

COVER NOTE

Subject : Summary report of the additional plenary session
– Brussels, 26 March 2003

**DISCUSSION ON THE AMENDMENTS RELATING TO ARTICLES 1 TO 7 OF THE
DRAFT CONSTITUTION**

Following the plenary session of 27 February dealing with Articles 1 to 7 of the draft Constitution and the amendments tabled by Convention members, the Convention continued its discussions at an additional session chaired by Mr Jean-Luc Dehaene, Vice-Chairman of the Convention.

Article 1

The Vice-Chairman briefly introduced the discussion by referring to the progress of proceedings at the plenary session at which these articles had been discussed and in particular recalling the main topics on which members of the Convention had submitted amendments. He also stated that the Praesidium would in any event seek to produce a revised version more clearly reflecting some of the concerns expressed; in particular, he cited the fact that the Union's competences were conferred by the Member States and not by the Constitution. This suggestion was welcomed by several Convention members.

Article 1(1)

"Peoples" or "citizens"

Many speakers indicated their preference for the term "citizens" rather than "peoples" in this paragraph, arguing that it was the more modern term, having been sanctioned by the Maastricht Treaty. By the same token, some speakers stressed the fact that the term "citizen" had a real legal sense, whereas the same could not be said for "peoples". However, others pointed out that the term "peoples" more accurately reflected the fundamental nature of the Union to which this Article referred. Finally, some speakers proposed rewording this paragraph to reconcile the two concepts of "peoples" and "citizens".

"Constitution" v "Constitutional Treaty"

Some speakers voiced a preference for avoiding the word "Constitution" and replacing it by "Constitutional Treaty", which more accurately reflected the idea of an agreement reached between States.

Establishment of the Union

Some speakers wondered whether legal continuity was guaranteed if the Constitution provided for "establishment" of the Union. In their view, it was not a case of establishing a Union because the Union already exists, but rather of marking a new stage in its development. The Vice-Chairman explained, firstly, that the Union established by the Constitution would in any event succeed the Community and the current Union and, secondly, that provisions guaranteeing legal continuity would be found in the last part of the Constitution, under the Title "Final provisions". One speaker emphasised the importance of reflecting legal continuity from Article 1 onwards, so as to avoid any ambiguity.

"Federal basis"

Some speakers were in favour of deleting the word "federal" in this paragraph.

These speakers expressed the view that the word "federal" had a different legal meaning in different languages and that it was therefore best avoided so as not to open up the possibility of divergent interpretations. One speaker proposed deleting the second part of the sentence (which reads: *"within which the policies of the Member States shall be coordinated, and which shall administer certain common competences on a federal basis"*), on the grounds that it was superfluous and devoid of substance. Others were in favour of maintaining this provision and the term "federal", believing that this term expressed more precisely and concisely than others the very specific way in which the Union operates in terms of some of its competences. Some speakers proposed replacing the word "federal" by "Community" or "supranational".

"Ever closer union"

Some Convention members advocating incorporating into this paragraph the concept of the ever closer Union which appears in the current Article 1 of the Treaty. One speaker suggested that an appropriate place for this concept was the Preamble to the Constitution, since it was intended to look towards the future. One Convention member said she saw a link between this issue and the question of the term "federal basis": she would be able to accept that expression provided the Constitution no longer included the expression "ever closer union".

Drafting points

Some members described the opening formula of Article 1 as "banal" and made alternative suggestions such as "...determined to build their future together". Moreover, the verb "administer" was criticised as being too bureaucratic.

Structure of the paragraph

Some speakers proposed inverting the order of the second part of the sentence so that the competences conferred on the Union came first, before the coordination of Member States' policies.

Article 1(2)

Several Convention members stressed the need to define more clearly the expression "national identity" in paragraph 2 of this Article and expressed doubts as to the advisability of mentioning national identity in two places in the Constitution. These members in particular proposed to make this concept more specific by adding various aspects such as cultural or linguistic diversity, autonomy and regional and other characteristics. Some speakers proposed amplifying the concept by adding the provisions of Article 9(6) or drawing up a new article on the basis of Article 1(2), supplemented by Article 9(6). However, one speaker expressed misgivings about incorporating elements of Article 9(6), fearing that the new paragraph would be overloaded.

Article 1(3)

One speaker pointed out that Article 1(3) relating to the Union's openness to other States was more mandatory in its wording of the conditions for membership than the provisions laid down for existing Member States in Article 2 on the Union's values.

At the end of the discussion on draft Article 1, the Vice-Chairman of the Convention summed up by noting, first of all, that there was a large body of opinion in favour of merging the existing drafts on national identity (Articles 1(2) and 9(6)) in a separate new article which would incorporate the various aspects of national identity set out in current Article 9(6). He said again that the Praesidium intended to draw up a formula which would express, without ambiguity, that the Union's competences came from the States and would make it clear that the Union's coordinating function was restricted to certain policies on the basis of the competences conferred on it. For the rest, he said that the Praesidium would look more closely at certain points which were still controversial, such as:

- use of the term "citizens" or "peoples" in Article 1(1);
- whether or not to use the term "federal basis" in Article 1(1).

Article 2

The Vice-Chairman introduced the discussion by explaining the logic which the Praesidium had followed in drafting this article, which was intended to be limited to a short list of the most essential values, accepted by all, and of sufficient legal clarity that serious breaches by a Member State could be sanctioned. He pointed out that a very large number of amendments set out to add equality and/or equality between men and women to the values. He also explained the Praesidium's approach to mentioning religion, referring back to Chairman Giscard d'Estaing's conclusions at the end of the last plenary session. Lastly, the Vice-Chairman noted that many amendments had raised the question of the relevance of the second sentence of this article, which was worded more as an aim than a value.

Many speakers requested that either the concept of equality in general (or in the case of some, equality before the law), or of equality between men and women, or both be added to the list of values. Several speakers argued that the term "equality" was no more general than "liberty" or "democracy" and should therefore be in line with the Praesidium's approach.

One member proposed speaking of "the inviolability" of human dignity, rather than simply respect, in line with the terminology of the Charter of Fundamental Rights. Some members also preferred the expression "fundamental rights" rather than "human rights".

Some members advocated enshrining cultural and linguistic diversity in Article 2, on the grounds that it was a true value of the Union; they did acknowledge, however, that drafting considerations could militate in favour of its inclusion in Article 3.

Several speakers took the point raised by the Vice-Chairman relating to the current wording of the second sentence and asked that it be either merged with the first sentence or moved to the Preamble or Article 3.

As regards references to religion, some Convention members wanted to go further than the Praesidium's approach as sketched out by the Chairman and Vice-Chairman, by making a reference to God in the Constitution; several other Convention members, on the other hand, expressed their satisfaction with the Praesidium's line.

The Vice-Chairman's argument that any reference to religious and spiritual values or heritage could in any event be included only in the Preamble and not in Article 2 was generally accepted.

In conclusion, the Vice-Chairman noted that a body of opinion had emerged in favour of including equality among the values and for some this also meant a reference to equality between men and women. He also said that the Praesidium would draw up a better formula for linking the two sentences in current draft Article 2.

Article 3

The Vice-Chairman briefly introduced the discussion on this article, reminding members of the state of play on the subject, as expressed both at the plenary session and by means of the amendments submitted by Convention members. He raised certain points on which there already seemed to be a degree of consensus, such as the need to express more fully the aims of environmental protection and improvement and of sustainable development and the need for a more open and less "Euro-centric" wording of paragraph 4 on the Union's role in the world, aligning it on the wording arrived at by Working Group VII. He also pointed out that the wording of the article should allay both the concerns of those who wanted to express the characteristics of the social market economy and of those who advocated an open market and free competition. Moreover, the Vice-Chairman indicated that a "mainstreaming" clause (taking into account in all the Union's policies the requirements of equality between the sexes and environmental protection) would in any event be included in the Constitution, but that there was room for discussion on the appropriate place for

such a clause (Part One or Part Two of the Constitution). Finally, he stressed that, despite all the suggested additions, the article should be kept fairly concise.

Some speakers made the general point that the objectives set out in Article 3 would be used by the Court of Justice, and consequently needed to be worded more clearly. It was commented that there should be a direct link between the Union's competences and its objectives and that objectives should not be mentioned if the Union did not have the competence to achieve them. Several Convention members endorsed the appeal by the Vice-Chairman to keep the wording of the article concise.

Some Convention members felt it was superfluous to include in Article 3(1) concepts such as peace and other values already covered in Article 2.

Others regretted the failure to adopt the principles that the Union's action should be as open as possible and as close as possible to its citizens, and proposed that a separate paragraph be added including those principles.

Finally, several Convention members asked for a "mainstreaming" or consistency clause, as also mentioned by the Vice-Chairman, to be inserted either in this article or in Part Two.

Article 3(2)

Many speakers welcomed the indication given by the Vice-Chairman that environmental protection and improvement and sustainable development in its various aspects might be more forcibly expressed, and submitted concrete drafting proposals to that effect.

- Several speakers called for a reference to both an "open market economy with free competition", as enshrined in current Article 4 TEC and a reference to the "social market economy", and the Convention members pointed out that the two concepts were not mutually exclusive. Moreover, referring to the conclusions of Working Group XI, some Convention members mentioned various aspects of the social market economy such as public health protection, combating social exclusion, promoting the quality of work and/or access to education and training, and high-quality services of general interest.

Several speakers wanted to add the idea of territorial cohesion. In that context, the point was made that such an addition would inevitably have consequences for the definition, in Part Two, of the structural funds policy, currently intended to promote economic and social cohesion only.

Lastly, some speakers suggested including a reference to the promotion of non-discrimination, especially in the fields currently covered by Article 13 TEC.

Article 3(3)

A series of speakers pointed out that since cultural diversity was not specifically linked to the area of freedom, security and justice, it should be mentioned separately. Others, in contrast, suggested enhancing the enshrinement of the area of freedom, security and justice by mentioning some of its constituent elements, notably the fight against racism and xenophobia which they thought should be included either here or in Part Two of the Treaty.

Some Convention members stressed the importance of adding the concept of linguistic diversity to that of cultural diversity; in this context, one speaker also added the idea of respect for the rights of minorities. The proposal to add the concept of a common cultural heritage in order to maintain the balance of Article 151(1) TEC was positively received.

Article 3(4)

Several speakers called for a more open and less defensive wording of this paragraph, based on the drafts suggested by Working Group VII. One Convention member questioned the concept of "the Union's independence". Those Convention members thought that reference should be made to respect for international law, the principles of the United Nations Charter and to fundamental rights in general, which some members thought should cover the reference to children's rights. The Vice-Chairman accepted that this paragraph ought to be redrafted along those lines, as already revised by the Working Group. Some speakers did not want objectives such as the protection of children's rights or the eradication of poverty to be linked to the defence of the Union's independence and interests in the world, so that account could also be taken of them internally.

Some Convention members explicitly wanted Article 3(4) to contain the definition and implementation by the Union of a common foreign and security policy and a common defence policy. Others pressed for a reference to the promotion of free trade.

One speaker proposed that, in this article, the Union reject war as a means of resolving international disputes.

Article 4

The Vice-Chairman opened the debate by saying that a relatively broad consensus had been reached on the draft article at the Convention plenary session. A very brief discussion on this point ensued.

One speaker emphasised the fact that approval of this article did not preclude the existence of special arrangements concerning the common foreign and security policy and certain aspects of Justice and Home Affairs.

Another speaker also insisted that the legal personality of the Union could not, in his view, turn the Union into a federation.

Article 5 to 7

In his introduction, the Vice-Chairman said that although several Convention members had called for the legal basis of Article 5(2) to be extended to include accession to other international conventions in the field of human rights, the Praesidium took the view that the current draft, which mentioned only the ECHR, should not be understood *a contrario* as ruling out accession to other conventions. This clause was necessary for the ECHR, in the light of the opinion of the Court of 1996, which rejected competence to accede to the ECHR on the ground that such accession "would be of constitutional significance"; on the other hand, in the case of other conventions in the field of human rights which did not have such "significance" and with linkage to the Union's competences, the existing legal bases in the Treaty (and included in Part Two) should suffice.

Moreover, as regards the calls to add other forms of discrimination to the current draft Article 6 on non-discrimination on grounds of nationality, the Vice-Chairman called for caution, considering that such an addition could have much wider legal consequences than the prohibition of discrimination contained in Article 21(1) of the Charter, the scope of which is clearly limited by Article 51 of the Charter.

Lastly, the Vice-Chairman raised the matter of potential duplication between Articles 6 and 7(2) (list of citizens' rights), on the one hand, and the text of the Charter, on the other, inviting the members to take a position on the choice of principle that had to be made in that respect.

During the discussion on Articles 5 to 7, the following points were covered:

- A suggestion was made to incorporate, in Title II, a new article devoted to the four fundamental freedoms on the grounds that the vital importance of those freedoms to European integration would justify their inclusion in the initial articles of the Constitution; this importance had more to do with the nature of fundamental rights having direct effect than the nature of the Union's competence. This proposal was welcomed by the Vice-Chairman and other Convention members.

- A number of Convention members favoured including the Charter in the actual text of the Constitution, rather than in a protocol; most of them expressed a preference either for inserting it in Part One or for the Charter to constitute Part Two. One Convention member added that in that case the preamble to the Charter could not be incorporated as such, since the Constitution could not have two preambles.
- One Convention member said that, were the Charter incorporated, the "Explanations" on the Charter should be strengthened and attached to the text of the Charter. However, the other Convention members and the Vice-Chairman, while supporting the conclusions of the Working Group on the publication of the updated Explanations, rejected the idea of attaching the Explanations to the text of the Charter in the Constitution, as that would give them the same legal value as the Charter itself. Instead, the Explanations should retain their current value, i.e. as preparatory work which could serve as a valuable instrument for interpreting the Charter.
- As regards Article 5(2), several Convention members remarked that it would be dangerous to confine it to one optional legal basis, to be used by the Council acting unanimously, which might result in accession to the ECHR being blocked. On the other hand, it was acknowledged that the Constitution could not lay down a firm obligation to accede, given that such accession would still depend on negotiations to be conducted with the Member States of the Council of Europe, and on their agreement. Support emerged and was accepted by the Vice-Chairman for wording to the effect that "the Union shall seek ..." accession to the ECHR.
- Several Convention members pointed out that the current Article 6 could be deleted if the Charter, which contains an identical provision in its Article 21(2), were included in the actual text of the Constitution. The Vice-Chairman returned to this point in his conclusions and stressed the need to examine the possibilities for avoiding duplication between Part One and the Charter.

EUROPEAN CONVENTION
Additional session on Wednesday 26 March 2003

LIST OF SPEAKERS

Further discussion on the draft of Articles 1 to 7 (CONV 528/03)

Mr Andrew Nicholas DUFF - European Parliament
Mr Esko Olavi SEPPÄNEN - European Parliament
Mr Inigo MENDEZ DE VIGO - European Parliament
Mr Neil Nicholas MACCORMICK - European Parliament
Mr Manfred DAMMEYER - Observer
Ms Riitta KORHONEN - Finland (Parliament)
Ms Teija TIILIKAINEN - Finland (Government)
Mr Paraskevas AVGERINOS - Greece (Parliament)
Mr Tunne KELAM - Estonia (Parliament)
Mr Gerhard TUSEK - Austria (Government)
Mr Jens-Peter BONDE - European Parliament
Mr Bobby McDONAGH - Ireland (Government)
Mr Gijs DE VRIES - Netherlands (Government)
Mr Adrian SEVERIN - Romania (Parliament)
Ms Anne VAN LANCKER - European Parliament
Ms Lone DYBKJAER - European Parliament
Mr Henrik HOLOLEI - Estonia (Government)
Mr Manuel LOBO ANTUNES - Portugal (Government)
Mr Peter HAIN - United Kingdom (Government)
Mr Rytis MARTIKONIS - Lithuania (Government)
Ms Helle THORNING-SCHMIDT - European Parliament
Ms Elena PACIOTTI - European Parliament
Mr Peter SERRACINO-INGLOTT - Malta (Government)
Mr Peter ECKSTEIN KOVACS - Romania (Parliament)
Mr Michel BARNIER - Commission
Lord MACLENNAN of Rogart - United Kingdom (Parliament)

Mr Ben FAYOT - Luxembourg (Parliament)
Ms Maria BERGER - European Parliament
Mr Franc HORVAT - Slovenia (Parliament)
Mr Caspar EINEM - Austria (Parliament)
Mr Johannes VOGGENHUBER - European Parliament
Ms Lenka ROVNA - Czech Republic (Government)
Mr Alojz PETERLE - Slovenia (Parliament)
Mr Filadelfio BASILE - Italy (Parliament)
Mr Tunne KELAM - Estonia (Parliament)
Mr. Paolo PONZANO - Commission
Ms Claude Du GRANRUT - Observer
Mr. Vytenis ANDRIUKAITIS - Lithuania (Parliament)
Ms Sylvia-Yvonne KAUFMANN - European Parliament
Mr Jens-Peter BONDE - European Parliament
Mr Peter ECKSTEIN KOVACS - Romania (Parliament)
Mr Peter HAIN - United Kingdom (Government)
Mr Franc HORVAT - Slovenia (Parliament)
Ms Lone DYBKJAER - European Parliament
Mr Esko Olavi SEPPÄNEN - European Parliament
Mr Gijs DE VRIES - Netherlands (Government)
Mr Proinsias DE ROSSA - Ireland (Parliament)
Mr Elmar BROK - European Parliament
Ms Maria BERGER - European Parliament
Ms Anne VAN LANCKER - European Parliament
Mr Neil Nicholas MACCORMICK - European Parliament
Ms Riitta KORHONEN - Finland (Parliament)
Lord MACLENNAN of Rogart - United Kingdom (Parliament)
Mr Peter SERRACINO-INGLOTT - Malta (Government)
Mr Paraskevas AVGERINOS - Greece (Parliament)
Mr Carlos CARNERO GONZALES - European Parliament
Mr Joachim WUERMELING - European Parliament
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Mr Andrew Nicholas DUFF - European Parliament
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Mr Adrian SEVERIN - Romania (Parliament)
Mr Manuel LOBO ANTUNES - Portugal (Government)
Mr Proinsias DE ROSSA - Ireland (Parliament)
Mr Josef ZIELENIC - Czech Republic (Parliament)
Mr Peter HAIN - United Kingdom (Government)
Mr Paolo PONZANO - Commission
Ms Anne VAN LANCKER - European Parliament
Mr Carlos CARNERO GONZALES - European Parliament
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Mr Neil Nicholas MACCORMICK - European Parliament
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