

CONV 724/03

VOLUME 1

**COVER NOTE**

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Subject :	<b>Draft Constitution, Volume I</b> <b>– Revised text of Part One</b>
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Members of the Convention will find attached the draft text of Part One of the Treaty establishing the Constitution together with that of the Protocols on the application of the principles of subsidiarity and proportionality and the role of the national Parliaments, as revised by the Praesidium in the light of the comments and amendments received and the discussions in plenary.

The Articles in Title IV "The institutions" are the only ones to be sent to the members of the Convention without change from the original version contained in CONV 691/03 of 23 April 2003. The very numerous amendments received and the comments made at the plenary on these Articles often go in opposing directions, particularly on central questions, including the three linked questions highlighted in the note of 23 April (representation in the European Parliament, definition of the qualified majority, and composition of the Commission). The Praesidium therefore thinks it would be appropriate to devote more time to discussion and thought on those subjects.

At a later stage, as these thoughts mature, the Praesidium will submit a revised version of Title IV to the Convention.

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Members' attention is drawn to the fact that the Articles in Part I are numbered consecutively. The references to the Articles in Part III will be specified when they have been finalised.

## **DRAFT TEXT – PART ONE**

### **TITLE I: DEFINITION AND OBJECTIVES OF THE UNION**

#### **Article I-1: Establishment of the Union**

1. Reflecting the will of the citizens and States of Europe to build a common future, this Constitution establishes the European Union, on which the Member States confer competences to attain objectives they have in common. The Union shall coordinate the policies by which the Member States aim to achieve these objectives, and shall exercise in the Community way the competences they confer on it.
2. The Union shall be open to all European States which respect its values and are committed to promoting them together.

#### **Article I-2: 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. These values are common to the Member States in a society of pluralism, tolerance, justice, equality, solidarity and non-discrimination.

### **Article I-3: The Union's objectives**

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, and a single market where competition is free and undistorted.
3. The Union shall work for a Europe of sustainable development based on balanced economic growth, with a social market economy aiming at full employment and social progress.

It shall aim at a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of children's rights.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

The Union shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

4. In its relations with the wider world, the Union shall uphold and promote its values and interests. It shall contribute to peace, security, the sustainable development of the earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and protection of human rights and in particular children's rights, as well as to strict observance and development of international law, including respect for the principles of the United Nations Charter.
5. These objectives shall be pursued by appropriate means, depending on the extent to which the relevant competences are attributed to the Union in this Constitution.

#### **Article I-4: Fundamental freedoms and non-discrimination**

1. Free movement of persons, goods, services and capital, and freedom of establishment shall be guaranteed within and by the Union, in accordance with the provisions of this Constitution.
2. In the field of application of this Constitution, and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

#### **Article I-5: Relations between the Union and the Member States**

1. The Union shall respect the national identities of its Member States, inherent in their fundamental structures, political and constitutional, including for regional and local self government. It shall respect their essential State functions, including for ensuring the territorial integrity of the State, and for maintaining law and order and safeguarding internal security.
2. Following the principle of loyal cooperation, the Union and the Member States shall, in full mutual respect, assist each other to carry out tasks which flow from the Constitution.

The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the objectives set out in the Constitution.

#### **Article I-6: Legal personality**

The Union shall have legal personality.

## **TITLE II: FUNDAMENTAL RIGHTS AND CITIZENSHIP OF THE UNION**

### **Article I-7: Fundamental rights**

1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes the Second Part of this Constitution.
2. The Union shall seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined in this Constitution.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

### **Article I-8: Citizenship of the Union**

1. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship; it shall not replace it.
2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in this Constitution. They shall have:
  - the right to move and reside freely within the territory of the Member States;
  - the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;

- the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;
  - the right to petition the European Parliament, to apply to the Union Ombudsman, and to write to the Institutions and advisory bodies of the Union in any of the Union's languages and to obtain a reply in the same language.
3. These rights shall be exercised in accordance with the conditions and limits defined by this Constitution and by the measures adopted to give it effect.

### **TITLE III: UNION COMPETENCES AND ACTIONS**

#### **Article I-9: Fundamental principles**

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.
2. Under the principle of conferral, the Union shall act within the limits of the competences conferred upon it by the Member States in the Constitution to attain the objectives set out in the Constitution. Competences not conferred upon the Union in the Constitution remain with the Member States.
3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The Union Institutions shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Constitution. National Parliaments shall ensure compliance with that principle in accordance with the procedure set out in the Protocol.

4. Under the principle of proportionality, the scope and form of Union action shall not exceed what is necessary to achieve the objectives of the Constitution.

The Institutions shall apply the principle of proportionality as laid down in the Protocol referred to in paragraph 3.

#### **Article I-10: Union law**

1. The Constitution, and law adopted by the Union's Institutions in exercising competences conferred on it, shall have primacy over the law of the Member States.
2. Member States shall take all appropriate measures, general or particular, to ensure fulfilment of the obligations flowing from the Constitution or resulting from the Union Institutions' acts.

#### **Article I-11: Categories of competence**

1. When the Constitution confers on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of acts adopted by the Union.

2. When the Constitution confers on the Union a competence shared with the Member States in a specific area, the Union and the Member States shall have the power to legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised, or has decided to cease exercising, its competence.
3. The Union shall have competence to coordinate the economic and employment policies of the Member States.
4. The Union shall have competence to define and implement a common foreign and security policy, including the progressive framing of a common defence policy.
5. In certain areas and in the conditions laid down in the Constitution, the Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas.
6. The scope of and arrangements for exercising the Union's competences shall be determined by the provisions specific to each area in Part Three of the Constitution.

#### **Article I-12: Exclusive competence**

1. The Union shall have exclusive competence to establish competition rules within the internal market, and in the following areas:
  - monetary policy, for the Member States which have adopted the euro,
  - common commercial policy,
  - customs union,
  - the conservation of marine biological resources under the common fisheries policy.



2. The Union shall have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union, is necessary to enable the Union to exercise its competence internally, or affects an internal Union act.

### **Article I-13: Areas of shared competence**

1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles I-12 and I-16.
2. Shared competence applies in the following principal areas:
  - internal market,
  - area of freedom, security and justice,
  - agriculture and fisheries, excluding the conservation of marine biological resources,
  - transport and trans-European networks,
  - energy,
  - social policy, for aspects defined in Part Three,
  - economic and social cohesion,
  - environment,
  - consumer protection,
  - common safety concerns in public health matters.
3. In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to define and implement programmes; however, the exercise of that competence may not result in Member States being prevented from exercising theirs.

4. In the areas of development cooperation and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member States being prevented from exercising theirs.

#### **Article I-14: The coordination of economic and employment policies**

1. The Union shall adopt measures to ensure coordination of the economic policies of the Member States, in particular by adopting broad guidelines for these policies. The Member States shall coordinate their economic policies within the Union.
2. Specific provisions shall apply to those Member States which have adopted the euro.
3. The Union shall adopt measures to ensure coordination of the employment policies of the Member States, in particular by adopting guidelines for these policies.
4. The Union may adopt initiatives to ensure coordination of Member States' social policies.

#### **Article I-15: The common foreign and security policy**

1. The Union's competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union's security, including the progressive framing of a common defence policy, which might lead to a common defence.
2. Member States shall actively and unreservedly support the Union's common foreign and security policy in a spirit of loyalty and mutual solidarity and shall comply with the acts adopted by the Union in this area. They shall refrain from action contrary to the Union's interests or likely to impair its effectiveness.

#### **Article I-16: Areas of supporting, coordinating or complementary action**

1. The Union may take supporting, coordinating or complementary action.
2. The areas for supporting, coordinating or complementary action shall be, at European level:
  - industry
  - protection and improvement of human health
  - education, vocational training, youth and sport
  - culture
  - civil protection.
3. Legally binding acts adopted by the Union on the basis of the provisions specific to these areas in Part Three cannot entail harmonisation of Member States' laws or regulations.

#### **Article I-17: Flexibility clause**

1. If action by the Union should prove necessary within the framework of the policies defined in Part Three to attain one of the objectives set by this Constitution, and the Constitution has not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall take the appropriate measures.
2. Using the procedure for monitoring the subsidiarity principle referred to in Article **I-9(3)**, the Commission shall draw Member States' national Parliaments' attention to proposals based on this Article.
3. Provisions adopted on the basis of this Article may not entail harmonisation of Member States' laws or regulations in cases where the Constitution excludes such harmonisation.

## **TITLE IV: THE UNION'S INSTITUTIONS**

### **Article I-18: The Union's Institutions**

1. The Union shall be served by a single institutional framework which shall aim to:

- advance the objectives of the Union,
- promote the values of the Union,
- serve the interests of the Union, its citizens and its Member States,

and ensure the consistency, effectiveness and continuity of the policies and actions it undertakes in pursuit of its objectives.

2. This institutional framework comprises:

the European Parliament,  
the European Council,  
the Council of Ministers,  
the European Commission,  
the Court of Justice of the European Union,  
the European Central Bank,  
the Court of Auditors.

3. Each institution shall act within the limits of the powers conferred on it in the Constitution, and in conformity with the procedures and conditions set out in it. The institutions shall practice full mutual cooperation.

### **Article I-19: The European Parliament**

1. The European Parliament shall, jointly with the Council, enact legislation and exercise functions of political control and consultation as laid down in the Constitution. It shall elect the President of the European Commission.
2. The European Parliament shall be directly elected by universal suffrage of European citizens in free and secret ballot for a term of five years. Its members shall not exceed seven hundred in number. Representation of European citizens shall be degressively proportional, with a minimum threshold of four members per Member State.
3. The European Parliament shall elect its President and its officers from among its members, for a term of five years.

### **Article I-20: The European Council**

1. The European Council shall provide the Union with the necessary impetus for its development, and shall define its general political directions and priorities.
2. The European Council shall consist of the Heads of State or Government of the Member States, together with its President and the President of the Commission. The Foreign Minister shall take part in its work.
3. The European Council shall meet quarterly, convened by its President. When the agenda so requires, its members may decide to be assisted by a minister, and, in the case of the President of the Commission, a Commissioner. When the situation so requires, the President shall convene an additional meeting of the European Council.
4. Except where the Constitution provides otherwise, decisions of the European Council shall be taken by consensus.

## **Article I-21: The European Council Chair**

1. The European Council shall elect its President, by qualified majority, for a term of two and a half years, renewable once. The person elected must be, or have been for at least two years, a member of the European Council. In cases of serious malpractice, the European Council can end his mandate according to the same procedure.

The President of the European Council shall ensure at his level that the Union is effectively represented in the wider world on issues concerning its common foreign and security policy.

2. The President of the European Council shall chair it and drive forward its work, ensuring proper preparation and continuity. He shall endeavour to facilitate cohesion and consensus within the European Council. He shall present a report to the European Parliament after each of its meetings.
3. The European Council may decide by consensus to create a board consisting of three of its members chosen according to a system of equitable rotation.
4. The President of the European Council may not be a member of another European institution or hold a national mandate.

## **Article I-22: The Council of Ministers**

1. The Council of Ministers shall, jointly with the European Parliament, enact legislation and carry out policy-making and coordinating functions, as laid down in the Constitution.
2. The Council of Ministers shall consist of a representative of each Member State at ministerial level for each of its formations. Only this representative may commit the Member State in question, and cast its vote.
3. Except where the Constitution provides otherwise, decisions of the Council shall be taken by qualified majority.

## **Article I-23: Council formations**

1. The General Affairs Council shall ensure consistency in the work of the Council of Ministers. With the participation of the Commission, it shall prepare meetings of the European Council.
2. The Legislative Council shall consider and, jointly with the European Parliament, enact European laws and European framework laws, in accordance with the provisions of the Constitution. Depending on the business on the Council agenda, each Member State's ministerial representative may be assisted by one or, if necessary, two specialised ministerial representatives.
3. The Foreign Affairs Council shall, on the basis of strategic guidelines laid down by the European Council, flesh out the Union's external policies, and ensure that its actions are consistent. It shall be chaired by the Union's Foreign Minister.
4. The Council shall also meet in the configuration of an Economic and Financial Affairs Council, and a Council on Justice and Security.

5. The Council, in its General Affairs formation, may decide on further formations.
6. The European Council may decide by consensus that the Presidency of a Council formation, other than that of Foreign Affairs, should be undertaken by a Member State for a period of at least a year, taking into account European political and geographical balance and the diversity of all Member States.

#### **Article I-24: Qualified majority**

1. When the European Council or the Council of Ministers take decisions by qualified majority, such a majority shall consist of the majority of Member States, representing at least three fifths of the population of the Union.
2. Within the European Council, its President and the President of the Commission do not vote.

#### **Article I-25: The European Commission**

1. The European Commission shall safeguard the general European interest. It shall ensure the application of the Constitution, and steps taken by the institutions under the Constitution. It shall also exercise coordinating, executive and management functions as laid down in the Constitution.
2. Except where the Constitution provides otherwise, Union acts can be adopted only on the basis of a Commission proposal.



3. The Commission shall consist of a President and up to fourteen other members. It may call on the help of Associate Commissioners.
4. In carrying out its responsibilities, the Commission shall be completely independent. In the discharge of their duties members of the Commission shall neither seek nor take instructions from any government or other body.

#### **Article I-26: The President of the European Commission**

1. Taking into account the elections to the European Parliament, the European Council, deciding by qualified majority, shall put forward to the European Parliament its proposed candidate for the Presidency of the Commission. This candidate shall be elected by the European Parliament by a majority of its members. If this candidate does not receive the required majority support, the European Council shall within one month put forward a new candidate, following the same procedure as before.
2. Each Member State shall submit a list of three persons, of whom at least one must be a woman, whom it considers qualified to be a European Commissioner. The President-elect, taking account of European political and geographical balance, shall, from among the names submitted, select as members of the Commission up to thirteen persons chosen for their competence, European commitment, and guaranteed independence. The President and the persons so nominated for membership of the Commission shall be submitted as a body to a vote of approval by the European Parliament.
3. The Commission, as a body, shall be responsible to the European Parliament. Under the procedure set out in Article [...] of Part Three of the Constitution, the European Parliament may pass a censure motion on the Commission. If such a motion is passed, the members of the Commission must all resign. They shall continue to handle everyday business until their successors are nominated.

4. The Commission shall work to guidelines laid down by its President. He shall decide its internal organisation, ensuring that it acts consistently, efficiently and on a collegiate basis. He shall appoint vice-presidents from among the members of the Commission.
5. The President may appoint Associate Commissioners, chosen according to the same criteria as apply for members of the Commission. Their number must not exceed the number of members of the Commission.

#### **Article I-27: The Foreign Minister**

1. The European Council, deciding by qualified majority, with the agreement of the President of the Commission, shall appoint the Union's Foreign Minister. He shall conduct the Union's common foreign and security policy.
2. The Foreign Minister shall contribute by his proposals to the development of the common foreign policy, which he shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.
3. The Foreign Minister shall be one of the Vice-Presidents of the Commission. He shall be responsible there for handling external relations and for coordinating other aspects of the Union's external action. In exercising these responsibilities within the Commission, and only for these responsibilities, he shall be bound by Commission procedures.

## **Article I-28: The Court of Justice of the European Union**

1. The Court of Justice, including the High Court, shall ensure respect for the Constitution and Union law.

The Member States shall provide rights of review sufficient to ensure effective legal protection in the field of Union law.

2. The Court of Justice shall consist of one judge from each Member State, and shall be assisted by Advocates-General. The High Court shall include at least one judge per Member State: the number shall be fixed by the Statute of the Court of Justice. The judges of the Court of Justice and the High Court and the Advocates-General of the Court of Justice, chosen from persons whose independence is beyond doubt and who satisfy the conditions set out in Article [...] of Part Three, shall be appointed by common accord of the governments of the Member States for a term of six years, renewable.

3. The Court of Justice shall be competent to:

- rule on actions brought by the Commission, a Member State, an institution or a natural or legal person in the cases mentioned and in accordance with the rules laid down in Article [...] of Part Three;
- give preliminary rulings, at the request of Member State courts, on the interpretation of Union law or the validity of acts adopted by the institutions;
- rule on appeals against decisions made by the High Court or exceptionally re-examine those decisions under the conditions laid down in the Statute of the Court of Justice.

## **Article I-29: The European Central Bank**

1. The European Central Bank shall direct the European System of Central Banks, of which it, alongside the national central banks, forms part.
2. The primary objective of the Bank shall be to maintain price stability. Without prejudice to the objective of price stability, it shall support general economic policies in the Union with a view to contributing to the achievement of the Union's objectives.
3. The Bank shall define and implement the monetary policy of the Union. It alone may authorise the issue of the Union currency, the euro. It shall conduct other Central Bank tasks according to the provisions of Part Two of the Constitution.
4. The Bank shall have legal personality. In the exercise of its powers and for its finances, it shall be independent. Union institutions and bodies, and the governments of the Member States, shall undertake to respect this principle.
5. The Bank shall adopt such measures as are necessary to carry out its tasks in accordance with the provisions of Articles [...] to [...] of Part Three of the Constitution, and with the conditions laid down in the Statutes of the Bank and of the European System of Central Banks. In accordance with these same provisions, those Member States which have not adopted the euro, and their central banks, shall retain their powers in monetary matters.
6. Within its areas of competence, the Bank shall be consulted on all proposed Union acts, and all proposals for regulation at national level, and may give an opinion.
7. The organs of the Bank, their composition and operating methods are set out in Articles [...] to [...] of Part Three, as well as in the Statute of the Bank.

### **Article I-30: The Court of Auditors**

1. The Court of Auditors shall carry out the audit.
2. It shall examine the accounts of all Union revenue and expenditure, and shall ensure good financial management.
3. It shall consist of one national of each Member State. In the performance of their duties, its members shall be completely independent.

### **Article I-31: The Union's Advisory Bodies**

1. The European Parliament, the Council of Ministers and the Commission shall be assisted by a Committee of the Regions and an Economic and Social Committee, exercising advisory functions.
2. The Committee of the Regions shall consist of representatives of regional and local bodies who either hold a regional or local authority mandate or are politically accountable to an elected assembly.
3. The Economic and Social Committee shall consist of representatives of organisations of employers, of the employed, and of others in representative civil society, notably in socio-economic, civic, professional and cultural areas.
4. The members of the Committee of the Regions and the Economic and Social Committee must not be bound by any mandatory instructions. They shall be completely independent, in the performance of their duties, in the Union's general interest.
5. Rules governing the composition of these Committees, the designation of their members, their powers and their operations, are set out in Articles [...] of Part Three of the Constitution. The rules governing their composition shall be reviewed at regular intervals by the Council, on the basis of a Commission proposal, in the light of economic, social and demographic developments within the Union.

## **TITLE V: EXERCISE OF UNION COMPETENCE**

### **Chapter I: Common provisions**

#### **Article I-32: The legal acts of the Union**

1. In exercising the competences conferred on it in the Constitution, the Union shall use as legal instruments, in accordance with the provisions of Part Three, European laws, European framework laws, European regulations, European decisions, recommendations and opinions.

A European law shall be a legislative act of general application. It shall be binding in its entirety and directly applicable in all Member States.

A European framework law shall be a legislative act binding, as to the result to be achieved, on the Member States, but leaving the national authorities entirely free to choose the form and means of achieving that result.

A European regulation shall be a non-legislative act of general application for the implementation of legislative acts and of certain specific provisions of the Constitution. It may either be binding in its entirety and directly applicable in all Member States, or be binding, as regards the result to be achieved, on all Member States to which it is addressed, but leaving the national authorities entirely free to choose the form and means of achieving that result.

A European decision shall be a non-legislative act, binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.

Recommendations and opinions adopted by the institutions shall have no binding force.

2. When considering proposals for legislative acts, the European Parliament and the Council shall refrain from adopting acts not provided for by this Article in the area in question.

### **Article I-33: Legislative acts**

1. European laws and European framework laws shall be adopted, on the basis of proposals from the Commission, jointly by the European Parliament and the Council under the ordinary legislative procedure as set out in Article [ex 251]. If the two institutions cannot reach agreement on an act, it shall not be adopted.

In the cases specifically provided for in Article [...] of Part III, laws and framework laws may be adopted at the initiative of a group of Member States in accordance with Article [ex 251].

2. In the specific cases provided for by the Constitution, European laws and European framework laws shall be adopted by the European Parliament with the participation of the Council, or by the Council with the participation of the European Parliament, in accordance with special legislative procedures.

### **Article I-34: Non-legislative acts**

1. The Council and the Commission shall adopt European regulations or European decisions in the cases referred to in Articles I-35 and I-36 and in cases specifically laid down in the Constitution. The European Central Bank shall adopt European regulations and European decisions when authorised to do so by the Constitution.
2. The Council and the Commission, and the European Central Bank when so authorised in the Constitution, shall adopt recommendations.

### **Article I-35: Delegated regulations**

1. European laws and European framework laws may delegate to the Commission the power to enact delegated regulations to supplement or amend certain non-essential elements of the law or framework law.

The objectives, content, scope and duration of the delegation shall be explicitly defined in the laws and framework laws. A delegation may not cover the essential elements of an area. These shall be reserved for the law or framework law.

2. The conditions of application to which the delegation is subject shall be explicitly determined in the laws and framework laws; they may consist of the following possibilities:

- the European Parliament **or** the Council may decide to revoke the delegation;
- the delegated regulation may enter into force only if no objection has been expressed by the European Parliament or the Council within a period set by the law or framework law.

For the purposes of the preceding paragraph, the European Parliament shall act by a majority of its members, and the Council by a qualified majority.



### **Article I-36: Implementing acts**

1. Member States shall adopt all measures of national law necessary to implement legally binding Union acts.
2. Where uniform conditions for implementing binding Union acts are needed, those acts may confer implementing powers on the Commission, or, in specific cases, and in the cases provided for in Article I-39, on the Council.
3. The law shall lay down in advance rules and general principles for the mechanisms for control by Member States over implementing acts of the Union.
4. Implementing acts of the Union shall take the form of European implementing regulations or European implementing decisions.

### **Article I-37: Principles common to the Union's legal acts**

1. Unless the Constitution contains a specific stipulation, the Institutions shall decide, in compliance with the procedures applicable, the type of act to be adopted in each case, in accordance with the principle of proportionality set out in Article I-9.
2. European laws, European framework laws, European regulations and European decisions shall state the reasons on which they are based and shall refer to any proposals or opinions required by this Constitution.

### **Article I-38: Publication and entry into force**

1. European laws and European framework laws adopted under the ordinary legislative procedure shall be signed by the President of the European Parliament and by the President of the Council. In other cases they shall be signed by the President of the Council or by the President of the European Parliament. Laws and framework laws shall be published in the Official Journal of the European Union and shall enter into force on the date specified in them or, in the absence of such a stated date, on the twentieth day following their publication.
2. European regulations and European decisions which do not specify those to whom they are addressed or which are addressed to all Member States shall be signed by the President of the Institution which adopts them, shall be published in the Official Journal of the European Union and shall enter into force on the date specified in them or, in the absence of such a stated date, on the twentieth day following their publication.
3. Other decisions shall be notified to those to whom they are addressed and shall take effect upon such notification.

## **Chapter II : Specific provisions**

### **Article I-39: Specific provisions for implementing common foreign and security policy**

1. The European Union shall conduct a common foreign and security policy, based on the development of mutual political solidarity among Member States, the identification of questions of general interest and the achievement of an ever-increasing degree of convergence of Member States' actions.
2. The European Council shall identify the Union's strategic interests and determine the objectives of its common foreign and security policy. The Council of Ministers shall frame this policy within the framework of the strategic guidelines established by the European Council and in accordance with the arrangements in Part Three of the Constitution.

3. The European Council and the Council of Ministers shall adopt the necessary decisions.
4. The common foreign and security policy shall be put into effect by the Union's Minister for Foreign Affairs and by the Member States, using national and Union resources.
5. Member States shall consult one another within the Council and the European Council on any foreign and security policy issue which is of general interest in order to determine a common approach. Before undertaking any action on the international scene or any commitment which could affect the Union's interests, each Member State shall consult the others within the Council or the European Council. Member States shall ensure, through the convergence of their actions, that the Union is able to assert its interests and values on the international scene. Member States shall show mutual solidarity.
6. The European Parliament shall be regularly consulted on the main aspects and basic choices of the common foreign and security policy, and shall be kept informed of how it evolves.
7. Decisions relating to the common foreign and security policy shall be adopted by the European Council and the Council of Ministers unanimously, except in the cases referred to in Part Three of the Constitution. Discussion shall be based on a proposal from a Member State, from the Union's Minister for Foreign Affairs or from the Minister with the Commission's support. Laws and framework laws are excluded.
8. The European Council may unanimously decide that the Council should act by qualified majority in cases other than those referred to in Part Three of the Constitution.

#### **Article I-40: Specific provisions for implementing common defence policy**

1. The common security and defence policy shall be an integral part of the common foreign and security policy. It shall provide the Union with an operational capability drawing on assets civil and military. The Union may use them on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter. The performance of these tasks shall be undertaken using capabilities provided by the Member States.
2. The common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

The policy of the Union in accordance with this Article shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty, and be compatible with the common security and defence policy established within that framework.

3. Member States shall make civilian and military capabilities available to the Union for the implementation of the common security and defence policy, to contribute to the objectives defined by the Council. Those Member States which together establish multinational forces may also make those forces available to the common security and defence policy.

Member States shall undertake progressively to improve their military capabilities.

A European Armaments, Research and Military Capabilities Agency shall be established to identify operational requirements, to put forward measures to satisfy those requirements, to contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, to participate in defining a European capabilities and armaments policy, and to assist the Council in evaluating the improvement of military capabilities.

4. Decisions on the implementation of the common security and defence policy, including those initiating a mission as referred to in this Article, shall be adopted by the Council acting unanimously on a proposal from the Union's Minister for Foreign Affairs or from a Member State. The Minister for Foreign Affairs may propose the use of both national resources and Union instruments, together with the Commission where appropriate.
5. The Council may entrust the execution of a task, within the Union framework, to a group of Member States in order to maintain the Union's values and serve its interests. The execution of such a task shall be governed by Article [...] of Part Three, Title B, of the Constitution.
6. Those Member States whose military capabilities meet higher criteria and which have made more binding commitments to one another in this area with a view to more demanding missions shall establish structured cooperation within the Union framework. Such cooperation shall be governed by the provisions of Article [...] of Part Three, Title B, of the Constitution.

7. Until such time as the European Council has acted in accordance with paragraph 2 of this Article, closer cooperation shall be established, in the Union framework, as regards mutual defence. Under this cooperation, if one of the Member States participating in such cooperation is the victim of armed aggression on its territory, the other participating States shall give it aid and assistance by all the means in their power, military or other, in accordance with Article 51 of the United Nations Charter. In the execution of closer cooperation on mutual defence, the participating Member States shall work in close cooperation with the North Atlantic Treaty Organisation. The detailed arrangements for participation in this cooperation and its operation, and the relevant decision-making procedures, are set out in Article [...] of Part Three, Title B, of the Constitution.
8. The European Parliament shall be regularly consulted on the main aspects and basic choices of the common security and defence policy, and shall be kept informed of how it evolves.

**Article I-41: Specific provisions for implementing the area of freedom, security and justice**

1. The Union shall constitute an area of freedom, security and justice:
  - by adopting European laws and European framework laws intended, where necessary, to approximate national laws in the areas listed in Part Three of the Constitution;
  - by promoting mutual confidence between the competent authorities of the Member States, in particular on the basis of mutual recognition of judicial and extrajudicial decisions;
  - by operational cooperation between the competent authorities of the Member States, including the police, customs and other services specialising in the prevention and detection of criminal offences.

2. Within the area of freedom, security and justice, national Parliaments may participate in the evaluation mechanisms foreseen in Article [...], Part Three, of the Constitution, and shall be involved in the political monitoring of Eurojust's and Europol's activities in accordance with Articles [...] and [...], Part Three, of the Constitution.
3. In the field of police and judicial cooperation in criminal matters, Member States shall have a right of initiative in accordance with Article [...], Part Three, of the Constitution.

#### **Article I-42: Solidarity clause**

1. The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the victim of terrorist attack or natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to:
  - (a) – prevent the terrorist threat in the territory of the Member States;
    - protect democratic institutions and the civilian population from any terrorist attack;
    - assist a Member State in its territory at the request of its political authorities in the event of a terrorist attack;
  - (b) – assist a Member State in its territory at the request of its political authorities in the event of a disaster.
2. The detailed arrangements for implementing this provision are at Article [...], of Part Three, Title B, of the Constitution.

## **Chapter III: Enhanced cooperation**

### **Article I-43: Enhanced cooperation**

1. Member States which wish to establish enhanced cooperation between themselves within the framework of the Union's non-exclusive competences may make use of its institutions and exercise those competences by applying the relevant provisions of the Constitution, subject to the limits and in accordance with the procedures laid down in this article and in Articles [...] to [...] of Part Three of the Constitution.

Enhanced cooperation shall aim to further the objectives of the Union, protect its interests and reinforce its integration process. Such cooperation shall be open to all Member States when it is being established and at any time, in accordance with Article [...] of Part Three of the Constitution.

2. Authorisation to proceed with enhanced cooperation shall be granted by the Council as a last resort, when it has been established within the Council that the objectives of such cooperation cannot be attained within a reasonable period by the Union as a whole, and provided that it brings together at least one third of the Member States. The Council shall act in accordance with the procedure laid down in Article [...] of Part Three of the Constitution.
3. Only representatives of the Member States participating in enhanced cooperation shall take part in the adoption of acts adopted within the Council. All Member States may, however, take part in the deliberations of the Council.

Unanimity shall be constituted by the participating States only. A qualified majority shall be defined as a majority of the votes of the participating Member States, representing at least three fifths of the population of those States.

Acts adopted in the framework of enhanced cooperation shall bind only participating Member States. They shall not be regarded as an *acquis* which has to be accepted by candidates for accession to the Union.



## **TITLE VI: THE DEMOCRATIC LIFE OF THE UNION**

### **Article I-44: The principle of democratic equality**

In all its activities, the Union shall observe the principle of the equality of citizens. All shall receive equal attention from the Union's Institutions.

### **Article I-45: The principle of representative democracy**

1. The working of the Union shall be founded on the principle of representative democracy.
2. Citizens are directly represented at Union level in the European Parliament. Member States are represented in the European Council and in the Council by their governments, themselves accountable to national Parliaments, elected by their citizens.
3. Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly as possible and as closely as possible to the citizen.
4. Political parties at European level contribute to forming European political awareness and to expressing the will of Union citizens.

### **Article I-46: The principle of participatory democracy**

1. The Union Institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views on all areas of Union action.
2. The Union Institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.
3. The Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.

#### **Article I-47: The social partners and autonomous social dialogue**

The European Union recognises and promotes the role of the social partners at Union level, taking into account the diversity of national systems; it shall facilitate dialogue between the social partners, respecting their autonomy.

#### **Article I-48: The European Ombudsman**

A European Ombudsman appointed by the European Parliament shall receive, investigate and report on complaints about maladministration within the Union's Institutions, bodies or agencies. The European Ombudsman shall be completely independent in the performance of his duties.

#### **Article I-49: Transparency of the proceedings of the Union's Institutions**

1. In order to promote good governance and ensure the participation of civil society, the Union's Institutions, bodies and agencies shall conduct their work as openly as possible.
2. The European Parliament shall meet in public, as shall the Council when it is discussing and adopting a legislative proposal.
3. Any citizen of the Union, man or woman, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union's Institutions, bodies and agencies in whatever form they are produced, in accordance with the conditions laid down in Part Three.
4. A European law shall lay down the general principles and limits which, on grounds of public or private interest, govern the right of access to such documents.
5. Each institution, body or agency referred to in paragraph 3 shall determine in its own rules of procedure specific provisions regarding access to its documents, in accordance with the European law referred to in paragraph 4 above.

#### **Article I-50: Protection of personal data**

1. Everyone has the right to the protection of personal data concerning him or her.
2. A European law shall lay down the rules relating to the protection of individuals with regard to the processing of personal data by the Union's Institutions, bodies and agencies, and by the Member States when carrying out activities which come under the scope of Union law, and the rules relating to the free movement of such data. Compliance with these rules shall be subject to the control of an independent authority.

#### **Article I-51: Status of churches and non-confessional organisations**

1. The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.
2. The Union equally respects the status of philosophical and non-confessional organisations.
3. Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.

#### **[Article X**

1. The Congress of the Peoples of Europe shall provide a forum for contact and consultation in European political life. It shall meet at least once a year. Its meetings shall be public. The President of the European Parliament shall convene and chair them.
2. The Congress shall not intervene in the Council's legislative procedure.
3. The President of the European Council shall report on the state of the Union. The President of the Commission shall present the annual legislative programme.
4. One third of the Congress shall be members of the European Parliament: two thirds shall be representatives of national Parliaments. The total shall not exceed seven hundred.]

## **TITLE VII: THE UNION'S FINANCES**

### **Article I-52: Budgetary and financial principles**

1. All items of Union revenue and expenditure shall be included in estimates drawn up for each financial year and shall be shown in the budget, in accordance with the provisions of Part Three of the Constitution.
2. The revenue and expenditure shown in the budget shall be in balance.
3. The expenditure shown in the budget shall be authorised for the annual budgetary period in accordance with the European law referred to in Article [ex 279].
4. The implementation of expenditure shown in the budget shall require the prior adoption of a binding legal act providing a legal basis for Union action and for the implementation of the expenditure in accordance with the European law referred to in Article [ex 279)]. This act must take the form of a European law, a European framework law, a European regulation or a European decision.
5. With a view to maintaining budgetary discipline, the Union shall not adopt any act which is likely to have appreciable implications for the budget without providing an assurance that the proposal or measure in question is capable of being financed within the limit of the Union's own resources and the multiannual financial framework referred to in Article I-54.
6. The Union's budget shall be implemented in accordance with the principle of sound financial management. Member States shall cooperate with the Union to ensure that the appropriations entered in the budget are used in accordance with the principles of sound financial management.
7. The Union and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Union in accordance with the provisions of Article [...] of Part Three.

### **Article I-53: The Union's resources**

1. The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.
2. Without prejudice to other revenue, the Union's budget shall be financed wholly from its own resources.
3. A European law of the Council shall lay down the limit of the Union's resources and may establish new categories of resources or abolish an existing category. That law shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements. The Council shall act unanimously after consulting the European Parliament.
4. A European law of the Council shall lay down the detailed arrangements relating to the Union's resources. The Council shall act after obtaining the consent of the Parliament.

### **Article I-54: The multiannual financial framework**

1. The multiannual financial framework shall ensure that Union expenditure develops in an orderly manner and within the own resources limits. It shall determine the amounts of the annual ceilings for commitment appropriations by category of expenditure in accordance with the provisions of Article [...] of Part Three.
2. A European law of the Council shall lay down the multiannual financial framework. The Council shall act after obtaining the consent of the European Parliament, which shall be given by a majority of its component members.
3. The annual budget of the Union shall comply with the multiannual financial framework.

### **Article I-55: The Union's budget**

The European Parliament and the Council shall, on a proposal from the Commission and in accordance with the arrangements laid down in Article [ex 272], adopt the European law determining the Union's annual budget.

## **TITLE VIII: THE UNION AND ITS IMMEDIATE ENVIRONMENT**

### **Article I-56: The Union and its immediate environment**

1. The Union shall develop a special relationship with neighbouring States, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation.
2. For this purpose, the Union may conclude and implement specific agreements with the countries concerned in accordance with Article [...] of Part Three of the Constitution. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation.

## **TITLE IX: UNION MEMBERSHIP**

### **Article I-57: Conditions and procedure for applying for Union membership**

1. The Union shall be open to all the European States which respect the values referred to in Article 2, and are committed to promoting them together.
2. Any European State which wishes to become a member of the Union may address its application to the Council. The European Parliament and the Member States' national Parliaments shall be notified of this application. The Council shall act unanimously after consulting the Commission and after obtaining the consent of the European Parliament. The conditions and arrangements for admission shall be the subject of an agreement between the Member States and the candidate State. That agreement shall be subject to ratification by all the contracting States, in accordance with their respective constitutional requirements.

### **Article I-58: Suspension of Union membership rights**

1. On a reasoned proposal by one third of the Member States, by the European Parliament or by the Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may adopt a decision determining that there is a clear risk of a serious breach by a Member State of the values mentioned in Article 2. Before making such a determination, the Council shall hear the Member State in question and, acting in accordance with the same procedure, may address recommendations to that State.

The Council shall regularly verify that the grounds on which such a determination was made continue to apply.

2. The European Council, acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the consent of the European Parliament, may adopt a decision determining the existence of a serious and persistent breach by a Member State of values mentioned in Article 2, after inviting the Member State in question to submit its observations.
3. Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may adopt a decision suspending certain of the rights deriving from the application of this Constitution to the Member State in question, including the voting rights of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

The obligations of the Member State in question under the Constitution shall in any case continue to be binding on that State.

4. The Council, acting by a qualified majority, may subsequently adopt a decision varying or revoking measures taken under paragraph 3 in response to changes in the situation which led to their being imposed.
5. For the purposes of this Article, the Council shall act without taking into account the vote of the Member State in question. Abstentions by members present in person or represented shall not prevent the adoption of decisions referred to in paragraph 2.

This paragraph shall also apply in the event of voting rights being suspended pursuant to paragraph 3.

6. For the purposes of paragraphs 1 and 2, the European Parliament shall act by a two-thirds majority of the votes cast, representing a majority of its Members.



## **Article I-59: Voluntary withdrawal from the Union**

1. Any Member State may decide to withdraw from the European Union in accordance with its own constitutional requirements.
2. A Member State which decides to withdraw shall notify the European Council of its intention; the European Council shall examine that notification. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

The representative of the withdrawing Member State shall not participate in Council or European Council discussions or decisions concerning it.

3. This Constitution shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, decides to extend this period.
4. If a State which has withdrawn from the Union asks to re-join, that request shall be subject to the procedure referred to in Article I-57.

# **DRAFT PROTOCOL ON THE ROLE OF NATIONAL PARLIAMENTS IN THE EUROPEAN UNION**

THE HIGH CONTRACTING PARTIES,

RECALLING that the way in which individual national Parliaments scrutinise their own governments in relation to the activities of the Union is a matter for the particular constitutional organisation and practice of each Member State.

DESIRING, however, to encourage greater involvement of national Parliaments in the activities of the European Union and to enhance their ability to express their views on legislative proposals as well as on other matters which may be of particular interest to them.

HAVE AGREED UPON the following provisions, which shall be annexed to the Constitution:

## **I. Information for Member States' national Parliaments**

1. All Commission consultation documents (green and white papers and communications) shall be forwarded directly by the Commission to Member States' national Parliaments upon publication. The Commission shall also send Member States' national Parliaments the annual legislative programme as well as any other instrument of legislative planning or policy strategy that it submits to the European Parliament and to the Council, at the same time as to those Institutions.
2. All legislative proposals sent to the European Parliament and to the Council shall simultaneously be sent to Member States' national Parliaments.
3. Member States' national Parliaments may send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion on whether a legislative proposal complies with the principle of subsidiarity, according to the procedure laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

4. A six-week period shall elapse between a legislative proposal being made available by the Commission to the European Parliament, the Council and the Member States' national Parliaments in the official languages of the European Union and the date when it is placed on a Council agenda for adoption or for adoption of a position under a legislative procedure, subject to exceptions on grounds of urgency, the reasons for which shall be stated in the act or common position. Save in urgent cases for which due reasons have been given, no agreement may be established on a legislative proposal during those six weeks. Ten days must elapse between the placing of a proposal on the Council agenda and the adoption of a common position.
5. The agendas for and the outcome of Council meetings, including the minutes of meetings where the Council is deliberating on legislative proposals, shall be transmitted directly to Member States' national Parliaments, at the same time as to Member States' governments.
6. The Court of Auditors shall send its annual report to Member States' national Parliaments, for information, at the same time as to the European Parliament and to the Council.
7. In the case of bicameral national Parliaments, these provisions shall apply to both chambers.

## II. Interparliamentary cooperation

8. The European Parliament and the national Parliaments shall together determine how interparliamentary cooperation may be effectively and regularly organised and promoted within the European Union.
9. The Conference of European Affairs Committees may submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission. That Conference shall in addition promote the exchange of information and best practice between Member States' Parliaments and the European Parliament, including their special committees. The Conference may also organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy and of common security and defence policy. Contributions from the Conference shall in no way bind national Parliaments or prejudice their positions.

## **PROTOCOL ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY**

THE HIGH CONTRACTING PARTIES,

WISHING to ensure that decisions are taken as closely as possible to the citizens of the Union,

RESOLVED to establish the conditions for the application of the principles of subsidiarity and proportionality, as enshrined in Article I-9 of the Constitution, and to establish a system for monitoring the application by the Institutions of those principles,

HAVE AGREED UPON the following provisions, which shall be annexed to the Constitution:

1. Each Institution shall ensure constant respect for the principles of subsidiarity and proportionality, as laid down in Article I-9 of the Constitution.
2. Before proposing legislative acts, the Commission shall consult widely. Such consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged. In cases of exceptional urgency, the Commission shall not conduct such consultations. It shall give reasons for the decision in its proposal.
3. The Commission shall send all its legislative proposals and its amended proposals to the national Parliaments of the Member States at the same time as to the Union legislator. The European Parliament and the Council shall send their legislative resolutions and common positions respectively, upon adoption, to the national Parliaments of the Member States.

4. The Commission shall justify its proposal with regard to the principles of subsidiarity and proportionality. Any legislative proposal should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact and, in the case of a framework law, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level must be substantiated by qualitative and, wherever possible, quantitative indicators. The Commission shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved.
5. Any national Parliament or any chamber of a national Parliament of a Member State may, within six weeks from the date of transmission of the Commission's legislative proposal, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the proposal in question does not comply with the principle of subsidiarity. It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional Parliaments with legislative powers.
6. The European Parliament, the Council and the Commission shall take account of the reasoned opinions issued by Member States' national Parliaments or by a chamber of a national Parliament.

The national Parliaments of Member States with unicameral Parliamentary systems shall have two votes, while each of the chambers of a bicameral Parliamentary system shall have one vote.

Where reasoned opinions on a Commission proposal's non-compliance with the principle of subsidiarity represent at least one third of all the votes allocated to the Member States' national Parliaments and their chambers, the Commission shall review its proposal. This threshold shall be at least a quarter in the case of a Commission proposal or an initiative emanating from a group of Member States under the provisions of Article [...] of Chapter X of Part Three of the Constitution on the area of freedom, security and justice.

After such review, the Commission may decide to maintain, amend or withdraw its proposal. The Commission shall give reasons for its decision.

7. The Court of Justice shall have jurisdiction to hear actions on grounds of infringement of the principle of subsidiarity by a legislative act, brought in accordance with the rules laid down in Article [230] by Member States, or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber of it.

In accordance with the same Article of the Constitution, the Committee of the Regions may also bring such actions as regards legislative acts for the adoption of which the Constitution provides that it be consulted.

8. The Commission shall submit each year to the European Council, the European Parliament, the Council and the national Parliaments of the Member States a report on the application of Article 8(3) of the Constitution. This annual report shall also be forwarded to the Committee of the Regions and to the Economic and Social Committee.

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## DRAFT TEXT WITH COMMENTS

### TITLE I: DEFINITION AND OBJECTIVES OF THE UNION

#### Article I-1: Establishment of the Union

1. Reflecting the will of the **citizens** ~~peoples~~ and States of Europe to build a common future, this Constitution establishes a the **European** Union ~~{entitled ...}~~, **on which the Member States confer competences to attain objectives they have in common. The Union shall coordinate the policies by which the Member States aim to achieve those objectives, and shall exercise in the Community way the competences they confer on it.** ~~within which the policies of the Member States shall be coordinated, and which shall administer certain common competences on a federal basis.~~
- ~~2. The Union shall respect the national identities of its Member States.~~
2. ~~The Union shall be open to all European States whose peoples share the same values, respect them and are committed to promoting them together.~~  
**The Union shall be open to all European States which respect its values and are committed to promoting them together.**

#### Comments

##### ad Paragraph 1:

1. *The proposed revised formula takes into account the many suggestions made by Convention members:*



- *avoid the expression "on a federal basis" which, although it appears relevant as a descriptive term in several languages and in the view of several Convention members, would conjure up very different connotations in the various languages of the Union and could therefore be misconstrued in some countries (see amendments from Hain + Kohout + Farnleitner + Hololei + Kirkhope + Hübner + Fini + Vanhanen + Kiljunen + Oleksy + Costa + 3 Portuguese members of the Convention + Korčok + Wüermeling + Altmaier + Kacin + Horvat + Schlüter + Queiró + Rupel + Tomlinson + Muscardini + Oguz + Hololei + Kelam + 3 members of the Convention + Schlüter). The alternative term "Community way" was suggested by several members;*
- *express Union's dual legitimacy based on citizens and States (see amendments from Duhamel + 6, Brok + 12, Palacio, Follini, Korčok, Arabadjiev, Fischer, Katiforis, Szájer, Paciotti, Spini, Puwak, Meyer, Voggenhuber + 1, Mac Cormick, Nagy);*
- *express clearly that the Union acts exclusively on the basis of competences conferred by the Member States and not by the Constitution as such (see amendments from Hain and others);*
- *state that it is the Union that coordinates policies (see amendments Duhamel + 6, Haenel + Badinter + Michel + 5);*
- *avoid giving the impression that **all** Member State policies are coordinated by the Union (am. Farnleitner + Michel + 5);*
- *a number of drafting suggestions have also been taken on board.*

*The Praesidium feels that the wording of the current treaties "ever closer union", the insertion of which in Article 1 was called for by several amendments (de Villepin, Michel + 5, Lopes, Van Lancker, Kohout, Fini, Lequiller, Kuneva, Fischer, Severin, Brok + 12) could be incorporated in the Preamble.*

Re paragraph 2:

*Replaced by new Article 3a (see below), merging this paragraph and former Article 9(6).*

Re paragraph 3 (now paragraph 2:

*In response to numerous amendments (Berger + 2, Timmermans + 3, Queiró, Brok + 34, Roche, Fischer, Svensson, Hjelm-Wallén + 3, Hain, de Vries + de Bruijn, Bonde + Heathcoat-Amory), the new wording clarifies that the accession criteria are those of the current EU Treaty.*

### **Article I-2: 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. **These values which are common to the Member States in a society** ~~Its aim is at peace, through the practice of pluralism,~~ tolerance, justice, **equality**, solidarity and non-discrimination.

### **Comments:**

*The second sentence was reworded to avoid giving the impression of stating the Union's objectives.*

*The main amendment to this Article consists of incorporating the notions of equality and non-discrimination, as many Convention members had requested this in their amendments and at the additional plenary session on 26 March 2003 (Duhamel + 9, Andiukaitis, Michel + 5, Pacioti + Spini, Katiforis, Voggenhuber + Lichtenberger, Giannakou, Einem, Tiilikainen, Kiljunen + Vanhanen, Svensson, Palacio, Kaufmann, Andriukaitis + 4). Of course, the two notions cover equality between women and men, which is mentioned more specifically in Article 3.*

*In addition, suggestions to incorporate pluralism in the Article have been adopted.*

### **Article I-3: The Union's objectives**

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall ~~constitute~~ **offer its citizens** an area of freedom, security and justice **without internal frontiers, and a single market where competition is free and undistorted**~~in which its shared values are developed and the richness of its cultural diversity is respected.~~
3. **The Union shall work for a Europe of sustainable development based on balanced economic growth, with a social market economy aiming at full employment and social progress.**

**It shall aim at a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.**

**It shall combat social exclusion and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of children's rights.**

**It shall promote economic, social and territorial cohesion, and solidarity among Member States.**

**The Union shall respect rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.**

- 3- ~~The Union shall work for a Europe of sustainable development based on balanced economic growth and social justice, with a free single market and on an economic and monetary union, aiming at full employment, generating high levels of competitiveness and high living standards. It shall promote economic and social cohesion, equality between women and men, and environmental and social protection and shall develop scientific and technological advance including the discovery of space. It shall encourage solidarity between generations and between Member States and equal opportunities for all~~
4. ~~In defending Europe's independence and interests, the Union shall seek to advance its values in the wider world.~~ **In its relations with the wider world, the Union shall uphold and promote its values and interests.** It shall contribute to **peace, security**, the sustainable development of the earth, solidarity and mutual respect among peoples, **free and fair trade**, eradication of poverty and protection of **human rights and in particular** children's rights, as well as to strict observance and **development of international commitments law**, **including respect for the principles of the United Nations Charter** and ~~peace between States.~~
5. These objectives shall be pursued by appropriate means, depending on the extent to which the relevant competences are attributed to the Union in this Constitution.

### Comments

*In view of the large number of amendments concerning paragraphs 2 and 3 of this Article, the Praesidium recast the two paragraphs to take account of as many amendments and interventions as possible, while trying to preserve, and even improve, the legibility of the text and the political balances.*

*The new text therefore incorporates in particular suggestions to:*

- *separate the concept of an area of freedom, security and justice, on the one hand, and that of cultural diversity, on the other, the combination of which had been criticised;*
- *make it clear that the Union is providing the area of freedom, security and justice and the single market for the benefit of its citizens (Brok + 13);*
- *strengthen the language on environmental protection (Hjelm-Wallén + 3 Convention members, Michel + 5, Voggenhuber + Lichtenberger, Tiilikainen + Peltomäki, Fischer, Svensson, Duff, MacCormick, Thorning-Schmidt, Kaufmann, Santer + 2 Convention members, Timmermans, Palacio, Skaarup and Dybkjær).*
- *introduce the notion of "social market economy" following the recommendations of Working Group XI (see amendments from de Villepin, Farnleitner, Santer + 2, Voggenhuber + Lichtenberger, Duhamel + 9, Nagy, Fischer, Kuneva, MacCormick, Arabajiev, Paciotti + Spini, Kaufmann, Floch, Meyer, López-Garrido, Teufel, Brok + 23 Convention members) and most of the other elements suggested by Working Group XI.*
- *introduce the notion of a single market where competition is free and undistorted (Teufel, Heathcoat-Amory);*
- *introduce the notion of "territorial cohesion" (amendments Borrell + 2, Cravinho, Chabert, de Villepin, Frendo, Cristina, Kacin, Horvat, Lequiller, Einem, Paciotti + Spini, Serracino-Inglot + Inguanez).*
- *add the notion of "linguistic diversity" to that of cultural diversity (MacCormick, Borrell + 2, Hübner, Rupel + 1, Eckstein-Kovács, Haenel + Badinter, Abitbol, Farnleitner, Muscardini, Lequiller, Rupel + Lenarčič, Cushnahan, Queiró). Moreover, for the sake of balance, the notion of a common cultural heritage was added (already in the current Treaty) (amendment de Vries + 4).*

- delete the words "including the discovery of space" (Hjelm-Wallén + 3 Convention members, Kristensen, Hain, Hololei, Lopes, Svensson, de Vires + 4 Convention members, Kiljunen + Vanhannen, Duff, Einem, Wittbrodt, Queiró, Heathcoat-Amory, Kohout, Meyer, Muscardini and Fogler)
- mention children's rights not only in the context of the Union's external action but also of its internal action.

*The Praesidium stresses that the logic of this Article dictates that the various generic concepts used to define, concisely and legibly, the fundamental objectives, concepts which are sometimes new and in relation to the current treaties, are to be interpreted as each covering a number of more specific policies and objectives enshrined in Part Three of the Constitution.*

*Furthermore, the Praesidium has ensured that several other elements suggested in this context have a prominent position in Part Three of the Constitution: see Articles III-1, III-2 and III-3 of Part Three on "gender mainstreaming", on taking account of environmental protection aspects, and on services of general interest; as well as the reference to combating racism and xenophobia in the Article of Part Three defining the objectives pursued in the context of the area of freedom, security and justice.*

*Paragraph 4 has been redrafted following multiple amendments and interventions calling for less "Eurocentric" and defensive language, so as to make it clear that the Union's attitude remains one of openness to the world. Several other, more specific amendments have equally been taken on board, notably a reference to security (Barnier, Demiralp, Figel, Giannakou, Brok + 13, Palacio, Michel + 5, Roche, de Villepin and Kelam) human rights (Farnleitner, Voggenhuber + Lichtenberger, Michel + 5, Lequiller, Duff, MacCormick, Serracino-Inglott, Hjelm-Wallén + 3, Nagy, Kaufmann and Tomlinson), observance and development of international law, including the UN Charter (Lopes, Michel + 5, Svensson, Hjelm-Wallén + 3, Paciotti + Spini and Dini), as well as free and fair trade (Lennmarker, Brok + 13, Stockton).*

#### **Article I-4: Fundamental freedoms and non-discrimination**

- 1. Free movement of persons, goods, services and capital, and freedom of establishment shall be guaranteed within and by the Union, in accordance with the provisions of this Constitution.**
2. In the field of application of this Constitution, and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

#### **Comments**

*This new Article responds to a suggestion made in various amendments and at the additional meetings both on 5 and 26 March as well as to a concern expressed by the President of the Court of Justice during his hearing before the discussion circle on 17 February: It enshrines the four fundamental freedoms of movement and the freedom of establishment right at the beginning of Part One, thus making their capital legal and political importance more visible. It also underlines more prominently, and more adequately than does their current inclusion in the Article on exclusive competences in the previous draft, that these are above all fundamental freedoms, namely directly applicable guarantees. That quality is in fact much more appropriate than the restriction of the Member States' legislative power which would arise if they were included among exclusive competences. For purposes of the classification in Title III, legislative action implementing the fundamental freedoms is covered by the concept of the internal market, which figures in Article 12.*

*The Praesidium has thought it wise to add the ban on discrimination on grounds of nationality, which was contained in Article 6 of the previous draft, to this Article. The amendments requesting deletion of this clause in Part One, on the grounds that it is contained in the Charter, were not taken on board. Indeed, the Praesidium feels that the special political value of this ban for the European enterprise as well as the interest in ensuring continuity in case-law on Article 12 TEC justify keeping this clause in Part One.*

## **Article I-5: Relations between the Union and the Member States**

- 1. The Union shall respect the national identities of its Member States, inherent in their fundamental structures, political and constitutional, including for regional and local self government. It shall respect their essential State functions, including for ensuring territorial integrity of the State, and for maintaining law and order and safeguarding internal security.**
- 2. Following the principle of loyal cooperation, the Union and the Member States shall, in full mutual respect, assist each other to carry out tasks which flow from the Constitution.**

**The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the objectives set out in the Constitution.**

### **Comments:**

*This new Article follows up numerous suggestions well received at the additional meetings on 5 and 26 March 2003, and merges and replaces Articles 1(2), and 9(6) of the previous draft, and incorporates the paragraphs on loyal cooperation from previous draft Article 8, as further components of a general Article on the Union's relation with the Member States.*

## **Article I-6: Legal personality**

The Union shall have legal personality.



## Comments

*Article unchanged, as it has already been approved.*

## TITLE II: FUNDAMENTAL RIGHTS AND CITIZENSHIP OF THE UNION

### Article I-7: Fundamental rights

1. ~~The Charter of Fundamental Rights shall be an integral part of this Constitution. The Charter is set out [in the second part of/in a Protocol annexed to] this Constitution.~~  
**The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes the Second Part of this Constitution.**
2. The Union ~~may accede~~ **shall seek accession** to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined ~~by~~ **in** this Constitution.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

## Comments:

1. *In the light of the positions expressed by a large majority of Convention members, the solution of incorporation of the Charter in a new Part Two appears to be the one likely to meet broad consensus within the Convention.*

*The wording of the first paragraph fits in better with that solution than did the previous draft. It is based on amendments by Costa, Eduarda Azevedo, d'Oliveira Martins, Nazaré Pereira, Duhamel + 8; Teufel, Schlüter, Palacio, and corresponds exactly to the last sentence of the Charter preamble.*

2. *On accession to the ECHR, there was general support at the additional meeting on 26 March for the wording adopted: "...the Union shall seek accession ..." (see also am. Kiljunen and Vanhanen, Svensson, Hjelm-Wallén + 4, Van der Linden + 3, Tiilikainen, Brok + 15).*
3. *As for the amendments aiming at including other international agreements in the area of human rights (Söderman, Michel + 5, Paciotti, Kaufmann, Voggenhuber, Lichtenberger, MacCormick, Duff + 6, Spini, Nagy), it is clear that this paragraph, as amended by the Praesidium, cannot be interpreted as ruling out the possibility of accession to other human rights conventions, a possibility which is opened up pursuant to other legal bases laid down in the Constitution (namely the various policies linked to such conventions, and even the flexibility clause in Article I-17). This paragraph may ask that the Union seek accession only in the specific case of the ECHR; however this particular formula is not in any way intended to rule out the possibility of accession to other conventions. As the Praesidium has already pointed out, only the European Convention on Human Rights is mentioned in this paragraph because of the fact that a Court of Justice opinion in 1996 had rejected Community competence to accede to that Convention on the basis of considerations specific to it.*

## **Article I-8: Citizenship of the Union**

1. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship; it shall not replace it. ~~All citizens of the Union, women and men, shall be equal before the law.~~
2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in this Constitution. They shall have:
  - the right to move and reside freely within the territory of the Member States;
  - the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;
  - the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;
  - the right to petition the European Parliament, to apply to the Ombudsman, and to write to the institutions and advisory bodies of the Union in any of the Union's languages and to obtain a reply in the same language.
3. These rights shall be exercised in accordance with the conditions and limits defined by this Constitution and by the measures adopted to give it effect.

### **Comments:**

*The sentence "all citizens of the Union, women and men, shall be equal before the law" has been deleted, following criticism by many Convention members (am. Duhamel + 8, Kaufmann, Kiljunen + 1, Figel, Fischer, Brok + 13, Duff + 4) because it would create a risk of contradiction with the Charter, given that the latter guarantees equality before the law to everyone, not merely to citizens.*

*On the other hand, the Praesidium maintained the list of citizens' rights in Article I-8(2) and Article I-8(3) on conditions and limits, in spite of the amendments calling for the avoidance of duplication in relation to Articles 39 to 46 of the Charter. In fact, these rights are essential to the very concept of Union citizenship and must therefore appear in the title of Part One which defines this concept.*

### **TITLE III: UNION COMPETENCES AND ACTIONS**

#### **Article I-9: Fundamental principles**

1. The limits of **Union competences are governed by the principles of conferral**. The use of Union competences **is** governed by the principles of subsidiarity **and** proportionality. ~~and loyal cooperation~~
2. ~~In accordance with~~ **Under** the principle of conferral, the Union shall act within the limits of the competences conferred upon it by **the Member States in** the Constitution to attain the objectives set out in the Constitution. Competences not conferred upon the Union ~~by~~ **in** the Constitution remain with the Member States.
3. ~~In accordance with~~ **Under** the principle of subsidiarity, in areas which do not fall within its exclusive competence the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, **either at central level or at regional and local level**, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The Union institutions shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Constitution. National parliaments shall ensure compliance with that principle in accordance with the procedure set out in the Protocol.

4. ~~In accordance with~~ **Under** the principle of proportionality, the scope and form of Union action shall not exceed what is necessary to achieve the objectives of the Constitution.

The institutions shall apply the principle of proportionality as laid down in the Protocol referred to in paragraph 3.

5. ~~In accordance with the principle of loyal cooperation, the Union and the Member States shall, in full mutual respect, assist each other to carry out tasks which flow from the Constitution.~~

**Comments:**

*The Praesidium considers it important to maintain this Article since it clarifies and defines the principles governing both the delimitation of competences between the Union and the Member States and the use of its competences by the Union, in accordance with the Nice Declaration on the future of the Union.*

*In view of the number of amendments calling for these principles to be listed, defined and implemented in the same Article, paragraphs 2 and 3 of former Article 9 have been incorporated into the new Article I-9 (Santer and others, Tiilikainen and Peltomäki, Fischer, Palacio, Farnleitner, Hain, Heathcoat-Amory).*

*The reference to the principle of loyal cooperation has been deleted from this (and from the following) Article and now appears in a new Article I-5 in Title I, together with the principle of respect for national identity. In fact, the scope of these two principles goes beyond the context of the Union's use of its competences and, consequently, the Praesidium feels that they should be incorporated in Title I of Part One of the Constitution.*

#### **Article I-9(1)**

*This paragraph has been amended to make it clear that, while the principle of conferral governs the limits of competences, the principles of subsidiarity and proportionality govern the use of competences. The reference to the principle of loyal cooperation has been deleted since it appears in Article I-5 of the Constitution.*

*As for the amendments calling for the addition in this paragraph of references to the principles of consistency and/or integration (Ben Fayot, Skaarup, MacCormick, Voggenhuber, Lichtenberger, Nagy), those principles will be included, as a horizontal clause in Part Three of the Constitution.*

#### **Article I-9(2)**

*The alteration made to this provision comes in response to amendments calling for clarification that competences are conferred on the Union by the Member States via the Constitution and not by the Constitution itself. The amendment at the beginning of the paragraph is merely a minor drafting improvement.*

#### **Article I-9(3)**

*The only change made to this paragraph is the addition of a reference to regional and local authorities as regards the principle of subsidiarity, in response to amendments to that effect (Teufel, Cushnahan, Duff and others, MacCormick, Farnleitner).*

*The second subparagraph incorporates former Article 9(2), in order to reflect amendments to that effect.*

*Application of the principle of subsidiarity continues to be excluded in areas of exclusive competence, as only the Union can legislate and adopt legally binding acts in such areas, whereas Member States can do so only if empowered by the Union or to implement Union acts. In any event, in areas of exclusive competence, the principle of proportionality, determining the intensity of Union action, continues to apply.*

#### **Article I-9(4)**

*The second subparagraph incorporates Article 9(3) in response to amendments to that effect and also those calling for a reference in this paragraph to the Protocol on the application of the principles of subsidiarity and proportionality (Oleksy, Fischer).*

#### **Article I-9(5)**

*This paragraph is included in new Article I-5.*

*The reference to the status of churches and non-confessional organisations called for by some (Brok and others, Heathcoat-Amory, Kaufmann, Einem) is included in the "democratic life" Title.*

#### **"Article I-10: Application of fundamental principles-Union law"**

1. The Constitution, and law adopted by the Union's institutions in exercising competences conferred on it, shall have primacy over the law of the Member States.

2.4. Member States shall take all appropriate measures, general or particular, to ensure fulfilment of the obligations flowing from the Constitution or resulting from the Union Institutions' acts.

~~2. In exercising the Union's non-exclusive competences, the institutions shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Constitution. The procedure set out in the Protocol shall enable national parliaments to ensure compliance with the principle of subsidiarity.~~

~~3. In exercising the Union's competences, the Institutions shall apply the principle of proportionality as laid down in the same Protocol.~~

~~5. In accordance with the principle of loyal cooperation, Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the objectives set out in the Constitution. The Union shall act loyally towards the Member States.~~

~~6. The Union shall respect the national identities of its Member States, inherent in their fundamental structures and essential State functions, especially their political and constitutional structure, including the organisation of public administration at national, regional and local level."~~

### **Comments:**

*The reference to the principle of primacy has been accepted, as it is a basic principle of the Union legal system which has to be laid down in the Constitution.*

*Paragraphs 2 and 3 appear in Article I-9 and paragraphs 5 and 6 in new Article I-5.*



## **Article I-11: Categories of competence**

1. When the Constitution confers on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union **or for the implementation of acts adopted by the Union.**
2. When the Constitution confers on the Union a competence shared with the Member States in a specific area, the Union and the Member States shall have the power to legislate and adopt legally binding acts in that area. The Member States shall exercise their competence ~~only if~~ **and** to the extent that the Union has not exercised, **or has decided to cease exercising, its competence.**
3. The Union shall have competence **to ensure the coordination of the economic and employment policies of the Member States.** ~~to coordinate the economic policies of the Member States.~~
4. The Union shall have competence to define and implement a common foreign and security policy, including the progressive framing of a common defence policy.
5. In certain areas and in the conditions laid down in the Constitution, the Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas.
6. **The scope of and arrangements for exercising the Union's competences shall be determined by the provisions specific to each area in Part Two of the Constitution.** ~~The Union shall exercise its competences to implement the policies defined in Part Two of the Constitution in accordance with the provisions specific to each area which are there set out.~~

## Article I-11(1)

*The terms "or for the implementation of acts adopted by the Union" have been added to take account of the fact that, even in areas of exclusive competence, Union law is generally implemented by the Member States without the need for them to be empowered by the Union in accordance with the general principle referred to in Article I-10(2). It is only when implementation must exceptionally be carried out by the Union that the Union act provides explicitly for such implementation. The aim of the addition to paragraph 1 is to ensure that implementation of Union law by the Member States in an area of exclusive competence does not require empowerment by the Union (which is currently the case).*

*The amendments calling for the addition of a new paragraph to this provision mentioning expressly that competences are conferred on the Union by the Member States (Hain, Lord Tomlinson, Heathcoat-Amory, Roche) have been taken up in Article I-9(2).*

*The expression "exclusive competences" has been retained, since it clearly reflects the fact that these are areas in which the Union has the sole power to legislate. Moreover, it is a term which already exists in the current Treaties and in Court of Justice case-law, whereas the term "own competences" does not.*

*With regard to the need for the Union to empower the Member States to legislate or adopt legally binding acts in an area of exclusive competence, the amendments submitted are conflicting. While some amendments request deletion of the reference to the need for empowerment by the Union, other amendments call for the content of the empowerment to be specified further. Consequently, the Praesidium suggests retaining the current wording which leaves room for manoeuvre on the form and content of empowerment by the Union.*

## Article I-11(2)

*The new wording of the last sentence of this paragraph is intended to follow up several amendments (Brok and others, Teufel, Wüermeling, Altmaier) requesting that the scope of Member States' competences in an area of shared competence be re-formulated. The addition to this paragraph means that when the Union has ceased to exercise its competence in an area of shared competence, it reverts to the Member States. The new wording should also meet the request of Mr Fischer, whose amendment sought changes to former Article 12(3).*

*The Praesidium feels that areas of shared competence should continue to be defined as those where both the Union and the Member States have the power to legislate and not as areas where the Union coordinates and lays down the general rules. The coordination of Member States' policies comes under this provision, given that the very notion of coordination implies that the main power to legislate in the area in question lies with the Member States. As for the term "lay down the general rules", in many areas of shared competence the Union's action extends beyond the establishment of general rules. Moreover, if we were to define the areas of shared competence as those where the Union lays down the general rules or coordinates Member States' policies, it would be necessary to create a new category of competences to cover those areas where both the Union and the Member States have the power to legislate.*

*The amendments providing that, where the Union has exercised its competence, the Member States must fulfil the obligations laid down by the Constitution or by acts adopted by the Union (Tiilikainen and Peltomäki, Kuneva, Kiljunen and Vanhanen, Balázs, de Villepin) have been incorporated into Article I-10, which contains the principle of primacy of Union law and the principle whereby Member States must ensure implementation of the obligations arising from the Constitution and from acts adopted by the Union.*

#### Article I-11(3)

*The Praesidium feels that the specific nature of the coordination of Member States' economic and employment policies merits a separate provision.*

*The amendments made to this provision aim to strike a balance between those amendments requesting that this paragraph (as well as former Article 13) reflect the current text of the Treaty provisions on coordination of the economic policies of the Member States (Article 99 TEC) (Roche, Teufel, Heathcoat-Amory, Fischer, Palacio, Queiró), the amendments calling for this paragraph to be deleted and coordination of policies to be added to the areas of shared competence or supporting action (Tiilikainen and Peltomäki, Kohout, Berès and others, Hain, Lopes, Duff and others, Earl of Stockton, Svensson, Kiljunen and Vanhanen, Nagy) and the amendments calling for a reference to Member States' competence to coordinate together with the Union (de Vries and others).*

*Those amendments requesting that the coordination of Member States' employment policies be included in this provision (Duhamel and others, Borrell and others, Gabaglio, Michel and others) have been included, given that, in both the area of economic policies and that of employment, the Treaty expressly provides for the coordination of the policies of the Member States within the Council and for the possibility for the Union to adopt guidelines. Amendments requesting that the coordination of social policies be included in this paragraph (Duhamel and others, Borrell and others, Michel and others, Paciotti and Spini, Lequiller, Santer and others) have been taken up in Article I-14.*

#### Article I-11(4)

*The Praesidium feels that the specific nature of the competences of the Union and the Member States in this area of the common foreign and security policy justifies keeping it as a separate paragraph. Indeed, given the nature of the Union's competence in the area, it would be difficult to insert it either as a shared competence or as a support area.*

*The amendments requesting a more detailed wording of Union competences in this area (Hain, Farnleitner, Roche, Brok and others, Borrell and others, Santer and others, Figel; de Villepin) have been taken into account in the new wording of Article 14.*

#### Article I-11(5)

*Most of the amendments submitted on this paragraph have been incorporated into Article I-16.*

*The reference to banning harmonisation in these areas requested by certain Convention members (Tiilikainen and Peltomäki; Lopes; Teufel; Kiljunen; Vanhanen) has not been added as it already exists in Article I-16(3).*

#### Article I-11(6)

*This paragraph has been re-worded in order to incorporate the substance of former Article 12(2), which has been deleted. The reference to the provisions of Part Three covers not only competences, but also the forms and instruments of action provided for in those provisions.*

### **Article I-12: Exclusive competence**

1. The Union shall have exclusive competence to ~~ensure the free movement of persons, goods, services and capital,~~ establish competition rules within the internal market, and in the following areas:
  - monetary policy for the Member States which have adopted the euro,
  - common commercial policy,
  - customs union,
  - the conservation of marine biological resources under the common fisheries policy.

2. The Union shall have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union, is necessary to enable the Union to exercise its competence internally, or affects an internal Union act.

#### Article I-12(1)

*The areas referred to in this paragraph are areas which currently fall within the exclusive competence of the Union.*

*The Praesidium thinks that the list of areas of exclusive competence (like areas of supporting action) should be restrictive. However, the list of areas of shared competence should not be restrictive as the latter is a residual category. This is all the more necessary given that in areas of exclusive competence it is the Union alone which can legislate and adopt legally binding acts.*

*The order in which the areas of exclusive competence are listed has been changed so that the policies most relevant to the citizen are placed first.*

*Free movement of persons, goods, services and capital has been deleted to accommodate several amendments to the effect that, since the four freedoms did not constitute a field in itself (the field being the internal market), they should be placed outside the Title on competences (Hain, Farnleitner, Tiilikainen and Peltomäki, Hjelm-Wallén and others; Kaufman and Fischer). The new Article I-4 incorporates the four freedoms as freedoms guaranteed within and by the Union.*

*The Praesidium has not added any new areas of exclusive competence to the list, given that the areas which some Convention members wanted to add either are not areas as such but acts which by their nature can only be adopted by the Union (budget, rules to ensure the functioning of the Institutions, Union statistics, etc.) or constitute areas of shared competence in accordance with the current provisions of Part Three (common agricultural and fisheries policy, common area of freedom and security, etc.) or constitute aspects of a broader area already covered by exclusive competence (monetary law and exchange-rate policy).*

*Given that in areas of exclusive competence the Union has sole ability to legislate and adopt legally binding acts (except for the delegation of powers), a specific reference to the provisions in Part Three was not considered necessary since the question of delimitation of competences between the Union and the Member States arises in particular in relation to areas of shared competence and areas for supporting action. In any event, the reference in Article I-11(6) to Part Three covers all the fields under Title III of Part One, and thus includes areas of exclusive competence.*

#### Article I-12(2)

*This paragraph remains unchanged given that very few amendments were put forward for it and it faithfully reflects Court of Justice case-law on the Union's exclusive competence to conclude international agreements.*

### **Article I-13: Areas of shared competence**

1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles I-12 and I-16 .
2. ~~The scope of shared competences is determined by the provisions of Part Two.~~
3. ~~Where the Union has not exercised or ceases to exercise its competence in an area of shared competence, the Member States may exercise theirs.~~
4. Shared competence applies in the following principal areas:
  - internal market,
  - area of freedom, security and justice,
  - agriculture and fisheries, **excluding the conservation of marine biological resources**,
  - transport and trans-European networks,
  - energy,
  - social policy, **for aspects defined in Part Three**,
  - economic and social cohesion,
  - environment
  - consumer protection,
  - ~~public health~~ **common safety concerns in public health matters**.
5. In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to **define and** implement programmes; however, the exercise of that competence may not result in Member States being prevented from exercising theirs.



6. In the areas of development cooperation and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member States being prevented from exercising theirs.

### Comments

#### Article I-13(1)

*As pointed out in the comments on Article I-11, the Praesidium thinks that shared competence is to be defined as a residual category in relation to areas of exclusive competence and areas for supporting action and that consequently it should be listed in a non-restrictive way in relation to the latter.*

*It was thought preferable not to add a reference to Articles I-14 and I-15 as the areas covered by these two Articles could not be clearly defined as areas of shared competence or areas for supporting action. The addition of such a reference in this paragraph would entail excluding such areas from the category of shared competence.*

#### Article I-13(2)

*This paragraph was deleted in response to amendments to that effect (Hain, Michel and others, Fini, Lord Tomlinson, Duff and others, Kaufmann). In any case the reference to Part Three in Article I-11 (6) also covers this Article. Article I-11(6) has been reworded to include a reference to both the extent of the Union's competences and procedures for exercising them.*

### Article I-13(3)

*This paragraph was deleted in response to numerous amendments to the effect that it was unnecessary (Hain, Palacio, Kohout, Hübner, Lord Tomlinson, Belohorská and others, Kuneva, Brok and others, de Villepin, Duff and others, Kaufmann).*

### Article I-13(4)

*This paragraph was the subject of contradictory amendments. On one hand, there were amendments calling for its deletion on the grounds that as shared competences are a residual category in relation to exclusive competence and areas for supporting action, a list of areas of shared competence does not have to be drawn up. On the other hand, there were amendments calling for the retention of such a list, while suggesting that new areas be added to the list or that some of the areas referred to be deleted.*

*The Praesidium suggests that the list of the principal areas of shared competence be retained. As most of the Union's areas of action are covered by shared competence, such a list clarifies the areas referred to in Part Three which are not covered by exclusive competence or areas for supporting action and where the Union consequently shares legislative capacity with the Member States. If such a list did not exist, all the provisions of Part Three would have to be scanned to see which are the main areas not referred to by Articles 11 and 15 and are therefore covered by shared competence.*

*The Praesidium did not modify the list of areas of shared competence tabled in its previous draft. The amendments calling for additions to or deletions from the list conflict: some call for an area considered by others as an area for supporting action to be regarded as covered by shared competence, or vice versa. Again, some amendments call for inclusion on the list of subjects which are not areas by themselves but form part of a larger area (e.g. harmonisation of laws in the internal market, which forms part of the latter) or a subject covered by several areas already included in the list (e.g. services of general interest which are covered inter alia by the internal market, health, transport, etc., or combating discrimination, which is covered by social policy and the Charter of Fundamental Rights). Finally, certain amendments refer to matters which are principles rather than areas (e.g. equal treatment of men and women).*

*The Praesidium has however specified what is covered by shared competence of the Union in three of the areas on the list, namely agriculture and fisheries, social policy and public health.*

*In the area of agriculture and fisheries, the conservation of marine biological resources has been excluded in view of the fact that it is covered by exclusive competence.*

*In the case of social policy, the words "for aspects defined in Part Three" have been added after "social policy" in order to make quite clear that the inclusion of social policy in the list does not imply an extension of competences, given the particular features of that policy. Finally, in response to the suggestion by certain Convention members (Hjelm-Wallén, Petersson), the reference to public health in the list of areas of shared competence has been modified to make clear which part of this area is covered by shared competences given that the area of public health comes partly under shared competences (Article 152(4)(a) and (b)) and partly under areas of supporting action (Article 152(4)(c)). The aspects of public health coming under areas of supporting action will be made clear in Article I-16. To accommodate these amendments, the Praesidium proposes dividing paragraph 4 of Article 151 into two separate paragraphs: one concerning the aspects of public health which come under shared competences and a second paragraph concerning aspects coming under areas of supporting action.*

### **Article I-13(5)**

*The Praesidium included the field of research, technological development and space in a separate paragraph in order to highlight its particular characteristics as compared with the fields listed in paragraph 4 of the same provision, i.e. make clear that in this field, even if the Union exercised its competence exhaustively, Member States retained their competence.*

*This paragraph was the subject of conflicting amendments. Some asked that the areas of research, technological development and space be regarded as areas of shared competence and be listed in paragraph 4 or that the reference to Member States' competences be deleted. Others sought to have this paragraph deleted and called for research, technological development and space to be regarded as support areas. The Praesidium thinks that this paragraph should be maintained unchanged given the specific nature of the Union's competence in this area.*

### **Article I-13(6)**

*This paragraph too was the subject of conflicting amendments: some called for the area of development cooperation and humanitarian aid to be mentioned in the list in paragraph 4 (see amendment concerning that paragraph). Others wanted it to be regarded as supporting action. Yet others called for the reference to Member States' competence to be deleted.*

*For the same reasons as those indicated in the comments on paragraph 5, the Praesidium thinks that this paragraph should be maintained as it stands.*

#### **Article I-14: The coordination of economic and employment policies**

- ~~1. The Union shall coordinate the economic policies of the Member States, in particular by establishing broad guidelines for these policies.~~

**The Union shall adopt measures to ensure coordination of the economic policies of the Member States, in particular by adopting broad guidelines for these policies. The Member States shall coordinate their economic policies within the Union.**

- ~~2.3.~~ Specific provisions shall apply to those Member States which have adopted the euro.

- 3. The Union shall adopt measures to ensure coordination of the employment policies of the Member States, in particular by adopting guidelines for these policies.**

- 4. The Union may adopt initiatives to ensure coordination of Member States' social policies.**

- ~~3. The Member States shall conduct their economic and employment policies, taking account of the common interest, so as to contribute to the achievement of the objectives of the Union.~~

#### **Comments:**

*For the reasons indicated in the comments on Article I-11(3), the Praesidium thinks that this Article should be maintained.*

## **1. Article I-14(1)**

*The new wording of paragraph 1 is intended to find a balance between the amendments suggesting that the wording correspond to that of the relevant legal basis for Part Three, i.e. Article 99 TEC (Fischer, de Villepin, Hain, Kuneva, Hjelm-Wallén and others, Teufel, McAvan), those calling for the Union to be given competence for the coordination of the Member States' economic policies and those asking that reference be made to the coordination of economic policies by the Union and the Member States (de Vries and de Bruijn).*

## **Article I-14(2) (former Article 13(3))**

*This paragraph is maintained unchanged as it simply reflects the current situation, where specific provisions apply to those Member States which have adopted the euro.*

## **Article I-14(3)**

*This paragraph is in response to the amendments requesting the addition of coordination of the Member States' employment policies (Einem, McAvan, Michel and others, Duhamel and others, Borrell and others, Haenel and Badinter).*

## **Article I-14(4)**

*This paragraph has been added in response to amendments asking for the addition of coordination of the Member States' social policies (Duhamel and others, Borrell and others, Michel and others, Paciotti and Spini, Lequiller, Santer and others).*

## **Article I-15: The common foreign and security policy**

1. **The Union's competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union's security, including the progressive framing of a common defence policy, which might lead to a common defence.**
2. Member States shall actively and unreservedly support the Union's common foreign and security policy in a spirit of loyalty and mutual solidarity **and shall comply with the acts adopted by the Union in this area.** They shall refrain from action contrary to the Union's interests or likely to impair its effectiveness.

### Comments:

*The Praesidium considers that the specific nature of the competence of the Union and the Member States in the field of CFSP justifies a separate Article. It is in fact difficult to classify this area either as shared competence or as supporting action. This difficulty and the importance of the area are reasons for maintaining a separate provision.*

### Paragraph 1

*A new paragraph has been added to Article I-15 in response to the amendments seeking an explicit reference in this Article both to the existence of Union competence in the field of common foreign and security policy (Kaufmann, Balázs) and a reference to the substance of that competence (Duhamel, Marinho, Van Lancker, Hänsch, Berès, Berger, Carnero and Thorning-Schmidt – de Villepin – Kuneva). This new paragraph also includes a reference to defence, requested in a large number of amendments (Fini, Borrell and others, Lord Maclellan, Duff and others, Rupel, Szent-Iványi, Costa, Azevedo, d'Oliveira Martins, Mains, Roche, Lopez, Katiforis, McAvan).*

*This provision does not list the Union's CFSP objectives, since these objectives are listed in Article 1 of Title B of Part Three concerning the Union's external action. The same has been done in the case of the amendments asking for the addition of a reference to the fact that in this area the Member States shall work together to enhance and develop their mutual solidarity, since such an obligation already appears in Part Three of the Constitution.*

*It is not necessary to specify in this provision that Member States may not intervene where the Union has exclusive competence, as that follows from the definition of exclusive competence in Article I-11.*

#### Paragraph 2

*The reference added in paragraph 2 to compliance with the Union's acts in this area is intended to strengthen the obligations on the Member States in the area of common foreign and security policy, as several have suggested.*

#### **Article I-16: Areas of supporting, coordinating or complementary action**

1. The Union may take supporting, coordinating or complementary action. ~~The scope of this competence shall be determined by the provisions of Part Two.~~
2. The areas for supporting, **coordinating or complementary action** shall be, **at European level:**
  - ~~employment~~
  - ~~industry~~
  - **protection and improvement of human health**
  - ~~education, vocational training, and youth and sport~~
  - ~~culture~~
  - ~~sport~~
  - **civil protection against disasters.**



~~2. The Member States shall coordinate their national employment policies within the Union.~~

4. 3. Legally binding acts adopted by the Union on the basis of the provisions specific to these areas in Part ~~Two~~ **Three** cannot entail harmonisation of Member States' laws or regulations.

Comments:

*The Praesidium considers that this Article must be retained since the Constitution must specify what the areas for supporting, coordinating or complementary action are, as referred to in Part Three.*

*The title of this Article has been reworded to reflect certain amendments calling for a change in the title. The Praesidium considers the words "areas for supporting, coordinating or complementary action" (de Villepin, Lequiller) are those that best reflect the content of the article and the fact that legislative competence in these areas lies with the Member States.*

Article I-16(1)

*The reference to the provisions of Part Three in this paragraph has been deleted as called for by certain amendments (Kaufmann, Hain, Michel and others). As such a reference already appears in Article I-11(6) with general application there is no need to repeat it in this provision.*

*The Praesidium considers it unnecessary to add a specific reference to the existence of Member States' competence in areas for supporting action since the nature of Union action in these areas (supporting, coordinating or complementing the action of Member States), and the explicit exclusion of harmonisation, implies that legislative competence lies with the Member States.*

## **Article I-16(2)**

*For the reasons explained above, the Praesidium considers that the list of areas for supporting, coordinating or complementary action should be limitative.*

*Employment has been deleted from the list following its inclusion in Article I-14, in response to a substantial number of amendments (Palacio; Gabaglio; Borrell and others; Paciotti and Spini; Michel and others; Dini).*

*To take account of amendments adding public health to this provision, a new indent to this effect has been added, specifying the aspects falling within that category of competences.*

*Sport has been added to the area of vocational training and youth to reflect the draft legal basis for this area (see Part Three).*

*The area of "protection against disasters" has been replaced by "civil protection", a broader concept encompassing protection against disasters, to reflect amendments to this effect (Fini, de Villepin, Teufel, Brok and others, Palacio).*

*The Praesidium considers that no new areas should be added to the list. The areas proposed by the Convention members are either areas that should appear in Article I-13 (e.g. consumer protection, transport and trans-European networks, research, development cooperation, etc.) or are already included in other, broader areas covered by Articles I-13 or I-16 (e.g. media, which at present come under both the internal market and culture, or police cooperation, which comes under the area of freedom, security and justice, etc.).*

*Nor does the Praesidium think that certain areas should be deleted from the list (apart from employment), since that would imply either the elimination of legal bases that exist at present (e.g. education, vocational training and youth; culture) or a change in the nature of the competence (e.g. industry).*

#### Article I-16(3)

*This paragraph has been deleted to reflect numerous amendments requesting the inclusion of employment in Article I-14 (see comments on this Article).*

#### Article I-16(4)

*The Praesidium considers that this paragraph must be retained without exception. In view of the definition of areas for supporting, coordinating or complementary action given, the areas where harmonisation of legislation is possible are areas of shared competence or exclusive competence, but not areas for supporting action. This exclusion of harmonisation implies that legislative competence lies with the Member States.*

#### Article I-17: Flexibility clause

1. If action by the Union should prove necessary within the framework of the policies defined in Part ~~Three Two~~ **Three** to attain one of the objectives set by this Constitution, and the Constitution has not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the **consent** ~~assent~~ of the European Parliament, shall take the appropriate measures.
2. Using the procedure for monitoring the subsidiarity principle referred to in Article **I-9(3)**, the Commission shall draw Member States' national Parliaments' attention to proposals based on this Article.

3. Provisions adopted on the basis of this Article may not entail harmonisation of Member States' laws or regulations in cases where the Constitution excludes such harmonisation.

Comments:

*The existence of this provision reflects the wish of the great majority of Convention members to ensure a degree of flexibility in the system.*

Article I-17(1)

*This paragraph attempts to strike a balance between the need for flexibility in the delimitation of competences and the need to observe the limits on the Union's competences. Hence the reference in this paragraph to the Union's objectives is intended to impart a degree of flexibility to the system whilst the reference to the framework of the policies defined in Part Three seeks to give an assurance that measures adopted on the basis of this provision will comply with the limits on the competences attributed to the Union by the Constitution. Accordingly, this provision could not be used to extend the competences of the Union by establishing a new policy, but only to carry out a measure relating to a policy already provided for by the Constitution.*

*The amendments tabled on this paragraph go in opposite directions. While some of the amendments seek to reduce the scope of this provision to certain of the policies defined in Part Three (notably the internal market and Economic and Monetary Union), others seek to remove any reference to Part Three, in order to enlarge the scope of Article I-17.*

*The Praesidium has retained the unanimity rule as it considers that the importance of the subject demands a binding voting rule. The Praesidium also considers that the European Parliament must participate in the adoption of acts on the basis of this provision by giving its consent and not simply by giving its opinion as is the case at present.*

*The possibility of introducing into this article a simplified constitutional review procedure for Articles I-9 to I-16 will have to be examined in the broader context of the procedure for revising the Constitution.*

#### Article I-17(2)

*The amendments tabled on this paragraph have been examined in the context of the examination of the Protocol on the principles of subsidiarity and proportionality.*

#### Article I-17(3)

*The Praesidium considers that this paragraph must be retained since it reiterates the limits established by the case-law of the Court of Justice for recourse to Article 308 of the TEC.*

## **TITLE IV: THE UNION'S INSTITUTIONS**

[Unchanged at this stage: see cover note.]

## **TITLE V: EXERCISE OF UNION COMPETENCE**

### **Chapter I: Common provisions**

#### **Article I-32: The legal acts of the Union**

1. In exercising the competences conferred on it in the Constitution, the Union shall use as legal instruments, in accordance with the provisions of Part Three, European laws, European framework laws, European regulations, European decisions, recommendations and opinions.

A European law shall be a legislative act of general application. It shall be binding in its entirety and directly applicable in all Member States.

A European framework law shall be a legislative act binding, as to the result to be achieved, on the Member States to which it is addressed, but leaving the national authorities entirely free to choose the form and means of achieving that result.

A European regulation shall be a non-legislative act of general application for the implementation of legislative acts and of certain specific provisions of the Constitution.

**It either** shall be binding in its entirety and directly applicable in all Member States, **or be binding, as regards the result to be achieved, on all Member States to which it is addressed, but leaving the national authorities entirely free to choose the form and means of achieving that result.**

A European decision shall be a non-legislative act, binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.

Recommendations and opinions adopted by the institutions shall have no binding force.

2. When considering proposals for legislative acts, the European Parliament and the Council shall refrain from adopting acts not provided for **by this Article in the area in question**.

**Comments:**

*The amendments to this Article cover an extremely diverse range of issues or reflect isolated positions and divergent tendencies. Nevertheless, it is possible to group some of them together around three issues:*

*There are a number of amendments calling for a type of regulation that would incorporate the features of the existing directive (Farnleitner, who proposes a special act called a "directive", Santer and others, who propose the name "framework regulation", de Vries and de Bruijn, Tiilikainen and others, Schlüter and Dam Kristensen, who propose to add the definition under the name "regulation"). The Praesidium is proposing to take on board the substance of these amendments, thus creating a category of regulations which would incorporate the features of the existing directive, in order to be able to draw on a non-legislative instrument which is binding on Member States as to result, but flexible as to means.*

*A number of amendments call for deletion of paragraph 2 on limiting recourse to non-standard acts (Lopes and Lobo Antunes, Fayot, Kaufmann, Santer and others, Borrell and others, de Vries and de Bruijn). Other amendments support the paragraph's aims, but want it moved to this former Article 25 (Kohout, Tiilikainen and others). One amendment (Azevedo and Nazaré Pereira) proposes an alternative form of words. The Praesidium amended this paragraph to make the wording clearer.*

*A number of amendments call for a new category of law, the "organic law". An organic law would cover measures halfway between the Constitution and a law, and would be subject to a special procedure more cumbersome than the legislative procedure. For some Convention members, this category of act could represent a kind of simplified constitutional review procedure.*

*Despite its interest, the Praesidium preferred not to adopt these amendments. It would make a number of points in this connection:*

- The organic law is a legal instrument unknown to the legal systems of a number of Member States. Where it does exist, it serves to protect certain areas of major importance, such as, for example, laws developing fundamental rights, by procedures that are more cumbersome than for ordinary laws. Where an area is reserved for organic law, it cannot be the subject of ordinary law. An organic law cannot be amended by an ordinary law.*
- There is no justification for introducing the organic law into the Union legal system, under which acts are adopted on individual legal bases. To amend an act adopted on the basis of a given article, another act must be adopted on the basis of the same article and hence in all cases under the same procedure. The system of legal bases has the effect of isolating subject areas from each other, thus rendering superfluous a concept such as the "organic law".*
- Adding a type of act which is new and also unfamiliar to the legal traditions of many Member States is unlikely to make for increased clarity in the Union legal system.*



### **Article I-33: Legislative acts**

1. European laws and European framework laws shall be adopted, on the basis of proposals from the Commission, jointly by the European Parliament and the Council under the **ordinary** legislative procedure as set out in Article [ex 251]. If the two institutions cannot reach agreement on an act, it shall not be adopted.

**In the cases specifically provided for in Article [...] of Part Three, laws and framework laws may be adopted at the initiative of a group of Member States in accordance with Article [ex 251].**

2. In the specific cases provided for by the Constitution, European laws and European framework laws shall be adopted by the **European Parliament with the participation of the Council, or by the Council with the participation of the European Parliament, in accordance with special legislative procedures.**
- ~~3. When acting under any procedure, the European Parliament and the Council shall meet in public.~~

#### **Comments:**

*Some amendments are against allowing exceptions to the general rule that legislative acts are adopted in accordance with the legislative procedure (Kirkhope, Kaufmann, Duff and others, Meyer, Dini and others, Duhamel and others, Michel and others, Brok and others, Paciotti, Lamassoure, Borrell and others, Costa and d'Oliveira, Stockton and Voggenhuber and others). 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. (Kohout, Brok and others who propose in addition that once a 5-year period had elapsed the general rule would be applied – Tiilikainen and others and de Vries and de Bruijn).*

*Some amendments call for the European Parliament to be consulted and the Commission to exercise the right of legislative initiative in the case of exceptions (Fischer, Kuneva and Tiilikainen and others). All of these amendments definitely confirm that the general rule for adoption of legislative acts must be the legislative procedure.*

*When it examined the classification of the legal bases and procedures, the Praesidium reached the conclusion in the light of the amendments and the debate in plenary that the designation "legislative" for the procedure which constitutes the general rule could prove misleading, since it appears to be the determining criterion and not the consequence of the "legislative" nature of the act. The Praesidium agreed to clarify its scope as a legislative procedure under ordinary law. It refers to it as "ordinary legislative procedure", in order to avoid excluding the legislative nature of the very limited number of acts which might be adopted by the Parliament or by the Council with varying degrees of participation by the other arm of the legislative authority by virtue of procedures which, while undoubtedly legislative, are "special".*

*The system described in draft Article I-33 implies that legislative acts are always adopted by the legislator. In general they are adopted jointly and on the basis of parity by the two arms of the legislative authority in accordance with the ordinary legislative procedure laid down in draft Article I-33. However, in certain specific cases, they are adopted in accordance with special legislative procedures by the Parliament with some participation by the Council, or by the Council (acting as legislator, i.e. subject to the rules of transparency and subsidiarity) with some participation by the Parliament.*

*The amendments to draft Article I-33 satisfy the above considerations.*

*As regards the amendments calling for the exceptions to be clearly specified, it should be noted that, during the debate on the initial draft Articles, the Praesidium announced that the Convention would be provided with a list indicating the scope of extension of the general rule for the adoption of legislative acts in accordance with the legislative procedure. This list was forwarded to the Legal Services' experts, who accordingly adapted the legal bases for Part Three of the Constitution (CONV 729/03). The document containing Part Three with comments (CONV 727/03), which is being submitted to the Convention members for the plenary on 30 and 31 May, includes in Annex II an exhaustive list of the legal bases for which the Praesidium suggests amending the decision-making procedure.*

*The Praesidium adapted the second subparagraph of paragraph 1 to the draft Articles on the area of justice, freedom and security. This involves the particular feature of the legislative procedure concerning an initiative by a group of Member States. The amended text of [ex Article 251], contained in the draft articles of Part Three on the Institutions, covers such a possibility.*

*The Praesidium decided to delete the last paragraph. The principle of transparency is stated more precisely in draft Article I-49.*

#### **Article I-34: Non-legislative acts**

1. The Council and the Commission ~~as well as the European Central Bank~~, shall adopt European regulations or European decisions in the cases referred to in Articles I-35 and I-36 and in cases specifically laid down in the Constitution. **The European Central Bank shall adopt European regulations and European decisions when authorised to do so by the Constitution.**
2. **The Council and the Commission, and the European Central Bank when so authorised in the Constitution, adopt recommendations.**

#### **Comments:**

*The very rare amendments to this Article diverge.*

*In the interests of clarity, the Praesidium proposes referring to the Central Bank in a separate sentence since it does not adopt the regulations and decisions referred to in Articles I-35 and I-36.*

*The Praesidium proposes adding a second paragraph. This paragraph is necessary since the legal bases in Part Three propose on a case-by-case basis the instrument or the binding instruments which may be used. Where the existing treaties do not specify any particular instrument and employ general terms such as "measures", the adoption of recommendations is included. A general provision must therefore be included to retain the possibility of using this type of non-binding instrument.*

### **Article I-35: Delegated regulations**

1. European laws and European framework laws may delegate to the Commission the power to enact delegated regulations to supplement or amend certain non-essential elements of the law or framework law.

The objectives, content, scope and duration of the delegation shall be explicitly defined in the laws and framework laws. A delegation may not cover the essential elements of an area. These shall be reserved for the law or framework law.

2. The conditions of application to which the delegation is subject shall be explicitly determined in the laws and framework laws. **They may consist of** the following possibilities:
  - the European Parliament **or** the Council may decide to revoke the delegation;
  - the delegated regulation may enter into force only if no objection has been expressed by the European Parliament or the Council within a period set by the law or framework law.
  - ~~— the provisions of the delegated regulation are to lapse after a period set by the law or framework law. They may be extended, on a proposal from the Commission, by decision of the European Parliament and of the Council.~~

For the purposes of the preceding paragraph, the European Parliament shall act by a majority of its members, and the Council by a qualified majority.

**Comments:**

*With regard to delegated acts, a number of amendments concern the definition of delegated regulations. They take diverging positions. The Praesidium consequently left paragraph 1 unchanged.*

*As regards the conditions for applying delegated acts, the Praesidium proposes to amend the first subparagraph of paragraph 2 to make it clearer that these conditions are determined case by case by the law or framework law which grants the delegation and that these conditions do not constitute a mandatory element of such a law or framework law.*

*Several amendments (de Villepin, Schlüter, Hjelm-Wallén, Bères, Brok and others and Roche) and many speakers in the plenary debate requested that the revocation of the delegation be decided by the Parliament or by the Council separately. The Praesidium took this amendment into account in the wording of the first indent.*

*Several amendments call for the removal of the possibility of providing for a delegated regulation to lapse after a given period (sunset clause) (Andriukaitis and others, Lopes and Lobo Antunes, Fischer, de Vries and de Bruijn, Michel and others, Santer and others and Fayot); other amendments propose alternative wordings (Marinho and Van Lancker). Those who propose the deletion of the paragraph consider that the "sunset clause" could be a source of uncertainty and problems for legal security. The Praesidium decided therefore to delete this indent.*

### **Article I-36: Implementing acts**

1. Member States shall adopt all measures of national law necessary to implement legally binding Union acts.
2. Where uniform conditions for implementing binding Union acts are needed, those acts may confer implementing powers on the Commission, or, in specific cases, and in the cases provided for in Article I-39, on the Council.
3. **The law shall lay down in advance rules and general principles for the mechanisms for control by Member States over** implementing acts of the Union.
4. Implementing acts of the Union shall take the form of European implementing regulations or European implementing decisions.

### **Comments:**

*Some amendments stipulate that these are mechanisms for control by the Member States (de Villepin, Farnleitner, Fini, Lopes and Lobo Antunes). The Praesidium introduced this stipulation into the draft Article.*

*Only a few amendments are opposed to the application of the legislative procedure to establish the control mechanisms and prefer the current procedure. The Praesidium proposes that the ordinary legislative procedure be maintained.*

*Several amendments are opposed to the current mechanisms of the committee procedure and propose deleting paragraph 3. Along the same lines, other amendments propose confining the control mechanisms to advisory committees alone. Since this is a matter for secondary legislation, the Praesidium proposes not to amend the draft Article.*

### **Article I-37: Principles common to the Union's legal acts**

1. Unless the Constitution contains a specific stipulation, the Institutions shall decide, in compliance with the procedures applicable, the type of act to be adopted in each case, in accordance with the principle of proportionality set out in Article I-9.
2. European laws, European framework laws, European regulations and European decisions shall state the reasons on which they are based and shall refer to any proposals or opinions required by this Constitution.

#### **Comments**

*There is broad agreement on this draft Article.*

### **Article I-38: Publication and entry into force**

1. European laws and European framework laws adopted under the **ordinary** legislative procedure shall be signed by the President of the European Parliament and by the President of the Council. In other cases they shall be signed by the President of the Council **or by the President of the European Parliament**. European Union laws and European Union framework laws shall be published in the Official Journal of the European Union and shall enter into force on the date specified in them or, in the absence of such a stated date, on the twentieth day following their publication.
2. European regulations ~~of the Commission or of the Council~~ and European decisions which do not specify those to whom they are addressed or which are addressed to all Member States shall be **signed by the President of the institution which adopts them**, shall be published in the Official Journal of the European Union and shall enter into force on the date specified in them or, in the absence of such a stated date, on the twentieth day following their publication.
3. Other decisions shall be notified to those to whom they are addressed and shall take effect upon such notification.

### **Comments:**

*The Praesidium has amended paragraph 1 to take account of the amendments to draft Article I-33.*

*The aim of the amendment to the second paragraph is to take account of acts adopted by the Central Bank and to establish a parallel with the signing of legislative acts.*

## **Chapter II**

### **Article I-39: Specific provisions for implementing common foreign and security policy**

1. The European Union shall ~~undertake to~~**conduct** a common foreign and security policy, based on the ~~progressive~~ development of mutual political solidarity among Member States, the ~~progressive~~ identification of questions of general interest and the achievement of an ever-increasing degree of convergence of Member States' actions.
2. The European Council shall identify the Union's strategic interests and determine the objectives of its common foreign and security policy. The Council of Ministers shall frame this policy **within the framework of the strategic guidelines established by the European Council** and in accordance with the arrangements in Part Three of the Constitution.
3. The European Council and the Council of Ministers shall adopt the necessary decisions.
4. The common foreign and security policy shall be put into effect by the Union's Minister for Foreign Affairs and by the Member States, using national and Union resources.



5. Member States shall consult one another within the Council and the European Council on any foreign and security policy issue which is of general interest in order to determine a common approach. Before undertaking any action on the international scene or any commitment which **could** affect the Union's interests, each Member State shall consult the others within the Council or the European Council. Member States shall ensure, through the convergence of their actions, that the Union is able to assert its interests and values on the international scene. Member States shall show mutual solidarity.
6. The European Parliament shall be **regularly** consulted on the main aspects and basic choices of the common foreign and security policy, and shall be kept informed of how it evolves.
7. Decisions relating to the common foreign and security policy shall be adopted by the European Council and the Council of Ministers unanimously, except in the cases referred to in Part **Three** of the Constitution. Discussion shall be based on a proposal from a Member State, ~~or from the Union's Minister for Foreign Affairs~~ **or from the Minister with the Commission's support.** ~~alone or together with the Commission.~~ **Laws and framework laws are excluded.**
8. The European Council may unanimously decide that the Council should act by qualified majority in cases other than those referred to in Part **Three** of the Constitution.

#### Comments

1. *Paragraph 1: many members of the Convention have asked that the wording of the first paragraph should be given more force, particularly by deleting the references to the progressive nature of the CFSP (proposed by, amongst others: Mr Duff and 19 other Convention members, Mr Farnleitner, Mr Borrell and 2 Convention members, Mr Fini, Mr Lamassoure, Mr Fischer, Ms Hjelm-Wallén and 4 other Convention members, Mr Voggenhuber and 2 other Convention members, Mr Speroni, Mr Svensson and Ms Thorning-Schmidt).*

2. *Paragraph 2: the addition of "within the framework of the strategic guidelines established by the European Council" is intended to make more explicit the role of the European Council and the fact that the Council of Ministers draws up the CFSP in the framework established by the European Council (proposal by Mr Farnleitner). It should be mentioned that other Convention members also asked for a reference to guidelines drawn up by the European Council (in particular Mr Brok and 28 other Convention members).*
3. *Paragraph 6: several members of the Convention have proposed spelling out that the European Parliament should be kept informed at regular intervals (proposed in particular by Mr Duff and 19 other Convention members, Mr Meyer, Mr Borrell and 2 other Convention members).*
4. *Paragraph 7: the procedure for CFSP decision-making gave rise to much comment. A number of members of the Convention want qualified majority voting to be the general rule. Others oppose this, and want to maintain the unanimity rule. The Praesidium's judgment is that, given these differences, it would be preferable to retain unanimity as the general rule, while extending the range of exceptions where qualified majority voting will apply pursuant to Article [...] of Part Three. In addition, paragraph 8 of this Article provides that the European Council may decide to extend the scope of qualified majority voting. It has also been spelt out that there are to be no legislative acts in the CFSP field.*
5. *Paragraph 7: the provisions on the right of initiative have been amended to draw a clearer distinction between the two options. On the one hand, the Minister, acting individually, may submit CFSP proposals to the Council. On the other hand, he may choose to submit such proposals with the support of the Commission, if he so decides. This is different again from the "joint proposal" option, whereby the minister would be responsible for CFSP aspects, while the Commission would take responsibility for the other aspects of external action.*

#### **Article I-40: Specific provisions for implementing common defence policy**

1. The common security and defence policy, ~~which~~ shall be an integral part of the common foreign and security policy. **It** shall provide the Union with an operational capability drawing on assets **civil and military** ~~and civilian~~. The Union may use them on missions outside the Union ~~to preserve for peace-keeping, conflict prevention and strengthening~~ international security in accordance with the principles of the United Nations Charter. **The performance of these tasks shall be undertaken using capabilities provided by the Member States.**
2. The common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

The policy of the Union in accordance with this Article shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty, and be compatible with the common security and defence policy established within that framework.

3. Member States shall make **civilian and military** ~~and civilian~~ capabilities available to the Union for the implementation of the common security and defence policy, to contribute to the objectives defined by the Council. **Those Member States which together establish multinational forces may also make those forces available to the common security and defence policy.**

Member States shall undertake progressively to improve their military capabilities.

A European Armaments, Research and **Military Capabilities** Agency shall be established to identify operational requirements, to put forward measures to satisfy those requirements, to contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, **to participate in defining a European capabilities and armaments policy**, and to assist the Council in evaluating the improvement of military capabilities.

~~Those Member States which establish multinational forces together may also make those forces available to the common security and defence policy.~~

4. Decisions on the implementation of the common security and defence policy, including those initiating a mission as referred to in this Article, shall be adopted by the Council acting unanimously on a proposal from the Union's Minister for Foreign Affairs or from a Member State. The Minister for Foreign Affairs may propose the use of both national resources and Union instruments, together with the Commission where appropriate.
5. The Council may entrust the execution of a task, within the Union framework, to a group of Member States **in order to maintain the Union's values and serve its interests**. The execution of such a task shall be governed by Article [...] of Part Three, Title B, of the Constitution.
6. Those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to more demanding missions shall establish structured cooperation within the Union framework. Such cooperation shall be governed by the provisions of Article [...], of Part Three, Title B, of the Constitution.

7. Until such time as the European Council has acted in accordance with paragraph 2 of this Article, closer cooperation shall be established, in the Union framework, as regards mutual defence. Under this cooperation, if one of the Member States participating in such cooperation is the victim of armed aggression on its territory, the other participating States shall give it aid and assistance by all the means in their power, military or other, in accordance with Article 51 of the United Nations Charter. **In the execution of closer cooperation on mutual defence, the participating Member States shall work in close cooperation with the North Atlantic Treaty Organisation.** The detailed arrangements for participation in this cooperation and its operation, and the relevant decision-making procedures, are set out in Article [...], of Part Three, Title B, of the Constitution.
8. The European Parliament shall be **regularly** consulted on the main aspects and basic choices of the common security and defence policy, and shall be kept informed of how it evolves.

**Comments:**

*Paragraph 1:*

*As a general rule, the Praesidium's approach whereby the common security and defence policy is an integral part of the CFSP has been welcomed with satisfaction by members of the Convention. Some of them have wanted to add force to this approach by a drafting amendment which divides the first sentence into two parts and removes the word "which" (Roches, Tiilikainen + 3 and Kiljunen). This amendment accommodates some members of the Convention, for whom it is essential that the link between the ESDP and the CFSP cannot be called into question.*

*It is also proposed that the order of military and civilian capabilities should be reversed, stressing first civilian and then military capabilities (Fischer, Meyer, Einem).*

*Some members of the Convention have also asked that conflict prevention be added to the scope of the common security and defence policy. This addition brings the wording of the Article closer to the United Nations Charter, and provides useful clarification without really changing the scope of the Union's tasks, since conflict prevention is explicitly mentioned in Article [...] of Part Three, (Hain, de Villepin, Fischer, Borrell).*

*The last sentence of the paragraph has been added following the joint amendment (Hain, Fischer, de Villepin). It is intended further to clarify the fact that it is the Member States which contribute to operations with their own capabilities.*

*Paragraph 3:*

*The proposed amendments to the first two subparagraphs consist of changing the order of civilian and military capabilities (see comments on paragraph 1).*

*Moving the sentence on multinational forces seems to clarify the paragraph (Earl of Stockton). Some members of the Convention had proposed that this sentence should be placed after that relating to the undertaking by Member States to improve their capabilities. This would place Member States under an obligation to improve their multinational forces too. In point of fact, Member States may make such forces available to the ESDP, but are not obliged to do so.*

*Several members of the Convention have asked that the name of the Agency should be changed to take better account of its true role and to include the notion of capabilities (de Vries, Fini, Hain, Roche, Fischer).*

*The amendment to the Agency's tasks reproduces one amendment (de Villepin) which seems to reflect a concern expressed by some members of the Convention to establish a genuine capabilities and armaments policy.*

*Paragraph 5:*

*An addition proposed by Brok and 28 others and Giannakou.*

*Paragraph 7:*

*Some members of the Convention have proposed including a reference in this paragraph to close cooperation with NATO in the execution of closer cooperation on mutual defence (Christophersen, Thorning-Schmidt).*

*Paragraph 8:*

*Proposal to add that the European Parliament should be regularly consulted – Brok and 30 others, Earl of Stockton, Giannakou. These members of the Convention asked that it should be specifically stated that it should be the Minister for Foreign Affairs who informs and consults the EP, but such a provision already exists in Article [...] of Part Three and therefore does not need to be repeated here.*

**Article I-42: Solidarity clause**

- 1. The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the victim of terrorist attack or natural or man-made disaster.** ~~In application of the principle of solidarity,~~ *The Union shall mobilise all the instruments at its disposal, including the military resources **made available by the Member States**, to:*
  - (a) – prevent the terrorist threat **in the territory of the Member States**;  
– protect democratic institutions and the civilian population from any terrorist attack;  
– assist a Member State in its territory at the request of its political authorities in the event of a terrorist attack;
  - (b) – **assist a Member State in its territory at the request of its political authorities in the event of a disaster.**
- 2. The detailed arrangements for implementing this provision are at Article [...] of Part ~~Two~~ **Three**, Title B, of the Constitution.**

## **Comments**

*The addition of the first sentence stems from the amendments tabled jointly by Hain, de Villepin and Fischer, and is intended to clarify the language of this clause.*

*The main amendment proposed here consists in widening the scope of the solidarity clause to cover natural or man-made disasters. This amendment, which is in accordance with the recommendations made by the Working Group on Defence, was requested by many members of the Convention (de Villepin, Fischer, Hain, Farnleitner, Kiljunen, Roche and Michel). The Convention's attention is drawn to the fact that a new legal basis on civil protection has also been included in Part Three of the Constitution. The consequence of this dual approach is that:*

- the ordinary legislative procedure would be used (although excluding harmonisation measures) for normal preventive action and establishing a framework for cooperation between national civil defence agencies;*
- mutual assistance between Member States using national civilian or military means would be coordinated in the Council and the ESDP bodies (in particular the Military Committee and the military staff) might contribute. Given the recourse to military means, the Minister for Foreign Affairs will have a role.*

*For the sake of clarity, it has been specified in the first indent of (a) that prevention of the terrorist threat should take place in the territory of the Member States.*



## **Chapter III: Enhanced cooperation**

### **Article I-43: Enhanced cooperation**

1. Member States which wish to establish enhanced cooperation between themselves within the framework of the Union's non-exclusive competences may make use of its institutions and exercise those competences by applying the relevant provisions of the Constitution, subject to the limits and in accordance with the procedures laid down in this article and in Articles **[... to ...] of Part Three** of the Constitution.

Enhanced cooperation shall aim to further the objectives of the Union, protect its interests and reinforce its integration process. Such cooperation shall be open to all Member States when it is being established and at any time, in accordance with Article **[...] of Part Three** of the Constitution.

2. Authorisation to proceed with enhanced cooperation shall be granted by the Council as a last resort, when it has been established within the Council that the objectives of such cooperation cannot be attained within a reasonable period by the Union as a whole, and provided that it brings together at least one third of the Member States. The Council shall act in accordance with the procedure laid down in Article **[...] of Part Three** of the Constitution.
3. Only representatives of the Member States participating in enhanced cooperation shall take part in the adoption of acts adopted within the Council. All Member States may, however, take part in the deliberations of the Council.

Unanimity shall be constituted by the participating States only. A qualified majority shall be defined as a majority of the votes of the participating Member States, representing at least three fifths of the population of those States.

4. Acts adopted in the framework of enhanced cooperation shall bind only participating Member States. They shall not be regarded as an *acquis* which has to be accepted by candidates for accession to the Union.

**Comments:**<sup>1</sup>

*The mechanism for enhanced cooperation was introduced by the Treaty of Amsterdam and amended by the Treaty of Nice. It is governed by general provisions applying to all areas (Articles 43 to 45 TEU) and by specific clauses for the areas covered by the TEC (Articles 11 and 11a TEC), cooperation in criminal matters (Articles 40 to 40b TEU) and the CFSP (Articles 27a to 27e TEU). Up till now, it has never yet been used.*

*Enhanced cooperation was conceived as a "last resort" mechanism, where an action cannot be carried through with all the Member States participating. The Council may in that case, acting by a qualified majority, authorise a minimum of eight Member States to go ahead, making use of the "institutions, procedures and mechanisms" laid down by the Treaties. However, only those States participating would vote in the Council on adoption of decisions which would apply only to them and any costs other than administrative expenditure would in principle be borne by them alone. Enhanced cooperation may be allowed in principle in all areas covered by the Treaties, with the exception of matters having military or defence implications.*

*The principal aim of the draft Articles of the Constitution is to simplify the wording and structure of the current provisions on enhanced cooperation, whereas the new structure of these Articles is based more on thematic criteria than on the present grouping by pillar.*

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<sup>1</sup> *Enhanced cooperation was the subject of a descriptive note on the mechanism, and of proposals for Articles with comments: see CONV 723 of 14 May 2003.*

*Part One of the Constitution contains **Article I-43**, which presents the essential features of the mechanism of enhanced cooperation in the Union framework. Since it constitutes a special instrument with regard to the exercise of Union competences, it forms the subject of a separate chapter of Title V of Part One of the Constitution. Compared with the current Treaties, few changes of substance are of note in this Article: the condition of last resort has been somewhat clarified, and the minimum threshold for participation has been set at one third of the Member States.*

**Article I-43(1), first subparagraph**

*This subparagraph sets out the fundamental principle that enhanced cooperation is to operate within the framework of the legal bases in the Treaties, as regards both competences and the exercise of competences (procedures and instruments). That principle is variously expressed in different parts of the present Treaties <sup>1</sup>.*

*On the other hand, the subparagraph refers straight away to the provisions in Part Three of the Constitution (**Articles [...] to [...]**), which appear in a separate chapter of Title VII devoted to the functioning of the Union. These provisions establish the limits and procedures applicable to the enhanced cooperation mechanism, in particular the fact that it does not apply to specific forms of cooperation in the area of defence, and other general conditions aimed mainly at upholding the Union acquis. They also describe the authorisation procedure and the procedure concerning subsequent participation of other Member States.*

**Article I-43(1), second subparagraph:** *Taken from the conditions in Article 43(a) of the TEU and affirming the principle of openness (Article 43b of the TEU), as spelt out further in **an article** of Part Three of the Constitution.*

**Article I-43(2):** *Principle of authorisation by the Council and conditions for such authorisation: last resort (Article 43a of the TEU) and minimum threshold (Article 43(g) of the TEU).*

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<sup>1</sup> *Articles 43 and 44 (first sentence) of the TEU, Article 11(3) of the TEC and Articles 27a(2) and 40(2) of the TEU.*

*This paragraph establishes the principle that Council authorisation is required to initiate enhanced cooperation and refers to **an Article** of Part Three of the Constitution as far as the details of the procedure are concerned. It also lays down two prior conditions for such authorisation: the last resort condition and the minimum participation threshold condition.*

*The last resort condition, as amended by the Treaty of Nice, does not indicate how the Council is supposed to establish that the requirement is met and also appears to overlap somewhat with the Council's authorising decision. The proposed wording shows that it is by means of the authorising decision that the Council formally establishes that the last resort condition is indeed met. In addition, the deletion of the phrase "by applying the relevant provisions of the Treaties" makes it clearer that the last resort condition does not necessarily mean the failure of a previous procedure, or even that any such decision-making procedure has been initiated. In any case, the scope of enhanced cooperation should not be predetermined by any previous procedures, but should be more broadly determinable in the course of the authorising procedure, for example by reference to a number of legal bases concerned by the proposed cooperation.*

*As far as the minimum threshold condition is concerned, the question is whether it might be preferable to reintroduce a proportion of Member States, rather than a set number, which makes little sense in a Union where the number of members is not fixed once and for all. In keeping with the spirit of the Treaty of Nice, that proportion could be one third of the Member States.*

**Article I-43(3):** Taken from Article 44(1) TEU

*The main institutional feature of enhanced cooperation is that non-participants do not have a vote in the Council. The draft Article, like the present Treaty, nevertheless provides that non-participants may take part in the deliberations.*

*In addition, the effect of applying the legal bases in the Constitution to enhanced cooperation is to carry over the voting rules specified in those bases, viz. unanimity or a qualified majority, into the operation of enhanced cooperation. There is thus a need to specify here, as in Article 44 of the TEU at present, what is meant by unanimity or a qualified majority within the Council when it acts under enhanced cooperation, bearing in mind the Convention's redefinition of qualified-majority voting.*

**Article I-43(4):** Taken from Article 44(2) TEU

*Acts adopted within enhanced cooperation are binding on the participants only. Such acts therefore do not bind other Member States, unless of course they take part at a later stage, as is also made clear in the **first paragraph of Article [...] of Part Three** ("subject to compliance with the acts already adopted within that framework"; see below). The further stipulations in Article 44(2) of the TEU do not seem necessary.*

*Lastly, it is proposed that the sentence "Such acts ... shall not form part of the Union acquis" be deleted. This provision raises an over-general issue, if its purpose is to avoid imposing the (as yet non-existent) acquis of enhanced cooperation on future Member States (i.e. after the forthcoming enlargement of the Union to bring in ten new States, as the question no longer arises for them). The wording proposed is based on Article 8 of the Protocol integrating the Schengen acquis into the framework of the European Union.*

◦  
◦      ◦

*The Secretariat started receiving various comments, including a call from Mr Duff for deletion of enhanced cooperation, once this draft article had been presented. The Praesidium takes the view that, in an enlarged Union, the Constitution must make provision for the possibility of enhanced forms of cooperation.*

## **TITLE VI: THE DEMOCRATIC LIFE OF THE UNION**

### **Article I-44: The principle of democratic equality**

~~The Union's operation shall be founded on~~ **In all its activities, the Union shall observe the principle of the equality of citizens. All shall receive equal attention from the Union's institutions.**

#### **Comments:**

- 1. Few amendments to Article I-454 were put forward by the members of the Convention. The most significant amendment was proposed by several members who wanted to state that the principle of equality also covers "equality between Member States". It seemed that such a mention could not readily form part of a title dealing with the democratic life of the Union and therefore addressed above all to citizens.*
- 2. Various drafting amendments were made to render the first sentence more readable and to meet the concern expressed by several members of the Convention who considered it desirable to specify the "citizens" to which it referred. They are the citizens of the Union.*

### **Article I-45: The principle of representative democracy**

- 1. The Working of the Union shall be founded on the principle of representative democracy.**
- 2. Citizens are directly represented at Union level in the European Parliament. Member States are represented in the European Council and in the Council by their governments, themselves accountable to national parliaments, elected by their citizens.**

3. Every citizen shall have the right to participate in the democratic life of the Union. **Decisions shall be taken as openly as possible and as closely as possible to the citizen.**
4. Political parties at European level contribute to forming European **political** awareness and to expressing the ~~political~~ will of Union citizens.

**Comments:**

1. *It is proposed that this new Article be introduced so that not only participatory democracy but also representative democracy is reflected in this title. Close links obviously exist between the two but the reference to representative democracy seems to have greater weight in a separate Article, rather than adding a text along those lines to Article I-46, as proposed by several members of the Convention (in particular Mr Duff and 22 others and Ms Dybkjaer).*
2. *The third paragraph incorporates the former first paragraph of Article I-46 with the addition of a second sentence on taking decisions as openly as possible and as close to citizens as possible. This amendment is in response to the request by a number of Convention members (in particular Mr Duff and 22 others, Ms Dybkjaer and Mr Voggenhuber and others) to take over features of Article 1 TEU. It should be noted that the text refers to "decisions" in the broader sense and not the specific instrument described in the Constitution.*
3. *The fourth paragraph includes a slightly amended version of former draft Article 35a on political parties at European level because it seems logical to add that text to the Article on representative democracy. Several members of the Convention (in particular Ms Hübner, Mr Lopes and Mr Lobo Antunes, Mr Santer and 4 others, Mr Brok and 36 others, Mr Follini and Mr Floch) requested that Article 191 TEC be taken over, in part (the first paragraph) or in full. The revised text is therefore based on the first paragraph of Article 191 TEC in a shortened form, to avoid having texts which were by way of an appraisal in Part One of the Constitution. The second paragraph of Article 191 will be covered in the institutional provisions of Part Three of the Constitution.*

#### **Article I-46: The principle of participatory democracy**

~~1. Every citizen shall have the right to participate in the democratic life of the union.~~

1. The Union institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views on all areas of Union action.
2. The Union institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.
3. **The Commission shall carry out broad prior consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.**

#### **Comments:**

1. *The first paragraph is moved to paragraph 3 of Article I-45.*
2. *Most of the requests made concerning this Article in both written amendments and during the debate in plenary on 24 April relate to the addition of a separate Article or a paragraph concerning the role of the social partners and autonomous social dialogue. It is suggested that this request be taken into account by the introduction of a separate Article (I-47) in order to make a distinction between social dialogue and dialogue with civil society in the broad sense.*
3. *The draft Article has also been supplemented with a paragraph concerning consultations with civil society on the basis of proposals by several members of the Convention (in particular Ms Berès and 10 others, Ms Van Lancker and 10 others, Ms Paciotti, Ms Hjelm-Wallén and 4 others, some of whom proposed making additions to one of the existing paragraphs).*



#### **Article I-47: The social partners and autonomous social dialogue**

The European Union recognises and promotes the role of the social partners at Union level, taking into account the diversity of national systems; it shall facilitate dialogue between the social partners, respecting their autonomy.

#### **Comments:**

*New Article aimed at meeting the wish expressed by a very large number of members of the Convention (in particular Mr Brok and 34 others, Mr Duff and 22 others, Ms Van Lancker and 11 others, Mr Gabaglio, Mr Jacobs, Mr Floch, Ms Dybkjaer, Ms Kaufmann, Mr Kohout, Mr Severin, Mr Voggenhuber and 4 others, Mr Kristensen and 4 others, Mr Bonde and Mr Zahradil) to see the role of the social partners and autonomous social dialogue reflected in an Article (or in a paragraph of Article I-46). The above draft Article is based on the draft texts proposed by Mr Brok and Ms Van Lancker (each supported by several members of the Convention), which are very similar. Mr Duff and others also proposed texts along the same lines.*

#### **Article I-48: The European Ombudsman**

**A European Ombudsman shall be appointed by the European Parliament to receive, investigate and report shall receive, investigate and report on complaints about maladministration within the Union institutions, bodies or agencies. The European Ombudsman shall be completely independent in the performance of his duties.**

#### **Comments:**

- 1. In keeping with requests made by a large number of Convention members (in particular the amendments put forward by Mr Borrell and 2 others, Mr Duff and 28 others, Mr Fischer, Ms Kaufmann, Ms Muscardini, Ms Paciotti and 10 others and Mr Voggenhuber and 4 others), it is proposed to specify that the European Ombudsman is appointed by the European Parliament.*

2. *Several Convention members also proposed that the text be amended to reflect the fact that the Ombudsman's scope of action covered not only the Institutions but also the bodies and agencies of the Union and/or that a reference be added to the exception of the Court of Justice and the Court of First Instance (amendments put forward in particular by Mr de Vries and Mr de Bruijn, Mr Lopes and Mr Antunes, Ms Muscardini, Ms Palacio, Mr de Villepin, Mr Voggenhuber and 4 others). As regards the request relating to the Court, it is proposed not to insert it here as this reference will appear in the corresponding Article in the Title on the Institutions in Part Three.*
3. *It is also proposed to take account of the Convention members' wish (Mr de Vries, Mr de Bruijn and Mr Timmermans in particular) to include a reference in this Article to the Ombudsman's independence.*

#### **~~Article 35a: Political parties at European level~~**

~~Political parties at European level contribute to forming a European awareness and to expressing the political will of the citizens of the Union.~~

#### **Comments:**

*This draft Article has been included as the fourth paragraph of the new Article I-45 on the principle of representative democracy.*

#### **Article I-49: Transparency of the proceedings of the Union's institutions**

1. In order to promote good governance and ensure the participation of civil society, the Union institutions, **bodies and agencies** shall conduct their work as openly as possible.

2. The European Parliament shall meet in public, as shall the Council when it is discussing **and adopting** a legislative proposal.
3. Any citizen of the Union, man or woman, and any natural or legal person residing **or having its registered office** in a Member State, shall have a right of access to ~~European Parliament, Council and Commission~~ documents **of the Union institutions, bodies and agencies** in whatever form they are produced, **in accordance with the conditions laid down in Part Three.** ~~and to those of the agencies and bodies created by those institutions.~~
4. **A European law shall lay down** the general principles~~conditions~~ and limits which, on grounds of public or private interest, govern the right of access to **such** documents. ~~shall be determined by the European Parliament and the Council in accordance with the legislative procedure.~~
5. Each institution, body or agency referred to in paragraph ~~2~~ **3** shall determine in its own rules of procedure specific provisions regarding access to its documents, **in accordance with the European law referred to in paragraph 4 above.**

#### **Comments:**

1. *Several Convention members (notably Mr Brok and 37 others, Mr Duff and 20 others, Mr Follini, Ms Kaufmann, Ms Tiilikainen and 4 others) wanted a more general reference to the Union institutions, bodies and agencies in paragraph 3. In the interest of consistency throughout the Article, the same amendment was proposed for paragraph 1.*
2. *Further to requests made by several Convention members (notably Mr Brok and 37 others, Mr Follini, Ms Hjelm-Wallén and 4 others), it is proposed to add "and adopting" to the wording of paragraph 2. The Convention members put forward other proposals, including a proposal to publish minutes; however, it is proposed not to mention them in this Article so as not to duplicate elements to appear in the institutional provisions of Part Three of the Constitution.*

3. *Numerous Convention members proposed deleting the feminine form of citizens in paragraph 3 as this does not translate easily into a number of languages. It should be noted that the French version of the Charter uses both the feminine and masculine forms, whereas, for example, the English version refers to "every citizen". Given that the matter appears to be principally one of translation, the proposal is to keep both forms for the moment and to determine subsequently the approach to be followed throughout the Constitution.*
4. *Moreover, it is proposed to add a reference to persons who have "a registered office" in the Union (wording of Article II.42 of the Charter and Article 255 TEC, which reads "having its registered office") in accordance with the proposals made by several Convention members (notably Mr Hain, Mr Roche, Ms Tiilikainen and 4 others, Ms Hjelm-Wallén and 7 others, Mr de Villepin).*
5. *The first amendment to paragraph 4 adapts the reference to the legislative procedure to match the references elsewhere in the draft Constitution. It is proposed to act on the wish of several Convention members (notably Mr Brok and 37 others, Mr Follini, Ms Tiilikainen and 4 others, Ms Hjelm-Wallén and 7 others) to delete the reference to "conditions". It is also proposed to amend the text so that it reads "to such documents" (proposal put forward inter alia by Mr Heathcoat-Amory and Mr Bonde).*
6. *A reference to paragraph 4 and the law laying down the principles for access to documents has been added in keeping with requests by several Convention members (Mr Brok and 37 others, Mr de Vries and Mr de Bruijn, Mr Follini).*

## **Article I-50: Protection of personal data**

1. Everyone has the right to the protection of personal data concerning him or her.
2. ~~The Parliament and the Council, in accordance with the legislative procedure,~~ **A European law shall lay down** the rules relating to the protection of individuals with regard to the processing of personal data by the Union's institutions, bodies and **agencies**, and by the Member States when carrying out activities which come under the scope of Union law, and the rules relating to the free movement of such data. **Compliance with these rules shall be subject to the control of an independent authority.**

### **Comments:**

1. *A number of Convention members (including Mr Duff and 22 others, Mr Einem, Mr Fischer, Mr Haenel and Mr Badinter, Ms Kaufmann, Mr Meyer, Mr Voggenhuber and 2 others) proposed deleting paragraph 1, arguing that it duplicated the first paragraph of Article II.8 of the Charter. In order to maintain an introduction to the second paragraph which refers to the adoption of a European law on the protection of personal data, it is, however, proposed that paragraph 1 be kept.*
2. *The first amendment to paragraph 2 adapts the reference to the legislative procedure to the references elsewhere in the draft Constitution. The second ("agencies") is included to ensure consistency with the preceding Articles. A reference to a supervisory body is also added, on a proposal from a number of Convention members (including Mr Farnleitner, Mr Floche and Mr de Villepin).*

## **Article I-51: Status of churches and non-confessional organisations**

1. The ~~European~~ Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.
2. The ~~European~~ Union equally respects the status of philosophical and non-confessional organisations.
3. Recognising their identity and their specific contribution, the Union shall maintain an **open, transparent and** regular dialogue with these churches and organisations.

### **Comments:**

1. *Article I-51 was frequently referred to by Convention members at the plenary meeting on 24 April as well as in the amendments or comments that were filed. Many of them were committed to the Article's provisions. Others wanted it deleted.*
2. *A large number of amendments concern paragraphs 1 and 2. Several of them are especially interesting and useful. They improve readability or clarify certain points in the text. But it was thought preferable not to embark on any amendment of the wording adopted, which is taken from Declaration 11 annexed to the Amsterdam Treaty. By moving in the direction of a re-write of a text that exists and has proved satisfactory, the Convention would risk opening up once again a more general and difficult debate which has already taken place in the past. A degree of caution is therefore justified in this matter. The only two amendments proposed are drafting changes that seek to simplify the current text without altering its substance.*

3. *In paragraph 3 it was thought appropriate to take up the amendment proposed by Ms Tiilikainen and 4 others to make clear that the dialogue was "open and transparent". Specifying the nature of the dialogue envisaged as "open and transparent" should also respond to the concerns voiced by those Convention members (Ms Muscardini and Mr Lequiller in particular) who feared that this provision could be used for other purposes by some churches or organisations or those claiming to be such.*

## **Article X**

1. The Congress of the Peoples of Europe shall provide a forum for contact and consultation in European political life. It shall meet at least once a year. Its meetings shall be public. The President of the European Parliament shall convene and chair them.
2. The Congress shall not intervene in the Union's legislative procedure.
3. The President of the European Council shall report on the state of the Union. The President of the Commission shall present the annual legislative programme.
4. One third of the Congress shall be members of the European Parliament: two thirds shall be representatives of national Parliaments. The total shall not exceed seven hundred.]

## **Comments:**

*Reproduction of draft Article X contained in CONV 691/03, which stated that such an Article might be incorporated in this Title.*

*The Secretariat has received a considerable number of amendments to this Article. A great many do not relate to drafting but propose deleting the provision.*

## **TITLE VII: THE UNION'S FINANCES**

### **Article I-52: Budgetary and financial principles**

1. All items of Union revenue and expenditure shall be included in estimates drawn up for each financial year and shall be shown in the budget, in accordance with the provisions of Part Three of the Constitution.
2. The revenue and expenditure shown in the budget shall be in balance.
3. The expenditure shown in the budget shall be authorised for the annual budgetary period in accordance with the European law referred to in Article [ex 279].
4. The implementation of expenditure shown in the budget shall require the prior adoption of a binding legal act providing a legal basis for Union action and for the implementation of the expenditure in accordance with the European law referred to in Article [ex 279)]. This act must take the form of a European law, a European framework law, a European regulation or a European decision.
5. With a view to maintaining budgetary discipline, ~~the Commission shall not make any proposal for a Union act, or alter its proposals, or adopt any implementing measure –~~ **the Union shall not adopt any act** which is likely to have appreciable implications for the budget without providing an assurance that the proposal or measure in question is capable of being financed within the limit of the Union's own resources **and the multiannual financial framework referred to in Article I-54.**
6. The Union's budget shall be implemented in accordance with the principle of sound financial management. Member States shall cooperate with the Union to ensure that the appropriations entered in the budget are used in accordance with the principles of sound financial management.
7. The Union and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Union in accordance with the provisions of Article [ex 280], of Part Three.



## **Comments**

### **Paragraph 1**

*In the first document on finances (CONV 602/03), budgetary principles were the subject of the second article in this Title. Further to several amendments and statements at the Convention plenary, the Praesidium proposes that the Article devoted to principles should be the first in Title VII.*

*Several amendments propose alternative wordings for this paragraph, with the aim of excluding any possibility of exceptions to the principle of the unity of the budget. Nevertheless, the Praesidium has decided that it should not be changed. In fact, paragraph 1 only allows exceptions insofar as the provisions of Part Three on policies provide for them.*

*It should also be remembered that the special provision of Article [ex 268 TEC] concerning the current second and third pillars has been deleted in the draft Articles on finances in Part Three. Special provisions will have to be laid down in the relevant Articles, addressing how expenditure on those policies should be entered in the budget.*

### **Paragraph 2**

*The Praesidium proposes that the wording of the principle of budgetary balance should remain unchanged. This is the established wording. It is clear that this principle means that deficits are prohibited. It is not necessary to say so expressly, as called for by some amendments.*

### **Paragraph 3**

*Some amendments (de Vries and de Bruijn, and Hübner) propose that the period covered by the annual budget should be mentioned. Article [...] of Part Three indicates this period: from 1 January to 31 December.*

#### Paragraph 5

*The final report of the discussion circle on the budgetary procedure notes that the multiannual financial framework must be mentioned in this paragraph, since it is the reference framework for budgetary discipline, together with the own resources ceiling.*

*Several amendments express the same wish (de Vries, Borrell and others, Duhamel and others, Hain and Hjelm-Wallén).*

#### Paragraph 6

*One amendment (de Vries and de Bruijn) proposes adding the rule that the Commission is responsible for implementation of the budget. On this issue, it should be remembered that this rule appears in a draft of Part Three, in the Chapter on the implementation and discharge of the budget.*

### **Article I-53: The Union's resources**

- 1. The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.**
- 2. Without prejudice to other revenue, the Union's budget shall be financed wholly from its own resources.**
- 3. A European law of the Council shall lay down the limit of the Union's resources and may establish new categories of resources or abolish an existing category. That law shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements. The Council shall act unanimously after consulting the European Parliament.**
- 4. A European law of the Council shall lay down the detailed arrangements relating to the Union's resources. The Council shall act after obtaining the consent of the Parliament.**

## **Comments:**

### **Paragraph 1**

*The final report of the discussion circle on own resources believes that the principle of sufficiency of means, currently referred to in Article 6(4) TEU, needs to be maintained in the Title of Part One of the Constitution dealing with finances.*

*Several amendments share this view (Brok and others, Wittbrodt and others, Palacio, Lopes and Lobo Antunes and Einem and Berger).*

*The discussion circle on own resources considered the question of the term "own resources". Some members thought that it might lead to confusion. Whatever term is chosen, the circle felt that the concept of "own resources" in the sense of resources belonging by right to the Union should be retained.*

### **Paragraphs 2 and 3**

*Most of the amendments concerning resources refer to the decision-making procedure. These amendments represent very differing positions. While some (notably certain government representatives) support retention of the procedure currently provided for in the EC Treaty (in particular unanimity and national ratification), others would like the Parliament to intervene by means of the legislative procedure or an assent and the Council to act by a qualified or "augmented" majority.*

*The discussion circle on own resources proposed duplicating the legal basis. This proposal did not achieve a consensus, but was supported by a majority within the circle. It is emerging as a possible solution (an amendment by de Villepin also envisages such duplication).*

*Concerning the provisions for resources (paragraph 3), most of the members of the circle supported qualified majority voting in the Council. Both the circle on own resources and the circle on budgetary procedure considered that the qualified majority for adoption of the provisions for resources and for adoption of the multiannual financial framework should be "augmented" where the Constitution provided for such a majority across the board. In the absence of such an augmented qualified majority, both circles suggested that the Council should decide by an ordinary qualified majority.*

*It should be noted that, with regard to own resources, a considerable number of amendments proposed leaving open the possibility of creating European taxes (Michel and others, de Villepin, Lequiller, Duhamel and others, Brok and others, Borrell and others, Farnleitner and Duff and others). The discussion circle concluded that the present legal basis already allows the creation of new resources, including fiscal resources. It would therefore not be necessary to mention them explicitly. The nature and system of the resources were matters for secondary legislation and would be covered by laws adopted on the present legal basis.*

#### **Article I-54: The multiannual financial framework**

- 1. The multiannual financial framework shall ensure that Union expenditure develops in an orderly manner and within the own resources limits. It shall determine the amounts of the annual ceilings for commitment appropriations by category of expenditure in accordance with the provisions of Article [...] of Part Three.**
- 2. A European law of the Council shall lay down the multiannual financial framework. The Council shall act after obtaining the consent of the European Parliament, which shall be given by a majority of its component members.**
- 3. The annual budget of the Union shall comply with the multiannual financial framework.**

## **Comments**

### **Paragraph 1**

*The discussion circle on the budgetary procedure and a number of amendments (de Vries and de Bruijn, de Villepin, Lopes and Lobo Antunes and Duff and others) propose devoting a specific Article to the financial perspective in Part One of the Constitution.*

*The circle feels that the expression "financial perspective" does not clearly reflect the content of the act, and proposes the term "multiannual financial framework".*

*In the view of the circle, the Article on the financial framework should precede that on the annual budgetary procedure and should contain the following:*

- It must specify that the multiannual financial framework is a binding framework for the annual budget with the purpose of ensuring that Union expenditure develops in an orderly manner.*
- It should include the principle that the financial framework determines the binding amounts of the annual ceilings for commitment appropriations by heading within the limits of the Union's own resources.*

*Several amendments support this approach (Duff and others, which does not mention the headings, de Vries, Lopes and Lobo Antunes, Duhamel and others and Michel and others). One amendment lays stress on compliance with the ceiling for own resources (Hjelm-Wallén).*

*The circle on own resources for its part considered that Part One of the Constitution should deal with the question of the "hierarchical relationship to be established between the Union's system of resources, and in particular the ceiling for those resources, and the multiannual financial framework".*

## Paragraph 2

*In the view of the circle on the budgetary procedure, the Article in Part One of the Constitution on the financial framework should also lay down the legal basis for its adoption.*

*As in the case of own resources, most of the amendments submitted concerning the financial framework relate to the adoption procedure and differ very widely. The Praesidium has followed the indications in the circle's final report.*

*Both the circle on own resources and the circle on the budgetary procedure considered that the qualified majority for the adoption of the provisions on resources and for the adoption of the multiannual financial framework would need to be "augmented" if the Constitution were to provide for such a majority across the board. In the absence of such an augmented qualified majority the two circles suggested that the Council should decide by an ordinary qualified majority.*

*Parliament's consent has to be obtained. It should be remembered that as the voting rule in the Council is a qualified majority, the need to obtain Parliament's consent gives the latter more scope for negotiation than the current procedure under the Interinstitutional Agreement. The discussion circle on the budgetary procedure sought to preserve the elements of "negotiation" between the Institutions. That element is covered by Article 1(5) of the budget provisions in Part Three.*

*The proposal is for a law adopted on a proposal from the Commission. The circle on the budgetary procedure feels that the legislative initiative should lie with the Commission, but without prejudice to the Council's voting rules. An exception will need to be made to the consequences of the Commission initiative with regard to Council voting currently laid down in Article [ex 250 TEC].*

*One amendment (Lopes and Lobo Antunes) proposes extending the last year of the previous framework, should the procedure for adopting the new framework fail. This idea is incorporated in draft Article 1 in Part Three.*

### Paragraph 3

*In the view of the circle on the budgetary procedure, the article on the financial framework in Part One of the Constitution should precede the Article on the annual budgetary procedure and must specify that the multiannual financial framework is a binding framework for the annual budget. A number of amendments also supported this approach.*

*For its part, the circle on own resources considers that Part One of the Constitution should settle the question of the "hierarchical relationship to be established between the Union's system of resources, and in particular the ceiling for those resources, and the multiannual financial framework". The annual budget determining the actual availability of resources should in turn comply with the financial framework.*

### **Article I-55: The Union's ~~budgetary procedure~~budget**

The European Parliament and the Council shall, on a proposal from the Commission and in accordance with the arrangements laid down in Article [ex 272], ~~jointly~~ adopt **the European law determining** the Union's annual budget.

~~The Union's budget shall be established in compliance with the multiannual financial perspective referred to in Article Y (Part II of the Constitution)~~

### **Comments:**

*The annual budgetary procedure has been the subject of conflicting amendments, especially as regards the arrangements to apply where the Parliament and the Council fail to agree.*

*The discussion circle has suggested an outline procedure, the main points of which are specified in the present draft Article; the details are contained in draft Article 3 of the budget provisions in Part Three.*

*It would involve a law adopted by an ad hoc procedure. The Praesidium has deleted "jointly" in order to define more clearly the nature of the procedure.*

*The law would be adopted on a proposal from the Commission. The circle on the budgetary procedure considers that the initiative should belong to the Commission, but without prejudice to the Council's voting rules. It will be necessary to allow an exception to the consequences which – as currently provided for in Article [ex 250 TEC] – the Commission's initiative has for the vote in the Council.*

*The circle proposes that the distinction between compulsory and non-compulsory expenditure should be abolished. This would be subject to the inclusion of the principle whereby the budget authority and the Commission must ensure that the necessary funds are available so that the Union can fulfil its legal obligations vis-à-vis third parties. A number of amendments (de Villepin, Schlüter, Lopes and Lobo Antunes and Roche) propose that this principle should be enshrined in the Constitution. The principle is actually referred to in draft Article [...] of the budget provisions in Part Three.*

## **TITLE VIII: THE UNION AND ITS IMMEDIATE ENVIRONMENT**

### **Article I.56: The Union and its immediate environment**

1. The Union shall develop a special relationship with neighbouring States, aiming to establish an area of prosperity and good neighbourliness, **founded on the values of the Union and** characterised by close and peaceful relations based on cooperation.
2. For this purpose, the Union may conclude and implement specific agreements with the countries concerned in accordance with Article III.226 (ex Article 33) of Part Three of the Constitution. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation.



### **Comments on paragraph 1**

*A number of members of the Convention (Attalides, Borrell and others, Carnero and others, Muscardini) wished to make it clear that the relationship put forward in this Article should be based on respect for democratic principles, the rule of law and human rights, values on which the Union itself is founded. The proposal to add a short phrase responds to this request. It is proposed to avoid listing the values themselves since this would render the article too heavy; in any case the values in question are clearly those set out in Article I-2 of the Constitution.*

### **Comments on Paragraph 2**

*No change*

*NB: A number of members of the Convention called for a reference to be included in the Article to the role of the Council of Europe.*

*Relations between the EU and the Council of Europe are covered in an Article in Part Three (ex Article 35). There is therefore no need for an additional reference to be included here. Furthermore, singling out the Council of Europe could be seen as invidious given that a number of those countries which the Union would wish to include in the proposed relationship are not members of the Council of Europe.*

### **~~Article 43: Criteria to be eligible for Union membership~~**

~~The Union shall be open to all European States whose peoples share the values referred to in Article 2, and who respect them and are committed to promoting them together. Accession to the Union implies acceptance of its Constitution.~~

Comments:

*The deletion of this Article is proposed in order to take on board numerous amendments which call either for the entire Article to be deleted because the first sentence repeats Article I-1(2) and the second sentence states the obvious (Meyer, Farnleitner and 3 others, Duff and 24 others, Lopes, Lobo Antunes), or for the second sentence to be deleted (Santer and 4 others, Demilrap, Fischer, Hjelm–Wallén and 3 others, Fini, Oleksy, de Vries and de Bruijn, Kaufmann).*

*The first sentence of this Article has nevertheless been reproduced in Article I-57, although it has been modified as requested in several amendments (see comments on Article I-57). Even though Article I-1(2) already contains the principle that the Union is open to European States which share its values, it is important to reiterate in Title IX on Union membership that respect for those values is a fundamental criterion for joining the Union.*

**Article I-57: Conditions and procedure for applying for Union membership**

The Union shall be open to all the European States ~~whose peoples share~~ **which respect** the values referred to in Article 2, ~~and who respect them~~ and are committed to promoting them together.

Any European State which wishes to become a member of the Union may address its application to the Council. The European Parliament and the **Member States'** national Parliaments shall be notified of this application. The Council shall act unanimously after consulting the Commission and after **obtaining** the ~~assent~~ **consent** of the European Parliament, ~~which shall act by an absolute majority of its component members~~. The conditions and arrangements for admission shall be the subject of an agreement between the Member States and the candidate State. **That** agreement shall be subject to ratification by all the contracting States, in accordance with their respective constitutional requirements.

### **Comments:**

*The first sentence added to this Article takes over the first sentence of former Article 43. The words "whose peoples" have been deleted to take account of amendments calling for respect for Union values, as a condition for accession, to be an obligation on the candidate States themselves, and not their peoples (Heathcoat-Amory, Berger and 2 others, Timmermans and Queiró, Brok and 34 others, Roche, Fischer, Svensson, Hjelm-Wallén and 3 others, Hain, de Vries and de Bruijn, Bonde). The rest of the amendments made are of a purely technical nature, in order to respond to the recommendations of the group of experts.*

*The proposed procedure for accession to the Union, taken over from Article 49 of the TEU, has been retained. Given that the accession treaties must have the same value as the Treaty establishing the Constitution, certain points of which they amend (e.g. composition of the Institutions), the conditions and procedure for a State's accession to the Union must be the subject of an agreement between the Member States parties to the Treaty establishing the Constitution and the candidate State.*

### **Article I-58: Suspension of Union membership rights**

1. On a reasoned proposal by one third of the Member States, by the European Parliament or by the Commission, the Council, acting by a majority of four fifths of its members after obtaining the ~~assent~~**consent** of the European Parliament, may **adopt a decision determining** ~~determine~~ that there is a clear risk of a serious breach by a Member State of the values mentioned in Article 2. Before making such a determination, the Council shall hear the Member State in question and, acting in accordance with the same procedure, may address recommendations to that State.

The Council shall regularly verify that the grounds on which such a determination was made continue to apply.

2. The European Council, acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the ~~assent~~**consent** of the European Parliament, may **adopt a decision determining** ~~determine~~ the existence of a serious and persistent breach by a Member State of values mentioned in Article 2, after inviting the Member State in question to submit its observations.
3. Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may **adopt a decision suspending** ~~decide to suspend~~ certain of the rights deriving from the application of this Constitution to the Member State in question, including the voting rights of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

The obligations of the Member State in question under the Constitution shall in any case continue to be binding on that State.

4. The Council, acting by a qualified majority, may ~~decide subsequently~~ **adopt a decision varying or revoking** ~~to vary or revoke~~ measures taken under paragraph 3 in response to changes in the situation which led to their being imposed.
5. For the purposes of this Article, the Council shall act without taking into account the vote of the Member State in question. Abstentions by members present in person or represented shall not prevent the adoption of decisions referred to in paragraph 2.

This paragraph shall also apply in the event of voting rights being suspended pursuant to paragraph 3.

6. For the purposes of paragraphs 1 and 2, the European Parliament shall act by a two-thirds majority of the votes cast, representing a majority of its Members.

Comments:

*The amendments made in this Article are of a purely technical nature, in order to respond to the recommendations of the group of experts.*

*The Praesidium has made no other changes in this Article, since the amendments received refer to procedural changes endorsed by a small number of Convention members.*

**Article I-59: Voluntary withdrawal from the Union**

1. Any Member State may decide to withdraw from the European Union in accordance with its own constitutional requirements.
2. A Member State which decides to withdraw shall notify the **European** Council of its intention; **the European Council shall examine that notification. In the light of the guidelines provided by the European Council,** the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the ~~assent~~ consent of the European Parliament.

The **representative of the** withdrawing **Member** State shall not participate in Council or **European Council** discussions or decisions concerning it.

3. This Constitution shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, **unless the European Council, in agreement with the Member State concerned, decides to extend this period.**

**3.4. If a State which has withdrawn from the Union asks to re-join, that request shall be subject to the procedure referred to in Article I-57.**

**Comments**

*The Praesidium considers that the Constitution must contain a provision on voluntary withdrawal from the Union. Although many consider that it is possible to withdraw even in the absence of a specific provision to that effect, the Praesidium feels that inserting a specific provision in the Constitution on voluntary withdrawal from the Union clarifies the situation and allows the introduction of a procedure for negotiating and concluding an agreement between the Union and the Member State concerned setting the arrangements for withdrawal and the framework for future relations. Moreover, the existence of a provision to that effect is an important political signal to anyone inclined to argue that the Union is a rigid entity which it is impossible to leave.*

*The Praesidium has made some amendments to the version of this provision presented to the Convention, as follows:*

- (a) providing that in the case of notification by a Member State of its intention to withdraw, the issue would be examined by the European Council;*
- (b) specifying that if a State which has withdrawn wishes to re-join the Union, it will be subject to the general conditions and procedures for accession.*

**Paragraph 1**

*The amendment is purely editorial.*

## **Paragraph 2**

*The amendments to this proposal are intended to strengthen the withdrawal procedure, as some members of the Convention wished (de Villepin, Demilrap, Tiilikainen and 2 others, Roche, Kiljunen and Vanhanen), by providing that the European Council will examine the notification of withdrawal made by a Member State, and will adopt guidelines on the basis of which the Union will negotiate and conclude the withdrawal agreement with the Member State concerned.*

## **Paragraph 3**

*The Praesidium considers that, since many hold that the right of withdrawal exists even in the absence of an explicit provision to that effect, withdrawal of a Member State from the Union cannot be made conditional upon the conclusion of a withdrawal agreement. Hence the provision that withdrawal will take effect in any event two years after notification. However, in order to encourage a withdrawal agreement between the Union and the State which is withdrawing, Article I-57 provides for the possibility of extending this period by common accord between the European Council and the Member State concerned.*

*The Praesidium considers that it is not necessary to create associated Member State status for the State withdrawing from the Union since Article I-56 on the Union and its immediate environment could provide a basis should the Union consider that appropriate.*

## **Paragraph 4**

*This new paragraph emphasises the fact that, should a State which has withdrawn apply to accede again, its application would be subject to the political assessment set out for the accession procedure (common accord of the Member States inter alia).*

## DRAFT PROTOCOL ON THE ROLE OF NATIONAL PARLIAMENTS IN THE EUROPEAN UNION

THE HIGH CONTRACTING PARTIES,

RECALLING that the way in which individual national parliaments scrutinise their own governments in relation to the activities of the Union is a matter for the particular constitutional organisation and practice of each Member State.

DESIRING, however, to encourage greater involvement of national parliaments in the activities of the European Union and to enhance their ability to express their views on **legislative proposals as well as on other** matters which may be of particular interest to them.

HAVE AGREED UPON the following provisions, which shall be annexed to the Constitution:

I. Information for Member States' national parliaments

1. All Commission **consultation** documents (green and white papers and communications) shall be forwarded directly by the Commission to Member States' national parliaments **upon publication**. The Commission shall **also** send Member States' national parliaments, ~~for information,~~ **the annual legislative programme as well as** any **other** instrument of legislative planning or policy strategy that it submits to the European Parliament and to the Council, at the same time as to those institutions.
2. **All legislative proposals sent to the European Parliament and to the Council shall simultaneously be sent to Member States' national parliaments.** ~~The Commission shall send all its proposals for legislation directly to Member States' national parliaments at the same time as to the European Parliament and to the Council.~~



3. Member States' national parliaments may send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion on whether a Commission's legislative proposal complies with the principle of subsidiarity, according to the procedure laid down in the Protocol on the application of the principles of subsidiarity and proportionality.
4. A six-week period shall elapse between a legislative proposal being made available by the Commission to the European Parliament, the Council and the Member States' national parliaments in their **official languages of the European Union** and the date when it is placed on a Council agenda for adoption or for adoption of a position under ~~the a~~ legislative procedure ~~set out in Article [X] in Part II of the Treaty establishing a constitution for Europe~~, subject to exceptions on grounds of ~~extreme~~ urgency, the reasons for which shall be stated in the act or common position. **Save in urgent cases for which due reasons have been given, no agreement may be established on a legislative proposal during those six weeks. Ten days must elapse between the placing of a proposal on the Council agenda and the adoption of a common position.**
5. The agendas for and the outcome of Council meetings, **including the minutes of meetings where the Council is deliberating on legislative proposals**, shall be transmitted directly to Member States' national parliaments, **at the same time as to Member States' governments.**
- ~~6. The Commission shall send Member States' national parliaments, for information, any instrument of legislative planning or policy strategy that it submits to the European Parliament and to the Council, at the same time as to those institutions.~~
6. The Court of Auditors shall send its annual report to Member States' national parliaments, for information, at the same time as to the European Parliament and to the Council.

7. **In the case of bicameral national parliaments, these provisions shall apply to both chambers.**

II. Interparliamentary cooperation

8. The European Parliament and the national parliaments shall together ~~examine~~ **determine** how interparliamentary cooperation may be effectively **and regularly organised and** promoted within the European Union.
9. The Conference of European Affairs Committees, ~~set up on 16 and 17 November 1989,~~ may submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission. **That Conference shall in addition promote the exchange of information and best practice between Member States' parliaments and the European Parliament, including their special committees. The Conference may also organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy and of common security and defence policy. Such Contributions from the Conference** shall in no way bind national parliaments or prejudice their positions.

**Comments**

1. *The proposed amendment to the preamble to the Protocol is based on the written amendments submitted by several members (in particular Ms Stuart and 18 others, and Mr Andriukaitis and 2 others) and emphasises the role of national parliaments in the examination of legislative proposals, while retaining the more general reference to matters which may be of particular interest to national parliaments.*

2. *The addition of a direct reference to the Commission's annual legislative programme in paragraph 1 is proposed, as well as the merger of paragraph 1 with paragraph 6. This is to accommodate several members (in particular Mr Brok and 42 others, Mr Duff and 16 others, and Mr Farnleitner), who have suggested that the forwarding of the annual legislative programme to the national parliaments should be mentioned more explicitly in the text. The forwarding of the documents "upon publication" is also added on the proposal of several members (in particular Ms Stuart and 18 others)*
3. *The amendment to paragraph 2 is intended to align this text on the revised draft Protocol on subsidiarity and proportionality concerning the "early-warning system", which specifically mentions legislative initiatives in the area of freedom, security and justice (they are subject to a specific threshold under the system). The Protocol should therefore also provide for the direct forwarding of such texts (which may originate from the Member States) to national parliaments. So as not to complicate the paragraph by specifying who sends which type of proposal/initiative, it is proposed that the wording of the paragraph be kept general.*
4. *It is proposed that no change be made to the wording of paragraph 3, which merely points to the subsidiarity early-warning system laid down in the Protocol on the application of the principles of subsidiarity and proportionality, but that the specific reference to the Commission in the third line be deleted to reflect the fact that the early-warning system also relates to initiatives from Member States in the area of freedom, security and justice (see also the amendment to paragraph 2).*
5. *A number of Convention members (in particular Ms Stuart and 18 others, Mr Andriukaitis and 2 others, Ms Azevedo, Mr Nazaré Pereira, Mr Bonde and Mr Seppänen) called for the time limits mentioned in paragraph 4 to be stricter. The proposed additions to the text make it clear that no agreement may be established within the six-week period, except in urgent cases for which due reasons have been given, and that ten days must elapse between the placing of a legislative proposal on the Council agenda and the adoption of a common position.*

6. *The proposed amendments to paragraph 5 are based on calls by a number of Convention members (in particular Ms Stuart and 18 others and Mr Andriukaitis and 2 others) to add the supply to national parliaments of minutes of meetings where the Council is deliberating on legislative proposals, as well as a stipulation that the documents referred to in the paragraph are to be sent to national parliaments at the same time as they are sent to governments.*
7. *The text of paragraph 6 (former paragraph 7) is unchanged in relation to the previous version. There are no requests to delete or amend the substance of this paragraph.*
8. *Some Convention members have proposed amendments concerning the concept of national parliaments in the context of the protocol (notably Mr Pieters, Mr Michel and 6 others, Mr Wuermeling and Mr Altmaier), requesting inter alia that information be forwarded to each chamber in the case of bicameral parliaments or proposing that the Member States' governments may, taking into account their constitutional system, indicate in a statement what constitutes for them the parliament that has legislative competence and must, in terms of each Union policy, be considered to be a national parliament within the meaning of the Protocol. It is proposed that a new paragraph 7 be introduced to take account of the request by several Convention members for information to be sent to each chamber in the case of bicameral national parliaments. National parliaments themselves may also, if their national constitutional system permits, forward legislative proposals and other texts mentioned in the Protocol to regional assemblies (responsibility for arranging for texts to be forwarded would fall to Member States' governments or to national parliaments).*
9. *A number of Convention members (notably Mr Duhamel, Ms Azevedo, Mr Nazaré Pereira, Mr Lopes, Mr Lobo Antunes and Mr Lequiller) have proposed amendments designed to make the text of paragraph 8 more "dynamic", with regard to the efforts of the European Parliament and the national parliaments to promote interparliamentary cooperation. The revised text therefore takes account of proposals to emphasise the definition of interparliamentary cooperation (rather than merely examining how to organise it), its organisation and the regular nature of cooperation.*

10. *A number of Convention members (notably Ms Stuart and 18 others, Mr Andriukaitis and 2 others, Mr Duff and 16 others, Ms Azevedo, Mr Nazaré Pereira, Mr Costa, Mr D'Oliveira Martins, Mr Schlüter, Mr Kirkhope and Mr Lequiller) have proposed various amendments to expand the description of the role of COSAC in paragraph 9. The amendments proposed above are in response to the request that COSAC's role should be defined more accurately, without going into too much detail or including a specific "mandate" for COSAC in the Protocol.*

## PROTOCOL ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY

THE HIGH CONTRACTING PARTIES,

WISHING to ensure that decisions are taken as closely as possible to the citizens of the Union,

RESOLVED to establish the conditions for the application of the principles of subsidiarity and proportionality, as enshrined in Article I-9 of the Constitution, and to establish a system for monitoring the application by the institutions of those principles,

HAVE AGREED UPON the following provisions, which shall be annexed to the Constitution:

1. Each institution shall ensure constant respect for the principles of subsidiarity and proportionality, as laid down in Article I-9 of the Constitution.
2. Before proposing legislative acts, the Commission shall consult widely, ~~except in cases of particular urgency or confidentiality~~. Such consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged. **In cases of exceptional urgency, the Commission shall not conduct such consultations. It shall give reasons for the decision in its proposal.**
3. The Commission shall send all its legislative proposals and its amended proposals to the national Parliaments of the Member States at the same time as to the Union legislator. The European Parliament and the Council shall send their legislative resolutions and common positions respectively, upon adoption, to the national Parliaments of the Member States.

4. The Commission shall justify its proposal with regard to the principles of subsidiarity and proportionality. Any legislative proposal should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity **and proportionality**. This statement should contain some assessment of the proposal's financial impact and, in the case of a framework law, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level must be substantiated by qualitative and, wherever possible, quantitative indicators. The Commission shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved.
5. Any national Parliament **or any chamber of a national Parliament** of a Member State may, within six weeks from the date of transmission of the Commission's legislative proposal, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the proposal in question does not comply with the principle of subsidiarity. It will be for each national Parliament **or each chamber of a national Parliament** to consult ~~each chamber in the case of bicameral parliaments and/or~~, where appropriate, regional parliaments with legislative powers.
6. The European Parliament, the Council and the Commission shall take account of the reasoned opinions **issued by** Member States' national Parliaments **or by a chamber of a national Parliament**.

**The national Parliaments of Member States with unicameral Parliamentary systems shall have two votes, while each of the chambers of a bicameral Parliamentary system shall have one vote.**

**Where reasoned opinions on a Commission proposal's non-compliance with the principle of subsidiarity represent at least one third of all the votes allocated to the Member States' national parliaments and their chambers, the Commission shall review its proposal. This threshold shall be at least a quarter in the case of a Commission proposal or an initiative emanating from a group of Member States under the provisions of Article [8] of Chapter X of Part Three of the Constitution on the area of freedom, security and justice.**

After such review, the Commission may decide to maintain, amend or withdraw its proposal. The Commission shall give reasons for its decision.

7. ~~The national parliaments of the Member States may also, during the period between the convening of the Conciliation Committee meeting and the holding of that meeting, issue a reasoned opinion stating why they consider either that the Council's common position does not comply with the principle of subsidiarity or that the European Parliament's amendments do not so comply. At the Conciliation Committee meeting, the European Parliament and the Council shall take the fullest account of the opinions expressed by the national parliaments of the Member States.~~
8. ~~Under Article [current Article 230] of the Constitution, The Court of Justice shall have jurisdiction to hear actions on grounds of infringement of the principle of subsidiarity~~ **by a legislative act, brought in accordance with the rules laid down in Article [230] by Member States, or, notified by them in accordance with their legal order on behalf of their national Parliament or a chamber of it.** ~~at the request of their national parliaments, in accordance with their respective constitutional rules.~~

In accordance with the same Article of the Constitution, the Committee of the Regions may also bring such actions as regards legislative acts ~~on which it was consulted.~~ **for the adoption of which the Constitution provides that it be consulted.**



9. The Commission shall submit each year to the European Council, the European Parliament, the Council and **the national parliaments of the Member States** a report on the application of Article I-9 of the Constitution. This annual report shall also be forwarded to the Committee of the Regions and to the Economic and Social Committee.

## **Point 2**

### **Comments:**

*The proposed change to the wording follows up the amendments calling for the Commission to give reasons for its decision when it does not conduct the envisaged consultations.*

## **Point 4**

### **Comments:**

*The purpose of the change made is to follow up those amendments calling for the Commission to justify its proposals with regard to both subsidiarity and proportionality (see, in particular, Duff + 16 Convention members + Teufel). It should be pointed out that under paragraph 4 of the existing Protocol on the application of the principles of subsidiarity and proportionality, the Commission has to justify proposed legislation with regard to subsidiarity and proportionality.*

*On the other hand, the amendments aimed at broadening the scope of the early-warning system to include the principle of proportionality were not taken on board. As Working Group I had concluded, the principle of subsidiarity is an essentially political principle which, by its very nature, lends itself to scrutiny by national Parliaments. However, the essentially legal nature of the principle of proportionality (the use of one legal instrument or of another) argues in favour of excluding it from the early-warning system. The same applies to the principle of delimitation of competences.*

## **Point 5**

### **Comments:**

*It emerges both from the amendments received and from discussions during the plenary session that a large number of Convention members are in favour of participation by the chambers of national Parliaments in the early-warning system provided that Member States whose Parliaments consist of a single chamber are not penalised: (Zieleniec, Stuart + 11 Convention members, Lequiller, Dini, Bazile, Wuermeling, Altmaier, Meyer, Teufel, Vanhanen, Fischer). Various proposals have been put forward to take these two constraints into account.*

*The Praesidium proposes authorising either one of the two chambers in those Member States which have bicameral systems to activate the early-warning system while ensuring that Member States with unicameral systems are not set at a disadvantage.*

## **Point 6**

### **Comments:**

*There was lengthy debate in the Convention on the one-third threshold. A number of Convention members wanted it raised, others wanted it lowered. The Praesidium therefore proposes keeping the one-third threshold, as most likely to achieve consensus. However, a new paragraph has been inserted since, during the debate on the articles on the area of freedom, security and justice, many Convention members felt that the threshold should be one quarter when proposed legislation related to cooperation on criminal and justice matters (former 3rd pillar).*

*The amendments regarding the number of votes allocated to national Parliaments incorporate the solution proposed by various Convention members so as not to penalise those Member States whose Parliaments consist of a single chamber.*

## **Point 7**

### **Comments:**

*A large number of Convention members (Michel + 6 Belgian Convention members, Van Eekelen, de Vries + de Bruijn, Voggenhuber, Nagy, Duhamel + 8 Convention members of the Socialist Group, Duff + 16 Convention members, Hain, Lamassoure, Hjelm-Wallén + 3 Swedish Convention members, Lennmarker) entered reservations on paragraph 7, either orally or in writing. It is therefore suggested that it be deleted.*

## **Point 8**

### **Comments:**

*The amendments made are primarily intended to follow up the majority view which appears to be emerging to give Member States' national Parliaments the right to bring actions. Opinions varied more widely as regards:*

- whether Member States' national Parliaments must exercise this right directly or via their national governments;*
- whether each of the chambers of the national Parliaments of Member States with bicameral systems should have such a right.*

*The Praesidium proposes to adopt a solution which is intended to be balanced and which, while giving Member States' national Parliaments the right to bring action before the Court of Justice on grounds of infringement of the principle of subsidiarity, leaves it to the legal orders of the Member States to determine the arrangements for exercising that right, including the question of granting it to each of the chambers of national Parliaments. The reference to the national legal order rather than to "constitutional rules" is intended to allow Member States to resolve the matter in their Constitution or at a lower level.*

*Regarding granting the Committee of the Regions the right to bring action on grounds of infringement of the principle of subsidiarity the Praesidium proposes giving it such a right in cases where the Constitution requires that it be consulted before adoption of a legislative act. On the other hand, the right of referral would not be granted in cases where the European Parliament or the Council considered it useful to consult the Committee of the Regions on their own initiative, nor where the Committee decided to take up a matter or issue an opinion on its own initiative.*

*The Praesidium did not take on board granting regions with legislative powers the right of referral to the Court on grounds of infringement of the principle of subsidiarity. This is not supported by a sufficient number of Convention members.*

## **Point 9**

### **Comments:**

*The amendment made follows up a suggestion which received very broad support within the Convention (de Vries, de Bruijn, Andriukaitis, Gricius, Sivickas, Belohorska, Figel, Migas, Kiljunen, Vanhanen, Stuart + 11 Convention members, Bonde, Seppanen, Floch, Lequiller, Azevedo, Nazaré Pereira, Lopes, Lobo), namely, to make the national Parliaments recipients of the Commission's annual report on the application of the principles of subsidiarity and proportionality.*