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COVER NOTE

from	Secretariat
to	The Convention
Subject :	Contribution submitted by Mr Michael Frendo, member of the Convention: - “A solidarity Clause in the European Constitution”

The Secretary-General of the Convention has received the attached contribution from
Mr Michael Frendo, member of the Convention.

A Solidarity Clause in the European Constitution

Convention Contribution by Michael Frendo

Synopsis:

1. Solidarity should be included as a *fundamental value* of the European Union on the same level as freedom, justice, pluralistic democracy and human rights. Solidarity is a fundamental value of the EU not just an objective.
2. Solidarity should be present as an *integral consideration in every decision*, measure and policy of the Union. Solidarity, as a value, should permeate the policies, measures and decision-making processes of the Union.
3. A specific Solidarity Clause should be inserted in the Constitutional document, providing the Union with the faculty to address *specific disproportionate social hardship which may result in a particular member state or states from the implementation of a Union measure*. This may be even more important in a Europe of 25 or more, where solidarity can be a constitutional counterbalance to the enhanced cooperation mechanism, and furthermore a tool to meet the inevitable challenges of integrating 10 new member states.

Solidarity as a fundamental value of the Union

1. The social dimension of the European Union is a very important dimension for European citizens and represents an important aspect of the values, mission and objectives of the European Union.
2. In this regard, *Solidarity* should be included as a fundamental value of the European Union on the same level as freedom, justice, pluralistic democracy and human rights. Solidarity is a fundamental value of the EU not just an objective. This is rightly recommended by Working Group XI (Social Europe) and, in my view, the Convention should be four-squarely fully behind this recommendation.
3. Article 2 of the draft text of the articles of the Treaty establishing a Constitution for Europe also makes reference to solidarity under the heading “The Union’s values”:

“The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights, values which are common to

the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity”.

4. In my view, this should be streamlined to read:

“The Union is founded on respect for human dignity, liberty, human rights, tolerance, democracy, solidarity, justice and the rule of law, values which are common to the Member States.”

5. With regard to the value of Solidarity, this would represent a development of the rather peripheral reference to solidarity in Article 2 TEC which, in the heading “Principles”, inter alia, refers to “economic and social cohesion and solidarity among Member States”.

Solidarity as an integral consideration in decision-making

6. Solidarity is more than an objective and more than a means of achieving what the draft describes as “a society at peace”: it is an important value for *both* the citizens and the Member States of the Union and which should permeate the policies, measures and decision-making process of the Union and its Member States.

7. Solidarity should, consequently, be present as an *integral consideration in every decision, measure and policy of the Union*. The recognition of solidarity as a fundamental value of the European Union would provide the basis for such integral consideration. This is essentially recognition, and consolidation, in the Constitutional document, of what has been effectively exercised by the Community and the Union over the years.

8. Indicating solidarity as a fundamental value of the Union *emphasises the support structure of the European family within the Union*. The European Union is a *community of values* : a union which has, as its central basic philosophy, that development and progress must be achieved across the whole gamut of the Union’s territory for the benefit of the citizens of all its member states, and not confined to the citizens of certain member states and/or regions.

A Solidarity Clause for the Constitution

9. In furtherance of this principle, a specific Solidarity Clause should be inserted in the Constitutional document, providing the Union with the faculty to address specific disproportionate social hardship which may result in a particular member state or states from the implementation of a Union measure.

10. Such a clause grows in importance in an enlarged European Union. As the EU grows to 25 members, and more, it must retain institutional structures and decision-

making processes which ensure that it remains effective while, at the same time, retaining its compactness.

11. In this regard, therefore, for example, it is likely to adopt qualified majority voting, (albeit, perhaps, of diverse types of majorities), as the norm in decision-making.

12. Furthermore, with 25 members or more, it is likely that, in certain areas, some states will not be challenged to achieve the same level of integration as others. This is already visible in the Union of 15 with regard to Schengen and the Euro. Member states may not be able to meet the exigencies of integration at the same tempo as others. Some states may opt for enhanced cooperation to retain their heightened pace of integration and not to be withheld from achieving their goals because some other member-states are not yet ready for certain developments. Furthermore, they may be instances, such as defence, where Union action will be carried out by “a coalition of the willing” while “the unwilling and/or unable” agree to constructively abstain.

13. In a Union of 25 member-states or more, these various geometries will inevitably develop and therefore, constitutionally, the Union should have a mechanism to counter the “*disintegrative*” effect of such developments. We must not underestimate the challenges which lie ahead in the integration process of ten new member states of a Union where the current members have been exposed to this experience for decades, some more, some less. We must not underestimate the pressures and pulls in different directions which are bound to occur as some member states seek to deepen their relationship further and others seek the necessary time to digest the new reality of integration. There will be tensions, and already this Convention is reflecting some of them.

14. A Solidarity Clause is being suggested in this context, and with the spirit of assisting compactness, of ensuring that no one falls behind unnecessarily particularly in the case where the member state is “willing but unable” to meet the exigencies of a particular aspect of the *acquis*, at that particular point in time.

15. This clause draws from Article 175.5 TEC relating to the Environment which states as follows:

“5. Without prejudice to the principle that the polluter should pay, if a measure based on the provision of paragraph 1 involves costs deemed disproportionate for the public authorities of a Member State, the Council shall, in the act adopting that measure, lay down appropriate provisions in the form of

- temporary derogations, and/or
- financial support from the Cohesion Fund set up pursuant to Article 161”

16. The Solidarity clause may, in this regard, allow the Council (or any other institutions, as appropriate) to take into account “costs deemed disproportionate” in any particular member state or states, and address that particular situation *in the adoption of the measure itself*.

17. The Solidarity Clause should therefore provide for the Union to be able to take measures which can be taken to assist any member-state to reach the goals of a particular part of the acquis or of a specific measure. Where a particular hardship would be encountered by particular member state/s in execution of a Union-adopted measure or acquis, the Union shall have the faculty to grant the “hardship” state/s assistance (financial or otherwise) or a longer transitional period, or both.

18. This ad hoc “redressing” exercise addressed to a member state or states would be specifically directed at the member state/s coming in line with the others within a given time-frame, and would be limited to the achievement of the effective implementation of the specific measure which would otherwise create disproportionate social hardship in the particular member state/s.

19. This solidarity clause may be utilised whenever it is deemed so necessary, in the interests of the Union. The faculty to use it should be established by the Constitution as one of the means available to the Union in its mission to retain a Union which moves forward together and as compactly as possible. This Solidarity Clause is directed at assisting, as far as possible, every member state to remain in the mainstream of the European project.

20. It is directing at those member states which, in relation to any particular measure or legislation, are, at that point in time, “willing but unable” and who would suffer substantial difficulties in adopting the new measure/acquis. It can perhaps also be compared, albeit in a different context, with the ‘hardship clause’ sometimes found in international contracts whereby the parties agree to review their contractual commitments if it results that, due to some circumstance or other, one of the parties would suffer undue hardship in carrying out its side of the performance of the obligation. The clause would act as a “cementing process” for those member states that could otherwise fall behind in the heightened pace of European integration.

20. With this objective in mind, the Constitution should provide that member states are to exhaust the possibility of utilising the Solidarity Clause PRIOR to any adoption of a measure of enhanced cooperation. In this way, one further emphasises that enhanced cooperation should, constitutionally, be a measure of last resort: one has always, prior to adopting enhanced cooperation, therefore, *procedurally* to investigate whether utilising the solidarity clause could be a means to achieving the same results albeit through a more integrative route.

21. The Solidarity Clause is intended to strength the unity and compactness of a Union which, with 25 members and beyond, will face increasing challenges to keep together, at the same pace of integration, and with the same intensity of commitment to the European grand design. It reflects the spirit of solidarity that has permeated the action of the European Community and later the European Union over the decades. It is a *focused application* of a fundamental value of the European Union.

22. A possible preliminary first draft of the Solidarity clause could read as follows:

“Whenever the implementation of a Union measure is deemed to produce disproportionate hardship to any member state, the Council may, where appropriate, in the act adopting that measure, lay down appropriate specific provisions in the form of assistance, technical or financial, and/or temporary derogation, intended to assist the particular member state implement such a measure.

“Member states shall first consider operating the procedure laid down in this Article, prior to adopting any measure of enhanced cooperation.”