

CONV 682/03

INFORMATION NOTE

from : Secretariat

to : Convention

Subject : **Complementary mandate for the working party of experts nominated by the Legal Services**

At its meeting on 2 April 2003, the Praesidium agreed to give a complementary mandate to the working party of experts nominated by the Legal Services of the European Parliament, the Council and the Commission to assist it with the technical adjustment of Part Two of the Constitution.

Convention members will find attached:

- in Annex A, the mandate as forwarded to the three Legal Services;
- in Annex B, the suggestions made by the working party of legal experts which they have already incorporated into the adapted text of Part Two.

THE EUROPEAN CONVENTION
THE SECRETARY-GENERAL

Brussels, 2 April 2003

**Complementary mandate for the working party of experts
nominated by the Legal Services
of the three Institutions**

1. At its meeting on 2 April 2003, the Praesidium examined the suggestions put forward by the working party of experts in its report of 13 March 2003 (cf. CONV 618/03, pp. 175 to 187), with the exception of the suggestions referred to in points 29, 30, 31 and 32.
2. Following this examination, the Praesidium agreed to give the working party a complementary mandate to implement some of the suggestions which the Praesidium has decided to act upon. Since it has not yet examined the suggestions referred to in points 29, 30, 31 and 32, the Praesidium will, if necessary, issue a further complementary mandate for their implementation.
3. The suggestions which the Praesidium would ask the working party to act upon are the following:

(a) Merger of Articles 70 and 80 TEC

The Praesidium has decided to act on this suggestion by choosing option (a) (p.179).

(b) Use of abbreviations

The Praesidium has decided to take up the working party's suggestion (p.176); the abbreviations in Part Two of the Constitution should be replaced by their official names.

(c) Decision-making procedures

The Praesidium has decided to act on the following suggestions made by the working party (pp. 184 and 185):

- (i) replace the current voting rule under which "the Council shall act by a majority of its members" (Article 205(1)) by the expression "the Council shall act by a qualified majority". The working party is asked to make the necessary technical adjustments to the legal bases to take account of this new rule.
- (ii) in relation to the European Parliament, replace the term "assent" with "consent";
- (iii) since the Praesidium has decided to include in an article of the Constitution devoted to the Commission a wording to the effect that "Except where specifically stated otherwise, an act by the Union may be adopted only on a proposal from the Commission", the working party is asked to make the necessary technical adjustments to the various legal bases which stipulate that the Council shall act on a proposal from the Commission.
- (iv) in relation to the European Parliament, replace the terms "absolute majority" with "majority of the votes cast", and the phrase "majority of the Members of the European Parliament" with "majority of its Members".

(d) Association of overseas countries and territories

The Praesidium has decided to retain Part Four of the EC Treaty as an independent section in Part Two.

(e) Merger of certain provisions

The Praesidium has decided to act on the suggestion that Article 19(1) and (2) be merged, while calling for care to be taken in drafting the merged provision to take full account of the specific features of each of the areas in question.

(f) Deletion of certain provisions

The Praesidium has decided to act on the conclusions of Working Group IX to delete the instrument of the agreements (cf. Articles 20 TEU and 186 and 293 TEC) and to replace them with Council regulations or decisions. As a result, it has decided to delete Article 293 TEC. The working party is asked to implement these suggestions and to examine the possible need to create a specific legal basis for the areas covered by this provision and which would not be covered by other provisions of the Constitution. Any new legal basis should make provision for the Council regulation as an instrument.

(g) Replacement of "shared values" in Article 16 TEC

The Praesidium has decided to act on the working party's suggestion to replace the words "in the shared values" in Article 16 TEC with the phrase "as services to which all in the Union attribute value".

4. The Praesidium also approved the suggestions of the working party of experts which the latter has already implemented and which are set out in the Annex to this note.

SUGGESTIONS WHICH HAVE ALREADY BEEN IMPLEMENTED
BY THE WORKING PARTY OF EXPERTS

1. Structure of Part Two

The working party of experts (p. 177) drew attention to the fact that certain provisions have no place in the structure dated 28 October 2002, such as, for example, the provisions having general application (Articles 3(2), 6, 16, 295 and 296 of the EC Treaty), the provisions on non-discrimination and citizenship (Articles 12, 13 and 18 to 22), those on taxation (Articles 90 to 93), customs cooperation (Article 135) or economic, financial and technical cooperation with third countries (Article 181a). The working party has made suggestions regarding where they should be placed in Part Two.

2. Deletion of obsolete provisions

The working party (p. 178) proposed deleting, on grounds of obsolescence, certain provisions of the EC Treaty which refer to dates or events that have been superseded (Article 14 TEC and Article 93 TEC which refer to 31 December 1992, the date set for the completion of the internal market, and Article 37(1) TEC which refers to a conference that took place in Stresa in 1958, the outcome of which now forms part of the *acquis*).

3. Rearrangement of certain Articles

The working party (pp. 182 and 183) proposed certain limited rearrangements:

- a. moving Article 4 TEC to the beginning of the Title on "*Economic and monetary policy*";
- b. Articles 14 and 15 TEC heading up a new title or chapter on the internal market, which would also group together Articles 94 to 97 TEC;

- c. adding the words "*and fisheries*" after "*Agriculture*" in Title II of the EC Treaty so as to reflect the scope of Article 32(1) TEC in the Title, and adapting the text of that Article accordingly.

4. **Annual sessions of the European Parliament**

Since the wording in the second paragraph of Article 196 TEC "*the European Parliament may meet in extraordinary session...*" may give rise to confusion in the public eye, the working party proposed (p. 187) replacing it with the wording used by the Parliament's Rules of Procedure since 1958, namely "*the part-session*".
