language.

Article 42 (Right of access to documents)¹

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has a right of access to European Parliament, Council and Commission documents.

Article 43 (Ombudsman)²

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has a right to refer to the Ombudsman of the Union cases of maladministration in the activities of the *Union* institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Article 44 (Right to petition)³

¹ “The right guaranteed in this Article is the right guaranteed by Article 255 of the EC Treaty. In accordance with Article 52(2) of the Charter, it applies under the conditions defined by the Treaty.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

² “The right guaranteed in this Article is the right guaranteed by Articles 21 and 195 of the EC Treaty. In accordance with Article 52(2) of the Charter, it applies under the conditions defined by the Treaty.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention in order to clarify the provisions of the Charter.

³ “The right guaranteed in this Article is the right guaranteed by Articles 21 and 194 of the EC Treaty. In accordance with Article 52(2) of the Charter, it applies under the conditions defined

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has a right to petition the European Parliament.

Article 45 (Freedom of movement and of residence)¹

(1) Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

(2) Freedom of movement and residence may be granted, in accordance with *Part Two of this Constitution*, to nationals of third countries legally resident in the territory of a Member State.

Article 46 (Diplomatic and consular protection)²

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same condition as the nationals of that Member State.

by the Treaty.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention in order to clarify the provisions of the Charter.

¹ “The right guaranteed by paragraph 1 is the right guaranteed by Article 18 of the EC Treaty. In accordance with Article 52(2) of the Charter, it applies under the conditions and within the limits defined by the Treaty. Paragraph 2 refers to the power granted to the Community by Article 62(1) and (3) and Article 63(4) of the EC Treaty. Consequently, the granting of this right depends on the institutions exercising that power.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention in order to clarify the provisions of the Charter.

² “The right guaranteed by this Article is the right guaranteed by Article 20 of the EC Treaty. In accordance with Article 52(2) of the Charter, it applies under the conditions defined by the Treaty.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention in order to clarify the provisions of the Charter.

1.4.2.

1.4.3. *Chapter VI: Justice*

Article 47 (Right to an effective remedy and to a fair trial)

(1) Everyone whose rights and freedoms guaranteed *by Union law* are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

(2) Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

(3) Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure access to justice.

Article 48 (Presumption of innocence and right of defence)

(1) Everyone who has been charged shall be presumed innocent until proved guilty according to law.

(2) Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Article 49 (Principles of legality and proportionality of criminal offences and penalties)

(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.

(2) This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.

(3) The severity of penalties must not be disproportionate to the criminal offence.

Article 50 (Right not to be tried or punished twice in criminal proceedings for the same criminal offence)

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

1.4.4.

1.4.5.

1.4.6. *Chapter VII: Union Citizenship*

Article 51 (*Union citizenship*)¹

(1) *Citizens of the Union shall be all persons holding the nationality of a Member State.*

(2) *Citizenship of the Union shall complement and not replace national citizenship.*

1.4.7. *Chapter VIII: Scope of Guaranteed Rights*

Article 52 (Scope of the Charter)

¹ The inclusion of Article 17(1) EC in the Charter is the only substantive amendment to the Charter suggested by this discussion paper. The purpose is to clarify, already within the context of the Charter, the meaning of the term “citizen of the Union”, which is used in Articles 15 (2), (3), 39 (1), 40, 42, 43, 44, 45, 46 of the Charter. It would be misleading to place the provision on “citizenship of the Union” at the beginning of the Charter, as most of the fundamental rights enshrined in the Charter apply to all human beings, not only to Union citizens. Cf. also the Final Report of Convention Working Group II “Charter”, p. 6: “The Group signals that if, as advocated by a large majority of the Group, incorporation is achieved by insertion of the Charter text in the first part of the Constitutional Treaty, it would then become necessary to combine, in an appropriate manner, in that Treaty the Charter articles on citizens’ rights and the provisions on citizenship of the EC Treaty having constitutional importance; this should

(1) The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers *and respecting the limits of the powers of the Union as conferred on it by this Constitution*¹.

(2) This Charter does not *extend the scope of application of Union law beyond the powers of the Union or*² establish any new power or task for the Union, or modify powers and tasks defined by *this Constitution*³.

Article 53 (Scope of guaranteed rights)

(1) Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

(2) Rights recognised by this Charter which are based on the provisions of *Part Two of this Constitution* shall be exercised under the conditions and within the limits defined *therein*.

(3) Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

(4) *Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those*

be considered as a technical operation raising no political problems.”

¹ Cf. the proposals in the Final Report of Convention Working Group II “Charter” for drafting adjustments in the horizontal articles of the Charter (p. 17).

² Cf. the proposals in the Final Report of Convention Working Group II “Charter” for drafting adjustments in the horizontal articles of the Charter (p. 17).

³ Cf. the proposals in the Final Report of Convention Working Group II “Charter” for drafting adjustments in the horizontal articles of the Charter (p. 17).

*traditions.*¹

*(5) The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions and bodies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.*²

*(6) Full account shall be taken of national laws and practices as specified in this Charter.*³

Article 54 (Level of protection)

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 55 (Prohibition of abuse of rights)

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

¹ Cf. the proposals in the Final Report of Convention Working Group II "Charter" for drafting adjustments in the horizontal articles of the Charter (p. 17).

² Cf. the proposals in the Final Report of Convention Working Group II "Charter" for drafting adjustments in the horizontal articles of the Charter (p. 17).

³ Cf. the proposals in the Final Report of Convention Working Group II "Charter" for drafting adjustments in the horizontal articles of the Charter (p. 17).

1.5. Title II: Definition and Objectives of the Union¹

Article 56 (Foundations of the European Union)²

(1) The European Union established by this Constitution shall be founded on the Citizens of the Union and the Member States³.

(2) The Union shall exercise certain common competences, in accordance with common values and objectives and in recognition of the diversity of the Union, on a federal basis⁴.

(3) The Union shall respect the national identities of the Member States, their constitutional and political structures, including regional and local self-government, their choices regarding language, and the legal status of churches and religious societies⁵.

Article 57 (Union values)

(1) The Union is based on human dignity, the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States⁶.

(2) The Union values include the values of those who believe in God as the source of truth, justice,

¹ **Title and structure as suggested in the Preliminary draft Constitutional Treaty of the Convention Presidium (therein Title I).**

² **Cf. Article 1 of the Preliminary draft Constitutional Treaty of the Convention Presidium.**

³ Cf. already Case 26/62, *van Gend & Loos* [ECR] 1963, 1: “The European Economic Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only the Member States but also their nationals”.

⁴ **Cf. the summary description on Article 1, second and third indent, in the Preliminary draft Constitutional Treaty of the Convention Presidium.**

⁵ Takes over the “Christophersen”-clause, as suggested in Convention Working Group V “Complementary competencies”. The role of the churches is in addition recognised by transforming the existing Declaration No 11 (annexed to the final act of Amsterdam) into a new “Protocol on the status of churches and non-confessional organisations”, annexed to this Constitution – see Annex I. **Cf. also the summary description on Article 1 in the Preliminary draft Constitutional Treaty of the Convention Presidium.**

⁶ **Cf. Article 6(1) EU and the summary description on Article 2 in the Preliminary draft Constitutional Treaty of the Convention Presidium.**

good and beauty as well as of those who do not share such a belief but respect these universal values arising from other sources¹.

Article 58 (Union objectives)²

(1) The Union shall set itself the following objectives:

- (a) to promote, by an internal market and an economic and monetary union, throughout the Union a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of an environment based on the principle of sustainable development, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States and their regions³;
- (b) to assert, through a common foreign and security policy, including a common defence, the identity, common values, security, interests and independence⁴ of the Union on the international scene⁵ and thereby to preserve peace and strengthen international security as well as to promote international cooperation and development, in accordance with Title VIII;
- (c) to maintain and develop, through a common policy in police and judicial matters, the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum,

¹ Inspired by the preamble of the Constitution of Poland of 2 April 1997.

² **Cf. Article 3 in the Preliminary draft Constitutional Treaty of the Convention Presidium; content taken over from the provisions on objectives in the EU and Communities Treaties.**

³ Cf. Article 2 EC. Cf. also the Final Report of Convention Working Group VI “Economic Governance” (p. 2), which recommends inclusion of the text of Article 2 EC (next to Articles 2 EU and 4 EC) in the Constitution.

⁴ **Cf. the summary description on Article 3 in the Preliminary draft Constitutional Treaty of the Convention Presidium.** See also Article 11(1), first indent EU.

⁵ Cf. Article 2, first indent EU.

immigration and the prevention and combating of crime¹;

(d) to contribute to the safe and peaceful use of nuclear energy²;

(e) to maintain in full the *acquis communautaire* and build on it³.

(2) The Union's objectives shall be implemented in accordance with the Union's competences as laid down in this Constitution.

Article 59 (Internal market)⁴

(1) The internal market shall comprise, as provided in Part Two of this Constitution, a customs union, an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured⁵, and a system which ensures that competition in the internal market is not distorted⁶, as well as common and complementary policies which are related to the proper functioning of the internal market.

(2) The primary purpose of all Union activities with regard to the internal market shall be the elimination of all barriers to or discriminations in trade and of all appreciable distortions of

¹ Cf. Article 2, fourth indent EU.

² Takes over the essence of the objectives of the EURATOM Treaty, in a modernised version.

³ Cf. Article 2, fifth indent EU.

⁴ **Takes over the essence of Articles 3 and 14 EC, which, within the Community legal order, are of constitutional importance (they are included in Part One of the EC Treaty, called “Principles”) and therefore should be included in Part One of the Constitution; they are missing in Part One of the Preliminary draft Constitutional Treaty of the Convention Presidium.** This Discussion Paper further suggests to replace “common market” by “internal market” throughout the Constitution. The use of the two terms in the current Treaty is determined more by chance than by logic. The definition of internal market is a broad one to cover all aspects of what today is covered by “internal market” and “common market”. The same approach has been chosen by the Feasibility Study of the Commission “Contribution to a preliminary draft Constitution of the European Union – Working Document” of 4 December 2002.

⁵ Cf. Articles 3(1) (c), 14(2) EC.

⁶ Cf. Article 3(1) (g) EC.

competition¹.

Article 60 (Economic and monetary union)²

(1) Economic union shall include, as provided in Part Two of this Constitution, the adoption of an economic policy which is based on the close coordination of Member States' economic policies under the close surveillance of the Union³, on the internal market and on the definition of common objectives, and conducted in accordance with the principle of an open market economy with free competition.

(2) Concurrently with the foregoing, as provided in Part Two of this Constitution and in the Statute of the ESCB annexed to this Constitution, and in accordance with the procedures set out therein, monetary union shall include the irrevocable fixing of exchange rates leading to the introduction of a single currency, the euro, and the definition and conduct of a single monetary policy and exchange-rate policy the primary objective of both of which shall be to maintain price stability and, without prejudice to this objective, to support the general economic policies in the Union, in accordance with the principle of an open market economy with free competition.

(3) The activities of the Member States and the Union with regard to economic and monetary union shall entail compliance with the following guiding principles: stable prices, sound public finances and monetary conditions and a sustainable balance of payments.

¹ Takes over the general principles underlying the four fundamental economic freedoms, as laid down in Article 30 EC and generalised by the case-law of the Court of Justice; cf. Case C-55/94, *Gebhard* [1995] ECR I-4165, para 37.

² **Cf. Article 4 EC, which is included in Part One of the EC Treaty (“Principles”) and therefore should be included in Part One of this Constitution. Such a provision is missing in Part One of the Preliminary draft Constitutional Treaty of the Convention Presidium. In support of the approach chosen in this discussion paper, cf. the Final Report of Convention Working Group VI “Economic Governance” (p. 2), which recommends explicitly that also the text of the present Article 4 EC (next to Articles 2 EU and 2 EC) should be included in the constitutional treaty.**

³ “under the close surveillance of the Union” added to take into account of the reinforced role of the Union level in economic policy coordination, as set out in Part Two of this Constitution. Cf. also the Final Report of Convention Working Group VI “Economic Governance”, p. 4: “The Group considers that economic policy coordination should be reinforced.”

Article 61 (Legal personality)¹

The Union shall have legal personality.

Article 62 (Supremacy of Union law)²

Union law shall prevail over national law.

Article 63 (Union loyalty)³

(1) Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Constitution or resulting from action taken by the Union. They shall facilitate the achievement of the Union's tasks.

(2) Member States shall abstain from any measure which could jeopardise the attainment of the objectives and rights⁴ laid down in this Constitution.

¹ **Cf. Articles 281, 282 EC, 184, 185 EURATOM. Cf. also the results of Convention Working Group III “Legal Personality” and Article 4 of the Preliminary draft Constitutional Treaty of the Convention Presidium. On the succession to the Communities, cf. Article x in the Final Title.**

² Cf. Case 6/64, *Costa v. ENEL* [1964] ECR 585; cf. also Joined cases C-10/97 to C-22/97, *Ministero delle Finanze v IN.CO.GE.'90 Srl, Idelgard Srl, Iris'90 Srl, Camed Srl, Pomezia Progetti Appalti Srl (PPA), Edilcam Srl, A. Cecchini & C. Srl, EMO Srl, Emoda Srl, Sappesi Srl, Ing. Luigi Martini Srl, Giacomo Srl and Mafar Srl*. [1998] ECR I-6307 para 21. **This important principle of the Union’s legal system is given much lesser importance in the Preliminary draft Constitutional Treaty of the Convention Presidium, where it figures only in Article 8 of Title III under “Union competence and action”. However, as the principle applies both to law adopted by the Union exercising its competences (secondary law) and to the law of the Constitution itself (primary law), it is suggested that only the insertion of this principle into the general Title II “Definition and Objectives of the Union” reflects adequately the current *acquis communautaire*.**

³ **Cf. Article 10 EC. Currently, this principle is included in the Part One of the EC Treaty (“Principles”). Therefore, it is also given a prominent place in the present discussion paper. The summary description of Article 8 in the Preliminary draft Constitutional Treaty of the Convention Presidium, mentions this principle only in Title III “Union competence and action”, which raises the same objections as mentioned in the previous footnote.**

⁴ “and rights” added during the EPP Study Days in Frascati to stress that this Constitution, in particular by including the Charter in Part One, now explicitly contains rights and places the

(3) The Union shall act with loyalty towards the Member States¹.

Article 64 (Union solidarity clause)²

(1) If any of the Member States should be the object of a terrorist attack, the other Member States will afford the Member State so attacked, at the request of its civilian authorities, all military and other aid and assistance within their power. All the instruments available to the Union (including military resources, measures under the common police and judicial policy, as well as civil protection measures) shall be mobilised in order to avert, in accordance with the values of the Union, the terrorist threat in the territory of the Union, to protect the civilian population and the functioning of democratic institutions in the Union and to otherwise assist the Member State so attacked within its territory³.

(2) In case of an armed attack, Union solidarity as described in paragraph 1 shall apply accordingly for the Member States which participate in the collective defence obligations set out in the Protocol on Collective Defence annexed to this Constitution⁴.

Article 65 (Rule of law)

(1) Member States undertake not to submit a dispute concerning the interpretation or application of this Constitution to any method of settlement other than those provided for in this Constitution⁵. They always comply with the judgments of the Court of Justice without delay and in a complete manner.

individual at the heart of the Union's activities (cf. preamble, recital 4). Article 52 clarifies that the Charter does not extend the scope of Union competences.

¹ This para 3 is drawn from the case-law of the Court of Justice according to which the duty of sincere cooperation imposes mutual obligations on the Member States and the Community institutions and therefore also obliges the Community towards the Member States.

² Cf. Article V of the Brussels Treaty of 17 March 1948, which established the Western European Union (WEU).

³ Such a solidarity clause was broadly supported in Working Group VIII "Defence"; cf. its Final Report, para 57.

⁴ Cf. the Final Report of Working Group VIII "Defence", para 61 et seq.

⁵ Cf. Articles 292 EC, 193 Euratom.

(2) Member States are obliged to make good loss and damage caused to individuals by breaches of Union law for which they are responsible¹.

Article 66 (Symbols of Union identity; privileges and immunities)

(1) The seat of the Union shall be Brussels².

(2) The flag of the Union shall be a circle of twelve golden stars on a blue ground.

(3) The currency of the Union shall be the euro.

(4) The anthem of the Union shall be the instrumental version of the Ode of Joy from the Ninth Symphony by Ludwig van Beethoven.

(5) 9 May shall be celebrated as Union day.

(6) The Union shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in a Protocol annexed to this Constitution³. The same shall apply to the ECB, the EIB and Europol.

¹ Codifies a general principle of Community law; cf. Joined Cases C-6/90 and C-9/90, *Francovich and Others* [1991] ECR I-5357, para 37; Joined cases C-46/93 and C-48/93, *Brasserie du Pêcheur SA v Bundesrepublik Deutschland and The Queen v Secretary of State for Transport, ex parte: Factortame Ltd and others* [1996] ECR I-1029, para 32.

² The seat of the institutions of the Union, of the ECB, the EIB and Europol continues to be governed by the "Protocol on the location of the seats of the institutions and of certain bodies and departments of the European Communities and Europol", annexed to this Constitution.

³ Cf. Article 291 EC. The protocol referred to is the "Protocol of 8 April 1965 on the privileges and immunities of the European Communities".

1.6. Title III: Union Competences and Actions¹

Article 67 (Fundamental principles)

(1) The boundaries and exercise of Union competences are governed by the principles of conferral, subsidiarity and proportionality.

(2) In accordance with the principle of conferral, the Union may act only if and insofar as competences are conferred upon it by this Constitution². Any competences not conferred upon the Union are reserved to the Member States.

(3) In accordance with the principle of subsidiarity, all decisions in the Union must be taken as closely as possible to the citizen; in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale or effects, be more efficiently³ achieved by the Union.

(4) In accordance with the principle of proportionality, the content and form of all Union action shall not go beyond what is necessary to achieve the objectives of this Constitution⁴.

(5) Any action taken by the Union shall be implemented, executed and applied by the Member States if not otherwise provided by this Constitution⁵.

¹ **Title III taken over from the Preliminary draft Constitutional Treaty of the Convention Presidium. The structure combines the structure proposed by the Convention Presidium with other structural proposals discussed in the Convention's Working Groups, in particular in Working Group V "Complementary Competencies". As agreed at the EPP Convention Group Study Days in Frascati, all issues of power (including competences) must be settled in Part One of this Constitution, and not in Part Two.**

² Cf. Article 5(1) EC.

³ "More efficiently" proposed instead of "better", in order to make the provision clearer and more justifiable.

⁴ Cf. Article 5(3) EC.

⁵ Principle of national implementation; cf. Declaration No 43 attached to the EC Treaty by the Treaty of Amsterdam as guidance for the application of the principles of subsidiarity and proportionality. Wording drawn from the works of Convention Working Group V "Complementary Competencies"; cf. also point 17 of the Report by Alain Lamassoure. **Cf. also the summary description on Article 8 of the Preliminary draft Constitutional**

Article 68 (Application of fundamental principles)

- (1) In exercising the Union's non-exclusive competences, the Union institutions shall apply the principle of subsidiarity in accordance with the Protocol on the application of the principles of subsidiarity and proportionality annexed to this Constitution.
- (2) The Union institutions shall apply the principle of proportionality in the exercise of Union competences in accordance with that Protocol.
- (3) National parliaments monitor the observance by the Union institutions of the principles of subsidiarity and proportionality using the political early warning mechanism described in that Protocol.

Article 69 (Categories of competence)

- (1) Exclusive competences confer on the Union the power to adopt, in a specific area, all legally binding acts, while Member States can only act in this area if and insofar as empowered to do so by the Union.
- (2) Shared competences confer the power to adopt legally binding acts in a specific area on the Union and on the Member States. Member States may exercise their competences only if and insofar the Union does not exercise its own.
- (3) Supporting competences allow the Union to supplement, support or coordinate action by Member States with a view to achieving one of the Union's objectives, excluding a full harmonisation of laws and regulations of the Member States, but allowing for the use of all legal instruments available under the Constitution, including legislation.
- (4) Union competences shall build on the *acquis* as it exists on the day of the entry into force of this Constitution¹.

Treaty of the Convention Presidium.

¹ This "acquis preservation"-rule is meant to ensure that the establishment of competence lists (Articles 70-72) as such does not lead to a change of the current division of competences.

Article 70 (Exclusive competences)¹

The Union shall have exclusive competence with regard to:

- (a) the fixing of Common Customs Tariff duties²;
- (b) the common commercial policy on trade in goods, services (except cultural, educational, social and human health services³) as well as on the commercial aspects of intellectual property⁴;
- (c) the monetary policy for the Member States which irrevocably have adopted the euro as their single currency, to be defined and implemented by the independent European Central Bank (ECB)⁵, referred to in Article 90, in accordance with Part Two of the Constitution and the Statute of the ESCB;
- (d) the monetary law of the euro⁶, including measures to harmonise the denominations and technical specifications of all coins intended for circulation to the extent necessary to permit their smooth circulation within the Union⁷;
- (e) the definition and implementation of the common agricultural policy⁸, in accordance with Part Two of the Constitution;
- (f) the conditions for fishing with a view to ensuring protection of fishing grounds and

¹ **Comprehensive competence lists allow to settle all power issues in Part One of the Constitution. At the same time, they reduce the need for including the legal bases for Union action in Part Two of the Constitution. The elements in the competence lists would in future also provide the legal bases for Union action; they therefore follow (as closely as possible in a constitutional text) the wording of the EC and EU Treaty provisions.**

² Cf. Article 26 EC. Cf. the Report Lamassoure, para 19: “customs policy”.

³ This exception results from Article 133(6) EC, as amended by the Treaty of Nice.

⁴ Cf. Article 133(1) and (5) EC. Cf. the Report Lamassoure, para 19: “external economic relations”. In Convention Working Group VII “External Action”, there was a high degree of support in favour of the use of qualified-majority voting in all areas of commercial policy, including services and intellectual property, as it is achieved by the wording proposed by this Discussion Paper; cf. the Final Report of Convention Working Group VII, point 8 c).

⁵ Cf. Article 105(2) EC. Cf. the Report Lamassoure, para 19.

⁶ Cf. Article 123(4) EC.

⁷ Cf. Article 106(2) EC.

⁸ Cf. Articles 32(4), 37 EC. Cf. the Report Lamassoure, para 22, where this field of policy is only regarded as a shared competence; under the *acquis*, it falls within the exclusive competence of the Community.

conservation of the biological resources of the sea¹;

- (g) measures giving effect to the principles of the Union's antitrust laws²;
- (h) the application of the Union's prohibition of State aids³;
- (i) the necessary safeguard measures (not exceeding six months) with regard to third countries where, in exceptional circumstances, movements of capital to or from third countries cause, or threaten to cause, serious difficulties for the operation of economic and monetary union⁴;
- (j) the definition of the tasks, priority objectives and the organisation of the Structural Funds of the Union, as defined in Part Two of this Constitution, as well as of the general rules applicable to them and of the provisions necessary to ensure their effectiveness and the coordination of the Funds with one another and with the other existing financial instruments of the Union⁵;
- (k) detailed arrangements regarding the exercise of the right of every Union citizen to vote and stand as candidate in municipal and European Parliament elections⁶;
- (l) measures for the production of Union statistics where necessary for the performance of the activities of the Union, without prejudice to the tasks of the ECB and the ESCB in the field of statistics⁷;
- (m) the protection of individuals with regard to the processing of personal data and the free movement of such data as regards the Union institutions and bodies, including the establishment of an independent supervisory body responsible for monitoring such protection⁸;

¹ Cf. Article 102 of the Treaty concerning the Accession of Denmark, Ireland and the United Kingdom. Cf. the Report Lamassoure, para 22, where this field of policy is only regarded as a shared competence; under the present acquis, it falls within the exclusive competence of the Community.

² Cf. Article 83 EC. Cf. the Report Lamassoure, para 19: "competition policy".

³ Cf. Article 89 EC. Cf. the Report Lamassoure, para 19: "competition policy".

⁴ Cf. Article 59 EC.

⁵ Cf. Article 161(1) EC. Cf. the Report Lamassoure, para 19: "structural or cohesion policies".

⁶ Cf. Article 19(1) and (2) EC.

⁷ Cf. Article 285 EC.

⁸ Cf. Article 286 EC.

- (n) the staff regulations of Union officials and the Conditions of Employment of other Union servants¹
- (o) the determination of the salaries, allowances and pensions of the President and Members of the Commission, of the President, Judges, Advocates-General and Registrar of the Court of Justice, of the Members and Registrar of the Court of First Instance; of the President and the Members of the Court of Auditors; of the Members of the Economic and Social Committee; and of any payment to be made in all these cases instead of remuneration²;
- (p) the rules governing the languages of the Union institutions, without prejudice to the provisions contained in the Statute of the Court of Justice³;

Article 71 (*Shared competences*)⁴

- (1) The Union shall have shared competences with the Member States with regard to:
 - (a) the definition and implementation of a common foreign and security policy⁵, in accordance with Title VIII, including the adoption of economic sanctions in order to implement this policy¹;
 - (b) the establishment and functioning of the internal market through measures which bring about free movement of goods, workers, services, capital, payments or freedom of establishment, or which eliminate appreciable distortions of competition within the internal market. This shall include, to the extent necessary for the establishment and functioning of the internal market measures for the mutual recognition of diplomas, certificates and other evidence of formal qualifications; consumer protection measures; social security measures, provisions on financial services; and internal-market related fiscal provisions, in particular on indirect taxation; but not

¹ Cf. Article 283 EC.

² Cf. Articles 210, 247(8) and 258(4) EC.

³ Cf. Article 290 EC.

⁴ In view of the importance of shared competences – they are the most used in practice – , this Discussion Paper suggests to list them all in Part One of the Constitution, where all power issues must be settled.

⁵ Cf. Articles 11(1) and 17 EU. Cf. the Report Lamassoure, para 20, where “the running of the common foreign and defence policy” even falls within the Union’s own competence.

provisions relating to the free movement of persons and to the rights and interests of employed persons²;

- (c) facilitating the exercise of the rights of Union citizens to move and reside freely within the territory of the Member States, excluding provisions on passports, identity cards, residence permits or any other such document or provisions on social security or social protection³;
- (d) the free movement of persons, be they citizens of the Union or nationals of third countries, within the internal market, including measures on the crossing of the external borders of the Union as well as external border controls⁴, to be exercised by the European Border Control Organisation (Eurobord) referred to in Article 94;
- (e) the fields of asylum, immigration policy and safeguarding the rights of nationals of third countries⁵;
- (f) provisional measures, not exceeding six months, in the event of one or more Member States being confronted with an emergency situation characterised by a sudden inflow of nationals of third countries, for the benefit of the Member States concerned⁶;
- (g) judicial cooperation in civil matters having cross-border implications insofar as necessary for the proper functioning of the internal market, including the following fields: cross-border service of judicial and extrajudicial documents; taking of evidence; recognition and enforcement of decisions in civil and commercial cases, including decisions in extrajudicial cases; conflict of laws and of jurisdiction; and civil procedure⁷;

¹ Cf. Articles 301 and 60 EC.

² Cf. Article 95 EC as well as Articles 93, 94, 96, 97 EC; Articles 40 and 42 EC; Articles 44, 46(2), 47(1) and (2) EC; Articles 52(1) and 55 EC; and Article 57(2) EC; under the *acquis*, these are all shared competences. Cf. however the Report Lamassoure, para 19, where it is suggested that “the legal basis for the internal market (including the four freedoms and financial services)” should be the Union’s own competence.

³ Cf. Article 18 EC.

⁴ Cf. Articles 61(a) and 62 EC.

⁵ Cf. Articles 61(a), (b) and 63 EC. Cf., however, the Report Lamassoure, para 20, which considers “the legal basis of the common area for freedom and security” as an own competence of the Union.

⁶ Cf. Article 64 EC.

⁷ Cf. Article 65 EC.

- (h) the approximation, where necessary, of rules on criminal matters in order to prevent and combat crime, including the establishment of minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organised crime, terrorism and illicit drug trafficking¹;
- (i) police cooperation, meaning cooperation between police forces, customs authorities and other competent authorities in the Member States, both directly and through the European Police Office (Europol), referred to in Article 92²;
- (j) judicial cooperation in criminal matters, meaning cooperation between judicial and other competent authorities of the Member States including cooperation through the European Judicial Cooperation Unit ('Eurojust'), referred to in Article 93³;
- (k) the definition and implementation of the common transport policy, covering rail, road, inland waterway, sea and air transport⁴;
- (l) ensuring, within the scope of this Constitution, the application of the prohibition of discrimination on grounds of nationality⁵;
- (m) the combating of discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation⁶;
- (n) social policy measures outside the internal market context⁷, including improvement in particular of the working environment to protect workers' health and safety; working conditions; social security and social protection of workers; protection of workers where their employment contract is terminated; the information and consultation of workers; representation and collective defence of the interests of workers and employers, including co-determination;

¹ Cf. Article 61(a) in fine EC and Articles 29(2), last indent and 31(1)(e) EU.

² Cf. Articles 30 and 32 EU.

³ Cf. Articles 31 and 32 EU.

⁴ Cf. Articles 71 and 75(3) EC and the Report Lamassoure, para 22.

⁵ Cf. Article 12(2) EC.

⁶ Cf. Article 13 EC.

⁷ The shared internal market competence under Article 71(1)(b) already allows for the adoption of social policy measures where they contribute to removing obstacles for the four fundamental freedoms (in particular free movement of workers) or otherwise to remove distortions of competition.

conditions of employment for third country nationals legally residing in Union territory; the integration of persons excluded from the labour market; equality between men and women with regard to labour market opportunities and treatment at work; the combating of social exclusion; and the modernisation of social protection systems. This competence does not cover pay, the right of association, the right to strike or the right to impose lock-outs¹.

- (o) ensuring the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value²;
- (p) prudential supervision of credit institutions and the stability of the financial system, in particular by taking into account the contribution of the ECB and, under its governance, the ESCB³;
- (q) trade in cultural and audiovisual services, educational services, and social and human health services⁴;
- (r) measures to strengthen, if necessary, the economic and social cohesion of the Union through specific action outside the Structural Funds and without prejudice to the measures decided within the framework of the other Union policies⁵;
- (s) to conduct a policy of high nuclear safety and security standards, allowing installations to remain in use in those Member States that have opted to use this source of energy, and to guarantee non-proliferation, in accordance with Part Two of this Constitution⁶;
- (t) a policy on the environment, including provisions primarily of a fiscal nature; measures affecting town and country planning, quantitative management of water resources or affecting, directly or indirectly, the availability of those resources and land use with the exception of

¹ Cf. Article 137 EC.

² Cf. Article 141(3) EC.

³ Cf. Article 105(5) EC.

⁴ Cf. Article 133(6), second subparagraph EC.

⁵ Cf. Article 159(3) EC.

⁶ Summarises the competences under the Euratom Treaty; cf. also the proposed Article 17 of the Feasibility Study of the Commission “Contribution to a preliminary draft Constitution of the European Union – Working Document” of 4 December 2002.

waste management¹;

- (u) the prevention of and fight against fraud affecting the financial interests of the Union through deterrent measures taken with a view to affording effective and equivalent protection in the Member States²;

(2) The special situation of the United Kingdom, Ireland and Denmark with regard to the competences referred to in paragraph 1 (d)-(h) is determined by Protocols annexed to this Constitution.

Article 72 (Supporting competences)

The Union shall have supporting competences with regard to:

- (a) measures strengthening customs cooperation between Member States and between the latter and the Commission³;
- (b) joint programmes which encourage the exchange of young workers⁴;
- (c) incentive measures in the field of employment designed to encourage cooperation between Member States and to support their action in this field through initiatives aimed at developing exchanges of information and best practices, providing comparative analysis and advice as well as promoting innovative approaches and evaluating experiences, in particular by recourse to pilot projects⁵;
- (d) measures contributing to the development of quality education and of a European dimension in education, particularly through the teaching and dissemination of the languages of the Member States and through encouraging mobility and exchange programmes for students, teachers and socio-educational instructors⁶;

¹ Cf. Articles 174 and 175 EC. Cf. also the Report Lamassoure, para 22.

² Cf. Article 280(4) EC.

³ Cf. Article 135 EC.

⁴ Cf. Article 41 EC. Broader is the Report Lamassoure, para 25, where “youth” is considered to be a complementary competence.

⁵ Cf. Articles 127 and 129 EC. Cf. also the Report Lamassoure, para 26, and the Final Report of Convention Working Group V “Complementary Competencies”, point 6.

⁶ Cf. Article 149 EC. Cf. also the Report Lamassoure, para 25, and the Final Report of Convention

- (e) vocational training policy, particularly in order to facilitate adaptation to industrial changes, vocational integration and reintegration into the labour market, mobility of instructors and trainees (particularly young people) and cooperation and exchanges of information and experience between the training establishments and firms in the Member States¹;
- (f) culture, through improvement of the knowledge and dissemination of the culture and history of the European peoples; through conservation and the safeguarding of cultural heritage of European significance; through non-commercial cultural exchanges; and through artistic and literary creation, including in the audiovisual sector²;
- (g) measures to protect, outside the internal market context³, human health, covering the fight against the major health scourges, by promoting research into their causes, their transmission and their prevention; health information and education; as well as action in reducing drugs-related health damage, including information and prevention⁴;
- (h) consumer protection measures outside the internal market context⁵, in particular measures which protect the health, safety and economic interests of consumers as well as their right of information, education and to organise themselves in order to safeguard their interests¹;
- (i) measures contributing to the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructures by promoting, within the

Working Group V “Complementary Competencies”, point 6.

¹ Cf. Article 150 EC. Cf. also the Report Lamassoure, para 25, and the Final Report of Convention Working Group V “Complementary Competencies”, point 6.

² Cf. Article 151 EC. Cf. also the Report Lamassoure, para 25, and the Final Report of Convention Working Group V “Complementary Competencies”, point 6.

³ The shared internal market competence under Article 71(1)(b) already allows for the adoption of human health measures where they contribute to removing obstacles for the four fundamental freedoms or otherwise to remove distortions of competition; see also Article 35 of the Charter of Fundamental Rights which makes human health protection an objective of all Union activities.

⁴ Cf. Article 152 EC. Cf. also the Report Lamassoure, para 25, and the Final Report of Convention Working Group V “Complementary Competencies”, point 6.

⁵ The shared internal market competence under Article 71(1)(b) already allows for the adoption of consumer protection measures where they contribute to removing obstacles for the four fundamental freedoms or otherwise to remove distortions of competition; see also Article 38 of the Charter of Fundamental Rights which makes consumer protection an objective of all Union activities.

framework of a system of open and competitive markets, the interconnection and interoperability of national networks as well as access to such networks²;

- (j) specific measures ensuring that the conditions necessary for the competitiveness of the Union's industry exist, in accordance with a system of open and competitive markets, excluding any measure which could lead to a distortion of competition or contain tax provisions or provisions relating to the rights and interests of employed persons³;
- (k) a policy with regard to research and technological development to strengthen the scientific and technological bases of Union industry and to encourage it to become more competitive at international level⁴;
- (l) strengthening the effectiveness of civil protection in the event of exceptional events or natural disasters⁵;
- (m) a policy in the sphere of development cooperation, without prejudice to cooperation with the African, Caribbean and Pacific countries in the framework of the ACP-EC Convention⁶;
- (n) economic, financial and technical cooperation measures with third countries⁷;
- (o) tourism⁸;
- (p) sport⁹.

¹ Cf. Article 153(2)(b) EC.

² Cf. Articles 154 and 155 EC. Cf. also the Final Report of Convention Working Group V "Complementary Competencies", point 6; cf. however, the Report Lamassoure, para 22, where this is seen as a shared competence.

³ Cf. Article 157(3) second sentence EC. Cf. also the Report Lamassoure, para 25, and the Final Report of Convention Working Group V "Complementary Competencies", point 6.

⁴ Cf. Articles 164(1), 165, 171 and 172 EC.

⁵ Cf. Article 3(1)(u) EC; cf. also the Report by Alain Lamassoure, para 25: "civil defence" as complementary competence; and the proposed Article III-63 in the Feasibility Study of the Commission "Contribution to a preliminary draft Constitution of the European Union – Working Document" of 4 December 2002.

⁶ Cf. Articles 177, 179(1) and (3) EC. Cf. also the Final Report of Convention Working Group V "Complementary Competencies", point 6.

⁷ Cf. Article 181a EC (added by the Treaty of Nice).

⁸ Cf. Article 3(1)(u) EC and the Report Lamassoure, para 25.

⁹ Cf. the Report Lamassoure, para 25.

Article 73 (External competences)¹

(1) If and insofar as this Constitution has conferred competences upon the Union, it shall also have the power to conclude agreements with third countries and international organisations, participate in international organisations or otherwise act at international level.

(2) The Union's external competence shall be exclusive in cases where the conclusion of an international agreement affects internal acts of the Union, is provided for in Union legislation or is necessary to enable the Union to exercise its competences internally.

Article 74 (Flexibility clause)²

(1) If action by the Union should prove necessary to attain one of the objectives set out by this Constitution and the Constitution has not provided the necessary powers, the European Parliament³ and Council, following the codecision procedure under Article 102, shall jointly take all appropriate measures. Throughout this procedure, the European Parliament shall give its assent with the majority of its members; the Council shall act [unanimously] [with a majority representing $\frac{3}{4}$ of the population of the Union]⁴.

(2) Under the mechanism for monitoring the subsidiarity principle referred to in Article 68 paragraph 3, the Commission shall explicitly draw national parliaments' attention to the proposals based on the present Article.

The European Parliament and the Council may act only after national parliaments have noted the Commission's notification.

(3) Provisions adopted on the basis of this Article may not comprise harmonisation of Member States' laws or regulations where such harmonisation is not allowed by this Constitution.

(4) The Court of Auditors shall be consulted on all proposals under this Article to ensure that the proposed Union action takes place with total budgetary transparency and that there is no

¹ Codifies the doctrine of parallelism according to Case 22/70, *Commission v. Council (AETR)* [1971] ECR 263. Such a provision is also recommended in point 4 of the Final Report of Convention Working Group VII "External Action" (Part A).

² **Cf. Article 308 EC. The inclusion of Article 308 EC is also suggested in the summary description on Article 8 in the Preliminary draft Constitution of the Convention Presidium ("rules governing the adaptability of the system"). Cf. also the Report Lamassoure, para 31, and para 24 of the EPP Congress Document "A Constitution for a Strong Europe": "It is essential to include a review clause in order to avoid establishing a rigid system for the delimitation of competences."**

³ Cf. para 24 of the EPP Congress Document "A Constitution for a Strong Europe": "The European Parliament should be involved in the decision-making".

⁴ **Should be further discussed.**

duplication of bureaucratic efforts at Union and national level¹.

¹ Cf. para 24 of the EPP Congress Document “A Constitution for a Strong Europe”.

1.7. Title IV: Union Institutions, Organisations and Bodies¹

1.7.1.

Article 75 (List of Union institutions; European Council)²

(1) The tasks entrusted to the Union shall be carried out by the following institutions:

- the European Parliament,
- the Council of the European Union,
- the European Commission,
- the European Court of Justice,
- the European Court of Auditors.

Each institution shall act within the limits of the powers conferred upon it by this Constitution. The European Parliament, the Council and the Commission shall be assisted by a Committee of the Regions and an Economic and Social Committee acting in an advisory capacity³.

(2)⁴ The European Council shall provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof.

The European Council shall bring together the Heads of State or Government of the Member States and the President of the Commission. They shall be assisted by the European Minister for Foreign Affairs (Article 82 paragraph 4) and by the General Affairs Council. The European Council shall

¹ **Cf. Title IV of the Preliminary draft Constitutional Treaty of the Convention Presidium, called “Union institutions”. This discussion paper has chosen the broader title “Union Institutions, Organisation and Bodies” to also include organisations such as the ECB and the EIB which, under the existing *acquis communautaire*, are not considered as Union institutions, but have a special status by virtue of their independence and their own legal personality and therefore are subject to special rules and procedures, laid down in their respective Statutes.**

² Cf. Articles 5 EU and 7 (1) EC.

³ Cf. Article 7 (1) and (2) EC.

⁴ Cf. Article 4 EU.

meet at least twice a year, under the chairmanship of the Head of State or Government of the Member State which holds the Presidency of the Council.

The European Council shall submit to the European Parliament a report after each of its meetings and a yearly written report on the progress achieved by the Union.

(3) Rules governing the functioning of the Union's institutions are laid down in in the Rules of Procedure which each of them may adopt.

1.7.2.

1.7.3. *Chapter 1: The European Parliament¹*

Article 76 (Function and composition of the European Parliament; President)

(1) The European Parliament shall form the House of Citizens in the legislative process of the Union.

(2) It shall consist of representatives of the citizens of the Member States brought together in the Union². They shall be elected by direct universal suffrage for a term of five years³.

(3) The number of representatives elected in each Member State shall be as follows⁴:

Belgium	22
<i>Bulgaria</i>	17
<i>Czech Republic</i>	22
Denmark	13
Germany	99
<i>Estonia</i>	6
Greece	22
Spain	50
France	72

¹ **According to the *acquis communautaire* (cf. Articles 5 EU, 7(1), 189 EC), and in line with the democratic principle, the Institutional Title of this Constitution starts with the European Parliament.**

² Cf. Article 189(1) EC.

³ Cf. Article 190 EC, as amended by the Treaty of Nice.

⁴ Cf. Article 190 EC, as amended by the Treaty of Nice.

Ireland	12
Italy	72
<i>Cyprus</i>	6
<i>Latvia</i>	12
<i>Lithuania</i>	8
Luxembourg	6
<i>Hungary</i>	22
<i>Malta</i>	6
Netherlands	25
Austria	17
<i>Poland</i>	50
Portugal	22
<i>Romania</i>	33
<i>Slovakia</i>	13
<i>Slovenia</i>	7
Finland	13
Sweden	18
United Kingdom	72

(4) The number of members of the European Parliament shall not exceed 732¹. From 2009, the number shall be limited to 700.

(5) In the event of amendments to paragraph 3, the number of representatives elected in each Member State must ensure appropriate representation of the citizens of the States brought together in the Union². The number of representatives elected in each Member States shall be at least 6.

(6) The European Parliament shall elect its President with a majority of its members.

Article 77 (Political control of the Commission; motion of censure)

(1) The European Parliament shall control the European Commission.

¹ Cf. Article 189(2) EC, as amended by the Treaty of Nice.

² Cf. Article 190(2), subpara (2) EC.

(2) The European Parliament may, acting by a majority of its members, request the Commission to submit any appropriate proposal on matters on which it considers that a Union law is required for the purpose of implementing this Constitution¹. The President of the Commission must give a reasoned opinion to the plenary of the European Parliament in case it should decide not to follow the request.

(3) In the course of its duties, the European Parliament may, at the request of a quarter of its members, set up a temporary Committee of Inquiry to investigate, without prejudice to the powers conferred by this Constitution on other institutions or bodies, alleged contraventions or maladministration in the implementation of Union law, except where the alleged facts are being examined before a court and while the case is still subject to legal proceedings. The temporary Committee of Inquiry shall cease to exist on the submission of its report².

(4) The European Parliament may, by a motion of censure carried by a two thirds majority of the votes cast, representing the majority of the members of the European Parliament, force the Commission to resign as a body.

1.7.4.

1.7.5.

1.7.6. Chapter 2: The Council of the European Union

Article 78 (Composition of the Council)

(1) The Council shall consist of one representative of each Member State at ministerial level, authorised to commit the government of that Member State¹.

(2) The Council can be assisted by conferences consisting of departmental ministers. Where the Council takes decisions within the context of its executive tasks under Article 79 paragraph 2, these conferences shall not have any decision-making power.

¹ Cf. Article 192(2) EC.

² Cf. Article 193 EC.

Article 79 (Council as House of States; Council in its executive function; Presidency)

(1) The Council shall form the House of States in the legislative process of the Union. With regard to this function of the Council, the office of the President shall be held in turn by each Member State in the Council for a term of six months; the Council may decide unanimously a longer term. The order in which the office of the President shall be held shall be decided by the Council unanimously².

(2) In addition and without prejudice to the competences of the Commission the Council ensures, together with the Commission, coordination of

- the general economic policies of the Member States³;
- the common foreign and security policy.

For these executive tasks of the Council, one of the ministers may be elected as President for a term of [x] years.⁴

1.7.7. Chapter 3: The European Commission

Article 80 (Tasks of the Commission)

(1) The executive power of the Union shall be vested in the European Commission.

¹ Cf. Article 203(1) EC.

² Cf. Article 203(2) EC.

³ Cf. Article 202, first indent EC.

⁴ X should be for some years in order to achieve continuity. As an alternative, the responsible Commissioner could chair the executive Council sessions, e.g. the European Minister for Foreign Affairs appointed according to the procedure laid down in Article 82(4) would chair the session of the Foreign Affairs Council. One could also think of the President of the Commission elected according to the procedure laid down in Article 81(3) in the chair of these executive Council sessions.

(2)¹ In order to ensure the proper functioning and development of the Union, the Commission in addition shall

- have the exclusive right to initiate Union legislation and decisions², except in cases where this Constitution provides otherwise;
- ensure that the provisions of this Constitution and the measures taken by the institutions pursuant thereto are applied;
- supervise the development of national economic policies, in particular of national budgets to ensure that Member States do not depart from the medium-term objective for the budgetary position of close to balance or in surplus, or that they do not otherwise jeopardise the proper functioning of economic and monetary union, under the conditions laid down in Part Two of this Constitution³;
- formulate recommendations or deliver opinions on matters dealt with in this Constitution, if it expressly so provides or if the Commission considers it necessary;
- have its own power of decision and participate in the shaping of measures taken by the Council and the European Parliament in the manner provided for in this Constitution;
- exercise the powers conferred on it by the European Parliament and by the Council for the implementation of the rules laid down by them;
- ensure the consistency of the external representation of the Union.

¹ Cf. Articles 211 EC.

² **Cf. the Commission's monopoly of initiative under Articles 251(2), 252 (a) EC. Cf. also the summary description of Article 18 of the Preliminary draft Constitutional Treaty of the Convention Presidium, where the "monopoly of initiative" is included in the core functions of the Commission. Cf. also para 46 of the EPP Congress Document "A Constitution for a Strong Europe": "The monopoly of initiative of the Commission must be guaranteed, as it constitutes a central element of the inter-institutional balance and a major source of future development and refinement of EU legislation."**

³ This Discussion Paper suggests to strengthen the role of the Commission in the application of the current Articles 99 and 104 EC. Details are laid down in Part Two.

Article 81 (Composition of the Commission; appointment and election of its President and its members; independence)

(1) The members of the Commission shall be chosen on the grounds of their general competence. Their independence shall be beyond doubt¹.

(2) The Commission shall include one national of each of the Member States².

The number of members of the Commission may be altered, with the assent of the European Parliament, by the Council acting unanimously.

Only nationals of Member States may be members of the Commission.

(3) A candidate for the President of the Commission shall be proposed to the European Parliament by the Council, acting by qualified majority³, in the light of the results of the European Parliament elections. To become President of the Commission, the proposed candidate requires the approval of an absolute majority of the members of the European Parliament⁴.

The other members of the Commission shall be nominated by the President of the Commission. They must be approved by the Council, acting by qualified majority. They are elected by the European Parliament after having been heard individually with regard to paragraph 1⁵.

¹ Cf. Article 213(1) EC.

² Cf. Article 4(1) of the Protocol on the Enlargement of the European Union, annexed to the Treaty of Nice, which is also attached to this Constitution. Cf. also Article 4(2) of this Protocol for the new rule to apply when the Union consists of 27 Member States: “The number of members of the Commission shall be less than the number of Member States. The members of the Commission shall be chosen according to a rotation system based on the principle of equality, the implementing arrangements for which shall be adopted by the Council, acting unanimously.” [to be added, as suggested by this Discussion Paper: “with the assent of the European Parliament.”]

³ Cf. Article 214 EC (as amended by the Treaty of Nice) which provides for appointment of the Commission President by qualified majority vote of the Council. Before the Nice Treaty, the Commission president and the other Commission members were nominated and appointed by common accord of the governments of the Member States.

⁴ Cf. para 47 of the EPP Congress document “A Constitution for a Strong Europe”, where the following reason is given for this new procedure: “This would give European political parties the opportunity to present their own candidates in the framework of the campaign for European elections. It would ensure a more personalised election campaign and increase democratic control and support of the European Commission.”

⁵ Cf. para 48 of the EPP Congress document “A Constitution for a Strong Europe”.

(4) The term of office of the members of the Commission shall be a period of five years. It shall be renewable¹.

(5) The members of the Commission shall, in the general interest of the Union, be completely independent in the performance of their duties.

In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties. Each Member State undertakes to respect this principle and not to seek to influence the members of the Commission in the performance of their tasks².

Article 82 (Political guidance of the President; decision-making; European Minister for Foreign Affairs)³

(1) The Commission shall work under the political guidance of its President, who shall decide on its internal organisation in order to ensure that it acts consistently, efficiently and on the basis of collegiality.

(2) The Commission shall act by a majority of the number of members⁴.

(3) The responsibilities incumbent upon the Commission shall be structured and allocated among its members by its President; when doing so, the President may also establish a hierarchy among the members of the Commission. The President may reshuffle the allocation of those responsibilities and the hierarchy during the Commission's term of office. The members of the Commission shall carry out the duties devolved upon them by the President under his authority; they shall have a right to give instructions to the Directorate-Generals and Services placed under their authority⁵.

(4) The President shall appoint Vice-Presidents from among the members of the Commission. The

¹ Cf. Articles 213 (2), 214(1) EC.

² Cf. Article 213_(2+) EC.

³ Cf. Article 217, as amended by the Treaty of Nice.

⁴ Cf. Article 219(1) EC.

⁵ Cf. Article 217(2) EC.

President of the Commission shall, by accord of the Council, charge one of the Vice-Presidents with the representation of the Union in its external relations. This Vice-President shall bear the title “European Minister for Foreign Affairs”¹.

(5) A member of the Commission shall resign if the President so requests for a stated reason.

(6) The President of the Commission may at any time request a vote of confidence of the European Parliament. Where the majority of the members of the European Parliament does not express its confidence on such request, the Commission must resign as a whole.

1.7.8.

1.7.9.

1.7.10. *Chapter 4: The European Court of Justice*

Article 83 (Function and composition of the Court of Justice)

(1) The Court of Justice shall ensure that in the interpretation and application of this Constitution the law is observed.²

(2) The Court of Justice shall consist of one judge per Member State³.

The Court of Justice shall be assisted by eight Advocates-General. Should the Court of Justice so request, the Council may, acting unanimously and with obtaining the assent of the European Parliament, increase the number of Advocates-General.

It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the

¹ Cf. also point 5 of the recommendations in the Final Report of Convention Working Group VII “External Action” (Part A), where a “European External Representative” is suggested who is appointed by the Council, with the approval of the President of the Commission and endorsement by the European Parliament, and who is “a full member of the Commission and preferably its Vice-President”.

² Cf. Article 220 EC, as amended by the Treaty of Nice.

³ Cf. Article 221(1) EC, as amended by the Treaty of Nice.

Court of Justice, require his involvement¹.

(3) The Judges and Advocates-General of the Court of Justice shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence; they shall be appointed by the Council, acting by a qualified majority, with obtaining the assent of the European Parliament for a term of eight years. Their term of office shall not be renewable.

Every three years there shall be a partial replacement of the Judges and Advocates-General, in accordance with the conditions laid down in the Statute of the Court of Justice.

(4) The Judges shall elect the President of the Court of Justice from among their number for a term of three years. He may be re-elected.

(5) The Court of First Instance shall have jurisdiction to hear and determine certain actions or proceedings under the conditions and within the limits laid down by Union law. Such decisions by the Court of First Instance may be subject to a right of appeal to the Court of Justice on points of law only, under the conditions and within the limits laid down by the Statute of the Court of Justice.

Article 84 (Direct jurisdiction of the Court of Justice)²

The Court of Justice shall have direct jurisdiction, under the conditions and within the limits laid down in the Statute of the Court of Justice:

- (a) to rule on proceedings for infringement of obligations under this Constitution by a Member State, brought by the Commission or by a Member State³;
- (b) to rule on proceedings brought by the Commission for a Member State's failure to comply with a judgement of the Court of Justice, including the imposition of a lump sum or penalty

¹ Cf. Article 222 EC, as amended by the Treaty of Nice.

² Summarises the cases where, under the existing *acquis communautaire*, direct actions may be brought before the ECJ.

³ Cf. Articles 226, 227 EC.

payment on such Member State¹;

- (c) to review the legality of acts adopted jointly by the European Parliament and the Council, of acts of the Council, of the Commission, of the ECB, of Europol, Eurojust and Eurobord, other than recommendations or opinions, and of acts of the European Parliament intended to produce legal effects vis-à-vis third parties, in actions brought by a Member State, the European Parliament, the Council or the Commission, on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Constitution or of any rule of law relating to its application, or misuse of powers²;
- (d) in actions for annulment brought by the Court of Auditors³, the Committee of the Regions⁴, the Economic and Social Committee or the ECB for the purpose of protecting their prerogatives or claiming an infringement of Title III of this Constitution;
- (e) in actions for annulment brought by a national parliament⁵ claiming an infringement of Title III of this Constitution⁶;
- (f) in actions for annulment instituted by any natural or legal person which alleges, in a substantiated manner, the infringement of a fundamental right granted to them by the Charter of Fundamental Rights of the European Union by a legal act of the Union, of the ECB, of Europol, Eurojust or Eurobord, including the claim that such a legal act directly and individually affects their right under Article 6 of this Constitution for lack of competence, infringement of an essential procedural requirement, infringement of this Constitution or of any rule of law relating to its application, or misuse of powers⁷;

¹ Cf. Article 228 EC.

² Cf. Article 230(1) and (2), as amended by the Treaty of Nice.

³ Cf. Article 230(3) as amended by the Treaty of Nice.

⁴ Cf. the Final Report of Convention Working Group I “Subsidiarity”, p. 8.

⁵ In line with the deliberations of Convention Working Group I “Subsidiarity”, this includes both chambers of a national Parliament where national constitutional law so allows.

⁶ Cf. the Final Report of Convention Working Group I “Subsidiarity”, p. 8. It is suggested not to limit the judicial control to compliance with the principle of subsidiarity, but to extend it to all competence provisions under Articles 67-74. In addition, it is suggested not to make national parliament action dependent on previous completion of the early warning procedure; cf. also the Final Report of Convention Working Group IV “National Parliaments”, para 25, third indent.

⁷ Cf. Article 230(4) EC. The new wording attempts to combine the justiciability of the Charter with the existing action for annulment without creating a special procedure for the protection of

- (g) in actions brought by a Member State, an institution of the Union or the ECB to establish that an institution of the Union or the ECB failed to act after having been called to act¹;
- (h) in actions brought by the Court of Auditors, the Committee of the Regions, the Economic and Social Committee or the ECB to establish that an institution of the Union infringed their prerogatives by having failed to act after having been called to act²;
- (i) in actions brought by any natural or legal person which complain to be infringed, by a failure to act of one of the institutions of the Union, of the ECB, of Europol, Eurojust or Eurobord, which first has been called to act, in a fundamental right granted to them by the Charter of Fundamental Rights, including the claim that such failure directly and individually affects their right under Article 6 of this Constitution for lack of competence, infringement of an essential procedural requirement, infringement of this Constitution or of any rule of law relating to its application, or misuse of powers³;
- (j) in disputes relating to compensation for damage provided for in Article 41 paragraph 3⁴;
- (k) in disputes concerning the fulfilment by national central banks of obligations under this Constitution and the Statute of the ESCB. In this connection the powers of the Governing Council of the ECB in respect of national central banks shall be the same as those conferred upon the Commission in respect of Member States by lit. (a) and (b). If the Court of Justice finds that a national central bank has failed to fulfil an obligation under this Constitution, that bank shall be required to take the necessary measures to comply with the judgment of the Court of Justice⁵;
- (l) in disputes concerning the fulfilment by Member States of obligations under the Statute of the EIB. In this connection, the Board of Directors of the Bank shall enjoy the powers conferred upon the Commission in lit. (a) and (b)⁶;

human rights.

¹ Cf. Article 232(1), (2) and (4) EC.

² Cf. Article 232(4) EC.

³ Cf. Article 232(3) EC.

⁴ Cf. Article 235 EC.

⁵ Cf. Article 237(d) EC.

⁶ Cf. Article 237(a) EC.

- (m) in disputes concerning measures adopted by the Board of Governors of the EIB. In this connection, any Member State, the Commission or the Board of Directors of the Bank may institute proceedings under the conditions laid down in lit. (c)¹;
- (n) in disputes concerning measures adopted by the Board of Directors of the EIB. Proceedings against such measures may be instituted only by Member States or by the Commission, under the conditions laid down in lit. (c), and solely on the grounds of non-compliance with the procedure provided for in Article 21 paragraph 2 and 5 to 7 of the Statute of the EIB²;
- (o) in disputes between the Union, the ECB, the EIB, Europol, Eurojust or Eurobord and their servants within the limits and under the conditions laid down in the staff regulations or the conditions of employment³;
- (p) to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the Union, the ECB, the EIB, Europol, Eurojust or Eurobord, whether that contract be governed by public or private law⁴;
- (q) in any dispute between Member States which relates to the subject matter of this Constitution if the dispute is submitted to it under a special agreement between the parties⁵.

Article 85 (Preliminary rulings and opinions of the Court of Justice)

(1)¹ The Court of Justice shall also have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of this Constitution;
- (b) the validity and interpretation of acts of the institutions of the Union, of the ECB, of Europol, Eurojust and Eurobord;

¹ Cf. Article 237(b) EC.

² Cf. Article 237(c) EC.

³ Cf. Article 236 EC.

⁴ Cf. Article 238 EC.

⁵ Cf. Article 239 EC.

- (c) the interpretation of the statutes of bodies established by an act of the Union, where those statutes so provide.

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.

(2)² The European Parliament, the Council, the Commission, the ECB or a Member State may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of this Constitution. Where the opinion of the Court of Justice is adverse, the agreement may enter into force only in accordance with Article 143.

Article 86 (No suspensory effect)

(1)³ Actions brought before the Court of Justice shall not have suspensory effect. The Court of Justice may, however, if it considers that circumstances so require, order that application of the contested act be suspended.

(2)⁴ The Court of Justice may in any cases before it prescribe any necessary interim measures.

Article 87 (Enforcement)⁵

The judgments of the Court of Justice shall be enforceable under the conditions laid down in Article

¹ Cf. Article 234 EC.

² Cf. Article 300(6) EC.

³ Cf. Article 242 EC.

⁴ Cf. Article 243 EC.

⁵ Cf. Article 244 EC.

Article 88 (Reserve jurisdiction of national courts)¹

Save where jurisdiction is conferred on the Court of Justice by this Constitution, disputes to which the Union is a party shall not on that ground be excluded from the jurisdiction of the courts or tribunals of the Member States.

1.7.11.

1.7.12.

1.7.13. *Chapter 5: The European Court of Auditors*

Article 89 (Function and composition of the Court of Auditors; independence)²

(1) The Court of Auditors shall examine the accounts of all revenue and expenditure of the Union. It shall also examine the accounts of all revenue and expenditure of all bodies set up by the Union insofar as the relevant constituent instrument does not preclude such examination.

The Court of Auditors shall provide the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions which shall be published in the Official Journal of the European Union. This statement may be supplemented by specific assessments for each major area of Union activity¹.

(2) The Court of Auditors shall consist of one national from each Member State.

(3) The members of the Court of Auditors shall be chosen from among persons who belong or have belonged in their respective countries to external audit bodies or who are especially qualified for this office. Their independence must be beyond doubt.

(4) The members of the Court of Auditors shall be appointed for a term of six years. The Council, acting by a qualified majority with the approval of the European Parliament, shall adopt the list of

¹ Cf. Article 240 EC.

² Cf. Article 248~~7~~ EC (as amended by the Treaty of Nice).

members drawn up in accordance with the proposals made by each Member State. The term of office of the members of the Court of Auditors shall be renewable.

They shall elect the President of the Court of Auditors from among their number for a term of three years. The President may be re-elected.

(5) The members of the Court of Auditors shall, in the general interest of the Union, be completely independent in the performance of their duties.

In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties.

1.7.14.

1.7.15.

1.7.16.

1.7.17. *Chapter 6: The Union's Specialised Organisations: ECB, EIB, Europol, Eurojust and Eurobord*

Article 90 (European Central Bank; objectives and tasks; decision-making bodies; independence; submission to rule of law)²

(1) The primary objective of the ECB shall be to maintain price stability³. Without prejudice to the objective of price stability, the ECB shall support the general economic policies in the Union with a view to contributing to the achievement of the objectives of the Union as laid down in Article 58 paragraph 1 lit. (a)⁴. The ECB shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 60⁵.

¹ Cf. Article 248 (1) EC (as amended by the Treaty of Nice).

² Cf. **Article 22 of the Preliminary draft Constitutional Treaty of the Convention Presidium, with the title “European Central Bank”. It is strongly suggested to deal in this Article not only with the tasks of the ECB and with the composition of its decision-making bodies, but also to set out the independence of the ECB, in view of its constitutional importance, and also its primary objective. According to the Final Report of Working Group VI “Economic Governance”, p. 3, “a large number of members of the group consider that the tasks, mandate and statute of the European Central Bank should remain unchanged, and should not be affected by any new treaty provisions.”**

³ Cf. Article 105(1), first sentence EC.

⁴ Cf. Article 105(1), second sentence EC.

⁵ Cf. Article 105(1), third sentence EC.

(2) The main task of the ECB shall be to define and implement the monetary policy of the Union¹. The ECB shall have the exclusive right to authorise the issue of euro banknotes within the Union².

(3) The ECB shall have legal personality³. The national central banks shall be the sole subscribers to and holders of its capital⁴. Its decision-making bodies shall be the Executive Board and the Governing Council.

When implementing its tasks, the ECB shall make use of the European System of Central Banks (ESCB), composed of the ECB and of central banks of the Member States (“national central banks”)⁵. The ESCB shall be governed by the decision-making bodies of the ECB⁶.

(4) The Executive Board of the ECB shall comprise the President, the Vice-President and six other members, all to be appointed from among persons of recognised standing and professional experience in monetary or banking matters by a two thirds majority of the governments of the Member States which have introduced the euro, at the level of Heads of State or Government, on a recommendation from the Council, after it has consulted the European Parliament and the Governing Council of the ECB. Their term of office shall be eight years and shall not be renewable. Only nationals of the Member States which have introduced the euro may be members of the Executive Board of the ECB⁷.

(5) The Governing Council of the ECB shall comprise the members of the Executive Board and the governors of the national central banks of the Member States which have introduced the euro⁸. The governors of the national central banks shall be appointed by the respective Member States on a recommendation from the Executive Board of the ECB, based on the requirements of the Statute of the ESCB.

The Governing Council of the ECB shall act by a simply majority, save as otherwise provided in the Statute of the ESCB⁹. In the event of a tie, the President shall have the casting vote¹⁰. The Members of the Executive Board and eight of the governors each shall have one vote. The voting right of the governors shall be exercised for a period of two years on a rotating basis, subject to the conditions to be determined by the Governing Council. Such decision must take into account both the capital share of the national central banks and the need for a wide geographic basis of the decisions of the Governing Council.

(6) When exercising the powers and carrying out the tasks and duties conferred upon them by this Constitution and by the Statute of the ESCB, neither the ECB, nor a national central bank, nor any member of their decision-making bodies shall neither seek nor take instructions from any Union institution or body, from any government of a Member State or from any other body. The Union institutions and bodies and the governments of the Member States undertake to respect this

¹ Cf. Article 105(2), first indent EC.

² Cf. Article 106(1), first sentence EC.

³ Cf. Article 107(2) EC.

⁴ Cf. Article 28.2 ESCB Statute.

⁵ Cf. Article 107(1) EC.

⁶ Cf. Article 107(3) EC.

⁷ Cf. Article 112(2) EC.

⁸ Cf. Article 112(1) EC.

⁹ Cf. Article 10.2, subpara 2, second sentence ESCB Statute.

¹⁰ Cf. Article 10.2, subpara 2, third sentence ESCB Statute.

principle and not to seek to influence the members of the decision-making bodies of the ECB or of the national central banks in the performance of their tasks¹.

(7)² The ECB shall be consulted:

- on any proposed Union act in its fields of competence,
- by national authorities regarding any draft legislative provision in its fields of competence, but within the limits and under the conditions set out by a Union law.

The ECB may submit opinions to the appropriate Union institutions or bodies or to national authorities on matters in its fields of competence.

(8) The ECB shall act within the limits of the tasks and competences conferred upon it by this Constitution and by the Statute of the ESCB, annexed to this Constitution³. It shall make good any damage caused by its decision-making bodies or servants in the performance of their duties; Article 41 paragraph 3 shall apply accordingly⁴.

Article 91 (European Investment Bank)⁵

(1) The EIB shall have the task to contribute, by having recourse to the capital market and utilising its own resources, to the balanced and steady development of the internal market in the interest of the Union. For this purpose the EIB shall, operating on a non-profit making basis, grant loans and give guarantees which facilitate the financing of projects in the following sectors of the economy:

- (a) projects for developing less-developed regions;
- (b) projects for modernising or converting undertakings or for developing fresh activities called for by the progressive establishment of the internal market, where these projects are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States;

¹ Cf. Article 108 EC.

² Cf. Article 105 (4) EC.

³ Cf. Article 8 EC.

⁴ Cf. Article 288(3) EC.

⁵ **The EIB has not been included in the Preliminary draft Constitutional Treaty of the Convention Presidium, even though it is mentioned in Part Five of the EC Treaty after the Community institutions.**

(c) projects of common interest to several Member States which are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States¹.

(2) The EIB shall have legal personality². Its members shall be the Member States³.

(3) The EIB shall act within the limits of the tasks and competences conferred upon it by this Constitution and by the Statute of the EIB, annexed to this Constitution⁴. It shall make good any damage caused by its decision-making bodies or servants in the performance of their duties; Article 41 paragraph 3 shall apply accordingly⁵.

Article 92 (Europol)⁶

(1) The objective of the European Police Office (Europol) shall be to improve the effectiveness and cooperation of the competent authorities in the Member States in preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime where there are factual indications that an organized criminal structure is involved and two or more Member States are affected by the forms of crime in question in such a way as to require a common approach by the Member States owing to the scale, significance and consequences of the offences concerned⁷.

(2) Europol shall have legal personality⁸.

(3) Europol shall act within the limits of the tasks and competences conferred upon it by this Constitution, by the Europol-Agreement, annexed to this Constitution as a Protocol, and by a Union law. It shall entirely be financed from the Union's budget.

Europol shall make good any damage caused by its decision-making bodies or servants in the performance of their duties; Article 41 paragraph 3 shall apply accordingly¹.

¹ Cf. Article 267(1), first sentence EC.

² Cf. Article 266(1) EC.

³ Cf. Article 266(2) EC.

⁴ Cf. Article 9 EC.

⁵ Cf. Article 288 (2) EC and Case C-270/89, *SGEEM and Etroy v. EIB* [1992] ECR I-6211.

⁶ Cf. the Europol-Agreement, concluded under the former Article K.3 EU.

⁷ Cf. Article 2 of the Europol-Agreement.

⁸ Cf. Article 26(1) of the Europol-Agreement.

Article 93 (Eurojust; European Public Prosecutor)

(1) The objective of the European Judicial Cooperation Unit (Eurojust) shall be to ensure close cooperation between judicial and other competent authorities of the Member States with a view to fight against serious cross-border crime, particularly in the case of organised crime, taking into account, in particular, the analyses carried out by Europol². In addition, Eurojust shall prevent fraud to the detriment of the Union's budget³.

(2) Eurojust shall have legal personality⁴. It shall be composed of one national member seconded by each Member State in accordance with its legal system, being a prosecutor, judge or police officer of equivalent competence⁵.

(3) Eurojust shall act within the limits of the tasks and competences conferred upon it by a Union law. It shall be entirely financed from the Union's budget.

A Union law extending the mandate of Eurojust to include the functions of a European Public Prosecutor shall require, by way of derogation from Article 102, the Council acting unanimously and the assent of the majority of the members of the European Parliament.

(4) Eurojust shall make good any damage caused by its decision-making bodies or servants in the performance of their duties; Article 41 paragraph 3 shall apply accordingly⁶.

Article 94 (Eurobord)⁷

¹ Cf. Article 39 (2) of the Europol-Agreement.

² Cf. Article 29, second subpara and Article 31 EU, as amended by the Nice Treaty.

³ Integrates the functions of the European Anti-Fraud Office (OLAF) into Eurojust.

⁴ Cf. Article 1 of Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, O.J. 2002 L 63/1.

⁵ Cf. Article 2(1) of Council Decision of 28 February 2002 setting up Eurojust.

⁶ When Eurojust becomes a Union organisation fully subject to the Union's rule of law, it is no longer appropriate, as currently foreseen in Article 24 of Council Decision of 28 February 2002 setting up Eurojust, that liability cases are heard by national courts. Instead, the general principle of Article 41(3) of the Charter should also apply to Eurojust.

⁷ Cf. Communication from the Commission to the Council and the European Parliament of 7 May 2002: Towards Integrated Management of the External Borders of the Member States of the

(1) The objective of the European Border Control Organisation (Eurobord) shall be to coordinate and supervise, while having recourse to the competent national external border authorities, the control of the external land, maritime and air borders of the Union.

(2) Eurobord shall have legal personality. The staff of Eurobord shall have the full prerogatives of public authority needed to perform their functions, irrespective of their nationality and their place of deployment. It shall be placed under the operational command of the Eurobord Executive Council, composed of a Director, appointed jointly by the Council acting with qualified majority and the European Parliament acting with the majority of its members, and the heads of the competent national external border control authority.

(3) Eurobord shall act within the limits of the tasks and competences conferred upon it by a Union law. It shall be entirely financed from the Union's budget.

(4) It shall make good any damage caused by its decision-making bodies or servants in the performance of their duties; Article 41 paragraph 3 shall apply accordingly.

European Union, where a “European Corps of Border Guards” is proposed on pp. 20 et seq.

Article 95 (Committee of the Regions)

(1) The Committee of the Regions shall represent the regional and local bodies which either hold a regional or local authority electoral mandate or are politically accountable to an elected assembly¹. Its advice shall ensure that the Union gives due regard to the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels, as well as to the principles of subsidiarity and proximity to the Union's citizens².

(2) The number of members of the Committee of the Regions shall not exceed 350.

The number of its members shall be as follows³:

Belgium	12
<i>Bulgaria</i>	<i>12</i>
<i>Czech Republic</i>	<i>12</i>
Denmark	9
Germany	24
<i>Estonia</i>	<i>7</i>
Greece	12
Spain	21
France	24
Ireland	9
Italy	24
<i>Cyprus</i>	<i>6</i>
<i>Latvia</i>	<i>7</i>
<i>Lithuania</i>	<i>9</i>
Luxembourg	6
<i>Hungary</i>	<i>12</i>

¹ Cf. Article 263(1) EC, as amended by the Treaty of Nice.

² Cf. para 50 of the EPP Congress Document "A Constitution for a Strong Europe".

³ Cf. Article 263(2), (3) EC, as amended by the Treaty of Nice.

<i>Malta</i>	5
Netherlands	12
Austria	12
<i>Poland</i>	21
Portugal	12
<i>Romania</i>	15
<i>Slovakia</i>	9
<i>Slovenia</i>	7
Finland	9
Sweden	12
United Kingdom	24

(3)¹ The members of the Committee and an equal number of alternate members shall be appointed for four years, on proposals from the respective Member States. Their term of office shall be renewable. The Council, acting by a qualified majority, shall adopt the list of members and alternate members drawn up in accordance with the proposals made by each Member State. No member of the Committee shall at the same time be a Member of the European Parliament.

The members of the Committee may not be bound by any mandatory instructions. They shall be completely independent in the performance of their duties, in the general interest of the Union.

(4)² The Committee shall elect its chairman and officers from among its members for a term of two years.

(5) The Committee of the Regions shall be consulted on any proposed Union act with regard to the definition and implementation of the common transport policy³, employment policy⁴, social policy measures⁵, education and vocational training⁶, culture⁷, public health⁸, trans-European networks⁹, and economic and social cohesion¹⁰.

¹ Cf. Article 263(4) and (5) EC, as amended by the Treaty of Nice.

² Cf. Article 264(1) EC.

³ Cf. Article 71 EC.

⁴ Cf. Article 129 EC.

⁵ Cf. Article 137(2) EC.

⁶ Cf. Article 149(4), 150(4) EC.

⁷ Cf. Article 151(5) EC.

⁸ Cf. Article 152(4) EC.

⁹ Cf. Article 156 EC.

¹⁰ Cf. Articles 159(3), 161(1) EC.

(6)¹ The European Parliament, the Council or the Commission may consult the Committee in all other cases in which they consider it appropriate, in particular in those which concern cross-border cooperation.

The Committee may issue an opinion on its own initiative in cases in which it considers such action appropriate.

Where the Economic and Social Committee is consulted, the Committee of the Regions shall be informed by the Council or the Commission of the request for an opinion. Where it considers that specific regional interests are involved, the Committee of the Regions may issue an opinion on the matter.

Article 96 (Economic and Social Committee)

(1) The Economic and Social Committee shall represent the various economic and social components of organised civil society, and in particular include representatives of producers, farmers, carriers, workers, dealers, craftsmen, professional occupations, consumers and the general interest². It shall ensure that the Union is in a constant and regular dialogue with the organised civil society.

(2) The number of members of the Economic and Social Committee shall not exceed ³⁵⁰.

The number of its members shall be as follows:

Belgium	12
<i>Bulgaria</i>	<i>12</i>
<i>Czech Republic</i>	<i>12</i>
Denmark	9
Germany	24
<i>Estonia</i>	<i>7</i>
Greece	12
Spain	21
France	24
Ireland	9

¹ Cf. Article 265(1), (3), (4) and (5) EC.

² Cf. Article 257(1) EC, as amended by the Treaty of Nice.

Italy	24
<i>Cyprus</i>	6
<i>Latvia</i>	7
<i>Lithuania</i>	9
Luxembourg	6
<i>Hungary</i>	12
<i>Malta</i>	5
Netherlands	12
Austria	12
<i>Poland</i>	21
Portugal	12
<i>Romania</i>	15
<i>Slovakia</i>	9
<i>Slovenia</i>	7
Finland	9
Sweden	12
United Kingdom	24

(3)¹ The members of the Committee shall be appointed for four years, on proposals from the Member States. The Council, acting by a qualified majority, shall adopt the list of members drawn up in accordance with the proposals made by each Member State. The term of office of the members of the Committee shall be renewable. No member of the Committee shall at the same time be a Member of the European Parliament.

The Council shall consult the Commission. It may obtain the opinion of European bodies which are representative of the various economic and social sectors to which the activities of the Union are of concern.

²The members of the Committee may not be bound by any mandatory instructions. They shall be completely independent in the performance of their duties, in the general interest of the Union.

¹ Cf. Article 259 EC, as amended by the Treaty of Nice.

² Cf. Article 258(3) EC, as amended by the Treaty of Nice.

(4) The Committee shall elect its chairman and officers from among its members for a term of two years.

(5) The Economic and Social Committee shall be consulted on any proposed Union act with regard to the definition and implementation of the common agricultural policy¹, internal market legislation, in particular legislation affecting the free movement of workers, freedom of establishment and fiscal provisions², the definition and implementation of the common transport policy³, employment policy⁴, social policy measures⁵, including measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation⁶, education and vocational training⁷, public health⁸, trans-European networks⁹, industry¹⁰, economic and social cohesion¹¹, research and development¹², environment¹³, and measures concerning the safe and peaceful use of nuclear energy in accordance with Part Two of the Constitution.

(6)¹⁴ The European Parliament, the Council or the Commission may consult the Committee in all other cases in which they consider it appropriate.

In addition, the Committee may issue an opinion on its own initiative in cases in which it considers such action appropriate.

1.7.19.

1.7.20. Chapter 8: Union Agencies

Article 97 (Establishment of Union agencies; independent Anti-Trust Authority)

¹ Cf. Article 37(2) EC.

² Cf. Article 40, 44, 93-95 EC.

³ Cf. Article 71 EC.

⁴ Cf. Article 129 EC.

⁵ Cf. Article 137(2) EC.

⁶ Cf. Article 141(3) EC.

⁷ Cf. Article 149(4), 150(4) EC.

⁸ Cf. Article 152(4) EC.

⁹ Cf. Article 156 EC.

¹⁰ Cf. Article 157(3) EC.

¹¹ Cf. Articles 159(3), 161(1) EC.

¹² Cf. Articles 166(1), (4) and 172 EC.

¹³ Cf. Article 175 EC.

¹⁴ Cf. Article 262(1) and (4) EC.

(1) In order to fulfil its tasks, the Union may, if necessary, establish Union agencies and provide them with legal personality by a Union law which also provides for judicial review of and liability for acts adopted by such bodies. By way of derogation from Article 102, adoption of such a Union law shall require the European Parliament acting by the majority of its members and the Council acting unanimously.

(2) Paragraph 1 shall also apply if Parliament and Council, following a proposal from the European Commission, decide to establish an independent Anti-Trust Authority of the Union.

1.8. Title V: Implementation of Union Action¹

1.8.1.

1.8.2. Chapter 1: Union Instruments

Article 98 (List of Union instruments)²

(1) Within its field of competence, the Union shall act exclusively³, and in line with the principles of subsidiarity and proportionality, through

- (a) Union laws and Union framework laws, enacted by the Union's legislature;
- (b) Union regulations, enacted by the Union's executive⁴;
- (c) Union decisions;
- (d) Union recommendations;
- (e) Union opinions.

(2) A Union law and a Union regulation shall have general application. They shall be binding in their entirety and directly applicable in all Member States.

(3) A Union framework law shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

(4) A Union decision shall be binding in its entirety upon those to whom it is addressed. It shall be notified to those to whom they are addressed and shall take effect upon such notification⁵.

(5) Union recommendations and Union opinions shall have no binding force.

¹ **Title V as in the Preliminary draft Constitutional Treaty of the Convention Presidium.**

² **Cf. Article 249 EC. See also Article 24 as suggested by the Preliminary draft Constitutional Treaty of the Convention Presidium.**

³ **The insertion of "exclusively" makes the list of Union instruments exhaustive. This means that additional instruments, as they are currently used within the framework of the second pillar (CFSP common strategies, joint actions, common positions, cf. Articles 12-15 EU) and of the third pillar (common positions, framework decisions without direct effect, cf. Article 34 EU) will be abolished as a consequence of the extension of the Community method to all Union activities and in an endeavour to simplify the decision-making process of the Union.**

⁴ Cf. points 10 and 12 of the Report by Alain Lamassoure.

⁵ Second sentence taken over from Article 254 (3) EC.

(6) The provisions of this Article shall be without prejudice to the regulatory competence of the ECB under the Statute of the ESCB¹.

Article 99 (Obligation to state reasons)²

(1) Union laws, Union framework laws, Union regulations and Union decisions shall state the reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained pursuant to this Constitution.

(2) The reasons shall include an explanation why, from the point of view of the acting institution, a legal act complies with the principle of subsidiarity and with the principle of proportionality³.

Article 100 (Enforcement of Union decisions)⁴

(1) Union decisions which impose a pecuniary obligation shall be enforceable.

(2) Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the government of each Member State shall designate for this purpose and shall make known to the Commission and to the Court of Justice.

(3) When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority.

(4) Enforcement may be suspended only by a decision of the Court of Justice. However, the courts of the country concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

¹ Cf. Article 110 EC.

² Cf. Article 253 EC.

³ Cf. the proposal of Convention Working Group I “Subsidiarity” (Final Report) of a “subsidiarity sheet” to be attached by the Commission to all legislative proposals.

⁴ Cf. Article 256 EC.

1.8.3. Chapter 2: The Legislative Procedure of the Union¹

Article 101 (Principles of legislation; delegated legislation)

(1) The legislation of the Union shall be implemented through Union laws and Union framework laws.

(2) Union laws and Union framework laws are adopted jointly by the European Parliament (House of Citizens) and by the Council (House of States) according to the co-decision procedure (Article 102).

(3) Where authorised by this Constitution or by a Union law, the Commission may make Union regulations while respecting content, purpose and limitation of the authorisation².

Article 102 (Co-decision procedure)³

(1) Proposals for Union laws and Union framework laws shall be submitted by the Commission simultaneously to the European Parliament and the Council.

(2) The Council, acting by a qualified majority after obtaining the opinion of the European Parliament,

– if it approves all the amendments contained in the European Parliament's opinion, may adopt the proposed act thus amended;

– if the European Parliament does not propose any amendments, may adopt the proposed act;

¹ **Cf. Article 25 of the Preliminary draft Constitution of the Convention Presidium.**

² Cf. points of the Report Lamassoure, para 10 and 12.

³ Cf. Article 252 EC.

- shall otherwise adopt a common position and communicate it to the European Parliament. The Council shall inform the European Parliament fully of the reasons which led it to adopt its common position.

If, within three months of such communication, the European Parliament:

- (a) approves the common position or has not taken a decision, the act in question shall be deemed to have been adopted in accordance with that common position;
- (b) rejects, by an absolute majority of its members, the common position, the proposed act shall be deemed not to have been adopted;
- (c) proposes amendments to the common position by an absolute majority of its members, the amended text shall be forwarded to the Council and the Commission, which shall deliver an opinion on those amendments.

(3) If, within three months of the matter being referred to it, the Council, acting by a qualified majority, approves all the amendments of the European Parliament, the act in question shall be deemed to have been adopted in the form of the common position thus amended; however, the Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion. If the Council does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee according to Article 103.

Article 103 (Conciliation procedure)¹

(1) The Conciliation Committee shall be composed of members of the Council and an equal number of members of the European Parliament. The respective majority of members sent to the Conciliation Committee by the Council and by the European Parliament must be appointed at the beginning of a legislative period as permanent members of the Conciliation Committee for the whole legislative period.

¹ Cf. Article 251 (4) - (7) EC.

The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council.

(2) The Conciliation Committee shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council and of the members of the European Parliament. In fulfilling this task, the Conciliation Committee shall address the common position on the basis of the amendments proposed by the European Parliament.

(3) If, within six weeks of its being convened, the Conciliation Committee approves a joint text, the European Parliament, acting by an absolute majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If either of the two institutions fails to approve the proposed act within that period, it shall be deemed not to have been adopted.

(4) Where the Conciliation Committee does not approve a joint text, the proposed act shall be deemed not to have been adopted.

(5) The periods of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council.

Article 104 (Signature; publication; entry into force)¹

(1) Union laws and Union framework laws shall be signed by the President of the European Parliament and by the President of the Council and published in the Official Journal of the European Union. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following that of their publication.

(2) Union regulations shall be signed by the President of the Commission and published in the Official Journal of the European Union. They shall enter into force on the date specified in them or,

¹ Cf. Article 254 EC.

in the absence thereof, on the twentieth day following that of their publication.

1.8.4. Chapter 3: Enhanced Cooperation¹

Article 105 (Preconditions for enhanced cooperation)

2.

(1) Member States which intend to establish enhanced cooperation between themselves may make use of the institutions, procedures and mechanisms laid down by this Constitution, provided that the proposed enhanced cooperation

- has been initiated by at least eight Member States;
- respects this Constitution and the exclusive competences of the Union; and
- is aimed at furthering the Union's objectives, at protecting and serving the Union's interests and at reinforcement the process of integration².

(2) Enhanced cooperation may be undertaken only as a last resort, when it has been established within the Council that the objectives of such cooperation cannot be attained within a reasonable period by applying the relevant provisions of this Constitution³.

(3) Member States which intend to establish enhanced cooperation between themselves in one of the areas referred to in this Constitution shall address a request to the Commission, which may submit a proposal to the Council to that effect. In the event of the Commission not submitting a proposal, it shall inform the Member States concerned of the reasons for not doing so.

Authorisation to establish enhanced cooperation shall be granted by the Council, acting by a qualified majority, on a proposal from the Commission and with the assent of the European Parliament, acting with a majority of its members.

A member of the Council may request that the matter be referred to the European Council. After that matter has been raised before the European Council, the Council may act in accordance with the first subparagraph of this paragraph⁴.

¹ **Cf. Article 32 of the Preliminary draft Constitutional Treaty of the Convention Presidium, according to which “enhanced cooperation” should be included in Title V “Implementation of Union Action.”**

² Cf. Articles 43 EU and 11 (1) EC (both as amended by the Treaty of Nice).

³ Cf. Article 43a EU (as introduced by the Treaty of Nice).

⁴ Cf. Article 11 EC and 40a EU (as amended by the Treaty of Nice).

Article 106 (Decision making in enhanced cooperation; financing)

(1) For the purpose of the adoption of the acts and decisions necessary for the implementation of enhanced cooperation, the relevant institutional provisions of this Constitution shall apply. However, while all members of the Council shall be able to take part in the deliberations, only those representing Member States participating in enhanced cooperation shall take part in the adoption of decisions.

Such acts and decisions shall not form part of the Union acquis¹.

(2) Member States shall apply, as far as they are concerned, the acts and decisions adopted for the implementation of the enhanced cooperation in which they participate. Such acts and decisions shall be binding only on those Member States which participate in such cooperation and, as appropriate, shall be directly applicable only in those States. Member States which do not participate in such cooperation shall not impede the implementation thereof by the participating Member States².

(3) Expenditure resulting from implementation of enhanced cooperation, other than administrative costs entailed for the institutions, shall be borne by the participating Member States, unless all members of the Council, acting unanimously, with the assent of the European Parliament decide otherwise³.

Article 107 (Openness for all Member States; coordination)

(1) When enhanced cooperation is being established, it shall be open to all Member States. The Commission and the Member States participating in enhanced cooperation shall ensure that as many Member States as possible are encouraged to take part¹.

(2) Any Member State which wishes to participate in enhanced cooperation shall notify its intention to the Council and the Commission, which shall give an opinion to the Council within three months of the date of receipt of that notification. Within four months of the date of receipt of that

¹ Cf. Article 44 (1) EU (as amended by the Treaty of Nice).

² Cf. Article 44 (2) EU.

³ Cf. Article 44a EU (as introduced by the Treaty of Nice).

notification the Commission shall take a decision on the request and on possible specific arrangements as it may deem necessary².

(3) The Council and the Commission shall ensure the consistency of activities undertaken on the basis of enhanced cooperation and the consistency of such activities with the policies of the Union, and shall cooperate to that end³.

¹ Cf. Article 43b EU (as introduced by the Treaty of Nice).

² Cf. Article 11a EC (as introduced by the Treaty of Nice).

³ Cf. Article 45 EU (as introduced by the Treaty of Nice).

2.1. Title VI: The Democratic Life of the Union¹

Article 108 (Equality before the Union's institutions)²

All citizens of the Union are equal vis-à-vis the Union's institutions.

Article 109 (Principle of participatory democracy)³

(1) The Union's democratic system is based on the principle of government of the people, by the people and for the people.

(2) The Union's institutions shall ensure a high level of openness, permitting citizens' organisations of all kinds, including churches and religious associations as well as non-confessional organisations, to play their part in the Union's democratic life.

(3) The political parties shall constitute their internal organisation on a democratic basis. They shall nominate their candidates for the European Parliament according to democratic procedures. In accordance with Article 11 paragraph 2, a Union law shall lay down the regulations governing political parties at European level and in particular the rules regarding their funding.

Article 110 (Elections to the European Parliament)⁴

¹ **Title VI as suggested the Preliminary draft Constitutional Treaty of the Convention Presidium.**

² **As suggested with Article 33 of the Preliminary draft Constitutional Treaty of the Convention Presidium. It should be discussed whether the good purpose behind this new provision is not already fully met by the equality rights under Articles 20, 21 and 23 of the Charter of Fundamental Rights, here inserted at the beginning of the Constitution.**

³ **As suggested with Article 34 of the Preliminary draft Constitutional Treaty of the Convention Presidium.** Para 1 is taken from Article 2 of the Constitution of the French Republic, in fine, where it is mentioned as principle of the Republic: "Gouvernement du peuple, par le peuple et pour le peuple." Para 2 is taken from the summary description of Article 34 of the Preliminary draft Constitutional Treaty of the Convention Presidium. Para 3 is taken from Article 191 EC (as amended by the Treaty of Nice).

⁴ **Cf. Article 190(4) EC. According to Article 35 of the Preliminary draft Constitutional Treaty of the Convention Presidium, this provision should only refer to a protocol which itself would lay down the election procedure.**

(1) At the latest one year before the first European Parliament elections under this Constitution, the European Parliament shall draw up a proposal for elections by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States.

(2) The Council shall, acting unanimously after obtaining the assent of the European Parliament, which shall act by a majority of its members, lay down the appropriate provisions before the first European Parliament elections under this Constitution.

Article 111 (Principle of openness)

(1) All sessions of the European Parliament shall be open to the public. The minutes shall be published.

(2) Whenever the Council acts as House of States in the legislative process, it shall meet in public and its minutes shall be published.

Article 112 (Voting rules in Parliament and Council)¹

(1) The European Parliament shall act by an absolute majority of the votes cast, save as otherwise provided in this Constitution. The European Parliament's Rules of Procedure shall determine the quorum.

(2) The Council shall act by a majority of its members, save as otherwise provided in this Constitution.

Where the Council is required to act by a qualified majority, the assent of the majority of members of the Council representing 50% of the total population of the Union is necessary.

Where a vote is taken, any member of the Council may also act on behalf of not more than one other member².

¹ Cf. Article 198 EC.

² Cf. Article 206 EC.

(3) Abstentions by members present in person or represented shall not prevent the adoption by the Council of acts which require unanimity¹.

(4) Where an enhanced cooperation is established in accordance with Articles 105-107, the qualified majority required under paragraph 2 shall be defined as the majority of the members of the Council, which participate in the enhanced cooperation, representing 50% of the population of the Member States participating in the enhanced cooperation. Unanimity shall be constituted by only those Council members concerned.

Article 113 (Annual legislative programme; annual general report)²

(1) At 1 November, the Commission shall forward the annual legislative programme of the Union for the following year to the European Parliament, the Council, each national parliament, the Committee of the Regions and the Economic and Social Committee.

(2) The Commission shall publish annually, not later than one month before the opening of the session of the European Parliament, a general report on the activities of the Union.

(3) The European Parliament and the Council shall discuss in open session the annual legislative programme and the general report submitted to them by the Commission.

2.2.

Article 114 (Ombudsman)³

(1) The European Parliament shall appoint an Ombudsman empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Union institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role (Article 43 of the Constitution).

¹ Cf. Article 205(3) EC.

² Cf. Articles 200 and 212 EC.

³ **Cf. Article 195 EC. Even though not mentioned in the Preliminary draft Constitutional Treaty of the Convention Presidium, this discussion papers considers the Ombudsman to be a body of such importance for the democratic life of the Union that it should be included in this Title in Part One of the Constitution.**

In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where the Ombudsman establishes an instance of maladministration, he shall refer the matter to the institution concerned, which shall have a period of three months in which to inform him of its views. The Ombudsman shall then forward a report to the European Parliament and the institution concerned. The person lodging the complaint shall be informed of the outcome of such inquiries.

The Ombudsman shall submit an annual report to the European Parliament on the outcome of his inquiries.

(2) The Ombudsman shall be appointed after each election of the European Parliament for the duration of its term of office. The Ombudsman shall be eligible for reappointment.

The Ombudsman may be dismissed by the Court of Justice at the request of the European Parliament if he no longer fulfils the conditions required for the performance of his duties or if he is guilty of serious misconduct.

(3) The Ombudsman shall be completely independent in the performance of his duties. In the performance of those duties he shall neither seek nor take instructions from any body. The Ombudsman may not, during his term of office, engage in any other occupation, whether gainful or not.

(4) The European Parliament shall, after seeking an opinion from the Commission and with the approval of the Council acting by a qualified majority, lay down by Union law the regulations and general conditions governing the performance of the Ombudsman's duties.

2.3. Title VII: The Finances of the Union¹

Article 115 (Budgetary principles)

(1) The Union shall provide itself with the means necessary to attain its objectives and carry through its policies².

(2) All items of revenue and expenditure of the Union shall be included in estimates to be drawn up for each financial year and shall be shown in the budget³.

(3) The revenue and expenditure shown in the budget shall be in balance⁴. Deficits in the Union budget shall be prohibited.

Article 116 (Financing from own resources)⁵

(1) Without prejudice to other revenue, the Union's budget shall be financed wholly from own resources.

(2) The total amount of own resources assigned to the Union is laid down in a Union law. By way of derogation from Article 102, such a Union law shall be approved by the Council, acting unanimously, and the Parliament, assenting the act with the majority of its members.

(3) Revenue from the following shall constitute own resources entered in the budget of the Union:

(a) levies, premiums, additional or compensatory amounts, additional amounts or factors and

¹ **Title VII as suggested by the Preliminary draft Constitutional Treaty of the Convention Presidium.**

² Cf. Article 6 (4) EU.

³ Cf. Article 268 (1) EC.

⁴ Cf. Article 268 (3) EC. Cf. also **Article 39 of the Preliminary draft Constitutional Treaty of the Convention Presidium.**

⁵ **Cf. Article 269 EC and Council Decision of 31 October 1994 on the system of the European Communities' own resources. Cf. also Article 38 of the Preliminary draft Constitutional Treaty of the Convention Presidium.**

other duties established or to be established by the institutions of the Union in respect of trade with non-member countries within the framework of the common agricultural policy, and also contributions and other duties provided for within the framework of the common organisation of the markets in sugar;

- (b) Common Customs Tariff duties and other duties established or to be established by the institutions of the Union in respect of trade with non-member countries;
 - (c) the application of a uniform rate valid for all Member States to the Value Added Tax assessment base which is determined in a uniform manner for Member States according to Union rules.
 - (d) the application of a rate – to be determined pursuant to the budgetary procedure in the light of the total of all other revenue – to the sum of all the Member States' Gross National Product established in accordance with the Union rules;
 - (e) revenue deriving from any new charges introduced within the framework of a common policy;
 - (f) revenue deriving from a tax of the Union, if it is established by a Union law; by way of derogation from Article 102, such a Union law shall be approved by the Council, acting unanimously, and the European Parliament assenting the act by a majority of its members.
- (4) The own resources of the Union shall be limited to 1,27% of the total of the Member States' Gross Domestic Products for the year at market prices. This limit may be amended by a joint decision of the Council, acting unanimously, and the European Parliament, acting with the majority of its members, which requires ratification by two thirds of the national Parliaments.
- (5) Details concerning the system of own resources shall be laid down by a Union law.

Article 117 (Budgetary authority; budgetary procedure)¹

¹ Para 4 corresponds to Article 270 EC. The rest of the provision is drawn from Article 272 EC, but has been considerably reworded to reflect the new principle expressed now in para 1. Cf. also para 35 of the EPP Congress Document "A Constitution for a Strong Europe": "Budgetary

- (1) The European Parliament and the Council shall be the two equal branches of the Union's budgetary authority.
- (2) The preliminary draft budget shall be proposed to the European Parliament and the Council by the Commission on the basis of estimates drawn up by each institution of the Union.
- (3) The budget shall be adopted jointly by the European Parliament, acting with the majority of its members, and the Council, acting by qualified majority, on a proposal by the Commission.
- (4) With a view to maintaining budgetary discipline, the Commission shall not make any proposal for a legal act of the Union, or alter its proposals, or adopt any implementing measure which is likely to have appreciable implications for the budget without providing the assurance that that proposal or that measure is capable of being financed within the limits of the Union's own resources.
- (5) The details of the budgetary procedure shall be determined in an inter-institutional agreement between the European Parliament, the Council and the Commission.

Article 118 (Accounting and discharge)¹

- (1) The Commission shall submit annually to the Council and to the European Parliament the accounts of the preceding financial year relating to the implementation of the budget. The Commission shall also forward them a financial statement of the assets and liabilities of the Union.
- (2) The European Parliament, acting on a recommendation from the Council which shall act by a qualified majority, and after having consulted the Court of Auditors, shall give a discharge to the Commission in respect of the implementation of the budget.
- (3) Before giving a discharge to the Commission, or for any other purpose in connection with the exercise of its powers over the implementation of the budget, the European Parliament may ask to hear the Commission give evidence with regard to the extension of expenditure or the operation of financial control systems. The Commission shall submit any necessary information to the European Parliament at the latter's request.
- (4) The Commission shall take all appropriate steps to act on the observations in the decisions

competence should be shared between the European Parliament and the Council.”

¹ Cf. Articles 275 and 276 EC.

giving discharge and on other observations by the European Parliament relating to the execution of expenditure, as well as on comments accompanying the recommendations on discharge adopted by the Council.

(5) At the request of the European Parliament or the Council, the Commission shall report on the measures taken in the light of these observations and comments and in particular on the instructions given to the departments which are responsible for the implementation of the budget. These reports shall also be forwarded to the Court of Auditors.

2.4. Title VIII: External Action of the Union¹

2.4.1. Chapter 1: Principles and Objectives

Article 119 (Objectives of all external action of the Union)²

(1) The Union's action at international stage will be guided by, and designed to advance in the wider world, the values which have inspired its own creation, development and enlargement: democracy, the rule of law, the universality and indivisibility of human dignity, equality and solidarity, and respect for international law in accordance with the principles of the Charter of the United Nations. The Union will seek to develop relations and build partnerships with countries, and regional or global organisations who share these values. It will promote multilateral solutions to common problems, in particular in the framework of the United Nations.

(2) The European Union will define and pursue common policies and Union actions, and will work for a maximum degree of cooperation in all fields of international relations in order

- (a) to safeguard the common values, fundamental interests, independence and integrity of the Union;
- (b) to consolidate and support democracy, the rule of law, human rights and international law;
- (c) to preserve peace, prevent conflicts and strengthen international security, in conformity with the principles of the Charter of the United Nations;
- (d) to foster the durable economic and social development of developing countries, with the primary aim to eradicate poverty, in particular in low income countries;

¹ **Title VIII as suggested by the Preliminary draft Constitutional Treaty of the Convention Presidium. Cf. also point 12 of the Final Report of Convention Working Group VII “External Action” which recommends that there is “one single set of provisions on the negotiation and conclusion of international agreements”.**

² Wording as recommended in the Final Report of Convention Working Group VII “External Action” (Part A), point 2.

- (e) to encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;
- (f) to develop international measures to preserve the environment and global natural resources, and ensure sustainable development;
- (g) to assist populations, countries and regions in confronting man-made or natural disasters;
- (h) to promote an international system based on stronger multilateral cooperation and good global governance.

(3) These principles shall be taken into account by all external Union action, whether it be diplomatic relations, security policy, defence, the external economic relations, development cooperation policy or the external dimension of Union policies.

Article 120 (External representation of the Union; international organisations)¹

(1) The Commission shall represent the Union in its external relations. This task shall be exercised, as a rule, by the European Minister for Foreign Affairs referred to in Article 82 paragraph 4.

(2) It shall be for the Commission to ensure the maintenance of close relations with the organs of the United Nations and of its specialised agencies², with the Council of Europe³ and with the Organisation for Economic Cooperation and Development⁴. The Commission shall also maintain such relations as are appropriate with all international organisations⁵.

(3) In international organisations where the Union is not yet a member, Member States shall

¹ **As suggested in the summary description of Article 41 of the Preliminary draft Constitutional Treaty of the Convention Presidium, this provision sets out who represents the Union in international relations. As this discussion paper intends to entrust external representation to the Commission (the European Minister for Foreign Relations, who is a Commission member), it does not provide any more for a role of the current High Representative for Common Foreign and Security Policy.**

² Cf. Article 302(1) EC.

³ Cf. Article 303 EC.

⁴ Cf. Article 304 EC.

⁵ Cf. Article 302(2) EC.

support the Union in acquiring full membership with a view to implement paragraph 1.

¹ Until the Union has acquired full membership, the Member States shall coordinate their action in international organisations and at international conferences. They shall uphold in such fora the common positions determined within the field of competences of the Union. In international organisations and at international conferences where not all the Member States participate, those which do take part shall uphold the common positions.

Member States represented in international organisations or international conferences where not all the Member States participate shall keep the latter, through the European Minister for Foreign Affairs, informed of any matter which is of relevance for the Union or otherwise of common interest.

(4) The Commission shall take the decisions adopted and agreements concluded under this Title into account. The Commission shall keep the European Parliament and the Council regularly informed regarding the state of the Union's external relations.

Article 121 (Loyalty and solidarity by the Member States)²

(1) The Member States shall support the Union's external action actively and unreservedly in a spirit of loyalty and mutual solidarity.

(2) They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.

Article 122 (Coherence of external action; External Action Service; Union delegations)

(1)³ The Council and the Commission, in particular the European Minister for Foreign Affairs referred to in Article 82 paragraph 4, shall ensure that the objectives and principles set out in Articles 119 to 121 are fully complied with. They shall ensure the unity, consistency and

¹ Cf. Article 19 EU.

² Cf. Article 11(2) EU.

³ Cf. Articles 11(2), third subpara and 13(3), third subpara.

effectiveness of all external action by the Union and an efficient external representation of the Union in accordance with Article 120 paragraph 1.

(2)¹ To support and facilitate the tasks referred to in paragraph 1, a joint service, called “European External Action Service”, shall be established under the authority of the European Minister for Foreign Relations. It shall be composed of Commission officials, officials from the Council secretariat and staff seconded from national diplomatic services. The details shall be laid down by a Union law.

(3)² The Commission delegations in third countries and international conferences, and their representations to international organisations shall operate under the authority of the European Minister for Foreign Affairs and be renamed “Union delegations”. They shall be staffed by officials of the Commission, officials from the Council secretariat and staff seconded from national diplomatic services.

(4)³ Union delegations and national diplomatic and consular missions shall closely cooperate by exchanging information, carrying out joint assessments and contributing to the implementation of Article 46 of the Charta of Fundamental Rights.

Article 123 (EU Diplomatic Academy)⁴

(1) An EU Diplomatic Academy shall be established by a Union law.

(2) It shall complement the national diplomatic education systems by regular joint courses and training sessions which focus on the external policies, interests and relations of the Union.

¹ Cf. point 7, first indent of the recommendations in the Final Report of Working Group VII “External Action” (Part A).

² Cf. point 7, second indent of the recommendations in the Final Report of Working Group VII “External Action” (Part A).

³ Cf. Article 20 EU.

⁴ Cf. point 7, second indent of the recommendations in the Final Report of Working Group VII “External Action” (Part A).

Article 124 (Agreements with third states and organisations; participation of the European Parliament)¹

(1) Where agreements with one or more states or international organisations need to be negotiated within the Union's field of competences, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations.

The Commission shall conduct these negotiations in consultation with a special committee to assist it in this task. This committee shall be composed of an equal number of representatives of the Council and of the European Parliament.

(2) Subject to the powers vested in the Commission in this field, the signing, which may be accompanied by a decision on provisional application before entry into force, and on the conclusion of the agreements shall be decided on by the Council, acting by qualified majority on a proposal from the Commission and with the advice and assent of the European Parliament.

The Council shall act unanimously and with the advice and assent of the majority of the members of the European Parliament when one of the following agreements shall be concluded:

- agreements referred to in Article 135 paragraphs 2 and 3 or other agreements establishing a specific institutional framework by organising cooperation procedures;
- agreements having important budgetary implications for the Union;
- agreements entailing amendments of an act adopted under the procedure referred to in Article 102;
- agreements covering a field for which unanimity in the Council and the assent of the European Parliament is required for the adoption of internal rules;
- an agreement on the accession of the Union to the European Convention on Human Rights².

¹ **Cf. Articles 133, 300 EC, which have been merged and modified to enable the European Parliament to play a more important role in the exercise of the Union's treaty-making power. This discussion paper takes the view that in view of the constitutional significance of the exercise of the treaty-making power, it should be included in Part One of the Constitution.**

² Convention Working Group II "Charter" (Final Report, p. 13) recommends "that a legal basis should be inserted at an appropriate place in the Constitutional Treaty which would authorise the Union to accede to the ECHR. The drafting of such legal basis could be kept fairly simple. Given the constitutional significance of possible accession, it should however also be specified that the signature and conclusion of the accession treaty require a decision by the Council by unanimity and the assent of the European Parliament; otherwise, the normal

The same procedure shall apply for a decision to suspend the application of an agreement, and for the purpose of establishing the positions to be adopted on behalf of the Union in a body set up by an agreement, when that body is called upon to adopt decisions having legal effects, with the exception of decisions supplementing or amending the institutional framework of the agreement.

The Council and the European Parliament may, in an urgent situation, agree upon a time-limit for the assent.

(3) When concluding an agreement, the Council may, by way of derogation from paragraph 2, authorise the Commission to approve modifications on behalf of the Union where the agreement provides for them to be adopted by a simplified procedure or by a body set up by the agreement; it may attach specific conditions to such authorisation.

(4) When the Council envisages concluding an agreement which calls for amendments to this Constitution, the amendments must first be adopted in accordance with the procedure laid down in Article 143.

(5) Agreements concluded under the conditions set out in this Article shall be binding on the institutions of the Union and the Member States.

Article 125 (International agreements concerning monetary or foreign exchange regime matters; external representation; participation of the ECB)¹

(1) By way of derogation from Article 124, the Council may, acting unanimously on a recommendation from the ECB or from the Commission, and after consulting the ECB in an endeavour to reach a consensus consistent with the objective of price stability, after consulting the European Parliament, in accordance with the procedure in paragraph 3 for determining the arrangements, conclude formal agreements on an exchange-rate system for the euro in relation to non-Union currencies. The Council may, acting by a qualified majority on a recommendation from the ECB or from the Commission, and after consulting the ECB in an endeavour to reach a consensus consistent with the objective of price stability, adopt, adjust or abandon the central rates of the euro within the exchange-rate system. The President of the Council shall inform the European

procedure for international agreements would apply.”

¹ Cf. Article 111 EC.

Parliament of the adoption, adjustment or abandonment to the euro central rates.

(2) In the absence of an exchange-rate system in relation to one or more non-Union currencies as referred to in paragraph 1, the Council, acting by a qualified majority either on recommendation from the Commission and after consulting the ECB or on a recommendation from the ECB, may formulate general orientations for exchange-rate policy in relation to these currencies. These general orientations shall be without prejudice to the primary objective of the ECB to maintain price stability.

(3) By way of derogation from Article 124, where agreements concerning monetary or foreign exchange regime matters need to be negotiated by the Union with one or more States or international organisations, the Council, acting by a qualified majority on a recommendation from the Commission and after consulting the ECB, shall decide the arrangements for the negotiation and for the conclusion of such agreements. These arrangements shall ensure that the Union expresses a single position without prejudice to the allocation of powers laid down in Article 120 paragraph 1 and Article 90.

Agreements concluded in accordance with this paragraph shall be binding on the institutions of the Union, on the ECB and on Member States.

(4) External representation in the field of economic and monetary union shall be ensured by the Commission with regard to economic policy¹, and by the ECB with regard to monetary policy¹. The Commission and the ECB shall jointly, in a spirit of sincere cooperation, decide upon the details and procedures of this external representation, with due respect to the statutory requirements of international economic and monetary organisations and to the independence of the ECB. The European Parliament and the Council shall be regularly informed about the external activities in the field of economic and monetary union.

¹ Cf. Article 111(4), which has left this issue for a Council decision. However, until now no such Council decision could be taken because of the difficulty of the matter. Therefore, this discussion paper takes the view that the matter must now be settled by the Constitution itself in order to ensure an efficient external representation also in economic and monetary matters. Cf. also the Final Report of Working Group VI “Economic Governance”, p. 8: “The Group agrees that the effectiveness of the current informal arrangements (reflecting the fact that the provisions of Article 111 paragraph 4 TEC have not been implemented) for representing the Eurozone in international organisations should be improved”.

Article 126 (Relation to previous treaties of the Member States; Union of the Benelux-States)²

(1) The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of this Constitution.

(2) To the extent that such agreements are not compatible with this Constitution, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude.

(3) In applying the agreements referred to in the first paragraph, Member States shall take into account the fact that the advantages accorded under this Constitution by each Member State form an integral part of the establishment of the Union and are thereby inseparably linked with the creation of common institutions, the conferring of powers upon them and the granting of the same advantage by all the other Member States.

(4) The provisions of this Constitution shall not preclude the existence or completion of regional unions between Belgium and Luxembourg, or between Belgium, Luxembourg and the Netherlands, to the extent that the objectives of these unions are not attained by application of this Constitution.

2.4.3. Chapter 3: Common Foreign and Security Policy

Article 127 (Scope of the common foreign and security policy)

¹ Cf. Article 6 ESCB Statute.

² Cf. Articles 306, 307 EC.

(1)¹ The common foreign and security policy of the Union shall cover all areas of foreign and security policy, including a common defence by European forces which are credible, available and effective².

(2)³ The common foreign and security policy shall also cover humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking.

⁴In addition, it may involve the use of military resources, in particular for the purpose of conflict prevention, joint disarmament operations, military advice and assistance, post-conflict stabilisation, and support for a third country's authorities, at their request, in combating terrorism.

(3)⁵ The policy of the Union in accordance with this Chapter shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework.

(4)⁶ The provisions of this Chapter shall not prevent the development of closer cooperation between two or more Member States on a bilateral level, in the framework of the Western European Union (WEU) and NATO, provided such cooperation does not run counter to or impede that provided for in this Chapter.

Article 128 (Common policy in the field of armaments; European Armaments and Strategic Research Agency)

(1)⁷ The common defence of the Union shall be supported by a common policy in the field of armaments.

¹ Cf. Article 17(1), subpara 1 and 3 EU.

² Incorporates the so-called "Helsinki headline goal".

³ Cf. Article 17(2) EU.

⁴ This expansion of the description of the "Petersberg tasks" is recommended in para 51 of the Final Report of Convention Working Group VIII "Defence".

⁵ Cf. Article 17(1), subpara 2 EU.

⁶ Cf. Article 17(4) EU.

⁷ Cf. Article 17(1), subpara 3 EU.

(2)¹ For this purpose, a European Armaments and Strategic Research Agency shall be set up by a Union law in accordance with Article 95. Its objective shall be to ensure the fulfilment of operational requirements by promoting a policy of harmonised procurement by the Member States, to support research into defence technology, including military space systems, and to strengthen the industrial and technological base of the Union's defence sector. The Agency shall build on already existing forms of cooperation between Member States in the armaments field.

Article 129 (Decision-making process under the CFSP Chapter)

(1)² The European Council, acting on a proposal from the Council, the European Minister for Foreign Affairs or a Member State, shall define the Union's strategic objectives and interests and determine the parameters and guidelines for Union action.

(2)³ The Council shall, on the basis of the general guidelines defined by the European Council, take the decisions necessary for defining and implementing the common foreign and security policy. The Council shall in particular define the approach of the Union to a particular matter of a geographical or thematic nature.

(3) The European Minister for Foreign Affairs shall participate, without having a right to vote, in all Council sessions under this Chapter.

(4) Under this Chapter, the Council shall act by qualified majority on a proposal from the European Minister for Foreign Affairs.

¹However, decisions having military or defence implications shall be taken by the Council acting unanimously, on a proposal either from the European Minister for Foreign Affairs or from a Member State. Abstentions by members present in person or represented shall not prevent the adoption of such decisions.

¹ Cf. the recommendation in para 64 of the Final Report of Convention Working Group VIII "Defence".

² Cf. Article 13(1) EU.

³ Cf. Articles 13(3) and 15 EU.

When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration under the present paragraph. In that case, it shall not be obliged to apply the decision but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or to impede Union action based on that decision and the other Member States shall respect its position. If the members of the Council qualifying their abstention in this way represent more than one third of the Union's population, the decision shall not be adopted.

(5)² In cases requiring a rapid decision, in particular in crisis management matters³, the European Minister for Foreign Affairs, of its own motion, or at the request of the Council, the Commission or a Member State, shall convene an extraordinary Council meeting within 48 hours or, in an emergency, within a shorter period.

Article 130 (Implementation of the Common Foreign and Security Policy)

(1)⁴ The European Minister for Foreign Affairs shall be responsible for the implementation of all decisions taken under this Chapter; in that capacity he shall in principle express the position of the Union in international organisations and international conferences, subject to Article 120 paragraphs 1 and 3.

(2)⁵ On a proposal by the European Minister for Foreign Affairs, the Council may appoint a special representative with a mandate in relation to particular policy issues.

Article 131 (Political and Security Committee)¹

(1) A Political and Security Committee shall monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the Council, of the European Minister for Foreign Affairs

¹ Cf. Article 23(1) EU, as amended by the Treaty of Nice.

² Cf. Article 22(2) EU.

³ Cf. para 52(b) of the Final Report of Working Group VIII "Defence", which recommends an enhanced role of the High Representative (or the person replacing him), in particular a right of initiative in crisis management matters.

⁴ Cf. Article 18(2) EU.

⁵ Cf. Article 18(5) EU.

or on its own initiative. It shall also monitor the implementation of agreed policies, without prejudice to the responsibility of the European Minister for Foreign Affairs.

(2) Within the scope of this Chapter, this Committee shall exercise, under the responsibility of the European Minister for Foreign Affairs, political control and strategic direction of crisis management operations.

(3) On a proposal from the European Minister for Foreign Affairs, the Council may authorise the Committee, for the purpose and for the duration of a crisis management operation, as determined by the Council, to take the relevant decisions concerning the political control and strategic direction of the operation.

Article 132 (UN Security Council)²

(1) Member States which are also members of the United Nations Security Council will concert and keep the other Member States and the European Minister for Foreign Affairs fully informed.

(2) Member States which are permanent members of the Security Council will, in the execution of their functions, ensure the defence of the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter.

Article 133 (Involvement of the European Parliament)³

(1) The European Minister for Foreign Relations shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and shall ensure that the views of the European Parliament are duly taken into consideration.

(2) The European Parliament shall be kept regularly informed by the European Minister for Foreign Affairs of the development of the Union's foreign and security policy.

(3) The European Parliament may ask questions of the European Minister for Foreign Affairs or of

¹ Cf. Article 25, as amended by the Treaty of Nice.

² Cf. Article 19(2) subpara 2 EU.

³ Cf. Article 21 EU.

the Council or make recommendations to them. It shall hold an annual debate on progress in implementing the common foreign and security policy.

Article 134 (Special financing provisions)

(1)¹ Operating expenditure to which the implementation of those provisions gives rise shall be charged to the budget of the European Union except for such expenditure arising from operations having military or defence implications and cases where the Council acting unanimously decides otherwise.

(2)² In cases where operating expenditure is not charged to the budget of the European Union, it shall be charged to the Member States in accordance with the gross national product scale, unless the Council acting unanimously decides otherwise. As for expenditure arising from operations having military or defence implications, Member States whose representatives in the Council have made a formal declaration under Article 129 paragraph 4, third subparagraph, shall not be obliged to contribute to the financing thereof.

¹ Cf. Article 28(3), subpara 1 EU.

² Cf. Article 28(3), subpara 2 EU.

2.5. Title IX: The Union and its Immediate Environment¹

Article 135 (Association of the overseas countries and territories; European partnership; association with third States and international organisations)

(1)² The non-European countries and territories which have special relationship with Denmark, France, the Netherlands, and the United Kingdom shall be associated with the Union in accordance with the provisions of Part Two. These countries and territories are listed in Annex II to this Constitution.

The purpose of association shall be to promote the economic and social development of the countries and territories and to establish close economic relations between them and the Union as a whole. In accordance with the values of the Union, association shall serve primarily to further the interests and prosperity of the inhabitants of these countries and territories in order to lead them to the economic, social and cultural development to which they aspire.

(2) With its neighbouring states, the Union may enter into special association agreements (“European partnerships”) which, in addition to an extension of parts of or all rules related to the internal market, may also provide for the establishment of joint institutions³.

(3) The Union may further conclude with one or more States or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure⁴.

¹ **As suggested by Title IX of the Preliminary draft Constitutional Treaty of the Convention Presidium.**

² Cf. Article 182 EC.

³ **This follows the summary description of Article 42 of the Preliminary draft Constitutional Treaty of the Convention Presidium, which provides for the possibility of “a privileged relationship between the Union and its neighbouring States”. See also para 6 of the EPP Congress Document “A Constitution for a Strong Europe”, where the EPP proposes a European Partnership similar to the EEA, but including a political component.**

⁴ Cf. Article 310 EC.

2.6. Title X: Union Membership¹

Article 136 (Openness to new Member States)²

Union membership shall be open to all European States which share the Union's values and wish to pursue them jointly, which strictly respect the Charter of Fundamental Rights and which accept the Union's rules of operation.

Article 137 (Accession of new Member States)³

(1) An application for Union membership shall be addressed to the Commission.

(2) The conditions of admission shall be the subject of an agreement between the Union and the applicant State. By way of derogation from Article 124, such an agreement shall require a unanimous decision of the Council and the assent of 2/3 of the members of the European Parliament.

¹ Takes over Title X “Union Membership” of the Preliminary draft Constitutional Treaty of the Convention Presidium. On purpose, this discussion paper does not provide for a procedure on voluntary withdrawal, as suggested in Article 46 of the Preliminary draft Constitutional Treaty. First of all, the necessity for and desirability of such a procedure – which is not part of the *acquis communautaire* – remains to be discussed. Second, the effect of a right to withdraw on the nature of the Union and of the mutual obligations of solidarity should be considered. Third, the compatibility of such a procedure with other provisions of this Constitution should be analysed, in particular with the provisions enshrining the “irreversibility” and “irrevocability” of the third stage of Economic and Monetary Union (cf. the Protocol on the transition to the third stage of economic and monetary union). Fourth, if a right of withdrawal were to be included in the Constitution, also the possibility of expulsion of a Member would have to be analysed – currently, the *acquis* provides only for a suspension of membership rights, which leaves Union membership as such of the member in question unaffected. All these issues should be discussed extensively in the plenary of the Convention. This Discussion Paper only sees a certain practical need for a special right of withdrawal in the context of future revisions of the Constitution.

² Cf. Article 49(1), first sentence EU and Article 43 of the Preliminary draft Constitutional Treaty of the Convention Presidium.

³ Cf. Article 49(1), second sentence, (2) EU and Article 44 of the Preliminary draft Constitutional Treaty of the Convention Presidium.

(3) Article 143 shall apply for the adjustments to the Constitution which such admission entails. The procedure as provided for in Article 143 paragraph 2 may be reduced to six months on a proposal from the Commission with the approval of the Council and the assent of the European Parliament.

Article 138 (Suspension of Union membership rights)¹

(1) On a reasoned proposal by one third of the Member States, by the European Parliament or by the Commission, the Council, acting by a majority of four-fifths of its members after obtaining the assent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of principles mentioned in Article 57 paragraph 1, and address appropriate recommendations to that State. Before making such a determination, the Council shall hear the Member State in question and, acting in accordance with the same procedure, may call on independent persons to submit within a reasonable time limit a report on the situation in the Member State in question.

The Council shall regularly verify that the grounds on which such a determination was made continue to apply.

(2) The Council, meeting in the composition of the Heads of State or Government and acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the assent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of principles mentioned in Article 57 paragraph 1, after inviting the government of the Member State in question to submit its observations.

(3) Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of this Constitution to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

The obligations of the Member State in question under this Constitution shall in any case continue to be binding on the State.

¹ Cf. Article 7 EU (as amended by the Treaty of Nice) and Article 309 EC.

(4) The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken under paragraph 3 in response to changes in the situation which led to their being imposed.

(5) For the purpose of this Article, the Council shall act without taking into account the vote of the representative of the government of the Member State in question. Abstentions by members present in person or represented shall not prevent the adoption of decisions referred to in paragraph 2.

Article 112 paragraph 2 shall apply without taking into account the Member State in question.

This paragraph shall also apply in the event of voting rights being suspended pursuant to paragraph 3.

(6) For the purpose of paragraph 1 and 2, the European Parliament shall act by a two-thirds majority of the votes cast, representing a majority of its members.

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3.1. Title XI: General and Final Provisions¹

Article 139 (Legal continuity in relationship to the European Communities and the European Union)²

(1) The European Union established by this Constitution shall be the immediate successor to the European Community, the European Atomic Energy Community and the European Union established by the Treaty of Maastricht.

(2) When this Constitution enters into force, the European Community and the European Atomic Energy Community are dissolved. The European Union shall take over all the assets and liabilities of the European Community and the European Atomic Energy Community.

(3) This Constitution is based on, and replaces, the Treaty establishing the European Community,

¹ **Part Three as suggested by the Preliminary draft Constitutional Treaty of the Convention Presidium. The numbers of the following articles will depend on the length and final place of Part Two of the Constitution.**

² **Cf. Article x of the Preliminary draft Constitutional Treaty of the Convention Presidium. In this discussion paper, the repeal of previous Treaties is already be dealt with in Article**

the Treaty establishing the European Atomic Energy Community, the Treaty on European Union as well as all subsequent Treaty amendments and all Treaties of Accession. It maintains in full the *acquis* created by these Treaties and develops it further into a Constitutional Union¹.

Article 140 (Territorial application of the Constitution)²

(1) This Constitution shall apply to the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland. [*the accession countries will have to be added after completion of the accessions*].

(2) This Constitution shall apply to the French overseas departments, the Azores, Madeira and the Canary Islands.

However, taking account of the structural social and economic situation of the French overseas departments, the Azores, Madeira and the Canary Islands, which is compounded by their remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development, a Union law shall govern specific measures aimed, in particular, at laying down the conditions of application of this Constitution to those regions, including common policies.

The Union law according to subparagraph 2 shall take into account areas such as customs and trade policies, fiscal policies, free zones, agriculture and fisheries policies, conditions for supply of raw materials and essential consumer goods, State aids and conditions of access to structural funds and to horizontal Union programmes.

The Union law referred to in subparagraph 2 shall further take into account the special characteristics and constraints of the outermost regions without undermining the integrity and the

56 (3) of the Constitution.

¹ **Cf. Article x of the Preliminary draft Constitutional Treaty of the Convention Presidium, which is meant to deal with the repeal of previous treaties.**

² Articles 299 EC, 198 EURATOM. **Cf. Article x + 1 of the Preliminary draft Constitutional**

coherence of the Union legal order, including the internal market and common policies.

(3) The special arrangements for association set out in Article 135 paragraph 1 and Part Two of the Constitution shall apply to the overseas countries and territories listed in Annex I to this Constitution.

This Constitution shall not apply to those overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not included in the aforementioned list.

(4) The provisions of this Constitution shall apply to the European territories for whose external relations a Member State is responsible.

(5) The provisions of this Constitution shall apply to the Åland Islands in accordance with the provisions set out in Protocol No. 2 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

(6) Notwithstanding the preceding paragraphs:

- a) this Constitution shall not apply to the Faeroe Islands;
- b) this Constitution shall not apply to the Sovereign Base Area of the United Kingdom of Great Britain and Northern Ireland in Cyprus;
- c) this Constitution shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community signed on 22 January 1972.

Article 141 (System of property ownership)¹

Treaty of the Convention Presidium.

¹ **Cf. Article 295 EC. This important provision is not included in the current Preliminary draft Constitutional Treaty of the Convention Presidium.**

This Constitution shall in no way prejudice the rules in Member States governing the system of property ownership.

Article 142 (Part Two and Protocols as integral part of this Constitution)¹

(1) Part Two of the Constitution and the Protocols annexed to this Constitution (Annex I) shall form an integral part thereof and shall be subject to the amendment procedure under Article 143, save as where explicitly provided otherwise.

(2) References to the Treaty on European Union or to the Treaties of the European Communities contained in these Protocols shall be regarded as references to the corresponding provisions of this Constitution. A consolidated version of these Protocols shall be drawn up under the authority of the Commission.

Article 143 (Procedure for revision of the Constitution)²

(1) The government of any Member State, the European Parliament and the Commission may submit to the Council proposals for the amendment of the Constitution.

(2) The amendment of the Constitution shall be prepared by a Constitutional Convention which shall be convened by the Council after consulting the European Parliament and the Commission, and which shall within one year draw up a final document containing a detailed draft text.

The Constitutional Convention shall be composed of:

- a Convention Chairman appointed by the Council with the approval of the European Parliament;

¹ **Cf. Article 311 EC. Cf. Article x + 2 of the Preliminary draft Constitutional Treaty of the Convention Presidium.**

² Incorporates the Convention method in the Constitution, as also suggested by Working Group IV “National Parliaments” (Final Report, para 28). **Cf. also Article x + 3 of the Preliminary draft Constitutional Treaty of the Convention Presidium.**

- a representative delegated by the government of each Member State;
- two representatives delegated by the national parliaments of each Member State;
- 54 members¹ of the European Parliament;
- four members of the European Commission.

In the case of institutional changes in the monetary area, one delegate of the ECB shall also participate in the Constitutional Convention².

The President of the European Court of Justice, the President of the European Court of Auditors, the President of the Committee of the Regions, the President of the Economic and Social Committee and the Ombudsman may each delegate one observer to the Constitutional Convention.

(3) The constitutional amendment adopted by the Constitutional Convention must be confirmed by a conference of representatives of the governments of the Member States. This conference shall be convened by the President of the Council immediately subsequent to the Convention.

(4) The constitutional amendment shall enter into force after having been assented by the European Parliament and being ratified, in accordance with their respective constitutional requirements, by a majority of Member States, representing 4/5th of the Union's population³.

Article 144 (Period of validity)⁴

This Constitution is established for an unlimited period.

¹ Currently, where the Union has 15 Member States, the European Parliament is allowed to send 30 members to the Convention. In a Union with 27 Member States, 54 would be the corresponding number.

² Cf. Article 48(2), second sentence EU.

³ Cf. Article 47 of the European Parliament's Hermann Report. **Should be further discussed.**

⁴ **Cf. Article 312 EC. Cf. also Article x + 5 of the Preliminary draft Constitutional Treaty of the Convention Presidium.**

Article 145 (Ratification of the Constitution; entry into force)¹

(1) This Constitution shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the Italian Republic.

(2) For the Member States which have ratified it, this Constitution shall enter into force on the first day of the month following the deposit of the instrument of ratification by the twelfth signatory state to take this step. The other Member States will have to decide, within one year following the entry into force of this Constitution, whether they want to be member of the Union on the basis of this Constitution or to leave the Union. Special association agreements (Article 116) shall be concluded with those Member States which decide to leave the Union².

Article 146 (Authentic text)

(1) This Constitution, drawn up in a single original in the *Czech*, Danish, Dutch, English, *Estonian*, Finnish, French, German, Greek, *Hungarian*, Irish, Italian, *Latvian*, *Lithuanian*, *Maltese*, *Polish*, Portuguese, *Slovak*, *Slovene*, Spanish and Swedish languages, the texts in each of these languages being equally authentic, shall be deposited in the archives of the government of the Italian Republic, which will transmit a certified copy to each of the governments of the other signatory States³.

(2) Every citizen of the Union shall receive a free copy of this Constitution from the Member State in which he or she resides, in the official language(s) of this Member State.

Done at Rome on _____ 2003

¹ **Cf. Article 52 EU. Cf. also Article 47 of the European Parliament's Herrmann Report. A ratification clause is also provided in Article x + 4 of the Preliminary draft Constitutional Treaty of the Convention Presidium,**

² **Should be further discussed.**

³ **Cf. Article 314 EC. Cf. also Article x + 6 of the Preliminary draft Constitutional Treaty of the Convention Presidium.**

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28. PART
SPECIAL AND IMPLEMENTING PROVISIONS¹

TWO:

¹ The Title proposed for Part Two in the Preliminary draft Constitutional Treaty of the Convention Presidium is “Union Policies and their implementation”. As this Discussion Papers proposes to include all power issues (including competences and main legal bases) in Part One of the Constitution, the Title “Special and Implementing Provisions” appeared to be more appropriate. In this Discussion Papers, Part Two takes over those provisions of the acquis which were not included in Part One on order to achieve a short and concise constitutional text. They include special provisions on the internal market and special fields of Union action, such as EMU, the Common Foreign and Security Policy and Defence, where special rules and procedures apply. Footnotes indicate the origin of the provisions in the acquis; wording which departs from the acquis is set in italics.

28.1. Title I: Internal Market¹

28.1.1. Chapter 1: Free Movement of Persons and Services

Article II-1 (Free movement of workers)¹

- (1) Freedom of movement for workers shall be secured within the *Union*.
- (2) Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.
- (3) It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:
- (a) to accept offers of employment actually made;
 - (b) to move freely within the territory of Member States for this purpose;
 - (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
 - (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in implementing regulations to be drawn up by the Commission.
- (4) The provisions of this article shall not apply to employment in the public service.

Article II-2 (Freedom of establishment)

¹ This Discussion Paper suggests to replace “common market” by “internal market” throughout the Constitution. See the footnote to Article 59 of the Constitution.

(1)² Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

(2)³ Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of *Article II-4*, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the chapter relating to capital.

(3)⁴ The provisions of this *Article* and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign nationals on grounds of public policy, public security or public health.

(4)⁵ The provisions of this *Article* shall not apply, so far as any given Member State is concerned, to activities which in that State are connected, even occasionally, with the exercise of official authority.

Article II-3 (Freedom to provide services)

(1)⁶ Within the framework of the provisions set out below, restrictions on freedom to provide services within the *Union* shall be prohibited in respect of nationals of Member States who are established in a State of the *Union* other than that of the person for whom the services are intended.

A Union law may extend the provisions of *this Article* to nationals of a third country who provide services and who are established within the *Union*.

¹ Cf. Article 39 EC.

² Cf. Article 43(1) EC.

³ Cf. Article 43(2) EC.

⁴ Cf. Article 46(1) EC.

⁵ Cf. Article 45(1) EC.

⁶ Cf. Article 49 EC.

(2)¹ Services shall be considered to be ‘services’ within the meaning of this *Constitution* where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons.

‘Services’ shall in particular include:

- (a) activities of an industrial character;
- (b) activities of a commercial character;
- (c) activities of craftsmen;
- (d) activities of the professions.

Without prejudice to the provisions of the *Article* relating to the right of establishment, the person providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals.

(3)² The provisions of *Article II-2(3) and (4)* shall apply to the matters covered by this *Article*.

(4)³ Freedom to provide services in the field of transport shall be governed by the provisions of the *Chapter* relating to transport *and by the common transport policy*.

Article II-4 (Application to companies and firms)⁴

(1) Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the *Union* shall, for the purposes of *Articles II-2 and II-3*, be treated in the same way as natural persons who are nationals of Member States.

¹ Cf. Article 50 EC.

² Cf. Article 55 EC.

³ Cf. Article 51(1) EC.

⁴ Cf. Article 48(1) EC.

(2) ‘Companies or firms’ means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.

28.1.2. Chapter 2: *Free Movement of Goods*

Article II-5 (Customs union)

(1)¹ The *Union* shall be based upon a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries.

(2)² The provisions of *Articles II-6 and II-8* shall apply to products originating in Member States and to products coming from third countries which are in free circulation in Member States.

(3)³ Products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State, and if they have not benefited from a total or partial drawback of such duties or charges.

Article II-6 (Prohibition of customs duties)⁴

Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature.

Article II-7 (Prohibition of quantitative restrictions)

¹ Cf. Article 23(1) EC.

² Cf. Article 23(2) EC.

³ Cf. Article 24 EC.

⁴ Cf. Article 25 EC.

(1)¹ Quantitative restrictions on imports, and all measures having equivalent effect, shall be prohibited between Member States.

(2)² Quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States.

(3)³ The provisions of *paragraphs 1 and 2* shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

Article II-8 (Adjustment of State monopolies)¹

(1) Member States shall adjust any State monopolies of a commercial character so as to ensure that no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of Member States.

The provisions of this Article shall apply to any body through which a Member State, in law or in fact, either directly or indirectly supervises, determines or appreciably influences imports or exports between Member States. These provisions shall likewise apply to monopolies delegated by the State to others.

(2) Member States shall refrain from introducing any new measure which is contrary to the principles laid down in paragraph 1 or which restricts the scope of the articles dealing with the prohibition of customs duties and quantitative restrictions between Member States.

(3) If a State monopoly of a commercial character has rules which are designed to make it easier to dispose of agricultural products or obtain for them the best return, steps should be taken in applying

¹ Cf. Article 28 EC.

² Cf. Article 29 EC.

³ Cf. Article 30 EC.

the rules contained in this Article to ensure equivalent safeguards for the employment and standard of living of the producers concerned.

28.1.3. *Chapter 3: Free Movement of Capital and Payments*

Article II-9 (Free movement of capital and payments)

(1)² Within the framework of the provisions set out in this *Article*, all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited.

(2)³ Within the framework of the provisions set out in this *Article*, all restrictions on payments between Member States and between Member States and third countries shall be prohibited.

(3)⁴ The provisions of *paragraphs 1 and 2* shall be without prejudice to the application to third countries of any restrictions which exist on 31 December 1993 under national or Community law adopted in respect of the movement of capital to or from third countries involving direct investment—including in real estate—establishment, the provision of financial services or the admission of securities to capital markets.

(4)⁵ The provisions of *paragraphs 1 and 2* shall be without prejudice to the right of Member States:

- (a) to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested;
- (b) to take all requisite measures to prevent infringements of national law and regulations, in particular in the field of taxation and the prudential supervision of financial institutions, or to

¹ Cf. Article 31 EC.

² Cf. Article 56(1) EC.

³ Cf. Article 56(2) EC.

⁴ Cf. Article 57(1) EC.

⁵ Cf. Article 58(1) EC.

lay down procedures for the declaration of capital movements for purposes of administrative or statistical information, or to take measures which are justified on grounds of public policy or public security.

(5)¹ The provisions of this *Article* shall be without prejudice to the applicability of restrictions on the right of establishment which are compatible with this *Constitution*.

(6)² The measures and procedures referred to in paragraphs 4 and 5 shall not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments as defined in *paragraph 1*.

28.1.4. Chapter 4: Competition Rules

Article II-10 (Prohibition of trusts)¹

(1) The following shall be prohibited as incompatible with the *internal* market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the *internal* market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary

¹ Cf. Article 58(2) EC.

² Cf. Article 58(3) EC.

obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(2) Any agreements or decisions prohibited pursuant to this article shall be automatically void.

(3) The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations of undertakings,
- any concerted practice or category of concerted practices, which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
 - (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
 - (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article II-11 (Prohibition of the abuse of a dominant position)²

Any abuse by one or more undertakings of a dominant position within the *internal* market or in a substantial part of it shall be prohibited as incompatible with the *internal* market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

¹ Cf. Article 81 EC.

² Cf. Article 82 EC.

- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article II-12 (Exclusive authority of the Commission)¹

(1) The Commission shall ensure the application of the principles laid down in *Articles II-10 and II-11*. On application by a Member State or on its own initiative, and in cooperation with the competent authorities in the Member States, which shall give it their assistance, the Commission shall investigate cases of suspected infringement of these principles. If it finds that there has been an infringement, it shall propose appropriate measures to bring it to an end.

(2) If the infringement is not brought to an end, the Commission shall record such infringement of the principles in a reasoned decision. The Commission may publish its decision and authorise Member States to take the measures, the conditions and details of which it shall determine, needed to remedy the situation.

(3) *Paragraphs 1 and 2 shall be without prejudice to a Union law laying down more detailed rules, in particular rules which allow the Commission to have recourse to national anti-trust authorities.*

Article II-13 (Public undertakings)²

(1) In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to

¹ Cf. Article 85 EC. The reference in paragraph 1 to Article 84 EC was deleted and replaced by a new paragraph 3, in view of the recent development of EC anti-trust law.

² Cf. Article 86 EC.

the rules contained in this *Constitution*, in particular to those rules provided for in *Article 22(2)* and in *Articles II-10 to II-15*.

(2) Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this *Constitution*, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the *Union*.

(3) The Commission shall ensure the application of the provisions of this Article and shall, where necessary, address appropriate directives or decisions to Member States.

Article II-14 (Aids granted by States)¹

(1) Save as otherwise provided in this *Constitution*, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the *internal* market.

(2) The following shall be compatible with the *internal* market:

- (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
- (b) aid to make good the damage caused by natural disasters or exceptional occurrences;
- (c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division.

(3) The following may be considered to be compatible with the *internal* market:

- (a) aid to promote the economic development of areas where the standard of living is abnormally

low or where there is serious underemployment;

- (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
- (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
- (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the *Union* to an extent that is contrary to the common interest;
- (e) such other categories of aid as may be specified by decision of the Council acting by a qualified majority on a proposal from the Commission.

Article II-15 (State aids surveillance procedure)¹

(1) The Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the *internal* market.

(2) If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the *internal* market having regard to *Article II-14*, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission.

If the State concerned does not comply with this decision within the prescribed time, the Commission or any other interested State may, in derogation from the provisions of *Article 84(a)*, refer the matter to the Court of Justice direct.

On application by a Member State, the Council may, acting unanimously, decide that aid which that

¹ Cf. Article 87 EC.

State is granting or intends to grant shall be considered to be compatible with the *internal* market, in derogation from the provisions of *Article II-14* or from *Union law implementing these provisions*, if such a decision is justified by exceptional circumstances. If, as regards the aid in question, the Commission has already initiated the procedure provided for in the first subparagraph of this paragraph, the fact that the State concerned has made its application to the Council shall have the effect of suspending that procedure until the Council has made its attitude known.

If, however, the Council has not made its attitude known within three months of the said application being made, the Commission shall give its decision on the case.

(3) The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the *internal* market having regard to *Article II-14*, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.

28.1.5. Chapter 5: Tax Provisions

Article II-16 (Prohibition of discriminatory taxation on imports)²

(1) No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.

(2) Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.

Article II-17 (Prohibition of discriminatory taxation on exports)³

¹ Cf. Article 88 EC.

² Cf. Article 90 EC.

³ Cf. Article 91 EC.

Where products are exported to the territory of any Member State, any repayment of internal taxation shall not exceed the internal taxation imposed on them whether directly or indirectly.

Article II-18 (Approval for remissions, repayments and countervailing charges)¹

In the case of charges other than turnover taxes, excise duties and other forms of indirect taxation, remissions and repayments in respect of exports to other Member States may not be granted and countervailing charges in respect of imports from Member States may not be imposed unless the measures contemplated have been previously approved for a limited period by *a Union law*.

28.1.6.

¹ Cf. Article 92 EC.

Article II-19 (Union control procedure)¹

(1) If, after the adoption by *the Union legislator* or by the Commission of a harmonisation measure, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in *Article II-7(3)*, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.

(2) Moreover, without prejudice to paragraph 1, if, after the adoption by the *Union legislator* or by the Commission of a harmonisation measure, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure, it shall notify the Commission of the envisaged provisions as well as the grounds for introducing them.

(3) The Commission shall, within six months of the notifications as referred to in *paragraphs 2 and 3*, approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market.

In the absence of a decision by the Commission within this period the national provisions referred to in *paragraphs 2 and 3* shall be deemed to have been approved. When justified by the complexity of the matter and in the absence of danger for human health, the Commission may notify the Member State concerned that the period referred to in this paragraph may be extended for a further period of up to six months.

(4) When, pursuant to *paragraph 3*, a Member State is authorised to maintain or introduce national provisions derogating from a harmonisation measure, the Commission shall immediately examine whether to propose an adaptation to that measure.

(5) When a Member State raises a specific problem on public health in a field which has been the

¹ Cf. Article 95 (4)-(10) EC.

subject of prior harmonisation measures, it shall bring it to the attention of the Commission which shall immediately examine whether to propose appropriate measures to the *Union legislator*.

(6) By way of derogation from the procedure laid down in *Article 84(a)*, the Commission and any Member State may bring the matter directly before the Court of Justice if it considers that another Member State is making improper use of the powers provided for in this Article.

(7) The harmonisation measures referred to above shall, in appropriate cases, include a safeguard clause authorising the Member States to take, for one or more of the non-economic reasons referred to in *Article II-7(3)*, provisional measures subject to a *Union* control procedure.

28.1.8. Chapter 7: *Agriculture and Fisheries*

Article II-20 (Application of internal market rules to agriculture and fisheries)

(1)¹ The *internal* market shall extend to agriculture, *fisheries* and trade in agricultural products. ‘Agricultural products’ means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products. *The list of such products shall be laid down by Union law.*

(2)² Save as otherwise provided in *Articles II-21 to II-26*, the rules laid down *for the internal market* shall apply to agricultural products.

(3)³ The operation and development of the *internal* market for agricultural products must be accompanied by the *definition and implementation of the* common agricultural policy.

Article II-21 (Special objectives of the common agricultural policy)⁴

(1) The objectives of the common agricultural policy shall be:

¹ Cf. Article 32(1), (3) EC.

² Cf. Article 32(2) EC.

³ Cf. Article 32(4) EC.

⁴ Cf. Article 33 EC.

(a) to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;

(b) thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;

(c) to stabilise markets;

(d) to assure the availability of supplies;

(e) to ensure that supplies reach consumers at reasonable prices.

(2) In working out the common agricultural policy and the special methods for its application, account shall be taken of:

(a) the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions;

(b) the need to effect the appropriate adjustments by degrees;

(c) the fact that in the Member States agriculture constitutes a sector closely linked with the economy as a whole.

Article II-22 (Common organisation of agricultural markets)¹

(1) In order to attain the objectives set out in *Article II-21*, a common organisation of agricultural markets shall be established.

This organisation shall take one of the following forms, depending on the product concerned:

¹ Cf. Article 34 EC.

- (a) common rules on competition;
- (b) compulsory coordination of the various national market organisations;
- (c) a European market organisation.

(2) The common organisation established in accordance with paragraph 1 may include all measures required to attain the objectives set out in *Article II-21*, in particular regulation of prices, aids for the production and marketing of the various products, storage and carryover arrangements and common machinery for stabilising imports or exports.

The common organisation shall be limited to pursuit of the objectives set out in *Article II-21* and shall exclude any discrimination between producers or consumers within the *Union*.

Any common price policy shall be based on common criteria and uniform methods of calculation.

(3)¹ *The European Agricultural Guidance and Guarantee Fund (Guarantee and Guidance Section) shall contribute to attaining the objectives of the common agricultural policy, in accordance with the conditions laid down by a Union law.*

Article II-23 (Complementary measures)²

To enable the objectives set out in *Article II-21* to be attained, provision may be made within the framework of the common agricultural policy for measures such as:

- (a) an effective coordination of efforts in the spheres of vocational training, of research and of the dissemination of agricultural knowledge; this may include joint financing of projects or institutions;

¹ Cf. Articles 34(3) and 162(2) EC.

² Cf. Article 35 EC.

- (b) joint measures to promote consumption of certain products.

Article II-24 (Application of competition rules to agriculture)¹

The provisions of the chapter relating to rules on competition shall apply to production of and trade in agricultural products only to the extent determined by a *Union law*, account being taken of the objectives set out in *Article II-21*.

Such a Union law may, in particular, authorise the granting of aid:

- (a) for the protection of enterprises handicapped by structural or natural conditions;
- (b) within the framework of economic development programmes.

Article II-25 (Replacement of national organisations by a common organisation)

(1)² *Commission proposals* for working out and implementing the common agricultural policy, including the replacement of the national organisations by a common organisation provided for in *Article II-22*, and for implementing the measures specified in this *Chapter*, shall take account of the interdependence of the agricultural matters mentioned in this *Chapter*.

(2)³ A *Union law* may replace the national market organisations by the common organisation provided for in *Article II-22* if:

- (a) the common organisation offers Member States which are opposed to this measure and which have an organisation of their own for the production in question equivalent safeguards for the employment and standard of living of the producers concerned, account being taken of the adjustments that will be possible and the specialisation that will be needed with the passage of time;

¹ Cf. Article 36 EC.

² Cf. Article 37(2) EC.

³ Cf. Article 37(3) EC.

(b) such an organisation ensures conditions for trade within the *Union* similar to those existing in a national market.

(3)¹ If a common organisation for certain raw materials is established before a common organisation exists for the corresponding processed products, such raw materials as are used for processed products intended for export to third countries may be imported from outside the *Union*.

Article II-26 (Countervailing charge)²

(1) Where in a Member State a product is subject to a national market organisation or to internal rules having equivalent effect which affect the competitive position of similar production in another Member State, a countervailing charge shall be applied by Member States to imports of this product coming from the Member State where such organisation or rules exist, unless that State applies a countervailing charge on export.

(2) The Commission shall fix the amount of these charges at the level required to redress the balance; it may also authorise other measures, the conditions and details of which it shall determine.

28.1.9. Chapter 8: *Transport*

Article II-27 (Field of application)³

The *common transport policy and the* provisions of this *Chapter* shall apply to transport by rail, road, inland waterway, sea and air.

Article II-28 (Prohibition of discrimination)

¹ Cf. Article 37(4) EC.

² Cf. Article 38 EC.

³ Cf. Article 80 EC.

(1)¹ In the case of transport within the *Union*, discrimination which takes the form of carriers charging different rates and imposing different conditions for the carriage of the same goods over the same transport links on grounds of the country of origin or of destination of the goods in question shall be *prohibited*.

(2)² The Commission shall, acting on its own initiative or on application by a Member State, investigate any cases of discrimination falling within paragraph 1 and, after consulting any Member State concerned, shall take the necessary decisions within the framework of *the common transport policy*.

Article II-29 (Aids in the field of transport)³

Aids shall be compatible with this *Constitution* if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service.

Article II-30 (Prohibition of protectionist rates or conditions)⁴

(1) The imposition by a Member State, in respect of transport operations carried out within the *Union*, of rates and conditions involving any element of support or protection in the interest of one or more particular undertakings or industries shall be prohibited, unless authorised by the Commission.

(2) The Commission shall, acting on its own initiative or on application by a Member State, examine the rates and conditions referred to in paragraph 1, taking account in particular of the requirements of an appropriate regional economic policy, the needs of underdeveloped areas and the problems of areas seriously affected by political circumstances on the one hand, and of the effects of such rates and conditions on competition between the different modes of transport on the other.

After consulting each Member State concerned, the Commission shall take the necessary decisions.

¹ Cf. Article 75(1) EC.

² Cf. Article 75(4) EC.

³ Cf. Article 73 EC.

⁴ Cf. Article 76 EC.

(3) The prohibition provided for in paragraph 1 shall not apply to tariffs fixed to meet competition.

Chapter 9: The Structural and Cohesion Funds of the Union

Article II-31 (The four funds and the other financial instruments)¹

The *Union* shall support the achievement of economic and social cohesion by the action it takes through the Structural Funds (European Agricultural Guidance and Guarantee Fund, Guidance Section; European Social Fund; European Regional Development Fund; *Cohesion Fund*), the European Investment Bank and the other existing Financial Instruments.

Article II-32 (European Social Fund)²

(1) In order to improve employment opportunities for workers in the internal market and to contribute thereby to raising the standard of living, a European Social Fund is hereby established in accordance with the provisions set out below; it shall aim to render the employment of workers easier and to increase their geographical and occupational mobility within the *Union*, and to facilitate their adaptation to industrial changes and to changes in production systems, in particular through vocational training and retraining.

(2) The Fund shall be administered by the Commission. The Commission shall be assisted in this task by a Committee presided over by a Member of the Commission and composed of representatives of governments, trade unions and employers' organisations.

¹ Cf. Article 159(1), third sentence EC.

² Cf. Article 146-148 EC.

Article II-33 (European Regional Development Fund)¹

The European Regional Development Fund is intended to help to redress the main regional imbalances in the *Union* through participation in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions.

Article II-34 (Cohesion Fund)²

The Cohesion Fund shall provide a financial contribution to projects in the fields of environment and trans-European networks in the area of transport infrastructure.

28.1.10. Chapter 10: Involvement of Management and Labour in Social Policy

Article II-35 (Consultation of management and labour)³

(1) The Commission shall have the task of promoting the consultation of management and labour at *Union* level and shall take any relevant measure to facilitate their dialogue by ensuring balanced support for the parties.

(2) To this end, before submitting proposals in the social policy field, the Commission shall consult management and labour on the possible direction of *Union* action.

(3) If, after such consultation, the Commission considers *Union* action advisable, it shall consult management and labour on the content of the envisaged proposal. Management and labour shall forward to the Commission an opinion or, where appropriate, a recommendation.

(4) On the occasion of such consultation, management and labour may inform the Commission of their wish to initiate the process provided for in *Article II-36*. The duration of the procedure shall not exceed nine months, unless the management and labour concerned and the Commission decide

¹ Cf. Article 160 EC.

² Cf. Article 161(2) EC.

³ Cf. Article 138 EC.

jointly to extend it.

Article II-36 (Agreements between management and labour at Union level)¹

(1) Should management and labour so desire, the dialogue between them at *Union* level may lead to contractual relations, including agreements.

(2) Agreements concluded at *Union* level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered by *the Union's competence in the field of social policy*, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission. The Council shall act by qualified majority.

Article II-37 (Implementation of Union framework laws by management and labour)²

(1) A Member State may entrust management and labour, at their joint request, with the implementation of *Union framework laws* adopted *in the field of social policy*.

(2) In this case, it shall ensure that, no later than the date on which a *Union framework law* must be transposed in accordance with *Article 98(3)*, management and labour have introduced the necessary measures by agreement, the Member State concerned being required to take any necessary measure enabling it at any time to be in a position to guarantee the results imposed by that *Union framework law*.

28.2.

¹ Cf. Article 139 EC, as amended by the Treaty of Nice.

² Cf. Article 137(3) EC.

28.3. Title II: Economic and Monetary Union

28.3.1. Chapter 1: Economic Policy

Article II-38 (Principles of economic policy coordination)

(1)¹ Member States shall conduct their economic policies with a view to contributing to the achievement of the objectives of the *Union*, as defined in *Article 59(1)(a)*, and in the context of the broad guidelines referred to in *Article II-39*. The Member States and the *Union* shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in *Article 60*.

(2)² Member States shall regard their economic policies as a matter of common concern and shall coordinate them within the Council, in accordance with the provisions of *paragraph 1*.

Article II-39 (Broad guidelines of economic policies; multilateral surveillance)

(1)³ The Council shall, acting by a qualified majority on a *proposal* from the Commission, formulate a draft for the broad guidelines of the economic policies of the Member States and of the *Union*, and shall report its findings to the European Council.

The European Council shall, acting on the basis of the *draft* from the Council, discuss a conclusion on the broad guidelines of the economic policies of the Member States and of the *Union*.

On the basis of this conclusion, the Council shall, acting by a qualified majority, adopt a recommendation setting out these broad guidelines. The Council shall inform the European Parliament of its recommendation.

(2)¹ In order to ensure closer coordination of economic policies and sustained convergence of the economic performances of the Member States, *the Commission* and the Council shall, on the basis

¹ Cf. Article 98 EC.

² Cf. Article 99(1) EC.

³ Cf. Article 99(2) EC.

of reports submitted by the Commission, monitor economic developments in each of the Member States and in the *Union* as well as the consistency of economic policies with the broad guidelines referred to in *paragraph 1*, and regularly carry out an overall assessment.

For the purpose of this multilateral surveillance, Member States shall *inform* the Commission of the measures envisaged to give effect to the recommendations adopted by the Council and of the actions decided on to this end.

(3)² Where it is established that the economic policies of a Member State are not consistent with the broad guidelines referred to in paragraph 1 or that they risk jeopardising the proper functioning of economic and monetary union, the *Commission shall address a recommendation as early warning to the Member State concerned*.

The Council may also, acting by a qualified majority on a proposal from the Commission, make the necessary recommendations to the Member State concerned.

*Where a Member State persists in failing to put into practice the Council's recommendations, the Council may, acting by qualified majority on a proposal from the Commission, decide on measures appropriate to the situation*³.

The voting rights of the representative of the Member State concerned shall be suspended for the Council decisions under this paragraph and shall not be taken into account in the calculation of the qualified majority.

(4) *The Commission shall report to the European Parliament and to the Council on the results of multilateral surveillance.*

(5)¹ Detailed rules for the multilateral surveillance procedure referred to in *paragraphs 2-4* of this Article may be laid down by a Union law on which the ECB shall be consulted.

¹ Cf. Article 99(3) EC.

² Cf. Article 99(4), subpara 1 EC. Cf. also the proposed Article III-66(4) in the Feasibility Study of the Commission "Contribution to a preliminary draft Constitution of the European Union – Working Document" of 4 December 2002.

³ Cf. the proposed Article III-66(5) in the Feasibility Study of the Commission "Contribution to a preliminary draft Constitution of the European Union – Working Document" of 4 December 2002.

Article II-40 (Measures appropriate to the economic situation; natural disasters; Union financial assistance)²

(1) Without prejudice to any other procedures provided for in this *Constitution*, the Council, acting by a qualified majority on a proposal from the Commission *and after consulting the European Parliament*, may decide upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products.

(2) Where a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council, acting by a qualified majority on a proposal from the Commission *and after consulting the European Parliament*, may grant, under certain conditions, *Union* financial assistance to the Member State concerned.

Article II-41 (Prohibition of monetary financing of public budgets)³

(1) Overdraft facilities or any other type of credit facility with the ECB or with the national central banks in favour of *Union* institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States shall be prohibited, as shall the purchase directly from them by the ECB or national central banks of debt instruments.

(2) Paragraph 1 shall not apply to publicly owned credit institutions which, in the context of the supply of reserves by central banks, shall be given the same treatment by national central banks and the ECB as private credit institutions.

Article II-42 (Prohibition of privileged access to financial institutions)¹

(1) Any measure, not based on prudential considerations, establishing privileged access by *Union* institutions or bodies, central governments, regional, local or other public authorities, other bodies

¹ Cf. Article 99(5) EC.

² Cf. Article 100 EC, as amended by the Treaty of Nice.

³ Cf. Article 101 EC.

governed by public law, or public undertakings of Member States to financial institutions, shall be prohibited.

(2) *A Union law* shall specify definitions for the application of the prohibition referred to in paragraph 1.

Article II-43 (Prohibition of bail outs)²

(1) The *Union* shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project. A Member State shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of another Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project.

(2) If necessary, *a Union law* may specify definitions for the application of the prohibition referred to in *Article II-41* and in this Article.

Article II-44 (Prohibition of excessive government deficits; surveillance procedure and sanctions)³

(1) Member States shall avoid excessive government deficits.

(2) The Commission shall monitor the development of the budgetary situation and of the stock of government debt in the Member States with a view to identifying gross errors. In particular it shall examine compliance with budgetary discipline on the basis of the following two criteria:

(a) whether the ratio of the planned or actual government deficit to gross domestic product exceeds

¹ Cf. Article 102 EC.

² Cf. Article 103 EC.

³ Cf. Article 104 EC.

a reference value, unless:

- either the ratio has declined substantially and continuously and reached a level that comes close to the reference value,
- or, alternatively, the excess over the reference value is only exceptional and temporary and the ratio remains close to the reference value;

(b) whether the ratio of government debt to gross domestic product exceeds a reference value, unless the ratio is sufficiently diminishing and approaching the reference value at a satisfactory pace.

The reference values are specified in the Protocol on the excessive deficit procedure annexed to this *Constitution*.

(3) If a Member State does not fulfil the requirements under one or both of these criteria, the Commission shall prepare a report. The report of the Commission shall also take into account whether the government deficit exceeds government investment expenditure and take into account all other relevant factors, including the medium-term economic and budgetary position of the Member State.

The Commission may also prepare a report if, notwithstanding the fulfilment of the requirements under the criteria, it is of the opinion that there is a risk of an excessive deficit in a Member State.

(4)¹ *The Commission shall, after consulting the Economic and Financial Committee referred to Article II-49 and after having considered any observations which the Member State concerned may wish to make, decide after an overall assessment whether an excessive deficit exists.*

(5)² Where the existence of an excessive deficit is decided according to *paragraph 4*, the Council shall make recommendations to the Member State concerned with a view to bringing that situation to an end within a given period.

¹ Cf. Article 104(4) and (6) EC.

² Cf. Article 104(7) EC.

(6)¹ If a Member State persists in failing to put into practice the recommendations of the Council, the Council may decide to give notice to the Member State to take, within a specified time limit, measures for the deficit reduction which is judged necessary by the Council in order to remedy the situation.

In such a case, the Council may request the Member State concerned to submit reports in accordance with a specific timetable in order to examine the adjustment efforts of that Member State.

(7)² The rights to bring actions provided for in *Articles 84(a)* may not be exercised within the framework of *paragraphs 1 to 6* of this Article.

(8)³ As long as a Member State fails to comply with a decision taken in accordance with *paragraph 5*, the Council may decide to apply or, as the case may be, intensify one or more of the following measures:

- to require the Member State concerned to publish additional information, to be specified by the Council, before issuing bonds and securities,
- to invite the European Investment Bank to reconsider its lending policy towards the Member State concerned,
- to require the Member State concerned to make a non-interest-bearing deposit of an appropriate size with the *Union* until the excessive deficit has, in the view of the Council, been corrected,
- to impose fines of an appropriate size.

The President of the Council shall inform the European Parliament of the decisions taken.

(9)⁴ To the extent that the excessive deficit in the Member State concerned has, *in the view of the Commission*, been corrected, *the Commission shall, after consulting the Economic and Financial*

¹ Cf. Article 104(9) EC.

² Cf. Article 104(10) EC.

³ Cf. Article 104(11) EC.

⁴ Cf. Article 104(12) EC.

Committee, abrogate its decision referred to in paragraph 4. In this case, the Council shall abrogate its decisions referred to in paragraphs 5, 6 and 8.

(10)¹ When taking the decisions referred to in *paragraphs 5, 6, 8 and 9*, the Council shall act on a *proposal* from the Commission *by a majority of two thirds of the votes of its members*, excluding the votes of the representative of the Member State concerned.

(11)² Further provisions relating to the implementation of the procedure described in this article are set out in the Protocol on the excessive deficit procedure annexed to this *Constitution*.

The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the ECB, adopt the appropriate provisions which shall then replace the said Protocol.

A Union law shall lay down detailed rules and definitions for the application of the provisions of the said Protocol.

(12)³ In the second stage of Economic and Monetary Union, Member States shall endeavour to avoid excessive government deficits.

28.3.2.

28.3.3. Chapter 2: Monetary Policy⁴

Article II-45 (Monetary policy as task of the ECB; prudential supervision)

(1) The Statute of the ESCB, annexed to this Constitution, determines how the monetary policy of

¹ Cf. Article 104(13) EC.

² Cf. Article 104(14) EC.

³ Cf. Article 116(4) EC; continues to be relevant in view of the two Member States (United Kingdom and Denmark) which have not yet decided to move to the third stage of EMU – see paragraph 6 of the Protocol on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland.

⁴ This Chapter comprises only those provisions which are neither included in Part One nor in the Statute of the ESCB, which is annexed to the Constitution. The Statute of the ESCB duplicates almost all monetary policy provisions of the EC Treaty. As a Protocol annexed to

the Union is defined and implemented by the ECB and, under its governance, by the ESCB.

(2)¹ The Council may, acting unanimously on a proposal from the Commission and after consulting the ECB and after receiving the assent of the European Parliament, confer upon the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings.

Article II-46 (Issue of coins)²

Member States may issue coins subject to approval by the ECB of the volume of the issue.

Article II-47 (Compatibility of national legislation)³

National legislation including the statutes of the national central bank must be compatible with this Constitution and the Statute of the ESCB, in particular with regard to the independence of the national central bank.

28.3.4. Chapter 3: Coordination of Economic and Monetary Policy

Article II-48 (Coordination between the ECB and the Union institutions)⁴

(1) The President of the Council and a member of the Commission may participate, without having the right to vote, in meetings of the Governing Council of the ECB. The President of the Council may submit a motion for deliberation to the Governing Council of the ECB.

the Constitution, it is an integral part thereof; see *Article 130 of the Constitution*.

¹ Cf. Article 105(6) EC.

² Cf. Article 106(2) EC.

³ Cf. Article 109 EC, combined with Article 116(5) EC.

⁴ Cf. Article 113 EC.

(2) The President of the ECB shall be invited to participate in Council meetings when the Council is discussing matters relating to the objectives and tasks of the ESCB.

(3) The ECB shall address an annual report on the activities of the ESCB and on the monetary policy of both the previous and current year to the European Parliament, the Council and the Commission, and also to the European Council. The President of the ECB shall present this report to the Council and to the European Parliament, which may hold a general debate on that basis.

The President of the ECB and the other members of the Executive Board may, at the request of the European Parliament or on their own initiative, be heard by the competent committees of the European Parliament.

Article II-49 (Economic and Financial Committee)¹

(1) The Economic and Financial Committee shall have the following tasks:

- to deliver opinions at the request of the Council or of the Commission, or on its own initiative for submission to those institutions,
- to keep under review the economic and financial situation of the Member States and of the *Union* and to report regularly thereon to the Council and to the Commission, in particular on financial relations with third countries and international institutions,
- to contribute to the preparation of the work of the Council referred to in *Articles 70(d) and (i), 71(1)(a) (where related to capital and payments) and 125, Articles II-39(1), (2), (3) and (5), II-40, II-42, II-43, II-44, II-45(2), II-51, II-52(2) and (3), II-54(2) and (3), and Articles 41 and 42 of the Statute of the ESCB*, and to carry out other advisory and preparatory tasks assigned to it by the Council,
- to examine, at least once a year, the situation regarding the movement of capital and the freedom of payments, as they result from the application of this *Constitution, of Union laws* and of measures adopted by the Council; the examination shall cover all measures relating to

¹ Cf. Article 114(2)-(4) EC.

capital movements and payments; the Committee shall report to the Commission, to the Council *and to the European Parliament* on the outcome of this examination.

(2) The Member States, the Commission and the ECB shall each appoint no more than two members of the Committee.

(3) *A Union law* shall lay down detailed provisions concerning the composition of the Economic and Financial Committee. *The ECB and the Committee referred to in this Article shall be consulted on such a Union law.*

(4) In addition to the tasks set out in *paragraph 1*, if and as long as there are Member States with a derogation as *referred to in Article II-51*, the Committee shall keep under review the monetary and financial situation and the general payments system of those Member States and report regularly thereon to the Council, to the Commission *and to the European Parliament*.

28.3.5. Chapter 4: Transitional Provisions

Article II-50 (Applicability of the transitional provisions)

The provisions of this Chapter shall be applicable only as long as there are Member States with a derogation.

Article II-51 (Member States with a derogation)¹

(1) Member States which do not yet fulfil the necessary conditions for the adoption of the single currency as laid down in *Article II-54* shall be referred to in this Constitution as “Member States with a derogation.”

(2) A derogation referred to in *paragraph 1* shall entail that the following *Articles of this Constitution* do not apply to the Member State concerned: *Articles 90(1), (2), (3), (4), and (5), 125, Articles II-44(6) and (8), II-46.*

¹ Cf. Article 122 EC.

The exclusion of such a Member State and its national central bank from rights and obligations within the ESCB is laid down in Chapter IX of the Statute of the ESCB.

(3) In *Articles 90(1), (2), (4) and (5), 125, and Article II-49*, ‘Member States’ shall be read as ‘Member States without a derogation’.

(4) The voting rights of Member States with a derogation shall be suspended for the Council decisions referred to in the *Articles of this Constitution* mentioned in paragraph 2. In that case, by way of derogation from *Article 112(2)*, a qualified majority shall be defined *as two thirds of the votes of the representatives of the Member States without a derogation*, and unanimity of those Member States shall be required for an act requiring unanimity.

Article II-52 (Mutual assistance in case of balance of payment difficulties)¹

(1) Where a Member State *with a derogation* is in difficulties or is seriously threatened with difficulties as regards its balance of payments either as a result of an overall disequilibrium in its balance of payments, or as a result of the type of currency at its disposal, and where such difficulties are liable in particular to jeopardise the functioning of the *internal* market or the progressive implementation of the common commercial policy, the Commission shall immediately investigate the position of the State in question and the action which, making use of all the means at its disposal, that State has taken or may take in accordance with the provisions of this *Constitution*. The Commission shall state what measures it recommends the State concerned to take.

If the action taken by a Member State *with a derogation* and the measures suggested by the Commission do not prove sufficient to overcome the difficulties which have arisen or which threaten, the Commission shall, after consulting the *Economic and Financial Committee*, recommend to the Council the granting of mutual assistance and appropriate methods therefor.

The Commission shall keep the Council, *the European Parliament and the ECB* regularly informed of the situation and of how it is developing.

(2) The Council, acting by a qualified majority *after consulting the European Parliament and the*

¹ Cf. Article 119 EC.

ECB, shall grant such mutual assistance; it shall adopt *Union framework laws* or decisions laying down the conditions and details of such assistance, which may take such forms as:

- (a) a concerted approach to or within any other international organisations to which Member States may have recourse;
- (b) measures needed to avoid deflection of trade where the State which is in difficulties maintains or reintroduces quantitative restrictions against third countries;
- (c) the granting of limited credits by other Member States, subject to their agreement.

(3) If the mutual assistance recommended by the Commission is not granted by the Council or if the mutual assistance granted and the measures taken are insufficient, the Commission shall authorise the State which is in difficulties to take protective measures, the conditions and details of which the Commission shall determine.

Such authorisation may be revoked and such conditions and details may be changed by the Council acting by a qualified majority.

Article II-53 (Sudden crisis in the balance of payments)¹

(1) Where a sudden crisis in the balance of payments occurs and a decision within the meaning of *Article II-52* is not immediately taken, the Member State *with a derogation* concerned may, as a precaution, take the necessary protective measures. Such measures must cause the least possible disturbance in the functioning of the *internal* market and must not be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen.

(2) The Commission, the other Member States *and the ECB* shall be informed of such protective measures not later than when they enter into force. The Commission may recommend to the Council the granting of mutual assistance under *Article II-52*.

(3) After the Commission has delivered an opinion and the *Economic and Financial Committee* has been consulted, the Council may, acting by a qualified majority *and after consulting the European*

Parliament and the ECB, decide that the State concerned shall amend, suspend or abolish the protective measures referred to above.

Article II-54 (Conditions and procedure for the abrogation of a derogation)²

(1)³ At least once every two years, or at the request of a Member State with a derogation, the Commission and the ECB shall report to the Council on the progress made in the fulfilment by the Member States with a derogation of their obligations regarding the achievement of economic and monetary union. These reports shall include an examination of the compatibility between each Member State's national legislation, including the statutes of its national central bank, and *Articles 90(6) and II-47* and the Statute of the ESCB. The reports shall also examine the achievement of a high degree of sustainable convergence by reference to the fulfilment by each Member State of the following criteria:

- the achievement of a high degree of price stability; this will be apparent from a rate of inflation which is close to that of, at most, the three best performing Member States in terms of price stability,
- the sustainability of the government financial position; this will be apparent from having achieved a government budgetary position without a deficit that is excessive as determined in accordance with *Article II-44(4)*,
- the observance of the normal fluctuation margins provided for by the exchange-rate mechanism of the European Monetary System, for at least two years, without devaluing against the *euro*,
- the durability of convergence achieved by the Member State and of its participation in the exchange-rate mechanism of the European Monetary System being reflected in the long-term interest-rate levels.

The four criteria mentioned in this paragraph and the relevant periods over which they are to be

¹ Cf. Article 120 EC.

² Combines the substance of Article 121 with the procedures of Articles 122 and 123(5) EC; the procedures under Article 121 EC applied only before 1 January 1999.

³ Cf. Articles 122(2), first sentence and Article 121(1) EC.

respected are developed further in a Protocol annexed to this *Constitution*. The reports of the Commission and the *ECB* shall also take account of the development of the *euro*, the results of the integration of markets, the situation and development of the balances of payments on current account and an examination of the development of unit labour costs and other price indices.

(2)¹ After consulting the European Parliament and after discussion in the Council, meeting in the composition of the Heads of State or Government, the Council shall, acting by a qualified majority on a proposal from the Commission, decide which Member States with a derogation fulfil the necessary conditions on the basis of the criteria set out in *paragraph 1*, and abrogate the derogations of the Member States concerned.

(3)² If it is decided to abrogate a derogation, the Council shall, acting with the unanimity of *the representatives of* the Member States without a derogation and the Member State concerned, on a proposal from the Commission and after consulting the *ECB and the European Parliament*, adopt the rate at which the *euro* shall be substituted for the currency of the Member State concerned, and take the other measures necessary for the introduction of the *euro* as the single currency in the Member State concerned.

Article II-55 (Exchange-rate policy of Member States with a derogation)³

Each Member State with a derogation shall treat its exchange-rate policy as a matter of common interest. In so doing, Member States shall take account of the experience acquired in cooperation within the framework of the European Monetary System (EMS⁴) and shall respect existing powers in this field.

¹ Cf. Article 122(2), second sentence EC.

² Cf. Article 123(5) EC.

³ Cf. Article 124 EC.

⁴ Today, this is the Exchange-Rate Mechanism (ERM) II, established by agreement between the ECB and the national central banks of the Member States which do not participate in the euro. The euro is the anchor currency of ERM II.

28.4. Title III: Employment

Article II-56 (Coordinated strategy for employment)

(1)¹ *The Union and the Member States* shall, in accordance with this Title, work towards developing a coordinated strategy for employment and particularly for promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change with a view to achieving the objectives defined in *Article 60(1) (a)*.

(2)² Member States, through their employment policies, shall contribute to the achievement of the objectives referred to in *paragraph 1* in a way consistent with the broad guidelines of the economic policies of the Member States and of the *Union* adopted pursuant to *Article II-39*.

(3)³ Member States, having regard to national practices related to the responsibilities of management and labour, shall regard promoting employment as a matter of common concern and shall coordinate their action in this respect within the Council, in accordance with the provisions of *Article II-57*.

Article II-57 (Guidelines for Employment)⁴

(1) The European Council shall each year consider the employment situation in the *Union* and adopt conclusions thereon, on the basis of a joint annual report by the Council and the Commission.

(2) On the basis of the conclusions of the European Council, the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee, the Committee of the Regions and the Employment Committee referred to in *Article II-58*, shall each year draw up guidelines which the Member States shall take into account in their employment policies. These guidelines shall be consistent with the broad guidelines adopted pursuant to *Article II-39*.

(3) Each Member State shall provide the Council and the Commission with an annual report on the

¹ Cf. Article 125 EC.

² Cf. Article 126(1) EC.

³ Cf. Article 126(2) EC.

⁴ Cf. Article 128 EC.

principal measures taken to implement its employment policy in the light of the guidelines for employment as referred to in paragraph 2.

(4) The Council, on the basis of the reports referred to in paragraph 3 and having received the views of the Employment Committee, shall each year carry out an examination of the implementation of the employment policies of the Member States in the light of the guidelines for employment. The Council, acting by a qualified majority on a *proposal* from the Commission *and after consulting the European Parliament*, may, if it considers it appropriate in the light of that examination, make recommendations to Member States.

(5) On the basis of the results of that examination, the Council and the Commission shall make a joint annual report to the European Council *and to the European Parliament* on the employment situation in the *Union* and on the implementation of the guidelines for employment.

Article II-58 (Employment Committee)¹

(1) *A Union law* shall establish an Employment Committee with advisory status to promote coordination between Member States on employment and labour market policies. The tasks of the Committee shall be:

- to monitor the employment situation and employment policies in the Member States and the *Union*,
- to formulate opinions at the request of either the Council or the Commission or on its own initiative, and to contribute to the preparation of the Council proceedings referred to in *Article II-57*.

(2) In fulfilling its mandate, the Committee shall consult management and labour.

(3) Each Member State and the Commission shall appoint two members of the Committee.

¹ Cf. Article 130 EC.

28.5. Title IV: Peaceful Use of Nuclear Energy¹

Article II-59 (Special objectives of the Union's nuclear energy policy)²

(1) The objective of the Union's policy with regard to nuclear energy, as provided for in *Articles 60(1)(d) and 70(1)(s)*, shall be to conduct, on the basis of what has been achieved under the Euratom Treaty, a policy of high nuclear safety and security standards, allowing installations to remain in use in those Member States that have opted to use this source of energy, and to guarantee non-proliferation.

(2) The Union's policy with regard to nuclear energy shall not prejudice the right of each Member State to opt to use or not to use this source of energy.

28.5.1. Chapter 1: Protection from Radiation

Article II-60 (Basic standards)

(1)³ Basic standards *relating to the safety of installations and the protection of the environment, the population and workers* against the dangers of radiation shall be laid down *by a Union law or a Union framework law*.

(2)⁴ The expression “basic standards” means:

(a) maximum permissible doses compatible with adequate safety;

¹ Takes over the content of the Euratom Treaty – which is an integral part of the *acquis communautaire* and primary Community law –, even though in a modernised version. It is inspired in large parts by the Feasibility Study of the Commission “Contribution to a preliminary draft Constitution of the European Union – Working Document” of 4 December 2002, where these provisions are taken over as Additional Act No 2 to the Constitution.

² Cf. Article 17 of the Feasibility Study of the Commission “Contribution to a preliminary draft Constitution of the European Union – Working Document” of 4 December 2002.

³ Cf. Article 30(1) Euratom.

⁴ Cf. Article 30(2) Euratom.

(b) maximum permissible levels of exposure or contamination;

(c) the fundamental principles governing the health surveillance of workers.

(3)¹ The basic standards shall be *proposed* by the Commission, after it has obtained the opinion of a group of persons *designated* by the Scientific and Technical Committee referred to in *Article II-91* from among *experts in public health and nuclear safety* in the Member States. The Commission shall obtain the opinion of the Economic and Social Committee on these basic standards.

(4)² At the request of a Member State *or of the European Parliament*, the basic standards may be revised or supplemented. The Commission shall examine *any such request*.

Article II-61 (Compliance with the basic standards by the Member States)³

(1) Each Member State shall lay down the appropriate provisions, whether by legislation, regulation or administrative action, to ensure compliance with the basic standards which have been established.

(2) The Commission shall make appropriate recommendations for harmonising the provisions applicable in this field in the Member States, including those regarding the safety of installations.

To this end, the Member States shall communicate to the Commission *those provisions in force* and any subsequent draft provisions of the same kind.

Any recommendations the Commission may wish to issue with regard to such draft provisions shall be made within three months of the date on which such draft provisions are communicated.

Article II-62 (Particularly dangerous experiments)⁴

¹ Cf. Article 31 Euratom.

² Cf. Article 32 Euratom.

³ Cf. Article 33 Euratom.

⁴ Cf. Article 34 Euratom.

(1) Any Member State in whose territories particularly dangerous experiments are to take place shall take additional protective measures, on which it shall first obtain the opinion on the Commission.

(2) The assent of the Commission shall be required where the effects of such experiments are liable to affect the territories of other Member States.

Article II-63 (Continuous monitoring of the level of radioactivity)

(1)¹ Each Member State shall establish the facilities necessary to carry out continuous monitoring of the level of radioactivity in the air, water and soil and to ensure compliance with the basic standards, *including those for nuclear safety*.

(2)² The Commission shall have the right of access to such facilities; it may verify their operation and efficiency.

(3)³ The appropriate authorities shall periodically communicate information on the checks referred to in paragraph 2 to the Commission so that it is kept informed of the level of radioactivity to which the public is exposed *and of adherence to standards of safety*.

(4)¹ The Commission shall make recommendations to the Member States with regard to the level of radioactivity in the air, water and soil.

In cases of urgency, the Commission shall adopt a *Union decision* requiring the Member State concerned to take, within a period laid down by the Commission, all necessary measures to prevent infringement of the basic standards and to ensure compliance with regulations.

Should the State in question fail to comply with the *Union decision* within the period laid down, the Commission or any Member State concerned may forthwith bring the matter, *by way of derogation from Article 84(a)*, directly before the Court of Justice.

¹ Cf. Article 35(1) Euratom.

² Cf. Article 35(2) Euratom.

³ Cf. Article 36 Euratom.

Article II-64 (Disposal of radioactive waste)²

(1) Each Member State shall provide the Commission with such general data relating to any plan for the disposal of radioactive waste in whatever form as will make it possible to determine whether the implementation of such plan is liable to result in the radioactive contamination of the water, soil or airspace *of the Union*.

(2) The Commission, *after seeking the necessary expert opinions*, shall deliver its opinion within six months.

28.5.2.

28.5.3. *Chapter 2: Investment*

Article II-65 (Programmes on nuclear energy production expectations)³

(1) The Commission shall periodically publish illustrative programmes, indicating in particular nuclear energy production *expectations* and all the types of investment required for their attainment.

(2) The Commission shall obtain the opinion of the Economic and Social Committee on such programmes before their publication.

Article II-66 (Communication of investment projects to the Commission)

(1)¹ Persons and undertakings engaged in the industrial activities listed in Annex I to this *Title* shall communicate to the Commission investment projects relating to new installations and also to replacements or conversions which fulfil the criteria as to type and size laid down by a Union law.

¹ Cf. Article 38 Euratom.

² Cf. Article 37 Euratom.

³ Cf. Article 40 Euratom.

The list of industrial activities may be altered *by a Union law*, on which the Economic and Social Committee shall be consulted.

(2)² The projects referred to in *paragraph 1* shall be communicated to the Commission and, for information purposes, to the Member State concerned, not later than three months before the first contracts are concluded with the suppliers or, if the work is to be carried out by the undertaking with its own resources, three months before the work begins.

The *Commission* may alter this time limit.

(3)³ The Commission shall discuss with the persons or undertakings all aspects of investment projects which relate to the objectives of the *Union, including their impact on the proper functioning of the internal market. It shall evaluate, within this framework, the methods of financing the planned investments and shall decide on the authorisation of the investment project.*

(4)⁴ The Commission may publish *the essential and general elements of its decision on the investment projects* communicated to it.

28.5.4.

28.5.5.

28.5.6.

28.5.7. *Chapter 3: Joint Undertakings*

Article II-67 (Possibility to establish joint undertakings)¹

Undertakings which are of fundamental importance to the development of the nuclear industry in the Union may be established as Joint Undertakings within the meaning of this Chapter, in accordance with the following Articles.

Article II-68 (Project for establishing a joint undertaking)

¹ Cf. Article 41 Euratom.

² Cf. Article 42 Euratom.

³ Cf. Article 43 Euratom.

⁴ Cf. Article 44 Euratom.

(1)² Every project for establishing a Joint Undertaking, whether originating from the Commission, a Member State or any other quarter, shall be the subject of an inquiry by the Commission.

For this purpose, the Commission shall obtain the views of the Member States and of any public or private body which in its opinion can usefully advise it.

(2)³ The Commission shall forward to *the European Parliament and the Council* any project for establishing a Joint Undertaking, together with its reasoned opinion.

If the Commission delivers a favourable opinion on the need for the proposed Joint Undertaking, it shall submit proposals *for a Union law* concerning:

- (a) the location,
- (b) the statutes,
- (c) the scale and timetable for financing,
- (d) possible participation by the *Union* in the financing of the Joint Undertaking,
- (e) possible participation of a third State, an international organisation or a national of a third State in the financing or management of the Joint Undertaking,
- (f) the conferring of any or all of the advantages listed in Annex II to this *Title*.

The Commission shall attach a detailed report on the project as a whole.

(3)¹ The *European Parliament and the Council* may, when the matter has been submitted to them by the Commission, request the latter to supply such further information or to undertake such further inquiries as they may consider necessary.

If *the European Parliament or the Council* considers that a project forwarded by the Commission

¹ Cf. Article 45 Euratom.

² Cf. Article 46(1) Euratom.

³ Cf. Article 46(2) Euratom.

with an unfavourable opinion should nevertheless be carried out, the Commission shall submit the proposals and the detailed report referred to in *paragraph 2*.

Article II-69 (Conferment of advantages to a joint undertaking)²

(1) *A Union law* may make applicable to each Joint Undertaking any or all of the advantages listed in Annex II to this *Title*; each Member State shall for its part ensure that these advantages are conferred.

(2) The conditions governing the conferment of these advantages may *be laid down by a Union law*.

Article II-70 (Establishment of joint undertakings)³

(1) Joint Undertakings shall be established by *a Union law, following a Commission proposal under Article II-68(2)*.

(2) Each Joint Undertaking shall have legal personality. In each of the Member States, it shall enjoy the most extensive legal capacity accorded to legal persons under their respective national laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.

(3) Save as otherwise provided in this *Constitution* or in its own statutes, each Joint Undertaking shall be governed by the rules applying to industrial or commercial undertakings; its statutes may make subsidiary reference to the national laws of the Member States.

(4) Save where jurisdiction is conferred upon the Court of Justice by this *Constitution*, disputes in which Joint Undertakings are concerned shall be determined by the appropriate national courts or tribunals.

(5)⁴ The Commission shall be responsible for carrying out all *Union laws* relating to the

¹ Cf. Article 47 Euratom.

² Cf. Article 48 Euratom.

³ Cf. Article 49 Euratom.

⁴ Cf. Article 51 Euratom.

establishment of Joint Undertakings until the bodies responsible for the operation of such Undertakings have been set up.

Article II-71 (Amendments of statutes of joint undertakings)¹

(1) The statutes of Joint Undertakings shall be amended, where necessary, in accordance with the special provisions which they contain for this purpose.

(2) Such amendments shall not, however, enter into force until they have been approved *by a Union law*.

28.5.8. Chapter 4: Supplies

Article II-72 (Common supply policy; the Agency)¹

(1) The supply of ores, source materials and special fissile materials shall be ensured, in accordance with the provisions of this Chapter, by means of a common supply policy on the principle of equal access to sources of supply.

(2) For this purpose and under the conditions laid down in this Chapter:

(a) All practices designed to secure a privileged position for certain users shall be prohibited;

(b) An Agency is hereby established; it shall have an exclusive right to conclude contracts for the supply of source materials and special fissile materials coming from inside the *Union* or outside.

The Agency may not discriminate in any way between users on the grounds of the use which they intend to make of the supplies requested unless such use is unlawful or is found to be contrary to the conditions imposed by suppliers outside the *Union* on the consignment in question.

¹ Cf. Article 50 Euratom.

Article II-73 (Supervision of the Agency by the Commission)²

(1) This Agency shall be under the supervision of the Commission, which shall issue directives to it, possess a right of veto over its decisions and appoint its Director.

(2) Any act, whether implied or expressed, performed by the Agency in the exercise of its exclusive right to conclude supply contracts, may be referred by the parties concerned to the Commission, which shall give a decision thereon within one month.

Article II-74 (Status of the Agency)³

(1) The Agency shall have legal personality and financial autonomy.

(2) The statutes of the Agency shall be laid down *by a Union law* and *may be amended by such law*.

(3) The statutes shall determine the Agency's capital and the terms upon which it is to be subscribed. The major part of the capital shall always belong to the *Union* and to the Member States. The contributions to the capital *coming from the Member States* shall be determined by common accord of the Member States.

(4) The rules for the commercial management of the activities of the Agency shall be laid down in the statutes. The latter may provide for a charge on transactions to defray the operating expenses of the Agency.

Article II-75 (Exclusive contracting rights of the Agency)

¹ Cf. Article 52 Euratom.

² Cf. Article 53 Euratom.

³ Cf. Article 54 Euratom.

(1)¹ The Agency, acting where appropriate within the framework of agreements concluded between the *Union* and a third State or an international organisation, shall, subject to the exceptions provided for in this *Constitution*, have the exclusive right to enter into agreements or contracts whose principal aim is the supply of ores, source materials or special fissile materials coming from outside the *Union*.

(2)² *The rules of the Agency, submitted for approval to the Commission, shall determine the conditions under which it shall approve applications from users and contracts between users and the Agency relating to the supply of ores, source materials or special fissile materials coming from outside the Union.*

The Agency may, however, decide on the geographical origin of supplies provided that conditions which are at least as favourable as those specified in the order are thereby secured for the user.

Article II-76 (Prohibition of discriminatory pricing practices)³

(1) Pricing practices designed to secure a privileged position for certain users in violation of the principle of equal access laid down in the provisions of this Chapter shall be prohibited.

(2) If the Agency finds that any such practices are being employed it shall report them to the Commission.

The Commission may, if it accepts the findings, set the prices of the offers at a level compatible with the principle of equal access.

Article II-77 (Revenue or mining regulations)¹

The Commission shall make all appropriate recommendations to Member States with regard to revenue or mining regulations.

¹ Cf. Article 64 Euratom.

² Cf. Article 65 Euratom.

³ Cf. Article 68 Euratom.

Article II-78 (Necessary commercial stocks; emergency stocks)²

(1) The Agency may, from material available inside or outside the *Union*, build up the necessary commercial stocks to facilitate supplies to or normal deliveries by the *Union*.

(2) The Commission may, where necessary, decide to build up emergency stocks. The method of financing such stocks shall be laid down by a *Union law*.

Article II-79 (Agreements or contracts within the province of the Agency; prior consent of the Commission)³

Where an agreement or contract between a Member State, a person or an undertaking on the one hand, and a third State, an international organisation or a national of a third State on the other, provides inter alia for delivery of products which come within the province of the Agency, the prior consent of the Commission shall be required for the conclusion or renewal of that agreement or contract, as far as delivery of the products is concerned.

Article II-80 (Exemptions)⁴

(1) The Commission may exempt from the provisions of this Chapter the transfer, import or export of small quantities of ores, source materials or special fissile materials such as are normally used in research.

(2) The Agency shall be notified of every transfer, import or export operation effected by virtue of this provision.

Article II-81 (Non-applicability of the Chapter)⁵

¹ Cf. Article 71 Euratom.

² Cf. Article 72 Euratom.

³ Cf. Article 73 Euratom.

⁴ Cf. Article 74 Euratom.

⁵ Cf. Article 75 Euratom.

(1) The provisions of this Chapter shall not apply to commitments relating to the processing, conversion or shaping of ores, source materials or special fissile materials and entered into:

- (a) by several persons and undertakings, where the material is to return to the original person or undertaking after being processed, converted or shaped; or
- (b) by a person or undertaking and an international organisation or a national of a third State, where the material is processed, converted or shaped outside the *Union* and then returned to the original person or undertaking; or
- (c) by a person or undertaking and an international organisation or a national of a third State, where the material is processed, converted or shaped inside the *Union* and is then returned either to the original organisation or national or to any other consignee likewise outside the *Union* designated by such organisation or national.

(2) The persons and undertakings concerned shall, however, notify the Agency of the existence of such commitments and, as soon as the contracts are signed, of the quantities of material involved in the movements. The Commission may prevent the commitments referred to in point (b) from being undertaken if it considers that the conversion or shaping cannot be carried out efficiently and safely and without the loss of material to the detriment of the *Union*.

(3) The materials to which such commitments relate shall be subject in the territories of the Member States to the safeguards laid down in *Chapter 5*.

Article II-82 (Special amendment procedure for Chapter 4)¹

The provisions of this Chapter may be amended by the Council, acting unanimously on a proposal from the Commission and after receiving the assent of the European Parliament, particularly if unforeseen circumstances create a situation of general shortage. The Commission shall inquire into any request made by a Member State.

¹ Cf. Article 76 Euratom.

28.5.9. Chapter 5: Safeguards

Article II-83 (Control of safeguard provisions by the Commission)¹

In accordance with the provisions of this Chapter, the Commission shall satisfy itself that, in the territories of Member States:

- (a) ores, source materials and special fissile materials are not diverted from their intended uses as declared by the users,
- (b) the provisions relating to supply and any particular safeguarding obligations assumed by the *Union* under an agreement concluded with a third State or an international organisation are complied with.

Article II-84 (Control of installations)²

(1) Anyone setting up or operating an installation for the production, separation or other use of source materials or special fissile materials or for the processing of irradiated nuclear fuels shall declare to the Commission the basic technical characteristics of the installations to the extent that knowledge of these characteristics is necessary for the attainment of the objectives set out in *Article II-83*.

(2) The Commission must approve the techniques to be used for the chemical processing of irradiated materials, to the extent necessary to attain the objectives set out in *Article II-83*.

Article II-85 (Requirement to keep and produce operating records)³

(1) The Commission shall require that operating records be kept and produced in order to permit accounting for ores, source materials and special fissile materials used or produced. The same

¹ Cf. Article 77 Euratom.

² Cf. Article 78 Euratom.

³ Cf. Article 79 Euratom.

requirement shall apply in the case of the transport of source materials and special fissile materials.

(2) Those subject to such requirements shall notify the authorities of the Member State concerned of any communications they make to the Commission pursuant to *Article II-84* and to the first paragraph of this Article.

(3) The nature and the extent of the requirements referred to in the first paragraph of this Article shall be defined *by the Commission in a Union regulation*.

Article II-86 (Deposit of special fissile materials)¹

(1) The Commission may require that any excess special fissile materials recovered or obtained as by-products and not actually being used or ready for use shall be deposited with the Agency or in other stores which are or can be supervised by the Commission.

(2) Special fissile materials deposited in this way must be returned forthwith to those concerned at their request.

Article II-87 (Commission inspections; infringements by a Member State)²

(1) The Commission may send inspectors into the territories of Member States. Before sending an inspector on his first assignment in the territory of a Member State, the Commission shall consult the State concerned; such consultation shall suffice to cover all future assignments of this inspector.

(2) On presentation of a document establishing their authority, inspectors shall at all times have access to all places and data and to all persons who, by reason of their occupation, deal with materials, equipment or installations subject to the safeguards provided for in this Chapter, to the extent necessary in order to apply such safeguards to ores, source materials and special fissile materials, and to ensure compliance with the provisions of *Article II-83*. Should the State concerned so request, inspectors appointed by the Commission shall be accompanied by representatives of the authorities of that State; however, the inspectors shall not thereby be delayed or otherwise impeded

¹ Cf. Article 80 Euratom.

² Cf. Articles 81 and 82 Euratom.

in the performance of their duties.

(3) If the carrying out of an inspection is opposed, the Commission shall apply to the President of the Court of Justice for an order to ensure that the inspection be carried out compulsorily. The President of the Court of Justice shall give a decision within three days.

If there is danger in delay, the Commission may itself issue a written order, in the form of a decision, to proceed with the inspection. This order shall be submitted without delay to the President of the Court of Justice for subsequent approval.

After the order or decision has been issued, the authorities of the State concerned shall ensure that the inspectors have access to the places specified in the order or decision.

(4) Inspectors shall be recruited by the Commission. They shall be responsible for obtaining and verifying the records referred to in *Article II-85*. They shall report any infringement to the Commission.

(5) The Commission may issue a *decision* calling upon the Member State concerned to take, by a time limit set by the Commission, all measures necessary to bring such infringement to an end; it shall inform the Council thereof.

If the Member State does not comply with the Commission *decision* by the time limit set, the Commission or any Member State concerned may, in derogation from *Article 84(a)*, refer the matter to the Court of Justice direct.

Article II-88 (Infringement by persons or undertakings)¹

(1) In the event of an infringement on the part of persons or undertakings of the obligations imposed on them by this Chapter, the Commission may impose sanctions on such persons or undertakings.

These sanctions shall be, in order of severity:

¹ Cf. Article 83 Euratom.

- (a) a warning,
- (b) the withdrawal of special benefits such as financial or technical assistance,
- (c) the placing of the undertaking, for a period not exceeding four months, under the administration of a person or board appointed by common accord of the Commission and the State having jurisdiction over the undertaking,
- (d) total or partial withdrawal of source materials or special fissile materials.

(2) Decisions taken by the Commission in implementation of paragraph 1 and requiring the surrender of materials shall be enforceable. They may be enforced in the territories of the Member States in accordance with *Article 100*.

By way of derogation from *Article 86*, *actions* brought before the Court of Justice against decisions of the Commission which impose any of the sanctions provided for in paragraph 1 shall have suspensory effect. The Court of Justice may, however, on application by the Commission or by any Member State concerned, order that the decision be enforced forthwith.

There shall be an appropriate legal procedure to ensure the protection of interests that have been prejudiced.

(3) The Commission may make any recommendations to Member States concerning laws or regulations which are designed to ensure compliance in their territories with the obligations arising under this Chapter.

(4) Member States shall ensure that sanctions are enforced and, where necessary, that the infringements are remedied by those committing them.

Article II-89 (Neutrality with regard to grounds of use; no application to materials intended to meet defence requirements)¹

¹ Cf. Article 84 Euratom.

(1) In the application of the safeguards, no discrimination shall be made on grounds of the use for which ores, source materials and special fissile materials are intended.

(2) The scope and procedure for the safeguards and the powers of the bodies responsible for their application shall be confined to the attainment of the objectives set out in this Chapter.

(2) The safeguards may not extend to materials intended to meet defence requirements which are in the course of being specially processed for this purpose or which, after being so processed, are, in accordance with an operational plan, placed or stored in a military establishment.

Article II-90 (Special amendment procedure for Chapter 5)¹

Where new circumstances so require, the procedures for applying the safeguards laid down in this Chapter may be adapted by the Council, acting unanimously on a proposal from the Commission and after receiving the assent of the European Parliament. The Commission shall examine any such request made by a Member State.

28.5.10. Chapter 6: Other Provisions

Article II-91 (Scientific and Technical Committee)²

(1) A Scientific and Technical Committee is hereby set up; it shall be attached to the Commission and have advisory status.

The Committee must be consulted where this *Title* so provides. It may be consulted in any case where the Commission deems it appropriate.

(2) The Committee shall consist of 38 members, *appointed by the Commission*. The members of the Committee shall be appointed in their personal capacity for five years. Their appointment shall be

¹ Cf. Article 85 Euratom.

² Cf. Article 134 Euratom.

renewable. They shall not be bound by any mandatory instructions.

The Scientific and Technical Committee shall each year elect its chairman and officers from among its Members.

Article II-92 (Link to the Union's research and development policy)¹

The Union's policy with regard to research and development provided for in Article 72(k) shall also facilitate nuclear research in the Member States.

Article II-93 (Joint Nuclear Research Centre)

(1)² After consulting the Scientific and Technical Committee, the Commission shall establish a Joint Nuclear Research Centre. This Centre shall ensure that the research programmes and other tasks assigned to it by the Commission are carried out.

It shall also ensure that a uniform nuclear terminology and a standard system of measurements are established.

It shall set up a central bureau for nuclear measurements.

It shall contribute to the development of the necessary methods and technologies in the field of nuclear safety and safeguards.

(2)³ The activities of the Centre may, for geographical or functional reasons, be carried out in separate establishments.

(3)⁴ After obtaining the opinion of the Economic and Social Committee, the Commission may, within the framework of the Joint Nuclear Research Centre, set up schools for the training of specialists, particularly in the fields of prospecting for minerals, the production of high-purity

¹ Replaces the main provisions of Chapter 1 of the Euratom Treaty.

² Cf. Article 8(1) Euratom.

³ Cf. Article 8(2) Euratom.

⁴ Cf. Article 9(1) Euratom.

nuclear materials, the processing of irradiated fuels, nuclear engineering, health and safety and the production and use of radioisotopes.

The Commission shall determine the details of such training.

Article II-94 (Security system for sensitive information)¹

(1) Information which the *Union* acquires as a result of carrying out its research programmes, and the disclosure of which is liable to harm the defence interests of one or more Member States, shall be subject to a security system.

(2) To this end, *a Union law* shall lay down the various security gradings to be applied and the security measures appropriate to each grading.

Article II-95 (Additional national sanctions for persons or undertakings)

(1) If the Commission considers that a person or undertaking has committed an infringement of this Title to which the provisions of *Article II-88* do not apply, it shall call upon the Member State having jurisdiction over that person or undertaking to cause sanctions to be imposed in respect of the infringement in accordance with the national law.

(2) If the State concerned does not comply with such a request within the period laid down by the Commission, the latter may bring an action before the Court of Justice to have the infringement of which the person or undertaking is accused established.

Article II-96 (Insurance contracts covering nuclear risks)²

(1) Member States shall take all measures necessary to facilitate the conclusion of insurance contracts covering nuclear risks.

¹ Cf. Article 24 Euratom.

² Cf. Article 98 Euratom.

(2) *A Union framework law* shall determine the application of this Article.

Article II-97 (Definitions)¹

- (1) “Special fissile materials” means plutonium-239, uranium-233, uranium enriched in uranium-235 or uranium-233; and any substance containing one or more of the foregoing isotopes and such other fissile materials as may be specified by *a Union law*; the expression "special fissile materials" does not, however, include source materials;
- (2) “Uranium enriched in uranium-235 or uranium-233” means uranium containing uranium-235 or uranium-233 or both in an amount such that the abundance ratio of the sum of these isotopes to isotope 238 is greater than the ratio of isotope 235 to isotope 238 occurring in nature;
- (3) “Source materials” means uranium containing the mixture of isotopes occurring in nature, uranium whose content in uranium-235 is less than normal, thorium, any of the foregoing in the form of metal, alloy, chemical compound or concentrate, any other substance containing one or more of the foregoing in such a concentration as shall be specified by *a Union law*;
- (4) “Ores” means any ore containing, in such average concentration as shall be specified by *a Union law*, substances from which the source materials specified above may be obtained by the appropriate chemical and physical processing.

28.5.11. *Annex 1: Industrial activities referred to in Article II-66¹*

1. Mining of uranium and thorium ore.

¹ Cf. Article 197 Euratom.

2. Concentration of such ores.
3. Chemical processing and refining of uranium and thorium concentrates.
4. Preparation of nuclear fuels, in any form.
5. Fabrication of nuclear fuel elements.
6. Production of uranium hexafluoride.
7. Production of enriched uranium.
8. Processing of irradiated fuels for the purpose of separating some or all of the elements contained therein.
9. Production of reactor moderators.
10. Production of hafnium-free zirconium or compounds thereof.
11. Nuclear reactors of all types and for all purposes.
12. Facilities for the industrial processing of radioactive waste, set up in conjunction with one or more of the facilities specified in this list.
13. Semi-industrial installations intended to prepare the way for the construction of plants involved in any of activities 3 to 10.

28.5.12. *Annex 2: Advantages which may be conferred on joint undertakings under Article II-69¹*

1. (a) Recognition that public interest status in conformity with the national laws applies to the

¹ Cf. Annex II to the Euratom Treaty.

acquisition of immovable property required for the establishment of Joint Undertakings.

(b) Application of national procedure for compulsory acquisition on the grounds of public interest, so that such acquisition may be effected where amicable agreement has not been reached.

2. Exemption from all duties and charges when Joint Undertakings are established and from all duties on assets contributed.
3. Exemption from all duties and charges levied upon acquisition of immovable property and from all registration and recording charges.
4. Exemption from all direct taxes to which Joint Undertakings, their property, assets and revenue might otherwise be liable.
5. Exemption from all customs duties and charges having equivalent effect and from all prohibitions and restrictions on imports or exports, whether of an economic or a fiscal nature, with regard to:
 - (a) scientific and technical equipment, excluding building materials and equipment for administrative purposes;
 - (b) substances which have been or are to be processed in the Joint Undertaking.
6. Exemption from restrictions on entry and residence for nationals of Member States employed by Joint Undertakings and for their spouses and dependent members of their families.

¹ Cf. Annex III to the Euratom Treaty.

28.6. Title V: Association of the Overseas Countries and Territories

Article II-98 (Objectives of association)¹

Association of *countries and territories in accordance with Article 135(1)* shall have the following objectives:

- (1) Member States shall apply to their trade with the countries and territories the same treatment as they accord each other pursuant to this *Constitution*.
- (2) Each country or territory shall apply to its trade with Member States and with the other countries and territories the same treatment as that which it applies to the European State with which it has special relations.
- (3) The Member States shall contribute to the investments required for the progressive development of these countries and territories.
- (4) For investments financed by the *Union*, participation in tenders and supplies shall be open on equal terms to all natural and legal persons who are nationals of a Member State or of one of the countries and territories.
- (5) In relations between Member States and the countries and territories the right of establishment of nationals and companies or firms shall be regulated in accordance with the provisions and procedures laid down in the *Chapter relating to the right of establishment* and on a non-discriminatory basis, subject to any special provisions laid down pursuant to *Article II-102*.

Article II-99 (Special rules on customs duties)¹

- (1) Customs duties on imports into the Member States of goods originating in the countries and territories shall be prohibited in conformity with the prohibition of customs duties between Member States in accordance with the provisions of this *Constitution*.

¹ Cf. Article 183 EC.

(2) Customs duties on imports into each country or territory from Member States or from the other countries or territories shall be prohibited in accordance with the provisions of *Article II-6*.

(3) The countries and territories may, however, levy customs duties which meet the needs of their development and industrialisation or produce revenue for their budgets.

The duties referred to in the preceding subparagraph may not exceed the level of those imposed on imports of products from the Member State with which each country or territory has special relations.

(4) Paragraph 2 shall not apply to countries and territories which, by reason of the particular international obligations by which they are bound, already apply a non-discriminatory customs tariff.

(5) The introduction of or any change in customs duties imposed on goods imported into the countries and territories shall not, either in law or in fact, give rise to any direct or indirect discrimination between imports from the various Member States.

Article II-100 (Deflections of trade to the detriment of a Member State)²

If the level of the duties applicable to goods from a third country on entry into a country or territory is liable, when the provisions of *Article II-99(1)* have been applied, to cause deflections of trade to the detriment of any Member State, the latter may request the Commission to propose to the other Member States the measures needed to remedy the situation.

Article II-101 (Agreements on free movement of workers)³

Subject to the provisions relating to public health, public security or public policy, freedom of movement within Member States for workers from the countries and territories, and within the countries and territories for workers from Member States, shall be governed by agreements to be concluded subsequently with the unanimous approval of Member States.

¹ Cf. Article 184 EC.

² Cf. Article 185 EC.

³ Cf. Article 186 EC.

Article II-102 (Rules and procedure for the association)¹

The Council, acting unanimously, shall, on the basis of the experience acquired under the association of the countries and territories with the *Union* and of the principles set out in this *Constitution*, lay down provisions as regards the detailed rules and the procedure for the association of the countries and territories with the *Union*.

Article II-103 (Status of Greenland)²

The provisions of *Article 135(1)* and of *Articles II-98 to II-102* shall apply to Greenland, subject to the specific provisions for Greenland set out in the Protocol on special arrangements for Greenland, annexed to this *Constitution*.

28.7. ANNEX I: List of Protocols Annexed to the Constitution

1. Protocols annexed to the Treaty on European Union and to the Treaties establishing the European Community and the European Atomic Energy Community:

- Protocol annexed to the Treaty on European Union and to the Treaties establishing the European Communities (1992)
- Protocol on the location of seats of the institutions and of certain bodies and departments of the European Communities and Europol (1997)
- Protocol on the role of national parliaments in the European Union (1997)
- Protocol on the enlargement of the European Union (2001)
- Protocol on the Statute of the Court of Justice of the European Community

¹ Cf. Article 187 EC.

² Cf. Article 188 EC.

(2001)

2. Protocols annexed to the Treaty on European Union and to the Treaty establishing the European Community

- Article 6 of the Protocol integrating the Schengen *acquis* into the framework of the European Union (1997)
- Protocol on the application of certain aspects of Article 14 of the Treaty establishing the European Community to the United Kingdom and Ireland (1997)
- Protocol on the position of the United Kingdom and Ireland (1997)
- Protocol on the position of Denmark (1997)

3. Protocols annexed to the Treaty establishing the European Community

- Protocol on the Statute of the European Investment Bank (1957)
- Protocol on goods originating in and coming from certain countries and enjoying special treatment when imported into a Member State (1957)
- Protocol concerning imports into the European Community of petroleum products refined in the Netherlands Antilles (1962)
- Protocol on special arrangements for Greenland (1985)
- Protocol on the acquisition of property in Denmark (1992)
- Protocol concerning Article 141 of the Treaty establishing the European Community (1992)
- Protocol on the Statute of the European Monetary Institute (1992)

- Protocol on the Statute of the European System of Central Banks and of the European Central Bank (1992)
- Protocol on the excessive deficit procedure (1992)
- Protocol on the convergence criteria referred to in Article 121 of the Treaty establishing the European Community (1992)
- Protocol on Denmark (1992)
- Protocol on Portugal (1992)
- Protocol on the transition to the third stage of economic and monetary union (1992)
- Protocol on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland (1992)
- Protocol on certain provisions relating to Denmark (1992)
- Protocol on France (1992)
- Protocol on economic and social cohesion (1992)
- Protocol on asylum for nationals of the Member States of the European Union (1997)
- Protocol on external relations of the Member States with regard to the crossing of external borders (1997)
- Protocol on the system of public broadcasting in the Member States (1997)
- Protocol on protection and welfare of animals (1997)

4. Protocol annexed to the 1972 Accession Treaty:

- Protocol No 3 on the Channel Islands and the Isle of Man

5. Protocol annexed to the 1985 Accession Treaty:

- Protocol No 2 concerning the Canary Islands and Ceuta and Melilla

6. Protocols annexed to the 1995 Accession Treaty:

- Protocol No 2 on the Åland Islands
- Protocol No 3 on the Sami people
- Protocol No 10 on the use of specific Austrian terms of the German language in the framework of the European Union

7. Protocol of 8 April 1965 on the privileges and immunities of the European Communities, as last amended by the Treaty of Nice

8. New Protocols 2003:

- *New Protocol on the status of churches and non-confessional organisations*

Corresponds to Declaration No 11 annexed to the final act of Amsterdam:

1. The European Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.
2. The European Union equally respects the status of philosophical and non-confessional organisations.

- *New Protocol on Collective Defence*

1. This Protocol shall only apply to those Member States which have accepted the obligations arising under it by a declaration made at the time of ratification of this Constitution or at any time thereafter.

2. In accordance with Article 64 of the Constitution, if any of the Member States which has ratified this Chapter should be the object of an armed attack in Europe, the other of the Member States which have ratified this Protocol will, in accordance with the provisions of Article 51 of the Charter of the United Nations, afford the Member State so attacked all the military and other aid and assistance in their power¹.
3. In such a case, aid and assistance by the Union shall be granted in accordance with the provisions on enhanced cooperation.

– ***Revised Protocol on the application of the principles of subsidiarity and proportionality and on the monitoring of these principles by national parliaments***

This Protocol must take into account the results of Convention Working Group I “Subsidiarity”. It should in particular include provisions along the following lines:

1. The Commission shall forward its annual legislative programme as well as all its legislative proposals simultaneously to the European Parliament, the Council, each national parliament), the Committee of the Regions and the Economic and Social Committee without delay in order to allow for an early political scrutiny whether in each case the principles of subsidiarity and the principle of proportionality have been satisfied (early-warning system).
2. If a national parliament concludes that a proposal does not comply with the principle of subsidiarity or the principle of proportionality, it may forward, within six weeks, a reasoned opinion to the Commission.
3. Following such reasoned opinions, the Commission shall give further specific reasons for the proposed act with regard to subsidiarity and proportionality. If a significant number of more than 1/3 of the national Parliaments issue a reasoned opinion, the Commission shall re-examine its proposal. That re-examination may lead the Commission either to maintain its proposal, amend it or withdraw it.
4. A national Parliament may also intervene with a reasoned opinion during the conciliation procedure (Article 103 of the Constitution).

– ***New Protocol on the integration of Europol into the organisational structure of the European Union***

¹ Cf. Article V of the Brussels Treaty of 17 March 1948, which established the Western European Union (WEU).

28.8. ANNEX II: List of Overseas Countries and Territories

to which the provisions of Title V of Part Two of the Constitution apply

- Greenland
- New Caledonia and Dependencies
- French Polynesia
- French Southern and Antarctic Territories
- Wallis and Futuna Islands
- Mayotte
- Saint Pierre and Miquelon
- Aruba
- Netherlands Antilles:
 - Bonaire
 - Curaçao
 - Saba
 - Sint Eustatius
 - Sint Maarten
- Anguilla
- Cayman Islands
- Falkland Islands
- South Georgia and the South Sandwich Islands
- Montserrat

- Pitcairn
- Saint Helena and Dependencies
- British Antarctic Territory
- British Indian Ocean Territory
- Turks and Caicos Islands
- British Virgin Islands
- Bermuda