

COVER NOTE

from : Praesidium

to : Convention

Subject : **Draft sections of Part Three with comments**

1. Members of the Convention have already received CONV 725/03, being the complete draft version of Part Three of the Constitution (together with Parts Two and Four).
2. To assist them in examining and evaluating the draft of Part Three, we have reproduced here those sections of Part Three which have been modified by the Praesidium since earlier versions on the basis of the amendments tabled, the debates in plenary and the discussion circles' findings. The amendments have been highlighted, and the provisions themselves are introduced by an explanatory note. Other texts, new in relation to the existing treaties, which have not yet been discussed by the Convention, are also reproduced here.
3. The provisions on the Institutions contain changes which must be made whatever choices are made on fundamental issues. For certain provisions, only the title has been inserted for the record. Those provisions will therefore have to be completed and adapted in the light of the final wording of the institutional provisions in Part One.

4. The sections set out below cover:
- fiscal provisions, in Annex I;
 - economic and monetary policy and the Protocol on the Euro Group, in Annex II;
 - the area of freedom security and justice, in Annex III;
 - the Union's external action, in Annex IV;
 - institutional provisions, in Annex V;
 - financial provisions, in Annex VI;
 - the new legal bases, in Annex VII.
5. In Annex VIII, members of the Convention will find a list of the provisions of Part Three for which the Praesidium is suggesting changes in the decision-making procedure.
-

TITLE III

INTERNAL POLICIES AND ACTION

CHAPTER I

SECTION 5

FISCAL PROVISIONS

EXPLANATORY NOTE

The attached section contains modifications to the articles on tax. The objective has been to respond to calls from the Working Group for a move to QMV on tax issues, whilst recognising the sensitivity of this issue as expressed by a number of members of the Convention both in the Working Group and the plenary. The proposal therefore clearly defines those areas where QMV should be applied, and introduces a mechanism by which the Council can only decide on a proposed measure if it has previously confirmed, by unanimity, that it does fall within the scope of those areas to which QMV applies.

DRAFT TEXTS

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 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 to ensure the functioning of the internal market and to avoid distortions of competition. The law or framework law shall be adopted unanimously after consulting the European Parliament and the Economic and Social Committee.**
- 2. When the Council, acting unanimously on a proposal from the Commission, establishes that the measures referred to in paragraph 1 relate to administrative cooperation or to combating tax fraud, by derogation from paragraph 1 it shall act by a qualified majority when adopting the European law or framework law laying down those measures.**

Article III-60 (new Article)

When the Council, acting unanimously on a proposal from the Commission, establishes that measures on company taxation relate to administrative cooperation or combating tax fraud, it shall adopt, by a qualified majority, a European law or framework law laying down those measures, provided that they are necessary to ensure the proper functioning of the internal market and to avoid distortions of competition.

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

TITLE III

INTERNAL POLICIES AND ACTION

CHAPTER II

ECONOMIC AND MONETARY POLICY

EXPLANATORY NOTE

1. The articles contained in the following chapter include modifications which fall into three broad categories.

Changes of substance (recommendations from the Economic Governance Working Group).

2. The text incorporates a number of proposals which emerged from the Economic Governance Working Group and in the subsequent discussion in plenary. They include some limited changes to the procedures on the Broad Economic Policy Guidelines [Article III-68 – ex Article 99], and to the excessive deficit procedure [Article III-73 – ex Article 104]. There is also a new article [Article III-81] on the external representation of the euro. The purpose of introducing these changes is to respond to the specific recommendations which emerged from the Working Group, but at the same time ensure that their scope takes into account the sensitivities which were raised by some both in the Working Group and in the subsequent discussion in plenary.

Changes to procedures (recommendations from the "Simplification" Working Group)

3. The articles also take into account the proposals from the "Simplification" Working Group to change the procedures for a number of legal bases falling within the EMU chapter (in particular those currently subject to the cooperation procedure, which will disappear). The "Simplification" Working Group recommended that of those provisions still subject to the cooperation procedure, Articles III-68 paragraph 6 (ex Article 99(5) and III-75 paragraph 2 (ex Article 106(2)) should pass to codecision (legislative procedure), and Articles III-71 paragraph 2 (ex Article 102(2) and III-72 paragraph 2 (ex Article 103(2)) should pass to simple consultation. It recommended in addition that the consultation procedure under Articles III-74 paragraph 6 (ex Article 105(6)) and III-76 paragraph 5 (ex Article 107(5)) should also pass to codecision (legislative procedure). The proposed text takes up these recommendations, with the exception of Article III-75 paragraph 2 (harmonisation of technical specifications of coins) which, because of its highly technical nature, is considered to be more appropriate to the consultation rather than the legislative procedure.

Technical changes

4. The substantive amendments have been introduced to a text to which the group of legal experts had already, at the request of the Praesidium, introduced a number of technical amendments. These relate primarily to the creation of a new definitive legal base for monetary policy (Article III-80) and a reorganisation of the section on transitional arrangements (section 4).

Additional Issues

5. It should be noted that virtually no changes have been introduced to the articles relating to the European Central Bank, despite the fact that it is proposed to introduce some of the existing provisions on the ECB into Title IV (Institutions) of Part One. The reasons for this are twofold. Firstly, there was a general consensus within the Working Group not to introduce any changes to the status or functions of the ECB. Secondly, given that the role of the ECB is inextricably linked with the provisions on monetary policy, it would be very difficult to identify those provisions which are purely "institutional" in nature. For this reason it is proposed to keep the detailed Part Three provisions on the ECB within the EMU chapter rather than extracting them and transferring them to the Part Three institutions chapter.
6. The existence of the euro group is formally recognised for the first time in a protocol annexed to the Constitution. Formal decisions on economic and financial issues will continue to be taken within the framework of the Council (normally in its ECOFIN configuration), including in those areas specifically identified in the Constitution where those Member States which are not members of the euro-zone are excluded from voting. However the text contains a new paragraph 3 in Article [III-86 (ex Article 122)] which provides for the possibility of the members of the eurozone to adopt measures, amongst themselves, in the areas of economic policy guidelines, budgetary discipline, and multilateral surveillance, which go beyond those provided for elsewhere in this Chapter.

DRAFT TEXTS

SECTION I – ECONOMIC POLICY

Article III-66 (ex Article 4)

1. For the purposes set out in Article I-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 I-3, and in the context of the broad guidelines referred to in [Article III-68, paragraph 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 [Article III-66].

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 [Article III-67].
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 [Article III-70] 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 sufficiently diminishing 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 [Articles III-261 and III-262] may not be exercised within the framework of paragraphs 1 to 6 or 8 and 9 of this Article.

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 I-3. 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 [Article III-66].
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 III-223];
 - (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 [Article III-76, paragraph 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 the **euro, the Union's currency.** ~~banknotes within the Union.~~ The European Central Bank and the national central banks may issue euro such notes, ~~The banknotes issued by the European Central Bank and the national central banks~~ **which** shall be the only such notes to have the status of legal tender within the Union.

2. Member States may issue 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 (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 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 [Article III-76, paragraph 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 [Article III-76, paragraph 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 23(4))

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 16 (ex Article 111)

~~1. By way of derogation from Article 300, the Council may, acting unanimously on a recommendation from the ECB or from the Commission, and after consulting the ECB in an endeavour to reach a consensus consistent with the objective of price stability, after consulting the European Parliament, in accordance with the procedure in paragraph 3 for determining the arrangements, conclude formal agreements on an exchange-rate system for the euro in relation to non-Community currencies. The Council may, acting by a qualified majority on a recommendation from the ECB or from the Commission, and after consulting the ECB 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 euro central rates.~~

~~2. In the absence of an exchange-rate system in relation to one or more non-Community 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 ECB or on a recommendation from the ECB, 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 ESCB to maintain price stability.~~

~~3. By way of derogation from Article 300, where agreements concerning monetary or foreign exchange regime matters need to be negotiated by the Community with one or more States or international organisations, the Council, acting by a qualified majority on a recommendation from the Commission and after consulting the ECB, shall decide the arrangements for the negotiation and for the conclusion of such agreements. These arrangements shall ensure that the Community expresses a single position. The Commission shall be fully associated with the negotiations.~~

~~Agreements concluded in accordance with this paragraph shall be binding on the institutions of the Community, on the ECB and on Member States.~~

~~4. Subject to paragraph 1, the Council, acting by a qualified majority on a proposal from the Commission and after consulting the ECB, shall decide on the position of the Community at international level as regards issues of particular relevance to economic and monetary union and on its representation, in compliance with the allocation of powers laid down in Articles 99 and 105.~~

~~5. Without prejudice to Community competence and Community agreements as regards economic and monetary union, Member States may negotiate in international bodies and conclude international agreements.~~

Article III-81 (new)

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 measures 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 [Article III-242], to contribute to the preparation of the work of the Council referred to in [Articles III-45 and III-219, Article III-68, paragraphs 2, 3, 4 and 6, Articles III-69, III-71, III-72 and III-73, Article III-74, paragraph 6, Article III-75, paragraph 2, Article III-76, paragraphs 5 and 6, Articles III-223 and III-90, Article III-91, paragraphs 2 and 3, Article III-86, paragraph 2, and Article III-87, paragraphs 2 and 3], 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 [Articles III-86, III-87 and III-88], 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 [Articles III-68, paragraph 4, Article III-73 with the exception of paragraph 13, Articles III-223, III-87, III-86 and Article III-87, paragraph 3], 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 (Article III-68, paragraph 2)**
- (b) coercive means of remedying excessive deficits (Article III-73, paragraphs 9 and 11)**

- (c) **the objectives and tasks of the European System of Central Banks (Article III-74, paragraphs 1, 2, 3 and 5)**
- (d) **issue of the euro (Article III-75)**
- (e) **acts of the European Central Bank (Article III-79)**
- (f) **measures relating to use of the euro (Article III-80)**
- (g) **monetary agreements (Article III-223)**
- (h) **external representation of the euro (Article III-81)**
- (i) **appointment of members of the Executive Board of the European Central Bank (Article III-82, paragraph 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, in particular to strengthen coordination of their economic policies and budgetary discipline. These measures shall concern economic policy guidelines and surveillance of them [Article III-68, paragraphs 2 and 3] and excessive deficits [Article III-3, paragraphs 6, 8 and 11]. Paragraph 5 shall apply.

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 [Articles III-77 and III-78] 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 [Article III-73, paragraph 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 [paragraph 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 [Article III-76, paragraph 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 [Article III-90, paragraph 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 [Article III-90].

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.

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.

TITLE III

INTERNAL POLICIES AND ACTION

CHAPTER IV

AREA OF FREEDOM, SECURITY AND JUSTICE

EXPLANATORY NOTE

General provisions

The first eight articles contain horizontal provisions concerning the principal features of the area of freedom, security and justice and its special procedures or those which derogate from the common rules.

Article [III-153] reflects the content of the other provisions and defines the general area in which European action may be taken. It was on the whole well received and the amendments submitted were more of a drafting nature. A number of Convention members suggested adding "prevent racism and xenophobia" (Duhamel + 10; Voggenhuber; Michel + 5; Dybkjaer; De Rossa; Carey and Gabaglio). This suggestion was adopted. It also seemed appropriate to indicate expressly that these provisions also apply to stateless persons. In the rest of the text the phrase "third-country nationals" therefore implicitly covers stateless persons without it being necessary to say so explicitly.

Articles [III-154] and [III-155] have hardly been amended. Some members wanted them deleted, but most were in favour of maintaining them, in line with the conclusions of Working Group X. It is proposed that the content of Article [III-154] be included in this Chapter and not in Article [I-20] of the Constitution concerning the European Council. As for Article [III-155] on the role of national parliaments, the only change proposed was the transfer to the Protocol on the principles of subsidiarity and proportionality of the provision which was originally in paragraph 2.

Regarding **Article [III-156]**, it is proposed that it be maintained, despite the fact that some members called for its deletion (Duff + 20, Fischer, Kaufmann, Kohout, Michel + 5, Teufel, Tiilikainen + 5). Endorsement of the method of mutual evaluation in fact forms part of the political compromise arrived at by Working Group X and was welcomed by several other Convention members. Moreover, the amendments designed to strengthen the role of the European Parliament (Costa + 1, Duhamel + 8) were not adopted, since the activity here is not a legislative one but rather that of administrative arrangements for an evaluation conducted by the Member States. It was also thought advisable to state that one of the aims of mutual evaluation is to encourage mutual recognition, thus satisfying a concern voiced by some members (Villepin, Lequiller).

Regarding **Article [III-157]** on operational cooperation, it is proposed to provide that the committee shall be set up and is not therefore simply an option for the Council. This takes account of a series of amendments and is in line with the other articles of the Constitution which refer to committees within the Council. The text has been amended in order not to expressly indicate the competent authorities which will be the subject of the planned coordination, thus leaving delegations within the Council considerable leeway to take account of the particular characteristics of their administrative structures. Moreover, it is proposed to add that the national parliaments should be kept informed in the same way as the European Parliament of the committee's work since operational resources are currently a matter for the Member States.

In the case of **Article [III-160]** on the right of initiative of the Member States, some Convention members wondered about this provision, basically because they feel that in this area too the Commission should have a monopoly on the right of initiative (Michel + 5 Convention members, Voggenhuber + 2, Wittbrodt; Costa). However, it emerged clearly from the plenary debate that other members of the Convention insist on a right of initiative for the Member States, to balance other areas where a move to the legislative procedure has been accepted. As for the threshold required, some have suggested a minimum of three States (Fischer and de Vries), while others have proposed a third of Member States (van Dijk + 1 Convention member, Santer + 3 Convention members) and others a fifth (Figel + 3 Convention members). The plenary debate supported the Praesidium's original proposal (one quarter of Member States), which seems to be a compromise capable of gaining consensus.

Regarding **ex Article 9 (currently Article III-279)** on judicial control, the Praesidium noted that many members of the Convention opposed this provision, pointing out that acts adopted in the context of the area of freedom, security and justice had implications for the rights of individuals (Farnleitner, Fischer, Brok + 32, Duhamel + 9, Wittbrodt + 1, Duff, Voggenhuber + 2, Michel + 5, Borrell + 1, Tiilikainen + 5). However, other members of the Convention insisted on the need to retain this provision. Some would even like to return to the precise wording of Article [35](5) TEU, i.e. without the words "where such action is a matter of national law" (Hain, de Villepin, Teufel, Fini, Hjelm-Wallén and Lekberg, Lopes and Lobo Antunes, Queiró, Schlüter, Tiilikainen + 4). The Praesidium therefore considered the proposed text of the article a good compromise and a counterbalance. Since this article concerns the jurisdiction of the Court of Justice, it is being inserted in the Chapter in Part Three of the Constitution concerning the Court of Justice (where it appears as Article [III-279]).

Section 1: Policies on border checks, asylum and immigration

Article [III-161] on checks on persons at borders has simply been the subject of drafting improvements. In subparagraph (a) of paragraph 2, a more concise and simpler wording is proposed, covering all aspects of the policy on visas and other short-stay residence permits which were set out in detail in the previous wording.

In subparagraph (d) of this paragraph, the amendments and interventions were intended to show the possibility of, in due course, creating a joint border guard structure or force to promote coordination between national border guards and to support them (Fischer, Kuneva, Vastagh, but see also amendments to the contrary by Lennmarker, + Kvist, Tiilikainen + 5). The Praesidium thought it preferable to retain the current wording which seems to be acceptable to all Convention members.

Moreover, on subparagraph (e), the Praesidium did not regard it as indispensable to adopt certain amendments aimed at explicit reference to the possibility for a Member State temporarily to reintroduce controls at the internal borders, as permitted by Article 2(2) of the Schengen Convention. Of course, given that the Schengen Convention currently has the legal status of secondary legislation of the Union, this rule would in any case remain in force after the entry into force of the Constitution. Article 2(2) of the Schengen Convention would thus be a "law" within the meaning of the current Article [III-161](2) and would be fully compatible with it.

Finally, a paragraph has been added to make clear that this provision does not affect the competence of the Member States for the geographical definition of their borders.

Regarding **Article [III-162]** on asylum, the Praesidium noted a broad consensus at the plenary on the content of paragraph 2. It therefore decided to follow only one substantive amendment, namely that of adding subparagraph (g) stressing, in response to Mr Hain's amendment, the importance of the external aspect of asylum policy, and in particular introducing the concept of partnership and cooperation with third countries so as to improve the management of inflows of people applying for asylum.

It is also proposed that the wording of subparagraph (c) should be slightly amended to clarify that the common procedure for granting asylum status, on the one hand, and subsidiary protection status, on the other hand, does not necessarily have to be the same (Brok + 33, Duff + 20). A slightly different wording was also adopted for temporary protection, given that Union action in this area is mainly a matter of a common system enabling the Union to cope with massive inflows, but not necessarily a uniform status for the persons concerned or a uniform procedure in individual cases.

In the case of **Article [III-163]** on immigration, the Praesidium adopted the amendments requesting deletion of the subparagraph which refers to action against trafficking in human beings (Farnleitner, Fischer, Hain + Tomlinson, Hjelm-Wallén). This aspect of the Union's action is in fact covered by including trafficking in human beings in the list of crimes in Article [17] as far as action against trafficking in human beings by instruments of criminal law is concerned. Moreover, subparagraph (c) ("illegal immigration and unauthorised residence") would seem to cover much of the action against trafficking in human beings by instruments other than those of criminal law (i.e. any facilitation of unauthorised entry into or residence in the Union). In paragraph 4, the exclusion of any harmonisation has been added in line with the provision in Article [18] (crime prevention) which refers in a similar way only to incentive and support measures.

Regarding **Article [III-164]** (principle of solidarity), it is proposed to retain this article unchanged, as it was the subject of very few amendments and they tended in opposite directions; some wanted to delete the article (Fischer, Heathcoat-Amory, Kirkhope), whilst others wanted either to delete the words "including its financial implications" (de Vries, Hjelm-Wallén + 4) or, on the contrary, to limit the article to financial solidarity alone (de Villepin). The Praesidium felt that the present wording was the outcome of a compromise negotiated at length within the Working Group and well received by a large majority of members of the Convention, particularly those of the new Member States, at the plenary session.

Section 2: Judicial cooperation in civil matters

In the case of **Article [III-165]** (judicial cooperation in civil matters), it was thought appropriate to add the words "having cross-border implications" in paragraph 1 (de Vries + 1 Convention member, Teufel, Roche, Hjelm-Wallén + 4, Haenel and Hübner). This principle should of course apply to the measures envisaged in paragraphs 2 and 3 of this provision.

Concerning the third paragraph, some Convention members pointed out that the Union should legislate in matters of family law only with respect to cross-border aspects (Voggenhuber + 2; Duhamel + 10; Borrell + 2). This suggestion was adopted in order to avoid any misunderstanding, even though paragraph 1 already states that the Union shall legislate in this area only if there are cross-border implications.

The Praesidium noted that the Convention was divided as to whether, in matters of family law, the Council should act unanimously or in accordance with the ordinary legislative procedure. Many members maintained that here the Council must decide unanimously (Teufel, de Vries and de Bruijn, Roche, Hjelm-Wallén, Hain, Fini, Lopes, Queiró and Schlüter). Others consider that the ordinary legislative procedure should apply (Duff + 19, Farnleitner, Santer + 3, Voggenhuber + 2), some going as far as to argue that family law should not be treated separately and therefore proposing that paragraph 3 be deleted (Michel + 5, Haenel + 1, Fischer and Meyer). The Praesidium therefore decided to maintain unanimity as provided for in the Treaty of Nice.

As to whether an exception could be made for parental responsibility, making it subject to the legislative procedure, a number of Convention members were opposed, and others argued that the distinction would be a difficult one to make in practice (Teufel, de Vries and de Bruijn, Roche, Hjelm-Wallén, Hain, Lopes, Queiró, Wuermeling, Schlüter). In the light of these comments, the Praesidium preferred to delete the reference to "parental responsibility". On that basis, the Praesidium thought it necessary to add a final paragraph, enabling the Council, acting unanimously, to make the legislative procedure applicable to some aspects of family law covered by this article. Such a clause would make it possible to avoid having to amend the Constitution, thus avoiding the full-scale revision procedure.

Section 3: Judicial cooperation in criminal matters

In the case of **Articles 15 and 16** (judicial cooperation in criminal matters and criminal procedure), the Praesidium thought they should be presented together and merged in the new **Article [III-166]** given that the approximation of criminal procedural law might prove necessary in order to facilitate the full mutual recognition of decisions.

The Praesidium examined the amendments submitted by some Convention members, who insisted on the unanimity rule for all acts adopted on the basis of Articles [III-166 to III-172] (Farnleitner, Lopes, Roche, Schlüter, de Vries, Santer for Articles [III-171] and [III-172] only, Hain for Article [III-166(2)] only). The Praesidium did not adopt these amendments in view of the Working Group's recommendations (which provided for unanimity to continue in a number of particularly sensitive cases and cut back on the Union's competences in relation to the current Treaty), the large majority of Convention members at the plenary session on 3 April in support of these provisions and a series of amendments tending towards abolition of unanimity even in the cases where the Praesidium's draft provides for it (for Articles [III-166(2), III-167, III-170, III-171] or some of them: Duff + a number of Convention members, de Villepin, Michel + 5, Berger + Einem, VanLancker, Duhamel + a number of Convention members, Voggenhuber + 2, van der Linden + Timmermans, Brok + 32 Convention members (for Article [III-170])).

On the subject of ex Article 16 (which has become paragraph 2 of Article [III-166]), many Convention members insisted that the Union should lay down minimum rules only in matters where this was justified by a cross-border dimension (Heathcoat-Amory, Schlüter, Teufel, Fischer, Wuermeling, Queiró, Haenel and Tiilikainen). The first paragraph has therefore been revised and the words "criminal matters with a cross-border dimension" have been added.

It should also be emphasised that while this provision is designed to establish minimum rules on the admissibility of evidence, it in no way seeks to harmonise admissibility or indeed the taking into account of such evidence, which are matters wholly and exclusively for national courts. The sole purpose is to establish minimum standards such that evidence obtained in conformity with those rules can then be used in proceedings in other Member States, but without prejudice to the freedom of the court to take into account other evidence in accordance with its national law (see in particular the Svensson and Hjelm-Wallén amendments). To obviate any misunderstanding, the wording "mutual admissibility of evidence between Member States" is proposed for subparagraph (a) of paragraph 2.

A number of Convention members wanted the Union to legislate solely by means of framework laws (Schlüter, Farnleitner, Teufel, de Vries, de Villepin, Fischer, Queiró). Here some stressed the need to involve national parliaments and argued that transposition of Union law was justified in this area. The Praesidium has agreed to this request and deleted the word "laws".

The Praesidium has also added a final sentence, proposed by Mr Roche, underlining the fact that Member States have the option of providing for higher standards of protection.

Regarding **Article [III-167]** (substantive criminal law), it is proposed that the first indent of this article (now the first paragraph, for a purely technical reason) remain as it stands, given the wide support which it enjoys. For the rest, of the small number of requests for the addition of other areas of crime to the list of the first indent, the only one that need be mentioned concerns racism and xenophobia, which has been added to Article [III-153].

The second paragraph has been changed in particular to take account of certain amendments (Hjelm-Wallén, Fini, Teufel, Roche, Schlüter, Hain, Tiilikainen). The new wording would therefore restrict the scope of the present paragraph in several ways, i.e.:

- the offences in question must be linked to harmonisation measures at Union level. This would obviate any link with Union policies which do not provide for harmonisation (areas for supporting action, such as culture), for it would be illogical to permit approximation of criminal law in an area where even harmonisation of non-criminal penalties is impossible;
- there must be a link to harmonisation measures already adopted by the Union. So, to use this legal basis, it would not be enough for the Union to have the theoretical ability to conduct a policy even if it had not yet exercised its competences. Approximation of criminal law can come only as an adjunct to harmonisation measures already taken under a Union policy. While that does indeed substantially restrict the scope of the paragraph, it meets the concern expressed by several Convention members that Article [III-167] should not lead to excessive and hasty recourse to criminal sanctions. The legislator must in fact assess whether criminal sanctions prove essential to ensure the effective implementation of the policy;

- where the harmonisation measures to which the paragraph relates are subject to the rule of unanimity in the Council, that procedure must also be followed in relation to this article. It makes sense to provide for matching procedures, which would be applied, for example, to approximation as regards offences involving racism and xenophobia (linked to ex Article 13 TEC) and tax fraud and tax evasion (linked to Article [III-59]).

Article [III-168] (crime prevention) has been the subject of a consensus and has therefore not been changed.

Article [III-169] (Eurojust) was well received by Convention members. It is true that some proposed that the law establishing Eurojust's tasks be adopted unanimously by the Council and not by a qualified majority (Kvist, Roche, Lopes, Queiró, Schlüter, de Vries, Tajani and Farnleitner). However, as a whole, the great majority accepted the legislative procedure. The wording "support and strengthen" coordination was suggested (Schlüter, Teufel) and seemed to be more appropriate for identifying Eurojust's tasks

In subparagraph (a) of the second paragraph, some Convention members entered reservations as to the possibility for Eurojust to "initiate" criminal prosecutions (Roche, Queiró, de Vries, Hain, Fini, Teufel, Hjelm-Wallén, Muscardini), but in general the idea seems to be accepted, provided it is stated that the criminal prosecutions are conducted by the competent national authorities. It is a matter of strengthening Eurojust's competences in this regard in future. As matters now stand, Eurojust can already ask the national authorities to undertake a criminal prosecution on the basis of specific evidence. The latter may, however, decide not to comply with the request (see Article 8 of the Council Decision of 28 February 2002 setting up Eurojust, OJ L 63, 6.3.2002, p.1). As the article is now worded, they could be obliged to do so if the law so requires. In the same paragraph, the Praesidium wanted to emphasise the importance of initiating criminal prosecutions for the protection of the Union's financial interests, an area in which it is important to make Union action more effective. This reference has therefore been added.

As for "appropriate supervision of Europol's.....activities" (previous third indent), a number of Convention members were opposed to including this task in the article (Roche, Queiró, Schlüter, Tajani, Hain, Farnleitner, Teufel, Hjelm-Wallén). Some pointed out that it was not clear what such "supervision" would consist of. It should be made clear first of all that two types of supervision of Europol's activities would theoretically be possible (in the same way as there are two types of supervision of police action in the Member States): "ex ante" supervision or "ex post" supervision. The aim of the proposed provision was to introduce ex ante supervision of Europol's operational activities to prevent it being able to act and possibly affect the rights of individuals without supervision. In this respect, this provision should be read along with Article [III-172](3) on Europol, which provides that "any operational action by Europol must be carried out in liaison with and in agreement with the authorities of the Member State(s) whose territory is concerned". It follows that "ex ante" supervision is already necessary before Europol embarks on operational action on the territory of a Member State. Under these circumstances, it does not seem essential to require supervision by Eurojust also, even if such a role could be useful in the case of action by joint investigative teams acting in several States. The Praesidium was therefore able to accept the amendments lodged by the abovementioned Convention members and delete this indent. At the same time, in Article [III-172](2)(b) on Europol's tasks, it decided that the words "where appropriate, in liaison with Eurojust" should be inserted (cf. that article).

Article [III-170] (European Public Prosecutor's Office) was the subject of a lively debate which was first held within the Working Group (which, on this point alone among the questions under its remit, made no consensual recommendation) and then in the Convention plenary on 6 December 2002. The proposed provision introduces a legal basis enabling the Council, acting unanimously and after obtaining the assent of the European Parliament, to establish a European Public Prosecutor's Office if it deems this to be appropriate, but without necessarily involving any obligation to do so. The provisions of paragraphs 2 and 3 would therefore become applicable only if the Council were to take such a decision. These provisions would, in addition, deliberately leave the legislator considerable leeway as to any concrete formulation, if appropriate, of the arrangements for setting up the Public Prosecutor's Office (i.e. its structure, workings, tasks and powers), by merely indicating in the Constitution only the essential details of such arrangements.

A large number of Convention members opposed the idea of creating a European Public Prosecutor's Office (Hain, de Vries, Roche, Schlüter, Queiró, Wuermeling, Hjelm-Wallén, Farnleitner, Tajani, Heathcoat-Amory, Muscardini, Tiilikainen). Some said there was no need for it, others pointed out that Eurojust had only recently begun to operate and that it was necessary to wait before assessing the need to create a European Public Prosecutor's Office. But many other members were in favour of creating a European Public Prosecutor's Office (Fayot, Haenel, Costa, Duff, Brok, Michel, Borrell, de Villepin, Fischer, Badinter, Lequiller, Voggenhuber, Kohout, Kaufmann, Teufel, Floch, Meyer, Wittbrodt and Fogler). Some even wanted the Constitution to provide for its creation (Fischer, Badinter) and others wanted the Constitution to place the Council under the obligation to adopt a law creating the European Public Prosecutor's Office.

During the discussion the Convention was divided on this point. The Praesidium feels, in view of the above, that its initial proposal constituted a reasonable compromise: the European Prosecutor's Office is not created by the Constitution, nor is the Council obliged to adopt a law instituting it. The article states only that the Council may adopt a law (unanimously and after obtaining the assent of Parliament) creating a European Public Prosecutor's Office from Eurojust. It is therefore proposed to leave this article unchanged. In order to avoid misunderstandings, it is proposed to indicate that the European Public Prosecutor's Office is created not "within" Eurojust but "from" Eurojust, as some Convention members have requested (Voggenhuber, Michel, Kaufmann, de Villepin, Fischer, Badinter, Wuermeling, Kohout). Moreover, inserting the words "where appropriate in liaison with Europol" (paragraph 2) would give the Council the possibility, in any law creating a European Public Prosecutor's Office, of regulating its working relationship with Europol.

Section 4: Police cooperation

Regarding **Article [III-171]** (cooperation between the competent authorities) ~~with regard to security~~ the change to paragraph 1 is in response to a series of amendments asking that the police cooperation provided for in this article retain exactly the same scope as under the current Article 30 TEU. In the second paragraph the text would refer simply to "support for the training" of police staff. This is just an alignment on the terminology already used in Articles [III-165] and [III-166].

The main subject raised in the amendments (Teufel, Roche, Fischer, de Villepin, Hjelm-Wallén + 4) and statements by members is the difficulty of clearly delimiting the third paragraph which, in accordance with the conclusions of the Working Group, makes operational cooperation between police authorities subject to the unanimity rule, and the last indent of the second paragraph, which makes the normal procedure (i.e. qualified majority) applicable to "any other measure" not covered by "operational cooperation". Finally, some Convention members were concerned that the unanimity rule for every operational measure could turn out to be too wide-ranging and rigid in practice (de Villepin, Voggenhuber + 2, Duff + 1, who proposed a superqualified majority).

To deal with these comments, the new text now sets out to list in full the subjects dealt with by a qualified majority; for that reason, the additional indent on common investigative techniques (already included in current Article 30(1) TEU) has been added. On the other hand, bearing in mind also that the reformulated Article [III-159] in any event covers administrative cooperation between police authorities, it is no longer necessary to introduce a "catch-all" clause in this Article for all other forms of "non-operational" cooperation.

As for the issue of the unanimity rule in the third paragraph, taking into account the final report by the Working Group, the Praesidium has decided to retain it, given that: Article [III-159] on administrative cooperation is governed by the qualified majority, the same applies to Article [III-172] on Europol (the key article for police cooperation, involving both Europol and the police authorities of the Member States, where appropriate in joint investigative teams) and in the laws or framework laws it adopts pursuant to this paragraph, the Council will have the possibility, as it already has now, of providing for the adoption of implementing regulations, either by itself, acting by a qualified majority, or by the Commission (Article I-36).

Regarding **Article [III-172]** (Europol), the Praesidium has made only non-substantive amendments, as this article has support from Convention members. Hence, in the first paragraph, the Praesidium has added "other law enforcement services" of the Member States, as in current Article 30 TEU (de Vries + de Bruijn). The insertion of the word "particularly" in subparagraph (a) of the second paragraph is intended to make it clear that analysis by Europol may, as now, also be based on information other than that forwarded by the Member States or third countries or bodies, and in particular on information which is publicly available (Hjelm-Wallén + 5). The expression "competent authorities" is more in keeping with the terminology of the Constitution than the word "services" (Hjelm-Wallén + 5).

As regards the description of tasks in the second paragraph, the few amendments received are contradictory: some want the potential tasks to be mentioned only as examples (Michel + 5) while others would like the Constitution itself to set Europol's tasks. Some propose amendments to confer on Europol more ambitious tasks directly provided for in the Constitution (Brok + 30), others, on the other hand, would rather Europol had more modest tasks, similar to those which it carries out today (Hain, Roche, Tiilikainen + 5). The Praesidium's approach and that of the Working Group seems to be a balanced compromise. It is proposed simply, following deletion of the third indent of Article [III-169](2), to insert the words "where appropriate in liaison with Eurojust", to enable the legislator to define the appropriate working relationship between the two bodies, particularly if Europol is given operational powers (taking due account of the fact that, in some Member States but not in all, law enforcement action by police bodies is subject to direction or supervision by prosecutors or magistrates).

Concerning paragraph 3, the Praesidium has decided to retain the current wording. However, the Praesidium would underline that it would be erroneous to understand the term "operational actions" in an extensive manner, covering the simple processing of information used for operational purposes, for which Europol is already responsible now. Rather, it is clear from the text that only operational action by Europol on the territory of a Member State requires the agreement of that State. The Praesidium would also stress that the intention in paragraph 3 is only to reserve the application of coercive measures to national agents. Nothing would prevent the legislator from providing a right for Europol to be present when such measures were being applied, or indeed from asking national agents to take such measures.

Finally, **Article [III-173]** (operations on the territory of another Member State) remains unchanged as it was not the subject of any amendments.

DRAFT TEXTS

SECTION 1

GENERAL PROVISIONS

Article III-153

(ex Article 1: [Definition of the area])

1. The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and 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 ~~ensure~~ 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 ~~free-movement principle of~~ **mutual recognition** of documents and judgments in civil matters ~~based on the principle of mutual recognition~~.

Article III-154

(ex Article 2: [Role of the European Council])

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

Article III-155

(ex Article 3: [Role of national Parliaments])

1. **Member States' national parliaments shall ensure that the legislative proposals and 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 provided for 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 of the Constitution.**

2. ~~[Notwithstanding the provisions foreseen in the Protocol on the application of the principles of subsidiarity and proportionality, where at least one quarter of national Parliaments issue reasoned opinions on non-compliance with the subsidiarity principle of a Commission proposal submitted in the context of Chapters 3 and 4 of this Title, the Commission shall review its proposal. After such review, the Commission may decide to maintain, amend or withdraw its proposal. The Commission shall give reasons for its decision. This provision shall also apply to initiatives emanating from a group of Member States in accordance with the provisions of Article 8 of this Title.]~~ *[This provision is being incorporated in the Protocol on subsidiarity].*

Article III-156
(ex Article 4: [Evaluation mechanisms])

Without prejudice to Articles [III-261 to III-263 (ex Articles 226 to 228 TEC)] ~~of this Treaty, of the Constitution,~~ the Council may **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: [Operational cooperation])

A standing committee shall be set up in order to ensure that operational cooperation on internal security is promoted and strengthened within the Union, ~~a standing committee may be set up within the Council.~~ Without prejudice to Article [III-242, (ex Article 207 TEC)] it shall ~~be responsible for coordinating~~ **facilitate coordination of** the action of Member States' competent authorities, including police, customs and civil protection authorities. Representatives of **the Union bodies and agencies concerned** ~~Europol, Eurojust and, where appropriate the European Public Prosecutor's Office,~~ 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: [Measures concerning public order and internal security])

~~This Title~~ **[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: [Administrative cooperation])

The Council shall adopt, by a qualified majority, **European** regulations to ensure **administrative** cooperation between the relevant departments ~~of the administrations~~ of the Member States in the areas covered by this ~~Title~~ **[Chapter]**, as well as between those departments and the Commission. It shall act on a Commission proposal ~~or, in the areas covered by Chapters 3 and 4 of this Title,~~ ~~either on a Commission proposal or on the initiative of a quarter of the Member States,~~ **without prejudice to Article III-160**, and after consulting the European Parliament.

Article III-160
(ex Article 8: [Right of initiative])

The acts referred to in ~~[Chapters]~~ **Sections** 4 and 5 of this ~~Title~~ **Chapter** shall be adopted:

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

Article 9: [Judicial control] [article unchanged, inserted in the "Court of Justice" Chapter]

~~[In exercising its competences regarding the provisions of Chapters 3 and 4 of this Title, 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.]~~

SECTION 2

**POLICIES ON BORDER CHECKS,
ASYLUM AND IMMIGRATION**

Article III-161
(ex Article 10: [Checks on persons at borders])

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 ~~an common~~ integrated management system for external borders.
2. For this purpose, ~~the European Parliament and the Council, in accordance with the legislative procedure, shall adopt~~ **a European** laws or framework laws **shall establish measures** concerning:
- (a) ~~the common policy on visas and other short-stay residence permits conditions of entry for a short stay for nationals of third States, including the visa requirement and exemption from this requirement, the rules, procedures and conditions of issue of permits for crossing external borders, and the uniform format for such permits;~~
 - (b) the controls to which persons crossing external borders ~~may be~~ **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 common~~ 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: [Asylum])

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 ~~shall~~ **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, ~~the European Parliament and the Council, in accordance with the legislative procedure shall adopt~~ **a European** laws or framework laws **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 ~~uniform status~~ **common system** of temporary protection for displaced persons in the event of a massive inflow;
- (d) a common procedures for **the** granting and withdrawing **of** uniform asylum or subsidiary ~~or temporary~~ 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 ~~or temporary~~ 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: [Immigration])**

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, ~~the European Parliament and the Council, in accordance with the legislative procedure, shall adopt a European~~ laws or framework laws **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.

~~[combating trafficking in persons, in particular women and children.]~~

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. ~~The European Parliament and the Council, in accordance with the legislative procedure, may adopt~~**A European laws and 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: [Principle of solidarity])

The policies of the Union set out in this ~~Section Chapter~~ 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 Chapter~~ shall contain appropriate measures to give effect to this principle.

SECTION 3 JUDICIAL COOPERATION IN CIVIL MATTERS

Article III-165 (ex Article 14: [Judicial cooperation in civil matters])

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** ~~national laws having cross-border implications.~~

2. To this end, ~~the European Parliament and the Council, in accordance with the legislative procedure, shall adopt~~ **a laws or framework laws 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 ~~measures of preventive justice and~~ alternative methods of dispute settlement;
- (h) support for the training of the judiciary and judicial staff.

3. **Notwithstanding paragraph 2, measures concerning** ~~The Council, on a proposal from the Commission, shall unanimously adopt laws and framework laws concerning the~~ **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 European Parliament and the Council, in accordance with the legislative procedure, shall adopt laws and framework laws concerning parental responsibility.~~

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: [Judicial cooperation in criminal matters])

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.

~~The European Parliament and the Council, in accordance with the legislative procedure, shall adopt~~
A European laws or framework laws 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** ~~all other forms of cooperation between ministries and~~ 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 strengthen mutual trust recognition of judicial decisions and police and judicial cooperation between the competent authorities of Member States in criminal matters with a cross-border dimension, and guarantee the effectiveness of common tools for police and judicial cooperation, the European Parliament and the Council, in accordance with the legislative procedure, may adopt laws and a European framework laws may establish containing~~ minimum rules concerning:

- (a) **mutual** admissibility of evidence between **Member States** ~~throughout the Union;~~
- (b) definition of the rights of individuals in criminal procedure ~~in compliance with fundamental rights;~~
- (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.

3. **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.**

(ex Article 16: [Criminal procedure] /has become paragraph 2 of Article 15/)

Article III-167

(ex Article 17: [Substantive criminal law])

1. ~~The European Parliament and the Council, in accordance with the legislative procedure, may adopt~~ **A European framework laws may establish containing** minimum rules concerning the definition of ~~in~~**criminations criminal offences** and sanctions in the areas of particularly serious crime with cross-border dimensions resulting from the nature or impact of ~~the~~ **such** offences or from a special need to ~~prosecute them jointly~~ **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 ~~identify~~ **adopt a European decision identifying** other areas of crime that meet the criteria specified in this ~~ident~~ **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: [Crime prevention])

1. ~~The European Parliament and the Council, in accordance with the legislative procedure, may adopt~~ **A European framework laws may establish measures** to promote and support the action of Member States in the field of crime prevention. **Such measures shall not include** ~~excluding any~~ **the** approximation of Member States' legislative and regulatory provisions.

Article III-169
(ex Article 19: [Eurojust])

1. Eurojust's mission shall be ~~to ensure~~ **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 ~~joint~~ prosecution **on common bases**, on the basis of operations conducted and information supplied by the Member States' authorities and by Europol.

2. ~~The European Parliament and the Council, in accordance with the legislative procedure,~~ **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.

~~— appropriate supervision of Europol's operational activities.~~

A **European law** referred to in the preceding subparagraph 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 ~~the following~~ Article **[III-170]**, formal acts of judicial procedure shall be adopted by the competent national officials.

Article III-170 (**ex Article 20: [European Public Prosecutor's Office]**)

1. ~~With a view to combating~~ **In order to combat** serious crimes having a cross-border dimension, as well as illegal activities affecting the interests of the Union, **a European law of the Council acting unanimously after obtaining the assent of the European Parliament may establish** ~~adopt a European law creating a European Public Prosecutor's Office within~~ **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 ~~the following~~ 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 ~~the preceding~~ 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 ~~the European Public Prosecutor's Office~~ **it** in the performance of its functions.

SECTION 5 POLICE COOPERATION

Article III-171 (**ex Article 21: [Cooperation between the competent authorities with regard to internal security]**)

1. The Union shall establish **police** cooperation involving all the Member States' competent authorities ~~with responsibility for internal security~~, 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 framework law may establish measures** concerning:
 - the collection, storage, processing, analysis and exchange of relevant information;
 - **support for** the training and exchange of **staff**, equipment and research **on crime**;
 - **common investigative techniques in relation to the detection of serious forms of organised crime.**

~~[— Any other measure not referred to in the following paragraph, that encourages cooperation between the authorities referred to in this Article.]~~

3. **A European law or framework law of the Council may establish measures** ~~unanimously adopt laws and framework laws~~ concerning operational cooperation between the authorities referred to in this Article. ~~It~~ **The Council** shall act **unanimously** after consulting the European Parliament.

Article III-172 **(ex Article 22: [Europol])**

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. ~~The European Parliament and the Council, in accordance with the legislative procedure,~~ **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** ~~services~~ or in the context of joint investigative teams, **where appropriate in liaison with Eurojust.**

A European law ~~referred to in the preceding paragraph~~ 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 ~~services~~ **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: [Operations in the territory of another Member State])

A European law or framework law of the Council, ~~acting unanimously, shall adopt laws and framework laws laying down~~ 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** ~~13 and 15 and 21~~ may operate in the territory of another Member State in liaison and in agreement with the authorities of that State. ~~It~~ **The Council** shall act **unanimously** after consulting the European Parliament.

TITLE V

THE UNION'S EXTERNAL ACTION

EXPLANATORY NOTE

I. General introduction

The Praesidium noted a general consensus on the proposed structure of the external action articles, which presented a clearer and more coherent overview of how the Union can act on the international stage. It was also acknowledged that the new structure does not lead to harmonisation of instruments and procedures, as different modalities continue to exist for the different policy areas.

The Praesidium further noted a general consensus on the proposal to create an EU Minister of Foreign Affairs, who would function under the authority of the Council for issues relating to CFSP, and as member of the Commission have responsibilities in other areas of external action managed by the Commission. The Praesidium also noted that members had different interpretations of the consequences of this institutional change. The proposed changes in [Article III-189 (ex Art. 2)] and in the relevant provisions of the following chapters aim at bringing more clarity in the role of the Minister and his relationship with the Commission and the Council. Some members of the Convention have suggested different titles for this post. The Praesidium proposes at this stage not to change the proposed title, but to await further discussion on the issue.

II. Generally applicable provisions (Chapter I, Horizontal Articles)

Several amendments have been presented by Convention members to add further elements to the horizontal article on principles and objectives [Article III-188 (ex Art. 1)]. In the light of the broad and varied scope of amendments and in order to maintain the balance of the text, which was originally proposed by Working Group VII, the Praesidium has elected to concentrate changes on a limited number of areas where a substantial number of members proposed strengthening the text. The most substantial modification concerns the strengthening of paragraph 3 on consistency between the different areas of the external action of the Union, as well as between external action and other policy areas, in keeping with the request of a considerable number of Convention members. It should in this context also be recalled that several Convention members have also suggested including a reference to the need to take account of the objectives of development cooperation in the implementation of other policies. Since this is covered by the reformulated paragraph concerning consistency between external action and internal policies (in general), it has not been added to this article, but it has instead been added in Chapter III under development cooperation, in recognition of the strong demand to reflect the content of the current Article 178 TEC. Bearing in mind the proposal to create the post of EU Minister of Foreign Affairs, the revised paragraph on consistency mentions his role in helping to underpin efforts to ensure consistency.

The other amendments to the Article on principles and objectives, based on proposals from several Convention members, concern: the inclusion of a reference to the Union's security in paragraph 2(a); the addition of a reference to the environment, and the deletion of the reference to low-income countries, in paragraph 2(d); and the strengthening of the language of paragraph 2(f) as regards protection of the environment and sustainable management of natural resources.

The Convention confirmed that for the Union to be able to act effectively on the international scene, it needed to be able to deploy instruments covering different policy areas in pursuit of a common strategic goal. The role of the European Council in defining these strategic objectives and interests was also confirmed, as well as the role of the Council in making recommendations to that effect.

However, diverging views were expressed on the right of initiative and decision making within the Council, with a number of Convention members expressing opposition to the possibility of proposals being put jointly by the Minister and the Commission to the Council, while others wanted to attribute a role to Member States as well. To overcome these differences, the Praesidium proposes to include in paragraph 1 of [Article III-189 (ex Art. 2)] a reference to the provisions governing the different policies, in order to ensure that the Council takes decisions in conformity with the rules and procedures laid down in the Constitution. The Council would subsequently, by combining the different elements, be able to make a recommendation on strategic objectives and interests to the European Council.

The Praesidium has further decided to amend paragraph 2 of [Article III-189 (ex Art. 2)] by deleting the reference to qualified majority voting. A number of Convention members had expressed opposition to this provision and argued that it was constitutionally not appropriate to make the procedure for a CFSP decision dependent on whether it was combined or not with a Commission proposal concerning another policy area. In addition, a number of members felt that it did not make sense to have the Minister and Commission making joint proposals if the Foreign Minister was also member of the Commission. They consider that it would be for the Minister to present proposals covering different external policies. The Praesidium has preferred to retain the proposed language on joint proposals by the Minister and the Commission, with the understanding that the Commission can invite the Minister to present proposals on its behalf covering areas under its competence.

III. Common foreign and security policy (Chapter II, Section 1)

The main questions with respect to the articles on CFSP concern the right of initiative and the decision-making process.

On the right of initiative, there is a general consensus on the proposal to attribute to the EU Minister of Foreign Affairs the right to put CFSP proposals to the Council. The Praesidium noted, however, that some members were opposed to the possibility of joint CFSP proposals by the Minister and the Commission, as they consider that this would make his CFSP proposals subject to the principle of collegiality. The Praesidium agreed to rephrase [Article III-195 (ex Art. 8)] to make it clear that the Minister does not submit his proposal to collegiality, but that he can decide, at his own initiative, to gather support from the Commission for a CFSP initiative.

With regard to decision-making procedures [Article III-196 (ex Art. 9)], there was a considerable demand in the Convention to introduce QMV as a general rule in CFSP, to which effect different models have been put forward by members of the Convention. On the other hand, strong opposition was expressed against extending QMV across the board in CFSP. The Praesidium, having reflected on this sensitive issue, and taking into account arguments put forward by both sides, proposes to maintain unanimity as a general rule and at the same time extend the use of QMV by making it

applicable to proposals by the Minister of Foreign Affairs, when acting at the request of the European Council (second indent of paragraph 2 of [Article III-196 (ex Art. 9)]). The Praesidium notes that the provision in paragraph 3 of [Article III-196 (ex Art. 9)] allows for further extension of the application of QMV without treaty change. The reference to joint proposals by the Minister and the Commission has been removed as a consequence of the amendment to paragraph 2 of [Article III-189 (ex Art. 2)].

The changes to [Article III-200 (ex Art. 13)] on the role of the European Parliament are based on amendments from a considerable number of members asking that the Parliament should debate progress in CFSP more than once a year, and that the Foreign Minister's consultation of the European Parliament should also cover issues related to security and defence. The Praesidium has also introduced in the text a new provision, suggested by some, that special representatives can be involved in informing the European Parliament. Some members asked for a reference to national parliaments: the Praesidium recalls that a new reference to CFSP has been included in the protocol on national parliaments.

The Praesidium has noted that some would wish the presidency of the Foreign Affairs Council to be exercised by a Member State, while others consider it crucial, for efficiency and clarity of representation, that this formation of the Council should be chaired by the Minister of Foreign Affairs. In the light of the different positions, the Praesidium has decided not to modify the relevant provision in [Article III-192 (ex Art. 5)].

The changes to [Article III-201 (ex Art. 14)] reflect amendments by members requesting that the Minister should be fully informed of developments in international fora where the Union as such is not represented. The changes in [Article III-203 (ex Art. 16)] aim at better reflecting the reinforced role of the Minister in CFSP.

Finally, some members of the Convention expressed concern that, as a result of the abolition of the pillars, there was a risk that acts relating to the former "first pillar" would now be taken on the basis of procedures applicable to CFSP. Others expressed concern about "communatising" CFSP, i.e. that decisions on issues covered by CFSP would be taken by applying rules of former "first pillar" areas. To help ensure that acts are adopted on the right legal basis, the Praesidium could envisage a new [Article III-204 (ex Art. 16 bis)] in Chapter II, Section 1 on CFSP, in addition to the provisions of [Article III-266 (ex Art. 230)] which stipulates that the Court of Justice can proceed to a control of the legality of an act if there were any doubt that it had been adopted on the wrong legal basis.

IV. Common security and defence policy (Chapter II, Section 2)

The main questions raised in the articles on the common security and defence policy concern tasks, the Agency and the various forms of flexibility.

With regard to tasks for which the Union may deploy civilian and military means, the amendment concerns the fact that the fight against terrorism is no longer considered a separate task but that all of the tasks listed in [Article III-205 (ex Art. 17)] contribute to supporting the fight against terrorism on the territory of a third country which has requested such support.

Some Convention members insisted that [Article III-207 (ex Art. 19)] specify that the Agency acts under the authority of the Council. Some Convention members also suggested that the Commission's role in relation to the Agency be spelled out. The proposed amendment is a combination of the various amendments to this effect.

With regard to forms of flexibility, some Convention members suggested that the Minister for Foreign Affairs or the Council be associated with the meetings of the Member States involved in the management of a task within the meaning of [Article III-206 (ex Art. 18)]. The proposed amendment to that Article takes this request into account.

The provisions on structured cooperation in [Article III-208 (ex Art. 20)] have been amended so as to satisfy several Convention members' calls for such cooperation to be more inclusive. The list of States participating in structured cooperation, as well as the criteria and commitments in terms of military capabilities, will now be set out in a "protocol" rather than in a declaration. By definition, a protocol requires the agreement of all Member States.

Decisions on the subsequent participation by a Member State in structured cooperation will be taken by the participating States, with all Member States allowed to participate in the deliberations.

V. Financial provisions (Chapter II, Section 3)

Given the diversity of – often contradictory – approaches, no changes are proposed to the substance of [Article III-210 (ex Art. 22)]. A technical amendment to the first subparagraph of paragraph 3 was, however, necessary.

VI. Common commercial policy (Chapter III)

The Praesidium has taken note of the fact that a large number of the amendments proposed to [Article III-212 (ex Art. 24)] on the common commercial policy concern paragraph 4, according to which in 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 (i.e. parallelism regarding the voting rules between the internal and the external domain in these areas).

The views of Convention members on this issue can be divided into three main groups. Firstly, a large number of Convention members who would like to delete this paragraph, thereby removing the exceptions and subjecting all trade policy to qualified majority. Secondly, those who have a strong preference for maintaining this element of parallelism introduced in the Treaty of Nice in Article 133(5), second subparagraph, albeit in the clarified form of the Praesidium proposal. Finally, certain Convention members who would prefer to revert even more to the provisions of Article 133(6) TEC (in addition to maintaining the notion of parallelism) and introduce a text according to which agreements relating to trade in cultural and audiovisual services, educational services and social and human health services shall fall within the shared competence of the Union

and its Member States and that the negotiations of such agreements shall require the common accord of the Member States. After having examined these different positions expressed by Convention members, the Praesidium has preferred to maintain its original proposal, which maintains the notion of parallelism regarding the voting rule (and expresses in a more explicit and comprehensible manner the policy areas concerned).

Another set of proposed amendments to this article concerned the role of the European Parliament, which many Convention members would like to see strengthened. In this connection, it should be noted that the wording of the draft text of CONV 685/03 already strengthened the role of the European Parliament vis-à-vis the current situation (legislative procedure, i.e. co-decision, for measures other than the agreements covered in paragraph 1 and, pursuant to [Article III-222 (ex Art. 33)] on the negotiation and conclusion of international agreements – which replaces the existing Article 300 TEC – the conclusion of agreements following assent of the European Parliament (deletion of the current exception regarding trade policy in Article 300 TEC). The Praesidium proposes, however, to modify the text so as to state that the Parliament shall be regularly informed on the progress of negotiations.

VII. Development cooperation, cooperation with third countries and humanitarian aid (Chapter IV)

In line with the amendment proposed by several Convention members, a reference to the principal objective of development cooperation, the fight against poverty, has been inserted in the first of the articles on development cooperation, together with a reference to the need to take account of the objectives of development cooperation in the implementation of other policies when these are likely to affect developing countries (based on Article 178 TEC). On the basis of the proposals from several Convention members, who consider that paragraph 4 of [Article III-214 (ex Art. 26)] and its reference to a distinctive approach vis-à-vis the ACP countries should be deleted, the Praesidium proposes to remove this paragraph from the Article. Further to requests by a certain number of Convention members, the Praesidium has, in order to distinguish economic, financial and technical cooperation more clearly from the specific framework of development cooperation, specified in [Article III-216 (ex Art. 28)] that cooperation in this area concerns third countries other than developing countries. Several Convention members had proposed applying the legislative procedure to the urgent financial assistance referred to in [Article III-217 (ex Art. 29)], or stipulating that the Council adopt the necessary measures following consultation of the European Parliament, or that it act following the European Parliament's agreement. It would however appear difficult to reconcile such amendments with the need for urgent aid and, for that reason, the text has not been amended (the English version of the text has however been corrected as regards decision-taking by qualified majority, as the previous version incorrectly referred to unanimity). No changes in substance are proposed to [Article III(ex Art. 30)] on humanitarian aid.

VIII. Restrictive measures (Chapter V)

The provisions relating to restrictive measures have not been modified. The Praesidium noted that the Convention welcomed the new provision which allows the Union to take financial and economic restrictive measures against groups and individuals (and not only States). It considered that it was not necessary to include a reference to fundamental rights, as the incorporation of the

Charter on fundamental rights make these binding on the Union in all its actions. In addition, the horizontal [Article III-188 (ex Art. 1)] includes references to respect for human rights and international law.

Some amendments suggested an extension of the scope of paragraph 2 of [Article III-219 (ex Art. 31)] to cover visa restrictions. The Praesidium felt however that this would entail a complication of the procedures and undesirable delay in application: an act adopted under the provisions of Chapter II introducing visa restrictions is directly applicable by Member States.

IX. International agreements (Chapter VI)

With regard to the Union's competence for the conclusion of international agreements [Article III-220 (ex Art. 32)], the reference to the Union's implicit competence, which was added further to the conclusions of Working Group VII, has not generally been called into question. Only a few amendments have proposed the deletion of the reference, while other Convention members would like to extend such implicit external competence every time the aim of an international agreement is to implement a Union policy. The text proposed by the Praesidium therefore remains unchanged in substance. The first and the third paragraphs have, however, been merged and their wording simplified.

Some amendments would suggest devoting a separate article to association agreements so that their legal basis appears more clearly in the Constitution. The text proposed here takes up that suggestion [Article III-221 (ex Art. 32a)].

As for the procedure for the conclusion of international agreements [Article III-222 (ex Art. 33)], the draft Article has largely been welcomed. There were not many amendments regarding the negotiator of agreements and they did not question the allocation of roles as proposed in the draft Article. The indication that the Minister for Foreign Affairs and the Commission may present joint recommendations has, however, been deleted. With regard to the European Parliament, few amendments have called for a strengthening of its role before the stage at which agreements are concluded. In respect of the conclusion of agreements, the deletion of the exception from consultation of the European Parliament for trade agreements has not been questioned by any amendments. Some amendments aimed to extend the requirement for consultation of the European Parliament to agreements regarding the CFSP, without debate in plenary having given reason to believe that the Convention supported such an extension of the Parliament's role. Some Convention members have submitted proposals for amendments aiming to require Parliament's approval for trade agreements. However, the text of [Article III-222 (ex Art. 33)] already provides that the European Parliament's consent is required for agreements covering areas to which the legislative procedure applies, the latter applying in particular to trade agreements, as indicated in [Article III-212(2) (ex Art. 24)]. As for recourse to qualified majority voting, some amendments have requested that it be extended to most agreements, while others have proposed extending the areas for which unanimity is required. The breakdown has therefore been maintained.

The reference in paragraph 12 to the Central Bank as one of the institutions which may request a prior opinion from the Court of Justice has been deleted, as this obviously does not come within its remit.

As requested by some Convention members, and further to the Praesidium decision on [Article 230b] (CONV 734/03), restriction of the Court of Justice's jurisdiction with regard to prior opinions as regards CFSP agreements has been deleted.

With regard to the draft [of Article III-223 (ex Art. 34)] on monetary agreements, paragraph 4 has been deleted, as a new [Article III-381] has been proposed in the title on EMU, which concerns the external representation of the euro.

Some amendments have pointed out that, since qualified-majority voting is the general rule laid down in [Article III-222 (ex Art. 33)], it might be unwise to specify in [Article III-223 (ex Art. 34)] that the Council shall decide by a qualified majority. However, this indication has been retained. It is after all worth specifying, while indicating that the procedures laid down in [Article III-223 (ex Art. 34)] derogate as a whole from the procedure laid down in [Article III.222 (ex Art. 33)].

X. Relations with international organisations and third countries and Union delegations (Chapter VII)

Certain Convention members suggested further evolution of the organisation of Union representation in international organisations and with third countries. The Praesidium considered, however, that it was not necessary to include more detailed provisions, which in many cases concerned administrative organisation. The substance of the texts proposed in this field is therefore unchanged.

DRAFT TEXTS

CHAPTER I

GENERALLY APPLICABLE PROVISIONS

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, ~~environmental~~, social **and environmental** development of developing countries, with the primary aim of eradicating poverty, ~~particularly in low-income countries~~;
 - (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, ~~and 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 ~~ensure consistency between the different areas of its external action. It shall also take into account~~ **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** ~~of 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** ~~proposal~~ from the Council, **adopted by the latter.** ~~The Council proposal shall be adopted by the Council under the arrangements laid down for each area, by a qualified majority on the basis of recommendations from the Minister for Foreign Affairs, for matters of common foreign and security policy, and from the Commission, for other fields of external action, or both together. The decisions of the European Council shall be implemented by the Council 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. ~~The Council shall adopt decisions on such joint proposals by a qualified majority.~~

CHAPTER I
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:
 - defining the ~~principles and~~ general guidelines,
 - adopting decisions on:
 - actions of the Union,
 - positions of the Union,
 - **implementation of actions and positions,**
 - 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, ~~or the Minister for Foreign Affairs, or the Minister with the support of the Commission, acting alone or 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:
 - 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 III-189(2)] of this Title;
 - ~~— when acting on the basis of a joint proposal by the Minister for Foreign Affairs and the Commission, as defined in Article 2(2);~~
 - **when adopting a decision on the initiative of the Minister for Foreign Affairs further to a request from the European Council;**

- when adopting any decision implementing a ~~decision on relating to a~~ Union action or position;
- when appointing a special representative in accordance with [Article III-198 (ex Art. 11)] of this Chapter.

If a member of the Council declares that, for **vital important** 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.

~~This paragraph shall not apply to decisions having military or defence implications.~~

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 I-39 **29(5)**, **the Union's Minister for Foreign Affairs and the Ministers for Foreign Affairs of the Member States shall coordinate their activities within the Council.** ~~there shall be close coordination between the activities of the Union's Minister for Foreign Affairs and the Ministers for Foreign Affairs of the Member States.~~
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** ~~on a proposal from~~ 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 III-222 (ex Art. 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 ~~an annual~~ 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 III-193(3) (ex Art. 6(3))], 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 I-8(2) (ex Art. 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 in close contact with~~ **of** the Minister for Foreign Affairs, political control and strategic direction of crisis management operations, as defined in [Article III-205 (ex Art. 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 I-12 to I-14 and I-16. Likewise, the implementation of the policies listed in those articles shall not affect the competence referred to in Article I-15.

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 **I-40(1)** ~~30(1)~~ of Part One, 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, ~~support action in combating terrorism at the request of a third country~~ 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 III-205 (ex Art. 17)], 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 III-205(2) (ex Art. 17(2))], 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:
 - contribute to identifying the Member States' military capability objectives and evaluating observance of the capability commitments given by the Member States;

- promote harmonisation of operational needs and adoption of effective, compatible procurement methods;
 - 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;
 - support defence technology research, and coordinate and plan joint research activities and the study of technical solutions meeting future operational needs;
 - 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)

1. The Member States listed in ~~Declaration~~ **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 ~~30(6)~~ **I-40(6)**. The military capability criteria and commitments which those Member States have defined are set out in that ~~Declaration~~ **Protocol**.
2. 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.** ~~The restricted Council on structured cooperation shall decide on the Member State's request.~~
3. 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.
4. The Council may ask the Member States participating in such cooperation to carry out at Union level a task referred to in [Article III-205 (ex Art. 17).]

Article III-209 (ex Article 21)

1. The closer cooperation on mutual defence provided for in Article **I-40(7)** ~~30(7)~~ 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 III-196(1) (ex Art. 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 I-40(1).**

Preparatory activities for tasks as referred to in Article 30(1) **I-40(1)** 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:

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

When it is planning a task as referred to in Article 30(1) **I-40(1)** 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. ~~The European Parliament and the Council shall adopt, in accordance with the legislative procedure, the European laws and framework laws~~ 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 III-222 (ex 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 III-188 (ex Art. 1)]. 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. ~~The European Parliament and the Council shall, in accordance with the legislative procedure, adopt the European laws and European framework laws.~~ 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 III-188 (ex Art. 1)]. Such agreements shall be negotiated and concluded in accordance with [Article III-222 (ex Art. 33)].

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.
4. ~~This Article shall not affect cooperation with the African, Caribbean and Pacific countries in the framework of the ACP-EC Convention.~~

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 III-213 (ex Art. 25) to III-215 (ex Art. 27)] 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 III-188 (ex Art. 1)].
2. ~~The European Parliament and the Council shall, in accordance with the legislative procedure, adopt the European laws and European framework laws~~ **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 III-222 (ex Art. 33) of this Title]. The Council shall act unanimously for the association agreements referred to in [Article III-221(2) (ex Art. 32a(2))] 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 III-188 (ex Art. 1)]. 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. ~~The European Parliament and the Council shall, in accordance with the legislative procedure, adopt the European laws and European framework laws~~ **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 III-188 (ex Art. 1)]. Such agreements shall be negotiated and concluded pursuant to [Article III-222 (ex Art. 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 compliance 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 I 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** ~~commit itself through agreements concluded~~ agreements with one or more third countries or international organisations ~~where in cases where the provisions of the Constitution so provides or where the conclusion of such an agreements 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. 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 action and special procedure.~~
 - ~~3. The Union may conclude international agreements where conclusion is necessary to achieve a Union objective, where there is provision for it in a Union legislative act, or where the agreements affect one of the Union's internal acts.~~
- 2.4** 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 action and special procedure.**

Article III-222 (ex Article 33)

1. ~~Without prejudice to the specific provisions laid down in Article 24 of this Title,~~ 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, ~~authorising him to open~~ which shall authorise **the opening of negotiations**. ~~The Commission and the Union's Minister for Foreign Affairs shall, where appropriate, present recommendations jointly.~~
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 III-212 (ex Art. 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. ~~However,~~ 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** ~~internal rules~~ 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~~ of all stages of the procedure ~~described in this Article~~.
12. **A Member State**, the European Parliament, the Council ~~or~~ the Commission ~~the European Central Bank or a Member State~~ may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of the Constitution ~~over which the Court of Justice has jurisdiction~~. 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 IV-6.

Article III-223 (ex Article 34)

1. By way of derogation from [Article III-222 (ex Art. 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 III-222 (ex Art. 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. ~~Subject to paragraph 1, the Council shall, acting by a qualified majority on a proposal from the Commission and after consulting the European Central Bank, decide on the position occupied by the Union at international level in relation to questions having particular interest for the Economic and Monetary Union and on the Union's representation, while complying with the allocation of competences laid down in Articles X [formerly 99] and Y [formerly 105].~~
- 4.5 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** ~~all~~ 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, which form part of the Union's diplomatic service, 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 ~~a framework~~ **the arrangements** for the implementation of the solidarity clause referred to in [Article I-42]. ~~These acts shall be adopted in accordance with the relevant provisions of the Constitution.~~
- ~~2.2.~~ 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.
- ~~3.3.~~ 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 ~~Standing Operational~~ Committee ~~on Internal Security~~, **provided for in [Article III-157 (ex Article 5, JHA)]**, which shall, if necessary, submit joint opinions.
- ~~4.4.~~ The European Council shall regularly assess the threats facing the Union, ~~on the basis of a report from the Council~~, in order to enable the Union to take effective action.

TITLE VI

THE FUNCTIONING OF THE UNION

CHAPTER I

PROVISIONS GOVERNING THE INSTITUTIONS

EXPLANATORY NOTE

The drafting of a number of the Part III institutions articles depends on the results of the Convention's discussions on corresponding texts in Part I. Furthermore, the Convention has not yet had an opportunity to discuss any of the Part III institutions articles, nor have they (with the exception of the ECJ texts) been the subject of a Working Group. The following articles are therefore based very closely on existing texts, and in areas where the content is likely to be directly linked to the provisions on the Part I institutions texts, the articles contain placeholders.

The structure of this chapter has been slightly reorganised, with the horizontal provisions placed at the end of the articles specific to individual institutions. There is a new short article in Section 1 containing technical provisions on the European Council (Article III-239), and the two consultative committees (Committee of the Regions and the Economic and Social Committee) have been brought together under a single Section. Section 4 on horizontal provisions contains the detailed description of the legislative procedure (with minor drafting amendments), as well as articles on transparency and good administration. The individual provisions on the emoluments of staff of the Union's institutions and bodies have also been brought together into a single consolidated article in this Section.

DRAFT TEXTS

SECTION 1

THE INSTITUTIONS

Subsection 1 THE EUROPEAN PARLIAMENT

Article III-227 (ex Article 190)

1. *(Composition of the European Parliament)*

2. 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.

3. 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 [I-45] 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 III-245]. 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 Article III-242.

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 III-248] 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-26. 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

SEE CONV 734/03

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 be completely independent in the performance of their duties and shall act in the Union's general interest.

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 III-294], the Committee of the Regions shall be informed by the European Parliament, the Council or the Commission of the request for an opinion. The Committee of the Regions may, where it considers that specific regional interests are at stake, issue an opinion thereon. It may also 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, to 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 [III-298(4) and (5), I-54 and III-306].
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 [III-329], 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 I-49, 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.

TITLE VI

THE FUNCTIONING OF THE UNION

CHAPTER II

FINANCIAL PROVISIONS

EXPLANATORY NOTE

This chapter was drafted on the basis of the corresponding articles of the TEC amended in the light of the articles on finances contained in Part One of the Constitution and the conclusions of the discussion circle on the budgetary procedure. The main amendments to the law currently in force are commented on below.

Article III-304 supplements the provisions of draft Article I-54; it is entirely new. It contains the rules on the multiannual financial framework which are to appear in Part Three of the Constitution, in keeping with the final report of the discussion circle on the budgetary procedure. These are:

- The duration of the period covered by the financial framework. This must be at least five years.
- Setting the annual ceilings on commitment appropriations for a limited number of headings and the annual ceiling on payment appropriations. These ceilings must be within the ceiling on own resources. This rule is already set out in Article 39a of Part One of the Constitution, so there is no need to repeat it here.
- The definition of "categories of expenditure". The circle pointed out that the categories of expenditure should not be specified in the Constitution, but that it should instead stipulate that only a limited number of categories may be the subject of binding ceilings, as otherwise the annual budget would be devoid of content. This is why a very flexible definition of the categories, stressing that they are few in number, has been included at the end of paragraph 2.
- The rule that the financial framework may contain any other provisions required for the annual budgetary procedure to run smoothly. This refers only to provisions closely linked with the implementation of the financial framework. The rule merely reflects the content of the current financial perspective.
- The mechanism to remedy any failure of the procedure for adopting the "multiannual financial framework". The circle suggested that this should consist in extending the last year of the previous "financial framework". A mechanism of this type is essential since the financial framework is destined to become the binding framework for the annual budgetary procedure.
- The obligation for the institutions to do their utmost to make the procedure successful. The aim of paragraph 5 is to keep the idea of interinstitutional negotiation in the decision-making procedure.

The Praesidium did not see any need to lay down a provision allowing for amendment of the multiannual financial framework, since such amendments would be subject, according to the circle's suggestions, to the same procedure as for adoption of the framework.

Article III-305 reproduces the first paragraph of the current Article 272 TEC.

Article III-306 describes the budgetary procedure, as set out in the final report of the discussion circle on the budgetary procedure:

- The initiative lies with the Commission, which will submit a draft budget, rather than the previous preliminary draft budget. Nevertheless, the circle felt that the fact that the Commission had the initiative ought not to prejudge voting rules in the Council. Here, as in the case of the "multiannual financial framework", provision ought to be made for an exception to the rules in the current Article 250 of the TEC, which set out the consequences, in terms of the majorities required in the Council, of the Commission taking the initiative. In the meantime, to avoid any possible confusion, the rule for voting in Council (qualified majority) has been expressly indicated at every stage of the procedure.
- The distinction in terms of procedure between compulsory and non-compulsory expenditure has been dropped. According to the circle's final report, this is conditional upon strengthening budgetary discipline through formalisation of the financial framework in the Constitution (Article I-54) and, most particularly, the incorporation of the principle whereby the budgetary authority and the Commission ensure that the necessary financial means are available to enable the Union to fulfil its legal obligations to third parties, which principle is laid down in draft Article 12 below.
- It ought to be possible to cut the length of the procedure: the draft budget would be submitted by 1 September at the latest and would have to be adopted before the end of the year.
- This would be an ad hoc procedure based on the ordinary simplified legislative procedure:
 - (a) There would be only one reading in each institution.
 - (b) In the event of a difference of opinion between the Parliament and the Council, a Conciliation Committee would be convened to try to negotiate a joint draft; the Committee would be composed along the lines of the current codecision procedure.

Of the options proposed by the discussion circle with regard to the mechanism for resolving cases in which one of the institutions rejects the joint draft produced by the Conciliation Committee or a joint text could not be adopted, the Praesidium preferred that based on the current procedure for non-compulsory expenditure according to which the Parliament would have the last word, with the requirement of an augmented majority.

Article III-307 concerns the system of provisional twelfths. It has been adapted to changes in the budgetary procedure. The distinction between procedures depending on whether the provisional twelfths concern compulsory expenditure or non-compulsory expenditure has been abolished, which has made it possible to greatly simplify this Article.

Article III-308 essentially reproduces the current Article 271 TEC.

Article III-309 takes over Article 274 with amendments, in particular to the second new paragraph, which are designed to make it possible to take better account of shared responsibility for the implementation of the budget through greater involvement of the Member States. The final paragraph of the Article ought rather to be included in the law adopted on the basis of Article III-314.

Article III-310 adds to the current Article 275 a new second paragraph which responds to a request by the discussion circle on the budgetary procedure aimed at boosting democratic control over the implementation of the budget.

With regard to Article III-311, the only change made to the current Article 276 TEC is the inclusion of the "evaluation report" referred to in draft Article III-310 among the items to be considered by the European Parliament and the Council under the discharge procedure.

The reference to the euro in Article III-312 was introduced further to the report of 13 March 2003 by the Working Party of Experts from the Legal Services. A reference is also needed to the multiannual financial framework, which is to be drawn up in euro.

Article III-313 is identical to current Article 278 TEC.

The Praesidium has adapted Article III-314 [ex 279] to the Title on instruments in Part One of the Constitution.

With regard to Article III-315, it should be remembered that as a condition for eliminating the distinction between compulsory and non-compulsory expenditure the discussion circle on the budgetary procedure wanted the Constitution to incorporate the principle that the budgetary authority and the Commission must ensure the availability of the financial means allowing the Union to fulfil its legal obligations in respect of third parties. The ultimate aim is to ensure explicit recognition of the concept of legally binding expenditure. The term "third" not only includes third States but also natural or legal persons with whom the Union has entered into legal obligations.

Article III-316 responds to the concern voiced by the discussion circle on the budgetary procedure that the informal negotiating and consultation procedures that have been built up in practice should be formalised in the new budgetary procedure, in order to preserve the collaborative culture developed between the institutions over the last ten years.

The Praesidium is proposing that the trialogue mechanism of meetings between the Presidents of the three institutions, the Parliament, the Council and the Commission, should be formalised, but that it should be flexible. The Commission, which initiates the procedure but also mediates between the Parliament and the Council, could be given the task of convening timely trialogue meetings, in order to ensure that budgetary procedures (for the annual budget but also for the multiannual financial framework) make progress. This Article reproduces the text of the current Article 280 TEC.

Paragraph 4 of Article III-317 has been brought into line with draft Articles 24 et seq. and the draft Title on the area of freedom, security and justice.

DRAFT TEXTS

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 [I-54].
2. The multiannual 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 setting a new financial framework has been adopted by the end of the period covered by the previous framework, the ceilings and other provisions corresponding to the last year of that framework shall be extended until such time as a new 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)

The 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 place the draft budget before 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 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 an absolute 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 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 that 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 budget 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. In the absence of a budget law 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 [Article III-314 (ex 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 law under examination.

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.

The decision 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 in the European law referred to in [Article III-314 (ex 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 [Article III-314 (ex 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 [Article III-314 (ex 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 [Article III-314 (ex 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 [Article III-314 (ex 279)] shall establish the responsibilities and detailed rules for each institution concerning its part in effecting its own expenditure.

Within the budget, the Commission may, subject to the limits and conditions laid down in the European law referred to in [Article III-314 (ex 279)], transfer appropriations from one chapter to another or from one subdivision to another.

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 [III-311 (ex 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 [Article III-310 (ex 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 Article III-286(1) (ex 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 the State concerned. 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. A 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, and concerning appropriate arrangements for inspection.

It shall be adopted after consultation of the Court of Auditors.

2. A Council regulation adopted on a proposal from the Commission shall establish 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 in 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 in order 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 to be 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. A European law or framework law shall establish 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. It 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.

NEW LEGAL BASES

EXPLANATORY NOTE

The draft articles on competences require the establishment of new legal bases.

The legal bases concerned (set out below) are:

- Sport: amendment of the article on education [ex Article 149];
- Energy: new article to be inserted in the Chapter "Policies in other specific areas";
- Civil protection: new article to be inserted in the Chapter "Areas where the Union may take supporting action"; this article goes together with the solidarity clause in Part One of the Constitution and the corresponding legal basis in Part Three;
- Intellectual property: new article to be inserted the Chapter "Internal market";
- Administrative cooperation: new article to be inserted in the Chapter "Areas where the Union may take supporting action";
- Space: new article to be inserted in the Section "Research and technological development".

Chapter V
Education, vocational training, youth and sport

Article [ex 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, while fully respecting 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:

- developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States;
- encouraging mobility of students and teachers, inter alia by encouraging the academic recognition of diplomas and periods of study;
- promoting cooperation between educational establishments;
- developing exchanges of information and experience on issues common to the education systems of the Member States;
- encouraging the development of youth exchanges and of exchanges of socio-educational instructors;
- encouraging the development of distance education;
- **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) incentive actions, excluding any harmonisation of the laws and regulations of the Member States, shall be established by a European law or framework law. It shall be adopted after consulting the Economic and Social Committee and the Committee of the Regions.
 - (b) the Council, on a proposal from the Commission, shall adopt recommendations.

Comments

The Praesidium has agreed to establish a specific legal basis for sport. It seems appropriate to add a specific reference to sport in Article 149 on education and youth, as sport constitutes part of this wider area.

Since the free movement of sportsmen and sportswomen is covered by the internal market provisions, this indent should be limited to "cross-border" issues which justify action at European level.

New article

(to be inserted in the Chapter "Policies in other specific areas")

- 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 supplies in the Union, and**
 - (c) promote energy efficiency and energy 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 law or framework law. It shall be adopted after consulting the Committee of the Regions and the Economic and Social Committee.**
- 3. The 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)].**

Comments

- 1. The draft text proposed for the legal basis for energy is designed to cover, in a fairly broadly worded paragraph 1, the kind of measures adopted up to now, without going into undue detail.*
- 2. Paragraph 2 makes provision for the ordinary legislative procedure to be used for measures under the objectives in paragraph 1. Reference is made to measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply, which are to be adopted under a special legislative procedure by the Council, acting unanimously after consulting the European Parliament, in accordance with Article ex 175(2)(c).*

New article

(to be inserted in the Chapter "Areas for supporting action")

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:

- **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;**
- **promote swift, effective operational cooperation between national civil-protection services;**
- **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 law or framework law.

Comments

This draft Article must be considered in the light of the solidarity clause inserted in Article I-42 of the Constitution and of the implementing provisions in Part Three.

The draft text of the legal basis for civil protection is intended to give Union action a character appropriate to the type of competence involved (area for supporting action), while giving it substance.

In the light of the many requests made by members of the Convention, it is proposed that mutual assistance in the event of natural and technological disasters should be reinserted in the solidarity clause (in both Part One and Part Two). The consequence of this double approach is that:

- *for normal preventive action and the establishment of a framework for cooperation between national civil protection forces, use will be made of the ordinary legislative procedure (excluding harmonisation measures, however);*
- *mutual assistance between Member States using national means, whether civilian or military, will be coordinated within the Council; the ESDP structures (particularly the Military Committee and the Military Staff) may contribute. Given the use of military means, a role is provided for the Minister for Foreign Affairs.*

Articles I-42 and III-226 on the solidarity clause are reproduced below as a reminder:

"Article I-42: Solidarity clause"

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

"Article III-226 (Implementation of the solidarity clause)"

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 I-42].*
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 [Article III-152 (ex 5)], 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."*

New article

(to be inserted in the Chapter "Internal market")

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, without prejudice to Article [ex 290].

Comments

The report by the Working Group on Complementary Competences and the report by experts from the Legal Services pointed up the desirability of providing an explicit legal basis for legislative action to protect intellectual-property rights. As Article ex 95 allows for approximation of laws, it is suggested that a separate article should provide the basis for the introduction of "European instruments" (trade marks, patents, etc.) and for centralised authorisation and supervision systems. The last sentence refers to Article ex 290, which provides for unanimity in the Council on matters relating to rules governing languages.

New article

(to be inserted in the Chapter "Areas for supporting action")

- 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. To this end, a European law shall establish the necessary measures.**
- 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.**

Comments

The final report of the Working Group on Complementary Competences recommended that: a clause should be introduced in a future Treaty underlining the common interest in the efficiency of national implementation of EU legislation and giving the Union powers to adopt supporting measures to facilitate exchange of information and persons related to national administration of Union law and to provide Union support for training and development programmes.

This provision puts into practice the recommendation of the Group. Such a provision would constitute an additional area of supporting measures that should be added to those listed in Article I-16 of the Constitution.

It is a basic principle of the Union that implementation and execution of Union laws fall to the Member States (except where otherwise provided in the Treaty), and there is of course a corresponding duty on the Member States to ensure that the administration and execution is done effectively and is legally correct. Paragraph 1 recalls the fact that the quality of national administration of EU legislation a matter of common interest. Paragraph 2 authorises the Union to adopt supporting measures in this respect, by facilitating exchange of information and persons related to administration of EU law and by supporting common training and development programmes. Paragraph 3 stresses that measures adopted in accordance with this legal basis do not affect obligations and duties imposed elsewhere by the Constitution.

New article

To be inserted in the Section "Research, technological development and space"

- 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.**

Comments

Paragraph 1 states the overall objective and sets out the guidelines for this policy, which covers research and technological development but also industrial competitiveness and, where appropriate, other Union policies.

Paragraph 2 indicates the nature and content of Union action in this area, which may include the drawing up and implementation of a European space programme, without excluding other forms of action (for example international cooperation).

INSTRUMENTS AND PROCEDURES

List of legal bases for which the draft Constitution changes the adoption procedure in comparison with the present Treaties:

<i>Legal bases for which the decision-making procedure is changed</i>	<i>Present procedure</i>
Ordinary legislative procedure	
Arrangements for control of implementing powers (Article I-36)	Unanimity in the Council, with just an opinion from the European Parliament (Article 202 TEC)
Internal market: social security measures for Community migrant workers (Article III-18)	Codecision, with the Council acting unanimously (Article 42 TEC)
Exclusion of certain activities in a Member State from the scope of the provisions on freedom of establishment (Article III-21, second paragraph)	Qualified majority in the Council (Article 45, second paragraph, TEC)
Coordination of provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons in the case of coordination of existing principles laid down by law governing the professions with respect to training and conditions of access for natural persons (Article III-23)	Codecision, with the Council acting unanimously (Article 47 TEC)
Extension of the provisions on services to third-country nationals established within the Community (Article III-26, second paragraph)	Qualified majority in the Council (Article 49, second paragraph, TEC)
Liberalisation of services (Article III-29)	Qualified majority in the Council, with just an opinion from the European Parliament (Article 52(1) TEC)
Adoption of other measures on movement of capital to or from third countries (Article III-43(2))	Qualified majority in the Council (first part of Article 57(2) TEC)

<i>Legal bases for which the decision-making procedure is changed</i>	<i>Present procedure</i>
Intellectual property (Article III-65)	Unanimity in the Council, with just an opinion from the European Parliament (Article 308 TEC)
Multilateral surveillance (Article III-68(6))	Cooperation procedure (Article 99(5) TEC)
Specific tasks for the ECB (Article III-74(6))	Unanimity in the Council and assent (Article 105(6) TEC)
Amendment of the Protocol on the Statute of the ESCB and of the ECB, on a recommendation from the ECB or from the Commission (Article III-76(5))	Qualified majority or unanimity in the Council and assent (Article 107(5) TEC)
Measures required for use of the euro (Article III-80)	(new)
Social policy: (d) protection of workers where their employment contract is terminated, (f) representation and collective defence, and (g) conditions of employment for third-country nationals (Article III-99(1) and (2))	Unanimity in the Council, with just an opinion from the European Parliament (Article 137 TEC) <i>(under the current Treaty, these aspects could be made subject to the codecision procedure if the Council unanimously so decides)</i>
Structural Funds and Cohesion Fund, as from 2007 (Article III-114)	Qualified majority in the Council as from 2007 (at present: unanimity), with the assent of the European Parliament (Article 161 TEC)
Application of competition rules to the common agricultural policy (Article III-121(1))	Qualified majority in the Council, with just an opinion from the European Parliament (Article 37(2) TEC)
Common agricultural policy legislation (Article III-122(2))	Qualified majority in the Council, with just an opinion from the European Parliament (Article 37(2))
Energy (Article III-152)	Unanimity, with just an opinion from the European Parliament (Article 308 TEC)
Border controls on persons (Article III-161)	Unanimity in the Council, with just an opinion from the European Parliament (Article 67 TEC) <i>(codecision following a unanimous decision on a change of procedure)</i>
Asylum (Article III-162)	Unanimity in the Council, with just an opinion from the European Parliament (Article 67 TEC)
Immigration (Article III-163)	Unanimity in the Council, with just an opinion from the European Parliament (Article 67 TEC)

<i>Legal bases for which the decision-making procedure is changed</i>	<i>Present procedure</i>
Judicial cooperation in criminal matters – procedures, cooperation, training and minimum rules (Article III-166)	Unanimity in the Council, with just an opinion from the European Parliament (Article 31 TEU)
Minimum rules on establishing offences and penalties for serious crime (Article III-167)	Unanimity in the Council, with just an opinion from the European Parliament (Article 31 TEU)
Supporting measures on crime prevention (Article III-168)	Unanimity in the Council, with just an opinion from the European Parliament (Article 31 TEU)
Eurojust (Article III-169)	Unanimity in the Council, with just an opinion from the European Parliament (Article 31 TEU)
Police cooperation (some aspects) (Article III-171(1))	Unanimity in the Council, with just an opinion from the European Parliament (Article 30 TEU)
Europol (Article III-172)	Unanimity in the Council, with just an opinion from the European Parliament (Article 30 TEU)
Culture (except for recommendations) (Article III-176)	Codecision, with the Council acting unanimously (Article 151 TEC)
Civil protection (Article III-179)	Unanimity, with just an opinion from the European Parliament (Article 308 TEC)
Commercial policy – implementing measures (Article III-212(2))	Qualified majority in the Council (Article 133 TEC)
Economic, financial and technical cooperation with third countries (Article III-216(2))	Qualified majority in the Council, with just an opinion from the European Parliament (Article 181a TEC)
Establishment of specialist judicial panels (Article III-260)	Unanimity in the Council, with just an opinion from the European Parliament (Article 225a TEC)
Jurisdiction for the Court of Justice in intellectual property matters (Article III-265)	Unanimity in the Council, with just an opinion from the European Parliament and with national ratification (Article 229a TEC)
Amendment of the Statute of the Court of Justice (except for Title I) (Article III-285)	Unanimity in the Council, with just an opinion from the European Parliament (Article 245 TEC)
Amendment of some articles of the Protocol on the Statute of the EIB (Article III-295, third paragraph)	Unanimity in the Council, with just an opinion from the European Parliament (Article 266 TEC)

<i>Legal bases for which the decision-making procedure is changed</i>	<i>Present procedure</i>
Adoption of financial rules, as from 2007 (Article III-314)	Qualified majority in the Council, with just an opinion from the European Parliament (Article 279(1) TEC)
Enactment of the Staff Regulations of officials of the European Community and the Conditions of Employment of other servants of the Union (Article III-329)	Qualified majority in the Council, with just an opinion from the European Parliament (Article 283 TEC)

Special legislative procedures	
Own resources arrangements (Article I-53(4)): Council law adopted by a qualified majority, with the consent of the European Parliament	Unanimity in the Council, with just an opinion from the European Parliament and with national ratification (Article 269 TEC)
Multiannual financial framework (Article I-54): Council law adopted by a qualified majority, with the consent of the European Parliament	Interinstitutional agreement
Adoption of measures on movement of capital to or from third countries, where constituting a step back in the liberalisation process under Community law (Article III-43): Council law adopted unanimously, after consulting the European Parliament	Unanimity in the Council, without any opinion from the European Parliament (end of Article 57(2) TEC)
Tax harmonisation measures concerning administrative cooperation or combating tax fraud (following a unanimous Council decision) (Article III-59(2)): Council law adopted by a qualified majority, after consulting the European Parliament	Unanimity in the Council, with just an opinion (Article 93 TEC)
Company taxation measures concerning administrative cooperation or combating tax fraud, where required for the operation of the internal market and to avoid distorting competition (following a unanimous Council decision) (Article III-60): Council law adopted by a qualified majority, after consulting the European Parliament	Unanimity in the Council, with just an opinion (Article 93 TEC)
Arrangements for exercising the right of inquiry (Article III-230): European Parliament law, with the approval of the Council and an opinion from the Commission	Common accord of the European Parliament, Council and Commission (Article 193 TEC)
Annual budget (Article III-306); law adopted under a special procedure	Special procedure (Article 272 TEC)

Non-legislative acts	
Application of the ban on privileged access (Article III-71(2)): qualified majority in the Council, after consulting the European Parliament	Cooperation procedure (Article 102(2) TEC)
Application of the ban on assuming commitments or granting overdraft facilities (Article III-72(2)): qualified majority in the Council, after consulting the European Parliament	Cooperation procedure (Article 103(2) TEC)
Measures to harmonise the denominations and technical specifications of coins (Article III-75(2)): qualified majority in the Council, after consulting the European Parliament	Cooperation procedure (Article 106(2) TEC)
Administrative cooperation for an area of freedom, security and justice (Article III-159)	Unanimity in the Council, with just an opinion from the European Parliament (Articles 66 TEC and 30 and 31 TEU)
Recommendations on cultural matters (Article III-176): majority in the Council	Unanimity in the Council (Article 151(5), second indent, TEC)
The Council acts by a qualified majority under the CFSP when adopting a decision on the initiative of the Minister for Foreign Affairs, further to a request from the European Council (Article III-196)	(Title V TEU)
Urgent financial assistance for third countries (Article III-217): qualified majority in the Council	Unanimity in the Council (Article 308 TEC)
Provisional twelfths (Article III-307): special procedure	Special procedure (Article 273 TEC)
Arrangements for the making available of own resources (Article III-314(2)): qualified majority in the Council, after consulting the European Parliament	Unanimity in the Council (Article 279(2) TEC)
