

COVER NOTE

from: Secretariat

to: Convention

Subject: **Summary of proposed amendments concerning enhanced cooperation:
draft Articles for Part Three (Articles III-318 to III-325 – ex Articles I to O)
of the Constitution**

Members of the Convention will find attached a summary of proposed amendments to the enhanced cooperation provisions in Part Three (Articles III-318 to III-325 – ex Articles I to O) of the Constitution.

A summary of proposed amendments to Part One, Title V, Article I-43 (ex Article 32b), has already been given in CONV 779/03.

**SUMMARY OF PROPOSED AMENDMENTS CONCERNING ENHANCED
COOPERATION**

**PART THREE, Articles III-318 to III-325 (ex Articles I to O),
of the Constitution**

Part Three: Articles III-318 to III-325 (ex Articles I to O)

Article III-318 (ex Article I – special forms of cooperation for the ESDP)

The provisions of Article [32b] of the Constitution and Articles [J to P] below shall not apply to the forms of cooperation in the area of defence provided for by Article [30] of the Constitution and governed specifically by Articles [18 to 21] (Part Three) of the Constitution.

Summary of amendments

- The scope of enhanced cooperation should extend to defence, except for the initiation and conduct of crisis management operations, without prejudice to other special forms of cooperation already provided for in that area (Articles III-206, 208 and 209, ex Articles 18, 20 and 21) (*am. 1, de Villepin; am. 3, Fischer; am. 4, Michel + 4*).
- The establishment of an armaments agency should not be excluded from the scope of enhanced cooperation (Article III-207, ex Article 19) (*am. 1, de Villepin; am. 3, Fischer*).
- The provisions on enhanced cooperation should be applicable to defence, including for forms of cooperation provided for in that area, without prejudice to specific provisions laid down in that regard (*am. 5, Queiró*).

- The institutional safeguards and procedures for enhanced cooperation should be applicable to structured cooperation (Article III-208, ex Article 20) (*am. 12, Brok + 25 PPE*).
- Initiation of structured cooperation under Article III-208 (ex Article 20) should require unanimous Council authorisation (*am. 9, Fini and Speroni*).
- The provisions on enhanced cooperation should be applicable to defence, to the exclusion of the special forms of cooperation provided for in that area (*am. 11, Kiljunen*).
- Defence should be excluded from the scope of enhanced cooperation (*am. 7, Hjelm-Wallén, Lekberg, Petersson and Kvist; am. 8, Lennmarker; am. 10, Hain*).
- The CFSP should be excluded from the scope of enhanced cooperation (*am. 7, Hjelm-Wallén, Lekberg, Petersson and Kvist; am. 8, Lennmarker*).
- Enhanced cooperation for the CFSP should be confined to implementing a joint action or common position, as under the Treaty of Nice (*am. 6, Roche; am. 10, Hain; see also am. 10 to Article III-322, ex Article M, Lopes + 2*).
- Article 27b of the TEU should be reinserted for the CFSP (*am. 6*).

Article III-319 (ex Article J – general conditions)

Any enhanced cooperation proposed shall comply with the Union's Constitution and acquis.

Such cooperation shall not undermine the internal market or economic and social cohesion. It shall not constitute a barrier to or discrimination in trade between Member States, nor shall it distort competition between them.

Summary of amendments

- A requirement to respect the Union's institutional framework should be added in the first paragraph (*am. 5, Michel + 4; am. 7, Roche*).

- The Commission should be able to allow exceptions to the limits in the second paragraph, under the authorisation procedure (*am. 2, de Villepin*).
- The second paragraph should be deleted (*am. 4, Fischer*).
- The second paragraph should be replaced by Article 43 of the TEU (*am. 6, Queiró*); the article should be replaced by Article 43 of the TEU, placed in Article 43 (ex Article 32b) of the Constitution (*am. 8, Lopes + 2*).
- Enhanced cooperation should not be applicable as regards Council decisions identifying the Union's common strategic interests (*am. 1, Balázs*).

Article III-320 (ex Article K – relations with non-participants)

Any enhanced cooperation proposed shall respect the competences, rights and obligations of those Member States which do not participate in it. Those Member States shall not impede its implementation by the participating Member States.

Summary of amendments

The article should be replaced by Article 43 of the TEU, to be inserted in Article 43 (ex Article 32b) of the Constitution (*am. 3, Lopes + 2*).

Article III-321 (ex Article L – principle of openness)

1. When enhanced cooperation is being established, it shall be open to all Member States, subject to compliance with any conditions of participation which may be laid down in the authorising decision. It shall also be open to them at any other time, subject to compliance with the acts already adopted within that framework, in addition to any such conditions.

The Commission and the Member States participating in enhanced cooperation shall ensure that they facilitate participation by as many Member States as possible.

2. The Commission and, where appropriate, the Minister for Foreign Affairs shall keep all Council members and the European Parliament regularly informed regarding developments in enhanced cooperation.

Summary of amendments

- The word "facilitate" should be replaced by "encourage and promote by appropriate means" (*am. 1, Balázs*); "encourage" should be added (*am. 5, Roche*).
- The reference to any conditions of participation should be deleted (*am. 5, Roche; am. 6, Lopes + 2*).

Article III-322 (ex Article M – authorisation procedure)

1. Member States which wish to establish enhanced cooperation between themselves in one of the areas covered by the Constitution, with the exception of the common foreign and security policy, shall address a request to the Commission, specifying the scope and objectives of the enhanced cooperation proposed. The Commission may submit a proposal to the Council to that effect. In the event of the Commission not submitting a proposal, it shall inform the Member States concerned of the reasons for not doing so.

Authorisation to proceed with enhanced cooperation shall be granted by a decision of the Council, acting by a qualified majority on a proposal from the Commission and after obtaining the assent of the European Parliament.

2. In the framework of the common foreign and security policy, the request of the Member States which wish to establish enhanced cooperation between themselves shall be addressed to the Council. It shall be forwarded to the Minister for Foreign Affairs, who shall give an opinion on whether the enhanced cooperation is consistent with the Union's common foreign and security policy, and to the Commission, which shall give its opinion in particular on whether the enhanced cooperation proposed is consistent with other Union policies. It shall also be forwarded to the European Parliament for information.

Authorisation to proceed with enhanced cooperation shall be granted by a decision of the Council, acting by a qualified majority.

Summary of amendments

- Several amendments seek to facilitate the authorisation procedure by stipulating that enhanced cooperation may be initiated once a request by a given number of Member States has been approved by the Commission, save as otherwise decided by the Council, acting by a qualified majority, or by the European Parliament, acting by an augmented majority. The same amendments call for the Commission to be able to propose enhanced cooperation, without any need for a prior request from Member States (and without prejudice to Member States' freedom to choose whether or not to participate) (*am. 1, de Villepin; am. 3, Michel + 4; am. 6, Fischer*).

For police cooperation and judicial cooperation in criminal matters, a group of Member States should be able to address a request directly to the Council if the Commission does not itself submit a proposal for the purpose (*am. 1, de Villepin; am. 7, Haenel*). The European Parliament should be informed of the move (instead of its assent being required) (*am. 7, Haenel*).

- It should be possible to refer the matter to the European Council, which would act unanimously, in areas other than the CFSP (*am. 4, Queiró*) or for the CFSP only (*am. 9, Hain*).
- For the CFSP, Council authorisation should be given unanimously (*am. 4, Queiró; am. 11, Muscardini*). Unanimity should also be required in areas other than the CFSP (*am. 11, Muscardini*).
- For the CFSP, the European Parliament should be consulted rather than just informed (*am. 3, Michel + 4*).
- For the CFSP, authorisation should be possible only for implementation of Union action (see above) (*am. 10, Lopes + 2*).
- One amendment would give the Minister for Foreign Affairs a similar role to the Commission in the authorisation procedure in the case of the CFSP (*am. 8, Berès, Duhamel and Fayot*).

Article III-323 (ex Article N – procedure for subsequent participation by other Member States)

1. *Any Member State which wishes to participate in enhanced cooperation shall notify its intention to the Council, the Commission and, where necessary, the Minister for Foreign Affairs.*

Within four months of the date of receipt of the notification the Commission shall confirm the participation of the Member State concerned. It shall note where necessary that any conditions of participation have been fulfilled and shall adopt any transitional arrangements deemed necessary with regard to the application of the acts already adopted within the framework of enhanced cooperation.

However, if the Commission considers that any conditions of participation have not been fulfilled, it shall indicate the measures to be taken to fulfil those conditions and shall set a deadline for re-examining the request for participation. When it re-examines the request, it shall act in accordance with the preceding subparagraph. If the Commission considers that any conditions of participation have still not been met, the Member State concerned may refer the matter to the Council, which shall act by a qualified majority in accordance with Article [32b(3)] of the Constitution. The Council may also adopt the abovementioned transitional arrangements acting on a proposal from the Commission.

2. *In the framework of the common foreign and security policy, the Council shall confirm the participation of the Member State concerned, after consulting the Minister for Foreign Affairs. It shall note where necessary that any conditions of participation have been fulfilled. The Council may also adopt transitional arrangements acting on a proposal from the Minister for Foreign Affairs. However, if the Council considers that any conditions of participation have not been fulfilled, it shall indicate the measures to be taken to fulfil those conditions and shall set a deadline for re-examining the request for participation.*

For the purposes of this paragraph, the Council shall act by a qualified majority in accordance with [Article 32b(3)] of the Constitution.

Summary of amendments

- The procedure for appealing to the Council in the event of a second refusal by the Commission to grant Member States' request for authorisation of enhanced cooperation should be deleted (*am. 3, Michel + 4; am. 6, Lopes + 3*).
- The reference to any objective conditions of participation should be deleted (*am. 4, Queiró; am. 5, Roche*).
- Participants in enhanced cooperation should be able to withdraw from it (*am. 4, Queiró*).

Article III-324 (ex Article O – financing)

Expenditure resulting from implementation of enhanced cooperation, other than administrative costs entailed for the Institutions, shall be borne by the participating Member States, unless all members of the Council, acting unanimously after consulting the European Parliament, decide otherwise.

Summary of amendments

- The procedure for drawing on the Community budget should be changed to the authorisation procedure (instead of a unanimous Council decision) (*am. 1, de Villepin*).

Article III-325 (ex Article P – principle of consistency)

The Council and the Commission shall ensure the consistency of activities undertaken in the context of enhanced cooperation and the consistency of such activities with the policies of the Union, and shall cooperate to that end.

Summary of amendments

None.

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