

COVER NOTE

from : Praesidium

to : Convention

No. prev. doc. : CONV 647/03

Subject : **Draft text of Part IV, with comments**

Members of the Convention will find attached the draft version of Part Four of the Treaty establishing the Constitution (General and final provisions), with the changes to the previous version highlighted. Explanatory notes on each of the provisions are annexed hereto.

PART FOUR: GENERAL AND FINAL PROVISIONS

Article IV-1 (Ex Article A) Repeal of earlier Treaties

The Treaty establishing the European Community, ~~of 25 March 1957, the Single Act of 17 February 1986 the Treaty on European Union of 7 February 1992, the Treaty of Amsterdam of 2 October 1997 and the Treaty of Nice of 26 February 2001~~ and the acts and treaties **which have supplemented or amended them** and are listed in **Protocol ... annexed to the Treaty establishing the Constitution** shall be repealed as from the date of entry into force of the ~~Constitutional Treaty establishing the Constitution~~. ~~shall also be repealed.~~

Article IV-2 (Ex Article B) Legal continuity in relation to the European Community and the European Union

The European Union shall succeed to all the rights and obligations of the European Communities and of the Union, whether internal or resulting from international agreements, which arose before the entry into force of the ~~Constitutional Treaty~~ **establishing the Constitution** by virtue of previous treaties, protocols and acts, including all the assets and liabilities of the Communities and of the Union, and their archives.

The provisions of the acts of the Institutions of the Union, adopted by virtue of the treaties and acts mentioned in the first paragraph, shall remain in force **under the conditions laid down in Protocol ... annexed to the Treaty establishing the Constitution** ~~insofar as they are compatible with the Constitution~~. The case-law of the Court of Justice of the European Communities shall be maintained as a ~~preferential~~ source of interpretation of ~~the Constitution and acts prior to its entry into force~~ **Union law**.

Article IV-3 (Ex Article C) Scope

1. The ~~Constitutional Treaty~~ **establishing the Constitution** shall apply to the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland, ...

2. The ~~Constitutional~~ Treaty **establishing the Constitution** shall apply to the French overseas departments, the Azores, Madeira and the Canary Islands in accordance with Article ... of Part ~~Two~~**Three**.

3. The special arrangements for association set out in Title IV of Part III of the ~~Constitutional~~ Treaty **establishing the Constitution** shall apply to the overseas countries and territories listed in [Annex II to the TEC].

The ~~Constitutional~~ Treaty **establishing the Constitution** shall not apply to overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not included in that list.

4. The ~~Constitutional~~ Treaty **establishing the Constitution** shall apply to the European territories for whose external relations a Member State is responsible.

5. The ~~Constitutional~~ Treaty **establishing the Constitution** shall apply to the Åland Islands in accordance with the provisions set out in Protocol 2 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

6. Notwithstanding the preceding paragraphs:

- (a) the ~~Constitutional~~ Treaty **establishing the Constitution** shall not apply to the Faeroe Islands;
- (b) the ~~Constitutional~~ Treaty **establishing the Constitution** shall not apply to the sovereign base areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus;
- (c) the ~~Constitutional~~ Treaty **establishing the Constitution** shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community, signed on 22 January 1972.

Article IV-4 (Ex Article D) Regional unions

The Treaty establishing the Constitution shall not preclude the existence or completion of regional unions between Belgium and Luxembourg, or between Belgium, Luxembourg and the Netherlands, to the extent that the objectives of these regional unions are not attained by application of the ~~said Constitutional~~ Treaty.

Article IV-5 (Ex Article E) Protocols

The protocols annexed to this Treaty shall form an integral part thereof.

Article IV-6 (Ex Article F) Procedure for revising the ~~Constitutional~~ Treaty **establishing the Constitution**

1. The government of any Member State, **the European Parliament** or the Commission may submit to the Council proposals for the amendment of the ~~Constitutional~~ Treaty **establishing the Constitution**. The national Parliaments **of the Member States** shall be notified of these proposals.
2. **If the European Council, after consulting the European Parliament and the Commission, adopts by a simple majority a decision in favour of examining the proposed amendments, the President of the European Council shall convene a Convention composed of representatives of the national Parliaments of the Member States, of the Heads of State or Government of the Member States, of the European Parliament and of the Commission. The European Central Bank shall also be consulted in the case of institutional changes in the monetary area. The European Council may decide by a simple majority not to convene the Convention should the scope of the amendments not warrant this. In the latter case, the European Council shall define the terms of reference for the conference of representatives of the governments of the Member States.**

The Convention shall examine the proposals for amendments and shall adopt by consensus a recommendation to the conference of representatives of the governments of the Member States provided for in paragraph 3.

- ~~3. If the Council, after consulting the European Parliament and, where appropriate, the Commission, delivers an opinion in favour of calling a~~ **The** conference of representatives of the governments of the Member States ~~the conference~~ shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to the ~~Constitutional~~ Treaty **establishing the Constitution**.

The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.

Article IV-7 (Ex Article G)
Adoption, ratification and entry into force of the ~~Constitutional~~ Treaty establishing the Constitution

1. The ~~Constitutional~~ Treaty **establishing the Constitution** shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the Italian Republic.
2. The ~~Constitutional~~ Treaty **establishing the Constitution** shall enter into force on ..., provided that all the instruments of ratification have been deposited, or, failing that, on the first day of the month following the deposit of the instrument of ratification by the last signatory State to take this step.
3. If, two years after the signature of the ~~Constitutional~~ Treaty **establishing the Constitution**, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter shall be referred to the European Council.

Article IV-8 (Ex Article H)
Duration

The ~~Constitutional~~ Treaty **establishing the Constitution** is concluded for an unlimited period.

Article IV-9 (Ex Article I)
Languages ¹

The ~~Constitutional~~ Treaty **establishing the Constitution**, drawn up in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish, Swedish, [Czech, Estonian, Latvian, Lithuanian, Hungarian, Maltese, Polish, Slovakian and Slovene] languages, the texts in each of these languages being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which will transmit a certified copy to each of the governments of the other signatory States.

¹ To be adjusted in accordance with the Act of Accession.

PART II: EXPLANATORY NOTE ON THE AMENDMENTS

Article IV-1 (Ex Article A) Repeal of earlier Treaties

The Treaty establishing the European Community, ~~of 25 March 1957, the Single Act of 17 February 1986 the Treaty on European Union of 7 February 1992, the Treaty of Amsterdam of 2 October 1997 and the Treaty of Nice of 26 February 2001~~ and the acts and treaties **which have supplemented or amended them** and are listed in **Protocol ... annexed to the Treaty establishing the Constitution** shall be repealed as from the date of entry into force of the ~~Constitutional Treaty establishing the Constitution.~~ **shall also be repealed.**

Comments

The wording of this Article has been simplified. In addition, a reference has been added to a Protocol which should mention the acts and treaties to be repealed on the date of entry into force of the Treaty establishing the Constitution. The Praesidium suggests that the Convention point out to the European Council that the Protocol referred to here will need to be drawn up before the end of the Intergovernmental Conference.

Article IV-2 (Ex Article B) Legal continuity in relation to the European Community and the European Union

The European Union shall succeed to all the rights and obligations of the European Communities and of the Union, whether internal or resulting from international agreements, which arose before the entry into force of the ~~Constitutional Treaty~~ **establishing the Constitution** by virtue of previous treaties, protocols and acts, including all the assets and liabilities of the Communities and of the Union, and their archives.

The provisions of the acts of the Institutions of the Union, adopted by virtue of the treaties and acts mentioned in the first paragraph, shall remain in force **under the conditions laid down in Protocol ... annexed to the Treaty establishing the Constitution** ~~insofar as they are compatible with the Constitution.~~ The case-law of the Court of Justice of the European Communities shall be maintained as a ~~preferential~~ source of interpretation of ~~the Constitution and acts prior to its entry into force~~ **Union law.**

Comments

This Article aims to establish the principle of the new European Union's succession to the European Communities and the Union. The reference to a Protocol annexed to the Treaty in paragraph 2 takes up the amendments (de Vries, de Bruijn) along these lines. Such a Protocol should list the categories of acts of the Institutions to be taken over by the new entity and the implementing rules for those acts. The Praesidium suggests that the Convention point out to the European Council that the Protocol will need to be drawn up before the end of the IGC.

The Praesidium holds that the reference to Court of Justice case-law in this provision should be kept. However, the last sentence of paragraph 2 has been recast to accommodate those requesting that this reference be reworded. The wording of this Article takes account of the fact that the Euratom Treaty remains as an independent treaty, but that the Union's legal personality is single and indivisible and subsumes that of the existing Communities.

Article IV-3 (Ex Article C) **Scope**

1. The ~~Constitutional~~ Treaty **establishing the Constitution** shall apply to the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland, ...
2. The ~~Constitutional~~ Treaty **establishing the Constitution** shall apply to the French overseas departments, the Azores, Madeira and the Canary Islands in accordance with Article ... of Part ~~Two~~**Three**.
3. The special arrangements for association set out in Title IV of Part III of the ~~Constitutional~~ Treaty **establishing the Constitution** shall apply to the overseas countries and territories listed in [Annex II to the TEC].

The ~~Constitutional~~ Treaty **establishing the Constitution** shall not apply to overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not included in that list.

4. The ~~Constitutional~~ Treaty **establishing the Constitution** shall apply to the European territories for whose external relations a Member State is responsible.

5. The ~~Constitutional~~ Treaty **establishing the Constitution** shall apply to the Åland Islands in accordance with the provisions set out in Protocol 2 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

6. Notwithstanding the preceding paragraphs:

- (a) the ~~Constitutional~~ Treaty **establishing the Constitution** shall not apply to the Faeroe Islands;
- (b) the ~~Constitutional~~ Treaty **establishing the Constitution** shall not apply to the sovereign base areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus;
- (c) the ~~Constitutional~~ Treaty **establishing the Constitution** shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community, signed on 22 January 1972.

Comments

The content of this Article remains unchanged. It reproduces Article 299 of the TEC, except for the second, third and fourth subparagraphs of paragraph 2 thereof, which will be reproduced in Article ... of Part Three of the Constitution.

Article IV-4 (Ex Article D) Regional unions

The ~~Constitutional~~ Treaty **establishing the Constitution** shall not preclude the existence or completion of regional unions between Belgium and Luxembourg, or between Belgium, Luxembourg and the Netherlands, to the extent that the objectives of these regional unions are not attained by application of the **said** ~~Constitutional~~ Treaty.

Comments

This Article remains unchanged.

Article IV-5 (Ex Article E) Protocols

The protocols annexed to this Treaty shall form an integral part thereof.

Comments

No change has been made to this provision.

The Convention should point out to the European Council that the future of the Protocols annexed to the current Treaties will need to be considered before the end of the IGC.

Article IV-6 (Ex Article F) Procedure for revising the ~~Constitutional~~ Treaty establishing the Constitution

1. The government of any Member State, **the European Parliament** or the Commission may submit to the Council proposals for the amendment of the ~~Constitutional~~ Treaty **establishing the Constitution**. The national Parliaments **of the Member States** shall be notified of these proposals.
2. **If the European Council, after consulting the European Parliament and the Commission, adopts by a simple majority a decision in favour of examining the proposed amendments, the President of the European Council shall convene a Convention composed of representatives of the national Parliaments of the Member States, of the Heads of State or Government of the Member States, of the European Parliament and of the Commission. The European Central Bank shall also be consulted in the case of institutional changes in the monetary area. The European Council may decide by a simple majority not to convene the Convention should this not be justified by the tenor of the proposed amendments. In the latter case, the European Council shall define the terms of reference for the conference of representatives of the governments of the Member States.**

The Convention shall examine the proposals for amendments and shall adopt by consensus a recommendation to the conference of representatives of the governments of the Member States provided for in paragraph 3.

3. ~~If the Council, after consulting the European Parliament and, where appropriate, the Commission, delivers an opinion in favour of calling a~~ **The conference of representatives of the governments of the Member States** ~~the conference~~ shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to the ~~Constitutional~~ Treaty **establishing the Constitution**.

The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.

Comments

Paragraph 1

The change to this paragraph is to take account of amendments requesting that the possibility of amendment on the initiative of the European Parliament be added (Kirkhope, Kauppi, Borrell, Carnero, Andriukaitis, Lequiller, Lamassoure, Duhamel and 8 others, Meyer, Brok and 27 others, Giannakou and Stylianidis, Duff and 21 others, Fischer, Kaufmann).

Paragraph 2

The Praesidium proposes to adopt as a general rule for future amendments to the Treaty establishing the Constitution the formula that seems acceptable to the majority of Convention members, i.e. approval of amendment of the Constitution by an Intergovernmental Conference prepared by a Convention composed of representatives of Member States' national Parliaments, of the Heads of State or Government of the Member States, and Members of the European Parliament and the Commission (Andriukaitis, Santer, Helminger, Fayot, Wagener, Schmidt, Haenel and Badinter, Farnleitner and 3 others, Demilrap, Figel, de Villepin, Duff and 21 others, Costa and d'Oliveira, Martinez, Azevedo and Nazaré Pereira, Rupel and Lenarčič, Oleksy, Fischer). The Praesidium also proposes to provide for the possibility of not applying this procedure where it is not justified by the scale of the amendments, as requested by some members of the Convention (Haenel, Badinter, Fischer and Einem). In this case, the European Council must clearly define the Intergovernmental Conference's terms of reference.

The Praesidium has not taken on board the suggestion from some quarters for different methods of amendment for different parts of the Constitution (more complex for Parts One, Two and Four; less complex for Part Three), given that some of the provisions of Part Three were closely linked to the provisions of Part One and should therefore be subject to the same amendment procedure. In addition, laying down different amendment procedures for Parts One and Three would mean re-opening discussion on the structure of the Constitutional Treaty, as it would give rise to requests for certain areas of Part Three to be moved to Part One. However, in order to accommodate requests for more flexible amendment procedures in some cases, the Praesidium considers it preferable to provide for a streamlined amendment option (Council acting unanimously, after consultation of the European Parliament, without ratification by national Parliaments) for certain provisions of Part Three which do not affect the objectives, values or competences of the Union.

Paragraph 3

The Praesidium proposes that future amendments to the Treaty establishing the Constitution should not enter into force until they have been ratified by all Member States, since it would be politically unacceptable in some quarters to set a ratification threshold of less than the full number of Member States for entry into force of the Treaty; serious problems of ratification might result in some Member States. However, the introduction of a streamlined amendment procedure for some provisions of the Constitutional Treaty (in accordance with arrangements set out above) is intended to make it easier to amend certain provisions which are less politically sensitive.

Article IV-7 (Ex Article G)

Adoption, ratification and entry into force of the ~~Constitutional~~ Treaty establishing the Constitution

1. The ~~Constitutional~~ Treaty **establishing the Constitution** shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the Italian Republic.
2. The ~~Constitutional~~ Treaty **establishing the Constitution** shall enter into force on ..., provided that all the instruments of ratification have been deposited, or, failing that, on the first day of the month following the deposit of the instrument of ratification by the last signatory State to take this step.
3. If, two years after the signature of the ~~Constitutional~~ Treaty **establishing the Constitution**, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter shall be referred to the European Council.

Comments

Paragraph 1

This paragraph remains unchanged.

Paragraph 2

This paragraph remains unchanged, given that, according to Article 48 TEU, which lays down the procedure for amendment of the current treaties, amendments to those treaties are to enter into force after ratification by all the Member States which have signed them. In addition, the current treaties can be repealed only with the consent of all the Member States party to them (15 at present and 25 following the entry into force of the accession treaties), so that the idea of laying down any rule on entry into force other than Article 48 TEU would be unworkable in practice.

Paragraph 3

The Praesidium considers that this paragraph should be retained, in order to make clear that the European Council would probably have to examine the situation which would arise if a large number of Member States had ratified amendments to the Treaty establishing the Constitution, but one or more Member States had not done so.

In order to make this paragraph applicable to ratification of the Treaty establishing the Constitution as well, it is proposed that its content should be set out in a Declaration annexed to the Final Act of signature of the Constitutional Treaty, as suggested by certain Convention members (Einem, Haenel).

Article IV-8 (Ex Article H) Duration

The ~~Constitutional~~ Treaty **establishing the Constitution** is concluded for an unlimited period.

Comments

This Article remains unchanged.

Article IV-9 (Ex Article I) Languages²

The ~~Constitutional~~ Treaty **establishing the Constitution**, drawn up in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish, Swedish, [Czech, Estonian, Latvian, Lithuanian, Hungarian, Maltese, Polish, Slovakian and Slovene] languages, the texts in each of these languages being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which will transmit a certified copy to each of the governments of the other signatory States.

Comments

This Article remains unchanged.

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² To be adjusted in accordance with the Act of Accession.