

COVER NOTE

from : Secretariat

to : Convention

Subject : Reactions to draft Articles 24 to 33 of the Constitutional Treaty
- Analysis

The Convention members will find attached analyses of proposed amendments to Articles 24 to 33 (CONV 571/03).

ANALYSIS OF ALL THE AMENDMENTS

The Convention members have presented 237 amendments to draft Articles 24 to 33.

First of all it should be borne in mind that many of these amendments have across-the-board impact and concern the names of the legal instruments or of the Constitution, the addition of a new instrument (e.g. organic law, directive) or the definition of a certain instrument (e.g. restricting the use of regulations to delegated acts or giving them legislative character). Such amendments, which are very numerous, concern a limited range of subjects.

The issues which attracted the most amendments are as follows:

1. As regards the catalogue of legal instruments, the amendments confirm the approach of distinguishing between legislative and non-legislative acts. Some add other instruments to those already proposed. Others would like a category of regulations to be created to assume the features of current directives so as to provide an instrument in the non-legislative sphere which is binding on the Member States with regard to the result, but flexible with regard to the means used.
2. Many amendments are against allowing exceptions to the general rule that legislative acts are adopted in accordance with the legislative procedure. Other amendments, while accepting that there would be exceptions, express a degree of concern regarding the scope of the general rule and would like the exceptions to be clearly specified. Some amendments would like the European Parliament to be consulted and the Commission to exercise the right of legislative initiative in the case of exceptions. All of these amendments definitely confirm that the general rule for adoption of legislative acts must be the legislative procedure.
3. With regard to delegated acts, many of the amendments concern the conditions for their application and above all request removal of the possibility to provide for a delegated regulation to lapse after a given deadline (sunset clause). Several amendments also concern the definition of delegated regulations. All of these amendments firmly support the proposal to create an act of this kind.

4. With regard to implementing acts, the amendments mostly concentrate on control mechanisms and procedures for laying them down. They are contradictory: some would like to re-instate the current procedure (unanimous Council decision after the Opinion of the Parliament), while others would like to use this draft Article to adjust, or even abolish, the current committee procedure.

SUMMARY SHEET OF AMENDMENTS TO TITLE V AS A WHOLE

Names of instruments:

Some amendments propose alternative names:

European Union law, European Union framework law, etc. (Amds. 5 Belohorská and others and 6 Andriukaitis and others)

EU law, EU framework law, etc. (Amds. 10, 57, 102, 115, 171, 208, 233 Hjelm-Wallén and others)

Union law, Union framework law, etc. (Amd. 52 Kelam and others)

European Community law, etc. (Amds. 14, 53, 199 Kirkhope)

Deletion of the adjective "European" before law, framework law, etc. (Amds. 8, 124, 211, 235 Fini)

Name of the Constitution

Some amendments propose replacing references to the Constitution with: Constitutional Treaty (Amd. 5 Belohorská and others), Treaty (Amds. 12 and 85 Queirò) or even simplified Treaty (Amends. 14, 53, 199 Kirkhope)

Creation of a category of organic laws

Several amendments aim to create a new kind of act, the organic law, which would be added to those already proposed. These amendments concern several Articles. They are Amendments 17, 69, 132, 212 Michel and others, 18, 55 Duff and others, 19, 82, 210 and 223 Lequiller, 20 Kaufmann, 81 de Villepin.

Change of title

Some amendments propose changing the title of this section (Amds. 1 Lequiller and 2 Lopes and Lobo Antunes), while others also propose changing the name "acts" to "instruments" (Amds. 7 Queirò, 20 Kaufmann).

Logic of the title and Article 24:

Some amendments depart to varying degrees from the logic behind Article 24 and Title V:

The distinction made in them between legislative and non-legislative acts is ignored by Amendments 10 Hjelm-Wallén and others and 14 Kirkhope.

Farnleitner's amendments (16, 94, 114, 149, 209 and 224) propose a classification into binding (legislative and non-legislative) and non-binding acts. Directives are included in non-legislative

acts, alongside regulations and decisions.

Amendments Michel and others (17, 101, 155 and 212) propose creating organic laws and reserving regulations for delegated acts and decisions for implementing acts.

Amendments Duff and others (18, 99) propose creating organic laws, making delegated acts legislative and adding "executive" to "non-legislative".

Amendment 47 Wittbrodt and others proposes adding a distinction between binding and non-binding acts.

Open method of coordination

Two amendments propose introducing a provision into Title V concerning the open method of coordination: Amendments 48 de Villepin and 237 Gabaglio.

Transparency

Some amendments propose introducing the requirement of transparency when adopting all Union acts: Amendments 3 Chabert and others, 47 Wittbrodt and Fogler and 50 Brok and others.

SUMMARY SHEET OF THE AMENDMENTS TO ARTICLE 24

Framework law

Some amendments propose that it be deleted (Amds. 14 Kirkhope, 21 Bonde and Seppänen, 25 Stockton).

Others would like to establish in the framework law a time limit for its incorporation into national law (Amds. 22 Duhamel and others, 23 Duhamel and others, 24 Lamassoure). Some would like it not to be too detailed (Amds. 26 Wuermeling and Altmaier, 27 Teufel).

Amd. 28 Muscardini: proposes an alternative wording for the framework law.

Amd. 29 Gabaglio: proposes that the Member States should not be free to choose the means for transposing a framework law.

Amd. 30 Chabert and others: stresses the role of certain regional authorities in the transposal of framework laws into national law.

Regulation

Some amendments propose that it be deleted (Amds. 14 Kirkhope, 25 Stockton, 31 Heathcoat-Amory); Amd. 342 Hain proposes its deletion but only as an instrument directly based on the Constitution.

Several amendments call for the addition of a type of regulation which would incorporate the features of the existing directive. The amendments in question are 16 Farnleitner (which proposes a special act called a directive), 37 Santer and others (which proposes the framework regulation), 38 de Vries and de Bruijn, 39 Tiilikainen and others, 40 Schlüter and 41 Dam Kristensen (which propose to add the definition under the name "regulation").

Other amendments modify certain elements of the definition of the regulation: Amd. 34 Queiró and 18 Duff and others assign a legislative character to delegated regulations, while Amd. 17 Michel and others reserves the regulation for the delegated acts exclusively. According to Amds. 35 Kohout and 36 Costa and d'Oliveira, regulations should not be used for the direct implementation of the Constitution.

Decision

Some amendments propose that it be deleted (Amds. 14 Kirkhope, 25 Stockton). Amd. 42 Queiró proposes to restore the current definition which implies that the decision is always specifically addressed.

Limitation of the use of non-standard acts: paragraph 2 of draft Article 24

Several amendments call for the deletion of the paragraph: 2 Lopes and Lobo Antunes, 13 Fayot, 20 Kaufmann, 37 Santer and others, 44 Borrell and others, 45 de Vries and de Bruijn.

Others propose moving it to paragraph 25: 35 Kohout, 39 and 77 Tiilikainen and others.

Amd. 46 Azevedo and Nazaré Pereira proposes an alternative text.

Other amendments

Amd. 11 Borrell and others: proposes that the list of instruments be exhaustive

Amd. 13 Fayot: the competences are conferred "by the Constitution"

Amd. 21 Bonde and Seppänen: proposes to set a time limit for laws

Amd. 43 de Vries and de Bruijn: proposes deleting opinions

Amd. 49 Fayot: proposes taking into account in this chapter the political activity of the European Council

Amd. 9 Pieters: linguistic.

SUMMARY SHEET OF THE AMENDMENTS TO ARTICLE 25

Rules of the legislative procedure

Several amendments propose introducing into Article 25 more detailed elements of the legislative procedure. Amd. 55 Duff and others introduces the full procedure. Amds. 56 de Vries and de Bruijn and 59 Queiró introduce clarifications concerning conciliation.

The required majorities in the Parliament and the Council are stipulated in Amds. 66 Meyer, 67 Dini and others and 68 Duhamel and others.

Qualified-majority voting in the Council is stipulated in Amds. 69 Michel and others, 70 Brok and others and 86 Wittbrodt and Fogler.

Particular rules of the legislative procedure

A number of amendments call for the deletion of particular features provided for with regard to subject matter covered by the third pillar: 53 Kirkhope, 54 Kaufmann, 58 Borrell and others, 66 Meyer, 67 Dini and others, 68 Duhamel and others, 69 Michel and others, 70 Brok and others, 71 Paciotti.

Amd. 63 Santer and others proposes making provision for special features also concerning CFSP and defence and Amd. 62 Jacobs, on social policy and taxation.

Exceptions to the legislative procedure

A number of amendments oppose providing for exceptions to the general rule of adoption of legislative acts in accordance with the legislative procedure: 53 Kirkhope, 54 Kaufmann, 55 Duff and others, 66 Meyer, 67 Dini and others, 68 Duhamel and others, 69 Michel and others, 70 Brok and others, 71 Paciotti, 72 Lamassoure, 73 Borrell and others, 74 Costa and d'Oliveira, 75 Stockton, 76 Voggenhuber and others.

Certain amendments propose stipulating the exceptions in the Constitution: 61 Kohout, 70 Brok and others (which proposes in addition that once a 5-year period had elapsed the general rule would be applied), 77 Tiilikainen and others and 80 de Vries and de Bruijn.

Some amendments state that in the case of exceptions the European Parliament is always consulted: 78 Fischer, 79 Kuneva and 77 Tiilikainen and others. The latter two amendments also specify the Commission's initiative.

Transparency

Paragraph 3 concerning the transparency of the legislative procedure is the subject of some amendments which propose alternative texts: 54 Kaufmann, 55 Duff and others, 61 Kohout, 65 Fini, 76 Voggenhuber and others, 83 Bonde and others and 84 Fayot.

Consultation of the CoR and the ESC

Several amendments stress that the Committees should be consulted if the Constitution so provides: Amds. 70 Brok and others, 86 Wittbrodt and Fogler, 87 Teufel, 77 Farnleitner and 89 Chabert and others.

Other amendments

Amds. 51 Queiró proposes changing the title to "approval of legislative acts". Amd. 53 Kirkhope proposes the legislative initiative of the Parliament.

Amd. 58 Borrell and others reaffirms the power of the Parliament and the Council to request from the Commission a legislative initiative.

Amd. 83 Bonde and others introduces the national parliaments into the procedure for the adoption of legislative acts.

SUMMARY SHEET OF AMENDMENTS TO ARTICLE 26

Deletion of the Article

Some amendments are aimed at the deletion of this Article: 90 Kirkhope, 91 Kelam and others, 92 Kaufmann and 93 Stockton.

Amendments linked to the amendments to Article 24

Amd. 95 Hübner and others: decisions are reserved for implementation of the Constitution and, according to Amd. 101 Michel and others, also for implementing acts, while regulations are reserved for delegated acts.

Amd. 97 de Villepin and Amd. 99 Duff and others: these arise from the fact that delegated acts are to be of a legislative nature.

Amd. 98 Costa and d'Oliveira: only decisions may be used for direct implementation of the Constitution.

Other amendments

Amds. 96 Lopes and Lobo Antunes and 103 Fini propose alternative wordings.

Amd. 104 Bonde and others: proposes a sunset clause for non-legislative acts.

Amd. 105 Berès and Van Lancker proposes a procedure for conditions of application of delegated acts and for economic policy guidelines.

SUMMARY SHEET OF AMENDMENTS TO ARTICLE 26

Deletion of the Article

Some amendments are aimed at deleting this article: 107 Kirkhope, 108 Kelam and others, 109 Stockton and 110 Heathcoat-Amory.

Definition of delegated regulations

Amd. 114 Farnleitner: changes the name to "delegated acts" since they could also take the form of directives (see Amd. 16).

The delegated regulation supplements elements of the legislative act but does not modify it:

Amd. 115 Hjelm-Wallen and others, 120 Teufel and 123 Borrell and others. Amd. 118 Lopes and Lobo Antunes proposes the opposite. According to Amd. 121 De Vries and De Bruijn, it implements elements of the act.

Some amendments propose topics which may not form the subject of delegated acts: Amd. 116 Tiilikainen and others (fundamental rights), 125 Quiero (exclusive legislative competences) and 127 Hain (CFSP, defence and present third pillar).

A more flexible definition is proposed by amendments 117 Andriukaitis and others and 122 Hübner and others.

Some amendments propose that delegated acts should be of a legislative nature: Amd. 111 Duff and others and 112 de Villepin.

Conditions of application

Some amendments propose transferring the details of the conditions of application in paragraph 2 of the Article to Part Two of the Constitution: Amd. 112 de Villepin and Amd. 127 Hain. Another amendment proposes deleting these details from the Constitution; they should be established by law on a case-by-case basis: Amd. 128 Paciotti.

Other amendments, however, propose setting out the conditions of application in more detail:

Amd. 114 Farnleitner, 116 Tiilikainen and others and 119 Kohout.

Some amendments propose removing the revocation mechanism provided for in the first indent: 117 Andriukaitis and 129 Berès.

The deletion of the sunset clause provided for in the third indent is proposed by Amds. 117 Andriukaitis and others, 118 Lopes and Lobo Antunes, 130 Fischer, 131 De Vries and de Bruijn, 132 Michel and others, 133 Santer and others and 134 Fayot. In contrast, Amds. 111 Duff and others and 135 Marinho, Van Lancker propose alternative wordings.

Amds. 129 Berès and 137 Schlüter propose more detail for the second indent of the paragraph,

which concerns the possibility for the Council and the European Parliament to express objections.

Amd. 111 Duff and others proposes an alternative control mechanism to that proposed in paragraph 2 for delegated acts .

Amd. 113 Kaufman stipulates that revocation may be applied in all cases, whereas the other conditions must be provided for by law on a case-by-case basis. Both the Parliament and the Council may use them independently.

Amds. 136 Roche and 138 Azevedo and Nazaré Pereira also concern the conditions of application.

Amd. 124 Fini proposes deleting the voting rules relating to the conditions of application.

Consultation

Amds. 139 Brok and others, 141 Wittbrodt and Fogler and 137 Schlüter call for the consultation of national bodies (including civil society) in relation to delegated acts.

Amd. 140 Chabert and others aims to apply to delegated acts the same requirements to consult bodies as apply to the laws on which they are based.

According to Amd. 126 Dam Kristensen, delegated acts must respect the role of the social partners.

SUMMARY SHEET OF AMENDMENTS TO ARTICLE 28

Principle of implementation of Union acts by Member States

Amds. 143 Kelam and others and 166 Fini call for the deletion of the first paragraph of the article on implementation of national level.

Several amendments emphasise that the principle of implementation of Union acts by Member States is the general rule: Amd. 149 Farnleitner, as well as Amds. 164 Teufel and 148 Wuermeling and Altmaier (which describe implementation at Union level as exceptional) and Amd. 165 Belohorská and others (which mentions the principle of subsidiarity).

Amd. 146 Lamassoure aims to establish a time limit for implementation by Member States.

Amds. 147 Borrell and others, 148 Wuermeling and Altmaier and 157 Fischer provide a broader definition of this principle: all measures adopted by Member States, and not only acts of law, are concerned as regards the implementation of Union acts.

Amd. 174 Bonde and others derogates from the obligation on Member States to implement Union acts when their national parliament is opposed to such a step.

Implementation of acts at Union level

Amds. 144 Kirkhope and 150 Stockton reject the possibility of implementation at Union level.

Amds. 151 Hain and 159 Kohout propose more flexible wordings as regards implementation at Union level.

Amd. 151 Hain proposes that the Council may also be responsible for implementation at Union level in the case of matters falling within the scope of the current third pillar.

Amd. 156 Duff and others provides for the possibility of conferring implementing competence on agencies, and Amd. 176 Gabaglio to the social partners.

Control mechanisms for implementing acts

Some Amds. stipulate that these are control mechanisms for the Member States:

Amds. 149 Farnleitner, 166 Fini, 167 Lopes and Lobo Antunes.

Several Amds. are opposed to the application of the legislative procedure to establish the control mechanisms and prefer the current procedure: Amds. 157 Fischer (with a qualified majority), 160 Queiró, 168 Palacio, 169 Muñoz Alonso, 170 Roche and 171 Hjelm-Wallén and others Amd. 172 de Villepin proposes an organic law to establish the control mechanisms. This is also proposed by Amd. 145 Kaufmann which moreover calls for a call back mechanism.

Several amendments object to the current mechanisms of the committee procedure and propose deleting paragraph 3: Amd. 152 Brok and others as well as 153 Wittbrodt and Fogler. Along the same lines, other amendments propose confining control mechanisms to advisory committees alone: Amds. 166 Fini, 167 Lopes and Lobo Antunes, 154 Costa and d'Oliveira and 156 Duff and others. Amd. 151 Hain proposes that control arrangements be established on a case-by-case basis for the act being implemented. Amd. 143 Kelam and others allows for the possibility of recall by the legislator (in line with his Amd. 108 which proposes the deletion of delegated acts).

Legal instruments

Amd. 149 Farnleitner deletes the reference to the legal instruments to be used (16).

Amd. 155 Michel and others limits these instruments to decisions (in line with his Amd. 17).

Other amendments

Amd. 142 Hübner and others: proposes the deletion of the Article.

Amendments 158 van der Linden and others and 173 Tiilikainen and others propose alternative wordings.

SUMMARY SHEET OF AMENDMENTS TO ARTICLE 29

Deletion of the Article concerning the specific arrangements for the common foreign and security policy : Amds. 177 Stockton, 178 Kirkhope.

Amd. 180 Hjelm-Wallén and others proposes extending the specific provisions to all areas of external action.

SUMMARY SHEET OF AMENDMENTS TO ARTICLE 30

Deletion of the Article concerning the specific arrangements for the common defence policy:

Amds. 181 Stockton, 185 Kirkhope, 184 Bonde and Seppänen (on the grounds that there should be no defence policy) as well as Amds. 183 Tiilikainen and others and 182 Hjelm-Wallén and others (on the grounds that it is part of external action).

SUMMARY SHEET OF AMENDMENTS TO ARTICLE 31

Deletion of the Article concerning the specific arrangements for police and criminal justice policy:

Amds. 186 Stockton, 187 Lennmarker, 188 Costa and D'Oliveira, 189 Hjelm-Wallén and others, 190 Tiilikainen and others, 191 Wittbrodt and Fogler, 192 Brok and others, 193 Duff and others, 194 Voggenhuber and others, 195 Duhamel and others, 196 Kirkhope, 197 Michel and others.

Combined amendment to the three Articles

Amd. 179 Azevedo and Nazaré Pereira concerns Articles 29, 30 and 31, and proposes accompanying each exception by a transition clause: once a certain deadline has passed, the general rule would be applied.

SUMMARY SHEET OF AMENDMENTS TO ARTICLE 32

Principle of proportionality

Amd. 201 Lopes and Lobo Antunes proposes deleting this paragraph on the grounds that it would be redundant.

Amds. 198 Kaufmann and 202 Teufel would like the instruments to be specified in the legal bases in Part Two.

Amds. 200 Fischer, 205 Korcok and others and 206 Andriukaitis and others add a reference to the principle of subsidiarity.

Amds. 199 Kirkhope and 204 Stockton limit the choice of legal acts in line with their earlier Amds. (see Amds. 14 or 25).

Principle of stating reasons for acts

Amd. 207 Hain proposes an alternative wording which seems to seek greater precision.

Amds. 209 Farnleitner, 210 Lequiller, 211 Fini and 212 Michel and others align this Article on their earlier amendments.

Other amendments

Amd. 208 Hjelm-Wallén and others: seeks to introduce a principle of good drafting and transparency.

Amd. 213 Duff and others: an annex to the framework law should indicate how each Member State intends to transpose it.

Amd. 214 Jacobs: the institutions should encourage self-regulation and co-regulation.

Merging of Articles 32 and 33

Amd. 215 de Villepin

SUMMARY SHEET OF AMENDMENTS TO ARTICLE 33

Deletion of the Article: 216 Hain. Move the Article to Part Two of the Constitution: Amd. 217 Kohout.

Amds. 218 Fayot, 219 Santer and others and 230 Kaufmann allow the ECB to be considered as one of the institutions adopting non-legislative acts.

Publication of decisions designating addressees: Amds. 229 Fischer, 230 Kaufmann, and 231 de Vries and de Bruijn.

A number of amendments to this Article stem from their alignment on amendments to earlier Articles: 220 Kirkhope, 221 Stockton, 223 Lequillier, 224 Farnleitner and 235 Fini, (with regard to the catalogue of Union acts and their names), as well as 225 Duff and others, 226 Meyer, 227 Voggenhuber and others, 228 Duhamel and others and 234 Michel and others (also concerning the removal of all exceptions to the legislative procedure for the adoption of laws and framework laws). Amd. 222 Pieters concerns the publication of acts in all official languages. Amd. 236 de Vries et de Bruijn relates to drafting.
