

LA CONVENTION EUROPÉENNE

LE SECRÉTARIAT

Bruxelles, le 6 décembre 2002 (10.12)
(OR. en)

CONV 325/1/02
REV 1

CONTRIB 111

NOTE DE TRANSMISSION

du: Secrétariat

à la: Convention

Objet: **Contribution présentée par M. Elmar Brok, membre de la Convention:**
"La Constitution de l'Union européenne"

Le secrétaire général de la Convention a reçu de M. Elmar Brok, membre de la Convention, la contribution figurant en annexe qui est une version révisée de sa contribution diffusée le 8 octobre 2002.



EPP CONVENTION GROUP

ELMAR BROK
THE CHAIRMAN

Mr Valéry Giscard d'Estaing
President of the Convention for the
Future of Europe

Brussels, 5 December 2002

Proposed Draft Constitution

Dear Mr President,

Please find annexed the updated version of the Draft Constitution which is the result of the EPP Convention Group Study Days in Frascati/Italy. The discussion there showed a lot of agreement in different areas, especially concerning the structure of the document, the Charter of Fundamental Rights and the general definition of competences.

This latest version largely follows the "skeleton" which you yourself have proposed to the Convention. The main difference is the positioning of the Fundamental Rights Chapter, which we would like to see at the very beginning of the text.

Our paper shows that your proposal is realistic and a positive approach.

However, it is clear that many compromises still have to be found. The EPP Convention Group considers this document as a "Work in Progress". Although numerous compromises and agreements have already been found and integrated in this proposal, many important areas remain to be discussed. In this sense, the document is not a final result but should be regarded as a contribution.

I hope that this contribution will be helpful for your own work, for the drafting work of the Praesidium and for the Convention as a whole. I am confident that the work of the EPP Convention Group can in this way positively influence a good and far-reaching consensus of the work of the Convention as a whole in order to make Europe more democratic and transparent in the future.

Yours sincerely

THE CONSTITUTION OF THE EUROPEAN UNION

– Discussion Paper –

INTRODUCTION

This informal discussion paper is based on

- the existing *acquis communautaire*;*
- the deliberations of the Convention Working Groups and in the Convention plenary sessions;*
- the European Parliament Resolution based on the Report by Alain Lamassoure on the division of competences between the European Union and the Member States;*
- the EPP document "A Constitution for a Strong Europe", as adopted at the EPP Congress in Estoril on 18 October 2002;*
- the deliberations of the EPP Convention Group study days in Frascati on 8-10 November 2002;*
- numerous comments received from Convention members and academics.*

*This new version of the discussion paper attempts to consolidate earlier drafts with the structure of the Preliminary draft Constitutional Treaty presented by the Convention Presidium on 28 October 2002. References to the Preliminary draft Constitutional Treaty of the Convention Presidium are included in the footnotes (**bold and underlined**). Footnotes indicate the origin of individual articles of the Constitution in the *acquis communautaire* and in the work of the Convention Working Groups.*

This discussion paper is designed to help ensure that the work in the Convention will result, in the end, in a concrete constitutional text. It is not intended to anticipate the final results, but should serve as a basis for further discussions within the Convention. The character of the discussion paper is therefore that of a "work in progress". The text is meant to be further adjusted according to the discussion process in the EPP Convention Group and in the European Convention.

THE CONSTITUTION OF THE EUROPEAN UNION

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I. PREAMBLE¹

The Member States and the Citizens of the European Union,

RESOLVED to share, in creating an ever closer union among them, a peaceful future based on common values²,

CONSCIOUS of their history and their common spiritual and moral heritage, of the indivisible, universal values of human dignity, freedom, equality and solidarity³, and of what Europe owes to its religious heritage⁴;

CONFIRMING their attachment to the principles of liberty, democracy and the respect for human rights and fundamental freedoms, tolerance and for the rule of law⁵,

DETERMINED to place the individual at the heart of the activities of the European Union, in particular by a Charter of Fundamental Rights of the European Union, by establishing the citizenship of the Union and by creating an area of freedom, security and justice⁶,

DETERMINED to preserve and to develop these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels⁷,

IN VIEW of the urgent need to render the process of European integration and the functioning of the European institutions more efficient, more transparent and more comprehensible for the citizens of the Union, to organise politics and the European political area in an enlarged Union on the basis of the principles of subsidiarity and proportionality and to develop the Union into a stabilising factor and a model in the new, multipolar world⁸,

¹ The preamble combines the essential elements of the preamble of the Charter of Fundamental Rights of the European Union (OJ 2000 C 364/1) and of the preambles of the EU and Communities Treaties. Cf. also the Final Report of Convention Working Group II “Charter”, p. 9, which proposes to use the Charter Preamble as the Preamble of the Constitution or to use the elements of general importance to be found in the Charter Preamble for the drafting of a new Treaty preamble. **The Preliminary draft Constitutional Treaty of the Convention Presidium also mentions a preamble.**

² Cf. preamble of the Charter of Fundamental Rights of the European Union, recital 1.

³ Cf. preamble of the Charter of Fundamental Rights of the European Union, recital 2.

⁴ Cf. para 1 and 20 of the EPP Congress Document “A Constitution for a Strong Europe”.

⁵ Cf. preamble of the EU Treaty, recital 3.

⁶ Cf. preamble of the Charter of Fundamental Rights of the European Union, recital 2.

⁷ Cf. preamble of the Charter of Fundamental Rights of the European Union, recital 3.

⁸ Cf. Declaration of Laeken of 15 December 2001, Part II.

IN REMEMBRANCE of the original purpose of the foundation of the European Communities, namely to substitute for age old rivalries the merging of their essential interests; to create, by establishing an economic community, the basis for a broader and deeper community among peoples long divided by bloody conflicts; and to lay the foundations for institutions which will give direction to a destiny henceforward shared¹,

RECALLING the historic importance of the ending of the division of the European continent and the need to create firm bases for the construction of a permanently united Europe²,

RESOLVED to develop, through the European Union, a common project of civilisation, which in the era of globalisation combines an open market economy with free competition with solidarity and respect for the environment (social market economy)³,

BASED UPON the achievements of the European Communities, in particular the Common Market established 31 December 1969, the Single European Market established 31 December 1992 and the economic and monetary union in the third stage of which the Community entered on 1 January 1999 and which has hitherto led to the introduction of a single currency in twelve Member States, committed to the primary objective of price stability; as well as upon the achievements of the European Union as expressed in the common foreign and security policy as well as in police and judicial cooperation in criminal matters, as established by the Treaty of Maastricht, and further developed by the Treaties of Amsterdam and Nice,

WITH REGARD to the Charter of Fundamental Rights of the European Union as drawn up by the Fundamental Rights Convention set up by the Cologne European Council of 3/4 June 1999, with the purpose to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter⁴,

RECALLING that the Charter of Fundamental Rights of the European Union reaffirms the rights as they result, in particular from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights; recalling that enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations⁵,

¹ Cf. preamble of the ECSC Treaty, recital 5.

² Cf. preamble of the EU Treaty, recital 2.

³ Cf. para 2 of the EPP Congress Document “A Constitution for a Strong Europe”.

⁴ Cf. preamble of the Charter of Fundamental Rights of the European Union, recital 4.

⁵ Cf. preamble of the Charter of Fundamental Rights of the European Union, recital 5 and 6.

WITH REGARD to the findings of the Convention on the Reform of the European Union created by the Laeken European Council on 15 December 2001 and in session in the European Parliament in Brussels from February 2002 to [] 2003, which were confirmed by the subsequent intergovernmental conference which ended in Rome on [] 2003,

FULL OF RESPECT for the special procedure, unprecedented in history, under which these two Conventions have laid the foundations for this Constitution of the European Union with the participation of representatives of the European Parliament, the European Commission as well as the Parliaments and Governments of the Member States,

RECALLING that the representatives of the Parliaments and Governments of the applicant countries were fully participating in the proceedings of the Convention on the Reform of the European Union,

RECALLING that the Court of Justice of the European Communities has qualified the Treaty establishing the European Community as constitutional charter of a Community based on the rule of law¹,

HAVE DECIDED to complete the European Union as a Constitutional Union by merging the reformed Treaties which form the foundations of the European Communities and the European Union into a Single Constitutional Document which is comprehensible to the citizens of the European Union.

¹ Cf. Case 294/83, *Parti écologiste “Les Verts” v. European Parliament* [1986] ECR 1339, para 23; Opinion 1/91, *European Economic Area I* [1991] ECR I-6079, para 21.

PART ONE:
CONSTITUTIONAL STRUCTURE

Title I: Charter of Fundamental Rights and Union Citizenship¹

Chapter 1: Human Dignity

Article 1 (Human dignity)

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

Article 2 (Right to life)

(1) Everyone has the right to life.

(2) No one shall be condemned to the death penalty, or executed.

Article 3 (Right to the integrity of the person)

(1) Everyone has the right to respect for his or her physical and mental integrity.

(2) In the fields of medicine and biology, the following must be respected in particular:

- the free and informed consent of the person concerned, according to the procedures laid down by law,
- the prohibition of eugenic practices, in particular those aiming at the selection of persons,
- the prohibition on making the human body and its parts as such a source of financial gain,
- the prohibition of the reproductive cloning of human beings.

¹ As suggested by Convention Working Group II “Charter”, the Charter of Fundamental Rights of the European Union (OJ 2000 C 364/1) is taken over **“in toto”** by this Constitution (only editorial changes and drafting adjustments in the horizontal articles, now all marked in *italics*). With regard to the question of the location of the Charter in the Constitution, this Discussion Paper follows the proposal of a large majority of Working Group II, namely to insert the Charter **“at the beginning of the Constitutional Treaty”**. Only such a prominent location reflects adequately the superior nature of the Charter, which is binding on all Union activities. After the firm and well-reflected decision of the Human Rights Convention to enshrine “human dignity” in Article 1, it would hardly be acceptable now to insert “human dignity” only as Article 6 or 7 of the European Constitution. **Cf. also the Preliminary draft Constitutional Treaty of the Convention Presidium, where incorporation of “all the articles of the Charter” is mentioned as one of three alternatives in the summary description of Article 6.**

Article 4 (Prohibition of torture and inhuman or degrading treatment or punishment)

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

Article 5 (Prohibition of slavery and forced labour)

(1) No one shall be held in slavery or servitude.

(2) No one shall be required to perform forced or compulsory labour.

(3) Trafficking in human beings is prohibited.

Chapter II: Freedoms

Article 6 (Right to liberty and security)

Everyone has the right to liberty and security of person.

Article 7 (Respect for private and family life)

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

Article 8 (Protection of personal data)¹

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

Article 9 (Right to marry and right to found a family)

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

Article 10 (Freedom of thought, conscience and religion)

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

Article 11 (Freedom of expression and information)

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

¹ “This Article is based on Article 286 of the Treaty establishing the European Community and Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995) as well as on Article 8 of the ECHR and on the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which has been ratified by all the Member States. The right to protection of personal data is to be exercised under the conditions laid down in the above Directive, and may be limited under the conditions set out by Article 52 of the Charter.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

Article 12 (Freedom of assembly and of association)

- (1) Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
- (2) Political parties at Union level contribute to expressing the political will of the citizens of the Union¹.

Article 13 (Freedom of the arts and sciences)

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

Article 14 (Right to education)

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

Article 15 (Freedom to choose an occupation and right to engage in work)

- (1) Everyone has the right to engage in work and to pursue freely chosen or accepted occupation.
- (2) Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State².
- (3) Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

¹ “Paragraph 2 of this Article corresponds to Article 191 of the Treaty establishing the European Community.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

² “The second paragraph deals with the three freedoms guaranteed by Articles 39, 43 and 49 et seq of the EC Treaty, namely freedom of movement for workers, freedom of establishment and freedom to provide services.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

Article 16 (Freedom to conduct a business)

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

Article 17 (Right to property)

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

(2) Intellectual property shall be protected.

Article 18 (Right to asylum)¹

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

¹ “The text of the Article is based on TEC Article 63 which requires the Union to respect the Geneva Convention on refugees. Reference should be made to the Protocols relating to the United Kingdom and Ireland annexed to the Treaty of Amsterdam and to Denmark to determine the extent to which those Member States implement Community law in this area and the extent to which this Article is applicable to them. This Article is in line with the Protocol on Asylum annexed to the EC Treaty.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

Article 19 (Protection in the event of removal, expulsion or extradition)

(1) Collective expulsions are prohibited.

(2) No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subject to the death penalty, torture or inhuman or degrading treatment or punishment.

Chapter III: Equality

Article 20 (Equality before the law)

Everyone is equal before the law.

Article 21 (Non-discrimination)

(1) Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited¹.

(2) Within the scope of application of *Part Two of this Constitution*, and without prejudice to the special provisions *thereof*, any discrimination on grounds of nationality shall be prohibited².

Article 22 (Cultural, religious and linguistic diversity)³

The Union shall respect cultural, religious and linguistic diversity.

¹ “Paragraph 1 draws on Article 13 of the EC Treaty, Article 14 of the ECHR and Article 11 of the Convention on Human Rights and Biomedicine as regards genetic heritage. Insofar as this corresponds to Article 14 of the ECHR, it applies in compliance with it.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

² “Paragraph 2 corresponds to Article 12 of the EC Treaty and must be applied in compliance with the Treaty.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

³ “This Article is based on Article 6 of the Treaty on European Union and on Article 151(1) and (4) of the EC Treaty concerning culture. It is also inspired by declaration No 11 to the Final Act of the Amsterdam Treaty on the status of churches and non-confessional organisations.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

Article 23 (Equality between men and women)

(1) Equality between men and women must be ensured in all areas, including employment, work and pay¹.

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

Article 24 (The rights of the child)

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

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

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

Article 25 (The rights of the elderly)

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

Article 26 (Integration of persons with disabilities)

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

¹ “The first paragraph is based on Articles 2 and 3(2) of the EC Treaty, which impose the objective of promoting equality between men and women on the Community, and on Article 141(3) of the EC Treaty. It draws on Article 20 of the revised European Social Charter of 3 May 1996 and on point 16 of the Community Charter on the rights of workers. It is also based on Article 141(3) of the EC Treaty and Article 2(4) of Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

Chapter IV: Solidarity

Article 27 (Workers' right to information and consultation within the undertaking)

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

Article 28 (Right of collective bargaining and action)

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

Article 29 (Right of access to placement services)

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

Article 30 (Protection in the event of unjustified dismissal)

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

Article 31 (Fair and just working conditions)

(1) Every worker has the right to working conditions which respect his or her health, safety and dignity.

(2) Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article 32 (Prohibition of child labour and protection of young people at work)

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

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

Article 33 (Family and professional life)

(1) The family shall enjoy legal economic and social protection.

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

Article 34 (Social security and social assistance)¹

(1) The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by *Union* law and national laws and practices.

(2) Everyone residing and moving legally within the Union is entitled to social security benefits and social advantages in accordance with *Union* law and national laws and practices.

(3) In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by *Union* law and national laws and practices.

¹ “The principle set out in Article 34(1) is based on Articles 137 and 140 of the EC Treaty and on Article 12 of the European Social Charter and point 10 of the Community Charter on the rights of workers. The Union must respect it when exercising the powers conferred on it by Article 140 of the Treaty establishing the European Community. The reference to social services relates to cases in which such services have been introduced to provide certain advantages but does not imply that such services must be created where they do not exist. "Maternity" must be understood in the same sense as in the preceding Article. The second paragraph is based on Article 13(4) of the European Social Charter and point 2 of the Community Charter of the Fundamental Social Rights of Workers and reflects the rules arising from Regulation No 1408/71 and Regulation No 1612/68. The third paragraph draws on Articles 30 and 31 of the revised Social Charter and point 10 of the Community Charter. The Union must respect it in the context of policies based on Article 137(2) of the Treaty establishing the European Community, particularly the last subparagraph.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

Article 35 (Health care)¹

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

Article 36 (Access to services of general economic interest)²

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

Article 37 (Environmental protection)³

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

Article 38 (Consumer protection)⁴

Union policies shall ensure a high level of consumer protection.

¹ “The principles set out in this Article are based on Article 152 of the EC Treaty and on Article 11 of the European Social Charter. The second sentence of the Article takes over Article 152(1).” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

² “This Article fully respects Article 16 of the Treaty establishing the European Community and does not create any new right. It merely sets out the principle of respect by the Union for the access to services of general economic interest as provided for by national provisions, when those provisions are compatible with Community legislation.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

³ “The principles set out in this Article are based on Articles 2, 6 and 174 of the EC Treaty. It also draws on the provisions of some national constitutions.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

⁴ “The principles set out in this Article are based on Article 153 of the EC Treaty”. – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

Chapter V: Citizens' Rights

Article 39 (Right to vote and to stand as a candidate at elections to the European Parliament)¹

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

(2) Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Article 40 (Right to vote and to stand as a candidate at municipal elections)²

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

Article 41 (Right to good administration)

(1) Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

(2) This right includes:

- the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
- the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
- the obligation of the administration to give reasons for its decisions.

¹ “Article 39 applies under the conditions laid down by the Treaty, in accordance with Article 52(2) of the Charter. Article 39(1) corresponds to the right guaranteed in Article 19(2) of the EC Treaty and Article 39(2) corresponds to Article 190(1) of that Treaty. Article 39(2) takes over the basic principles of the electoral system in a democratic State.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

² “This Article corresponds to the right guaranteed by Article 19(1) of the EC Treaty. In accordance with Article 52(2) of the Charter, it applies under the conditions set out in the Treaty.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

(3) Every person has the right to have the *Union* make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

(4) Every person may write to the institutions of the Union in one of the languages of the Constitution and must have an answer in the same language.

Article 42 (Right of access to documents)¹

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

Article 43 (Ombudsman)²

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

Article 44 (Right to petition)³

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

¹ “The right guaranteed in this Article is the right guaranteed by Article 255 of the EC Treaty. In accordance with Article 52(2) of the Charter, it applies under the conditions defined by the Treaty.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention.

² “The right guaranteed in this Article is the right guaranteed by Articles 21 and 195 of the EC Treaty. In accordance with Article 52(2) of the Charter, it applies under the conditions defined by the Treaty.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention in order to clarify the provisions of the Charter.

³ “The right guaranteed in this Article is the right guaranteed by Articles 21 and 194 of the EC Treaty. In accordance with Article 52(2) of the Charter, it applies under the conditions defined by the Treaty.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention in order to clarify the provisions of the Charter.

Article 45 (Freedom of movement and of residence)¹

(1) Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

(2) Freedom of movement and residence may be granted, in accordance with *Part Two of this Constitution*, to nationals of third countries legally resident in the territory of a Member State.

Article 46 (Diplomatic and consular protection)²

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

Chapter VI: Justice

Article 47 (Right to an effective remedy and to a fair trial)

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

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

(3) Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure access to justice.

¹ “The right guaranteed by paragraph 1 is the right guaranteed by Article 18 of the EC Treaty. In accordance with Article 52(2) of the Charter, it applies under the conditions and within the limits defined by the Treaty. Paragraph 2 refers to the power granted to the Community by Article 62(1) and (3) and Article 63(4) of the EC Treaty. Consequently, the granting of this right depends on the institutions exercising that power.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention in order to clarify the provisions of the Charter.

² “The right guaranteed by this Article is the right guaranteed by Article 20 of the EC Treaty. In accordance with Article 52(2) of the Charter, it applies under the conditions defined by the Treaty.” – Cf. the explanations prepared at the instigation of the Presidium of the Fundamental Rights Convention in order to clarify the provisions of the Charter.

Article 48 (Presumption of innocence and right of defence)

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

Article 49 (Principles of legality and proportionality of criminal offences and penalties)

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

Article 50 (Right not to be tried or punished twice in criminal proceedings for the same criminal offence)

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

Chapter VII: Union Citizenship

Article 51 (*Union citizenship*)¹

(1) *Citizens of the Union shall be all persons holding the nationality of a Member State.*

(2) *Citizenship of the Union shall complement and not replace national citizenship.*

Chapter VIII: Scope of Guaranteed Rights

Article 52 (Scope of the Charter)

(1) The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers *and respecting the limits of the powers of the Union as conferred on it by this Constitution*².

(2) This Charter does not *extend the scope of application of Union law beyond the powers of the Union or*³ establish any new power or task for the Union, or modify powers and tasks defined by *this Constitution*⁴.

¹ The inclusion of Article 17(1) EC in the Charter is the only substantive amendment to the Charter suggested by this discussion paper. The purpose is to clarify, already within the context of the Charter, the meaning of the term “citizen of the Union”, which is used in Articles 15 (2), (3), 39 (1), 40, 42, 43, 44, 45, 46 of the Charter. It would be misleading to place the provision on “citizenship of the Union” at the beginning of the Charter, as most of the fundamental rights enshrined in the Charter apply to all human beings, not only to Union citizens. Cf. also the Final Report of Convention Working Group II “Charter”, p. 6: “The Group signals that if, as advocated by a large majority of the Group, incorporation is achieved by insertion of the Charter text in the first part of the Constitutional Treaty, it would then become necessary to combine, in an appropriate manner, in that Treaty the Charter articles on citizens’ rights and the provisions on citizenship of the EC Treaty having constitutional importance; this should be considered as a technical operation raising no political problems.”

² Cf. the proposals in the Final Report of Convention Working Group II “Charter” for drafting adjustments in the horizontal articles of the Charter (p. 17).

³ Cf. the proposals in the Final Report of Convention Working Group II “Charter” for drafting adjustments in the horizontal articles of the Charter (p. 17).

⁴ Cf. the proposals in the Final Report of Convention Working Group II “Charter” for drafting adjustments in the horizontal articles of the Charter (p. 17).

Article 53 (Scope of guaranteed rights)

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

Article 54 (Level of protection)

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

¹ Cf. the proposals in the Final Report of Convention Working Group II “Charter” for drafting adjustments in the horizontal articles of the Charter (p. 17).

² Cf. the proposals in the Final Report of Convention Working Group II “Charter” for drafting adjustments in the horizontal articles of the Charter (p. 17).

³ Cf. the proposals in the Final Report of Convention Working Group II “Charter” for drafting adjustments in the horizontal articles of the Charter (p. 17).

Article 55 (Prohibition of abuse of rights)

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

Title II: Definition and Objectives of the Union¹

Article 56 (Foundations of the European Union)²

(1) The European Union established by this Constitution shall be founded on the citizens of the Union and the Member States.

(2) The Union shall have legal personality³.

(3) The Union shall exercise certain common competences, in accordance with common values and objectives and in recognition of the diversity of the Union, on a federal basis⁴. It shall respect the national identities of the Member States, their constitutional and political structures, including regional and local self-government, their choices regarding language, and the legal status of churches and religious bodies⁵.

(4) This Constitution is based on, and replaces, the Treaty establishing the European Community, the Treaty establishing the European Atomic Energy Community, the Treaty on European Union as well as all subsequent Treaty amendments and all Treaties of Accession. It maintains in full the acquis created by these Treaties and develops it further into a Constitutional Union⁶.

¹ **Title and structure as suggested in the Preliminary draft Constitutional Treaty of the Convention Presidium (therein Title I).**

² **Cf. Article 1 of the Preliminary draft Constitutional Treaty of the Convention Presidium.**

³ **Cf. Articles 281, 282 EC, 184, 185 EURATOM. Cf. also the results of Convention Working Group III “Legal Personality” and Article 4 of the Preliminary draft Constitutional Treaty of the Convention Presidium. On the succession to the Communities, cf. Article x in the Final Title.**

⁴ **Cf. the summary description on Article 1, second and third indent, in the Preliminary draft Constitutional Treaty of the Convention Presidium.**

⁵ Takes over the “Christophersen”-clause, as suggested in Convention Working Group V “Complementary competencies”. In addition, the role of the churches is recognised by transforming the existing Declaration No 11 (annexed to the final act of Amsterdam) into a new “Protocol on the status of churches and non-confessional organisations”, annexed to this Constitution – see Annex III. **Cf. also the summary description on Article 1 in the Preliminary draft Constitutional Treaty of the Convention Presidium.**

⁶ **Cf. Article x of the Preliminary draft Constitutional Treaty of the Convention Presidium, which is meant to deal with the repeal of previous treaties. This discussion papers suggests to ensure already in Part One of the Constitution that the Constitution builds upon the existing acquis communautaire.**

Article 57 (Union values) ¹

(1) The Union is based on human dignity, the principles of liberty, democracy, respect for human rights and fundamental freedoms, tolerance, and the rule of law, principles which are common to the Member States.

(2) The Union values include the values of those who believe in God as the source of truth, justice, good and beauty as well as of those who do not share such a belief but respect these universal values arising from other sources².

Article 58 (Union objectives)³

(1) The Union shall set itself the following objectives:

- a) to promote, by an internal market and an economic and monetary union, throughout the Union a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of an environment based on the principle of sustainable development, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States and their regions⁴;
- b) to assert, through a common foreign and security policy, including a common defence, the identity, common values, security, interests and independence⁵ of the Union on the international scene⁶ and thereby to preserve peace and strengthen international security as well as to promote international cooperation and development;
- c) to maintain and develop, through a common policy in policy and judicial matters, the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime⁷;

¹ **Cf. Article 6 (1) EU and the summary description on Article 2 in the Preliminary draft Constitutional Treaty of the Convention Presidium.**

² Inspired by the preamble of the Constitution of Poland.

³ **Cf. Article 3 in the Preliminary draft Constitutional Treaty of the Convention Presidium; content taken over from the provisions on objectives in the EU and Communities Treaties.**

⁴ Cf. Article 2 EC. Cf. also the Final Report of Convention Working Group VI “Economic Governance” (p.2), which recommends inclusion of the text of Article 2 EC (next to Articles 2 EU and 4 EC) in the Constitution.

⁵ **Cf. the summary description on Article 3 in the Preliminary draft Constitutional Treaty of the Convention Presidium.**

⁶ Cf. Article 2, first indent EU.

⁷ Cf. Article 2, fourth indent EU.

- d) to contribute to the safe and peaceful use of nuclear energy¹;
- e) to maintain in full the *acquis communautaire* and build on it².

(2) The Union's objectives shall be implemented in accordance with the Union's competences as laid down in Title III of this Constitution..

Article 59 (Internal market)³

(1) The internal market shall comprise, as provided in Part Two of this Constitution, a customs union, an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured⁴, and by a system which ensures that competition in the internal market is not distorted⁵, as well as common and complementary policies which are related to the proper functioning of the internal market.

(2) The primary purpose of all Union activities with regard to the internal market shall be the elimination of all barriers to or discriminations in trade and of all appreciable distortions of competition⁶.

¹ Takes over the essence of the objectives of the EURATOM Treaty.

² Cf. Article 2, fifth indent EU.

³ **Takes over the essence of Articles 3 and 14 EC, which, within the Community legal order, are of constitutional importance (they are included in Part One of the EC Treaty, called “Principles”) and therefore should be included in Part One of the Constitution; they are missing in Part One of the Preliminary draft Constitutional Treaty of the Convention Presidium.**

⁴ Cf. Articles 3 (1) (c), 14 (2) EC.

⁵ Cf. Article 3 (1) (g) EC.

⁶ Takes over the general principles underlying the four fundamental economic freedoms, as laid down in Article 30 EC and generalised by the case-law of the Court of Justice; cf. Case C-55/94, *Gebhard* [1995] ECR I-4165, para 37.

Article 60 (Economic and monetary union)¹

(1) Economic union shall include, as provided in Part Two of this 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 under the close surveillance of the Union², 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 Part Two of this Constitution, and in accordance with the timetable and the procedures set out therein, monetary union shall include the irrevocable fixing of exchange rates leading to the introduction of 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) The activities of the Member States and the Union with regard to economic and monetary union shall entail compliance with the following guiding principles: stable prices, sound public finances and monetary conditions and a sustainable balance of payments.

Article 61 (Seat of the Union; symbols of Union identity; privileges and immunities)

(1) The seat of the Union shall be Brussels³.

(2) The currency of the Union shall be the euro.

¹ **Cf. Article 4 EC, which is included in Part One of the EC Treaty (“Principles”) and therefore should be included in Part One of this Constitution. Such a provision is missing in Part One of the Preliminary draft Constitutional Treaty of the Convention Presidium. In support of the approach chosen in this discussion paper, cf. the Final Report of Convention Working Group VI “Economic Governance” (p. 2), which recommends explicitly that also the text of the present Article 4 EC (next to Articles 2 EU and 2 EC) should be included in the constitutional treaty.**

² The words “under the close surveillance of the Union” are added to take into account of the reinforced role of the Union level in economic policy coordination, as set out in Part Two of this Constitution. Cf. also the Final Report of Convention Working Group VI “Economic Governance”, p. 4: “The Group considers that economic policy coordination should be reinforced.”

³ The seat of the institutions of the Union, of the ECB, the EIB and Europol continues to be governed by the "Protocol on the location of the seats of the institutions and of certain bodies and departments of the European Communities and Europol“, annexed to this Constitution.

- (3) The flag of the Union shall be a circle of twelve golden stars on a blue ground.
- (4) The anthem of the Union shall be the instrumental version of the Ode of Joy from the Ninth Symphony by Ludwig van Beethoven.
- (5) 9 May shall be celebrated as Union day.
- (6) The Union shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in a Protocol annexed to this Constitution¹. The same shall apply to the ECB, the EIB and Europol.

Article 62 (Union loyalty)²

- (1) Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Constitution or resulting from action taken by the Union. They shall facilitate the achievement of the Union's tasks.
- (2) Member States shall abstain from any measure which could jeopardise the attainment of the objectives and rights³ laid down in this Constitution.
- (3) The Union shall act with loyalty towards the Member States⁴.

¹ Cf. Article 291 EC. The protocol referred to is the "Protocol of 8 April 1965 on the privileges and immunities of the European Communities".

² **Cf. Article 10 EC. Currently, this principle is included in the Part One of the EC Treaty ("Principles"). Therefore, it is also given a prominent place in the present discussion paper. Cf. as an alternative the summary description of Article 8 in the Preliminary draft Constitutional Treaty of the Convention Presidium, where this principle is only mentioned in Title III "Union competence and action".**

³ "and rights" added in order to stress that this Constitution, in particular by including the Charter in Part One, now explicitly contains individual rights and places the individual at the heart of the Union's activities (cf. preamble, recital 4). Article 52 clarifies that the Charter does not extend the scope of Union competences.

⁴ This para 3 is drawn from the case-law of the European Court of Justice according to which the duty of sincere cooperation imposes mutual obligations on the Member States and the Community institutions and therefore also obliges the Community towards the Member States.

Article 63 (Rule of law)

(1) Member States undertake not to submit a dispute concerning the interpretation or application of this Constitution to any method of settlement other than those provided for in this Constitution¹. They always comply with the judgments of the Court of Justice without delay and in a complete manner.

(2) Member States are obliged to make good loss and damage caused to individuals by breaches of Union law for which they are responsible².

¹ Cf. Articles 292 EC, 193 EURATOM.

² Codifies a general principle of Community law; cf. Joined Cases C-6/90 and C-9/90, *Francovich and Others* [1991] ECR I-5357, para 37; Joined cases C-46/93 and C-48/93, *Brasserie du Pêcheur SA v Bundesrepublik Deutschland and The Queen v Secretary of State for Transport, ex parte: Factortame Ltd and others* [1996] ECR I-1029, para 32.

Title III: Union Competence and Actions¹

Article 64 (Division of competences between the Union and the Member States)²

- (1) Competences in the Union are reserved to the Member States insofar as this Constitution does not assign such competences to the Union.
- (2) Union law shall prevail over national law³.
- (3) Any action taken by the Union shall be implemented, executed and applied by the Member States if not otherwise provided by this Constitution.

Article 65 (Categories of Union competences; definitions)

- (1) The Union's competences are divided into the Union's own competences, competences shared with Member States and supplementary competences of the Union⁴.

¹ **Title III taken over from the Preliminary draft Constitutional Treaty of the Convention Presidium. The structure combines the structure proposed by the Convention Presidium with other structural proposals discussed in the Convention's Working Groups, in particular in Working Group V "Complementary Competencies". As agreed at the EPP Convention Group study days in Frascati, all issues of power (including competences) must be settled in Part One of this Constitution, and not in Part Two.**

² Principles of enumerated powers (cf. Article 5 (1) EC) and of national implementation (cf. Declaration No 43 attached to the EC Treaty by the Treaty of Amsterdam as guidance for the application of the principles of subsidiarity and proportionality), in a wording drawn from the works of Convention Working Group V "Complementary Competencies"; cf. also point 17 of the Report by Alain Lamassoure. **Cf. the summary description on Article 8 of the Preliminary draft Constitutional Treaty of the Convention Presidium.**

³ Cf. Case 6/64, *Costa v. ENEL* [1964] ECR 585; cf. also Joined cases C-10/97 to C-22/97, *Ministero delle Finanze v IN.CO.GE.'90 Srl, Idelgard Srl, Iris'90 Srl, Camed Srl, Pomezia Progetti Appalti Srl (PPA), Edilcam Srl, A. Cecchini & C. Srl, EMO Srl, Emoda Srl, Sappesi Srl, Ing. Luigi Martini Srl, Giacomo Srl and Mafar Srl*. [1998] ECR I-6307 para 21. **This important principle of the Union's legal system is given lesser importance in the Preliminary draft Constitutional Treaty of the Convention Presidium, where it figures only in Article 8 of Title III under "Union competence and action".**

⁴ Cf. point 15 of the Report by Alain Lamassoure. **The distinction between own (exclusive) competences of the Union, shared/concurrent competences and complementary competences is also inspired by the work of the Convention Working Group "Complementary Competencies" and is also the basis of the Preliminary draft Constitutional Treaty of the Convention Presidium (cf. Articles 9-12 thereof).**

(2) The Union's own competences are those which, by their very nature, are reserved for the Union and therefore only the Union, its institutions and bodies are empowered to act.

(3) Shared competences are those conferred upon the Union which the Member States may exercise as long as and insofar the Union has not yet done so¹.

(4) Supplementary competences² of the Union are those conferred upon the Union where the Union is limited to supplement, support or coordinate action taken by the Member States with a view to achieving one of the Union's objectives, excluding any harmonisation of the laws and regulations of the Member States³.

Article 66 (Own competences)

The Union's own competences shall be:

- [a) the definition and implementation of the common foreign and security policy⁴;
- b) the establishment of the rights and duties related to the citizenship of the Union, including the modalities of their exercise⁵;
- [c) the establishment and functioning of the internal market⁶, including in particular civil and commercial contracts, intellectual property law, financial services and taxation relating to the internal market⁷;

¹ Cf. the mandate of Convention Working Group V "Complementary Competencies": "It should be noted that the main difference between complementary competencies and concurrent competencies is that in the latter case once the Union/Community has legislated in such areas, Member States may no longer legislate in the fields covered by this legislation, except to the extent necessary to implement it. Community competencies could therefore become exclusive through being exercised."

² Cf. the Final Report of Convention Working Group V "Complementary Competencies", where the notion of "supplementary" is preferred to "complementary" competences.

³ Cf. the mandate of Convention Working Group V "Complementary Competencies": "Though no clear overall definition currently exists, it is generally accepted that complementary competence covers areas in which intervention by the Community is limited to supplementing, supporting, or coordinating the action of the Member States. (In such areas negative delimitation of competence (e.g. the exclusion of harmonisation in certain areas) is common.) The power to adopt legislative rules in these areas remains in the hands of the Member States, and intervention by the Community cannot have the effect of excluding intervention by the Member States."

⁴ Cf. point 20 of the Report by Alain Lamassoure ("the running of the common foreign and defence policy"). Should be further discussed.

⁵ Cf. Articles 18 (2), 19, 20 EC.

⁶ Under the existing *acquis*, this competence is considered to be a concurrent competence which leaves Member States scope for legislation (in respect of the four fundamental freedoms and the principle of mutual recognition) as long as there exists no harmonising measure of the Community. However, in point 19 of the Report by Alain Lamassoure, it is suggested that "the legal basis for the internal market (including the four freedoms and financial services)" should be the Union's own competence. Should be further discussed.

⁷ Cf. point 22 of the Report by Alain Lamassoure.

- d) the common organisation of agricultural markets¹;
- e) the common fisheries policy²;
- f) the external trade policy, with regard to both goods and services and including customs policy³;
- g) the conclusion of association treaties⁴;
- h) the monetary law of the euro⁵;
- i) the competition policy of the Union⁶;
- j) the structural and cohesion policy of the Union⁷;
- k) the funding of the Union's budget⁸;
- l) prudential supervision of financial institutions⁹;
- m) the legal regime governing the officials and servants of the Union¹⁰;
- n) the rules governing the languages of the institutions of the Union¹¹;
- o) the establishment of decentralised bodies of the Union and their legal regime¹²;

¹ Cf. point 22 of the Report by Alain Lamassoure, where this field of policy is regarded as a shared competence; under the present acquis, this field of policy is an exclusive competence.

² Cf. point 22 of the Report by Alain Lamassoure, where this field of policy is regarded as a shared competence; under the present acquis, this field of policy is an exclusive competence.

³ Cf. point 19 of the Report by Alain Lamassoure ("customs policy", "external economic relations").

⁴ Cf. Article 310 EC and point 19 of the Report by Alain Lamassoure.

⁵ Cf. point 19 of the Report by Alain Lamassoure. Cf. also Article 123 (4) EC. On monetary policy, cf. the specific provisions on the ECB in Article 85 of this discussion paper.

⁶ Cf. point 19 of the Report by Alain Lamassoure ("competition policy").

⁷ Cf. point 19 of the Report by Alain Lamassoure ("structural or cohesion policies").

⁸ Cf. point 20 of the Report by Alain Lamassoure.

⁹ Cf. Article 105 (6) EC.

¹⁰ Cf. Article 283 EC.

¹¹ Cf. Article 290 EC.

¹² Currently done, as a rule, under Article 308 EC.

p) Union statistics¹.

Article 67 (Shared competences)

The Union's shared competences shall be:

- [a) the definition and implementation of the common foreign and security policy²;
- [b) the establishment and functioning of the internal market³, including in particular civil and commercial contracts, intellectual property law, financial services and taxation relating to the internal market⁴;
- c) the protection of the environment⁵;
- d) consumer protection⁶;
- e) transport⁷;
- f) trans-European networks⁸;
- g) development cooperation⁹;
- h) energy¹⁰, including a policy of safety in the field of nuclear energy¹¹;

¹ Cf. Article 286 EC.

² Cf. point 20 of the Report by Alain Lamassoure (“the running of the common foreign and defence policy”). Should be further discussed.

³ Under the existing acquis, this competence is considered to be a concurrent competence which leaves Member States scope for legislation (in respect of the four fundamental freedoms and the principle of mutual recognition) as long as there exists no harmonising measure of the Community. However, in point 19 of the Report by Alain Lamassoure, it is suggested that “the legal basis for the internal market (including the four freedoms and financial services)” should be the Union's own competence.

⁴ Cf. point 22 of the Report by Alain Lamassoure.

⁵ Cf. point 22 of the Report by Alain Lamassoure.

⁶ Cf. point 22 of the Report by Alain Lamassoure.

⁷ Cf. point 22 of the Report by Alain Lamassoure.

⁸ Cf. point 22 of the Report by Alain Lamassoure. According to the Final Report of Convention Working Group V “Complementary Competencies”, only supplementary measures shall be allowed in this field.

⁹ Point 22 of the Report by Alain Lamassoure.

¹⁰ Point 22 of the Report by Alain Lamassoure.

¹¹ Summarises the competences under the EURATOM Treaty.

- i) social policy¹;
- j) measures concerning visas, asylum, immigration and other policies related to the entry and movement of third-country nationals in the Union²;
- k) the combat of fraud detrimental to the Union's budget³;
- l) the control of the external borders of the Union⁴;
- m) the association of the overseas countries and territories in order to increase trade and promote jointly economic and social development⁵;
- n) research and technological development⁶.

¹ Cf. point 22 of the Report by Alain Lamassoure.

² Point 20 of the Report by Alain Lamassoure would instead consider “the legal basis of the common area for freedom and security” as an own (exclusive) competence of the Union.

³ Cf. Article 280 EC.

⁴ Point 20 of the Report by Alain Lamassoure would instead consider “the legal basis of the common area for freedom and security” as an own (exclusive) competence of the Union.

⁵ This proposal follows the Report by Alain Lamassoure; currently, this field of policy is rather regarded as an exclusive competence.

⁶ Point 22 of the Report by Alain Lamassoure. According to the Final Report of Convention Working Group V “Complementary Competencies”, only supplementary measures shall be allowed in this field.

Article 68 (Supplementary competences¹)

The Union's supplementary competences are:

- a) education²;
- b) vocational training³;
- c) youth⁴;
- d) culture⁵;
- e) health protection⁶;
- f) the control and supervision of national budgetary policies⁷;
- g) industrial policy⁸;
- h) employment policy⁹;
- i) civil protection¹⁰;
- j) tourism¹¹;
- k) sport¹².

¹ As recommended by the Final Report of Convention Working Group V “Complementary Competencies”, the notion “supplementary” has been chosen instead of “complementary”.

² Cf. point 25 of the Report by Alain Lamassoure.

³ Cf. point 25 of the Report by Alain Lamassoure.

⁴ Cf. point 25 of the Report by Alain Lamassoure.

⁵ Cf. point 25 of the Report by Alain Lamassoure.

⁶ Cf. point 25 of the Report by Alain Lamassoure.

⁷ Cf. point 26 of the Report by Alain Lamassoure.

⁸ Cf. point 25 of the Report by Alain Lamassoure.

⁹ Cf. point 26 of the Report by Alain Lamassoure.

¹⁰ Cf. point 25 of the Report by Alain Lamassoure (“civil defence”); cf. Article 3 (1) lit. u EC (“civil protection”).

¹¹ Cf. point 25 of the Report by Alain Lamassoure.

¹² Cf. point 25 of the Report by Alain Lamassoure.

Article 69 (Principles of subsidiarity and proportionality; ex ante political monitoring)

(1) In areas which do not fall within its own competence, the Union shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed actions cannot be sufficiently achieved by the Member States and can, by reason of the scale or effects of the proposed actions, be more efficiently achieved by the Union¹.

(2) Any action by the Union shall not go beyond what is necessary to achieve the objectives of this Constitution (principle of proportionality)².

(3) The Commission shall forward its annual legislative programme as well as all its legislative proposals simultaneously to the European Parliament, the Council, each national parliament³, the Committee of the Regions and the Economic and Social Committee without delay in order to allow for an early political scrutiny whether in each case the principles of subsidiarity and the principle of proportionality have been satisfied (early-warning system).

If a national parliament concludes that a proposal does not comply with the principle of subsidiarity or the principle of proportionality, it may forward, within six weeks, a reasoned opinion to the Commission.

Following such reasoned opinions, the Commission shall give further specific reasons for the proposed act with regard to subsidiarity and proportionality. If a significant number of more than 1/3 of the national Parliaments issue a reasoned opinion, the Commission shall re-examine its proposal. That re-examination may lead the Commission either to maintain its proposal, amend it or withdraw it.

A national Parliament may also intervene with a reasoned opinion during the conciliation procedure in accordance with Article 96 (6).⁴

¹ Article 5 (2) EC.

² Article 5 (3) EC.

³ According to Convention Working Group I “Subsidiarity” (Final Report), “Each national parliament” means each chamber of the same parliament when the parliament is composed of two chambers. This is the case in the great majority of current Member States and candidate countries.”

⁴ Cf. the results of Convention Working Group I “Subsidiarity” (Final Report) with regard to the “early warning system”.

Article 70 (External competences)¹

- (1) In areas where the Union has competences, foreign relations shall be conducted by the Union².
- (2) Before the Union acts at international level, a Member State whose very important interests are at stake has to be heard in due time.
- (3) In areas where the Member States have competences, the Union has to be consulted in due time before a Member State acts at international level.

Article 71 (Flexibility clause)³

- (1) If action by the Union should prove necessary to achieve one of the Union's objectives, and this Constitution has not provided the necessary competences, the European Parliament and the Council shall jointly take the appropriate measures on a proposal from the Commission. By way of derogation from Article 95, the assent of the majority of the members of the European Parliament⁴ and unanimity in the Council shall be required.
- (2) The Court of Auditors shall be consulted on all proposals under this Article to ensure that the proposed Union action takes place with total budgetary transparency and that there is no duplication of bureaucratic efforts at Union and national level⁵.

¹ **This discussion paper includes the Union's external competences already in Part One of the Constitution, in order to submit them clearly to the general principles mentioned in this title (principles of enumerated powers, subsidiarity and proportionality). This also reflects the *acquis communautaire* principle of "parallelism" between internal and external competencies (AETR doctrine). As an alternative, see the proposal in the Preliminary draft Constitutional Treaty of the Convention Presidium where external competences would only be set out in Part Two of the Constitution (Part B thereof).**

² Codifies the doctrine of parallelism according to Case 22/70, *Commission v. Council (AETR)* [1971] ECR 263.

³ **Cf. Article 308 EC. The inclusion of Article 308 EC is also suggested in the summary description on Article 8 in the Preliminary draft Constitution of the Convention Presidium ("rules governing the adaptability of the system"). Cf. also point 31 of the Report by Alain Lamassoure, and para 24 of the EPP Congress Document "A Constitution for a Strong Europe": "It is essential to include a review clause in order to avoid establishing a rigid system for the delimitation of competences."**

⁴ Cf. para 24 of the EPP Congress Document "A Constitution for a Strong Europe": "The European Parliament should be involved in the decision-making".

⁵ Cf. para 24 of the EPP Congress Document "A Constitution for a Strong Europe".

Title IV: Union Institutions, Organisations and Bodies¹

Article 72 (List of Union institutions; European Council)²

(1) The tasks entrusted to the Union shall be carried out by the following institutions:

- the European Parliament,
- the Council of the European Union,
- the European Commission,
- the European Court of Justice,
- the European Court of Auditors.

Each institution shall act within the limits of the powers conferred upon it by this Constitution. The European Parliament, the Council and the Commission shall be assisted by a Committee of the Regions and an Economic and Social Committee acting in an advisory capacity³.

(2)⁴ The European Council shall provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof.

The European Council shall bring together the Heads of State or Government of the Member States, the President of the Commission and the Commissioner for External Relations (Article 79 paragraph 4). They shall be assisted by the Ministers for Foreign Affairs of the Member States and by a further member of the Commission. The European Council shall meet at least twice a year, under the chairmanship of the Head of State or Government of the Member State which holds the Presidency of the Council.

¹ **Cf. Title IV of the Preliminary draft Constitutional Treaty of the Convention Presidium, called “Union institutions”. This discussion paper has chosen the broader title “Union Institutions, Organisation and Bodies” to also include bodies such as the ECB and the EIB, which, under the existing *acquis communautaire*, are not considered as Union institutions, but have a special status by virtue of their independence and their own legal personality and therefore are subject to special rules and procedures, laid down in their respective Statutes.**

² **Cf. Articles 5 EU and 7 (1) EC. Neither under the EU Treaty nor under the EC Treaty, the European Council (which is a political, and not a law- or decision-making body) is included in the list of institutions. This is why this discussion paper departs in this respect from the proposal made in the Preliminary draft Constitutional Treaty of the Convention Presidium where the European Council is mentioned as the first institution among the Union institutions (cf. Article 15 thereof). This discussion paper instead follows the order of the institutions as laid down in Articles 5 EU and 7 (1) EC. In order to keep the institutional structure of the Union simple, this discussion paper does not provide for the creation of any additional Union institutions.**

³ Cf. Article 7 (1) and (2) EC.

⁴ Cf. Article 4 EU.

The European Council shall submit to the European Parliament a report after each of its meetings and a yearly written report on the progress achieved by the Union.

(3) Rules governing the functioning of the Union's institutions are laid down in Part Two of this Constitution and in the Rules of Procedure which each of them may adopt.

Chapter 1: The European Parliament¹

Article 73 (Function and composition of the European Parliament; President)

(1) The European Parliament shall form the House of Citizens in the legislative process of the Union.

(2) It shall consist of representatives of the citizens of the Member States brought together in the Union². They shall be elected by direct universal suffrage for a term of five years³.

(3) The number of representatives elected in each Member State shall be as follows⁴:

Belgium	22
Denmark	13
Germany	99
Greece	22
Spain	50
France	72
Ireland	12
Italy	72
Luxembourg	6
Netherlands	25

¹ **According to the acquis communautaire (cf. Articles 5 EU, 7 (1), 189 EC), and in line with the democratic principle, the institutional Title of this Constitution starts with the European Parliament.**

² Cf. Article 189 (1) EC.

³ Cf. Article 190 EC (as amended by the Treaty of Nice).

⁴ Cf. Article 190 EC (as amended by the Treaty of Nice).

Austria	17
Portugal	22
Finland	13
Sweden	18
United Kingdom	72
<i>[Bulgaria</i>	<i>17</i>
<i>Cyprus</i>	<i>6</i>
<i>Czech Republic</i>	<i>22</i>
<i>Estonia</i>	<i>6</i>
<i>Hungary</i>	<i>22</i>
<i>Lithuania</i>	<i>8</i>
<i>Latvia</i>	<i>12</i>
<i>Malta</i>	<i>6</i>
<i>Poland</i>	<i>50</i>
<i>Romania</i>	<i>33</i>
<i>Slovakia</i>	<i>13</i>
<i>Slovenia</i>	<i>7]</i>

(4) The number of members of the European Parliament shall not exceed 732¹. From 2009, the number shall be limited to 700.

(5) In the event of amendments to paragraph 3, the number of representatives elected in each Member State must ensure appropriate representation of the citizens of the States brought together in the Union². The number of representatives elected in each Member States shall be at least 6.

(6) The European Parliament shall elect its President with a majority of its members.

Article 74 (Political control of the Commission; motion of censure)

(1) The European Parliament shall control the European Commission.

(2) The European Parliament may, acting by a majority of its 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 this Constitution³. The President of the Commission must give a reasoned opinion to the plenary of the European Parliament in case it should decide not to follow the request.

¹ Cf. Article 189 (2) EC (as amended by the Treaty of Nice).

² Cf. Article 190 (2), subpara (2) EC.

³ Cf. Article 192 (2) EC.

(3) In the course of its duties, the European Parliament may, at the request of a quarter of its members, set up a temporary Committee of Inquiry to investigate, without prejudice to the powers conferred by this 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 report¹.

(4) The European Parliament may, by a motion of censure carried by a two thirds majority of the votes cast, representing the majority of the members of the European Parliament, force the Commission to resign as a body.

Chapter 2: The Council of the European Union

Article 75 (Composition of the Council)

(1) The Council shall consist of one representative of each Member State at ministerial level, authorised to commit the government of that Member State.

(2) The Council can be assisted by conferences consisting of departmental ministers. Where the Council takes decisions within the context of its tasks under Article 76 paragraph 1, these conferences shall not have any decision-making power.

Article 76 (Council as House of States; Council in its executive function; Presidency)²

(1) The Council shall form the House of States in the legislative process of the Union. With regard to this function of the Council, the office of the President shall be held in turn by each Member State in the Council for a term of six months; the Council may decide unanimously a longer term. The order in which the office of the President shall be held shall be decided by the Council unanimously.

(2) In addition and without prejudice to the competences of the Commission the Council ensures, together with the Commission, coordination of

- the general economic policies of the Member States³;
- the common foreign and security policy;

¹ Cf. Article 193 EC.

² Cf. Article 203 EC.

³ Cf. Article 202, first indent EC.

- the common police and judicial policy.

Whenever the Council does act in these executive functions, one of the ministers may be elected as President for a term of x.¹

Chapter 3: The European Commission

Article 77 (Tasks of the Commission)

(1) The executive power of the Union shall be vested in the European Commission.

(2)² In order to ensure the proper functioning and development of the Union, the Commission in addition shall

- have the exclusive right to initiate Union legislation and decisions³, except in cases where this Constitution provides otherwise;
- ensure that the provisions of this Constitution and the measures taken by the institutions pursuant thereto are applied;
- ensure that Member States receive an early warning when national budgets leave the objective of medium-term balance, risk to become excessive or otherwise to jeopardise the proper functioning of economic and monetary union, under the conditions laid down in Part Two of this Constitution⁴;
- formulate recommendations or deliver opinions on matters dealt with in this Constitution, if it expressly so provides or if the Commission considers it necessary;

¹ X should be i.e. for some years in order to achieve continuity. As an alternative, the responsible Commissioner could chair the Council sessions, e.g. the Commissioner for Foreign Affairs appointed according to the procedure laid down in Article 79 (4) would chair the session of the Foreign Affairs Council. One could also think of one of the President of the Commission elected according to the procedure laid down in Article 78 in the chair.

² Text taken from Articles 211.

³ **Cf. the Commission's monopoly of initiative under Articles 251 (2), 252 (a) EC. Cf. also the summary description of Article 18 of the Preliminary draft Constitutional Treaty of the Convention Presidium, where the "monopoly of initiative" is included in the core functions of the Commission. Cf. also para 46 of the EPP Congress Document "A Constitution for a Strong Europe": "The monopoly of initiative of the Commission must be guaranteed, as it constitutes a central element of the inter-institutional balance and a major source of future development and refinement of EU legislation."**

⁴ Cf. Article 99 (3) EC. This discussion paper suggests to strengthen the role of the Commission in the application of the early warning procedure.

- have its own power of decision and participate in the shaping of measures taken by the Council and the European Parliament in the manner provided for in this Constitution;
- exercise the powers conferred on it by the European Parliament and by the Council for the implementation of the rules laid down by them;
- ensure the consistency of the external representation of the Union.

Article 78 (Composition of the Commission; appointment and election of its President and its members; independence)

(1) The members of the Commission shall be chosen on the grounds of their general competence. Their independence shall be beyond doubt.¹

(2) The Commission shall include one national of each of the Member States².

The number of members of the Commission may be altered, with the assent of the European Parliament, by the Council acting unanimously.

Only nationals of Member States may be members of the Commission.

(3) A candidate for the President of the Commission shall be proposed to the European Parliament by the Council, acting by qualified majority³, in the light of the results of the European Parliament elections. To become President of the Commission, the proposed candidate requires the approval of an absolute majority of the members of the European Parliament⁴.

¹ Cf. Article 213 EC.

² Cf. Article 4 (1) of the Protocol on the Enlargement of the European Union, annexed to the Treaty of Nice, which would also be attached to this Constitution. Cf. also Article 4 (2) of this Protocol for the new rule to apply when the Union consists of 27 Member States: “The number of members of the Commission shall be less than the number of Member States. The members of the Commission shall be chosen according to a rotation system based on the principle of equality, the implementing arrangements for which shall be adopted by the Council, acting unanimously.” [add: “with the assent of the European Parliament.”]

³ Cf. Article 214 EC (as amended by the Treaty of Nice) which provides for appointment of the Commission President by qualified majority vote of the Council. Before the Nice Treaty, the Commission president and the other Commission members were nominated and appointed by common accord of the governments of the Member States.

⁴ Cf. para 47 of the EPP Congress document “A Constitution for a Strong Europe”, where the following reason is given for this new procedure: “This would give European political parties the opportunity to present their own candidates in the framework of the campaign for European elections. It would ensure a more personalised election campaign and increase democratic control and support of the European Commission.”

The other members of the Commission shall be nominated by the President of the Commission. They must be approved by the Council, acting by qualified majority. They are elected by the European Parliament after having been heard individually with regard to paragraph 1¹.

(4) The term of office of the members of the Commission shall be a period of five years. It shall be renewable.²

(5) The members of the Commission shall, in the general interest of the Union, be completely independent in the performance of their duties.

In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties. 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.

Article 79 (Political guidance of the President; decision-making; Commissioner for Foreign Relations)³

(1) The Commission shall work under the political guidance of its President, who shall decide on its internal organisation in order to ensure that it acts consistently, efficiently and on the basis of collegiality.

(2) The Commission shall act by a majority of the number of members⁴.

(3) The responsibilities incumbent upon the Commission shall be structured and allocated among its members by its President; when doing so, the President may also establish a hierarchy among the members of the Commission. The President may reshuffle the allocation of those responsibilities and the hierarchy 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.

(4) The President shall appoint two Vice-Presidents from among the members of the Commission. The President of the Commission shall, by accord of the Council, charge one of the Vice-Presidents with the external representation of the Union. This Vice-President shall bear the title “Commissioner for Foreign Relations”.

¹ Cf. para 48 of the EPP Congress document “A Constitution for a Strong Europe”.

² Cf. Article 241 (1).

³ Cf. Article 217 (as amended by the Treaty of Nice).

⁴ Cf. Article 219 (2) EC.

(5) A member of the Commission shall resign if the President so requests for a stated reason.

(5) The President of the Commission may at any time request a vote of confidence of the European Parliament. Where the majority of the members of the European Parliament does not express its confidence on such request, the Commission must resign as a whole.

Chapter 4: The European Court of Justice

Article 80 (Function and composition of the Court of Justice)

(1) The Court of Justice shall ensure that in the interpretation and application of this Constitution the law is observed.¹

(2) The Court of Justice shall consist of one judge per Member State².

The Court of Justice shall be assisted by eight Advocates-General. Should the Court of Justice so request, the Council may, acting unanimously and with obtaining the assent of the European Parliament, increase the number of Advocates-General.

It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice, require his involvement³.

(3) The Judges and Advocates-General of the Court of Justice shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence; they shall be appointed by the Council, acting by a qualified majority, with obtaining the assent of the European Parliament for a term of eight years. Their term of office shall not be renewable.

Every three years there shall be a partial replacement of the Judges and Advocates-General, in accordance with the conditions laid down in the Statute of the Court of Justice.

(4) The Judges shall elect the President of the Court of Justice from among their number for a term of three years. He may be re-elected.

¹ Cf. Article 220 EC (as amended by the Treaty of Nice).

² Cf. Article 221 (1) EC (as amended by the Treaty of Nice).

³ Cf. Article 222 EC (as amended by the Treaty of Nice).

(5) The Court of First Instance shall have jurisdiction to hear and determine certain actions or proceedings under the conditions and within the limits laid down in Part Two of this Constitution. Such decisions by the Court of First Instance may be subject to a right of appeal to the Court of Justice on points of law only, under the conditions and within the limits laid down by the Statute of the Court of Justice.

Article 81 (Direct jurisdiction of the Court of Justice¹)

The Court of Justice shall have direct jurisdiction, under the conditions and within the limits laid down in Part Two of this Constitution and in the Statute of the Court of Justice:

- a) to rule on proceedings for infringement of obligations under this Constitution by a Member State, brought by the Commission or by a Member State (infringement proceedings)²;
- b) to rule on proceedings brought by the Commission for a Member State's failure to comply with a judgement of the Court of Justice, including the imposition of a lump sum or penalty payment on such Member State (compliance proceedings)³;
- c) to review the legality of acts adopted jointly by the European Parliament and the Council, of acts of the Council, of the Commission, of the ECB and of Europol, other than recommendations or opinions, and of acts of the European Parliament intended to produce legal effects vis-à-vis third parties, in actions brought by a Member State, the European Parliament, the Council or the Commission, on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Constitution or of any rule of law relating to its application, or misuse of powers (action for annulment by privileged applicants)⁴;
- d) in actions for annulment brought by the Court of Auditors, the Committee of the Regions⁵, the Economic and Social Committee or the ECB for the purpose of protecting their prerogatives or claiming an infringement of Title III of this Constitution (action for annulment by semi-privileged applicants)⁶;

¹ Summarises the cases where, under the existing *acquis communautaire*, direct actions may be brought before the ECJ.

² Cf. Articles 226, 227 EC.

³ Cf. Article 228 EC.

⁴ Cf. Article 230 (1) and (2), as amended by the Treaty of Nice.

⁵ Cf. the Final Report of Convention Working Group I "Subsidiarity".

⁶ Cf. Article 230 (3) as amended by the Treaty of Nice.

- e) in actions for annulment brought by a national parliament claiming an infringement of Title III of this Constitution (national parliament action for lack of competence)¹;
- f) in actions for annulment instituted by any natural or legal person which alleges, in a substantiated manner, the infringement of a fundamental right granted to them by the Charter of Fundamental Rights of the European Union (Part One of this Constitution), including the claim that a Union act directly and individually affects their right under Article 6 of this Constitution for lack of competence, infringement of an essential procedural requirement, infringement of this Constitution or of any rule of law relating to its application, or misuse of powers (action for annulment by individuals)²;
- g) in actions brought by a Member State, an institution of the Union or the ECB to establish that an institution of the Union or the ECB failed to act after having been called to act (action for failure to act by privileged applicants)³;
- h) in actions brought by the Court of Auditors, the Committee of the Regions, the Economic and Social Committee or the ECB to establish that an institution of the Union infringed their prerogatives by having failed to act after having been called to act (action for failure to act by semi-privileged applicants)⁴;
- i) in actions brought by any natural or legal person which complain to be infringed, by a failure to act of one of the institutions of the Union or the ECB which first has been called to act, in a fundamental right granted to them by the Charter of Fundamental Rights (Part One of this Constitution), including the claim that such failure directly and individually affects their right under Article 6 of this Constitution for lack of competence, infringement of an essential procedural requirement, infringement of this Constitution or of any rule of law relating to its application, or misuse of powers (action for failure to act by individuals)⁵;

¹ Cf. the Final Report of Convention Working Group I “Subsidiarity”. It is suggested not to limit the judicial control to compliance with the principle of subsidiarity, but to extend it to all competence provisions under Articles 66-72. In addition, it is suggested not to make national parliament action dependent on previous completion of the early warning procedure; cf. also the Final Report of Convention Working Group IV “National Parliaments”, para 25, third indent.

² Cf. Article 230 (4) EC. The new wording attempts to combine the justitiability of the Charter with the existing action for annulment without creating a special procedure for the protection of human rights. In Convention Working Group II “Charter”, a majority of members had reservations about the creation of such a special procedure, but nevertheless underlined “the great benefit citizens would gain from a possible integration of the Charter into the Constitutional Treaty architecture, thereby making the Union’s present system available” (pp. 15-16 of the Final Report). The new wording suggested also attempts to remedy the “certain lacuna of protection” identified by the discussions of Convention Working Group II in the application of the present Article 230 (4) EC.

³ Cf. Article 232 (1), (2) and (4) EC.

⁴ Cf. Article 232 (4) EC.

⁵ Cf. Article 232 (3) EC.

- j) in disputes relating to compensation for damage provided for in Article 41 paragraph 3 (action for damages)¹;
- k) in disputes concerning the fulfilment by national central banks of obligations under this Constitution and the Statute of the ESCB. In this connection the powers of the Governing Council of the ECB in respect of national central banks shall be the same as those conferred upon the Commission in respect of Member States by lit. a and b. If the Court of Justice finds that a national central bank has failed to fulfil an obligation under this Constitution, that bank shall be required to take the necessary measures to comply with the judgment of the Court of Justice²;
- l) in disputes concerning the fulfilment by Member States of obligations under the Statute of the EIB. In this connection, the Board of Directors of the Bank shall enjoy the powers conferred upon the Commission in lit. a and b³;
- m) in disputes concerning measures adopted by the Board of Governors of the EIB. In this connection, any Member State, the Commission or the Board of Directors of the Bank may institute proceedings under the conditions laid down in lit. c⁴;
- n) in disputes concerning measures adopted by the Board of Directors of the EIB. Proceedings against such measures may be instituted only by Member States or by the Commission, under the conditions laid down in lit. c , and solely on the grounds of non-compliance with the procedure provided for in Article 21 paragraph 2 and 5 to 7 of the Statute of the EIB⁵;
- o) in disputes between the Union, the ECB, the EIB or Europol and their servants within the limits and under the conditions laid down in the staff regulations or the conditions of employment (staff cases)⁶;
- p) to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the Union, the ECB, the EIB or Europol, whether that contract be governed by public or private law (arbitration cases)⁷;

¹ Cf. Article 235 EC.

² Cf. Article 237 (d) EC.

³ Cf. Article 237 (a) EC.

⁴ Cf. Article 237 (b) EC.

⁵ Cf. Article 237 (c) EC.

⁶ Cf. Article 236 EC

⁷ Cf. Article 238 EC.

- q) in any dispute between Member States which relates to the subject matter of this Constitution if the dispute is submitted to it under a special agreement between the parties (special agreement action)¹.

Article 82 (Preliminary rulings and opinions of the Court of Justice)

(1) The Court of Justice shall also have jurisdiction to give preliminary rulings concerning:

- a) the interpretation of this Constitution;
- b) the validity and interpretation of acts of the institutions of the Union, of the ECB and of Europol;
- c) the interpretation of the statutes of bodies established by an act of the Union, where those statutes so provide.

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice².

(2) The European Parliament, the Council, the Commission, the ECB 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 this Constitution. Where the opinion of the Court of Justice is adverse, the agreement may enter into force only in accordance with Article x + 4 (judicial ex-ante control of international agreements)³.

Article 83 (Reserve jurisdiction of national courts)⁴

Save where jurisdiction is conferred on the Court of Justice by this Constitution, disputes to which the Union is a party shall not on that ground be excluded from the jurisdiction of the courts or tribunals of the Member States.

¹ Cf. Article 239 EC.

² Cf. Article 234 EC.

³ Cf. Article 300 (6) EC.

⁴ Cf. Article 240 EC.

Chapter 5: The European Court of Auditors

Article 84 (Function and composition of the Court of Auditors; independence)¹

(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 activity².

(2) The Court of Auditors shall consist of one national from each Member State.

(2) 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.

(4) The members of the Court of Auditors shall be appointed for a term of six years. The Council, acting by a qualified majority with the approval of the European Parliament, shall adopt the list of members drawn up in accordance with the proposals made by each Member State. The term of office of the members of the Court of Auditors shall be renewable.

They shall elect the President of the Court of Auditors from among their number for a term of three years. The President may be re-elected.

(5) The members of the Court of Auditors shall, in the general interest of the Union, be completely independent in the performance of their duties.

In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties.

¹ Cf. Article 247 EC (as amended by the Treaty of Nice).

² Cf. Article 248 (1) EC (as amended by the Treaty of Nice).

Article 85 (European Central Bank; objectives and tasks; decision-making bodies; independence; submission to rule of law)¹

(1) The primary objective of the ECB shall be to maintain price stability². Without prejudice to the objective of price stability, the ECB shall support the general economic policies in the Union with a view to contributing to the achievement of the objectives of the Union as laid down in Article 58 paragraph 1 lit. a³. The ECB 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 60⁴.

(2) The main task of the ECB shall be to define and implement the monetary policy of the Union⁵. The ECB shall have the exclusive right to authorise the issue of euro banknotes within the Union⁶.

(3) The ECB shall have legal personality⁷. The national central banks shall be the sole subscribers to and holders of its capital⁸. Its decision-making bodies shall be the Executive Board and the Governing Council.

When implementing its tasks, the ECB shall make use of the European System of Central Banks (ESCB), composed of the ECB and of central banks of the Member States ("national central banks")⁹. The ESCB shall be governed by the decision-making bodies of the ECB¹⁰.

(4) The Executive Board of the ECB shall comprise the President, the Vice-President and four other members, all to 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

¹ Cf. **Article 22 of the Preliminary draft Constitutional Treaty of the Convention Presidium, with the title "European Central Bank". It is suggested to deal in this Article not only with the tasks of the ECB and with the composition of its decision-making bodies, but also to set out the independence of the ECB, in view of its constitutional importance, and also its primary objective. According to the Final Report of Working Group VI "Economic Governance" (p. 3), "a large number of members of the group consider that the tasks, mandate and statute of the European Central Bank should remain unchanged, and should not be affected by any new treaty provisions."**

² Cf. Article 105 (1), first sentence EC.

³ Cf. Article 105 (1), second sentence EC.

⁴ Cf. Article 105 (1), third sentence EC.

⁵ Cf. Article 105 (2), first indent EC.

⁶ Cf. Article 106 (1), first sentence EC.

⁷ Cf. Article 107 (2) EC.

⁸ Cf. Article 28.2 ESCB Statute.

⁹ Cf. Article 107 (1) EC.

¹⁰ Cf. Article 107 (3) EC.

States which have introduced the euro 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 ECB. Their term of office shall be eight years and shall not be renewable. Only nationals of the Member States which have introduced the euro may be members of the Executive Board¹.

The Governing Council of the ECB shall comprise the members of the Executive Board and the governors of the national central banks of the Member States which have introduced the euro².

(5) When exercising the powers and carrying out the tasks and duties conferred upon them by this Constitution and by the Statute of the ESCB, neither the ECB, nor a national central bank, nor any member of their decision-making bodies shall neither seek nor take instructions from any Union institution or body, 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 ECB or of the national central banks in the performance of their tasks³.

(6) The ECB shall act within the limits of the tasks and competences conferred upon them by Part Two of this Constitution and by the Statute of the ESCB⁴. It shall make good any damage caused by its decision-making bodies or servants in the performance of their duties; Article 41 paragraph 3 shall apply accordingly⁵.

Article 86 (European Investment Bank)⁶

(1) The EIB shall have the task to contribute, by having recourse to the capital market and utilising its own resources, to the balanced and steady development of the common market in the interest of the Union. For this purpose the EIB shall, operating on a non-profit making basis, grant loans and give guarantees which facilitate the financing of projects in the following sectors of the economy:

- a) projects for developing less-developed regions;

¹ Cf. Article 112 (2) EC.

² Cf. Article 112 (1) EC.

³ Cf. Article 108 EC.

⁴ Cf. Article 8 EC.

⁵ Cf. Article 288 (3) EC.

⁶ **The EIB has not been included in the Preliminary draft Constitutional Treaty of the Convention Presidium, even though it is mentioned in Part Five of the EC Treaty after the Community institutions.**

- b) projects for modernising or converting undertakings or for developing fresh activities called for by the progressive establishment of the common 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 States¹.

(2) The EIB shall have legal personality². Its members shall be the Member States³.

(3) The EIB shall act within the limits of the tasks and competences conferred upon it by Part Two of this Constitution and by the Statute of the EIB, annexed to this Constitution⁴. It shall make good any damage caused by its decision-making bodies or servants in the performance of their duties; Article 41 paragraph 3 shall apply accordingly⁵.

Article 87 (Europol)⁶

(1) The objective of Europol shall be to improve the effectiveness and cooperation of the competent authorities in the Member States in preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime where there are factual indications that an organized criminal structure is involved and two or more Member States are affected by the forms of crime in question in such a way as to require a common approach by the Member States owing to the scale, significance and consequences of the offences concerned⁷.

(2) Europol shall have legal personality⁸.

(3) The European Police Office (hereinafter referred to as “Europol”) shall act within the limits of the tasks and competences conferred upon it by Part Two of this Constitution and by the Europol-Agreement, annexed to this Constitution as a Protocol. Europol shall make good any damage caused by its decision-making bodies or servants in the performance of their duties; Article 41 paragraph 3 shall apply accordingly⁹.

¹ Cf. Article 267 (1), first sentence EC.

² Cf. Article 266 (1) EC.

³ Cf. Article 266 (2) EC.

⁴ Cf. Article 9 EC.

⁵ Cf. Article 288 (2) EC and Case C-270/89, *SGEEM and Etroy v. EIB* [1992] ECR I-6211.

⁶ Cf. the Europol-Agreement, concluded under the former Article K.3 EU.

⁷ Cf. Article 2 of the Europol-Agreement.

⁸ Cf. Article 26 (1) of the Europol-Agreement.

⁹ Cf. Article 39 (2) of the Europol-Agreement.

Chapter 7: Committee of the Regions; Economic and Social Committee

Article 88 (Committee of the Regions)

(1) The Committee of the Regions shall represent the regional and local bodies which either hold a regional or local authority electoral mandate or are politically accountable to an elected assembly¹. It shall ensure that the Union gives due regard to the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels. The Committee of the Regions shall be the guardian of the principles of subsidiarity and proximity to the Union's citizens².

(2) The composition and prerogatives of the Committee of the Regions are set out in Part Two of this Constitution.

Article 89 (Economic and Social Committee)

(1) The Economic and Social Committee shall represent the various economic and social components of organised civil society, and in particular include representatives of producers, farmers, carriers, workers, dealers, craftsmen, professional occupations, consumers and the general interest³. It shall ensure that the Union is in a constant dialogue and regularly with the organised civil society.

(2) The composition and prerogatives of the Economic and Social Committee are set out in Part Two of this Constitution.

¹ Cf. Article 263 (1) EC, as amended by the Treaty of Nice.

² Cf. para 50 of the EPP Congress document "A Constitution for a Strong Europe".

³ Cf. Article 257 (1) EC, as amended by the Treaty of Nice.

Chapter 8: The Union's Decentralised Bodies

Article 90 (Establishment of decentralised bodies; independent Anti-Trust Authority)

(1) In order to fulfil its tasks, the Union may, if necessary, establish bodies and provide them with legal personality by a Union act which also provides for judicial review of and liability for acts adopted by such bodies. Adoption of such a Union act shall require a proposal of the European Commission, the European Parliament acting by the majority of its members and the Council acting unanimously.

(2) Paragraph 1 shall also apply if Parliament and Council, following a proposal from the European Commission, decide to establish an independent Anti-Trust Authority of the Union.

Title V: Implementation of Union Action¹

Chapter 1: Union Instruments

Article 91 (List of Union instruments)²

(1) Within its field of competence, the Union shall act exclusively³, and in line with the principles of subsidiarity and proportionality, through

- Union acts and Union framework acts, enacted by the Union's legislature;
- Union regulations, enacted by the Union's executive⁴;
- Union decisions;
- Union recommendations;
- Union opinions.

(2) A Union act and a Union regulation shall have general application. They shall be binding in their entirety and directly applicable in all Member States.

(3) A Union framework act shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

(4) A Union decision shall be binding in its entirety upon those to whom it is addressed. They shall be notified to those to whom they are addressed and shall take effect upon such notification⁵.

(5) Union recommendations and Union opinions shall have no binding force.

(6) This provision shall be without prejudice to the regulatory competence of the ECB under Part Two of the Constitution⁶.

¹ **Title V as in the Preliminary draft Constitutional Treaty of the Convention Presidium.**

² **Cf. Article 249 EC. See also Article 24 as suggested by the Preliminary draft Constitutional Treaty of the Convention Presidium.**

³ **The insertion of “exclusively” makes the list of Union instruments exhaustive. This means that additional instruments, as they are currently used within the framework of the second pillar (CFSP common strategies, joint actions, common positions, cf. Articles 12-15 EU) and of the third pillar (common positions, framework decisions without direct effect, cf. Article 34 EU) will be abolished as a consequence of the extension of the Community method to all Union activities and in an endeavour to simplify the decision-making process of the Union. As an alternative, cf. Articles 29-31 of the Preliminary draft Constitutional Treaty of the Convention Presidium, which appear to intend to maintain the special legal instruments of the second and third pillar.**

⁴ Cf. points 10 and 12 of the Report by Alain Lamassoure.

⁵ Second sentence taken over from Article 254 (3) EC.

⁶ Cf. Article 110 EC.

Article 92 (Obligation to state reasons)¹

(1) Union acts, Union framework acts, Union regulations and Union decisions shall state the reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained pursuant to this Constitution.

(2) The reasons shall include an explanation why, from the point of view of the acting institution, a legal act complies with the principle of subsidiarity and with the principle of proportionality².

Article 93 (Enforcement of Union decisions)³

(1) Union decisions which impose a pecuniary obligation shall be enforceable.

(2) Enforcement shall be governed by the rules of civil procedure in force in the 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 to the Court of Justice.

(3) 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.

(4) 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.

¹ Cf. Article 253 EC.

² Cf. the proposal of Convention Working Group I “Subsidiarity” (Final Report) of a “subsidiarity sheet” to be attached by the Commission to all legislative proposals.

³ Cf. Article 256 EC.

Chapter 2: The Legislative Procedure of the Union¹

Article 94 (Principles of legislation; delegated legislation)

- (1) The legislation of the Union shall be implemented through Union acts and Union framework acts.
- (2) Union acts and Union framework acts are adopted jointly by the European Parliament (House of Citizens) and by the Council (House of States) according to the co-decision procedure (Article 95).
- (3) Where authorised by this Constitution or by a Union act, the Commission may make Union regulations while respecting content, purpose and limitation of the authorisation².

Article 95 (Co-decision procedure)³

- (1) Proposals for Union acts and Union framework acts shall be submitted by the Commission simultaneously to the European Parliament and the Council.
- (2) The Council, acting by a qualified majority after obtaining the opinion of the European Parliament,
 - if it approves all the amendments contained in the European Parliament's opinion, may adopt the proposed act thus amended;
 - if the European Parliament does not propose any amendments, may adopt the proposed act;
 - shall otherwise adopt a common position and communicate it to the European Parliament. The Council shall inform the European Parliament fully of the reasons which led it to adopt its common position.

If, within three months of such communication, the European Parliament:

- a) approves the common position or has not taken a decision, the act in question shall be deemed to have been adopted in accordance with that common position;

¹ **Cf. Article 25 of the Preliminary draft Constitution of the Convention Presidium.**

² Cf. points 10 and 12 of the Report by Alain Lamassoure.

³ Cf. Article 252 EC.

- b) rejects, by an absolute majority of its members, the common position, the proposed act shall be deemed not to have been adopted;
- c) proposes amendments to the common position by an absolute majority of its members, the amended text shall be forwarded to the Council and the Commission, which shall deliver an opinion on those amendments.

(3) If, within three months of the matter being referred to it, the Council, acting by a qualified majority, approves all the amendments of the European Parliament, the act in question shall be deemed to have been adopted in the form of the common position thus amended; however, the Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion. If the Council 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 according to Article 96.

Article 96 (Conciliation procedure)¹

(1) The Conciliation Committee shall be composed of members of the Council and an equal number of members of the European Parliament. The respective majority of members sent to the Conciliation Committee by the Council and by the European Parliament must be appointed at the beginning of a legislative period as permanent members of the Conciliation Committee for the whole legislative period.

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.

(2) The Conciliation Committee shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council and by a qualified majority of the members of the European Parliament. In fulfilling this task, the Conciliation Committee shall address the common position on the basis of the amendments proposed by the European Parliament.

(3) If, within six weeks 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 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.

¹ Cf. Article 251 (4) - (7) EC.

(4) Where the Conciliation Committee does not approve a joint text, the proposed act shall be deemed not to have been adopted.

(5) The periods 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.

(6) Whenever the Conciliation Committee is convened, the Commission shall send national Parliaments the Council's common position and the amendments adopted by the European Parliament. Each national Parliament may, within six weeks, send a reasoned opinion to the Presidents of the European Parliament, the Council and the Commission on the application of the principles of subsidiarity and proportionality¹.

Article 97 (Signature; publication; entry into force)²

(1) Union acts and Union framework acts shall be signed by the President of the European Parliament and by the President of the Council and published in the Official Journal of the European Union. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following that of their publication.

(2) Union regulations shall be signed by the President of the European Commission and published in the Official Journal of the European Union. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following that of their publication.

¹ Cf. the results of Convention Working Group I "Subsidiarity" (Final Report). This discussion paper understands political subsidiarity control in a broad sense, also including review of the principle of proportionality; cf. also the Final Report of Convention Working Group IV "National Parliaments".

² Cf. Article 254 EC.

Chapter 3: Enhanced Cooperation¹

Article 98 (Preconditions for enhanced cooperation)

(1) Member States which intend to establish enhanced cooperation between themselves may make use of the institutions, procedures and mechanisms laid down by this Constitution, provided that the proposed enhanced cooperation

- has been initiated by at least eight Member States;
- respects this Constitution and the exclusive competences of the Union; and
- is aimed at furthering the Union's objectives, at protecting and serving the Union's interests and at reinforcement the process of integration².

(2) Enhanced cooperation may be undertaken only as a last resort, when it has been established within the Council that the objectives of such cooperation cannot be attained within a reasonable period by applying the relevant provisions of this Constitution³.

(3) Member States which intend to establish enhanced cooperation between themselves in one of the areas referred to in this Constitution shall address a request to the Commission, which 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 establish enhanced cooperation shall be granted by the Council, acting by a qualified majority, on a proposal from the Commission and with the assent of the European Parliament, acting with a majority of its members.

A member of the Council may request that the matter be referred to the European Council. After that matter has been raised before the European Council, the Council may act in accordance with the first subparagraph of this paragraph⁴.

Article 99 (Decision making in enhanced cooperation; financing)

(1) For the purpose of the adoption of the acts and decisions necessary for the implementation of enhanced cooperation, the relevant institutional provisions of this Constitution shall apply. However, while all members of the Council shall be able to take part in the deliberations, only those representing Member States participating in enhanced cooperation shall take part in the adoption of decisions.

¹ **Cf. Article 32 of the Preliminary draft Constitutional Treaty of the Convention Presidium, according to which “enhanced cooperation” should be included in Title V “Implementation of Union Action.”**

² Cf. Articles 43 EU and 11 (1) EC (both as amended by the Treaty of Nice).

³ Cf. Article 43a EU (as introduced by the Treaty of Nice).

⁴ Cf. Article 11 EC and 40a EU (as amended by the Treaty of Nice).

Such acts and decisions shall not form part of the Union acquis¹.

(2) Member States shall apply, as far as they are concerned, the acts and decisions adopted for the implementation of the enhanced cooperation in which they participate. Such acts and decisions shall be binding only on those Member States which participate in such cooperation and, as appropriate, shall be directly applicable only in those States. Member States which do not participate in such cooperation shall not impede the implementation thereof by the participating Member States².

(3) 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, with the assent of the European Parliament decide otherwise³.

Article 100 (Openness for all Member States; coordination)

(1) When enhanced cooperation is being established, it shall be open to all Member States. The Commission and the Member States participating in enhanced cooperation shall ensure that as many Member States as possible are encouraged to take part⁴.

(2) Any Member State which wishes to participate in enhanced cooperation shall notify its intention to the Council and the Commission, which shall give an opinion to the Council within three months of the date of receipt of that notification. Within four months of the date of receipt of that notification the Commission shall take a decision on the request and on possible specific arrangements as it may deem necessary⁵.

(3) The Council and the Commission shall ensure the consistency of activities undertaken on the basis of enhanced cooperation and the consistency of such activities with the policies of the Union, and shall cooperate to that end⁶.

¹ Cf. Article 44 (1) EU (as amended by the Treaty of Nice).

² Cf. Article 44 (2) EU.

³ Cf. Article 44a EU (as introduced by the Treaty of Nice).

⁴ Cf. Article 43b EU (as introduced by the Treaty of Nice).

⁵ Cf. Article 11a EC (as introduced by the Treaty of Nice).

⁶ Cf. Article 45 EU (as introduced by the Treaty of Nice).

Title VI: The Democratic Life of the Union¹

Article 101 (Equality before the Union's institutions)²

All citizens of the Union are equal vis-à-vis the Union's institutions.

Article 102 (Principle of participatory democracy)³

(1) The Union's democratic system is based on the principle of government of the people, by the people and for the people.

(2) The Union's institutions shall ensure a high level of openness, permitting citizens' organisations of all kinds to play fully in the Union's democratic life.

(3) The political parties shall constitute their internal organisation on a democratic basis. They shall nominate their candidates for the European Parliament according to democratic procedures. In accordance with Article 11 paragraph 2, a Union act shall lay down the regulations governing political parties at European level and in particular the rules regarding their funding.

Article 103 (Elections to the European Parliament)⁴

One year before the first European Parliament elections under this Constitution, the European Parliament shall draw up a proposal 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.

¹ Title VI as suggested the Preliminary draft Constitutional Treaty of the Convention Presidium.

² As suggested with Article 33 of the Preliminary draft Constitutional Treaty of the Convention Presidium. It should be discussed whether the good purpose behind this new provision is not already fully met by the equality rights under Articles 20, 21 and 23 of the Charter of Fundamental Rights, here inserted at the beginning of the Constitution.

³ As suggested with Article 34 of the Preliminary draft Constitutional Treaty of the Convention Presidium. Para 1 is taken from Article 2 of the Constitution of the French Republic, in fine, where it is mentioned as principle of the Republic: "Gouvernement du peuple, par le peuple et pour le peuple." Para 2 is taken from the summary description of Article 34 of the Preliminary draft Constitutional Treaty of the Convention Presidium. Para 3 is taken from Article 191 EC (as amended by the Treaty of Nice).

⁴ Cf. Article 190 (4) EC. According to Article 35 of the Preliminary draft Constitutional Treaty of the Convention Presidium, this provision should only refer to a protocol which itself would lay down the election procedure.

The Council shall, acting unanimously after obtaining the assent of the European Parliament, which shall act by a majority of its members, lay down the appropriate provisions before the first European Parliament elections under this Constitution.

Article 104 (Principle of openness)

(1) All sessions of the European Parliament shall be open to the public. The minutes shall be published.

(2) Whenever the Council acts as House of States in the legislative process, it shall meet in public and its minutes shall be published.

Article 105 (Voting rules in Parliament and Council) ¹

(1) The European Parliament shall act by an absolute majority of the votes cast, save as otherwise provided in this Constitution. The European Parliament's Rules of Procedure shall determine the quorum.

(2) The Council shall act by a majority of its members, save as otherwise provided in this Constitution,

Where the Council is required to act by a qualified majority, the assent of the majority of members of the Council representing 50 % of the total population of the Union is necessary.

Where a vote is taken, any member of the Council may also act on behalf of not more than one other member².

(3) Abstentions by members present in person or represented shall not prevent the adoption by the Council of acts which require unanimity³.

(4) Where an enhanced cooperation is established in accordance with Articles 98-100 of this Constitution, the qualified majority required under paragraph 2 shall be defined as the majority of the members of the Council, which participate in the enhanced cooperation, representing 50 % of the population of the Member States participating in the enhanced cooperation. Unanimity shall be constituted by only those Council members concerned.

¹ Cf. Article 198 EC.

² Cf. Article 206 EC.

³ Cf. Article 205 (3) EC.

Article 106 (Annual legislative programme; annual general report)¹

(1) At 1 November, the Commission shall forward the annual legislative programme of the Union for the following year to the European Parliament, the Council, each national parliament, the Committee of the Regions and the Economic and Social Committee.

(2) 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.

(3) The European Parliament and the Council shall discuss in open session the annual legislative programme and the general report submitted to them by the Commission.

A.

Article 107 (Ombudsman)²

(1) The European Parliament shall appoint an Ombudsman 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 institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role (Article 43 of the Constitution).

In accordance with his duties, the 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 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 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 Ombudsman shall submit an annual report to the European Parliament on the outcome of his inquiries.

¹ Cf. Articles 200 and 212.EC.

² **Cf. Article 195 EC. Even though not mentioned in the Preliminary draft Constitutional Treaty of the Convention Presidium, this discussion papers considers the Ombudsman to be a body of such importance for the democratic life of the Union that it should be included in this Title of the Constitution.**

(2) The Ombudsman shall be appointed after each election of the European Parliament for the duration of its term of office. The Ombudsman shall be eligible for reappointment.

The 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 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 Ombudsman may not, during his term of office, engage in any other occupation, whether gainful or not.

(4) The European Parliament shall, after seeking an opinion from the Commission and with the approval of the Council acting by a qualified majority, lay down by Union act the regulations and general conditions governing the performance of the Ombudsman's duties.

Title VII: The Finances of the Union¹

Article 108 (Budgetary principles)

- (1) The Union shall provide itself with the means necessary to attain its objectives and carry through its policies².
- (2) All items of revenue and expenditure of the Union shall be included in estimates to be drawn up for each financial year and shall be shown in the budget³.
- (3) The revenue and expenditure shown in the budget shall be in balance⁴. Deficits in the Union budget shall be prohibited.

Article 109 (Financing from own resources)⁵

- (1) Without prejudice to other revenue, the Union's budget shall be financed wholly from own resources.
- (2) The total amount of own resources assigned to the Union is laid down in a Union act. By way of derogation from Article 95, such a Union act shall be approved by the Council, acting unanimously, and the Parliament, assenting the act with the majority of its members.
- (3) Revenue from the following shall constitute own resources entered in the budget of the European Union:
- a) levies, premiums, additional or compensatory amounts, additional amounts or factors and other duties established or to be established by the institutions of the Union in respect of trade with non-member countries within the framework of the common agricultural policy, and also contributions and other duties provided for within the framework of the common organisation of the markets in sugar;

¹ **Title VII as suggested by the Preliminary draft Constitutional Treaty of the Convention Presidium.**

² Cf. Article 6 (4) EU.

³ Cf. Article 268 (1) EC.

⁴ Cf. Article 268 (3) EC. Cf. also **Article 39 of the Preliminary draft Constitutional Treaty of the Convention Presidium.**

⁵ **Cf. Article 269 EC and Council Decision of 31 October 1994 on the system of the European Communities' own resources. Cf. also Article 38 of the Preliminary draft Constitutional Treaty of the Convention Presidium.**

- b) Common Customs Tariff duties and other duties established or to be established by the institutions of the Union in respect of trade with non-member countries;
 - c) the application of a uniform rate valid for all Member States to the Value Added Tax assessment base which is determined in a uniform manner for Member States according to Union rules.
 - d) the application of a rate – to be determined pursuant to the budgetary procedure in the light of the total of all other revenue – to the sum of all the Member States' Gross National Product established in accordance with the Union rules;
 - e) revenue deriving from any new charges introduced within the framework of a common policy;
 - f) revenue deriving from a tax of the Union, if it is established by Union act; by way of derogation from Article 95, such a Union act shall be approved by the Council, acting unanimously, and the European Parliament assenting the act by a majority of its members.
- (4) The own resources of the Union shall be limited to 1,27% of the total of the Member States' Gross Domestic Products for the year at market prices. This limit may be amended by a joint decision of the Council, acting unanimously, and the European Parliament, acting with the majority of its members, which requires ratification by two thirds of the national Parliaments.
- (5) Details concerning the system of own resources shall be laid down by Union act.

Article 110 (Budgetary authority; budgetary procedure)¹

- (1) The European Parliament and the Council shall be the two equal branches of the Union's budgetary authority.
- (2) The preliminary draft budget shall be proposed to the European Parliament and the Council by the Commission on the basis of estimates drawn up by each institution of the Union.

¹ Para 4 corresponds to Article 270 EC. The rest of the provision is drawn from Article 272 EC, but has been considerably reworded to reflect the new principle expressed now in para 1. Cf. also para 35 of the EPP Congress Document "A Constitution for a Strong Europe":
 "Budgetary competence should be shared between the European Parliament and the Council."

(3) The budget shall be adopted jointly by the European Parliament, acting with the majority of its members, and the Council, acting by qualified majority, on a proposal by the Commission.

(4) With a view to maintaining budgetary discipline, the Commission shall not make any proposal for a legal act of the Union, or alter its proposals, or adopt any implementing measure which is likely to have appreciable implications for the budget without providing the assurance that that proposal or that measure is capable of being financed within the limits of the Union's own resources.

(5) The details of the budgetary procedure shall be determined in an inter-institutional agreement between the European Parliament, the Council and the Commission.

Article 111 (Accounting and discharge)¹

(1) The Commission shall submit annually to the Council and to the European Parliament the accounts of the preceding financial year relating to the implementation of the budget. The Commission shall also forward them a financial statement of the assets and liabilities of the Union.

(2) The European Parliament, acting on a recommendation from the Council which shall act by a qualified majority, and after having consulted the Court of Auditors, shall give a discharge to the Commission in respect of the implementation of the budget.

(3) 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 extension 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.

(4) 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.

¹ Cf. Article 275 EC.

Title VIII: Union Action in the World¹

Article 112 (External representation of the Union)²

(1) The Commission represents the Union in its external relations.

(2) It shall be for the Commission to ensure the maintenance of close relations with the organs of the United Nations and of its specialised agencies, with the Council of Europe and with the Organisation for Economic Cooperation and Development.

The Commission shall also maintain such relations as are appropriate with all international organisations.

(3) The Commission takes the decisions adopted under this Title into account. The Commission shall keep the European Parliament and the Council regularly informed regarding the state of the Union's external relations.

Article 113 (Agreements with third states and organisations; participation of the European Parliament)³

(1) Where agreements with one or more states or international organisations need to be negotiated within the Union's field of competences, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations.

The Commission shall conduct these negotiations in consultation with a special committee to assist it in this task. This committee shall be composed of an equal number of representatives of the Council and of the European Parliament.

(2) Subject to the powers vested in the Commission in this field, the signing, which may be accompanied by a decision on provisional application before entry into force, and on the conclusion of the agreements shall be decided on by the Council, acting by qualified majority on a proposal from the Commission and with the advice and assent of the European Parliament.

¹ **Title VIII as suggested by the Preliminary draft Constitutional Treaty of the Convention Presidium.**

² **As suggested in the summary description of Article 41 of the Preliminary draft Constitutional Treaty of the Convention Presidium, this provision sets out who represents the Union in international relations. As this discussion paper intends to entrust external representation to the Commission (the Commissioner for Foreign Relations), it does not provide for a role of the current High Representative for Common Foreign and Security Policy.**

³ **Cf. Articles 133, 300 EC, which have been merged and modified to enable the European Parliament to play a more important role in the exercise of the Union's treaty-making power. This discussion paper takes the view that in view of the constitutional significance of the exercise of the treaty-making power, it should be included in Part One of the Constitution.**

The Council shall act unanimously and with the advice and assent of the majority of the members of the European Parliament when one of the following agreements shall be concluded:

- agreements referred to in Article 116 or other agreements establishing a specific institutional framework by organising cooperation procedures;
- agreements having important budgetary implications for the Union
- agreements entailing amendments of an act adopted under the procedure referred to in Article 95;
- agreements covering a field for which unanimity in the Council and the assent of the European Parliament is required for the adoption of internal rules.
- an agreement on the accession of the Union to the European Convention on Human Rights¹.

The same procedure shall apply for a decision to suspend the application of an agreement, and for the purpose of establishing the positions to be adopted on behalf of the Union 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.

The Council and the European Parliament may, in an urgent situation, agree upon a time-limit for the assent.

(3) When concluding an agreement, the Council may, by way of derogation from paragraph 2, authorise the Commission to approve modifications on behalf of the Union 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.

(4) When the Council envisages concluding an agreement which calls for amendments to this Constitution, the amendments must first be adopted in accordance with the procedure laid down in Article x + 4.

¹ Convention Working Group II “Charter” (Final Report, p. 13) recommends “that a legal basis should be inserted at an appropriate place in the Constitutional Treaty which would authorise the Union to accede to the ECHR. The drafting of such legal basis could be kept fairly simple. Given the constitutional significance of possible accession, it should however also be specified that the signature and conclusion of the accession treaty require a decision by the Council by unanimity and the assent of the European Parliament; otherwise, the normal procedure for international agreements would apply.”

(5) Agreements concluded under the conditions set out in this Article shall be binding on the institutions of the Union and the Member States.

Article 114 (International agreements concerning monetary or foreign exchange regime matters; external representation; participation of the ECB)¹

(1) By way of derogation from Article 113, 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-Union 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 to the euro central rates.

(2) In the absence of an exchange-rate system in relation to one or more non-Union currencies as referred to in paragraph 1, the Council, acting by a qualified majority either on 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 ECB to maintain price stability.

(3) By way of derogation from Article 113, where agreements concerning monetary or foreign exchange regime matters need to be negotiated by the Union 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 Union expresses a single position without prejudice to the allocation of powers laid down in Article 112 paragraph 1 and the fields of competence of the ECB.

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

(4) External representation in the field of economic and monetary union shall be ensured by the Commission with regard to economic policy², and by the ECB with regard to monetary policy³. The

¹ Cf. Article 111 EC.

² Cf. Article 111 (4), which has left this issue for a Council decision. However, until now no such Council decision could be taken because of the difficulty of the matter. Therefore, this discussion paper takes the view that the matter must now be settled by the Constitution itself in order to ensure an efficient external representation also in economic and monetary matters.

³ Cf. Article 6 ESCB Statute.

Commission and the ECB shall jointly, in a spirit of sincere cooperation, decide upon the details and procedures of this external representation, with due respect to the statutory requirements of international economic and monetary organisations and to the independence of the ECB. The European Parliament and the Council shall be regularly informed about the external activities in the field of economic and monetary union.

Article 115 (Relation to previous treaties of the Member States; Union of the Benelux-States)¹

- (1) The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of this Constitution.
- (2) To the extent that such agreements are not compatible with this Constitution, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude.
- (3) In applying the agreements referred to in the first paragraph, Member States shall take into account the fact that the advantages accorded under this Constitution by each Member State form an integral part of the establishment of the Union and are thereby inseparably linked with the creation of common institutions, the conferring of powers upon them and the granting of the same advantage by all the other Member States.
- (4) The provisions of this 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 unions are not attained by application of this Constitution.

¹ Cf. Articles 306, 307 EC.

Title IX: The Union and its Immediate Environment¹

Article 116 (Association with third States and international organisations; European partnership)

(1) The Union may conclude with one or more States or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure².

(2) With its neighbouring states, the Union may inter into special association agreements (“European partnerships”) which, in addition to an extension of parts of or all rules related to the common market, may also provide for the establishment of joint institutions or allow for associate participation of representatives of these states in the work of the Union institutions³.

¹ **As suggested by Title IX of the Preliminary draft Constitutional Treaty of the Convention Presidium.**

² Cf. Article 310 EC.

³ **This follows the summary description of Article 42 of the Preliminary draft Constitutional Treaty of the Convention Presidium, which provides for the possibility of “a privileged relationship between the Union and its neighbouring States”. See also para 6 of the EPP Congress Document “A Constitution for a Strong Europe”, where the EPP proposes a European Partnership similar to the EEA, but including a political component.**

Title X: Union Membership¹

Article 117 (Openness to new Member States)²

Union membership shall be open to all European States which share the Union's values and wish to pursue them jointly, which strictly respect the Charter of Fundamental Rights and which accept the Union's rules of operation.

Article 118 (Accession of new Member States)³

(1) An application for Union membership shall be addressed to the Commission.

(2) The conditions of admission shall be the subject of an agreement between the Union and the applicant State. By way of derogation from Article 113, such an agreement shall require a unanimous decision of the Council and the assent of 2/3 of the members of the European Parliament.

(3) Article x + 4 shall apply for the adjustments to the Constitution which such admission entails. The procedure as provided for in Article x + 4 paragraph 2 may be reduced to six months on a proposal from the Commission with the approval of the Council and the assent of the European Parliament.

¹ **Takes over Title X “Union Membership” of the Preliminary draft Constitutional Treaty of the Convention Presidium. However, this discussion paper does not provide for a procedure on voluntary withdrawal, as suggested in Article 46 of Preliminary draft Constitutional Treaty. First of all, the necessity for and desirability of such a procedure – which is not part of the *acquis communautaire* – remains to be discussed. Second, the effect of a right to withdraw on the nature of the Union and of the mutual obligations of solidarity should be considered. Third, the compatibility of such a procedure with other provisions of this Constitution should be analysed, in particular with the provisions enshrining the “irreversibility” and “irrevocability” of the third stage of Economic and Monetary Union (cf. the Protocol on the transition to the third stage of economic and monetary union). Fourth, if a right of withdrawal were to be included in the Constitution, also the possibility of expulsion of a Member would have to be analysed (currently, the *acquis* provides only for a suspension of membership rights, which leaves Union membership as such of the member in question unaffected). All these issues should be discussed extensively in the plenary of the Convention. It should be noted, however, that this discussion paper provides for a special right of withdrawal in the context of future revisions of the Constitution.**

² **Cf. Article 49 (1), first sentence EU and Article 43 of the Preliminary draft Constitutional Treaty of the Convention Presidium.**

³ **Cf. Article 49 (1), second sentence, (2) EU and Article 44 of the Preliminary draft Constitutional Treaty of the Convention Presidium.**

Article 119 (Suspension of Union membership rights)¹

(1) On a reasoned proposal by one third of the Member States, by the European Parliament or by the Commission, the Council, acting by a majority of four-fifths of its members after obtaining the assent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of principles mentioned in Article 57 (1), and address appropriate recommendations to that State. Before making such a determination, the Council shall hear the Member State in question and, acting in accordance with the same procedure, may call on independent persons to submit within a reasonable time limit a report on the situation in the Member State in question.

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

(2) The Council, meeting in the composition of the Heads of State or Government and acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the assent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of principles mentioned in Article 57 (1), after inviting the government of the Member State in question to submit its observations.

(3) Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of this Constitution to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

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

(4) The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken under paragraph 3 in response to changes in the situation which led to their being imposed.

(5) For the purpose of this Article, the Council shall act without taking into account the vote of the representative of the government of the Member State in question. Abstentions by members present in person or represented shall not prevent the adoption of decisions referred to in paragraph 2. Article 105 paragraph 2 shall apply without taking into account the Member State in question.

¹ Cf. Article 7 EU (as amended by the Treaty of Nice) and Article 309 EC.

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

(6) For the purpose of paragraph 1 and 2, the European Parliament shall act by a two-thirds majority of the votes cast, representing a majority of its members.

PART TWO:
UNION POLICIES AND THEIR IMPLEMENTATION

The existence, scope and purpose of a Part Two of the Constitution, as well as its relationship with Part One and the procedures for its amendment, have not yet been determined in the Convention. Essentially, there are 2 options:

Option 1¹: *Part Two could include all the legal bases for Union action in the field of the common market, EMU, common foreign and security policy, defence, internal security etc. For each area it would specify the type of competence (Title III) and the acts and procedures (Title V) to be applied, in line with what is decided for Part One.*

*Option 1 would have the advantage of leaving the existing *acquis communautaire* mostly intact, only requiring a number of technical amendments. However, it would also mean that in the second of three parts of the Constitution, there would be a bulk of text (414 provisions, according to an estimate of President Valéry Giscard d'Estaing) which would be hardly accessible for the reader. In addition, the importance of Part One of the Constitution, in particular of its Title III and its Title V would be considerably reduced. Provisions listing the Union competences would be either superfluous or be nothing more than an illustration, as one would always have to look into Part Two to find out if and how the Union is entitled to act.*

Option 2²: *All the competences of the Union would result only from Part One, Title III, which would define and list, in an exhaustive manner, all the own, shared and complementary competences of the Union and serve as the legal basis for all Union action. The instruments and procedures of Union action would result from Part One, Title V and VI. Part Two (which could be either inserted in the Constitution or added to it as one or several Protocols) would only include provisions of the *acquis* which include neither competences nor procedures, such as the 4 fundamental economic freedoms, the competition rules, the principles and transitory rules on EMU as well as details on the functioning of the Union institutions not included in Part One.*

*The advantage of this Option 2 would be an increased transparency and accessibility of the Constitution, which also would be much shorter than the existing *acquis*. Option 2 would however require a considerable drafting exercise in which the whole *acquis* would have to be analysed to identify the nature of the competences of the Union and the instruments available for implementing them. This exercise has already been done, at least to a large extent, in the report of Alain Lamassoure on the division of competences between the Union and the Member States. In addition, the advisory functions of the Committee of the Regions and of the Economic and Social Committee would have to be integrated into Part One.*

¹ **Option 1 appears to be the background of the Part Two suggested in the Preliminary draft Constitutional Treaty of the Convention Presidium. Cf. the summary description thereof,**

² **Option 2 was the preferred option at the EPP Convention Group study days in Frascati as only this option allows for settling all “power issues” already in Part One of the Constitution.**

Preliminary Draft Structure of Part Two of the Constitution
under Option 2:

Part Two would only include

- economic freedoms and obligations of the citizens and undertakings in the internal market (four fundamental freedoms, competition rules)
- obligations of the Member States (such as to guarantee free movement of goods and services or to abolish discriminatory trade monopolies or prohibition of excessive deficits)
- special rules on procedures (such as state aid surveillance, multilateral surveillance of economic policies)
- special rules on institutions (such as rules on Court of First Instance, composition of Economic and Financial Committee and Employment Committee)
- possibly policy principles to guide Union action in specific areas (such as the goals of agriculture policy).

Under Option 2, Part Two would include approximately 180-200 Articles, which could, through a textual modernisation and better structure, be further reduced to around 100-120 Articles.

TITLE I: COMMON MARKET

Chapter 1: Free movement of goods

Articles 23, 24, 25, 27, 28, 29, 30, 31 EC

Chapter 2: Agriculture

Articles 32, 33, 38 EC

Chapter 3: Free movement of persons, services and capital

Articles 39, 41, 43, 45 (1), 46 (1), 48, 49, 50, 51, 53, 55, 56, 58 EC

Chapter 4: Competition Rules

Articles 81, 82, 84, 85, 86, 87, 88 EC

Chapter 4: Taxation

Articles 90, 91, 92 EC

Chapter 5: Employment

Articles 125, 126, 127, 128, 130

Chapter 6: Social policy, education, vocational training and youth

Articles 136, 141 (1), (2) + (4), 142, 143, 145, 146, 147, 148, 149 (1)-(2)

Chapter 7: [...] *to be continued following the Titles of Part Three of the EC Treaty*

TITLE II: ECONOMIC AND MONETARY UNION

(should be integrated into Part Two as such, as not all Member States fully participate in the single currency and as different procedures apply)

Chapter 1: Economic Policy

Articles 98, 99, 100, 101, 102, 103, 104 EC

Chapter 2: Monetary Policy

Articles 105, 106, 107, 108, 109, 110, 111 (already in Part One) EC

Chapter 3: Institutional Provisions

Articles 112, 113, 114, 115 EC

Chapter 4: Transitional provisions

Article 116, 117, 118, 119, 120, 121, 122, 123, 124 EC

TITLE III: INTERNAL SECURITY

(could include elements of former 3rd pillar provisions, to which now the Community method should be applied)

TITLE IV: COMMON FOREIGN AND SECURITY POLICY

(could include elements of former 2nd pillar provisions, to which now the Community method should be applied)

TITLE IV: DEFENCE

(could include, for those Member States participating in this title, mutual defence obligations, as currently included in the WEU Treaty)

TITLE V: EURATOM

(could include the policy principles of the Euratom Treaty)

TITLE VI: THE FUNCTIONING OF THE UNION INSTITUTIONS

(could include those provisions on the institutions which are currently part of the EC Treaty, but not included in Part One of the Constitution; e.g. the rules on the Court of First Instance and on the judicial panels at the ECJ)

It would have to be checked whether the content of the following Articles has already been adequately included in Title III of Part One on Union Competences or elsewhere in the Constitution.

Articles 26, 34, 35, 36, 37, 40, 42, 44, 45 (2), 46 (2), 47, 52, 57, 59, 60, 61-69 (visa, asylum), 70-80 (transport), 83, 89, 93, 94, 95, 96, 97, 129, 131-134 (common commercial policy), 135, 137-140, 141 (2) (social policy), 149 (4), 150, 151 (culture)*(to be continued)*

PART THREE:
GENERAL AND FINAL PROVISIONS¹

¹ **Part Three as suggested by the Preliminary draft Constitutional Treaty of the Convention Presidium. The numbers of the following articles will depend on the length and final place of Part Two of the Constitution.**

Final Title

Article x (Legal continuity in relationship to the European Community and the European Union)¹

(1) The European Union established by this Constitution shall be the immediate successor to the European Community, the European Atomic Energy Community and the European Union established by the Treaty of Maastricht.

(2) When this Constitution enters into force, the European Community and the European Atomic Energy Community are dissolved. The European Union shall take over all the assets and liabilities of the European Community and the European Atomic Energy Community.

Article x + 1 (Territorial application of the Constitution)²

(1) This 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 and the United Kingdom of Great Britain and Northern Ireland. [*the accession countries will have to be added after completion of the accessions*].

(2) This Constitution shall apply to the French overseas departments, the Azores, Madeira and the Canary Islands.

However, taking account of the structural social and economic situation of the French overseas departments, the Azores, Madeira and the Canary Islands, which is compounded by their remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development, a Union act shall govern specific measures aimed, in particular, at laying down the conditions of application of this Constitution to those regions, including common policies.

The Union act according to subparagraph 2 shall take into account areas such as customs and trade policies, fiscal policies, free zones, agriculture and fisheries policies, conditions for supply of raw

¹ **Cf. Article x of the Preliminary draft Constitutional Treaty of the Convention Presidium. In this discussion paper, the repeal of previous Treaties is already be dealt with in Article 56 (3) of the Constitution.**

² Articles 299 EC, 198 EURATOM. **Cf. Article x + 1 of the Preliminary draft Constitutional Treaty of the Convention Presidium.**

materials and essential consumer goods, State aids and conditions of access to structural funds and to horizontal Union programmes.

The Union act referred to in subparagraph 2 shall take into account the special characteristics and constraints of the outermost regions without undermining the integrity and the coherence of the Union legal order, including the internal market and common policies.

(3) The special arrangements for association set out in Constitutional Protocol No. 1 shall apply to the overseas countries and territories listed in Annex II to this Constitution.

This Constitution shall not apply to those overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not included in the aforementioned list.

(4) The provisions of this Constitution shall apply to the European territories for whose external relations a Member State is responsible.

(5) The provisions of this Constitution shall apply to the Åland Islands in accordance with the provisions set out in Protocol No. 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) this Constitution shall not apply to the Faeroe Islands;
- b) this Constitution shall not apply to the Sovereign Base Area of the United Kingdom of Great Britain and Northern Ireland in Cyprus;
- c) this 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 x + 2 (System of property ownership)¹

This Constitution shall in no way prejudice the rules in Member States governing the system of property ownership.

Article x + 3 (Protocols as integral part of this Constitution)²

(1) The protocols annexed to this Constitution by common accord of the Member States shall form an integral part thereof.

(2) Paragraph 1 shall also apply to protocols annexed to the Treaty establishing the European Community, the Treaty establishing the European Atomic Energy Community, the Treaty on European Union, a Treaty of Amendment or a Treaty of Accession. References to the Treaty on European Union or to the Treaties of the European Communities contained in these protocols shall be regarded as references to the corresponding provisions of this Constitution. The Commission shall draw up a consolidated version of these protocols.

Article x + 4 (Procedure for revision of the Constitution)³

(1) The government of any Member State, the European Parliament and the Commission may submit to the Council proposals for the amendment of the Constitution.

(2) The Amendment of the Constitution shall be prepared by a Constitutional Convention which shall be convened by the Council after consulting the European Parliament and the Commission, and which shall within one year draw up a final document containing a detailed draft text.

The Constitutional Convention shall be composed of:

- a Convention Chairman appointed by the Council with the approval of the European Parliament;
- a representative delegated by the government of each Member State;

¹ **Cf. Article 295 EC. This important provision is not included in the current Preliminary draft Constitutional Treaty of the Convention Presidium.**

² **Cf. Article 311 EC. Cf. Article x + 2 of the Preliminary draft Constitutional Treaty of the Convention Presidium.**

³ Incorporates the Convention method in the Constitution, as also suggested by Working Group IV “National Parliaments” (Final Report, para 28). **Cf. also Article x + 3 of the Preliminary draft Constitutional Treaty of the Convention Presidium.**

- two representatives delegated by the national parliaments of each Member State;
- 34 members of the European Parliament;
- four members of the European Commission.

Two delegates of the ECB shall also participate in the Constitutional Convention in the case of institutional changes in the monetary area.

The President of the European Court of Justice, the President of the European Court of Auditors, the President of the Committee of the Regions and the President of the Economic and Social Committee and the Ombudsman may each delegate one observer to the Constitutional Convention.

(3) The constitutional amendment adopted by the Constitutional Convention must be confirmed by a conference of representatives of the governments of the Member States. This conference shall be convened by the President of the Council immediately subsequent to the Convention.

(4) The constitutional amendment shall enter into force after having been assented by the European Parliament and being ratified, in accordance with their respective constitutional requirements, by a majority of Member States, representing 4/5th of the Union's population¹.

Article x + 5 (Period of validity)²

This Constitution is established for an unlimited period.

Article x + 6 (Ratification of the Constitution; entry into force)³

(1) This 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.

¹ Cf. Article 47 of the European Parliament's Herrmann Report.

² **Cf. Article 312 EC. Cf. also Article x + 5 of the Preliminary draft Constitutional Treaty of the Convention Presidium.**

³ **Cf. Article 52 EU. Cf. also Article 47 of the European Parliament's Herrmann Report. A ratification clause is also provided in Article x + 4 of the Preliminary draft Constitutional Treaty of the Convention Presidium,**

(2) For the Member States which have ratified it, this Constitution shall enter into force on the first day of the month following the deposit of the instrument of ratification by the twelfth signatory state to take this step. The other Member States will have to decide, within one year following the entry into force of this Constitution, whether they want to be member of the Union on the basis of this Constitution or to leave the Union. Special association agreements (Article 116) shall be concluded with those Member States which decide to leave the Union¹.

Article x + 7 (Authentic text)²

(1) This Constitution, drawn up in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages [*the languages of the accession countries will have to be added after completion of the accessions*], 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.

(2) Every citizen of the Union shall receive a free copy of this Constitution from the Member State in which he or she resides, in the official language(s) of this Member State.

¹ Should be further discussed.

² **Cf. Article 314 EC. Cf. also Article x + 6 of the Preliminary draft Constitutional Treaty of the Convention Presidium,**

ANNEX I: List of Protocols Annexed to the Constitution

(some of these Protocols could be integrated into Part Two of the Constitution)

- Protocol annexed to the Treaty on European Union and to the Treaties establishing the European Communities
- Protocol on the enlargement of the European Union
- Protocol on the location of seats of the institutions and of certain bodies and departments of the European Communities and Europol
- Protocol on the role of national parliaments in the European Union
- Protocol on the Statute of the Court of Justice of the European Community
- Protocol integrating the Schengen acquis into the framework of the European Union
- Protocol on the position of Denmark
- Protocol on the Statute of the European Investment Bank
- Protocol on the excessive deficit procedure
- Protocol on the application of certain aspects of Article 14 (ex-Article 7 a) of the Treaty establishing the European Community to the United Kingdom and Ireland
- Protocol on the position of the United Kingdom and Ireland
- Protocol on Article 17 (ex-Article J.7) of the Treaty on the European Union
- Protocol on the acquisition of property in Denmark
- Protocol on Article 141 (ex-Article 119) of the Treaty establishing the European Community
- Protocol on the Statute of the European Systems of Central Banks and on the European Central Bank
- Protocol on the Statute of the European Monetary Institute

- Protocol on the convergence criteria referred to in Article 121 (ex-Article 109 j) of the Treaty establishing the European Community
- Protocol on Denmark
- Protocol on Portugal
- Protocol on certain provisions relating to Denmark
- Protocol on France
- Protocol on the transition to the third stage of economic and monetary union
- Protocol on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland
- Protocol on economic and social cohesion
- Protocol on asylum for nationals of Member States of the European Union
- Protocol on the application of the principles of subsidiarity and proportionality
- Protocol on external relations of the Member States with regard to the crossing of external borders
- Protocol on the system of public broadcasting in the Member States
- Protocol on protection and welfare of animals
- Protocol on the financial consequences of the expiry of the ECSC Treaty and on the research fund for coal and steel
- Protocol on Article 67 of the Treaty establishing the European Community
- *Protocol (new) on the status of churches and non-confessional organisations (= Declaration No 11 annexed to the final act of Amsterdam)*
- *Protocol (new) on the integration of Europol in the organisational structure of the European Union*

ANNEX II: List of Overseas Countries and Territories
(text not reproduced)
