

**NOTE**

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Subject :       **Summary report on the additional plenary session**  
                  –       **Brussels, 5 March 2003**

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**DEBATE ON THE AMENDMENTS TO  
ARTICLES 8 TO 16 OF THE DRAFT CONSTITUTION**

Following the plenary session on 28 February dealing with Articles 8 to 16 of the draft Constitution and the amendments tabled by Convention members, the latter continued their discussions during an additional session chaired by Mr Giuliano Amato, Vice-Chairman of the Convention. The morning discussions were structured around Articles 8 and 9 on principles, and the afternoon discussions around the other Articles on competences.

**Articles 8 and 9: principles and application of principles**

***Source of competences***

1. Some Convention members emphasised that the Articles on competences (starting with Article 8(2) on the principle of conferral) should state that it was the Member States and not the Constitution that conferred competences. The reference to the Constitution should therefore be preceded by the preposition "in" (or "in accordance with the provisions of") rather than "by". Others pointed out that the current Treaties already contained the expression "powers conferred upon it by this Treaty" (see, for example, Article 5(1) of the TEC) and saw no reason to change it since the Constitution formally remained a Treaty.

## *Structure of the Articles*

2. Many Convention members suggested avoiding the repetitions concerning the principle of loyal cooperation (Article 8(5), Article 9(4) (5) and Article 14) as well as national identity (Article 1(2) and Article 9(6)). Some proposed considering the principle of loyal cooperation, the primacy of Union law and respect for national identity in a context broader than that of competences, for example in Title I of the Constitution. Others envisaged merging Articles 8 and 9, with no distinction between "principles" and their "application".

## *Principle of subsidiarity (Article 8(3))*

3. Several Convention members suggested not expressly ruling out application of the principle of subsidiarity for exclusive competences. Various arguments were put forward in that respect:
  - exclusivity of competence did not mean that the Union must always necessarily act; the principle of subsidiarity could therefore also influence the exercise of an exclusive competence;
  - subsidiarity also determined the intensity of an action in an area of exclusive competence;
  - subsidiarity always applied at the level of implementation of a Union action, even in an area of exclusive competence;
  - subsidiarity applied to the exercise of shared competences becoming "exclusive" once exercised;
  - subsidiarity also applied to governing the mechanism enabling the Union to empower Member States provided for in Article 10(1).

4. Some felt that the application of the principle of subsidiarity was linked to extending the concept and changing the name of the competences referred to as "exclusive" (see *below*). Others, however, felt that it was necessary to continue to rule out the application of subsidiarity for the exercise of exclusive competences.
5. Several members also proposed inserting a reference to regional and local authorities after "by the Member States" (and also in the Protocol on subsidiarity).

#### ***Scrutiny mechanism for the principle of subsidiarity (Article 9(2))***

6. Some proposed not confining the mechanism of scrutiny by national parliaments to the principle of subsidiarity alone, applying it to the principle of proportionality as well. One Convention member proposed extending the mechanism to the Committee of the Regions.

#### ***Principle of primacy (Article 9(1))***

7. A large number of Convention members expressed firm support for maintaining it in the Constitution, while others would like it at least to be reworded in a less direct way, for example by referring to the exercise of competences without explicitly mentioning the Constitution itself or by simply indicating that national law could not derogate from Union law.

#### ***National identity (Article 9(6))***

8. Several suggestions were made concerning the reference to national identity. Some preferred a very short provision (as in Article 1(2)), while others would accept a more detailed provision, in particular with a reference either to local and regional authorities, linguistic diversity, the status of churches (see Declaration No 11 annexed to the Treaty of Amsterdam), or internal security. The current wording of Article 9(6) was, however, felt by some to be too detailed. One Convention member expressed misgivings on any reference to national identity given the vagueness of the concept.

### ***Principle of mainstreaming***

9. Many Convention members wanted to highlight certain existing clauses on horizontal competences affecting all areas of policy (*mainstreaming*), in particular with regard to the environment and gender equality. Such a clause should appear in Part One of the Constitution, and some suggested Article 8 (or 9) as an appropriate place.
10. In conclusion, Mr Amato indicated that the number of points on which there was relative consensus merited a re-examination of the texts by the Praesidium:
  - adding a principle of mainstreaming;
  - reference to local and regional authorities;
  - a single Article on national identity;
  - source of competences: the Treaty could establish once and for all at the beginning of the text that competences emanated from the Member States.

### **Articles 10 to 16: Categories of competence**

#### ***Categories of competence (Article 10) and general approach***

11. Several Convention members questioned the need for paragraphs 3 and 4 (coordination of economic policies and CFSP) since those areas would not constitute a category of competence in the proper sense (more a conferral). Others, however, felt that those areas fell not under Union competence but rather under Member States' competence.

12. Some Convention members suggested creating a separate category, distinct from supporting actions, for coordination competences in general. Along the same lines, a few members suggested that, within shared competences, a distinction be drawn between areas of action depending on their intensity (for example, one which can be exercised only on the basis of the principles or the minimum rules). One Convention member mooted the idea of laying down the principle of sharing competences and defining the scope precisely without establishing even an indicative list, at the same time indicating the specific characteristics of certain areas, particularly with regard to the type of action (not necessarily in Part One of the Treaty).
13. Lastly, some questioned whether, bearing in mind Article 10(6), it was advisable to repeat a reference to Part Two in Articles 12 and 15 (shared competences and supporting actions) when there was no such reference in Article 11 (exclusive competences).

#### ***Exclusive competences (Article 11)***

14. A number of Convention members suggested changing the name of the category of "exclusive" competences to "own" or "conferred" competences of the Union or, quite simply, to "Union competences". Some felt that the notion of exclusive competence was more precise from a legal point of view, while others felt that it was misleading, particularly since Member States retained competence for implementation and monitoring in those areas or could be empowered to act by the Union.
15. Some areas were mentioned for addition to the new category, such as internal market, organisation of agricultural markets, economic and social cohesion and the Union's financing. A few Convention members also mentioned the CFSP and the area of freedom, security and justice. Others, however, expressed misgivings with regard to considering certain areas as an exclusive competence, in particular the four freedoms of movement, competition, or certain aspects of commercial policy deemed to be sensitive. With regard to the four freedoms, a few Convention members suggested giving them a more prominent position, but not necessarily in the Title on competences.

### ***Shared competences (Article 12)***

16. Some Convention members sought clarification on the concept, in particular on Article 12(3) ("Where the Union has not exercised or ceases to exercise its competence...") in relation to the last sentence of Article 10(2) ("The Member States shall exercise their competence...").
17. Several expressed a preference for the category of shared competences, which was a residual category, without providing even an indicative list of the main areas concerned. Others, conversely, proposed adding certain areas, such as the fight against discrimination, gender equality, immigration policy, services of general interest and public services, the fiscal dimension of the internal market, protection against disasters, animal protection, etc. A few Convention members regarded public health as a supporting action.

### ***Coordination of economic policies (Article 13)***

18. Many Convention members proposed considering the coordination of economic and employment policies, and even some aspects of social policy, together as a whole. Some pointed out that it was not the Union as such that coordinated economic policies, but rather the Member States or at the very least the Council. Others stressed the need not to take a step backwards in this area, pointing out in particular that the current Treaty referred to "economic policy" and not just to coordination.

### ***Common foreign and security policy (Article 14)***

19. Some suggested deleting this Article, others suggested mentioning the common defence policy.

### ***Areas of supporting action (Article 15)***

20. Several Convention members suggested making the system more flexible by not providing an exhaustive list of the areas of supporting actions. Some envisaged not ruling out in advance all harmonisation, even minimal, in the category of areas of supporting action. Lastly, a few Convention members expressed a preference for the name "complementary competences" rather than "areas of supporting action".

### ***Flexibility clause (Article 16)***

21. Several members made alternative proposals as regards the procedure for adopting rules on the basis of this clause, in particular concerning the role of the European Parliament and Council voting (qualified majority). Some members proposed redrafting the clause so that it could operate in both directions, i.e. also to curtail a Union competence. Lastly, it was suggested that the name "flexibility clause" be changed.
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**EUROPEAN CONVENTION**  
**Additional session on Wednesday 5 March 2003**

**LIST OF SPEAKERS**

**Further discussion on the draft of Articles 8 to 16 (CONV 528/03)**

*Morning*

Mr Reinhard RACK – European Parliament  
Ms Anne VAN LANCKER – European Parliament  
Mr Antonio TAJANI – European Parliament  
Mr Vytenis ANDRIUKAITIS – Lithuania (Parliament)  
Mr Andrew Nicholas DUFF – European Parliament  
Mr Peter HAIN – United Kingdom (Government)  
Ms Teija TIILIKAINEN – Finland (Government)  
Mr Ben FAYOT – Luxembourg (Parliament)  
Mr John Edward TOMLINSON – United Kingdom (Parliament)  
Mr Adrian SEVERIN – Romania (Parliament)  
Sir Neil MacCORMICK – European Parliament  
Mr Bobby McDONAGH – Ireland (Government)  
Mr Jean-Luc DEHAENE – Vice-Chairman  
Ms Maria BERGER – European Parliament  
Mr Antonio VITORINO – Commission  
Mr Johannes VOGGENHUBER – European Parliament  
Lord MACLENNAN of Rogarts – United Kingdom (Parliament)  
Mr Rytis MARTIKONIS – Lithuania (Government)  
*(Blue card: Fayot)*  
Ms Linda McAVAN – European Parliament  
Mr Elmar BROK – European Parliament  
Mr Manfred DAMMEYER – Committee of the Regions  
Ms Claude Du GRANRUT – Observer



Mr Alain LAMASSOURE – European Parliament  
Mr António NAZARÉ-PEREIRA – Portugal (Parliament)  
Mr Johannes VOGGENHUBER – European Parliament  
Ms Pervenche BERÈS – European Parliament

Afternoon

Mr Vytenis ANDRIUKAITIS – Lithuania (Parliament)  
Mr Jacques FLOCH – France (Parliament)  
Mr John Edward TOMLINSON – United Kingdom (Parliament)  
Mr Manuel Lobo ANTUNES – Portugal (Government)  
Mr Reinhard RACK – European Parliament  
Mr Jens-Peter BONDE – European Parliament  
Mr Andrew Nicholas DUFF – European Parliament  
Lord MACLENNAN of Rogart – United Kingdom (Parliament)  
Mr Peter HAIN – United Kingdom (Government)  
Ms Pascale ANDREANI – France (Government)  
*(Blue cards: Peterle, Ponzano, Horvat, Duff)*  
Mr Bobby McDONAGH – Ireland (Government)  
Ms Teija TIILIKAINEN – Finland (Government)  
Mr Carlos CARNERO GONZALES – European Parliament  
Mr Ben FAYOT – Luxembourg (Parliament)  
Ms Maria BERGER – European Parliament  
Mr Alain LAMASSOURE – European Parliament  
Ms Elena PACIOTTI – European Parliament  
*(Blue cards: Tomlinson, Kauppi, Pereira, Helle, Avgerinos, Lamassoure)*  
Sir Neil MacCORMICK – European Parliament  
Mr Johannes VOGGENHUBER – European Parliament  
*(Blue cards: Bonde, Dybjaer, Macleennan, Berès, Duff, McDonagh)*

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