

CONV 725/03

VOLUME II

**COVER NOTE**

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from : Praesidium

to : Convention

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Nos prev. docs : CONV 729/03, CONV 723/03, CONV 685/03, CONV 647/03, CONV 614/03

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Subject : **Draft Constitution, Volume II**  
**– Draft text of Parts Two, Three and Four**

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1. Members of the Convention will find attached the draft version of Parts Two, Three and Four drawn up by the Praesidium; this draft:
  - includes the Charter of Fundamental Rights as Part Two;
  - incorporates into the basic text on policies (Part Three in this document) which was drawn up by the experts nominated by the Legal Services, the groups of articles dealing with external action and the area of freedom, security and justice revised in the light of amendments received and the debates in plenary;
  - also inserts into Part Three:
    - new draft articles on the budgetary procedure and economic governance, the wording of which reflects the recommendations of the working groups and discussion circles and the ensuing discussions and is designed to ensure consistency with Part One, and
    - new legal bases resulting from the approach adopted in Part One (Title X) on competences;

- includes, as Part Four, draft general and final provisions revised in the light of the amendments received and the debates in plenary.
2. As regards decision-making procedures, draft Part Three reflects the breakdown between legislative and non-legislative acts and the suggestions for extending the ordinary legislative procedure, which were explained in cover note CONV 729/03, as well as a few other changes in the decision-making procedures in connection with the new sections of texts. A full list of the legal bases for which a procedural change is suggested is contained in Annex II to CONV 727/03.
  3. As regards the institutional provisions, the amendments made are independent of the crucial issues still to be settled. These provisions will of course have to be adapted subsequently in order to reflect what is decided for the provisions in Part One.
  4. Members of the Convention are in addition referred to CONV 726/03, CONV 727/03 and CONV 728/03, which contain the texts of Parts Two, Three and Four, with the changes to the previous versions highlighted and an explanatory note setting out the considerations which led the Praesidium to propose the changes in question.
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## **PART TWO**

### **THE CHARTER OF FUNDAMENTAL RIGHTS OF THE UNION**

## PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.



## **TITLE I**

### **DIGNITY**

#### Article II-1 Human dignity

Human dignity is inviolable. It must be respected and protected.

#### Article II-2 Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

#### Article II-3 Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
  - (a) the free and informed consent of the person concerned, according to the procedures laid down by law,
  - (b) the prohibition of eugenic practices, in particular those aiming at the selection of persons,
  - (c) the prohibition on making the human body and its parts as such a source of financial gain,
  - (d) the prohibition of the reproductive cloning of human beings.

#### Article II-4 Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

#### Article II-5 Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

## **TITLE II**

### **FREEDOMS**

#### **Article II-6** **Right to liberty and security**

Everyone has the right to liberty and security of person.

#### **Article II-7** **Respect for private and family life**

Everyone has the right to respect for his or her private and family life, home and communications.

#### **Article II-8** **Protection of personal data**

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

#### **Article II-9** **Right to marry and right to found a family**

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

#### **Article II-10** **Freedom of thought, conscience and religion**

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article II-11  
Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Article II-12  
Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article II-13  
Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article II-14  
Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article II-15  
Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article II-16  
Freedom to conduct a business

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

Article II-17  
Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

Article II-18  
Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Constitution.

Article II-19  
Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

## **TITLE III**

### **EQUALITY**

#### **Article II-20 Equality before the law**

Everyone is equal before the law.

#### **Article II-21 Non-discrimination**

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

#### **Article II-22 Cultural, religious and linguistic diversity**

The Union shall respect cultural, religious and linguistic diversity.

#### **Article II-23 Equality between men and women**

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

#### **Article II-24 The rights of the child**

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

#### Article II-25

##### The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

#### Article II-26

##### Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

## **TITLE IV**

### **SOLIDARITY**

#### Article II-27

##### Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

#### Article II-28

##### Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

#### Article II-29

##### Right of access to placement services

Everyone has the right of access to a free placement service.

#### Article II-30

##### Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

#### Article II-31

##### Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

#### Article II-32

##### Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

#### Article II-33

##### Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

#### Article II-34

##### Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

#### Article II-35

##### Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.



Article II-36  
Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Constitution, in order to promote the social and territorial cohesion of the Union.

Article II-37  
Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article II-38  
Consumer protection

Union policies shall ensure a high level of consumer protection.

## TITLE V

### CITIZENS' RIGHTS

#### Article II-39

##### Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

#### Article II-40

##### Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

#### Article II-41

##### Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies and agencies of the Union.
2. This right includes:
  - (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
  - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
  - (c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the official languages of the Union and must have an answer in the same language.

Article II-42  
Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies and agencies of the Union, in whatever form they are produced.

Article II-43  
Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the institutions, bodies or agencies of the Union, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Article II-44  
Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article II-45  
Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Constitution, to nationals of third countries legally resident in the territory of a Member State.

Article II-46  
Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

## **TITLE VI**

### **JUSTICE**

#### **Article II-47**

##### **Right to an effective remedy and to a fair trial**

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

#### **Article II-48**

##### **Presumption of innocence and right of defence**

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

#### **Article II-49**

##### **Principles of legality and proportionality of criminal offences and penalties**

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

#### **Article II-50**

##### **Right not to be tried or punished twice in criminal proceedings for the same criminal offence**

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

## **TITLE VII**

### **GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER**

#### **Article II-51 Scope**

1. The provisions of this Charter are addressed to the institutions, bodies and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the other Parts of the Constitution.
2. This Charter does not extend the scope of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks defined in the other Parts of the Constitution.

#### **Article II-52 Scope of guaranteed rights**

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter for which provision is made in other Parts of the Constitution shall be exercised under the conditions and within the limits defined by these relevant Parts
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions and bodies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.
6. Full account shall be taken of national laws and practices as specified in this Charter.

Article II-53  
Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article II-54  
Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

## **PART THREE**

### **THE POLICIES AND FUNCTIONING OF THE UNION**

## **TITLE I**

### **CLAUSES OF GENERAL APPLICATION**

#### **Article III-1 (ex Article 3(2))**

In all the activities referred to in this Part, the Union shall aim to eliminate inequalities, and to promote equality, between men and women.

#### **Article III-2 (ex Article 6)**

Environmental protection requirements must be integrated into the definition and implementation of the Union policies and activities referred to in this Part, in particular with a view to promoting sustainable development.

#### **Article III-3 (ex Article 16)**

Without prejudice to [ex Articles 73, 86 and 87], and given the place occupied by services of general economic interest as services to which all in the Union attribute value as well as their role in promoting social and territorial cohesion, the Union and the Member States, each within their respective powers and within the scope of application of the Constitution, shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions.

## **TITLE II**

### **NON-DISCRIMINATION AND CITIZENSHIP**

#### **Article III-4 (ex Article 12)**

The European law or framework law shall lay down rules to prohibit discrimination on grounds of nationality as referred to in [Article I-4].

#### **Article III-5 (ex Article 13)**

1. Without prejudice to the other provisions of the Constitution and within the limits of the powers conferred by it upon the Union, a European law or framework law of the Council may establish the measures needed to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The Council shall act unanimously after consulting the European Parliament.



2. By way of derogation from paragraph 1, the European law or framework law shall establish the Union's incentive measures, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1, excluding any harmonisation of the laws and regulations of the Member States.

#### Article III-6 (ex Article 18)

1. If action by the Union should prove necessary to attain the objective, referred to in [Article I-8], of the right of every Union citizen to move and reside freely and the Constitution has not provided the necessary powers, the European law or framework law may facilitate the exercise of that right.

2. For the same purposes as that referred to in paragraph 1 and unless the Constitution has provided for powers of action in this area, measures concerning passports, identity cards, residence permits or any other such document and measures concerning social security or social protection shall be laid down by a unanimously adopted European law or framework law of the Council.

#### Article III-7 (ex Article 19)

A European law or framework law of the Council shall determine the detailed arrangements for exercising the right, referred to in [Article I-8], for every Union citizen to vote and to stand as a candidate in municipal elections and elections to the European Parliament in their Member State of residence. The Council shall act unanimously after consulting the European Parliament. These arrangements may provide for derogations where warranted by problems specific to a Member State.

The right to vote and to stand as a candidate in elections to the European Parliament shall be exercised without prejudice to [Article 190(4)] and the measures adopted for its implementation.

#### Article III-8 (ex Article 20)

Member States shall adopt the necessary provisions to secure diplomatic and consular protection of citizens of the Union in third countries as referred to in [Article I-8].

A European law of the Council adopted on a proposal by the Commission may establish the measures necessary to facilitate such protection. It shall act after consulting the European Parliament.

#### Article III-9 (ex Article 21)

The languages in which every citizen of the Union may write to the institutions or bodies under [Article I-8], and have an answer in the same language, are those listed in [ex Article 314]. The institutions and bodies referred to in this Article are those listed in [Articles I-18(2) and I-31] and also the European Ombudsman.

### Article III-10 (ex Article 22)

The Commission shall report to the European Parliament, to the Council and to the Economic and Social Committee every three years on the application of the provisions of [Article I-7 ] and of [this title]. This report shall take account of the development of the Union.

On this basis, and without prejudice to the other provisions of the Constitution, a European law or framework law of the Council shall add to the rights laid down in [Title V of Part Two]. The Council shall act unanimously after obtaining the consent of the European Parliament. This law or framework law shall not enter into force until each Member State has given its approval in accordance with its constitutional requirements.

**TITLE III**  
**INTERNAL POLICIES AND ACTION**

**CHAPTER I**  
**INTERNAL MARKET**

**SECTION 1**  
**ESTABLISHMENT OF THE INTERNAL MARKET**

Article III-11 (ex Article 14)

1. The Union shall adopt measures with the aim of establishing the internal market, in accordance with this Article, [ex Articles 15 and 26], [ex Article 47(2)] and [ex Articles 49, 80, 93 and 95] and without prejudice to the other provisions of the Constitution.
2. The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Constitution.
3. The Council, on a proposal from the Commission, shall adopt European regulations and decisions laying down the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned.

Article III-12 (ex Article 15)

When drawing up its proposals with a view to achieving the objectives set out in [ex Article 14], the Commission shall take into account the extent of the effort that certain economies showing differences in development will have to sustain for the establishment of the internal market and it may propose appropriate measures.

If these measures take the form of derogations, they must be of a temporary nature and must cause the least possible disturbance to the functioning of the internal market.

### Article III-13 (ex Article 297)

Member States shall consult each other with a view to taking together the steps needed to prevent the functioning of the common market being affected by measures which a Member State may be called upon to take in the event of serious internal disturbances affecting the maintenance of law and order, in the event of war, serious international tension constituting a threat of war, or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security.

### Article III-14 (ex Article 298)

If measures taken in the circumstances referred to in [ex Articles 296 and 297] have the effect of distorting the conditions of competition in the internal market, the Commission shall, together with the State concerned, examine how these measures can be adjusted to the rules laid down in the Constitution.

By way of derogation from the procedure laid down in [ex Articles 226 and 227], the Commission or any Member State may bring the matter directly before the Court of Justice if it considers that another Member State is making improper use of the powers provided for in [ex Articles 296 and 297]. The Court of Justice shall give its ruling in camera.

## SECTION 2

### FREE MOVEMENT OF PERSONS AND SERVICES

#### Subsection 1

#### Workers

### Article III-15 (ex Article 39)

1. Workers shall have the right to move freely within the Union.
2. Any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment shall be prohibited.
3. Workers shall have the right, subject to limitations justified on grounds of public policy, public security or public health:
  - (a) to accept offers of employment actually made;
  - (b) to move freely within the territory of Member States for this purpose;

- (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
  - (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in European regulations adopted by the Commission.
4. This Article shall not apply to employment in the public service.

#### Article III-16 (ex Article 40)

A European law or framework law shall establish the measures needed to bring about freedom of movement for workers, as defined in [ex Article 39]. It shall be adopted after consulting the Economic and Social Committee.

The European law or framework law shall aim, in particular, to:

- (a) ensure close cooperation between national employment services;
- (b) abolish those administrative procedures and practices and those qualifying periods in respect of eligibility for available employment, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to liberalisation of the movement of workers;
- (c) abolish all such qualifying periods and other restrictions provided for either under national legislation or under agreements previously concluded between Member States as impose on workers of other Member States conditions regarding the free choice of employment other than those imposed on workers of the State concerned;
- (d) set up appropriate machinery to bring offers of employment into touch with applications for employment and to facilitate the achievement of a balance between supply and demand in the employment market in such a way as to avoid serious threats to the standard of living and level of employment in the various regions and industries.

#### Article III-17 (ex Article 41)

Member States shall, within the framework of a joint programme, encourage the exchange of young workers.

### Article III-18 (ex Article 42)

In the field of social security, a European law or framework law shall establish such measures as are necessary to bring about freedom of movement for workers by introducing a system to secure for migrant workers and their dependants:

- (a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries;
- (b) payment of benefits to persons resident in the territories of Member States.

### Subsection 2

#### Freedom of establishment

### Article III-19 (ex Article 43)

Within the framework of [this Section], restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

Nationals of a Member State shall have the right, in the territory of another Member State, to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of [the second paragraph of ex Article 48], under the conditions laid down for its own nationals by the law of the Member State where such establishment is effected, subject to the provisions of the [ex chapter] relating to capital.

### Article III-20 (ex Article 44)

1. A European framework law shall establish measures in order to attain freedom of establishment as regards a particular activity. It shall be adopted after consulting the Economic and Social Committee.
2. The European Parliament, the Council and the Commission shall carry out the duties devolving upon them under paragraph 1, in particular:
  - (a) by according, as a general rule, priority treatment to activities where freedom of establishment makes a particularly valuable contribution to the development of production and trade;
  - (b) by ensuring close cooperation between the competent authorities in the Member States in order to ascertain the particular situation within the Union of the various activities concerned;

- (c) by abolishing those administrative procedures and practices, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to freedom of establishment;
- (d) by ensuring that workers of one Member State employed in the territory of another Member State may remain in that territory for the purpose of taking up activities therein as self-employed persons, where they satisfy the conditions which they would be required to satisfy if they were entering that State at the time when they intended to take up such activities;
- (e) by enabling a national of one Member State to acquire and use land and buildings situated in the territory of another Member State, insofar as this does not conflict with the principles laid down in [ex Article 33(2)];
- (f) by effecting the progressive abolition of restrictions on freedom of establishment in every branch of activity under consideration, both as regards the conditions for setting up agencies, branches or subsidiaries in the territory of a Member State and as regards the conditions governing the entry of personnel belonging to the main establishment into managerial or supervisory posts in such agencies, branches or subsidiaries;
- (g) by coordinating to the necessary extent the safeguards which, for the protection of the interests of members and others, are required by Member States of companies or firms within the meaning of [the second paragraph of ex Article 48] with a view to making such safeguards equivalent throughout the Community;
- (h) by satisfying themselves that the conditions of establishment are not distorted by aids granted by Member States.

#### Article III-21 (ex Article 45)

This chapter shall not apply, so far as any given Member State is concerned, to activities which in that State are connected, even occasionally, with the exercise of official authority.

A European law or framework law may exempt certain activities from application of this chapter.

#### Article III-22 (ex Article 46)

1. [This Chapter] and measures adopted in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action in Member States providing for special treatment for foreign nationals on grounds of public policy, public security or public health.
2. A European framework law shall coordinate the national provisions referred to in paragraph 1.

### Article III-23 (ex Article 47)

1. A European framework law shall make it easier for persons to take up and pursue activities as self-employed persons. It shall cover:
  - (a) the mutual recognition of diplomas, certificates and other evidence of formal qualifications;
  - (b) the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons.
2. In the case of the medical and allied and pharmaceutical professions, the progressive abolition of restrictions shall be dependent upon coordination of the conditions for their exercise in the various Member States.

### Article III-24 (ex Article 48)

Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union shall, for the purposes of [this ex-chapter], be treated in the same way as natural persons who are nationals of Member States.

"Companies or firms" means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.

### Article III-25 (ex Article 294)

Member States shall accord nationals of the other Member States the same treatment as their own nationals as regards participation in the capital of companies or firms within the meaning of [Article 48], without prejudice to the application of the other provisions of the Constitution.

### Subsection 3

#### Freedom to provide services

### Article III-26 (ex Article 49)

Within the framework of [this ex-chapter], restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.

A European law or framework law may extend the provisions of this chapter to nationals of a third country who provide services and who are established within the Union.



#### Article III-27 (ex Article 50)

Services shall be considered to be "services" within the meaning of the Constitution where they are normally provided for remuneration, insofar as they are not governed by the provisions relating to freedom of movement for goods, capital and persons.

"Services" shall in particular include:

- (a) activities of an industrial character;
- (b) activities of a commercial character;
- (c) activities of craftsmen;
- (d) activities of the professions.

Without prejudice to the [ex-chapter] relating to the right of establishment, the person providing a service may, in order to do so, temporarily pursue his activity in the Member State where the service is provided, under the same conditions as are imposed by that State on its own nationals.

#### Article III-28 (ex Article 51)

1. Freedom to provide services in the field of transport shall be governed by the [title] relating to transport.
2. The liberalisation of banking and insurance services connected with movements of capital shall be effected in step with the liberalisation of movement of capital.

#### Article III-29 (ex Article 52)

1. A European framework law shall establish the measures in order to achieve the liberalisation of a specific service. It shall be adopted after consulting the Economic and Social Committee.
2. As regards the European framework law referred to in paragraph 1, priority shall as a general rule be given to those services which directly affect production costs or the liberalisation of which helps to promote trade in goods.

#### Article III-30 (ex Article 53)

The Member States declare their readiness to undertake the liberalisation of services beyond the extent required by the European framework law adopted pursuant to [ex Article 52(1)], if their general economic situation and the situation of the economic sector concerned so permit.

To this end, the Commission shall make recommendations to the Member States concerned.

Article III-31 (ex Article 54)

As long as restrictions on freedom to provide services have not been abolished, each Member State shall apply such restrictions without distinction on grounds of nationality or of residence to all persons providing services within the meaning of [the first paragraph of ex Article 49].

Article III-32 (ex Article 55)

[ex Articles 45 to 48] shall apply to the matters covered by [this ex-Chapter].

SECTION 3  
FREE MOVEMENT OF GOODS

Subsection 1

Customs union

Article III-33 (ex Article 23)

1. The Union shall comprise a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries.
2. [ex Article 25] and [ex Chapter 2] of [this ex-Title] shall apply to products originating in Member States and to products coming from third countries which are in free circulation in Member States.

Article III-34 (ex Article 24)

Products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State, and if they have not benefited from a total or partial drawback of such duties or charges.

Article III-35 (ex Article 25)

Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature.

Article III-36 (ex Article 26)

The Council, on a proposal from the Commission, shall adopt the European regulations and decisions fixing Common Customs Tariff duties.

### Article III-37 (ex Article 27)

In carrying out the tasks entrusted to it under [this ex-chapter] the Commission shall be guided by:

- (a) the need to promote trade between Member States and third countries;
- (b) developments in conditions of competition within the Union insofar as they lead to an improvement in the competitive capacity of undertakings;
- (c) the requirements of the Union as regards the supply of raw materials and semi-finished goods; in this connection the Commission shall take care to avoid distorting conditions of competition between Member States in respect of finished goods;
- (d) the need to avoid serious disturbances in the economies of Member States and to ensure rational development of production and an expansion of consumption within the Union.

### Subsection 2

#### Customs cooperation

### Article III-38 (ex Article 135)

Within the scope of application of the Constitution, a European law or framework law shall establish measures in order to strengthen customs cooperation between Member States and between the latter and the Commission. These measures shall not concern the application of national criminal law or the national administration of justice.

### Subsection 3

#### Prohibition of quantitative restrictions

### Article III-39 (ex Article 28)

Quantitative restrictions on imports and exports and all measures having equivalent effect shall be prohibited between Member States.

#### Article III-40 (ex Article 30)

[ex Article 28] shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

#### Article III-41 (ex Article 31)

1. Member States shall adjust any State monopolies of a commercial character so as to ensure that no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of Member States.

This Article shall apply to any body through which a Member State, in law or in fact, either directly or indirectly supervises, determines or appreciably influences imports or exports between Member States. It shall likewise apply to monopolies delegated by the State to others.

2. Member States shall refrain from introducing any new measure which is contrary to the principles laid down in [ex paragraph 1] or which restricts the scope of the Articles dealing with the prohibition of customs duties and quantitative restrictions between Member States.

3. If a State monopoly of a commercial character has rules which are designed to make it easier to dispose of agricultural products or obtain for them the best return, steps should be taken in applying this Article to ensure equivalent safeguards for the employment and standard of living of the producers concerned.

## SECTION 4

### CAPITAL AND PAYMENTS

#### Article III-42 (ex Article 56)

1. Within the framework of this Chapter, restrictions both on the movement of capital and on payments between Member States and between Member States and third countries shall be prohibited.

#### Article III-43 (ex Article 57)

1. [ex Article 56] shall be without prejudice to the application to third countries of any restrictions which exist on 31 December 1993 under national or Union law adopted in respect of the movement of capital to or from third countries involving direct investment – including in real estate – establishment, the provision of financial services or the admission of securities to capital markets.
2. A European law or framework law shall enact measures on the movement of capital to or from third countries involving direct investment – including investment in real estate – establishment, the provision of financial services or the admission of securities to capital markets.

The European Parliament and the Council shall endeavour to achieve the objective of free movement of capital between Member States and third countries to the greatest extent possible and without prejudice to the other [chapters] of the Constitution.

3. Notwithstanding paragraph 2, only a Council European law or framework law may enact measures which constitute a step back in Union law as regards the liberalisation of the movement of capital to or from third countries. The Council shall act unanimously after consulting the European Parliament.

#### Article III-44 (ex Article 58)

1. [ex Article 56] shall be without prejudice to the right of Member States:
  - (a) to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested;
  - (b) to take all requisite steps to prevent infringements of national provisions laid down by law or regulation, in particular in the field of taxation and the prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information, or to take measures which are justified on grounds of public policy or public security.

2. This [Chapter] shall be without prejudice to the applicability of restrictions on the right of establishment which are compatible with the Constitution.
3. The measures and procedures referred to in paragraphs 1 and 2 shall not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments as defined in [ex Article 56].

#### Article III-45 (ex Article 59)

Where, in exceptional circumstances, movements of capital to or from third countries cause, or threaten to cause, serious difficulties for the operation of economic and monetary union, the Council, on a proposal from the Commission, may adopt European regulations or decisions introducing safeguard measures with regard to third countries for a period not exceeding six months if such measures are strictly necessary. It shall act after consulting the European Central Bank.

#### Article III-46 (new)

Where necessary to achieve the objectives set out in Article [ex 1 JHA], in particular as regards prevention of and fight against organised crime, terrorism and trafficking in human beings, the European law may define a framework for measures with regard to capital movements and payments, such as the freezing of funds, financial assets or economic gains belonging to, or owned or held by, natural or legal persons, groups or non-state entities.

The Council, on a proposal from the Commission, shall adopt European regulations or European decisions in order to implement the law referred to above. It shall act on a proposal from the Commission.

SECTION 5  
RULES ON COMPETITION

Subsection 1

Rules applying to undertakings

Article III-47 (ex Article 81)

1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:
  - (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
  - (b) limit or control production, markets, technical development, or investment;
  - (c) share markets or sources of supply;
  - (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
  - (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.
3. Paragraph 1 may, however, be declared inapplicable in the case of:
  - (a) any agreement or category of agreements between undertakings;
  - (b) any decision or category of decisions by associations of undertakings;
  - (c) any concerted practice or category of concerted practices, which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
  - (d) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;



- (e) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

#### Article III-48 (ex Article 82)

Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market insofar as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

#### Article III-49 (ex Article 83)

1. The Council, on a proposal from the Commission, shall adopt the European regulations to give effect to the principles set out in [ex Articles 81 and 82]. It shall act after consulting the European Parliament.

2. The European regulations referred to in paragraph 1 shall be designed in particular:

- (a) to ensure compliance with the prohibitions laid down in [ex Article 81(1)] and in [ex Article 82] by making provision for fines and periodic penalty payments;
- (b) to lay down detailed rules for the application of [ex Article 81(3)], taking into account the need to ensure effective supervision on the one hand, and to simplify administration to the greatest possible extent on the other;
- (c) to define, if need be, in the various branches of the economy, the scope of the provisions of [ex Articles 81 and 82];
- (d) to define the respective functions of the Commission and of the Court of Justice in applying the provisions laid down in this paragraph;
- (e) to determine the relationship between national laws and this Section or the European regulations adopted pursuant to this Article.

#### Article III-50 (ex Article 84)

Until the entry into force of the European regulations adopted in pursuance of [ex Article 83], the authorities in Member States shall rule on the admissibility of agreements, decisions and concerted practices and on abuse of a dominant position in the internal market in accordance with their internal law and [ex Articles 81, in particular paragraph 3, and 82].

#### Article III-51 (ex Article 85)

1. Without prejudice to [ex Article 84], the Commission shall ensure the application of the principles laid down in [ex Articles 81 and 82]. On application by a Member State or on its own initiative, and in cooperation with the competent authorities in the Member States, which shall give it their assistance, the Commission shall investigate cases of suspected infringement of these principles. If it finds that there has been an infringement, it shall propose appropriate measures to bring it to an end.
2. If the infringement is not brought to an end, the Commission shall adopt a reasoned European decision recording the infringement of the principles. The Commission may publish its decision and authorise Member States to take the steps, the conditions and details of which it shall determine, needed to remedy the situation.

#### Article III-52 (ex Article 86)

1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the provisions of the Constitution, in particular [Article 12 and Articles 81 to 89].
2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the provisions of the Constitution, in particular to the rules on competition, insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the Union's interests.
3. The Commission shall ensure the application of this Article and shall, where necessary, adopt appropriate European regulations or decisions.

## Subsection 2

### Aids granted by Member States

#### Article III-53 (ex Article 87)

1. Save as otherwise provided in the Constitution, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the internal market.
2. The following shall be compatible with the internal market:
  - (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
  - (b) aid to make good the damage caused by natural disasters or exceptional occurrences;
  - (c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, insofar as such aid is required in order to compensate for the economic disadvantages caused by that division.
3. The following may be considered to be compatible with the internal market:
  - (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
  - (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
  - (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
  - (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest;
  - (e) such other categories of aid as may be specified by European regulations or decisions adopted by the Council on a proposal from the Commission.

### Article III-54 (ex Article 88)

1. The Commission, in cooperation with Member States, shall keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the internal market.
2. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a Member State or through State resources is not compatible with the internal market having regard to [ex Article 87], or that such aid is being misused, it shall adopt a European decision requiring the State concerned to abolish or alter such aid within a period of time to be determined by the Commission.

If the State concerned does not comply with this European decision within the prescribed time, the Commission or any other interested Member State may, in derogation from [ex Articles 226 and 227], refer the matter to the Court of Justice direct.

On application by a Member State, the Council may adopt unanimously a European decision that aid which that State is granting or intends to grant shall be considered to be compatible with the internal market, in derogation from [ex Article 87] or from European regulations provided for in [ex Article 89], if such a decision is justified by exceptional circumstances. If, as regards the aid in question, the Commission has already initiated the procedure provided for in the first subparagraph of this paragraph, the fact that the State concerned has made its application to the Council shall have the effect of suspending that procedure until the Council has made its attitude known.

If, however, the Council has not made its attitude known within three months of the said application being made, the Commission shall give its decision on the case.

3. The Commission shall be informed by the Member States, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the internal market having regard to [ex Article 87], it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.

### Article III-55 (ex Article 89)

The Council, on a proposal from the Commission, may adopt European regulations for the application of [ex Articles 87 and 88] and for determining in particular the conditions in which [ex Article 88(3)] shall apply and the categories of aid exempted from this procedure. It shall act after consulting the European Parliament.

## SECTION 6

### FISCAL PROVISIONS

#### Article III-56 (ex Article 90)

No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.

Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.

#### Article III-57 (ex Article 91)

Where products are exported by a Member State to the territory of another Member State, any repayment of internal taxation shall not exceed the internal taxation imposed on them whether directly or indirectly.

#### Article III-58 (ex Article 92)

In the case of charges other than turnover taxes, excise duties and other forms of indirect taxation, remissions and repayments in respect of exports to other Member States may not be granted and countervailing charges in respect of imports from Member States may not be imposed unless the provisions contemplated have been previously approved for a limited period by a European decision adopted by the Council on a proposal from the Commission.

#### Article III-59 (ex Article 93)

1. A European law or framework law of the Council shall lay down measures for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation provided that such harmonisation is necessary for the functioning of the internal market and to avoid distortion of competition. The law or framework law shall be adopted unanimously after consulting the European Parliament and the Economic and Social Committee.
2. Where the Council, acting unanimously on a proposal from the Council, finds that the measures referred to in paragraph 1 relate to administrative cooperation or to combating tax fraud, it shall act, notwithstanding paragraph 1, by a qualified majority when adopting the European law or framework law adopting these measures.

#### Article III-60 (new)

Where the Council, acting unanimously on a proposal from the Commission, finds that measures on company taxation relate to administrative cooperation or combating tax fraud, it shall adopt, by a qualified majority, a law or framework law laying down these measures, provided that they are necessary for the functioning of the internal market and to avoid distortion of competition.

The law or framework law shall be adopted after consulting the European Parliament and the Economic and Social Committee.

### SECTION 7

#### APPROXIMATION OF LEGISLATION

#### Article III-61 (ex Article 94)

A Council European framework law shall establish measures for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the internal market. The Council shall act unanimously after consulting the European Parliament and the Economic and Social Committee.

#### Article III-62 (ex Article 95)

1. By way of derogation from [ex Article 94] and save where otherwise provided in the Constitution, this Article shall apply for the achievement of the objectives set out in [ex Article 14]. A European law or framework law shall establish measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market. It shall be adopted after consulting the Economic and Social Committee.
2. Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons or to those relating to the rights and interests of employed persons.
3. The Commission, in its proposals submitted under paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective.
4. If, after the adoption of a harmonisation measure by means of European law or framework law or a Commission regulation, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in [ex Article 30], or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.

5. Moreover, without prejudice to paragraph 4, if, after the adoption of a harmonisation measure by means of a European law or framework law or a Commission regulation, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure, it shall notify the Commission of the envisaged provisions and the reasons for them.

6. The Commission shall, within six months of the notifications as referred to in paragraphs 4 and 5, adopt a European decision approving or rejecting the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they constitute an obstacle to the functioning of the internal market.

In the absence of a decision by the Commission within this period the national provisions referred to in paragraphs 4 and 5 shall be deemed to have been approved.

When justified by the complexity of the matter and in the absence of danger for human health, the Commission may notify the Member State concerned that the period referred to in this paragraph may be extended for a further period of up to six months.

7. When, pursuant to [paragraph 6], a Member State is authorised to maintain or introduce national provisions derogating from a harmonisation measure, the Commission shall immediately examine whether to propose an adaptation to that measure.

8. When a Member State raises a specific problem on public health in a field which has been the subject of prior harmonisation measures, it shall bring it to the attention of the Commission which shall immediately examine whether to propose appropriate measures.

9. By way of derogation from the procedure laid down in [ex Articles 226 and 227], the Commission and any Member State may bring the matter directly before the Court of Justice if it considers that another Member State is making improper use of the powers provided for in this Article.

10. The harmonisation measures referred to in this Article shall, in appropriate cases, include a safeguard clause authorising the Member States to adopt, for one or more of the non-economic reasons referred to in [ex Article 30], provisional provisions subject to a Union control procedure.

#### Article III-63 (ex Article 96)

Where the Commission finds that a difference between the provisions laid down by law, regulation or administrative action in Member States is distorting the conditions of competition in the internal market and that the resultant distortion needs to be eliminated, it shall consult the Member States concerned.

If such consultation does not achieve the desired result, a European framework law shall eliminate the distortion in question. Any other appropriate measures provided for in the Constitution may be adopted.

#### Article III-64 (ex Article 97)

1. Where there is a reason to fear that the adoption or amendment of a national provision laid down by law, regulation or administrative action may cause distortion within the meaning of [ex Article 96], a Member State desiring to proceed therewith shall consult the Commission. After consulting the Member States, the Commission shall address to the Member States concerned a recommendation on such measures as may be appropriate to avoid the distortion in question.
2. If a Member State desiring to introduce or amend its own provisions does not comply with the recommendation addressed to it by the Commission, other Member States shall not be required, in pursuance of [ex Article 96], to amend their own provisions in order to eliminate such distortion. If the Member State which has ignored the recommendation of the Commission causes distortion detrimental only to itself, [ex Article 96] shall not apply.

#### Article III-65 (new)

In establishing an internal market, measures for the introduction of European instruments to provide uniform intellectual-property rights protection throughout the Union and for the setting up of centralised Union-wide authorisation, coordination and supervision arrangements shall be established in a European law or framework law. The language arrangements for the instruments shall be established by a European law of the Council adopted unanimously on a proposal from the Commission. It shall act after consulting the European Parliament.



## **CHAPTER II**

### **ECONOMIC AND MONETARY POLICY**

#### **SECTION 1**

#### **ECONOMIC POLICY**

##### **Article III-66 (ex Article 4)**

1. For the purposes set out in Article 3, the activities of the Member States and the Union shall include, as provided in the Constitution, and in accordance with the timetable set out therein, the adoption of an economic policy which is based on the close coordination of Member States' economic policies, on the internal market and on the definition of common objectives, and conducted in accordance with the principle of an open market economy with free competition.
2. Concurrently with the foregoing, and as provided in the Constitution and in accordance with the timetable and the procedures set out therein, these activities shall include a single currency, the euro, and the definition and conduct of a single monetary policy and exchange-rate policy, the primary objective of both of which shall be to maintain price stability and, without prejudice to this objective, to support the general economic policies in the Union, in accordance with the principle of an open market economy with free competition.
3. These activities of the Member States and the Union shall entail compliance with the following guiding principles: stable prices, sound public finances and monetary conditions and a stable balance of payments.

##### **Article III-67 (ex Article 98)**

Member States shall conduct their economic policies in order to contribute to the achievement of the Union's objectives, as defined in Article 3 of Part One, and in the context of the broad guidelines referred to in [ex Article 99(2)]. The Member States and the Union shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in [ex Article 4].

##### **Article III-68 (ex Article 99)**

1. Member States shall regard their economic policies as a matter of common concern and shall coordinate them within the Council, in accordance with the provisions of [ex Article 98].
2. The Council, on a recommendation from the Commission, shall formulate a draft for the broad guidelines of the economic policies of the Member States and of the Union, and shall report its findings to the European Council.

The European Council, on the basis of the report from the Council, shall discuss a conclusion on the broad guidelines of the economic policies of the Member States and of the Union. On the basis of this conclusion, the Council shall adopt a recommendation setting out these broad guidelines. It shall inform the European Parliament of its recommendation.

3. In order to ensure closer coordination of economic policies and sustained convergence of the economic performances of the Member States, the Council, on the basis of reports submitted by the Commission, shall monitor economic developments in each of the Member States and in the Union, as well as the consistency of economic policies with the broad guidelines referred to in paragraph 2, and regularly carry out an overall assessment.

For the purpose of this multilateral surveillance, Member States shall forward information to the Commission on important steps taken by them in the field of their economic policy and such other information as they deem necessary.

4. Where it is established, under the procedure referred to in paragraph 3, that the economic policies of a Member State are not consistent with the broad guidelines referred to in paragraph 2 or that they risk jeopardising the proper functioning of economic and monetary union, the Commission may address a warning to the Member State concerned. The Council, on a recommendation from the Commission, may address the necessary recommendations to the Member State concerned. The Council, on a proposal from the Commission, may decide to make its recommendations public.

Within the scope of this paragraph, the Council shall act without taking into account the vote of the representative of the Member State concerned, and a qualified majority shall be defined as the majority of the votes of the other Member States, representing at least three fifths of their populations.

5. The President of the Council and the Commission shall report to the European Parliament on the results of multilateral surveillance. The President of the Council may be invited to appear before the competent committee of the European Parliament if the Council has made its recommendations public.

6. A European law or framework law may lay down detailed rules for the multilateral surveillance procedure referred to in paragraphs 3 and 4.

#### Article III-69 (ex Article 100)

1. Without prejudice to any other procedures provided for by the Constitution, a European law of the Council may lay down the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products.

2. Where a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council, on a proposal from the Commission, may adopt a European decision granting, under certain conditions, Union financial assistance to the Member State concerned. The President of the Council shall inform the European Parliament of the decision taken.

#### Article III-70 (ex Article 101)

1. Overdraft facilities or any other type of credit facility with the European Central Bank or with the central banks of the Member States (hereinafter referred to as "national central banks") in favour of Union Institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States shall be prohibited, as shall the purchase directly from them by the European Central Bank or national central banks of debt instruments.
2. Paragraph 1 shall not apply to publicly owned credit institutions which, in the context of the supply of reserves by central banks, shall be given the same treatment by national central banks and the European Central Bank as private credit institutions.

#### Article III-71 (ex Article 102)

1. Any measure or provision, not based on prudential considerations, establishing privileged access by Union Institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States to financial institutions shall be prohibited.
2. The Council, on a proposal from the Commission, may adopt European regulations or decisions specifying definitions for the application of the prohibition referred to in paragraph 1. It shall act after consulting the European Parliament.

#### Article III-72 (ex Article 103)

1. The Union shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project. A Member State shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of another Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project.
2. The Council, on a proposal from the Commission, may adopt European regulations or decisions specifying definitions for the application of the prohibitions referred to in [ex Article 101] and in this Article. It shall act after consulting the European Parliament.

#### Article III-73 (ex Article 104)

1. Member States shall avoid excessive government deficits.
2. The Commission shall monitor the development of the budgetary situation and of the stock of government debt in the Member States in order to identify gross errors. In particular it shall examine compliance with budgetary discipline on the basis of the following two criteria:

- (a) whether the ratio of the planned or actual government deficit to gross domestic product exceeds a reference value, unless:
  - (i) either the ratio has declined substantially and continuously and reached a level that comes close to the reference value;
  - (ii) or, alternatively, the excess over the reference value is only exceptional and temporary and the ratio remains close to the reference value;
- (b) whether the ratio of government debt to gross domestic product exceeds a reference value, unless the ratio is diminishing sufficiently and approaching the reference value at a satisfactory pace.

The reference values are specified in the Protocol on the excessive deficit procedure.

3. If a Member State does not fulfil the requirements under one or both of these criteria, the Commission shall prepare a report. The report of the Commission shall also take into account whether the government deficit exceeds government investment expenditure and take into account all other relevant factors, including the medium-term economic and budgetary position of the Member State.

The Commission may also prepare a report if, notwithstanding the fulfilment of the requirements under the criteria, it is of the opinion that there is a risk of an excessive deficit in a Member State.

4. The Economic and Financial Committee shall formulate an opinion on the report of the Commission.

5. If the Commission considers that an excessive deficit in a Member State exists or may occur, it shall address an opinion to the Member State concerned.

6. The Council shall, on a proposal from the Commission, having considered any observations which the Member State concerned may wish to make and after an overall assessment, decide whether an excessive deficit exists. Where the Council decides that an excessive deficit exists, it shall adopt, according to the same procedures, the recommendations addressed to the Member State concerned with a view to bringing that situation to an end within a given period. Subject to paragraph 8, those recommendations shall not be made public.

Within the scope of this paragraph, the Council shall act without taking into account the vote of the representative of the Member State concerned, and a qualified majority shall be defined as the majority of the votes of the other Member States, representing at least three fifths of their populations.

7. The Council, on a recommendation from the Commission, shall adopt by a qualified majority the European decisions and recommendations referred to in paragraphs 8 to 11. It shall act without taking into account the vote of the representative of the Member State concerned, and a qualified majority shall be defined as the majority of the other Member States, representing at least three fifths of their populations.

8. Where it establishes that there has been no effective action in response to its recommendations within the period laid down, the Council may make its recommendations public.

9. If a Member State persists in failing to put into practice the recommendations of the Council, the Council may adopt a European decision giving notice to the Member State to take, within a specified time-limit, steps for the deficit reduction which is judged necessary by the Council in order to remedy the situation.

In such a case, the Council may request the Member State concerned to submit reports in accordance with a specific timetable in order to examine the adjustment efforts of that Member State.

10. As long as a Member State fails to comply with a European decision adopted in accordance with paragraph 9, the Council may decide to apply or, as the case may be, intensify one or more of the following measures:

- (a) to require the Member State concerned to publish additional information, to be specified by the Council, before issuing bonds and securities;
- (b) to invite the European Investment Bank to reconsider its lending policy towards the Member State concerned;
- (c) to require the Member State concerned to make a non-interest-bearing deposit of an appropriate size with the Union until the Council considers that the excessive deficit has been corrected;
- (d) to impose fines of an appropriate size.

The President of the Council shall inform the European Parliament of the measures adopted.

11. The Council shall abrogate some or all of its measures referred to in paragraphs 6 and 8 to 10 to the extent that it considers the excessive deficit in the Member State concerned to have been corrected. If the Council has previously made public recommendations, it shall state publicly, as soon as the decision under paragraph 8 has been abrogated, that there is no longer an excessive deficit in the Member State concerned.

12. The rights to bring actions provided for in [ex Articles 226 and 227] may not be exercised within the framework of paragraphs 1 to 6 or 8 and 9.

13. Further provisions relating to the implementation of the procedure described in this Article are set out in the Protocol on the excessive deficit procedure.

A European law of the Council shall lay down the appropriate measures to replace the said Protocol. The Council shall act unanimously after consulting the European Parliament and the European Central Bank.

Subject to the other provisions of this paragraph, the Council, on a proposal from the Commission, shall adopt European regulations or decisions laying down detailed rules and definitions for the application of the said Protocol. It shall act after consulting the European Parliament.

## SECTION 2

### MONETARY POLICY

#### Article III-74 (ex Article 105)

1. The primary objective of the European System of Central Banks shall be to maintain price stability. Without prejudice to this objective, the European System of Central Banks shall support the general economic policies in the Union in order to contribute to the achievement of its objectives as laid down in Article 3 of Part One. The European System of Central Banks shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in [ex Article 4].
  2. The basic tasks to be carried out through the European System of Central Banks shall be:
    - (a) to define and implement the Union's monetary policy;
    - (b) to conduct foreign exchange operations consistent with the provisions of [Article 111];
    - (c) to hold and manage the official foreign reserves of the Member States;
    - (d) to promote the smooth operation of payment systems.
  3. Paragraph 2(c) shall be without prejudice to the holding and management by the governments of Member States of foreign-exchange working balances.
  4. The European Central Bank shall be consulted:
    - (a) on any proposed Union act in its fields of competence;
    - (b) by national authorities regarding any draft legislative provision in its fields of competence, but within the limits and under the conditions set out by the Council in accordance with the procedure laid down in [ex Article 107(6)].
- The European Central Bank may submit opinions to the Union Institutions or bodies or to national authorities on matters in its fields of competence.
5. The European System of Central Banks shall contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system.
  6. A European law or framework law may confer upon the European Central Bank specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings. Such law or framework law shall be adopted after consulting the European Central Bank.

### Article III-75 (ex Article 106)

1. The European Central Bank shall have the exclusive right to authorise the issue of euro bank notes in the Union. The European Central Bank and the national central banks may issue such notes. Only the bank notes issued by the European Central Bank and the national central banks shall have the status of legal tender within the Union.
2. Member States may issue euro coins subject to approval by the European Central Bank of the volume of the issue. A European law or framework law of the Council may lay down measures to harmonise the denominations and technical specifications of all coins intended for circulation to the extent necessary to permit their smooth circulation within the Union. Such law or framework law shall be adopted after consulting the European Parliament and the European Central Bank.

### Article III-76 (ex Article 107)

1. The European System of Central Banks shall be composed of the European Central Bank and of the national central banks.
2. The European Central Bank shall have legal personality.
3. The European System of Central Banks shall be governed by the decision-making bodies of the European Central Bank, which shall be the Governing Council and the Executive Board.
4. The Statute of the European System of Central Banks is laid down in the Protocol on the Statutes of the European System of Central Banks and the European Central Bank.
5. Articles 5.1, 5.2, 5.3, 17, 18, 19.1, 22, 23, 24, 26, 32.2, 32.3, 32.4, 32.6, 33.1(a) and 36 of the Statute of the European System of Central Banks may be amended:
  - (a) either by a European law adopted after consultation of the European Central Bank;
  - (b) or by a European law of the Council adopted on a recommendation from the European Central Bank, after consent by the European Parliament and consultation of the Commission.
6. The Council shall adopt the measures referred to in Articles 4, 5.4, 19.2, 20, 28.1, 29.2, 30.4 and 34.3 of the Statute of the System of European Central Banks. It shall act after consulting the European Parliament:
  - (a) either on a proposal from the Commission after consulting the European Central Bank;
  - (b) or on a recommendation from the European Central Bank after consulting the Commission.

### Article III-77 (ex Article 108)

When exercising the powers and carrying out the tasks and duties conferred upon them by the Constitution and the Statute of the European System of Central Banks, neither the European Central Bank, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Union Institutions or bodies, from any government of a Member State or from any other body. The Union Institutions and bodies and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the European Central Bank or of the national central banks in the performance of their tasks.

### Article III-78 (ex Article 109)

Each Member State shall ensure that its national legislation, including the statutes of its national central bank, is compatible with the Constitution and the Statute of the European System of Central Banks.

### Article III-79 (ex Article 110)

1. In order to carry out the tasks entrusted to the European System of Central Banks, the European Central Bank shall, in accordance with the Constitution and under the conditions laid down in the Statute of the European System of Central Banks, adopt:
  - (a) European regulations to the extent necessary to implement the tasks defined in Article 3.1, first indent, Articles 19.1, 22 and 25.2 of the Statute of the European System of Central Banks and in cases which shall be laid down in the acts of the Council referred to in [ex Article 107(6)];
  - (b) European decisions necessary for carrying out the tasks entrusted to the European System of Central Banks under the Constitution and the Statute of the European System of Central Banks;
  - (c) recommendations and opinions.
2. The European Central Bank may decide to publish its European decisions, recommendations and opinions.
3. Within the limits and under the conditions adopted by the Council under the procedure laid down in [ex Article 107(6)], the European Central Bank shall be entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its European regulations and decisions.



### Article III-80 (ex Article 110a)

Without prejudice to the powers of the European Central Bank, a European law or framework law shall lay down the measures necessary for use of the euro as the single currency of the Member States. Such law or framework law shall be adopted after consulting the European Central Bank.

### Article III-81 (ex Article 111)

1. In order to secure the euro's place in the international monetary system, Member States whose currency is the euro shall coordinate their action among themselves and with the Commission with a view to adopting common positions on monetary matters within the competent international financial institutions and conferences. They shall defend and promote those common positions.

For monetary policy or directly related matters, the European Central Bank, without prejudice to its independence, shall be fully associated with that coordination.

2. On the basis of that coordination, the Council, on a proposal from the Commission, may adopt appropriate European decisions to ensure unified representation within the international financial institutions and conferences.

### SECTION 3

#### INSTITUTIONAL PROVISIONS

##### Article III-82 (ex Article 112)

1. The Governing Council of the European Central Bank shall comprise the members of the Executive Board of the European Central Bank and the Governors of the national central banks of the Member States without a derogation.
2. (a) The Executive Board shall comprise the President, the Vice-President and four other members.  
  
(b) The President, the Vice-President and the other members of the Executive Board shall be appointed from among persons of recognised standing and professional experience in monetary or banking matters by common accord of the governments of the Member States at the level of Heads of State or Government, on a recommendation from the Council, after it has consulted the European Parliament and the Governing Council of the European Central Bank.

Their term of office shall be eight years and shall not be renewable.

Only nationals of Member States may be members of the Executive Board.

##### Article III-83 (ex Article 113)

1. The President of the Council and a member of the Commission may participate, without having the right to vote, in meetings of the Governing Council of the European Central Bank.

The President of the Council may submit a motion for deliberation to the Governing Council of the European Central Bank.

2. The President of the European Central Bank shall be invited to participate in Council meetings when the Council is discussing matters relating to the objectives and tasks of the European System of Central Banks.
3. The European Central Bank shall address an annual report on the activities of the European System of Central Banks and on the monetary policy of both the previous and current year to the European Parliament, the Council and the Commission, and also to the European Council. The President of the European Central Bank shall present this report to the Council and to the European Parliament, which may hold a general debate on that basis.

The President of the European Central Bank and the other members of the Executive Board may, at the request of the European Parliament or on their own initiative, be heard by the competent committees of the European Parliament.

### Article III-84 (ex Article 114)

1. In order to promote coordination of the policies of Member States to the full extent needed for the functioning of the internal market, an Economic and Financial Committee is hereby set up.
2. The Committee shall have the following tasks:
  - (a) to deliver opinions at the request of the Council or of the Commission, or on its own initiative for submission to those institutions;
  - (b) to keep under review the economic and financial situation of the Member States and of the Union and to report regularly thereon to the Council and to the Commission, in particular on financial relations with third countries and international institutions;
  - (c) without prejudice to [ex Article 207], to contribute to the preparation of the work of the Council referred to in [ex Articles 59 and 60, Article 99(2), (3), (4) and (5), ex Articles 100, 102, 103 and 104, ex Article 105(6), Article 106(2), ex Article 107(5) and (6), ex Articles 111 and 119, Article 120(2) and (3), ex Article 122(2) and ex Article 123(4) and (5)], and to carry out other advisory and preparatory tasks assigned to it by the Council;
  - (d) to examine, at least once a year, the situation regarding the movement of capital and the freedom of payments, as they result from the application of the Constitution and of measures adopted by the Council; the examination shall cover all measures relating to capital movements and payments; the Committee shall report to the Commission and to the Council on the outcome of this examination.

The Member States, the Commission and the European Central Bank shall each appoint no more than two members of the Committee.

3. The Council, on a proposal from the Commission, shall adopt a European decision laying down detailed provisions concerning the composition of the Economic and Financial Committee. It shall act after consulting the European Central Bank and the Committee. The President of the Council shall inform the European Parliament of such a decision.
4. In addition to the tasks set out in paragraph 2, if and as long as there are Member States with a derogation as referred to in [ex Articles 122 and 123], the Committee shall keep under review the monetary and financial situation and the general payments system of those Member States and report regularly to the Council and to the Commission on the matter.

### Article III-85 (ex Article 115)

For matters within the scope of [ex Articles 99(4), 104 with the exception of paragraph 14, 111, 121, 122 and ex Article 123(4) and (5)], the Council or a Member State may request the Commission to make a recommendation or a proposal, as appropriate. The Commission shall examine this request and submit its conclusions to the Council without delay.

## SECTION 4

### TRANSITIONAL PROVISIONS

#### Article III-86 (ex Article 122)

1. Member States which the Council has decided do not fulfil the necessary conditions for the adoption of the euro shall have a derogation as defined in paragraph 2 of this Article. Such Member States shall hereinafter be referred to as "Member States with a derogation".
2. A derogation referred to in paragraph 1 shall mean that the following provisions of the Constitution do not apply to the Member State concerned:
  - (a) adoption of the parts of the broad economic-policy guidelines which concern the euro area generally (ex Article 99(2))
  - (b) coercive means of remedying excessive deficits (ex Article 104(9) and (11))
  - (c) the objectives and tasks of the European System of Central Banks (ex Article 105(1), (2), (3) and (5))
  - (d) issue of the euro (ex Article 106)
  - (e) acts of the European Central Bank (ex Article 110)
  - (f) measures governing the use of the euro (ex Article 123(4))
  - (g) monetary agreements (ex Article 111)
  - (h) external representation of the euro (new Article)
  - (i) appointment of members of the Executive Board of the European Central Bank (ex Article 112(2)(b)).

The exclusion of such a Member State and its national central bank from rights and obligations within the European System of Central Banks is laid down in Chapter IX of the Statute of the European System of Central Banks.

3. In order to help the economic and monetary union to work properly and in accordance with the relevant provisions of the Constitution, additional measures aimed at the Member States whose currency is the euro may be adopted, particularly to strengthen economic policy coordination and budgetary discipline. Such measures concern economic-policy guidelines and the monitoring of those guidelines (ex Article 99(2) and (3)), as well as excessive deficits (ex Article 104 (6), (8) and (12)). Paragraph 5 is applicable.
4. In the articles referred to in paragraph 2, "Member States" shall be read as "Member States without a derogation".
5. The voting rights of Member States with a derogation shall be suspended for the Council measures referred to in the articles listed in paragraph 2. A qualified majority shall be defined as the majority of the votes of the representatives of the Member States without a derogation, representing at least three fifths of their population. Unanimity of those Member States shall be required for an act requiring unanimity.

Article III-87 (ex Articles 121, 122(2) and 123(5))

1. At least once every two years, or at the request of a Member State with a derogation, the Commission and the European Central Bank shall report to the Council on the progress made by the Member States with a derogation in fulfilling their obligations regarding the achievement of economic and monetary union. These reports shall include an examination of the compatibility between each of these Member States' national legislation, including the statutes of its national central bank, and [ex Articles 108 and 109] of the Constitution and the Statute of the European System of Central Banks. The reports shall also examine whether a high degree of sustainable convergence has been achieved, by analysing how far each of these Member States has fulfilled the following criteria:

- (a) the achievement of a high degree of price stability; this will be apparent from a rate of inflation which is close to that of, at most, the three best performing Member States in terms of price stability;
- (b) the sustainability of the government financial position; this will be apparent from having achieved a government budgetary position without a deficit that is excessive as determined in accordance with [ex Article 104(6)];
- (c) the observance of the normal fluctuation margins provided for by the exchange-rate mechanism for at least two years, without devaluing against the euro;
- (d) the durability of convergence achieved by the Member State with a derogation and of its participation in the exchange-rate mechanism, being reflected in the long-term interest-rate levels.

The four criteria mentioned in this paragraph and the relevant periods over which they are to be respected are developed further in the Protocol on the convergence criteria. The reports of the Commission and the European Central Bank shall also take account of the results of the integration of markets, the situation and development of the balances of payments on current account and an examination of the development of unit labour costs and other price indices.

2. After consulting the European Parliament and after discussion in the Council, meeting in the composition of the Heads of State or Government, the Council, acting on a proposal from the Commission, shall decide by a qualified majority which Member States with a derogation fulfil the necessary conditions on the basis of the criteria set out in [ex Article 121(1)], and abrogate the derogations of the Member States concerned.

3. If it is decided, according to the procedure set out in paragraph 2, to abrogate a derogation, the Council shall, on a proposal from the Commission, with the unanimity of the members of the Council representing Member States without a derogation and the Member State concerned, irrevocably fix the rate at which the euro is to be substituted for the currency of the Member State concerned, and take the other measures necessary for the introduction of the euro as the single currency in that Member State. The Council shall act after consulting the European Central Bank.

### Article III-88 (ex Articles 123(3) and 117(2))

1. If and as long as there are Member States with a derogation, and without prejudice to [ex Article 107(3)] of the Constitution, the General Council of the European Central Bank referred to in Article 45 of the Statute of the European System of Central Banks shall be constituted as a third decision-making body of the European Central Bank.
2. If and as long as there are Member States with a derogation, the European Central Bank shall, as regards those Member States:
  - (a) strengthen cooperation between the national central banks;
  - (b) strengthen the coordination of the monetary policies of the Member States, with the aim of ensuring price stability;
  - (c) monitor the functioning of the exchange-rate mechanism;
  - (d) hold consultations concerning issues falling within the competence of the national central banks and affecting the stability of financial institutions and markets;
  - (e) carry out the former tasks of the European Monetary Cooperation Fund, previously taken over by the European Monetary Institute.

### Article III-89 (ex Article 124(1))

Each Member State with a derogation shall treat its exchange-rate policy as a matter of common interest. In so doing, it shall take account of the experience acquired in cooperation within the framework of the exchange-rate mechanism.

### Article III-90 (ex Article 119)

1. Where a Member State with a derogation is in difficulties or is seriously threatened with difficulties as regards its balance of payments either as a result of an overall disequilibrium in its balance of payments, or as a result of the type of currency at its disposal, and where such difficulties are liable in particular to jeopardise the functioning of the internal market or the implementation of the common commercial policy, the Commission shall immediately investigate the position of the State in question and the action which, making use of all the means at its disposal, that State has taken or may take in accordance with the Constitution. The Commission shall state what measures it recommends the Member State concerned to take.

If the action taken by a Member State with a derogation and the measures suggested by the Commission do not prove sufficient to overcome the difficulties which have arisen or which threaten, the Commission shall, after consulting the Economic and Financial Committee, recommend to the Council the granting of mutual assistance and appropriate methods.

The Commission shall keep the Council regularly informed of the situation and of how it evolves.

2. The Council shall grant such mutual assistance; it shall adopt European framework laws or European decisions laying down the conditions and details of such assistance, which may take such forms as:

- (a) a concerted approach to or within any other international organisations to which Member States with a derogation may have recourse;
- (b) measures needed to avoid deflection of trade where the Member State with a derogation which is in difficulties maintains or reintroduces quantitative restrictions against third countries;
- (c) the granting of limited credits by other Member States, subject to their agreement.

3. If the mutual assistance recommended by the Commission is not granted by the Council or if the mutual assistance granted and the measures taken are insufficient, the Commission shall authorise the Member State with a derogation which is in difficulties to take protective measures, the conditions and details of which the Commission shall determine.

Such authorisation may be revoked and such conditions and details may be changed by the Council on its own initiative.

#### Article III-91 (ex Article 120)

1. Where a sudden crisis in the balance of payments occurs and a decision within the meaning of [ex Article 119(2)] is not immediately taken, a Member State with a derogation may, as a precaution, take the necessary protective measures. Such measures must cause the least possible disturbance in the functioning of the internal market and must not be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen.

2. The Commission and the other Member States shall be informed of such protective measures not later than when they enter into force. The Commission may recommend to the Council the granting of mutual assistance under [ex Article 119].

3. After the Commission has delivered an opinion and the Economic and Financial Committee has been consulted, the Council may decide that the Member State concerned shall amend, suspend or abolish the protective measures referred to above.

## CHAPTER III

### POLICIES IN OTHER SPECIFIC AREAS

#### SECTION 1

#### EMPLOYMENT

##### Article III-92 (ex Article 125)

The Union and the Member States shall, in accordance with this [Section], work towards developing a coordinated strategy for employment and particularly for promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change with a view to achieving the objectives defined in [Article ...] of the Constitution.

##### Article III-93 (ex Article 126)

1. Member States, through their employment policies, shall contribute to the achievement of the objectives referred to in [ex Article 125] in a way consistent with the broad guidelines of the economic policies of the Member States and of the Union adopted pursuant to [ex Article 99(2)].
2. Member States, having regard to national practices related to the responsibilities of management and labour, shall regard promoting employment as a matter of common concern and shall coordinate their action in this respect within the Council, in accordance with [ex Article 128].

##### Article III-94 (ex Article 127)

1. The Union shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action. In doing so, the competences of the Member States shall be respected.
2. The objective of a high level of employment shall be taken into consideration in the formulation and implementation of Union policies and activities.

##### Article III-95 (ex Article 128)

1. The European Council shall each year consider the employment situation in the Union and adopt conclusions thereon, on the basis of a joint annual report by the Council and the Commission.
2. On the basis of the conclusions of the European Council, the Council, on a proposal from the Commission, shall each year adopt guidelines which the Member States shall take into account in their employment policies. It shall act after consulting the European Parliament, the Committee of the Regions, the Economic and Social Committee and the Employment Committee.



These guidelines shall be consistent with the broad guidelines adopted pursuant to [ex Article 99(2)].

3. Each Member State shall provide the Council and the Commission with an annual report on the principal steps taken to implement its employment policy in the light of the guidelines for employment as referred to in paragraph 2.

4. The Council, on the basis of the reports referred to in paragraph 3 and having received the views of the Employment Committee, shall each year carry out an examination of the implementation of the employment policies of the Member States in the light of the guidelines for employment. The Council, on a recommendation from the Commission, may adopt recommendations which it shall address to Member States.

5. On the basis of the results of that examination, the Council and the Commission shall make a joint annual report to the European Council on the employment situation in the Union and on the implementation of the guidelines for employment.

#### Article III-96 (ex Article 129)

A European law or framework law may establish incentive measures designed to encourage cooperation between Member States and to support their action in the field of employment through initiatives aimed at developing exchanges of information and best practices, providing comparative analysis and advice as well as promoting innovative approaches and evaluating experiences, in particular by recourse to pilot projects. It shall be adopted after consultation with the Committee of the Regions and the Economic and Social Committee.

The European law or framework law shall not include harmonisation of the laws and regulations of the Member States.

#### Article III-97 (ex Article 130)

The Council, on its own initiative, shall establish by simple majority an Employment Committee with advisory status to promote coordination between Member States on employment and labour market policies. It shall act after consulting the European Parliament.

The tasks of the Committee shall be:

- (a) to monitor the employment situation and employment policies in the Member States and the Union;
- (b) without prejudice to [ex Article 207], to formulate opinions at the request of either the Council or the Commission or on its own initiative, and to contribute to the preparation of the Council proceedings referred to in [ex Article 128].

In fulfilling its mandate, the Committee shall consult management and labour.

Each Member State and the Commission shall appoint two members of the Committee.

## SECTION 2

### SOCIAL POLICY

#### Article III-98 (ex Article 136)

The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

To this end the Union and the Member States shall act taking account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Union economy.

They believe that such a development will ensue not only from the functioning of the internal market, which will favour the harmonisation of social systems, but also from the procedures provided for in the Constitution and from the approximation of provisions laid down by law, regulation or administrative action.

#### Article III-99 (ex Article 137)

1. With a view to achieving the objectives of [ex Article 136], the Union shall support and complement the activities of the Member States in the following fields:

- (a) improvement in particular of the working environment to protect workers' health and safety;
- (b) working conditions;
- (c) social security and social protection of workers;
- (d) protection of workers where their employment contract is terminated;
- (e) the information and consultation of workers;
- (f) representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 5;
- (g) conditions of employment for third-country nationals legally residing in Union territory;
- (h) the integration of persons excluded from the labour market, without prejudice to [ex Article 150];
- (i) equality between men and women with regard to labour market opportunities and treatment

at work;

- (j) the combating of social exclusion;
- (k) the modernisation of social protection systems without prejudice to point (c).

2. To this end:

- (a) a European law or framework law may establish measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States;
- (b) in the fields referred to in paragraph 1(a) to (i), a European framework law may establish minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such European framework law shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

In all cases, the European law or framework law shall be adopted after consulting the Committee of the Regions and the Economic and Social Committee.

3. By way of derogation from paragraph 2, in the fields referred to in paragraph 1(c), the European law or framework law shall be adopted by the Council acting unanimously after consulting the European Parliament, the Committee of the Regions and the Economic and Social Committee.

4. A Member State may entrust management and labour, at their joint request, with the implementation of European framework laws adopted pursuant to paragraph 2.

In this case, it shall ensure that, no later than the date on which a European framework law must be transposed, management and labour have introduced the necessary measures by agreement, the Member State concerned being required to take any necessary measure enabling it at any time to be in a position to guarantee the results imposed by that framework law.

5. The European laws and framework laws adopted pursuant to this Article:

- (a) shall not affect the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof;
- (b) shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with the Constitution.

6. This Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs.

#### Article III-100 (ex Article 138)

1. The Commission shall have the task of promoting the consultation of management and labour at Union level and shall adopt any relevant measure to facilitate their dialogue by ensuring balanced support for the parties.
2. To this end, before submitting proposals in the social policy field, the Commission shall consult management and labour on the possible direction of Union action.
3. If, after such consultation, the Commission considers Union action advisable, it shall consult management and labour on the content of the envisaged proposal. Management and labour shall forward to the Commission an opinion or, where appropriate, a recommendation.
4. On the occasion of such consultation, management and labour may inform the Commission of their wish to initiate the process provided for in [ex Article 139]. The duration of the procedure shall not exceed nine months, unless the management and labour concerned and the Commission decide jointly to extend it.

#### Article III-101 (ex Article 139)

1. Should management and labour so desire, the dialogue between them at Union level may lead to contractual relations, including agreements.
2. Agreements concluded at Union level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered by [ex Article 137], at the joint request of the signatory parties, by a European regulation or decision adopted by the Council on a proposal from the Commission.

Where the agreement in question contains one or more provisions relating to one of the areas referred to in ex Article 137(1)(c), the Council shall act unanimously.

#### Article III-102 (ex Article 140)

With a view to achieving the objectives of [ex Article 136] and without prejudice to the other provisions of the Constitution, the Commission shall encourage cooperation between the Member States and facilitate the coordination of their action in all social policy fields under [this Section], particularly in matters relating to:

- (a) employment;
- (b) labour law and working conditions;
- (c) basic and advanced vocational training;
- (d) social security;
- (e) prevention of occupational accidents and diseases;

- (f) occupational hygiene;
- (g) the right of association and collective bargaining between employers and workers.

To this end, the Commission shall act in close contact with Member States by making studies, delivering opinions and arranging consultations both on problems arising at national level and on those of concern to international organisations.

Before delivering the opinions provided for in this Article, the Commission shall consult the Economic and Social Committee.

#### Article III-103 (ex Article 141)

1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.
2. For the purpose of this Article, "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.

Equal pay without discrimination based on sex means:

- (a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;
  - (b) that pay for work at time rates shall be the same for the same job.
3. A European law or framework law shall establish measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value. It shall be adopted after consulting the Economic and Social Committee.
  4. With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

#### Article III-104 (ex Article 142)

Member States shall endeavour to maintain the existing equivalence between paid holiday schemes.

#### Article III-105 (ex Article 143)

The Commission shall draw up a report each year on progress in achieving the objectives of [Article 136], including the demographic situation in the Union. It shall forward the report to the European Parliament, the Council and the Economic and Social Committee.

#### Article III-106 (ex Article 144)

The Council, on its own initiative, shall establish by a simple majority a Social Protection Committee with advisory status to promote cooperation on social protection policies between Member States and with the Commission. The Council shall act after consulting the European Parliament.

The tasks of the Committee shall be:

- (a) to monitor the social situation and the development of social protection policies in the Member States and the Union;
- (b) to promote exchanges of information, experience and good practice between Member States and with the Commission;
- (c) without prejudice to [ex Article 207], to prepare reports, formulate opinions or undertake other work within its fields of competence, at the request of either the Council or the Commission or on its own initiative.

In fulfilling its mandate, the Committee shall establish appropriate contacts with management and labour.

Each Member State and the Commission shall appoint two members of the Committee.

#### Article III-107 (ex Article 145)

The Commission shall include a separate chapter on social developments within the Union in its annual report to the European Parliament.

The European Parliament may invite the Commission to draw up reports on any particular problems concerning social conditions.

## Subsection 1

### The European Social Fund

#### Article III-108 (ex Article 146)

In order to improve employment opportunities for workers in the internal market and to contribute thereby to raising the standard of living, a European Social Fund is hereby established in accordance with this [Section]; it shall aim to render the employment of workers easier and to increase their geographical and occupational mobility within the Union, and to facilitate their adaptation to industrial changes and to changes in production systems, in particular through vocational training and retraining.

#### Article III-109 (ex Article 147)

The Commission shall administer the Fund.

It shall be assisted in this task by a Committee presided over by a Member of the Commission and composed of representatives of Member States, trade unions and employers' organisations.

#### Article III-110 (ex Article 148)

Implementing measures relating to the European Social Fund shall be enacted in a European law or framework law. It shall be adopted after consulting the Committee of the Regions and the Economic and Social Committee.

## SECTION 3

### ECONOMIC, SOCIAL AND TERRITORIAL COHESION

#### Article III-111 (ex Article 158)

In order to promote its overall harmonious development, the Union shall develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion.

In particular, the Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions or islands, including rural areas.

#### Article III-112 (ex Article 159)

Member States shall conduct their economic policies and shall coordinate them in such a way as, in addition, to attain the objectives set out in [ex Article 158]. The formulation and implementation of the Union's policies and actions and the implementation of the internal market shall take into account those objectives and shall contribute to their achievement. The Union shall also support the achievement of these objectives by the action it takes through the Structural Funds (European Agricultural Guidance and Guarantee Fund, Guidance Section; European Social Fund; European Regional Development Fund), the European Investment Bank and the other existing financial instruments.

The Commission shall submit a report to the European Parliament, the Council, the Committee of the Regions and the Economic and Social Committee every three years on the progress made towards achieving economic and social cohesion and on the manner in which the various means provided for in this Article have contributed to it. This report shall, if necessary, be accompanied by appropriate proposals.

A European law or framework law may establish any specific measure outside the Funds, without prejudice to measures adopted within the framework of the Union's other policies. It shall be adopted after consulting the Committee of the Regions and the Economic and Social Committee.

#### Article III-113 (ex Article 160)

The European Regional Development Fund is intended to help to redress the main regional imbalances in the Union through participation in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions.

#### Article III-114 (ex Article 161)

Without prejudice to [ex Article 162], a European law or framework law shall define the tasks, priority objectives and the organisation of the Structural Funds – which may involve grouping the Funds – the general rules applicable to them and the provisions necessary to ensure their effectiveness and the coordination of the Funds with one another and with the other existing financial instruments.



A Cohesion Fund set up by a European law shall provide a financial contribution to projects in the fields of environment and trans-European networks in the area of transport infrastructure.

In all cases, the European law or framework law shall be adopted after consulting the Committee of the Regions and the Economic and Social Committee. The Council shall act unanimously until 1 January 2007.

#### Article III-115 (ex Article 162)

Implementing measures relating to the European Regional Development Fund shall be enacted in a European law or framework law. It shall be adopted after consulting the Committee of the Regions and the Economic and Social Committee.

With regard to the European Agricultural Guidance and Guarantee Fund, Guidance Section, and the European Social Fund, [ex Articles 37 and 148] respectively shall apply.

## SECTION 4

### AGRICULTURE AND FISHERIES

#### Article III-116 (new)

The Union shall define and implement a common agriculture and fisheries policy.

"Agricultural products" means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products. References to the common agricultural policy or to agriculture, and the use of the term "agricultural", shall be understood as also referring to fisheries.

#### Article III-117 (ex Article 32)

1. The internal market shall extend to agriculture and trade in agricultural products.
2. Save as otherwise provided in [ex Articles 33 to 38], the rules laid down for the establishment of the internal market shall apply to agricultural products.
3. The products listed in [Annex I] shall be subject to Articles 33 to 38.
4. The operation and development of the internal market for agricultural products must be accompanied by the establishment of a common agricultural policy.

#### Article III-118 (ex Article 33)

1. The objectives of the common agricultural policy shall be:
  - (a) to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;
  - (b) thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;
  - (c) to stabilise markets;
  - (d) to assure the availability of supplies;
  - (e) to ensure that supplies reach consumers at reasonable prices.
2. In working out the common agricultural policy and the special methods for its application, account shall be taken of:
  - (a) the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions;

- (b) the need to effect the appropriate adjustments by degrees;
- (c) the fact that in the Member States agriculture constitutes a sector closely linked with the economy as a whole.

#### Article III-119 (ex Article 34)

1. In order to attain the objectives set out in [ex Article 33], a common organisation of agricultural markets shall be established.

This organisation shall take one of the following forms, depending on the product concerned:

- (a) common rules on competition;
- (b) compulsory coordination of the various national market organisations;
- (c) a European market organisation.

2. The common organisation established in accordance with paragraph 1 may include all measures required to attain the objectives set out in [Article 33], in particular regulation of prices, aids for the production and marketing of the various products, storage and carryover arrangements and common machinery for stabilising imports or exports.

The common organisation shall be limited to pursuit of the objectives set out in [Article 33] and shall exclude any discrimination between producers or consumers within the Union.

Any common price policy shall be based on common criteria and uniform methods of calculation.

3. In order to enable the common organisation referred to in paragraph 1 to attain its objectives, one or more agricultural guidance and guarantee funds may be set up.

#### Article III-120 (ex Article 35)

To enable the objectives set out in [ex Article 33] to be attained, provision may be made within the framework of the common agricultural policy for measures such as:

- (a) an effective coordination of efforts in the spheres of vocational training, of research and of the dissemination of agricultural knowledge; this may include joint financing of projects or institutions;
- (b) joint measures to promote consumption of certain products.

### Article III-121 (ex Article 36)

1. The [Section] relating to rules on competition shall apply to production of and trade in agricultural products only to the extent determined by a European law or framework law in accordance with [ex Article 37(2)], having regard to the objectives set out in [ex Article 33].
2. The Council, acting on a proposal from the Commission, may adopt a European regulation or decision authorising the granting of aid:
  - (a) for the protection of enterprises handicapped by structural or natural conditions;
  - (b) within the framework of economic development programmes.

### Article III-122 (ex Article 37)

The Commission shall submit proposals for working out and implementing the common agricultural policy, including the replacement of the national organisations by one of the forms of common organisation provided for in [ex Article 34(1)], and for implementing the measures referred to in [this Section].

These proposals shall take account of the interdependence of the agricultural matters mentioned in this Section.

2. A European law or framework law shall establish the common organisation of the market provided for in [ex Article 34(1)] and the other provisions necessary for the achievement of the objectives of the common agricultural policy and the common fisheries policy.
3. The Council, acting on a proposal from the Commission, shall adopt the European regulations or decisions on fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities.
4. In accordance with [paragraph 2], the national market organisations may be replaced by the common organisation provided for in [ex Article 34(1)] if:
  - (a) the common organisation offers Member States which are opposed to this measure and which have an organisation of their own for the production in question equivalent safeguards for the employment and standard of living of the producers concerned, account being taken of the adjustments that will be possible and the specialisation that will be needed with the passage of time;
  - (b) such an organisation ensures conditions for trade within the Union similar to those existing in a national market.
5. If a common organisation for certain raw materials is established before a common organisation exists for the corresponding processed products, such raw materials as are used for processed products intended for export to third countries may be imported from outside the Union.

### Article III-123 (ex Article 38)

Where in a Member State a product is subject to a national market organisation or to internal rules having equivalent effect which affect the competitive position of similar production in another Member State, a countervailing charge shall be applied by Member States to imports of this product coming from the Member State where such organisation or rules exist, unless that State applies a countervailing charge on export.

The Commission shall fix the amount of these charges at the level required to redress the balance; it may also authorise other measures, the conditions and details of which it shall determine.

## SECTION 5

### ENVIRONMENT

#### Article III-124 (ex Article 174)

1. Union policy on the environment shall contribute to pursuit of the following objectives:
  - (a) preserving, protecting and improving the quality of the environment;
  - (b) protecting human health;
  - (c) prudent and rational utilisation of natural resources;
  - (d) promoting measures at international level to deal with regional or worldwide environmental problems.
2. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional steps, for non-economic environmental reasons, subject to a procedure of inspection by the Union.
3. In preparing its policy on the environment, the Union shall take account of:
  - (a) available scientific and technical data;
  - (b) environmental conditions in the various regions of the Union;
  - (c) the potential benefits and costs of action or lack of action;
  - (d) the economic and social development of the Union as a whole and the balanced development of its regions.
4. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for the Union's cooperation may be the subject of agreements between the Union and the third parties concerned, which shall be negotiated and concluded in accordance with [ex Article 300].

The previous subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

Article III-125 (ex Article 175)

1. A European law or framework law shall establish what action is to be taken in order to achieve the objectives referred to in [ex Article 174]. It shall be adopted after consulting the Committee of the Regions and the Economic and Social Committee.
2. By way of derogation from paragraph 1 and without prejudice to [ex Article 95] the Council shall adopt unanimously European laws or framework laws establishing:
  - (a) measures primarily of a fiscal nature;
  - (b) measures affecting:
    - (i) town and country planning;
    - (ii) quantitative management of water resources or affecting, directly or indirectly, the availability of those resources;
    - (iii) land use, with the exception of waste management;
  - (c) measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.

A European law of the Council may by unanimity define those matters referred to in this paragraph on which it shall act by a qualified majority.

In all cases, the Council shall act after consulting the European Parliament, the Committee of the Regions and the Economic and Social Committee.

3. General action programmes which set out priority objectives to be attained shall be enacted by a European law or framework law. It shall be adopted after consulting the Committee of the Regions and the Economic and Social Committee.

The measures necessary for the implementation of these programmes shall be adopted under the terms of paragraph 1 or paragraph 2, according to the case.

4. Without prejudice to certain measures adopted by the Union, the Member States shall finance and implement the environment policy.
5. Without prejudice to the principle that the polluter should pay, if a measure based on the provisions of paragraph 1 involves costs deemed disproportionate for the public authorities of a Member State, such measure shall provide in appropriate form for:
  - (a) temporary derogations, and/or
  - (b) financial support from the Cohesion Fund.

Article III-126 (ex Article 176)

The protective provisions adopted pursuant to [ex Article 175] shall not prevent any Member State from maintaining or introducing more stringent protective provisions. Such provisions must be compatible with the Constitution. They shall be notified to the Commission.



## SECTION 6

### CONSUMER PROTECTION

#### Article III-127 (ex Article 153)

1. In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.
2. Consumer protection requirements shall be taken into account in defining and implementing other Union policies and activities.
3. The Union shall contribute to the attainment of the objectives referred to in paragraph 1 through:
  - (a) measures adopted pursuant to [ex Article 95] in the context of the completion of the internal market;
  - (b) measures which support, supplement and monitor the policy pursued by the Member States.
4. The measures referred to in paragraph 3(b) shall be enacted by a European law or framework law. It shall be adopted after consultation of the Economic and Social Committee.
5. Measures adopted pursuant to paragraph 4 shall not prevent any Member State from maintaining or introducing more stringent protective provisions. Such provisions must be compatible with the Constitution. They shall be notified to the Commission.

## SECTION 7

### TRANSPORT

#### Article III-128 (ex Article 70)

The objectives of the Constitution shall, in matters governed by this Title, be pursued within the framework of a common transport policy.

#### Article III-129 (ex Article 71)

1. A European law or framework law shall implement [ex Article 70], taking into account the distinctive features of transport. It shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

The European law or framework law shall contain:

- (a) common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States;
- (b) the conditions under which non-resident carriers may operate transport services within a Member State;
- (c) measures to improve transport safety;
- (d) any other appropriate measure.

#### Article III-130 (ex Article 72)

Until the European law or framework law referred to in [Article 71(1)] has been adopted, no Member State may, unless the Council has unanimously adopted a European law granting a derogation, make the various provisions governing the subject on 1 January 1958 or, for acceding States, the date of their accession less favourable in their direct or indirect effect on carriers of other Member States as compared with carriers who are nationals of that State.

#### Article III-131 (ex Article 73)

Aids shall be compatible with the Constitution if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service.

### Article III-132 (ex Article 74)

Any measures adopted within the framework of the Constitution in respect of transport rates and conditions shall take account of the economic circumstances of carriers.

### Article III-133 (ex Article 75)

1. In the case of transport within the Union, discrimination which takes the form of carriers charging different rates and imposing different conditions for the carriage of the same goods over the same transport links on grounds of the Member State of origin or of destination of the goods in question shall be prohibited.

2. Paragraph 1 shall not prevent the adoption of other European laws or framework laws in pursuance of [Article 71(1)].

3. The Council, on a proposal from the Commission, shall adopt European regulations or decisions for implementing paragraph 1. It shall act after consulting the Economic and Social Committee.

The Council may in particular adopt the European regulations and decisions needed to enable the institutions to secure compliance with the rule laid down in paragraph 1 and to ensure that users benefit from it to the full.

4. The Commission shall, acting on its own initiative or on application by a Member State, investigate any cases of discrimination falling within paragraph 1 and, after consulting any Member State concerned, shall adopt the necessary European decisions within the framework of the European regulations and decisions referred to in paragraph 3.

### Article III-134 (ex Article 76)

1. The imposition by a Member State, in respect of transport operations carried out within the Union, of rates and conditions involving any element of support or protection in the interest of one or more particular undertakings or industries shall be prohibited, unless authorised by a European decision of the Commission.

2. The Commission shall, acting on its own initiative or on application by a Member State, examine the rates and conditions referred to in paragraph 1, taking account in particular of the requirements of an appropriate regional economic policy, the needs of underdeveloped areas and the problems of areas seriously affected by political circumstances on the one hand, and of the effects of such rates and conditions on competition between the different modes of transport on the other.

After consulting each Member State concerned, the Commission shall adopt the necessary European decisions.

3. The prohibition provided for in paragraph 1 shall not apply to tariffs fixed to meet competition.

#### Article III-135 (ex Article 77)

Charges or dues in respect of the crossing of frontiers which are charged by a carrier in addition to the transport rates shall not exceed a reasonable level after taking the costs actually incurred thereby into account.

Member States shall endeavour to reduce these costs.

The Commission may make recommendations to Member States for the application of this Article.

#### Article III-136 (ex Article 78)

The provisions of this Section shall not form an obstacle to the application of measures taken in the Federal Republic of Germany to the extent that such measures are required in order to compensate for the economic disadvantages caused by the division of Germany to the economy of certain areas of the Federal Republic affected by that division.

#### Article III-137 (ex Article 79)

An Advisory Committee consisting of experts designated by the governments of Member States shall be attached to the Commission. The Commission, whenever it considers it desirable, shall consult the Committee on transport matters.

#### Article III-138 (ex Article 80)

1. This Title shall apply to transport by rail, road and inland waterway.
2. A European law or framework law may lay down appropriate measures for sea and air transport. It shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

## SECTION 8

### TRANS-EUROPEAN NETWORKS

#### Article III-139 (ex Article 154)

1. To help achieve the objectives referred to in [ex Articles 14 and 158] and to enable citizens of the Union, economic operators and regional and local communities to derive full benefit from the setting-up of an area without internal frontiers, the Union shall contribute to the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructures.
2. Within the framework of a system of open and competitive markets, action by the Union shall aim at promoting the interconnection and interoperability of national networks as well as access to such networks. It shall take account in particular of the need to link island, landlocked and peripheral regions with the central regions of the Union.

#### Article III-140 (ex Article 155)

1. In order to achieve the objectives referred to [in ex Article 154], the Union:
  - (a) shall establish a series of guidelines covering the objectives, priorities and broad lines of measures envisaged in the sphere of trans-European networks; these guidelines shall identify projects of common interest;
  - (b) shall implement any measures that may prove necessary to ensure the interoperability of the networks, in particular in the field of technical standardisation;
  - (c) may support projects of common interest supported by Member States, which are identified in the framework of the guidelines referred to in point (a), particularly through feasibility studies, loan guarantees or interest-rate subsidies; the Union may also contribute, through the Cohesion Fund, to the financing of specific projects in Member States in the area of transport infrastructure.

The Union's activities shall take into account the potential economic viability of the projects.

2. The guidelines and other measures referred to in paragraph 1 shall be enacted by a European law or framework law. It shall be adopted after consulting the Committee of the Regions and the Economic and Social Committee.

Guidelines and projects of common interest which relate to the territory of a Member State shall require the approval of the Member State concerned.

3. Member States shall, in liaison with the Commission, coordinate among themselves the policies pursued at national level which may have a significant impact on the achievement of the objectives referred to in [Article 154]. The Commission may, in close cooperation with the Member State, take any useful initiative to promote such coordination.

4. The Union may cooperate with third countries to promote projects of mutual interest and to ensure the interoperability of networks.

## SECTION 9

### RESEARCH AND TECHNOLOGICAL DEVELOPMENT, AND SPACE

#### Article III-141 (ex Article 163)

1. The Union shall have the objective of strengthening the scientific and technological bases of Union industry and encouraging it to become more competitive at international level, while promoting all the research activities deemed necessary by virtue of other Chapters of the Constitution.
2. For this purpose the Union shall, throughout the Union, encourage undertakings, including small and medium-sized undertakings, research centres and universities in their research and technological development activities of high quality; it shall support their efforts to cooperate with one another, aiming, notably, at enabling undertakings to exploit the internal market potential to the full, in particular through the opening-up of national public contracts, the definition of common standards and the removal of legal and fiscal obstacles to that cooperation.
3. All the Union's activities under the Constitution in the area of research and technological development, including demonstration projects, shall be decided on and implemented in accordance with [this Section].

#### Article III-142 (ex Article 164)

In pursuing these objectives, the Union shall carry out the following activities, complementing the activities carried out in the Member States:

- (a) implementation of research, technological development and demonstration programmes, by promoting cooperation with and between undertakings, research centres and universities;
- (b) promotion of cooperation in the field of the Union's research, technological development and demonstration with third countries and international organisations;
- (c) dissemination and optimisation of the results of activities in the Union's research, technological development and demonstration;
- (d) stimulation of the training and mobility of researchers in the Union.

#### Article III-143 (ex Article 165)

1. The Union and the Member States shall coordinate their research and technological development activities so as to ensure that national policies and the Union's policy are mutually consistent.
2. In close cooperation with the Member States, the Commission may take any useful initiative to promote the coordination referred to in paragraph 1.

#### Article III-144 (ex Article 166)

1. A European law shall establish a multiannual framework programme, setting out all the activities of the Union. It shall be adopted after consultation of the Economic and Social Committee.

The framework programme shall:

- (a) establish the scientific and technological objectives to be achieved by the activities provided for in [ex Article 164] and fix the relevant priorities;
  - (b) indicate the broad lines of such activities;
  - (c) fix the maximum overall amount and the detailed rules for the Union's financial participation in the framework programme and the respective shares in each of the activities provided for.
2. The framework programme shall be adapted or supplemented as the situation changes.
  3. The framework programme shall be implemented through specific programmes developed within each activity. Each specific programme shall define the detailed rules for implementing it, fix its duration and provide for the means deemed necessary. The sum of the amounts deemed necessary, fixed in the specific programmes, may not exceed the overall maximum amount fixed for the framework programme and each activity.
  4. The Council, acting on a proposal from the Commission, shall adopt the European regulations or decisions establishing the specific programmes. It shall act after consulting the European Parliament and the Economic and Social Committee.

#### Article III-145 (ex Article 167)

For the implementation of the multiannual framework programme, a European law or framework law shall establish:

- (a) the rules for the participation of undertakings, research centres and universities;
- (b) the rules governing the dissemination of research results.

The European law or framework law shall be adopted after consulting the Economic and Social Committee.



#### Article III-146 (ex Article 168)

In implementing the multiannual framework programme, supplementary programmes may be adopted involving the participation of certain Member States only, which shall finance them subject to possible participation by the Union.

A European law or framework law shall determine the rules applicable to supplementary programmes, particularly as regards the dissemination of knowledge and access by other Member States. It shall be adopted after consulting the Economic and Social Committee.

Adoption of the supplementary programmes shall require the agreement of the Member States concerned.

#### Article III-147 (ex Article 169)

In implementing the multiannual framework programme, the European law or framework law may make provision, in agreement with the Member States concerned, for participation in research and development programmes undertaken by several Member States, including participation in the structures created for the execution of those programmes.

The European law or framework law shall be adopted after consulting the Economic and Social Committee.

#### Article III-148 (ex Article 170)

In implementing the multiannual framework programme the Union may make provision for cooperation in the Union's research, technological development and demonstration with third countries or international organisations.

The detailed arrangements for such cooperation may be the subject of agreements between the Union and the third parties concerned, which shall be negotiated and concluded in accordance with [ex Article 300].

#### Article III-149 (ex Article 171)

The Council, on a proposal from the Commission may adopt European regulations or decisions to set up joint undertakings or any other structure necessary for the efficient execution of the Union's research, technological development and demonstration programmes. It shall act after consulting the European Parliament and the Economic and Social Committee.

#### Article III-150 (new)

1. To promote scientific and technical progress, industrial competitiveness and the implementation of its policies, the Union shall draw up a European space policy. To this end, it may promote joint initiatives, support research and technological development and coordinate the efforts needed for the exploration and exploitation of space.

2. To contribute to attaining the objectives referred to in paragraph 1, a European law or framework law shall establish the necessary measures, which may take the form of a European space programme.

#### Article III-151 (ex Article 173)

At the beginning of each year the Commission shall send a report to the European Parliament and the Council. The report shall include information on research and technological development activities and the dissemination of results during the previous year, and the work programme for the current year.

## SECTION 10

### ENERGY

#### Article III-152 (new)

1. In establishing an internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim to:

- (a) ensure the functioning of the energy market,
- (b) ensure security of energy supply in the Union, and
- (c) promote energy efficiency and saving and the development of new and renewable forms of energy.

2. The measures necessary to achieve the objectives in paragraph 1 shall be enacted in a European law or framework law. It shall be adopted after consulting the Committee of the Regions and the Economic and Social Committee.

The law or framework law shall not affect a Member State's choice between different energy sources and the general structure of its energy supply. Such measures shall be adopted in accordance with Article [ex Article 175(2)(c)].

## CHAPTER IV

### AREA OF FREEDOM, SECURITY AND JUSTICE <sup>1</sup>

#### SECTION 1

##### GENERAL PROVISIONS

##### Article III-153 (ex Article 1)

1. The Union shall constitute an area of freedom, security and justice with respect for fundamental rights, taking into account the different legal traditions and systems of the Member States.
2. It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals, including stateless persons.
3. The Union shall endeavour to ensure a high level of security by measures to prevent and combat crime, racism and xenophobia, and measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as by the mutual recognition of judgments in criminal matters and the approximation of criminal laws.
4. The Union shall facilitate access to justice, in particular by the principle of mutual recognition of documents and judgments in civil matters.

##### Article III-154 (ex Article 2)

The European Council shall define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice.

##### Article III-155 (ex Article 3)

1. Member States' national parliaments shall ensure that the proposals and legislative initiatives submitted under Sections 4 and 5 of this Chapter comply with the principle of subsidiarity, in accordance with the arrangements in the Protocol on the application of the principles of subsidiarity and proportionality.

Member States' national parliaments may participate in the evaluation mechanisms contained in Article III-156 of the Constitution and in the political monitoring of Europol's and Eurojust's activities in accordance with Articles III-169 and III-172.

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<sup>1</sup> In this Chapter the references to ex articles relate to the articles submitted to the Convention by the Praesidium (CONV 614/03).

#### Article III-156 (ex Article 4)

Without prejudice to Articles [III-261 to III-263], the Council may, on a proposal from the Commission, adopt European regulations or decisions laying down the arrangements whereby Member States, in collaboration with the Commission, conduct objective and impartial evaluation of the implementation of the Union policies referred to in this Chapter by Member States' authorities, in particular in order to facilitate full application of the principle of mutual recognition. The European Parliament, as well as Member States' national parliaments, shall be informed of the content and results of the evaluation.

#### Article III-157 (ex Article 5)

A standing committee shall be set up in order to ensure that operational cooperation on internal security is promoted and strengthened within the Union. Without prejudice to Article [III-242], it shall facilitate coordination of the action of Member States' competent authorities. Representatives of the Union bodies and agencies concerned may be involved in the proceedings of this committee. The European Parliament and Member States' national parliaments shall be kept informed of the proceedings.

#### Article III-158 (ex Article 6)

This Chapter shall not affect the exercise of the responsibilities incumbent upon Member States with regard to maintaining law and order and safeguarding internal security.

#### Article III-159 (ex Article 7)

The Council shall adopt European regulations to ensure administrative cooperation between the relevant departments of the Member States in the areas covered by this Chapter, as well as between those departments and the Commission. It shall act on a Commission proposal, without prejudice to Article [III-160], and after consulting the European Parliament.

#### Article III-160 (ex Article 8)

The acts referred to in Sections 4 and 5 of this Chapter shall be adopted:

- (a) on a proposal from the Commission, or
- (b) on the initiative of a quarter of the Member States.

## SECTION 2

### POLICIES ON BORDER CHECKS, ASYLUM AND IMMIGRATION

#### Article III-161 (ex Article 10)

1. The Union shall develop a policy with a view to:
  - (a) ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders;
  - (b) carrying out checks on persons and efficient monitoring of the crossing of external borders;
  - (c) the gradual introduction of a integrated management system for external borders.
2. For this purpose, a European law or framework law shall establish measures concerning:
  - (a) the common policy on visas and other short-stay residence permits;
  - (b) the controls to which persons crossing external borders are subject;
  - (c) the conditions under which nationals of third countries shall have the freedom to travel within the Union for a short period;
  - (d) any measure necessary for the gradual establishment of an integrated management system for external borders;
  - (e) the absence of any controls on persons, whatever their nationality, when crossing internal borders.
3. This Article shall not affect the competence of the Member States concerning the geographical demarcation of their borders, in accordance with international law.

#### Article III-162 (ex Article 11)

1. The Union shall develop a common policy on asylum and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties.

2. For this purpose, a European law or framework law shall lay down measures for a common European asylum system comprising:

- (a) a uniform status of asylum for nationals of third countries, valid throughout the Union;
- (b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;
- (c) a common system of temporary protection for displaced persons in the event of a massive inflow;
- (d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;
- (e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;
- (f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;
- (g) partnership and cooperation with third countries with a view to managing inflows of people applying for asylum or subsidiary or temporary protection.

3. In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt European regulations or decisions comprising provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament.

#### Article III-163 (ex Article 12)

1. The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.

2. To this end, a European law or framework law shall establish measures in the following areas:

- (a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion;
- (b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing the freedom of movement and of residence in other Member States;

(c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation.

3. The Union may conclude readmission agreements with third countries for the readmission of third-country nationals residing without authorisation to their countries of origin or provenance.

4. A European law or framework law may establish measures providing incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.

#### Article III-164 (ex Article 13)

The policies of the Union set out in this Section and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the acts of the Union adopted pursuant to the provisions of this Section shall contain appropriate measures to give effect to this principle.



## SECTION 3

### JUDICIAL COOPERATION IN CIVIL MATTERS

#### Article III-165 (ex Article 14)

1. The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States.
2. To this end, a law or framework law shall lay down measures aimed inter alia at ensuring:
  - (a) the mutual recognition and enforcement between Member States of judgments and decisions in extrajudicial cases;
  - (b) the cross-border service of judicial and extrajudicial documents;
  - (c) the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction;
  - (d) cooperation in the taking of evidence;
  - (e) a high level of access to justice;
  - (f) the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States;
  - (g) the development of alternative methods of dispute settlement;
  - (h) support for the training of the judiciary and judicial staff.
3. Notwithstanding paragraph 2, measures concerning those aspects of family law with cross-border implications shall be laid down in a European framework law by the Council. It shall act unanimously after consulting the European Parliament.

The Council, on a proposal from the Commission, may adopt a European decision determining those aspects of family law with cross-border implications which may be adopted by the ordinary legislative procedure. The Council shall act unanimously after consulting the European Parliament.

## SECTION 4

### JUDICIAL COOPERATION IN CRIMINAL MATTERS

#### Article III-166 (ex Article 15)

1. Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in paragraph 2 and in Article [III-167].

A European law or framework law shall establish measures to:

- (a) establish rules and procedures aimed at ensuring the recognition throughout the Union of all forms of judgments and judicial decisions;
- (b) prevent and settle conflicts of jurisdiction between Member States;
- (c) encourage the training of the judiciary and judicial staff;
- (d) facilitate cooperation in criminal matters between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.

2. In order to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters with a cross-border dimension, a European framework law may establish minimum rules concerning:

- (a) mutual admissibility of evidence between Member States;
- (b) definition of the rights of individuals in criminal procedure;
- (c) rights of victims of crime;
- (d) any other specific aspects of criminal procedure which the Council has identified in advance by a European decision. The Council shall act unanimously after receiving the approval of the European Parliament.

Adoption of such minimum rules shall not prevent Member States from maintaining or introducing a higher level of protection for the rights of individuals in criminal procedure.

#### Article III-167 (ex Article 17)

1. A European framework law may establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with cross-border dimensions resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.

On the basis of developments in crime, the Council may adopt a European decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after approval by the European Parliament

2. If the approximation of criminal legislation proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, a European framework law may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned.

Without prejudice to Article [III-160], that framework law shall be adopted by the same procedure as was followed for the adoption of the harmonisation measures referred to in the preceding subparagraph.

#### Article III-168 (ex Article 18)

A European law or framework law may establish measures to promote and support the action of Member States in the field of crime prevention. Such measures shall not include the approximation of Member States' legislative and regulatory provisions.

#### Article III-169 (ex Article 19)

1. Eurojust's mission shall be to support and strengthen coordination and cooperation between national prosecuting authorities in relation to serious crime affecting two or more Member States or requiring a prosecution on common bases, on the basis of operations conducted and information supplied by the Member States' authorities and by Europol.

2. A European law shall determine Eurojust's structure, workings, scope of action and tasks. Those tasks may include:

- (a) the initiation and coordination of criminal prosecutions conducted by competent national authorities, particularly those relating to offences against the financial interests of the Union;
- (b) the strengthening of judicial cooperation, including by resolution of conflicts of jurisdiction and by close cooperation with the European Judicial Network.

A European law shall also determine arrangements for involving the European Parliament and Member States' national parliaments in the evaluation of Eurojust's activities.

3. In the prosecutions referred to in this Article, and without prejudice to [Article III-170], formal acts of judicial procedure shall be adopted by the competent national officials.

### Article III-170 (ex Article 20)

1. In order to combat serious crime having a cross-border dimension, as well as illegal activities affecting the interests of the Union, a European law of the Council may establish a European Public Prosecutor's Office from Eurojust. The Council shall act unanimously after approval by the European Parliament.
2. The European Public Prosecutor's Office shall be responsible for investigating, prosecuting and bringing to judgment, where appropriate in liaison with Europol, the perpetrators of and accomplices in serious crimes affecting more than one Member State and of offences against the Union's financial interests, as determined by the European law provided for in paragraph 1. It shall exercise the functions of prosecutor in the competent courts of the Member States in relation to such offences.
3. The European law referred to in paragraph 1 shall determine the general rules applicable to the European Public Prosecutor's Office, the conditions governing the performance of its functions, the rules of procedure applicable to its activities, as well as those governing the admissibility of evidence, and the rules applicable to the judicial review of procedural measures taken by it in the performance of its functions.

## SECTION 5

### POLICE COOPERATION

#### Article III-171 (ex Article 21)

1. The Union shall establish police cooperation involving all the Member States' competent authorities, including police, customs and other specialised law enforcement services in relation to the prevention, detection and investigation of criminal offences.
2. To this end, a European law or framework law may establish measures concerning:
  - (a) the collection, storage, processing, analysis and exchange of relevant information;
  - (b) support for the training and exchange of staff, equipment and research on crime;
  - (c) common investigative techniques in relation to the detection of serious forms of organised crime.
3. A European law or framework law of the Council may establish measures concerning operational cooperation between the authorities referred to in this Article. The Council shall act unanimously after consulting the European Parliament.

#### Article III-172 (ex Article 22)

1. Europol's mission is to support and strengthen action by the Member States' police authorities and other law enforcement services and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy.
2. A European law shall determine Europol's structure, operation, field of action and tasks. These tasks may include:
  - (a) the collection, storage, processing, analysis and exchange of information forwarded particularly by the authorities of the Member States or third countries or bodies;

- (b) the coordination, organisation and implementation of investigative and operational action carried out jointly with the Member States' competent authorities or in the context of joint investigative teams, where appropriate in liaison with Eurojust.

A European law shall also lay down the procedures for scrutiny of Europol's activities by the European Parliament, together with Member States' national parliaments.

- 3. Any operational action by Europol must be carried out in liaison and in agreement with the authorities of the Member States whose territory is concerned. The application of coercive measures shall be the exclusive responsibility of the competent national authorities.

#### Article III-173 (ex Article 23)

A European law or framework law of the Council shall lay down the conditions and limitations under which the competent authorities of the Member States referred to in Articles III-166 and III-171 may operate in the territory of another Member State in liaison and in agreement with the authorities of that State. The Council shall act unanimously after consulting the European Parliament.

## **CHAPTER 5**

### **AREAS WHERE THE UNION MAY TAKE COORDINATING, SUPPLEMENTARY OR SUPPORTING ACTION**

#### **SECTION 1**

#### **PUBLIC HEALTH**

##### **Article III-174 (ex Article 152)**

1. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.

Action by the Union, which shall complement national policies, shall be directed towards improving public health, preventing human illness and diseases, and obviating sources of danger to human health. Such action shall cover the fight against the major health scourges, by promoting research into their causes, their transmission and their prevention, as well as health information and education.

The Union shall complement the Member States' action in reducing drugs-related health damage, including information and prevention.

2. The Union shall encourage cooperation between the Member States in the areas referred to in this Article and, if necessary, lend support to their action.

Member States shall, in liaison with the Commission, coordinate among themselves their policies and programmes in the areas referred to in paragraph 1. The Commission may, in close contact with the Member States, take any useful initiative to promote such coordination.

3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of public health.

4. A European law or framework law shall contribute to the achievement of the objectives referred to in this Article by establishing measures enabling common safety concerns to be met, in particular:

- (a) measures setting high standards of quality and safety of organs and substances of human origin, blood and blood derivatives; these measures shall not prevent any Member State from maintaining or introducing more stringent protective measures;
- (b) by way of derogation from [ex Article 37], measures in the veterinary and phytosanitary fields which have as their direct objective the protection of public health;

The European law or framework law shall be adopted after consulting the Economic and Social Committee and the Committee of the Regions.

5. A European law or framework law may also establish incentive measures designed to protect and improve human health, excluding any harmonisation of the laws and regulations of the Member States. It shall be adopted after consulting the Committee of the Regions and the Economic and Social Committee.

6. For the purposes set out in this Article, the Council, on a proposal from the Commission, may also adopt recommendations.

7. Union action in the field of public health shall fully respect the responsibilities of the Member States for the organisation and delivery of health services and medical care. In particular, measures referred to in paragraph 4(a) shall not affect national provisions on the donation or medical use of organs and blood.



## SECTION 2

### INDUSTRY

#### Article III-175 (ex Article 157)

1. The Union and the Member States shall ensure that the conditions necessary for the competitiveness of the Union's industry exist.

For that purpose, in accordance with a system of open and competitive markets, their action shall be aimed at:

- (a) speeding up the adjustment of industry to structural changes;
- (b) encouraging an environment favourable to initiative and to the development of undertakings throughout the Union, particularly small and medium-sized undertakings;
- (c) encouraging an environment favourable to cooperation between undertakings;
- (d) fostering better exploitation of the industrial potential of policies of innovation, research and technological development.

2. The Member States shall consult each other in liaison with the Commission and, where necessary, shall coordinate their action. The Commission may take any useful initiative to promote such coordination.

3. The Union shall contribute to the achievement of the objectives set out in paragraph 1 through the policies and activities it pursues under other provisions of the Constitution. A European law or framework law may establish specific measures in support of action taken in the Member States to achieve the objectives set out in paragraph 1. It shall be adopted after consultation of the Economic and Social Committee.

This Section shall not provide a basis for the introduction by the Union of any measure which could lead to distortion of competition or contains tax provisions or provisions relating to the rights and interests of employed persons.

## SECTION 3

### CULTURE

#### Article III-176 (ex Article 151)

1. The Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.
2. Action by the Union shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas:
  - (a) improvement of the knowledge and dissemination of the culture and history of the European peoples;
  - (b) conservation and safeguarding of cultural heritage of European significance;
  - (c) non-commercial cultural exchanges;
  - (d) artistic and literary creation, including in the audiovisual sector.
3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of culture, in particular the Council of Europe.
4. The Union shall take cultural aspects into account in its action under other provisions of the Constitution, in particular in order to respect and to promote the diversity of its cultures.
5. In order to contribute to the achievement of the objectives referred to in this Article:
  - (a) a European law or framework law shall establish incentive actions, excluding any harmonisation of the laws and regulations of the Member States. It shall be adopted after consulting the Committee of the Regions;
  - (b) the Council, acting on a proposal from the Commission, shall adopt recommendations.

## SECTION 4

### EDUCATION, VOCATIONAL TRAINING, YOUTH AND SPORT

#### Article III-177 (ex Article 149)

1. The Union shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action. It shall fully respect the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity.

The Union shall contribute to the promotion of European sporting issues, given the social and educational function of sport.

2. Union action shall be aimed at:

- (a) developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States;
- (b) encouraging mobility of students and teachers, inter alia by encouraging the academic recognition of diplomas and periods of study;
- (c) promoting cooperation between educational establishments;
- (d) developing exchanges of information and experience on issues common to the education systems of the Member States;
- (e) encouraging the development of youth exchanges and of exchanges of socio-educational instructors;
- (f) encouraging the development of distance education;
- (g) developing the European dimension in sport, by promoting fairness in competitions and cooperation between sporting bodies and by protecting the physical and moral integrity of sportsmen and sportswomen, especially young sportsmen and sportswomen.

3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the field of education, in particular the Council of Europe.

4. In order to contribute to the achievement of the objectives referred to in this Article,

- (a) a European law or framework law shall establish incentive actions, excluding any harmonisation of the laws and regulations of the Member States. It shall be adopted after consulting the Committee of the Regions and the Economic and Social Committee.
- (b) the Council, acting on a proposal from the Commission, shall adopt recommendations.

Article III-178 (ex Article 150)

1. The Union shall implement a vocational training policy which shall support and supplement the action of the Member States, while fully respecting the responsibility of the Member States for the content and organisation of vocational training.
2. Union action shall aim to:
  - (a) facilitate adaptation to industrial change, in particular through vocational training and retraining;
  - (b) improve initial and continuing vocational training in order to facilitate vocational integration and reintegration into the labour market;
  - (c) facilitate access to vocational training and encourage mobility of instructors and trainees and particularly young people;
  - (d) stimulate cooperation on training between educational or training establishments and firms;
  - (e) develop exchanges of information and experience on issues common to the training systems of the Member States.
3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of vocational training.
4. A European law or framework law shall contribute to the achievement of the objectives referred to in this Article, excluding any harmonisation of the laws and regulations of the Member States. It shall be adopted after consulting the Committee of the Regions and the Economic and Social Committee.

SECTION 5  
CIVIL PROTECTION

Article III-179 (new)

1. The Union shall encourage cooperation between Member States in order to improve the effectiveness of systems for preventing and protecting against natural or man-made disasters within the Union.

Union action shall aim to:

- (a) support and supplement Member States' action at national, regional and local level in risk prevention, in preparing their civil-protection personnel and in responding to natural or man-made disasters;
- (b) promote swift, effective operational cooperation between national civil-protection services;
- (c) promote consistency in international civil-protection work.

2. The measures necessary to help achieve the objectives referred to in paragraph 1 shall be enacted in a European law or framework law.

## SECTION 6

### ADMINISTRATIVE COOPERATION

#### Article III-180 (new)

1. Effective national implementation of Union law by the Member States, which is essential for the proper functioning of the Union, shall be regarded as a matter of common interest.
2. The Union may support the efforts of Member States to improve their administrative capacity to implement Union law. Such action may include facilitation of exchange of information and of civil servants as well as supporting training and development schemes. No Member State shall be obliged to avail itself of such support. A European law shall establish the necessary measures to this end.
3. This Article does not affect the obligations of the Member States to implement Union law or the prerogatives and duties of the Commission. Nor does this Article affect other provisions of the Constitution providing for administrative cooperation among the Member States and between them and the Union.

## **TITLE IV**

### **ASSOCIATION OF THE OVERSEAS COUNTRIES AND TERRITORIES**

#### Article III-181 (ex Article 182)

The non-European countries and territories which have special relations with Denmark, France, the Netherlands and the United Kingdom shall be associated with the Union. These countries and territories (hereinafter called the "countries and territories") are listed in [Annex II].

The purpose of association shall be to promote the economic and social development of the countries and territories and to establish close economic relations between them and the Union as a whole.

In accordance with the principles set out ... <sup>1</sup>, association shall serve primarily to further the interests and prosperity of the inhabitants of these countries and territories in order to lead them to the economic, social and cultural development to which they aspire.

#### Article III-182 (ex Article 183)

Association shall have the following objectives.

- 1) Member States shall apply to their trade with the countries and territories the same treatment as they accord each other pursuant to the Constitution.
- 2) Each country or territory shall apply to its trade with Member States and with the other countries and territories the same treatment as that which it applies to the European State with which it has special relations.
- 3) Member States shall contribute to the investments required for the progressive development of these countries and territories.
- 4) For investments financed by the Union, participation in tenders and supplies shall be open on equal terms to all natural and legal persons who are nationals of a Member State or of one of the countries and territories.
- 5) In relations between Member States and the countries and territories, the right of establishment of nationals and companies or firms shall be regulated in accordance with the provisions and procedures laid down in the [Chapter] relating to the right of establishment and on a non-discriminatory basis, subject to any special measures adopted pursuant to [Article 187].

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<sup>1</sup> The principles in question, which are currently in the preamble to the TEC, should be incorporated in the Constitution and, if appropriate, in this provision.

#### Article III-183 (ex Article 184)

1. Customs duties on imports into the Member States of goods originating in the countries and territories shall be prohibited in conformity with the prohibition of customs duties between Member States provided for by the Constitution.
2. Customs duties on imports into each country or territory from Member States or from the other countries or territories shall be prohibited in accordance with [ex Article 25].
3. The countries and territories may, however, levy customs duties which meet the needs of their development and industrialisation or produce revenue for their budgets.

The duties referred to in the first subparagraph may not exceed the level of those imposed on imports of products from the Member State with which each country or territory has special relations.

4. Paragraph 2 shall not apply to countries and territories which, by reason of the particular international obligations by which they are bound, already apply a non-discriminatory customs tariff.
5. The introduction of or any change in customs duties imposed on goods imported into the countries and territories shall not, either in law or in fact, give rise to any direct or indirect discrimination between imports from the various Member States.

#### Article III-184 (ex Article 185)

If the level of the duties applicable to goods from a third country on entry into a country or territory is liable, when [ex Article 184(1)] has been applied, to cause deflections of trade to the detriment of any Member State, the latter may request the Commission to propose to the other Member States that they take the necessary steps to remedy the situation.

#### Article III-185 (ex Article 186)

Subject to the provisions relating to public health, public security or public policy, freedom of movement within Member States for workers from the countries and territories, and within the countries and territories for workers from Member States, shall be regulated by measures adopted in accordance with [ex Article 187].

#### Article III-186 (ex Article 187)

The Council, on its own initiative/without a proposal from the Commission, shall adopt unanimously, on the basis of the experience acquired under the association of the countries and territories with the Union and of the principles set out, measures as regards the detailed rules and the procedure for the association of the countries and territories with the Union.



Article III-187 (ex Article 188)

[Ex Articles 182 to 187] shall apply to Greenland, subject to the specific provisions for Greenland set out in the Protocol on special arrangements for Greenland.

## **TITLE V**

### **THE UNION'S EXTERNAL ACTION**

#### **CHAPTER I**

#### **PROVISIONS HAVING GENERAL APPLICATION**

##### **Article III-188 (ex Article 1)**

1. The Union's action on the international scene shall be guided by, and designed to advance in the wider world, the principles which have inspired its own creation, development and enlargement: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, equality and solidarity, and for international law in accordance with the principles of the United Nations Charter. The Union shall seek to develop relations and build partnerships with countries, and regional or global organisations, which share these values. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.
2. The European Union shall define and pursue common policies and Union actions, and shall work for a maximum degree of cooperation in all fields of international relations, in order to:
  - (a) safeguard the common values, fundamental interests, security, independence and integrity of the Union;
  - (b) consolidate and support democracy, the rule of law, human rights and international law;
  - (c) preserve peace, prevent conflicts and strengthen international security, in conformity with the principles of the United Nations Charter;
  - (d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;
  - (e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;
  - (f) develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;
  - (g) assist populations, countries and regions confronting man-made or natural disasters;
  - (h) promote an international system based on stronger multilateral cooperation and good global governance.

3. The Union shall respect the principles and pursue the objectives listed above in the development and implementation of the different areas of the Union's external action covered by this Title and the external aspects of other Union policies.

The Union shall ensure consistency between the different areas of its external action and between these and its internal policies. The Council and the Commission, assisted to that end by the Union's Minister for Foreign Affairs, shall be responsible for ensuring this consistency and shall cooperate to that effect.

#### Article III-189 (ex Article 2)

1. On the basis of the principles and objectives referred to in Article 1 of this Title, the European Council shall identify the strategic interests and objectives of the Union.

European Council decisions on the strategic interests and objectives of the Union may relate to foreign policy and to other areas of the external action of the Union. Such decisions may concern the relations of the Union with a specific country or region or may be thematic in approach. They shall define their duration, and the means to be made available by the Union and the Member States.

The European Council shall act unanimously on a recommendation from the Council, adopted by the latter under the arrangements laid down for each area. The decisions of the European Council shall be implemented in accordance with the procedures provided for in the Constitution.

2. The Minister for Foreign Affairs, for the field of common foreign and security policy, and the Commission, for other fields of external action, may submit joint proposals to the Council.

## **CHAPTER II**

### **COMMON FOREIGN AND SECURITY POLICY**

#### **SECTION 1**

#### **COMMON FOREIGN POLICY**

##### **Article III-190 (ex Article 3)**

1. In the context of the principles and objectives of its external action as set out in Article 1 of this Title, the Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy

2. The Member States shall support the Union's common foreign and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity.

The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.

The Council and the Union's Minister for Foreign Affairs shall ensure that these principles are complied with.

3. The Union shall conduct the common foreign and security policy by:

- (a) defining the general guidelines;
- (b) adopting decisions on:
  - (i) actions of the Union,
  - (ii) positions of the Union,
  - (iii) implementation of actions and positions;
- (c) strengthening systematic cooperation between Member States in the conduct of policy.

##### **Article III-191 (ex Article 4)**

The European Council shall define the general guidelines for the common foreign and security policy, including for matters with defence implications.

If international developments so require, the President of the European Council shall convene an extraordinary meeting of the European Council in order to define the strategic lines of the Union's policy in the face of such developments.

The Council shall take the decisions necessary for defining and implementing the common foreign and security policy on the basis of the general guidelines and strategic lines defined by the European Council.

#### Article III-192 (ex Article 5)

1. The Union's Minister for Foreign Affairs, who shall chair the Foreign Affairs Council, shall contribute through his proposals towards the preparation of the common foreign and security policy and shall be responsible for implementing the decisions taken by the European Council and the Council.
2. For matters relating to the common foreign and security policy, the Union shall be represented by the Minister for Foreign Affairs, who shall conduct political dialogue on the Union's behalf and shall express the Union's position in international organisations and at international conferences.

#### Article III-193 (ex Article 6)

1. Where the international situation requires operational action by the Union, the Council shall take the necessary decisions. A decision shall lay down the objectives, the scope, the means to be made available to the Union, if necessary the duration, and the conditions for implementation of the action.
2. If there is a change in circumstances having a substantial effect on a question subject to such a decision, the Council shall review the principles and objectives of the action and take the necessary decisions. As long as the Council has not acted, the decision on action by the Union shall stand.
3. Such decisions shall commit the Member States in the positions they adopt and in the conduct of their activity.
4. Whenever there is any plan to adopt a national position or take national action pursuant to such a decision, information shall be provided in time to allow, if necessary, for prior consultations within the Council. The obligation to provide prior information shall not apply to measures which are merely a national transposition of Council decisions.
5. In cases of imperative need arising from changes in the situation and failing a Council decision, Member States may take the necessary measures as a matter of urgency, having regard to the general objectives of the decision on action by the Union. The Member State concerned shall inform the Council immediately of any such measures.
6. Should there be any major difficulties in implementing such a decision, a Member State shall refer them to the Council which shall discuss them and seek appropriate solutions. Such solutions shall not run counter to the objectives of the action or impair its effectiveness.

#### Article III-194 (ex Article 7)

The Council shall adopt decisions which shall define the approach of the Union to a particular matter of a geographical or thematic nature. Member States shall ensure that their national policies conform to the positions of the Union.

### Article III-195 (ex Article 8)

1. Any Member State, the Minister for Foreign Affairs, or the Minister with the support of the Commission, may refer to the Council any question relating to the common foreign and security policy and may submit proposals to the Council.
2. In cases requiring a rapid decision, the Minister for Foreign Affairs, of the Minister's own motion or at the request of a Member State, shall convene an extraordinary Council meeting within forty-eight hours or, in an emergency, within a shorter period.

### Article III-196 (ex Article 9)

1. Decisions under this Chapter shall be taken by the Council acting unanimously. Abstentions by members present in person or represented shall not prevent the adoption of such decisions.

When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration under the present subparagraph. In that case, it shall not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position. If the members of the Council qualifying their abstention in this way represent more than one third of the votes weighted in accordance with [Article X] of the Constitution, the decision shall not be adopted.

2. By derogation from paragraph 1, the Council shall act by qualified majority:
  - (a) when adopting decisions on Union actions and positions on the basis of a European Council decision relating to the Union's strategic interests and objectives, as defined in [Article 2(1)] of this Title;
  - (b) when adopting a decision on the initiative of the Minister for Foreign Affairs further to a request from the European Council;
  - (c) when adopting any decision implementing a Union action or position;
  - (d) when appointing a special representative in accordance with [Article 11] of this Chapter.

If a member of the Council declares that, for vital and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. The Council may, acting by a qualified majority, request that the matter be referred to the European Council for decision by unanimity.

3. The European Council may decide unanimously that the Council shall act by a qualified majority in cases other than those referred to in paragraph 2.
4. Paragraphs 2 and 3 shall not apply to decisions having military or defence implications.

#### Article III-197 (ex Article 10)

1. When the Union has defined a common approach within the meaning of [Article 31(5)] of Part One of the Constitution, the Union's Minister for Foreign Affairs and the Ministers for Foreign Affairs of the Member States shall coordinate their activities within the Council.
2. The diplomatic missions of the Member States and the delegations of the Union shall cooperate in third countries and in international organisations, and shall contribute to formulating and implementing a common approach.

#### Article III-198 (ex Article 11)

The Council shall, whenever it deems it necessary, appoint, on the initiative of the Minister for Foreign Affairs, a special representative with a mandate in relation to particular policy issues. The special representative shall carry out his mandate under the authority of the Minister for Foreign Affairs.

#### Article III-199 (ex Article 12)

The Union may conclude agreements with one or more States or international organisations pursuant to this Chapter, in accordance with the procedure described in Article 33 of this Title.

#### Article III-200 (ex Article 13)

1. The Minister for Foreign Affairs shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy, including the common security and defence policy, and shall ensure that the views of the European Parliament are duly taken into consideration. The European Parliament shall be kept regularly informed by the Minister for Foreign Affairs of the development of the Union's foreign and security policy, including the security and defence policy. Special representatives may be involved in briefing the European Parliament.
2. The European Parliament may ask questions of the Council and of the Minister for Foreign Affairs or make recommendations to them. Twice a year it shall hold a debate on progress in implementing the common foreign and security policy, including the security and defence policy.

#### Article III-201 (ex Article 14)

1. Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the Union's positions in such fora. The Union's Minister for Foreign Affairs shall organise this coordination.

In international organisations and at international conferences where not all the Member States participate, those which do take part shall uphold the Union's positions.

2. Without prejudice to paragraph 1 and [Article 6(3)] of this Title, Member States represented in international organisations or international conferences where not all the Member States participate shall keep the latter, as well as the Minister for Foreign Affairs, informed of any matter of common interest.

Member States which are also members of the United Nations Security Council will concert and keep the other Member States and the Union's Minister for Foreign Affairs fully informed. Member States which are members of the Security Council will, in the execution of their functions, defend the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter.

When the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the Minister for Foreign Affairs be asked to present the Union's position.

#### Article III-202 (ex Article 15)

The diplomatic and consular missions of the Member States and the Union delegations in third countries and international conferences, and their representations to international organisations, shall cooperate in ensuring that the decisions relating to Union positions and actions adopted by the Council are complied with and implemented. They shall step up cooperation by exchanging information and carrying out joint assessments.

They shall contribute to the implementation of the provisions referred to in [Article 7(2) of Part One] of the Constitution on the protection of European citizens in the territory of a third country. Member States shall establish the necessary rules among themselves and start the international negotiations required to secure this protection.

#### Article III-203 (ex Article 16)

Without prejudice to [Article XX] of the Constitution [on the organisation of the Council/Permanent Representatives Committee], a Political and Security Committee shall monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the Council, or of the Minister for Foreign Affairs, or on its own initiative. It shall also monitor the implementation of agreed policies, without prejudice to the responsibility of the Minister for Foreign Affairs.

Within the scope of this title, this Committee shall exercise, under the responsibility of the Council and of the Minister for Foreign Affairs, political control and strategic direction of crisis management operations, as defined in [Article 17] of this Title.

The Council may authorise the Committee, for the purpose and for the duration of a crisis management operation, as determined by the Council, to take the relevant decisions concerning the political control and strategic direction of the operation.



Article III-204 (ex Article 16a)

The implementation of the common foreign and security policy shall not affect the competences listed in [Articles 11 to 13, 15 and 16 of Part One] of the Constitution. Likewise, the implementation of the policies listed in those articles shall not affect the competence referred to in [Article 14 of Part One] of the Constitution.

The Court of Justice shall have jurisdiction to monitor compliance with this Article.

## SECTION 2

### THE COMMON SECURITY AND DEFENCE POLICY

#### Article III-205 (ex Article 17)

1. The tasks referred to in [Article 32(1) of Part One] of the Constitution, in the course of which the Union may use military and civilian means, shall include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peacemaking, and post-conflict stabilisation. All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories.
2. The Council, acting unanimously, shall adopt decisions relating to the tasks referred to in this Article, defining their objectives and scope and the general conditions for their implementation. The Minister for Foreign Affairs, acting under the authority of the Council and in close and constant contact with the Political and Security Committee, shall ensure coordination of the civilian and military aspects of such tasks.

#### Article III-206 (ex Article 18)

1. Within the framework of the decisions adopted in accordance with [Article 17] of this Title, the Council may entrust the implementation of a task to a group of Member States having the necessary capability and the desire to undertake the task. Those Member States in association with the Union's Minister for Foreign Affairs shall agree between themselves on the management of the task.
2. The Council shall be regularly informed by the Member States participating in the task on its progress and, should the completion of the task involve major new consequences or require amendment of the objective, scope and conditions for implementation agreed by the Council under [Article 17(2)] of this Title, the Member States participating shall refer the matter to the Council forthwith. In such cases, the Council shall adopt the necessary decisions.

#### Article III-207 (ex Article 19)

1. The European Armaments, Research and Military Capabilities Agency, subject to the Council's authority, shall have as its task to:
  - (a) contribute to identifying the Member States' military capability objectives and evaluating observance of the capability commitments given by the Member States;
  - (b) promote harmonisation of operational needs and adoption of effective, compatible procurement methods;

- (c) propose multilateral projects to fulfil the objectives in terms of military capabilities, ensure coordination of the programmes implemented by the Member States and management of specific cooperation programmes;
- (d) support defence technology research, and coordinate and plan joint research activities and the study of technical solutions meeting future operational needs;
- (e) contribute to identifying and, if necessary, implementing any useful measure for strengthening the industrial and technological base of the defence sector and for improving the effectiveness of military expenditure.

2. The Agency shall be open to all Member States wishing to be part of it. The Council, acting by qualified majority, shall adopt a decision defining the Agency's statute, seat and operational rules. Such rules should take account of the level of effective participation in the Agency's activities. Specific groups shall be set up within the Agency bringing together Member States engaged in joint projects. The Agency shall carry out its tasks in liaison with the Commission where necessary.

#### Article III-208 (ex Article 20)

The Member States listed in Protocol X annexed to the Constitution, which fulfil high military capability criteria and wish to enter into more binding commitments in this matter with a view to more demanding tasks, hereby establish structured cooperation between themselves within the meaning of [Article 32(6) of Part One] of the Constitution. The military capability criteria and commitments which those Member States have defined are set out in that Protocol.

1. If a Member State wishes to participate in such cooperation at a later stage, and thus subscribe to the obligations it imposes, it shall inform the European Council of its intention. The Council shall deliberate at the request of the Member State in question but only the Member States taking part in structured cooperation shall decide on the request.
2. Only Member States taking part in such cooperation shall adopt decisions relating to matters covered by it. The Minister for Foreign Affairs shall attend the deliberations. Other Member States shall be duly and regularly informed by the Minister for Foreign Affairs of developments in cooperation.
3. The Council may ask the Member States participating in such cooperation to carry out at Union level a task referred to in [Article 17] of this Title.

Article III-209 (ex Article 21)

1. The closer cooperation on mutual defence provided for in [Article 32(7) of Part One] shall be open to all Member States of the Union. A list of participating Member States shall be set out in a Declaration annexed to this Constitution. If a Member State wishes to take part in such cooperation at a later stage, and thus subscribe to the obligations it imposes, it shall inform the European Council of its intention and subscribe to the Declaration annexed to the Constitution.
2. A participating Member State which is the victim of armed aggression on its territory shall inform the other participating States of the situation and may request aid and assistance from them. Participating Member States shall meet at ministerial level, assisted by their representative on the Political and Security Committee and the Military Committee.
3. The United Nations Security Council shall be informed immediately of any armed aggression and the measures taken as a result.
4. These provisions shall not affect the rights and obligations resulting, for those concerned, from the North Atlantic Treaty.

## SECTION 3

### FINANCIAL PROVISIONS

#### Article III-210 (ex Article 22)

1. Administrative expenditure which the provisions referred to in this Chapter entail for the institutions shall be charged to the Union budget.
2. Operating expenditure to which the implementation of those provisions gives rise shall also be charged to the Union budget, except for such expenditure arising from operations having military or defence implications and cases where the Council acting unanimously decides otherwise.

In cases where expenditure is not charged to the Union's budget it shall be charged to the Member States in accordance with the gross national product scale, unless the Council acting unanimously decides otherwise. As for expenditure arising from operations having military or defence implications, Member States whose representatives in the Council have made a formal declaration under [Article 9(1), second subparagraph], shall not be obliged to contribute to the financing thereof.

3. A Council Decision shall establish the specific procedures for guaranteeing rapid access to appropriations in the Union budget for urgent financing of initiatives in the framework of the common foreign and security policy, and in particular for preparatory activities for tasks as referred to in [Article 32(1) of Part One] of the Constitution.

Preparatory activities for tasks as referred to in [Article 32(1) of Part One] of the Constitution which are not charged to the Union budget shall be financed by a start-up fund made up of Member States' contributions.

The Council shall adopt by a qualified majority on a proposal from the Minister for Foreign Affairs:

- (a) the procedures for setting up and financing the fund, in particular the amounts allocated to the fund and the procedures for reimbursement;
- (b) the procedures for administering the fund;
- (c) the financial control procedures.

When it is planning a task as referred to in [Article 32(1) of Part One] of the Constitution which cannot be charged to the Union's budget, the Council shall authorise the Minister for Foreign Affairs to use the fund. The Minister for Foreign Affairs shall report to the Council on the implementation of the remit.

## CHAPTER III

### COMMON COMMERCIAL POLICY

#### Article III-211 (ex Article 23)

By establishing a customs union between themselves, Member States aim to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers.

#### Article III-212 (ex Article 24)

1. The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action, as set out in Article 1 of this Title.

2. A European law or framework law shall establish the measures required to implement the common commercial policy.

3. Where agreements with one or more States or international organisations need to be negotiated, the relevant provisions of [Article 33] of this Title shall apply. The Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Union policies and rules.

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee and to the European Parliament on the progress of negotiations.

4. For the negotiation and conclusion of agreements in the fields of trade in services involving the movement of persons and the commercial aspects of intellectual property, the Council shall act unanimously where such agreements include provisions for which unanimity is required for the adoption of internal rules.

5. The exercise of the competences conferred by this Article in the field of commercial policy shall not affect the delimitation of internal competences between the Union and the Member States, and shall not lead to harmonisation of legislative or regulatory provisions of Member States insofar as the Constitution excludes such harmonisation.

**CHAPTER IV**  
**COOPERATION WITH THIRD COUNTRIES**  
**AND HUMANITARIAN AID**

**SECTION 1**

**DEVELOPMENT COOPERATION**

Article III-213 (ex Article 25)

1. Union policy in the sphere of development cooperation shall be conducted within the framework of the principles and objectives of the Union's external action as set out in [Article 1] of this Title. The Union's development cooperation policy and that of the Member States complement and reinforce each other.

Union development cooperation policy shall have as its primary objective the reduction and, in the long term, the eradication of poverty. The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries.

2. The Union and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.

Article III-214 (ex Article 26)

1. A European law or framework law shall establish the measures necessary for the implementation of development cooperation policy, which may relate to multiannual cooperation programmes with developing countries or programmes with a thematic approach.

2. The Union may conclude with third countries and competent international organisations any agreement helping to achieve the objectives referred to in [Article 1] of this Title. Such agreements shall be negotiated and concluded in accordance with [Article 33] of this Title.

The first subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

3. The European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures referred to in paragraph 1.

Article III-215 (ex Article 27)

1. The Union and the Member States shall coordinate their policies on development cooperation and shall consult each other on their aid programmes, including in international organisations and during international conferences, in order to promote the complementarity and efficiency of their action. They may undertake joint action. Member States shall contribute if necessary to the implementation of Union aid programmes.
2. The Commission may take any useful initiative to promote the coordination referred to in paragraph 1.
3. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and the competent international organisations.



## SECTION 2

### ECONOMIC, FINANCIAL AND TECHNICAL COOPERATION WITH THIRD COUNTRIES

#### Article III-216 (ex Article 28)

1. Without prejudice to the other provisions of this Treaty, and in particular those of [Articles 25 to 27] of this Title concerning development cooperation, the Union shall, within its spheres of competence, carry out economic, financial and technical cooperation measures, including financial aid in particular, with third countries other than developing countries. Such measures shall be consistent with the development policy of the Union. The Union's measures and those of the Member States shall complement and reinforce each other. They shall be carried out within the framework of the principles and objectives of the Union's external action as set out in Article 1 of this Title.
2. A European law or framework law shall establish the measures necessary for the implementation of paragraph 1.
3. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and the competent international organisations. The arrangements for Union cooperation may be the subject of agreements between the Union and the third parties concerned, which shall be negotiated and concluded pursuant to [Article 33] of this Title. The Council shall act unanimously for the association agreements referred to in [Article 32(2)] of this Title and for the agreements to be concluded with the States which are candidates for accession to the Union. The first subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

#### Article III-217 (ex Article 29)

When the situation in a third country requires urgent financial aid from the Union, the Council shall adopt the necessary measures by a qualified majority, on a proposal from the Commission.

## SECTION 3

### HUMANITARIAN AID

#### Article III-218 (ex Article 30)

1. The Union's operations in the field of humanitarian aid shall be conducted within the framework of the principles and objectives of the external action of the Union as set out in [Article 1] of this Title. Such operations shall be intended to provide ad hoc assistance, relief and protection for people in third countries and victims of man-made and natural disasters, in order to meet the humanitarian needs resulting from these different situations. The Union's actions and those of the Member States shall complement and reinforce each other.

2. Humanitarian aid operations shall be conducted in compliance with the principles of international humanitarian law, in particular the principles of impartiality and non-discrimination.

3. A European law or framework law shall establish the necessary measures defining the framework within which the Union's humanitarian aid operations shall be implemented.

4. The Union may conclude with third countries and competent international organisations any agreement helping to achieve the objectives referred to in Article 1. Such agreements shall be negotiated and concluded pursuant to [Article 33] of this Title.

The first subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

5. In order to establish a framework for joint contributions from young Europeans to the humanitarian actions of the Union, a European Voluntary Humanitarian Aid Corps shall be set up. The European Parliament and the Council, in accordance with the legislative procedure, shall adopt a European law determining the rules and operation of the Corps.

6. The Commission may take any useful initiative to promote coordination between actions of the Union and those of the Member States, in order to enhance the efficiency and complementarity of Union and national humanitarian aid measures.

7. The Union shall ensure that its humanitarian operations are coordinated and consistent with those of international organisations and bodies, in particular those forming part of the United Nations system.

## **CHAPTER V**

### **RESTRICTIVE MEASURES**

#### Article III-219 (ex Article 31)

1. Where a decision on a Union position or action adopted in accordance with the provisions on the common foreign and security policy in Chapter 1 of this Title provides for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from the Minister for Foreign Affairs and the Commission, shall take the necessary measures. It shall inform the European Parliament thereof.
2. In the areas referred to in paragraph 1, the Council may adopt restrictive measures under the same procedure against natural or legal persons and non-State groups or bodies.

## CHAPTER VI

### INTERNATIONAL AGREEMENTS

#### Article III-220 (ex Article 32)

1. The Union may conclude agreements with one or more third countries or international organisations where the Constitution so provides or where the conclusion of an agreement is necessary in order to achieve one of the Union's objectives, where there is provision for it in a binding Union legislative act or where it affects one of the Union's internal acts.
2. Agreements concluded by the Union are binding upon the institutions of the Union and on its Member States.

#### Article III-221 (ex Article 32a)

1. The Union may conclude association agreements with one or more third countries or international organisations. Such agreements shall establish an association with one or more third countries or international organisations involving reciprocal rights and obligations, common actions and special procedures.

#### Article III-222 (ex Article 33)

1. Agreements between the Union and third states or international organisations shall be negotiated and concluded in accordance with the following procedure.
2. The Council shall authorise negotiations to be opened, adopt negotiating directives and conclude agreements.
3. The Commission, or the Union's Minister for Foreign Affairs where the agreement exclusively or principally relates to the common foreign and security policy, shall submit recommendations to the Council, which shall authorise the opening of negotiations.
4. In connection with the decision authorising negotiations, depending on the subject of the future agreement, the Council shall nominate the negotiator or leader of the Union's negotiating team.
5. Without prejudice to the specific provisions laid down in Article 24, the Council may address negotiating directives to the negotiator of the agreement and may designate a special committee in consultation with which the negotiations must be held.
6. On a proposal from the agreement negotiator, the Council shall decide on the signing and, if necessary, provisional application of agreements before entry into force.

7. The Council shall conclude agreements on the proposal of the agreement negotiator. Except where agreements relate exclusively to the common foreign and security policy, the Council shall not conclude any agreement until the European Parliament has been consulted. The Parliament shall deliver its opinion within a time-limit which the Council may lay down according to the urgency of the matter. In the absence of an opinion within that time-limit, the Council may act. The European Parliament's assent shall be required for association agreements, for Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms and for agreements establishing a specific institutional framework by organising cooperation procedures, agreements with important budgetary implications for the Union and agreements covering fields to which the legislative procedure applies. The Council and the European Parliament may, in an urgent situation, agree upon a time-limit for the assent.
8. When concluding an agreement, the Council may, by way of derogation from the foregoing, authorise the negotiator of the agreement to approve modifications on the Union's behalf where the agreement provides for them to be adopted by a simplified procedure or by a body set up by the agreement; it may attach specific conditions to such authorisation.
9. The Council shall act by a qualified majority throughout the procedure. However, it shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements and for Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms.
10. The Council, on a proposal from the Union's Minister for Foreign Affairs or the Commission, shall take a decision to suspend the application of an agreement and shall establish the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt decisions having legal effects, with the exception of decisions supplementing or amending the institutional framework of the agreement.
11. The European Parliament shall be immediately and fully informed at all stages of the procedure.
12. A Member State, the European Parliament, the Council or the Commission may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of the Constitution. Where the opinion of the Court of Justice is adverse, the agreement envisaged may not enter into force unless the Constitution is revised in accordance with the procedure laid down in [Article [N]].

#### Article III-223 (ex Article 34)

1. By way of derogation from [Article 33], the Council, acting unanimously on a recommendation from the European Central Bank or from the Commission, following consultation with the European Central Bank with a view to reaching a consensus compatible with the objective of price stability and after consultation with the European Parliament in accordance with the procedure laid down in paragraph 3 for the arrangements there referred to, may conclude formal agreements on a system of exchange rates for the euro in relation to non-Union currencies. The Council may, acting by a qualified majority on a recommendation from the European Central Bank or the Commission and after consulting the European Central Bank in an endeavour to reach a consensus consistent with the objective of price stability, adopt, adjust or abandon the central rates of the euro within the exchange-rate system. The President of the Council shall inform the European Parliament of the adoption, adjustment or abandonment of the central rates of the euro.

2. In the absence of an exchange-rate system in relation to one or more third-country currencies as referred to in paragraph 1, the Council, acting by a qualified majority either on a recommendation from the Commission and after consulting the European Central Bank or on a recommendation from the European Central Bank, may formulate general orientations for exchange-rate policy in relation to these currencies. These general orientations shall be without prejudice to the primary objective of the European System of Central Banks, to maintain price stability.
3. By way of derogation from [Article 33], where agreements on matters relating to the monetary or exchange-rate system are to be the subject of negotiations between the Union and one or more States or international organisations, the Council shall, acting by a qualified majority on a recommendation from the Commission and after consulting the European Central Bank, decide the arrangements for the negotiation and for the conclusion of the agreements. These arrangements shall ensure that the Union expresses a single position. The Commission shall be fully associated with the negotiations.
4. Without prejudice to Union competence and agreements as regards economic and monetary union, Member States may negotiate in international bodies and conclude international agreements.

## **CHAPTER VII**

### **RELATIONS WITH INTERNATIONAL ORGANISATIONS AND THIRD COUNTRIES AND UNION DELEGATIONS**

#### **Article III-224 (ex Article 35)**

1. The Union shall establish all appropriate forms of cooperation with the United Nations, the Council of Europe, the Organisation for Security and Cooperation in Europe and the Organisation for Economic Cooperation and Development.
2. It shall also maintain such relations as are appropriate with other international organisations.
3. The Union's Minister for Foreign Affairs and the Commission shall be instructed to implement the above paragraph.

#### **Article III-225 (ex Article 36)**

1. Union delegations in third countries and to international organisations shall represent the Union.
2. Union delegations shall operate under the authority of the Union's Minister for Foreign Affairs and in close cooperation with Member States' missions.

## **CHAPTER VIII**

### **IMPLEMENTATION OF THE SOLIDARITY CLAUSE**

#### **Article III-226 (ex Article X)**

1. On the basis of a joint proposal by the Minister for Foreign Affairs and the Commission, the Council shall adopt a decision defining the arrangements for the implementation of the solidarity clause referred to in [Article 33 of Part One].
2. Should a Member State fall victim to a terrorist attack or a natural or man-made disaster, the other Member States shall assist it at the request of its political authorities. To that end, the Member States shall coordinate between themselves in the Council.
3. For the purposes of this Article, the Council shall be assisted by the Political and Security Committee, with the support of the structures developed in the context of the common security and defence policy, and by the Committee provided for in [ex Article 5, JHA], which shall, if necessary, submit joint opinions.
4. The European Council shall regularly assess the threats facing the Union in order to enable the Union to take effective action.



**TITLE VI**  
**THE FUNCTIONING OF THE UNION**

**CHAPTER I**  
**PROVISIONS GOVERNING THE INSTITUTIONS**

SECTION 1  
THE INSTITUTIONS

Subsection 1  
The European Parliament

Article III-227 (ex Article 190)

*(Composition of the European Parliament)*

1. The European Parliament shall draw up a proposal for a European law for elections by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States.

The Council shall, acting unanimously after obtaining the consent of the European Parliament, which shall act by a majority of its component members, lay down the law referred to in the preceding subparagraph, which it shall recommend to Member States for adoption in accordance with their respective constitutional requirements.

2. A European law of the European Parliament, adopted on its own initiative, shall lay down the regulations and general conditions governing the performance of the duties of its Members. The European Parliament shall act after seeking an opinion from the Commission and with the approval of the Council. All rules or conditions relating to the taxation of Members or former Members shall require unanimity within the Council.

Article III-228 (ex Article 191)

Pursuant to Article [35a] of the Constitution, a European law shall lay down the regulations governing political parties at European level and in particular the rules regarding their funding.

#### Article III-229 (ex Article 192)

The European Parliament may, acting by a majority of its component Members, request the Commission to submit any appropriate proposal on matters on which it considers that a Union act is required for the purpose of implementing the Constitution. If the Commission does not submit a proposal, it shall inform the European Parliament of the reasons.

#### Article III-230 (ex Article 193)

In the course of its duties, the European Parliament may, at the request of a quarter of its component Members, set up a temporary Committee of Inquiry to investigate, without prejudice to the powers conferred by the Constitution on other institutions or bodies, alleged contraventions or maladministration in the implementation of Union law, except where the alleged facts are being examined before a court and while the case is still subject to legal proceedings.

The temporary Committee of Inquiry shall cease to exist on the submission of its report.

A European law adopted by the European Parliament on its own initiative shall lay down the detailed provisions governing the exercise of the right of inquiry. The European Parliament shall act after seeking an opinion from the Commission and with the approval of the Council.

#### Article III-231 (ex Article 194)

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right to address, individually or in association with other citizens or persons, a petition to the European Parliament on a matter which comes within the Union's fields of activity and which affects him, her or it directly.

#### Article III-232 (ex Article 195)

1. The European Parliament shall appoint a European Ombudsman on its own initiative. The European Ombudsman shall be empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Union's institutions or bodies, with the exception of the Court of Justice acting in its judicial role.

In accordance with his duties, the European Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where the European Ombudsman establishes an instance of maladministration, he shall refer the matter to the institution concerned, which shall have a period of three months in which to inform him of its views. The European Ombudsman shall then forward a report to the European Parliament and the institution concerned. The person lodging the complaint shall be informed of the outcome of such inquiries.

The European Ombudsman shall submit an annual report to the European Parliament on the outcome of his inquiries.

2. The European Ombudsman shall be appointed after each election of the European Parliament for the duration of its term of office. The European Ombudsman shall be eligible for reappointment.

The European Ombudsman may be dismissed by the Court of Justice at the request of the European Parliament if he no longer fulfils the conditions required for the performance of his duties or if he is guilty of serious misconduct.

3. The European Ombudsman shall be completely independent in the performance of his duties. In the performance of those duties he shall neither seek nor take instructions from any body. The European Ombudsman may not, during his term of office, engage in any other occupation, whether gainful or not.

4. A European law of the European Parliament, adopted on its own initiative, shall lay down the regulations and general conditions governing the performance of the European Ombudsman's duties. The European Parliament shall act after seeking an opinion from the Commission and with the approval of the Council.

#### Article III-233 (ex Article 196)

The European Parliament shall hold an annual session. It shall meet, without requiring to be convened, on the second Tuesday in March.

The European Parliament may meet in extraordinary part-session at the request of a majority of its Members or at the request of the Council or of the Commission.

#### Article III-234 (ex Article 197)

Members of the Commission may attend all meetings of the European Parliament and shall, at their request, be heard on behalf of the Commission.

The Commission shall reply orally or in writing to questions put to it by the European Parliament or by its Members.

The Council shall be heard by the European Parliament in accordance with the conditions laid down by the Council in its Rules of Procedure.

#### Article III-235 (ex Article 198)

Save as otherwise provided in the Constitution, the European Parliament shall act by a majority of the votes cast. The Rules of Procedure shall determine the quorum.

#### Article III-236 (ex Article 199)

The European Parliament shall adopt its Rules of Procedure, acting by a majority of its Members.

The proceedings of the European Parliament shall be published in the manner laid down in its Rules of Procedure.

#### Article III-237 (ex Article 200)

The European Parliament shall discuss in open session the annual general report submitted to it by the Commission.

#### Article III-238 (ex Article 201)

If a motion of censure on the activities of the Commission is tabled before it, the European Parliament shall not vote thereon until at least three days after the motion has been tabled and only by open vote.

If the motion of censure is carried by a two-thirds majority of the votes cast, representing a majority of the Members of the European Parliament, the Members of the Commission shall resign as a body. They shall continue to deal with current business until they are replaced in accordance with [Article 214]. In this case, the term of office of the Members of the Commission appointed to replace them shall expire on the date on which the term of office of the Members of the Commission obliged to resign as a body would have expired.

#### Subsection 2

#### The European Council

#### Article III-239 (new)

Where a vote is taken, any member of the European Council may also act on behalf of not more than one other member. Abstentions by members present in person or represented shall not prevent the adoption by the European Council of decisions which require unanimity.

The European Council shall adopt its Rules of Procedure by a simple majority.

The President of the European Parliament may be invited to be heard by the European Council.

The European Council shall be assisted by the Secretariat mentioned in [ex Article 207]

### Subsection 3

#### The Council

#### Article III-240 (ex Articles 203 and 204)

##### *(Presidency of the Council)*

#### Article III-241 (ex Articles 205 and 206)

Where a vote is taken, any member of the Council may also act on behalf of not more than one other member.

Where the Council is required to act by a simple majority, the Council shall act by a majority of its members.

Abstentions by members present in person or represented shall not prevent the adoption by the Council of acts which require unanimity.

#### Article III-242 (ex Article 207)

1. A committee consisting of the Permanent Representatives of the Member States shall be responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the Council. The Committee may adopt procedural decisions in cases provided for in the Council's Rules of Procedure.

2. The Council shall be assisted by a General Secretariat, under the responsibility of a Secretary-General.

The Council shall decide on the organisation of the General Secretariat by a simple majority.

3. The Council shall adopt its Rules of Procedure by a simple majority.

#### Article III-243 (ex Article 208)

The Council, acting by a simple majority, may request the Commission to undertake any studies the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals. If the Commission does not submit a proposal, it shall inform the Council of the reasons.

#### Article III-244 (ex Article 209)

The Council shall adopt, on its own initiative by a simple majority, the European decisions laying down the rules governing the committees provided for in the Constitution. It shall act after consulting the Commission.

#### Subsection 4

#### The Commission

##### Article III-245 (ex Article 213(1) and ex Article 214)

1. *(Procedures for appointing Members of the Commission)*
2. Only nationals of Member States may be Members of the Commission.

##### Article III-246 (ex Article 213(2))

The Members of the Commission shall refrain from any action incompatible with their duties. Each Member State undertakes to respect this principle and not to seek to influence the Members of the Commission in the performance of their tasks.

The Members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. In the event of any breach of these obligations, the Court of Justice may, on application by the Council, acting by a simple majority, or the Commission, rule that the Member concerned be, according to the circumstances, either compulsorily retired in accordance with [Article (26)] or deprived of his right to a pension or other benefits in its stead.

##### Article III-247 (ex Article 215)

1. Apart from normal replacement, or death, the duties of a Member of the Commission shall end when he resigns or is compulsorily retired. A Member of the Commission shall resign if the President so requests, after obtaining the approval of the College.

*(Procedures for replacing the President or a Member of the Commission)*

##### Article III-248 (ex Article 216)

If any Member of the Commission no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct, the Court of Justice may, on application by the Council, acting by a simple majority, or the Commission, compulsorily retire him.

#### Article III-249 (ex Article 217)

The responsibilities incumbent upon the Commission shall be structured and allocated among its Members by its President, subject to Article I-27(3) of the Constitution. The President may reshuffle the allocation of those responsibilities during the Commission's term of office. The Members of the Commission shall carry out the duties devolved upon them by the President under his authority.

#### Article III-250 (new)

*(Other provisions relating to the Commission)*

#### Article III-251 (ex Article 218)

The Commission shall adopt its Rules of Procedure so as to ensure both its own operation and that of its departments. It shall ensure that these rules are published.

#### Article III-252 (ex Article 219)

The Commission shall act by a majority of its Members. The Rules of Procedure shall determine the quorum.

#### Article III-253 (ex Article 212)

The Commission shall publish annually, not later than one month before the opening of the session of the European Parliament, a general report on the activities of the Union.

### Subsection 5

#### The Court of Justice

#### Article III-254 (ex Article 221)

The Court of Justice shall sit in chambers, in a Grand Chamber or as a full Court, in accordance with the rules laid down for that purpose in the Statute of the Court of Justice.

#### Article III-255 (ex Article 222)

The Court of Justice shall be assisted by eight Advocates-General. Should the Court of Justice so request, the Council, acting unanimously, may increase the number of Advocates-General.

It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice, require his involvement.

#### Article III-256 (ex Article 223)

The Judges and Advocates-General of the Court of Justice shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence; they shall be appointed by common accord of the governments of the Member States after consulting the panel provided for in [ex Article 224a].

Every three years there shall be a partial replacement of the Judges and Advocates-General, in accordance with the conditions laid down in the Statute of the Court of Justice.

The Judges shall elect the President of the Court of Justice from among their number for a term of three years. He may be re-elected.

The Court of Justice shall establish its Rules of Procedure. Those Rules shall require the approval of the Council, acting by a qualified majority.

#### Article III-257 (ex Article 224)

The number of Judges of the High Court shall be determined by the Statute of the Court of Justice. The Statute may provide for the High Court to be assisted by Advocates-General.

The members of the High Court shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high legal office. They shall be appointed by common accord of the governments of the Member States for a term of six years after consulting the panel provided for in [ex Article 224a]. The membership of the High Court shall be partially renewed every three years. Retiring members may be reappointed.

The Judges shall elect the President of the High Court from among their number for a term of three years. He may be re-elected.

The High Court shall establish its Rules of Procedure in agreement with the Court of Justice. It shall act after receiving the approval of the Council, acting by a qualified majority.

Unless the Statute of the Court of Justice provides otherwise, the provisions of the Constitution relating to the Court of Justice shall apply to the High Court.



### Article III-258 (ex Article 224a)

A panel shall be set up in order to give an opinion on candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the High Court before the governments of the Member States take the decisions referred to in [ex Articles 223 and 224].

The panel shall comprise seven persons chosen from among former members of the Court of Justice and the High Court, members of national supreme courts and lawyers of recognised competence, one of whom shall be proposed by the European Parliament. The appointment of members of the panel and the panel's operating rules shall be decided by the Council, acting by a qualified majority, on a proposal from the President of the Court of Justice.

### Article III-259 (ex Article 225)

1. The High Court shall have jurisdiction to hear and determine at first instance actions or proceedings referred to in [ex Articles 230, 232, 235, 236 and 238], with the exception of those assigned to a judicial panel and those reserved in the Statute for the Court of Justice. The Statute may provide for the High Court to have jurisdiction for other classes of action or proceeding.

Decisions given by the High Court under this paragraph may be subject to a right of appeal to the Court of Justice on points of law only, under the conditions and within the limits laid down by the Statute.

2. The High Court shall have jurisdiction to hear and determine actions or proceedings brought against decisions of the judicial panels set up under [ex Article 225a].

Decisions given by the High Court under this paragraph may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Union law being affected.

3. The High Court shall have jurisdiction to hear and determine questions referred for a preliminary ruling under [ex Article 234], in specific areas laid down by the Statute.

Where the High Court considers that the case requires a decision of principle likely to affect the unity or consistency of Union law, it may refer the case to the Court of Justice for a ruling.

Decisions given by the High Court on questions referred for a preliminary ruling may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Union law being affected.

#### Article III-260 (ex Article 225a)

1. The European Parliament and the Council, in accordance with the legislative procedure, may adopt European laws establishing specialised courts attached to the High Court to hear and determine at first instance certain classes of action or proceeding brought in specific areas. They shall act either on a proposal from the Commission after consulting the Court of Justice or at the request of the Court of Justice after consulting the Commission.
2. The European law establishing a specialised court shall lay down the rules on the organisation of the court and the extent of the jurisdiction conferred upon it.
3. Decisions given by specialised courts may be subject to a right of appeal on points of law only or, when provided for in the European law establishing the specialised court, a right of appeal also on matters of fact, before the High Court.
4. The members of the specialised courts shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office. They shall be appointed by the Council, acting unanimously.
5. The specialised courts shall establish their Rules of Procedure in agreement with the Court of Justice. They shall act after receiving the approval of the Council, acting by a qualified majority.
6. Unless the European law establishing the specialised court provides otherwise, the provisions of the Constitution relating to the Court of Justice and the provisions of the Statute of the Court of Justice shall apply to the specialised courts.

#### Article III-261 (ex Article 226)

If the Commission considers that a Member State has failed to fulfil an obligation under the Constitution, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice.

#### Article III-262 (ex Article 227)

A Member State which considers that another Member State has failed to fulfil an obligation under the Constitution may bring the matter before the Court of Justice.

Before a Member State brings an action against another Member State for an alleged infringement of an obligation under the Constitution, it shall bring the matter before the Commission.

The Commission shall deliver a reasoned opinion after each of the States concerned has been given the opportunity to submit its own case and its observations on the other party's case both orally and in writing.

If the Commission has not delivered an opinion within three months of the date on which the matter was brought before it, the absence of such opinion shall not prevent the matter from being brought before the Court of Justice.

#### Article III-263 (ex Article 228)

1. If the Court of Justice finds that a Member State has failed to fulfil an obligation under the Constitution, the State shall be required to take the necessary measures to comply with the judgement of the Court of Justice.
2. If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the Court's judgement, it may bring the case before the Court of Justice after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court of Justice finds that the Member State concerned has not complied with its judgement it may impose a lump sum or penalty payment on it.

This procedure shall be without prejudice to [ex Article 227].

3. When the Commission brings a case before the Court of Justice pursuant to [ex Article 226] on the grounds that the State concerned has failed to fulfil its obligations to notify measures transposing a framework law, it may, when it deems appropriate, request that, in the course of the same proceedings, the Court of Justice impose the payment of a lump sum or penalty if the Court finds that there has been such a failure. If the Court of Justice complies with the Commission's request, the payment in question shall take effect within the time limit laid down by the Court of Justice in its judgement.

#### Article III-264 (ex Article 229)

European laws and framework laws as well as Council laws and regulations, adopted pursuant to the provisions of the Constitution, may give the Court of Justice unlimited jurisdiction with regard to the penalties provided for in them.

#### Article III-265 (ex Article 229a)

Without prejudice to the other provisions of the Constitution, a European law shall confer on the Court of Justice, to the extent that it shall determine, jurisdiction in disputes relating to the application of acts adopted on the basis of the Constitution which create industrial property rights.

### Article III- 266 (ex Article 230)

1. The Court of Justice shall review the legality of European laws and European framework laws, of acts of the Council, of the Commission and of the ECB, other than recommendations and opinions, and of acts of the European Parliament intended to produce legal effects vis-à-vis third parties. It shall also review the legality of acts of agencies and bodies of the Union which produce legal effects vis-à-vis third parties.
2. It shall for this purpose have jurisdiction in actions brought by a Member State, the European Parliament, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Constitution or of any rule of law relating to its application, or misuse of powers.
3. The Court of Justice shall have jurisdiction under the same conditions in actions brought by the Court of Auditors, by the European Central Bank and by the Committee of the Regions for the purpose of protecting their prerogatives.
4. Any natural or legal person may, under the same conditions, institute proceedings against an act addressed to that person or which is of direct and individual concern to him, and against a regulatory act which is of direct concern to him without entailing implementing measures.
5. Acts setting up agencies and bodies of the Union may lay down specific conditions and arrangements concerning actions brought by natural or legal persons against acts of these bodies or agencies intended to produce legal effects.
6. The proceedings provided for in this Article shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

### Article III-267 (ex Article 230a)

The Member State concerned by a determination made by the European Council or the Council pursuant to Article I-58 may apply to the Court of Justice, within one month from the date of that determination, regarding infringement of the purely procedural stipulations contained in that Article.

### Article III-268 (ex Article 231)

If the action is well founded the Court of Justice shall declare the act concerned to be void.

However, the Court of Justice shall, if it considers this necessary, state which of the effects of the act which it has declared void shall be considered as definitive.

### Article III-269 (ex Article 232)

Should the European Parliament, the Council or the Commission, in infringement of the Constitution, fail to act, the Member States and the other institutions of the Union may bring an action before the Court of Justice to have the infringement established. This provision shall apply, under the same conditions, to agencies and bodies of the Union which fail to act.

The action shall be admissible only if the institution, agency or body concerned has first been called upon to act. If, within two months of being so called upon, the institution, agency or body concerned has not defined its position, the action may be brought within a further period of two months.

Any natural or legal person may, under the conditions laid down in the preceding paragraphs, complain to the Court of Justice that an institution, agency or body of the Union has failed to address to that person any act other than a recommendation or an opinion.

### Article III-270 (ex Article 233)

The institution or institutions, agency or body whose act has been declared void, or whose failure to act has been declared contrary to the Constitution, shall be required to take the necessary measures to comply with the judgement of the Court of Justice.

This obligation shall not affect any obligation which may result from the application of [the second paragraph of ex Article 288].

### Article III-271 (ex Article 234)

The Court of Justice shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of the Constitution;
- (b) the validity and interpretation of acts of the institutions of the Union;
- (c) the interpretation of the statutes of agencies or bodies established by an act of the Union, where those statutes so provide.

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgement, request the Court of Justice to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice shall act with the minimum of delay.

Article III-272 (ex Article 235)

The Court of Justice shall have jurisdiction in disputes relating to compensation for damage provided for in [the second paragraph of Article 288].

Article III-273 (ex Article 236)

The Court of Justice shall have jurisdiction in any dispute between the Union and its servants within the limits and under the conditions laid down in the Staff Regulations or the Conditions of Employment.

Article III-274 (ex Article 237)

The Court of Justice shall, within the limits hereinafter laid down, have jurisdiction in disputes concerning:

- (a) the fulfilment by Member States of obligations under the Statute of the European Investment Bank. In this connection, the Board of Directors of the Bank shall enjoy the powers conferred upon the Commission by [ex Article 226];
- (b) measures adopted by the Board of Governors of the European Investment Bank. In this connection, any Member State, the Commission or the Board of Directors of the Bank may institute proceedings under the conditions laid down in [ex Article 230];
- (c) measures adopted by the Board of Directors of the European Investment Bank. Proceedings against such measures may be instituted only by Member States or by the Commission, under the conditions laid down in [ex Article 230], and solely on the grounds of non-compliance with the procedure provided for in Article 21(2), (5), (6) and (7) of the Statute of the Bank;
- (d) the fulfilment by national central banks of obligations under the Constitution and the Statute of the European System of Central Banks. In this connection, the powers of the Council of the European Central Bank in respect of national central banks shall be the same as those conferred upon the Commission in respect of Member States by [ex Article 226]. If the Court of Justice finds that a national central bank has failed to fulfil an obligation under the Constitution, that bank shall be required to take the necessary measures to comply with the judgement of the Court of Justice.

Article III-275 (ex Article 238)

The Court of Justice shall have jurisdiction to give judgement pursuant to any arbitration clause contained in a contract concluded by or on behalf of the Union, whether that contract be governed by public or private law.

Article III-276 (ex Article 239)

The Court of Justice shall have jurisdiction in any dispute between Member States which relates to the subject matter of the Constitution if the dispute is submitted to it under a special agreement between the parties.

Article III-277 (ex Article 240)

Save where jurisdiction is conferred on the Court of Justice by the Constitution, disputes to which the Union is a party shall not on that ground be excluded from the jurisdiction of the courts or tribunals of the Member States.

Article III-278(ex Article 240a)

The Court of Justice shall not have jurisdiction with respect to Articles I-39 and I-40 of Part One and the provisions of Chapter II of Title V of Part Three concerning the common foreign and security policy.

Article III-279 (ex Article 240b)

In exercising its competences regarding the provisions of Sections 3 and 4 of Chapter IV of Title III concerning the area of freedom, security and justice, the Court of Justice shall have no jurisdiction to review the validity or proportionality of operations carried out by the police or other law-enforcement services of a Member State or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security, where such action is a matter of national law.

Article III-280 (ex Article 240c)

Member States undertake not to submit a dispute concerning the interpretation or application of the Constitution to any method of settlement other than those provided for therein.

Article III-281 (ex Article 241)

Notwithstanding the expiry of the period laid down in [the fifth paragraph of ex Article 230], any party may, in proceedings in which a European law, a law or a regulation of the Council, of the Commission, or of the European Central Bank is at issue, plead the grounds specified in [the second paragraph of ex Article 230] in order to invoke before the Court of Justice the inapplicability of that act.

Article III-282 (ex Article 242)

Actions brought before the Court of Justice shall not have suspensory effect. The Court of Justice may, however, if it considers that circumstances so require, order that application of the contested act be suspended.

Article III-283 (ex Article 243)

The Court of Justice may in any cases before it prescribe any necessary interim measures.

#### Article III-284 (ex Article 244)

The judgements of the Court of Justice shall be enforceable under the conditions laid down in [ex Article 256].

#### Article III-285 (ex Article 245)

The Statute of the Court of Justice shall be laid down in a Protocol.

The law may amend the provisions of the Statute, with the exception of Title I and Article 64. The European Parliament and the Council shall act either at the request of the Court of Justice and after consulting the Commission, or at the request of the Commission and after consulting the Court of Justice.

### Subsection 6

#### The Court of Auditors

#### Article III-286 (ex Article 248)

1. The Court of Auditors shall examine the accounts of all revenue and expenditure of the Union. It shall also examine the accounts of all revenue and expenditure of all bodies set up by the Union insofar as the relevant constituent instrument does not preclude such examination.

The Court of Auditors shall provide the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions which shall be published in the *Official Journal of the European Union*. This statement may be supplemented by specific assessments for each major area of Union activity.

2. The Court of Auditors shall examine whether all revenue has been received and all expenditure incurred in a lawful and regular manner and whether the financial management has been sound. In doing so, it shall report in particular on any cases of irregularity.

The audit of revenue shall be carried out on the basis both of the amounts established as due and the amounts actually paid to the Union.

The audit of expenditure shall be carried out on the basis both of commitments undertaken and payments made.

These audits may be carried out before the closure of accounts for the financial year in question.



3. The audit shall be based on records and, if necessary, performed on the spot in the other institutions, on the premises of any body which manages revenue or expenditure on behalf of the Union and in the Member States, including on the premises of any natural or legal person in receipt of payments from the budget. In the Member States the audit shall be carried out in liaison with national audit bodies or, if these do not have the necessary powers, with the competent national departments. The Court of Auditors and the national audit bodies of the Member States shall cooperate in a spirit of trust while maintaining their independence. These bodies or departments shall inform the Court of Auditors whether they intend to take part in the audit.

The other institutions, any bodies managing revenue or expenditure on behalf of the Union, any natural or legal person in receipt of payments from the budget, and the national audit bodies or, if these do not have the necessary powers, the competent national departments, shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task.

In respect of the European Investment Bank's activity in managing Union expenditure and revenue, the Court's rights of access to information held by the Bank shall be governed by an agreement between the Court, the Bank and the Commission. In the absence of an agreement, the Court shall nevertheless have access to information necessary for the audit of Union expenditure and revenue managed by the Bank.

4. The Court of Auditors shall draw up an annual report after the close of each financial year. It shall be forwarded to the other institutions and shall be published, together with the replies of these institutions to the observations of the Court of Auditors, in the *Official Journal of the European Union*.

The Court of Auditors may also, at any time, submit observations, particularly in the form of special reports, on specific questions and deliver opinions at the request of one of the other institutions.

It shall adopt its annual reports, special reports or opinions by a majority of its Members. However, it may establish internal chambers in order to adopt certain categories of reports or opinions under the conditions laid down by its Rules of Procedure.

It shall assist the European Parliament and the Council in exercising their powers of control over the implementation of the budget.

The Court of Auditors shall adopt its Rules of Procedure. It shall act after obtaining the approval of the Council.

#### Article III-287 (ex Article 247)

1. The Members of the Court of Auditors shall be chosen from among persons who belong or have belonged in their respective countries to external audit bodies or who are especially qualified for this office. Their independence must be beyond doubt.

2. The Members of the Court of Auditors shall be appointed for a term of six years. Their term of office shall be renewable. The Council shall adopt on its own initiative the list of Members drawn up in accordance with the proposals made by each Member State. It shall act after consulting the European Parliament.

The Members of the Court of Auditors shall elect their President from among their number for a term of three years. He may be re-elected.

3. The Members of the Court of Auditors shall, in the Union's general interest, be completely independent in the performance of their duties.

In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties.

4. The Members of the Court of Auditors may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.

5. Apart from normal replacement, or death, the duties of a Member of the Court of Auditors shall end when he resigns, or is compulsorily retired by a ruling of the Court of Justice pursuant to paragraph 7.

The vacancy thus caused shall be filled for the remainder of the Member's term of office.

Save in the case of compulsory retirement, Members of the Court of Auditors shall remain in office until they have been replaced.

6. A Member of the Court of Auditors may be deprived of his office or of his right to a pension or other benefits in its stead only if the Court of Justice, at the request of the Court of Auditors, finds that he no longer fulfils the requisite conditions or meets the obligations arising from his office.

## SECTION 2

### THE UNION'S ADVISORY BODIES

#### Subsection 1

#### The Committee of the Regions

#### Article III-288 (ex Article 263)

#### *(Composition of the Committee of the Regions)*

The members of the Committee and an equal number of alternate members shall be appointed for five years. Their term of office shall be renewable. The Council shall adopt, on its own initiative, the European decision establishing the list of members and alternate members drawn up in accordance with the proposals made by each Member State. When the mandate referred to in the first paragraph on the basis of which they were proposed comes to an end, the term of office of members of the Committee shall terminate automatically and they shall then be replaced for the remainder of the said term of office in accordance with the same procedure. No member of the Committee shall at the same time be a Member of the European Parliament.

#### Article III-289 (ex Article 264)

The Committee of the Regions shall elect its chairman and officers from among its members for a term of two and a half years.

It shall adopt its Rules of Procedure.

The Committee shall be convened by its chairman at the request of the European Parliament, of the Council or of the Commission. It may also meet on its own initiative.

#### Article III-290 (ex Article 265)

The Committee of the Regions shall be consulted by the European Parliament, by the Council or by the Commission where the Constitution so provides and in all other cases, in particular those which concern cross-border cooperation, in which one of these two institutions considers it appropriate.

The European Parliament, the Council or the Commission shall, if it considers it necessary, set the Committee, for the submission of its opinion, a time-limit which may not be less than one month from the date on which the chairman receives notification to this effect. Upon expiry of the time-limit, the absence of an opinion shall not prevent further action.

Where the Economic and Social Committee is consulted pursuant to [Article 262], the Committee of the Regions shall be informed by the European Parliament, the Council or the Commission of the request for an opinion. It may issue an opinion on its own initiative in cases in which it considers such action appropriate.

The opinion of the Committee, together with a record of the proceedings, shall be forwarded to the European Parliament, to the Council and to the Commission.

## Subsection 2

### The Economic and Social Committee

#### Article III-291 (ex Article 258)

##### *(Composition of the Economic and Social Committee)*

#### Article III-292 (ex Article 259)

The members of the Committee shall be appointed for five years. Their term of office shall be renewable. The Council shall adopt, on its own initiative a European decision establishing the list of members drawn up in accordance with the proposals made by each Member State.

The Council shall act after consulting the Commission. It may obtain the opinion of European bodies which are representative of the various economic and social sectors and of civil society to which the Union's activities are of concern.

#### Article III-293 (ex Article 260)

The Committee shall elect its chairman and officers from among its members for a term of two and a half years.

It shall adopt its Rules of Procedure.

The Committee shall be convened by its chairman at the request of the European Parliament, of the Council or of the Commission. It may also meet on its own initiative.

### Article III-294 (ex Article 262)

The Committee must be consulted by the European Parliament, by the Council or by the Commission where the Constitution so provides. In all other cases, it may be consulted by these institutions. It may also issue an opinion on its own initiative.

The European Parliament, the Council or the Commission shall, if it considers it necessary, set the Committee, for the submission of its opinion, a time-limit which may not be less than one month from the date on which the chairman receives notification to this effect. Upon expiry of the time-limit, the absence of an opinion shall not prevent further action.

The opinion of the Committee and that of the specialised section, together with a record of the proceedings, shall be forwarded to the European Parliament, the Council and to the Commission.

## SECTION 3

### THE EUROPEAN INVESTMENT BANK

#### Article III-295 (ex Article 266)

The European Investment Bank shall have legal personality.

The members of the European Investment Bank shall be the Member States.

The Statute of the European Investment Bank is laid down in a Protocol. A European law may amend Articles 4, 11 and 12 and Article 18(5) of the Statute of the Bank, either at the request of the European Investment Bank and after consulting the Commission, or at the request of the Commission and after consulting the European Investment Bank.

#### Article III-296 (ex Article 267)

The task of the European Investment Bank shall be to contribute, by having recourse to the capital market and utilising its own resources, to the balanced and steady development of the internal market in the Union's interest. For this purpose the Bank shall, operating on a non-profit-making basis, grant loans and give guarantees which facilitate the financing of the following projects in all sectors of the economy:

- (a) projects for developing less-developed regions;
- (b) projects for modernising or converting undertakings or for developing fresh activities called for by the progressive establishment of the internal market, where these projects are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States;
- (c) projects of common interest to several Member States which are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States.

In carrying out its task, the Bank shall facilitate the financing of investment programmes in conjunction with assistance from the Structural Funds and other Union financial instruments.

## SECTION 4

### PROVISIONS COMMON TO UNION INSTITUTIONS AND BODIES

#### Article III-297 (ex Article 250)

1. Where, in pursuance of this Treaty, the Council acts on a proposal from the Commission, unanimity shall be required for an act constituting an amendment to that proposal, subject to Articles [251(4) and (5), I 54 and 272].
2. As long as the Council has not acted, the Commission may alter its proposal at any time during the procedures leading to the adoption of a Community act.

#### Article III-298 (ex Article 251)

1. Where, pursuant to the Constitution, laws or framework laws are adopted under the ordinary legislative procedure the following provisions shall apply.
2. The Commission shall submit a proposal to the European Parliament and the Council.

#### First reading

3. The European Parliament shall adopt its position at first reading and communicate it to the Council.
4. If the Council approves the European Parliament's position, the proposed act shall be adopted.
5. If the Council does not approve the European Parliament's position, it shall adopt its position at first reading and communicate it to the European Parliament.
6. The Council shall inform the European Parliament fully of the reasons which led it to adopt its position at first reading. The Commission shall inform the European Parliament fully of its position.

#### Second reading

7. If, within three months of such communication, the European Parliament
  - (a) approves the Council's position at first reading or has not taken a decision, the proposed act shall be deemed to have been adopted;
  - (b) rejects, by an absolute majority of its component members, the Council's position at first reading, the proposed act shall be deemed not to have been adopted;
  - (c) proposes, by an absolute majority of its component members, amendments to the Council's position at first reading, the text thus amended shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.

8. If, within three months of receiving the European Parliament's amendments, the Council, acting by a qualified majority,
- (a) approves all those amendments, the act in question shall be deemed to have been adopted;
  - (b) does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.
9. The Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion.

### Conciliation

10. The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of representatives of the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the representatives of the European Parliament within six weeks of its being convened, on the basis of the positions of the Parliament and the Council at second reading.
11. The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council.
12. If, within six weeks of its being convened, Conciliation Committee does not approve the joint text, the proposed act shall be deemed not to have been adopted.

### Third reading

13. If, within that period, the Conciliation Committee approves a joint text, the European Parliament, acting by an absolute majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If either of the two institutions fails to approve the proposed act within that period, it shall be deemed not to have been adopted.
14. The period of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council.
15. Where, in the case specifically provided for in the Constitution, a law or framework law is submitted to the ordinary legislative procedure on the proposal of a group of Member States, paragraphs 2, 6 in fine and 9 shall not apply.

The European Parliament and the Council shall communicate to the Commission the proposal of the group of Member States and their positions at first and second readings. The European Parliament or the Council may request the opinion of the Commission throughout the procedure. The Commission may deliver an opinion on its own initiative. It may, if it deems it necessary, take part in the Conciliation Committee on the terms laid down in paragraph 11.



#### Article III-299 (new)

The European Parliament, the Council and the Commission shall consult each other and by common agreement make arrangements for their cooperation. To that end, they may, in compliance with the Constitution, conclude interinstitutional agreements which may be of a binding nature.

#### Article III-300 (new)

1. In carrying out their tasks, the institutions, agencies and bodies of the Union shall have the support of an open, efficient and independent European public service.
2. Without prejudice to Article [283], a European law establishing the specific provisions applicable may be adopted to that end.

#### Article III-301 (new)

1. The institutions, agencies and bodies of the Union shall recognise the importance of transparency in their work and shall, in application of Article 36 of Part One of the Constitution, lay down in their rules of procedure the specific provisions for public access to documents.
2. Regarding the legislative procedure, the European Parliament and the Council in its legislative capacity shall not only meet in public, but also ensure publication of the relevant documents [*option*: publish results, explanations of voting, minutes and any statements entered in them].

#### Article III-302 (ex Article 210)

The Council shall adopt European decisions determining the salaries, allowances and pensions of the President and Members of the Commission, the President, Judges, Advocates-General and Registrar of the Court of Justice, the Members and Registrar of the Court of First Instance, the President and Members of the Court of Auditors and the Members of the Economic and Social Committee. It shall also determine any payment to be made instead of remuneration.

#### Article III –303(ex Article 256)

Acts of the Council, of the Commission or of the European Central Bank which impose a pecuniary obligation on persons other than States shall be enforceable.

Enforcement shall be governed by the rules of civil procedure in force in the Member State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the government of each Member State shall designate for this purpose and shall make known to the Commission and the Court of Justice.

When these formalities have been completed on application by the party concerned, the latter may

proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority.

Enforcement may be suspended only by a decision of the Court of Justice. However, the courts of the country concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

## **CHAPTER II**

### **FINANCIAL PROVISIONS**

#### **SECTION 1**

#### **THE MULTIANNUAL FINANCIAL FRAMEWORK**

##### **Article III-304 (new)**

1. The multiannual financial framework shall be established for a period of at least five years in accordance with Article [39a].
2. The financial framework shall fix the amounts of the annual ceilings on commitment appropriations by category of expenditure and of the annual ceiling on payment appropriations. The categories of expenditure, few in number, shall correspond to the Union's major sectors of activity.
3. The financial framework shall lay down any other provisions required for the annual budgetary procedure to run smoothly.
4. Where no European law of the Council establishing a new financial framework has been adopted by the end of the previous financial framework, the ceilings and other provisions corresponding to the last year of that framework shall be extended until such time as that law is adopted.
5. Throughout the procedure leading to the adoption of the multiannual financial framework, the Parliament, the Council and the Commission shall take any measure necessary to facilitate the successful completion of the procedure.

## SECTION 2

### THE UNION'S ANNUAL BUDGET

#### Article III-305 [ex Article 272]

The financial year shall run from 1 January to 31 December.

#### Article III-306 [ex Article 272]

A European law shall establish the Union's annual budget in accordance with the following provisions:

1. Each Institution shall, before 1 July, draw up estimates of its expenditure. The Commission shall consolidate these estimates in a draft budget. It shall attach thereto an opinion which may contain different estimates.

The draft budget shall contain an estimate of revenue and an estimate of expenditure.

The Commission may amend the draft budget during the procedure until such time as the Conciliation Committee, referred to in paragraph 5 below, is convened.

2. The Commission shall submit the draft budget to the European Parliament and the Council not later than 1 September of the year preceding that in which the budget is to be implemented.

3. The Council shall adopt its position on the draft budget law and forward it to the European Parliament not later than 1 October of the year preceding that in which the budget is to be implemented. The Council shall inform the European Parliament fully of the reasons which led it to adopt its position.

4. If, within 40 days of such communication, the European Parliament:

- (a) approves the Council position or has not taken a decision, the budget law shall be deemed to have been adopted;
- (b) proposes amendments to the Council position by a majority of its component members, the amended text shall be forwarded to the Council and to the Commission. The President of the European Parliament, in agreement with the President of the Council, shall immediately convene a meeting of the Conciliation Committee.

If, within ten days, the Council informs the European Parliament that it has approved all its amendments, the Conciliation Committee shall not meet.

5. The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of representatives of the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the representatives of the European Parliament within twenty-one days of its being convened, on the basis of the positions of the European Parliament and the Council.

6. The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council.

7. If, within twenty-one days of its being convened, the Conciliation Committee approves a joint text, the European Parliament, acting by a majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of fourteen days from that approval in which to adopt the joint text.

8. If, within twenty-one days, the Conciliation Committee does not approve a joint text or if the Council rejects the joint text, the Parliament may, within fourteen days, acting by a majority of its component members and three fifths of the votes cast, confirm its amendments. Where the Parliament amendment is not confirmed, the Council position on the budget item which is the subject of the amendment shall be deemed to be adopted.

However, if the Parliament, acting by a majority of its component members and three fifths of the votes cast, rejects the joint text, it may ask for a new draft to be submitted.

9. When the procedure provided for in this Article has been completed, the President of the European Parliament shall declare that the budget law has been finally adopted.

#### Article III-307 [ex Article 273]

1. If no budget law has been adopted at the beginning of a financial year, a sum equivalent to not more than one twelfth of the budget appropriations entered in the budget law for the preceding financial year may be spent each month in respect of any chapter or other subdivision of the budget in accordance with the provisions of the European law referred to in [ex Article 279]; this arrangement shall not, however, have the effect of placing at the disposal of the Commission appropriations in excess of one twelfth of those provided for in the draft budget under consideration.

2. The Council, on a proposal by the Commission and in compliance with the other conditions laid down in the first paragraph, may adopt a European decision authorising expenditure in excess of one twelfth. The Council shall forward the decision immediately to the European Parliament.

The European decision shall lay down the necessary measures relating to resources to ensure application of this Article.

It shall enter into force thirty days following its adoption if the European Parliament, acting by a majority of its component members, has not decided to reduce this expenditure within that time-limit.

#### Article III-308 [ex Article 271]

In accordance with conditions laid down by the European law referred to in [ex Article 279], any appropriations, other than those relating to staff expenditure, that are unexpended at the end of the financial year may be carried forward to the next financial year only.

Appropriations shall be classified under different chapters grouping items of expenditure according to their nature or purpose and subdivided in accordance with the European law referred to in [ex Article 279].

The expenditure of the European Parliament, the Council, the Commission and the Court of Justice shall be set out in separate parts of the budget, without prejudice to special arrangements for certain common items of expenditure.

## SECTION 3

### IMPLEMENTATION OF THE BUDGET AND DISCHARGE

#### Article III-309 [ex Article 274]

The Commission shall implement the budget in cooperation with the Member States, in accordance with the European law referred to in [ex Article 279], on its own responsibility and within the limits of the appropriations allocated, having regard to the principles of sound financial management. Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with those principles.

The European law referred to in [ex Article 279] shall establish the control and audit obligations of the Member States in the implementation of the budget and the resulting responsibilities

The European law referred to in [ex Article 279] shall establish responsibilities and detailed rules for each Institution concerning its part in effecting its own expenditure.

The Commission may, subject to the limits and conditions laid down by the European law referred to in Article [ex Article 279], make transfers of appropriations between chapters or between subdivisions within the budget.

#### Article III-310 [ex Article 275]

The Commission shall submit annually to the European Parliament and to the Council the accounts of the preceding financial year relating to the implementation of the budget. The Commission shall also forward to them a financial statement of the Union's assets and liabilities.

The Commission shall also submit to the European Parliament and to the Council an evaluation report based on the results achieved, in particular in relation to the indications given by the European Parliament and the Council pursuant to Article [.....] [ex Article 276(3)].

#### Article III-311 [ex Article 276]

1. The European Parliament, on a recommendation from the Council, shall give a discharge to the Commission in respect of the implementation of the budget. To this end, the Council and the European Parliament in turn shall examine the accounts, the financial statement and the evaluation report referred to in [ex Article 275], the annual report by the Court of Auditors together with the replies of the institutions under audit to the observations of the Court of Auditors, the statement of assurance referred to in [the second subparagraph of ex Article 248(1)] and any relevant special reports by the Court of Auditors.

2. Before giving a discharge to the Commission, or for any other purpose in connection with the exercise of its powers over the implementation of the budget, the European Parliament may ask to hear the Commission give evidence with regard to the execution of expenditure or the operation of financial control systems. The Commission shall submit any necessary information to the European Parliament at the latter's request.

3. The Commission shall take all appropriate steps to act on the observations in the decisions giving discharge and on other observations by the European Parliament relating to the execution of expenditure, as well as on comments accompanying the recommendations on discharge adopted by the Council.
4. At the request of the European Parliament or the Council, the Commission shall report on the measures taken in the light of these observations and comments and in particular on the instructions given to the departments which are responsible for the implementation of the budget. These reports shall also be forwarded to the Court of Auditors.



## SECTION 4

### COMMON PROVISIONS

#### Article III-312 [ex Article 277]

The multiannual financial framework and the annual budget shall be drawn up in euro.

#### Article III-313 [ex Article 278]

The Commission may, provided it notifies the competent authorities of the Member States concerned, transfer into the currency of one of the Member States its holdings in the currency of another Member State, to the extent necessary to enable them to be used for purposes which come within the scope of the Constitution. The Commission shall as far as possible avoid making such transfers if it possesses cash or liquid assets in the currencies which it needs.

The Commission shall deal with each Member State concerned through the authority designated by that State. In carrying out financial operations the Commission shall employ the services of the bank of issue of the Member State concerned or of any other financial institution approved by that State.

#### Article III-314 [ex Article 279]

1. The European law:
  - (a) shall lay down the financial rules which determine in particular the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts;
  - (b) lay down rules concerning the responsibility of financial controllers, authorising officers and accounting officers.

It shall be adopted after consultation of the Court of Auditors.

2. A Council regulation adopted on a proposal from the Commission shall lay down measures determining the methods and procedure whereby the budget revenue provided under the arrangements relating to the Union's own resources shall be made available to the Commission, and the measures to be applied, if need be, to meet cash requirements. The Council shall act after consulting the European Parliament and the Court of Auditors.

3. The Council shall act unanimously until 1 January 2007 in all the cases referred to by this Article.

#### Article III-315 (new)

The European Parliament, the Council and the Commission shall ensure that the financial means are made available to allow the Union to fulfil its legal obligations in respect of third parties.

#### Article III-316 (new)

Regular meetings between the Presidents of the European Parliament, the Council and the Commission shall be convened on the initiative of the Commission under the budgetary procedures referred to in this Chapter. The Presidents shall take all the necessary steps to promote consultation and the reconciliation of the Institutions' positions to facilitate the implementation of the provisions of this Chapter.

## SECTION 5

### COMBATING FRAUD

#### Article III-317 [ex Article 280]

1. The Union and the Member States shall counter fraud and any other illegal activities affecting the Union's financial interests through measures adopted in accordance with this Article. These measures shall act as a deterrent and be such as to afford effective protection in the Member States.
2. Member States shall take the same steps to counter fraud affecting the Union's financial interests as they take to counter fraud affecting their own financial interests.
3. Without prejudice to other provisions of the Constitution, the Member States shall coordinate their action aimed at protecting the Union's financial interests against fraud. To this end they shall organise, together with the Commission, close and regular cooperation between the competent authorities.
4. European laws or framework laws shall lay down the necessary measures in the fields of the prevention of and fight against fraud affecting the Union's financial interests with a view to affording effective and equivalent protection in the Member States. They shall be adopted after consultation of the Court of Auditors.
5. The Commission, in cooperation with Member States, shall each year submit to the European Parliament and to the Council a report on the measures and provisions adopted for the implementation of this Article.

## CHAPTER III

### ENHANCED COOPERATION

#### Article III-318 (ex Article I)

The provisions of Article [32b] of the Constitution and Articles [J to P] below shall not apply to the forms of cooperation in the area of defence provided for by Article [30] of the Constitution and governed specifically by Articles [18 to 21] (*Part Three*) of the Constitution.

#### Article III-319 (ex Article J)

Any enhanced cooperation proposed shall comply with the Union's Constitution and *acquis*.

Such cooperation shall not undermine the internal market or economic and social cohesion. It shall not constitute a barrier to or discrimination in trade between Member States, nor shall it distort competition between them.

#### Article III-320 (ex Article K)

Any enhanced cooperation proposed shall respect the competences, rights and obligations of those Member States which do not participate in it. Those Member States shall not impede its implementation by the participating Member States.

#### Article III-321 (ex Article L)

1. When enhanced cooperation is being established, it shall be open to all Member States, subject to compliance with any conditions of participation which may be laid down in the authorising decision. It shall also be open to them at any other time, subject to compliance with the acts already adopted within that framework, in addition to any such conditions.

The Commission and the Member States participating in enhanced cooperation shall ensure that they facilitate participation by as many Member States as possible.

2. The Commission and, where appropriate, the Minister for Foreign Affairs shall keep all Council members and the European Parliament regularly informed regarding developments in enhanced cooperation.

### Article III-322 (ex Article M)

1. Member States which wish to establish enhanced cooperation between themselves in one of the areas covered by the Constitution, with the exception of the common foreign and security policy, shall address a request to the Commission, specifying the scope and objectives of the enhanced cooperation proposed. The Commission may submit a proposal to the Council to that effect. In the event of the Commission not submitting a proposal, it shall inform the Member States concerned of the reasons for not doing so.

Authorisation to proceed with enhanced cooperation shall be granted by a decision of the Council, acting by a qualified majority on a proposal from the Commission and after obtaining the assent of the European Parliament.

2. In the framework of the common foreign and security policy, the request of the Member States which wish to establish enhanced cooperation between themselves shall be addressed to the Council. It shall be forwarded to the Minister for Foreign Affairs, who shall give an opinion on whether the enhanced cooperation is consistent with the Union's common foreign and security policy, and to the Commission, which shall give its opinion in particular on whether the enhanced cooperation proposed is consistent with other Union policies. It shall also be forwarded to the European Parliament for information.

Authorisation to proceed with enhanced cooperation shall be granted by a decision of the Council, acting by a qualified majority.

### Article III-323 (ex Article N)

1. Any Member State which wishes to participate in enhanced cooperation shall notify its intention to the Council, the Commission and, where necessary, the Minister for Foreign Affairs.

Within four months of the date of receipt of the notification the Commission shall confirm the participation of the Member State concerned. It shall note where necessary that any conditions of participation have been fulfilled and shall adopt any transitional arrangements deemed necessary with regard to the application of the acts already adopted within the framework of enhanced cooperation.

However, if the Commission considers that any conditions of participation have not been fulfilled, it shall indicate the measures to be taken to fulfil those conditions and shall set a deadline for re-examining the request for participation. When it re-examines the request, it shall act in accordance with the preceding subparagraph. If the Commission considers that any conditions of participation have still not been met, the Member State concerned may refer the matter to the Council, which shall act by a qualified majority in accordance with Article [32b(3)] of the Constitution. The Council may also adopt the abovementioned transitional arrangements acting on a proposal from the Commission.

2. In the framework of the common foreign and security policy, the Council shall confirm the participation of the Member State concerned, after consulting the Minister for Foreign Affairs. It shall note where necessary that any conditions of participation have been fulfilled. The Council may also adopt transitional arrangements acting on a proposal from the Minister for Foreign Affairs. However, if the Council considers that any conditions of participation have not been fulfilled, it shall indicate the measures to be taken to fulfil those conditions and shall set a deadline for re-examining the request for participation.

For the purposes of this paragraph, the Council shall act by a qualified majority in accordance with [Article 32b(3)] of the Constitution.

#### Article III-324 (ex Article O)

Expenditure resulting from implementation of enhanced cooperation, other than administrative costs entailed for the Institutions, shall be borne by the participating Member States, unless all members of the Council, acting unanimously after consulting the European Parliament, decide otherwise.

#### Article III-325 (ex Article P)

The Council and the Commission shall ensure the consistency of activities undertaken in the context of enhanced cooperation and the consistency of such activities with the policies of the Union, and shall cooperate to that end.

## **TITLE VII**

### **COMMON PROVISIONS**

#### Article III-326 (ex Article 299)

Taking account of the structural economic and social situation of the French overseas departments, the Azores, Madeira and the Canary Islands, which is compounded by their remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development, the Council, on a proposal from the Commission, shall adopt European regulations and decisions aimed, in particular, at laying down the conditions of application of the Constitution to those regions, including common policies. It shall act after consulting the European Parliament.

The measures referred to in the first paragraph concern in particular areas such as customs and trade policies, fiscal policy, free zones, agriculture and fisheries policies, conditions for supply of raw materials and essential consumer goods, State aids and conditions of access to structural funds and to horizontal Union programmes.

The Council shall adopt the measures referred to in the first paragraph taking into account the special characteristics and constraints of the outermost regions without undermining the integrity and the coherence of the Union legal order, including the internal market and common policies.

#### Article III-327 (ex Article 295)

The Constitution shall in no way prejudice the rules in Member States governing the system of property ownership.

#### Article III-328 (ex Article 282)

In each of the Member States, the Union shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. To this end, the Union shall be represented by the Commission.

#### Article III-329 (ex Article 283)

The Staff Regulations of Union officials and the Conditions of Employment of other servants of the Union shall be laid down by law. The law shall be adopted after consulting the other institutions concerned.

#### Article III-330 (ex Article 284)

The Commission may, within the limits and under conditions laid down by the Council in accordance with the Constitution, collect any information and carry out any checks required for the performance of the tasks entrusted to it.

#### Article III-331 (ex Article 285)

1. Without prejudice to Article 5 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, measures for the production of statistics shall be laid down by law or framework law where necessary for the performance of the Union's activities.
2. The production of statistics shall conform to impartiality, reliability, objectivity, scientific independence, cost-effectiveness and statistical confidentiality; it shall not entail excessive burdens on economic operators.

#### Article III-332 (ex Article 287)

The members of the Union's institutions, the members of committees, and the officials and other Union servants shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

#### Article III-333 (ex Article 288)

The Union's contractual liability shall be governed by the law applicable to the contract in question.

In the case of non-contractual liability, the Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties.

The preceding paragraph shall apply under the same conditions to damage caused by the European Central Bank or by its servants in the performance of their duties.

The personal liability of its servants towards the Union shall be governed by the provisions laid down in their Staff Regulations or in the Conditions of Employment applicable to them.



Article III-334 (ex Article 289)

The seat of the Union's institutions shall be determined by common accord of the Governments of the Member States.

Article III-335 (ex Article 290)

The rules governing the languages of the Union's institutions shall be laid down in a unanimously adopted Council regulation, without prejudice to the Statute of the Court of Justice

Article III-336 (ex Article 291)

The Union shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the Protocol of 8 April 1965 on the privileges and immunities of the European Communities. The same shall apply to the European Central Bank and the European Investment Bank.

Article III-337 (ex Article 292)

Member States undertake not to submit a dispute concerning the interpretation or application of the Constitution to any method of settlement other than those provided for therein.

Article III-338 (ex Article 307)

The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the Constitution.

To the extent that such agreements are not compatible with the Constitution, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude.

In applying the agreements referred to in the first paragraph, Member States shall take into account the fact that the advantages accorded under the Constitution by each Member State form an integral part of the Union and are thereby inseparably linked with the creation of common institutions, the conferring of powers upon them and the granting of the same advantages by all the other Member States.

Article III-339 (ex Article 296) <sup>1</sup>

1. The Constitution shall not preclude the application of the following rules:
  - (a) no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security;
  - (b) any Member State may take such steps as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such steps shall not adversely affect the conditions of competition in the internal market regarding products which are not intended for specifically military purposes.
2. The Council, acting on a proposal from the Commission, may unanimously adopt a European Decision making changes to the list, which it drew up on 15 April 1958, of the products to which the provisions of paragraph 1(b) apply.

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<sup>1</sup> The Convention may wish to consider this Article in the context of common defence.

**PROTOCOL AMENDING THE EURATOM TREATY**

THE HIGH CONTRACTING PARTIES,

RECALLING the necessity that the provisions of the Treaty establishing the European Atomic Energy Community should continue to have full legal effect,

DESIROUS however to adapt that Treaty to the new rules established by the Treaty establishing a Constitution for Europe, in particular in the institutional and financial fields,

HAVE ADOPTED the following provisions, which are annexed to the Treaty establishing a Constitution for Europe and amend the Treaty establishing the European Atomic Energy Community as follows:

Article 1

The word "Community" shall be replaced by "Union".

Article 2

Article 3 shall be repealed.

Article 3

The heading of Title III "Institutional provisions" shall be replaced by the following: "Institutional and financial provisions".

Article 4

Articles 107 to 170 shall be replaced by the following:

"Article 107

Without prejudice to the specific provisions laid down in Articles 134, 135, 144, 145, 171, 172, 174 and 176, the institutional and financial provisions of the Treaty establishing a Constitution for Europe (Articles I-XX to I-ZZ and Articles III-XX to III-ZZ) and Article I-45 of that Treaty shall apply to this Treaty".

Article 5

The heading of Title IV "Financial provisions" shall be replaced by the following:

"Specific financial provisions".

Article 6

Articles 173, 173a, 175 and 177 to 183a and 184 shall be repealed.

## Article 7

Article 190 shall be replaced by the following:

"The rules governing the languages of the institutions of the Community shall, without prejudice to the provisions contained in the Statute of the Court of Justice, be determined by the Council, acting unanimously".

## Article 8

Article 198 shall be amended as follows:

"(a) This Treaty shall not apply to the Faeroe Islands".

## Article 9

Article 201 shall be amended as follows:

"The Union shall establish close cooperation with the Organisation for Economic Cooperation and Development, the details of which shall be determined by common accord".

## Article 10

Article 206 shall be amended as follows:

"The Union may conclude with one or more States or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedures.

These agreements shall be concluded by the Council, acting unanimously after consulting the European Parliament.

Where such agreements call for amendments to this Treaty, these amendments shall first be adopted in accordance with the procedure laid down in Article N of the Treaty on European Union".

**Protocol on the Euro Group**

The High Contracting Parties,

Desiring to promote conditions for stronger economic growth in Europe and, to that end, to develop ever-closer coordination of economic policies within the euro area,

Conscious of the need to lay down special provisions for enhanced dialogue between the States in the euro area, pending the accession of all EU Member States to the euro area,

Have agreed upon the following provisions, which are annexed to the Constitution:

**Article 1**

The ministers of the States in the euro area shall meet informally. Such meetings shall take place, when necessary, to discuss questions related to the specific responsibilities they share with regard to the single currency. The Commission and the ECB shall be invited to take part in such meetings, which shall be prepared by the representatives of the ministers with responsibility for finance participating in the euro area.

**Article 2**

The ministers of the States in the euro area shall elect a president for two years, by a majority of the Member States of the euro area.

## **PART FOUR**

### **GENERAL AND FINAL PROVISIONS**

Article IV-1 (ex Article A)  
Repeal of earlier Treaties

The Treaty establishing the European Community, the Treaty on European Union and the acts and treaties which have supplemented or amended them and are listed in Protocol ... annexed to the Treaty establishing the Constitution shall be repealed as from the date of entry into force of the Treaty establishing the Constitution.

Article IV-2 (ex Article B)  
Legal continuity in relation to the European Community and the European Union

The European Union shall succeed to all the rights and obligations of the European Communities and of the Union, whether internal or resulting from international agreements, which arose before the entry into force of the Treaty establishing the Constitution by virtue of previous treaties, protocols and acts, including all the assets and liabilities of the Communities and of the Union, and their archives.

The provisions of the acts of the Institutions of the Union, adopted by virtue of the treaties and acts mentioned in the first paragraph, shall remain in force under the conditions laid down in Protocol ... annexed to the Treaty establishing the Constitution. The case-law of the Court of Justice of the European Communities shall be maintained as a source of interpretation of Union law.

Article IV-3 (ex Article C)  
Scope

1. The Treaty establishing the Constitution shall apply to the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland, ...
2. The Treaty establishing the Constitution shall apply to the French overseas departments, the Azores, Madeira and the Canary Islands in accordance with Article ... of Part Three.
3. The special arrangements for association set out in Part [Four of the TEC] of the Treaty establishing the Constitution shall apply to the overseas countries and territories listed in [Annex II to the TEC].

The Treaty establishing the Constitution shall not apply to overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not included in that list.

4. The Treaty establishing the Constitution shall apply to the European territories for whose external relations a Member State is responsible.
5. The Treaty establishing the Constitution shall apply to the Åland Islands in accordance with the provisions set out in Protocol 2 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.
6. Notwithstanding the preceding paragraphs:
  - (a) the Treaty establishing the Constitution shall not apply to the Faeroe Islands;
  - (b) the Treaty establishing the Constitution shall not apply to the sovereign base areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus;
  - (c) the Treaty establishing the Constitution shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community, signed on 22 January 1972.

Article IV-4 (ex Article D)  
Regional unions

The Treaty establishing the Constitution shall not preclude the existence or completion of regional unions between Belgium and Luxembourg, or between Belgium, Luxembourg and the Netherlands, to the extent that the objectives of these regional unions are not attained by application of the said Treaty.

Article IV-5 (ex Article E)  
Protocols

The protocols annexed to this Treaty shall form an integral part thereof.

Article IV-6 (ex Article F)  
Procedure for revising the Treaty establishing the Constitution

1. The government of any Member State, the European Parliament or the Commission may submit to the Council proposals for the amendment of the Treaty establishing the Constitution. The national Parliaments of the Member States shall be notified of these proposals.



2. If the European Council, after consulting the European Parliament and the Commission, adopts by a simple majority a decision in favour of examining the proposed amendments, the President of the European Council shall convene a Convention composed of representatives of the national Parliaments of the Member States, of the Heads of State or Government of the Member States, of the European Parliament and of the Commission. The European Central Bank shall also be consulted in the case of institutional changes in the monetary area. The European Council may decide by a simple majority not to convene the Convention should this not be justified by the extent of the proposed amendments. In the latter case, the European Council shall define the terms of reference for the conference of representatives of the governments of the Member States.

The Convention shall examine the proposals for amendments and shall adopt by consensus a recommendation to the conference of representatives of the governments of the Member States provided for in paragraph 3.

3. The conference of representatives of the governments of the Member States shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to the Treaty establishing the Constitution.

The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.

#### Article IV-7 (ex Article G)

##### Adoption, ratification and entry into force of the Treaty establishing the Constitution

1. The Treaty establishing the Constitution shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the Italian Republic.

2. The Treaty establishing the Constitution shall enter into force on ....., provided that all the instruments of ratification have been deposited, or, failing that, on the first day of the month following the deposit of the instrument of ratification by the last signatory State to take this step.

3. If, two years after the signature of the Treaty establishing the Constitution, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter shall be referred to the European Council.

#### Article IV-8 (ex Article H)

##### Duration

The Treaty establishing the Constitution is concluded for an unlimited period.

Article IV-9 (ex Article I)  
Languages <sup>1</sup>

The Treaty establishing the Constitution, drawn up in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish, Swedish, [Czech, Estonian, Latvian, Lithuanian, Hungarian, Maltese, Polish, Slovakian and Slovene] languages, the texts in each of these languages being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which will transmit a certified copy to each of the governments of the other signatory States.

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<sup>1</sup> To be adjusted in accordance with the Act of Accession.