

CONV 829/03

BEGELEIDENDE NOTA

van: het secretariaat

aan: de Conventie

Betreft: brief van de heer Giuliano Amato, namens de Partij van de Europese Sociaal-democraten, de heer Elmar Brok, namens de Europese Volkspartij en de heer Andrew Duff, namens de Europese Liberale en Democratische Partij.

Hierbij gaat voor de leden van de Conventie een brief die de voorzitter van de Conventie op 8 juli 2003 heeft ontvangen van de heer Giuliano Amato, namens de Partij van de Europese Sociaal-democraten, de heer Elmar Brok, namens de Europese Volkspartij en de heer Andrew Duff, namens de Europese Liberale en Democratische Partij.

THE EUROPEAN CONVENTION

From Mr Giuliano Amato on behalf of the Party of European Socialists, Mr Elmar Brok on behalf of the European People's Party, and Mr Andrew Duff on behalf of the European Liberal, Democrat and Reform Party

President Valéry Giscard d'Estaing
European Convention
Rue de la Loi 175
1048 Brussels

7 July 2003

Dear President,

Further to the meeting of the Convention last Friday, we are writing to affirm our support, on behalf of our three political families represented in the Convention, for the proposals jointly agreed by the national and European parliamentarians.

We append the appropriate draft amendments, article by article.

We would like to make one additional point. We have considered at some length the proposal that member states acting under the enhanced cooperation arrangements should be expressly permitted to deploy the passerelle clause (Article I-24).

We wish to warmly support this proposal, and attach an appropriate proposed new Article III-325 bis.

Please accept our compliments.

Yours sincerely,

GIULIANO AMATO

ELMAR BROK

ANDREW DUFF

Part III - Title II

Suggestion for amendment of Article : III-5

By Members: Mr Giuliano Amato, Mr Elmar Brok and Mr Andrew Duff

Article III-5 (ex Article 13)

1. Without prejudice to the other provisions of the Constitution and within the limits of the powers conferred by it upon the Union, a European law or framework law of the Council of Ministers may establish the measures needed to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The Council of Ministers shall act unanimously after consulting the European Parliament.
 2. By way of derogation from paragraph 1, ***European laws or framework laws shall establish minimum standards in this area. Also by way of derogation from paragraph 1,*** the European law or framework law shall establish the Union's incentive measures, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1, excluding any harmonisation of the laws and regulations of the Member States.
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Explanation:

A large majority of Members of the Convention has expressed itself in favour of the use of QMV in developing EU policy in the area of non-discrimination. However, because certain Members have opposed this, we propose to restrict the use of QMV to the establishment of minimum standards.

Part III - Title III - Chapter I: Fiscal Provisions

Suggestion for amendment of Article : III-59

By Members: Mr Giuliano Amato, Mr Elmar Brok and Mr Andrew Duff

Article III-59

1. A European law or framework law of the Council of Ministers shall lay down measures for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation provided that such harmonisation is necessary for the functioning of the internal market and to avoid distortion of competition. The Council of Ministers shall act unanimously after consulting the European Parliament and the Economic and Social Committee.
 2. *A European law or framework law may establish, within the areas defined in paragraph 1, measures relating* to administrative cooperation, combating tax fraud and tax evasion.
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Explanation:

2. Administrative cooperation and the fight against tax evasion and tax fraud are essential elements in further developing the internal market and there has been very significant support in the Convention for rendering these decisions subject not only to QMV but also to the normal legislative procedure.

With regard to administrative cooperation, the Praesidium's draft constitutes a step backwards compared with the current situation which allows decisions by QMV without requiring prior unanimity under Article 95 TEC.

Part III - title III - Chapter III:

Suggestion for amendment of Article : III-99

By Members: Mr Andrew Duff

Article III-99 (ex Article 137)

1. With a view to achieving the objectives of [Article III-98 (ex 136)], the Union shall support and complement the activities of the Member States in the following fields:

- (a) improvement in particular of the working environment to protect workers' health and safety;
- (b) working conditions;
- (c) social security and social protection of workers;
- (d) protection of workers where their employment contract is terminated;
- (e) the information and consultation of workers;
- (f) representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 5;
- (g) conditions of employment for third-country nationals legally residing in Union territory, *without prejudice to the competence of Member States to establish the numbers of third-country nationals to access their labour markets*;
- (i) equality between men and women with regard to labour market opportunities and treatment at work;
- (j) the combating of social exclusion;
- (k) the modernisation of social protection systems without prejudice to point (c).

2. To this end:

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

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

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

The Council of Ministers may, on a proposal from the Commission, adopt a European decision making the ordinary legislative procedure applicable to paragraph 1, (f) and (g) of this Article. It shall act unanimously after consulting the European Parliament.

4.

Explanation:

1(g). The competence for deciding the volume of third-country nationals to access national labour markets should remain within the Member States as it affects a key element of integration policy of the Member States. The Union should establish the common rules for access, however.

3. There seems to be a consensus in the Convention that more progress is needed at the EU level to protect the situation of sacked workers in the single labour market.

Part III - title III - Chapter III:

Suggestion for amendment of Article : III-99

By Members: Mr Elmar Brok

Article III-99 (ex Article 137)

1. With a view to achieving the objectives of [Article III-98 (ex 136)], the Union shall support and complement the activities of the Member States in the following fields:
 - (a) improvement in particular of the working environment to protect workers' health and safety;
 - (b) working conditions;
 - (c) social security and social protection of workers;
 - (d) protection of workers where their employment contract is terminated;
 - (e) the information and consultation of workers;
 - (f) representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 5;
 - (g) conditions of employment for third-country nationals legally residing in Union territory;
without prejudice to the exclusive competence of Member States to establish rules of access for third-country nationals to their labour market;
 - (i) equality between men and women with regard to labour market opportunities and treatment at work;
 - (j) the combating of social exclusion;
 - (k) the modernisation of social protection systems without prejudice to point (c).
2. To this end:
 - (a) a European law or framework law may establish measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States;
 - (b) in the fields referred to in paragraph 1(a) to (i), a European framework law may establish minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such European framework law shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

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

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

The Council of Ministers may, on a proposal from the Commission, adopt a European decision making the ordinary legislative procedure applicable to paragraph 1, (f) and (g) of this Article. It shall act unanimously after consulting the European Parliament.

4.

Explanation:

The competence for the access of third-country nationals to the labour market should remain within the Member States as it affects a key element of integration policy of the Member States.

There seems to be a consensus in the Convention that more progress is needed at the EU level to protect the situation of sacked workers in the single labour market.

AMENDMENT FORM

**Suggestion for amendment of: PART III OF THE CONSTITUTION:
Article III-163**

By Members: Mr Giuliano Amato, Mr Elmar Brok and Mr Andrew Duff

Suggestion

Article III-163 (ex Article 12)

1. The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.
2. To this end, a European law or framework law shall establish measures in the following areas:
 - (a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion;
 - (b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing the freedom of movement and of residence in other Member States *without prejudice to Article III-99 (1)*;
 - (c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation.
3. The Union may conclude readmission agreements with third countries for the readmission of third-country nationals residing without authorisation to their countries of origin or provenance.
4. A European law or framework law may establish measures providing incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.

Explanation (if any) :

This brings coherence between this Article and our amendment to Article III-99.1(g).

Part III - title III - Chapter III:

Suggestion for amendment of Article : III-192

By Members: Mr Giuliano Amato, Mr Elmar Brok and Mr Andrew Duff

Article III-192 (ex Article 5)

1. The Union Minister for Foreign Affairs, who shall chair the Council of Ministers for Foreign Affairs, shall contribute through his proposals towards the preparation of the common foreign and security policy and shall ensure implementation of the European decisions adopted by the European Council and the Council of Ministers.
 2. For matters relating to the common foreign and security policy, the Union shall be represented by the Union Minister for Foreign Affairs. He shall conduct political dialogue on the Union's behalf and shall express the Union's position in international organisations and at international conferences.
 3. In fulfilling his mandate ***under Article I-27***, the Union Minister for Foreign Affairs shall be assisted by ~~a~~ **the** European External Action Service ***which shall be established in accordance with Article III-251 and III-300***. This service shall work in cooperation with the diplomatic services of the Member States ¹.
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Explanation:

¹ See the Declaration on the creation of a European External Action Service in Annex III.

Part III - Title V Chapter II: Common Foreign and Security Policy

Suggestion for amendment of Article : III-196

By Members: Mr Giuliano Amato, Mr Elmar Brok and Mr Andrew Duff

Article III-196 (ex Article 9)

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

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

2. By derogation from paragraph 1, the Council of Ministers shall act by qualified majority:

- (a) when adopting European decisions on Union actions and positions on the basis of a European decision of the European Council relating to the Union's strategic interests and objectives, as defined in [Article III-189(1)] of this Title;
- (b) when adopting a decision on a Union action or position, on a proposal which the Minister puts forward to it following *a request* to him from the European Council made at its own initiative or that of the Minister;
- (c) when adopting any European decision implementing a Union action or position;
- (d) when adopting a European decision concerning the appointment of a special representative in accordance with [Article III-198 (ex 11)] of this Chapter.
- (e) *when adopting a decision on the initiative of the Minister for Foreign Affairs with the support of the Commission.*

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

3. The European Council may decide unanimously that the Council of Ministers shall act by a qualified majority in cases other than those referred to in paragraph 2.

4. Paragraphs 2 and 3 shall not apply to decisions having military or defence implications.

Explanation:

In 2(b) we delete the reference to a 'specific' request on the grounds that this is an unnecessary constraint on the discretion of the Foreign Minister.

We add an additional and essential trigger to QMV - that is, the initiative of the Minister with the support of the Commission. This proposal has had the support of a majority of Members of the Convention and of the Working Group.

AMENDMENT FORM

Suggestion for amendment of: **PART III OF THE CONSTITUTION:** **Article III-222**

By Mr Giuliano Amato, Mr Elmar Brok and Mr Andrew Duff

Article III-222 (ex Article 33)

1. Agreements between the Union and third states or international organisations shall be negotiated and concluded in accordance with the following procedure.
2. The Council shall authorise negotiations to be opened, adopt negotiating directives and conclude agreements.
3. The Commission, or the Union's Minister for Foreign Affairs where the agreement exclusively or principally relates to the common foreign and security policy, shall submit recommendations to the Council, which shall authorise the opening of negotiations.
4. In connection with the decision authorising negotiations, depending on the subject of the future agreement, the Council shall nominate the negotiator or leader of the Union's negotiating team.
5. Without prejudice to the specific provisions laid down in Article 24, the Council may address negotiating directives to the negotiator of the agreement and may designate a special committee in consultation with which the negotiations must be held.
6. On a proposal from the agreement negotiator, the Council shall decide on the signing and, if necessary, provisional application of agreements before entry into force.
7. The Council shall conclude agreements on the proposal of the agreement negotiator. Except where agreements relate exclusively to the common foreign and security policy, the Council shall not conclude any agreement until the European Parliament has been consulted. The Parliament shall deliver its opinion within a time-limit which the Council may lay down according to the urgency of the matter. In the absence of an opinion within that time-limit, the Council may act. The European Parliament's assent shall be required for association agreements, for Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms and for agreements establishing a specific institutional framework by organising cooperation procedures, agreements with important budgetary implications for the Union, ***agreements according to Article III-212*** and agreements covering fields to which the legislative procedure applies. The Council and the European Parliament may, in an urgent situation, agree upon a time-limit for the assent.
8. When concluding an agreement, the Council may, by way of derogation from the foregoing, authorise the negotiator of the agreement to approve modifications on the Union's behalf where the agreement provides for them to be adopted by a simplified procedure or by a body set up by the agreement; it may attach specific conditions to such authorisation.

9. The Council shall act by a qualified majority throughout the procedure. However, it shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements and for Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

10. The Council, on a proposal from the Union's Minister for Foreign Affairs or the Commission, shall take a decision to suspend the application of an agreement and shall establish the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt decisions having legal effects, with the exception of decisions supplementing or amending the institutional framework of the agreement.

11. The European Parliament shall be immediately and fully informed at all stages of the procedure.

12. A Member State, the European Parliament, the Council or the Commission may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of the Constitution. Where the opinion of the Court of Justice is adverse, the agreement envisaged may not enter into force unless the Constitution is revised in accordance with the procedure laid down in [Article [N]].

Explanation (if any) :

Para 7: For trade policy, the assent of the European Parliament is indispensable.

Part III - Chapter VI: The Functionings of the Union - Chapter 1 - Section 1 - The Institutions

Suggestion for amendment of Article : III-278

By Members: Mr Giuliano Amato, Mr Elmar Brok and Mr Andrew Duff

Article III-278 (ex Article 240a)

1. The Court of Justice shall not have jurisdiction with respect to Articles [I-39 and I-40] and the provisions of [Chapter II of Title V of Part III] concerning the common foreign and security policy.
 2. *By way of derogation from paragraph 1, proceedings may be instituted according to the provisions of Article III-266.2 solely in cases brought by a Member State, and according to the provisions of Article III-266.4, Article III-268 and Article III-272.*
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Explanation:

The merger of the pillars implies that there are no a priori areas where the supervision of the Court cannot apply. Already, Articles 1 and 9 of Part One, as well as the horizontal provisions of the Charter, insist on respect for both Union competence and national law. Together they provide an adequate safeguard.

The powers of the Court are clearly not the same in CFSP as they are in the former first and third pillars, but the constitutionalisation of the Union requires the potential for judicial review over the whole spectrum of the Union's activities. The citizen will not understand why CFSP is excluded.

Due to the special nature of the Court's role in CFSP, we have limited the extent of its purview to four aspects similar to the role of national courts with regard to national foreign policy in most Member States. These are Article III-266.2 (actions brought by member states challenging the legality of CFSP acts), Article 266.4 (actions brought by individuals directly concerned), Article 268 (procedures) and Article 272 (damages).

Part III -Title VI - Chapter III: Enhanced cooperation

Suggestion for New Article : III-325 bis

By Members: Mr Giuliano Amato, Mr Elmar Brok and Mr Andrew Duff

Article III-325 bis

- 1. When a provision of the Constitution is subject to enhanced cooperation, and the Constitution provides for European laws and framework laws to be adopted by the Council of Ministers according to a special legislative procedure, the Council can adopt, on its own initiative and by unanimity, a decision allowing for the adoption of such European laws or framework laws according to the ordinary legislative procedure. The Council shall act after consulting the European Parliament and informing the national parliaments.*
 - 2. When a provision of the Constitution is subject to enhanced cooperation, and the Constitution provides for the Council of Ministers to act unanimously in that given area, the Council can adopt, on its own initiative and by unanimity, a decision allowing the Council to act by qualified majority in that area. The Council shall act after consulting the European Parliament and informing the national parliaments.*
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Explanation:

This new article gives express permission to the member states acting under the enhanced cooperation procedures to exploit the provisions of the 'passerelle' Article I-24.4.

I. Proposal by Mr Giuliano Amato, Mr Elmar Brok and Mr Andrew Duff

II. OPTION 1¹

**DECLARATION ON THE CREATION OF
A EUROPEAN EXTERNAL ACTION SERVICE**

To strengthen the coherence and efficiency of the Union's action in the world, the Convention agrees on the need to establish a joint administration (European External Action Service) within the Commission including officials from the relevant units from the General Secretariat of the Council and foreign ministries of the Member States. The administration shall work as mandated by the Council as far as it does not interfere in the competences of the Commission.

The staff of the Union's delegations, as defined in Article III-225, shall be provided from this joint service.

The Convention is of the view that the necessary arrangements for the establishment of the joint service should be made within the first year after entry into force of the Constitutional Treaty.

¹ Option 1 is our preferred option.

III. Proposal by Mr Giuliano Amato, Mr Elmar Brok and Mr Andrew Duff

IV. OPTION 2

DECLARATION ON THE CREATION OF A EUROPEAN EXTERNAL ACTION SERVICE

To strengthen the coherence and efficiency of the Union's action in the world, the Convention agrees on the need to establish *as an integral part of the Commission administration*, one joint service (European External Action Service) composed of relevant Council of Ministers and *Commission officials* and staff seconded from national Diplomatic Services. *The administration shall work as mandated by the Council without prejudice to the competences of the Commission.*

The staff of the Union's delegations, as defined in Article III-225, shall be provided from this joint service.

The Convention is of the view that the necessary arrangements for the establishment of the joint service should be made within the first year after entry into force of the Constitutional Treaty.

AMENDMENT FORM

Part Three: General and final provisions

Suggestion for amendment of Article : IV-6

By Members: Mr Giuliano Amato, Mr Elmar Brok and Mr Andrew Duff

Status : Members.

Article IV-6: Procedure for revising the Treaty establishing the Constitution

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

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

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Explanation:

The changes allow the European Parliament to give its consent to a decision of the European Council not to call a Convention.