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**PROPOSALS FOR AMENDMENTS TO THE DRAFT ARTICLES OF THE  
TREATY ESTABLISHING A CONSTITUTION FOR EUROPE**

**- FINAL VERSION -**

**General Comments**

The provisions on foreign, security and defence policy in this constitutional draft include a number of positive elements such as a solidarity clause and the introduction of new forms of flexibility (structured cooperation and closer cooperation).

However, the draft fails in generalising QMV. The use of QMV can still be blocked by a single member state as long as the European Council decides on the case by unanimity. This requires an amendment of the present draft article 9 in Part II of the Constitution.

Also, there is too much emphasis placed throughout this constitutional draft on the role of the European Council. It appears to be the decision-making centre/government of the Union whereby the Council becomes an executive or administrative body. This needs to be changed and clarified: The European Council sets the guidelines and identifies the strategic interests of the Union. The Council, on a proposal by the Foreign Minister, makes the decisions according to Art. 9, Part II of the Constitution.

In the whole text, the rights of the European Parliament need to be reserved and strengthened. Our amendments include some more precise provisions in that respect aiming at the consultation procedure and at transparency over activities of the Council or groups of member states.

## PART TWO – TITLE B

### THE UNION'S EXTERNAL ACTION

#### Article 1: Principles and objectives

1. The Union's action on the international scene shall be guided by, and designed to advance in the wider world, the principles which have inspired its own creation, development and enlargement: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, equality and solidarity, and for international law in accordance with the principles of the United Nations Charter. The Union shall seek to develop relations and build partnerships with countries, and regional or global organisations, which share these values. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.

2. The European Union shall define and pursue common policies and Union actions, and shall work for a maximum degree of cooperation in all fields of international relations, in order to:

- a) safeguard the common values, fundamental interests, independence and integrity of the Union;
- b) consolidate and support democracy, the rule of law, human rights, civic rights and international law;
- c) preserve peace, prevent conflicts and strengthen international security, in conformity with the principles of the United Nations Charter;
- d) foster the sustainable economic and social development of developing countries, with the primary aim of eradicating poverty, particularly in low-income countries;
- e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;
- f) develop international measures to preserve and improve the environment and global natural resources, and ensure sustainable development;
- g) assist populations, countries and regions confronting man-made or natural disasters;
- h) promote an international system based on stronger multilateral cooperation and good global governance.

3. The Union shall ensure consistency between the different areas of its external action. It shall also take into account the principles and objectives listed above in the development and implementation of external aspects of other Union policies.

## Article 2

1. On the basis of the principles and objectives referred to in Article 1 of this Title, the European Council shall identify the strategic interests and objectives of the Union. ~~European Council decisions on the strategic interests and objectives of the Union may relate to foreign policy and to other areas of the external action of the Union. Such decisions – which~~ may concern the relations of the Union with a specific country or region or may be thematic in approach. ~~They shall define their~~ including the duration of an activity, and the means to be made available by the Union and the Member States. The European Council shall act ~~unanimously~~ by consensus on a proposal from the Council. The Council proposal shall be adopted by the Council by a qualified majority on the basis of recommendations by the Minister for Foreign Affairs for matters relating to the common foreign and security policy), by the Commission for other areas of external action), or by both together. The decisions of the European Council shall be implemented by the Council in accordance with the procedures provided for in the Constitution.<sup>1</sup>

2. The Minister for Foreign Affairs, for the field of common foreign and security policy, and the Commission, for other fields of external action, may submit joint proposals to the Council. The Council shall adopt decisions on such joint proposals by qualified majority.

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<sup>1</sup> This article uses elements of Art. 13 of the EU-Treaty on common strategies. The expression “common strategies” is, however, not used. But the European Council could very well identify the strategic interests and the objectives of the Union also in relation to specific cases or countries. But it does not make any sense if the European Council acts by unanimity on a proposal made by the Council and decided by it with qualified majority on the basis of a recommendation of the Minister of Foreign Affairs, by the Commission or by both together. In such a case, the European Council should also use qualified majority or, in the minimum, the consensus rule.

## CHAPTER 1: COMMON FOREIGN AND SECURITY POLICY

### A. Common foreign policy

#### Article 3

1. In the context of the principles and objectives of its external action as set out in Article 1 of this Title, the Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy.

2. The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity. The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations. The Council and the Minister for Foreign Affairs shall ensure that these principles are complied with.

3. The Union shall conduct the common foreign and security policy by:

- defining the principles and general guidelines,
- pursuing strategic interests and objectives,<sup>2</sup>
- adopting decisions on:
  - actions of the Union,
  - positions of the Union,
- strengthening systematic cooperation between Member States in the conduct of policy.

#### Article 4

The European Council shall define the principles of and general guidelines for the common foreign and security policy, including for matters with defence implications. The Council shall take the decisions necessary for defining and implementing the common foreign and security policy on the basis of the principles and guidelines defined by the European Council. If international developments so require, the ~~President~~ Chairman of the European Council

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<sup>2</sup> This complementation seems to be obvious when taking Art. 2 (1) of Part II of this Constitution into account.

~~shall~~ may convene an extraordinary meeting of the European Council in order to define the strategic lines of the Union's policy in the face of such developments. ~~The Council shall take the decisions necessary for defining and implementing the common foreign and security policy on the basis of the strategic lines defined by the European Council.~~ The Council shall take the necessary decisions to implement the strategic lines of the Union's policy.<sup>3</sup>

## Article 5

1. The Minister for Foreign Affairs, who shall chair the Foreign Affairs Council, shall contribute through his proposals towards the preparation of the common foreign and security policy and shall be responsible for implementing the ~~decisions taken by~~ guidelines of the European Council and the decisions of the Council.<sup>4</sup>

2. For matters relating to the common foreign and security policy, the Union shall be represented by the Minister for Foreign Affairs, who shall conduct the political dialogue on the Union's behalf and shall express the Union's position in international organisations and at international conferences.

## Article 6

1. Where the international situation requires operational action by the Union, the Council shall take the necessary decisions. A decision shall lay down the objectives, scope, the means to be made available to the Union, if necessary its duration, and the conditions for implementation of the action.

2. If there is a change in circumstances having a substantial effect on a question subject to such a decision, the Council shall review the principles and objectives of the action and take

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<sup>3</sup> The proposed second sentence of this article covers nearby fully the previous third sentence of the article, but in a certain logic which explains the interplay between the European Council and the Council. The new final sentence follows the same logic and defines the role of the Council for implementing the strategic lines of the Union's policy as defined by the European Council if international developments so require, i.e. in the event of an international crisis.

<sup>4</sup> Again: the European Council adopts guidelines, the Council makes decisions.

the necessary decisions. As long as the Council has not acted, the decision on action by the Union shall stand.

3. Such decisions shall commit the Member States in the positions they adopt and in the conduct of their activity.

4. Whenever there is any plan to adopt a national position or take national action pursuant to such a decision, information shall be provided in time to allow, if necessary, for prior consultations within the Council. The obligation to provide prior information shall not apply to measures which are merely a national transposition of Council decisions.

5. In cases of imperative need arising from changes in the situation and failing a Council decision, Member States may take the necessary measures as a matter of urgency having regard to the general objectives of the decision on action by the Union. The Member State concerned shall inform the Council immediately of any such measures.

6. Should there be any major difficulties in implementing such a decision, a Member State shall refer them to the Council which shall discuss them and seek appropriate solutions. Such solutions shall not run counter to the objectives of the action or impair its effectiveness.

## **Article 7**

The Council shall adopt decisions which shall define the approach of the Union to a particular matter of a geographical or thematic nature. Member States shall ensure that their national policies conform to the positions of the Union.

## **Article 8**

1. Any Member State or the Minister for Foreign Affairs, acting alone or together with the Commission, may refer to the Council any question relating to the common foreign and security policy and may submit proposals to the Council.

2. In cases requiring a rapid decision, the Minister for Foreign Affairs, of the Minister's own motion, or at the request of a Member State, shall convene an extraordinary Council meeting within forty-eight hours or, in an emergency, within a shorter period.

## Article 9

~~1.2. By derogation from paragraph 1, Decisions under this chapter shall be taken by the Council shall act by qualified majority:~~

~~—when adopting decisions on Union actions and positions on the basis of a European Council decision relating to the Union's strategic interests and objectives, as defined in Article 2(1) of this Title;~~

~~—when acting on the basis of a joint proposal by the Minister for Foreign Affairs and the Commission, as defined in Article 2(2);~~

~~—when adopting any decision implementing a decision on Union action or position;~~

~~—when appointing a special representative in accordance with Article 11 of this Chapter.~~

If a member of the Council declares that, for important and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. ~~The Council may, acting by a qualified majority, request that the matter be~~ The Foreign Minister and the Chairman of the European Council shall act as mediators in such a situation. Should the mediation not lead to a result acceptable for the member state in question and the other member states the matter will be referred to the European Council for decision by ~~unanimity qualified majority. This paragraph shall not apply to decisions having a military or defence implications.~~

~~1.2. By derogation from paragraph 1, Decisions under this Chapter with defence implications [on military missions] shall be taken by the Council acting unanimously, whereby abstentions by members present in person or represented shall not prevent the adoption of such decisions. When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration under the present subparagraph. In that case, it shall not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other~~

Member States shall respect its position. If the members of the Council qualifying their abstention in this way represent more than one third of the ~~votes weighted in accordance with Article X of the Constitution~~ member states representing one third of the EU-population, the decision shall not be adopted.<sup>5</sup>

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

## Article 10

1. When the Union has defined a common approach within the meaning of Article 29(5), there shall be close coordination between the activities of the Union's Minister for Foreign Affairs and the Ministers for Foreign Affairs of the Member States.

2. The diplomatic missions of the Member States and the delegations of the Union shall cooperate in third countries and in international organisations, and shall contribute to formulating and implementing a common approach.

## Article 11

The Council shall, whenever it deems it necessary, appoint, on a proposal from the Minister for Foreign Affairs, a special representative with a mandate in relation to particular policy issues. The special representative shall carry out his mandate under the authority of the Minister for Foreign Affairs.

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<sup>5</sup> By linking the first and the second sentence, the important element of constructive abstention will be stressed. When referring to the blocking minority, the new system of vote-weighting in relation to qualified majority voting should come into play. Hence, the decision should only then not be adopted if one third of the member states representing one third of the EU population were against it.

## Article 12

The Union may conclude agreements with one or more States or international organisations pursuant to this Chapter, in accordance with the procedure described in Article 33 of this Title.

## Article 13

1. The Minister for Foreign Affairs shall consult the European Parliament on the main aspects and the basic choices of the common foreign ~~and~~ security and defence policy and shall ensure that the views of the European Parliament are duly taken into consideration. The European Parliament shall be kept regularly informed by the Minister for Foreign Affairs on all aspects of the development of the Union's foreign and security policy, including the security and defence policy.

2. The European Parliament may ask questions to ~~of~~ the Council and ~~of~~ to the Minister for Foreign Affairs or make recommendations to them. It shall hold ~~an annual~~ twice a year a debate on progress in implementing the common foreign and security policy, including the security and defence policy. Hearings organised by the Parliament include the Parliament's right to request the Foreign Minister or other EU-officials such as the Chairman of the Military Committee to give oral evidence on questions in relation to important aspects of the Union's Foreign, Security and Defence Policy.<sup>6</sup>

## Article 14

1. Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the Union's positions in such fora. The Union's Minister for Foreign Affairs shall organise this coordination. In international organisations and at international conferences where not all the Member States participate, those which do take part shall uphold the Union's positions.

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<sup>6</sup> The amendments here are to strengthen the role of the European Parliament in foreign and security policy.

2. Without prejudice to paragraph 1 and Article 6(3) of this Title, Member States represented in international organisations or international conferences where not all the Member States participate shall keep the latter informed of any matter of common interest. Member States which are also members of the United Nations Security Council will concert and keep ~~the other Member States~~ the Council and the Foreign Minister<sup>7</sup> fully informed. Member States which are members of the Security Council will, in the execution of their functions, defend the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter. When the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the Minister for Foreign Affairs be asked to present the Union's position.

## **Article 15**

The diplomatic and consular missions of the Member States and the Union delegations in third countries and international conferences, and their representations to international organisations, shall cooperate in ensuring that the decisions relating to Union positions and actions adopted by the Council are complied with and implemented. They shall step up cooperation by exchanging information and carrying out joint assessments. They shall contribute to the implementation of the provisions referred to in Article 7(2) of Part One of the Constitution on the protection of European citizens in the territory of a third country. Member States shall establish the necessary rules among themselves and start the international negotiations required to secure this protection.

## **Article 16**

Without prejudice to Article XX of the Constitution [on the organisation of the Council/Permanent Representatives Committee], a Political and Security Committee shall monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the

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<sup>7</sup> It should be made clearer that information between the members of the Security Council and the other members of the Union should be channelled via the Council as an institution and the Foreign Minister as a new element in the institutional set-up.

request of the Council or on its own initiative. It shall also monitor the implementation of agreed policies, ~~without prejudice to the responsibility of~~ It shall be chaired by the Minister for Foreign Affairs or his/her representative. Within the scope of this title, this Committee shall exercise, under the responsibility of the Council, and in close contact with the Minister for Foreign Affairs, political control and strategic direction of crisis management operations, as defined in Article 17 of this Title. The Council may authorise the Committee, for the purpose and for the duration of a crisis management operation, as determined by the Council, to take the relevant decisions concerning the political control and strategic direction of the operation.<sup>8</sup>

## **B. Common Security and Defence Policy**

### **Article 17**

The tasks referred to in Article 30(1) of Part One of the Constitution, in the course of which the Union may deploy military and civilian means, shall include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peacemaking, support action in combating terrorism at the request of a third country, and post-conflict stabilisation.

1. The Council, acting ~~unanimously~~ in accordance with Article 9 Part II of the Constitution and after consulting the European Parliament, shall adopt decisions relating to the tasks referred to in this Article, defining their objectives and scope and the general conditions for their implementation. The Minister for Foreign Affairs, acting under the authority of the Council and in close and constant contact with the Political and Security Committee, shall ensure coordination of the civilian and military aspects of such tasks.<sup>2</sup>

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<sup>8</sup> The Constitution, so far, gives no clear signal who should run the Political and Security Committee. The amendment suggests that the Chairman of the PSC should be either the Foreign Minister or his/her representative which could be a Director General of the Commission or the Secretariat General.

<sup>9</sup> Again: claiming that the Council can act only by unanimity falls behind the Nice Treaty. Also: It is rather unconceivable that the Union runs a crisis management operation without consulting the European Parliament on the objectives and scope of such an operation.

## Article 18

1. Within the framework of the decisions adopted in accordance with Article 17 of this Title, the Council may entrust the implementation of a task to a group of Member States having the necessary capability and the desire to undertake the task. Those Member States shall agree between themselves on the management of the task. The Foreign Minister participates in the meetings of this group of Member States.<sup>10</sup>

2. The Council shall be regularly informed by the Member States participating in the task on its progress and, should the completion of the task involve major new consequences or require amendment of the objective, scope and conditions for implementation agreed by the Council under Article 17(2) of this Title, the Member States participating shall refer the matter to the Council forthwith. In such cases, the Council shall adopt the necessary decisions and inform, through the Foreign Minister, the European Parliament on its decisions.

## Article 19

1. The European Armaments and Strategic Research Agency shall have as its task to:<sup>11</sup>

- contribute to identifying the Member States' military capability objectives and evaluating observance of the capability commitments given by the Member States;
- promote harmonisation of operational needs and adoption of effective, compatible procurement methods;
- propose multilateral projects to fulfil the objectives in terms of military capabilities, ensure coordination of the programmes implemented by the Member States
- ~~manage~~ manage specific cooperation programmes, including the necessary financial means;
- support defence technology research, and coordinate and plan joint research activities and the study of technical solutions meeting future operational needs;

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<sup>10</sup> The Foreign Minister should have access to the meetings of the group acting on behalf of the Union. The Parliament should also be informed in case of changes in the objective of a mission.

<sup>11</sup> It would already be a big advantage to have the armaments agency anchored in the Constitution. However, it is not clear what this would imply for the old Art. 296 of the EC-Treaty. The Armaments Agency would only make real sense if Art. 296 would be deleted or significantly amended.

– promote the development of a single European armaments market and the harmonisation of arms export controls;

– contribute to identifying and, if necessary, implementing any useful measure for strengthening the industrial and technological base of the defence sector and for improving the effectiveness of military expenditure;

2. The Agency shall be open to all Member States wishing to be part of it. The Council, acting by qualified majority, shall adopt a decision defining the Agency's statute, seat and operational rules. Such rules should take account of the level of effective participation in the Agency's activities. Specific groups shall be set up within the Agency bringing together Member States engaged in joint projects with a common budget under the roof of the Agency.<sup>12</sup>

## Article 20

1. The Member States listed in Declaration X annexed to the Constitution, which fulfil high military capability criteria and wish to enter into more binding commitments in this matter with a view to more demanding tasks, ~~hereby~~ They may, after a proposal of one of them or of the Foreign Minister and a decision of the Council by qualified majority, establish structured cooperation between themselves within the meaning of Article 30(6) of Part One of the Constitution. The military capability criteria and commitments which those Member States have defined are set out in that Declaration.<sup>13</sup>

2. If a Member State wishes to participate in such cooperation at a later stage, and thus subscribe to the obligations it imposes, it shall inform the ~~European~~ Council of its intention. The restricted Council on structured cooperation shall decide on the Member State's request.

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<sup>12</sup> Again: the Armaments Agency should administer a certain budget in order to support strategic research or the initial phase of a procurement project.

<sup>13</sup> It is very important that the Constitution promotes better flexibility also in security and defence policy. Given the specificities of the defence sector the old Art. 27 b and c of the EU-Treaty can not simply be used. However, a certain degree of procedure might be necessary for establishing structured cooperation in the framework of the Union. The amendment proposes that this could be done on the recommendation of the Foreign Minister and by a Council decision with qualified majority. This would also contribute to transparency and trust among the member states. The amendments in paragraph 3 of this article try to strengthen transparency through information of the Council, the Commission and the European Parliament. In addition, the effectiveness of structured cooperation should be strengthened not only by transparency, but also by regular reporting about the achievements of the member states cooperating in a structured way.

3. Only Member States taking part in such cooperation shall adopt decisions relating to matters covered by it. The Minister for Foreign Affairs shall attend the deliberations of the restricted Council on structured cooperation. Other Member States, the College of the Commisison and the European Parliament shall be duly and regularly informed by the Minister for Foreign Affairs of developments in cooperation. The Minister of Foreign Affairs shall submit an annual report on the developments in structured cooperation to the Council and the European Parliament.

4. The Council may ask the Member States participating in such cooperation to carry out at Union level a task referred to in Article 17 of this Title.

## **Article 21**

1. The closer cooperation on mutual defence provided for in Article 30(7) of Part One shall be open to all Member States of the Union. A list of participating Member States shall be set out in a Declaration annexed to this Constitution. If a Member State wishes to take part in such cooperation at a later stage, and thus subscribe to the obligations it imposes, it shall inform the ~~European~~ Council of its intention and subscribe to the Declaration annexed to the Constitution.

2. A participating Member State which is the victim of armed aggression on its territory shall inform the other participating States of the situation and may request aid and assistance from them. Participating Member States shall meet at ministerial level, assisted by their representative on the Political and Security Committee and the Military Committee.

3. The United Nations Security Council shall be informed immediately of any armed aggression and the measures taken as a result.

4. These provisions shall not affect the rights and obligations resulting, for those concerned, from the North Atlantic Treaty.

## C. Financial provisions

### Article 22

1. Administrative expenditure which the provisions relating to the areas referred to in this Title entail for the institutions shall be charged to the Union budget.

2. Operating expenditure to which the implementation of those provisions gives rise shall also be charged to the Union budget, except for such expenditure arising from operations having military or defence implications and cases where the Council acting unanimously decides otherwise. In cases where expenditure is not charged to the Union's budget it shall be charged to the Member States in accordance with the gross national product scale, unless the Council acting unanimously decides otherwise. As for expenditure arising from operations having military or defence implications, Member States whose representatives in the Council have made a formal declaration under Article 9(1), second subparagraph, shall not be obliged to contribute to the financing thereof.

3. A Union budgetary heading shall be created for urgent financing of initiatives in the framework of the common foreign and security policy, in particular preparatory activities for tasks as referred to in ~~by~~ Article 30(1) of Part One of the Constitution without prejudice to the role of the European Parliament in budgetary affairs. Specific procedures shall be put in place to guarantee rapid access to appropriations entered under this heading and their effective use within the deadlines imposed by the situations concerned.<sup>14</sup>

**[[**Preparatory activities for tasks as referred to in Article 30(1) of Part One of the Constitution which are not charged to the Union budget shall be financed by a start-up fund made up of Member States' contributions. The Council shall adopt by a qualified majority on a proposal from the Minister for Foreign Affairs:

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

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<sup>14</sup> It should be stressed that one could search for specific procedures to facilitate access to the EU-budget but, at the same time, it should be stressed that this should not lead to circumventing the budgetary rights of the European Parliament.

– the financial control procedures.

When it is planning a task as referred to in Article 30(1) of Part One of the Constitution which cannot be charged to the Union's budget, the Council shall authorise the Minister for Foreign Affairs to use the fund. The Minister for Foreign Affairs shall report to the Council on the implementation of the remit. After five years the Minister for Foreign Affairs will submit a proposal to the Council on including this preparatory fund into the EU budget. The Council decides by qualified majority on a proposal to the European Council acting by consensus [alternatively: after five years the preparatory fund will become an integral part of the Union's budget]. ]]<sup>15</sup>

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<sup>15</sup> The provisions on the start-up fund for activities having defence implications are designed to overcome the difficulties among member states in agreeing on the funding of operations. It is therefore an element in the Constitution which should be supported. On the other hand, it is a clear provision for circumventing the rights and the influence of the European Parliament. It is a method of creating a budget and using it for crisis management operations without the ordinary procedures of the Union. It should therefore be either deleted and the possibility for initial funding of civil and/or military crisis management operations be included into the first and the second sentence of Art. 22, paragraph 3. Or alternatively, a transitory arrangement should be laid down in the Constitution. This would either imply an automatism after a period of X years for transferring the defence fund into the EU-budget or a specific procedure as foreseen in this amendment.

## CHAPTER 2: COMMON COMMERCIAL POLICY

### Article 23

~~By establishing a~~ Through the customs union between themselves Member States aim to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and to foreign direct investment, and the lowering of customs barriers.<sup>16</sup>

### Article 24

1. The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action, as set out in Article 1 of this Title.

2. The European Parliament and the Council shall adopt, in accordance with the legislative procedure, the European laws and framework laws required to implement the common commercial policy.

3. Where agreements with one or more States or international organisations need to be negotiated, the relevant provisions of Article 33 of this Title shall apply. The Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Union policies and rules. The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee on the progress of negotiations.

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<sup>16</sup> The wording needs to be adapted to the fact that the Customs Union had already been established.

¶4. For the negotiation and conclusion of agreements in the fields of trade in services involving the movement of persons and the commercial aspects of intellectual property, the Council shall act unanimously where such agreements include evidently provisions for which unanimity is required for the adoption of internal rules.¶<sup>17</sup>

5. The exercise of the competences conferred by this Article in the field of commercial policy shall not affect the delimitation of internal competences between the Union and the Member States, and shall not lead to harmonisation of legislative or regulatory provisions of Member States insofar as the Constitution excludes such harmonisation.

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<sup>17</sup> Paragraph 4 of Art. 24 should be amended in a sense that clear evidence needs to be provided for justifying the need of deciding by unanimity. Otherwise, the whole paragraph should be deleted since in the working group VII and in the plenary of the Convention the view was widely shared that QMV should be used.

## **CHAPTER 3: COOPERATION WITH THIRD COUNTRIES AND HUMANITARIAN AID**

### **I. DEVELOPMENT COOPERATION**

#### **Article 25**

1. Union policy in the sphere of development cooperation shall be conducted within the framework of the principles and objectives of the Union's external action as set out in Article 1 of this Title. The Union's development cooperation policy and that of the Member States complement and reinforce each other.

2. The Union and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.

#### **Article 26**

1. The European Parliament and the Council shall, in accordance with the legislative procedure, adopt the European laws and European framework laws necessary for the implementation of development cooperation policy, which may relate to multiannual cooperation programmes with developing countries or programmes with a thematic approach.

2. The Union may conclude with third countries and competent international organisations any agreement helping to achieve the objectives referred to in Article 1 of this Title. Such agreements shall be negotiated and concluded in accordance with Article 33 of this Title. The first subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

3. The European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures referred to in paragraph 1.

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

### **Article 27**

1. The Union and the Member States shall coordinate their policies on development cooperation and shall consult each other on their aid programmes, including in international organisations and during international conferences, in order to promote the complementarity and efficiency of their action. They may undertake joint action. Member States shall contribute if necessary to the implementation of Community aid programmes.

2. The Commission may take any useful initiative to promote the coordination referred to in paragraph 1.

3. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and the competent international organisations.

## **II. ECONOMIC, FINANCIAL AND TECHNICAL COOPERATION WITH THIRD COUNTRIES**

### **Article 28**

1. Without prejudice to the other provisions of this Treaty, and in particular those of Articles 25 to 27 of this Title concerning development cooperation, the Union shall, within its spheres of competence, carry out economic, financial and technical cooperation measures with third countries. Such measures shall be consistent with the development policy of the Union. The Union's measures and those of the Member States shall complement and reinforce each other. They shall be carried out within the framework of the principles and objectives of the Union's external action as set out in Article 1 of this Title.

2. The European Parliament and the Council shall, in accordance with the legislative procedure, adopt the European laws and European framework laws necessary for the implementation of paragraph 1.

3. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and the competent international organisations. The arrangements for Union cooperation may be the subject of agreements between the Union and the third parties concerned, which shall be negotiated and concluded pursuant to Article 33 of this Title. The Council shall act unanimously for the association agreements referred to in Article 32(2) of this Title and for the agreements to be concluded with the States which are candidates for accession to the Union. The first subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

## **Article 29**

When the situation in a third country requires urgent financial aid from the Union, the Council shall, on a proposal from the Commission and after consulting the European Parliament, ~~unanimously~~ adopt the necessary measures.

## **III. HUMANITARIAN AID**

### **Article 30**

1. The Union's operations in the field of humanitarian aid shall be conducted within the framework of the principles and objectives of the external action of the Union as set out in Article 1 of this Title. Such operations shall be intended to provide ad hoc assistance, relief and protection for people in third countries and victims of man-made and natural disasters, in order to meet the humanitarian needs resulting from these different situations. The Union's actions and those of the Member States shall complement and reinforce each other.

2. Humanitarian aid operations shall be conducted in compliance with the principles of international humanitarian law, in particular the principles of impartiality and non-discrimination.

3. The European Parliament and the Council, in accordance with the legislative procedure, shall adopt the necessary laws and framework laws defining the framework within which the Union's humanitarian aid operations shall be implemented.

4. The Union may conclude with third countries and competent international organisations any agreement helping to achieve the objectives referred to in Article 1. Such agreements shall be negotiated and concluded pursuant to Article 33 of this Title. The first subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

5. In order to establish a framework for joint contributions from young Europeans to the humanitarian actions of the Union, a European Voluntary Humanitarian Aid Corps shall be set up. The European Parliament and the Council, in compliance with the legislative procedure, shall adopt a European law determining the rules and operation of the Corps.

6. The Commission may take any useful initiative to promote coordination between actions of the Union and those of the Member States, in order to enhance the efficiency and complementarity of Union and national humanitarian aid measures.

7. The Union shall ensure that its humanitarian operations are coordinated and consistent with those of international organisations and bodies, in particular those forming part of the United Nations System.

## **CHAPTER 4: RESTRICTIVE MEASURES**

### **Article 31**

1. Where a decision on a Union position or action adopted according to the provisions on the common foreign and security policy in Chapter 1 of this Title provides for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from the Minister for Foreign Affairs and the Commission, shall take the necessary measures. It shall inform the European Parliament thereof.

2. In the areas referred to in paragraph 1 the Council may adopt restrictive measures under the same procedure against natural or legal persons and non-State groups or bodies.

## CHAPTER 5: INTERNATIONAL AGREEMENTS

### Article 32

1. The Union may commit itself through agreements concluded with one or more third countries or international organisations in cases where the provisions of the Constitution provide for the conclusion of such agreements.

2. The Union may conclude association agreements with one or more third countries or international organisations. Such agreements shall establish an association with one or more third countries or international organisations involving reciprocal rights and obligations, common action and special procedure.

3. The Union may conclude international agreements where conclusion is necessary to achieve a Union objective, where there is provision for it in a Union legislative act, or where the agreements affect one of the Union's internal acts.

4. Agreements concluded by the Union are binding upon the institutions of the Union and on its Member States.

### Article 33

1. Without prejudice to the specific provisions laid down in Articles 24 of this Title, agreements between the Union and third states or international organisations shall be negotiated and concluded by the following procedure.

2. The Council shall authorise negotiations to be opened, adopt negotiating directives and conclude agreements.

3. The Commission, or the Union's Minister for Foreign Affairs ~~where the agreement exclusively or principally relates to the common foreign and security policy,~~ shall submit recommendations to the Council, authorising him to open negotiations. The Commission and

the Union's Minister for Foreign Affairs shall, where appropriate, present recommendations jointly.<sup>18</sup>

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. The Council may address the 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~~ after the European Parliament has been consulted.<sup>19</sup>

The Parliament shall deliver its opinion within a time-limit which the Council may lay down according to the urgency of the matter. In the absence of an opinion within that time-limit, the Council may act. However, the European Parliament's assent shall be required for association agreements, accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms and for agreements establishing a specific institutional framework by organising cooperation procedures, agreements with important budgetary implications for the Union and agreements covering fields to which the legislative procedure applies. The Council and the European Parliament may, in an urgent situation, agree upon a time-limit for the assent.

8. When concluding an agreement, the Council may, by way of derogation from the foregoing, authorise the negotiator of the agreement to approve modifications on the Union's behalf where the agreement provides for them to be adopted by a simplified procedure or by a body set up by the agreement; it may attach specific conditions to such authorisation.

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<sup>18</sup> The distinction made here is relatively vague. What are agreements relating exclusively or principally to the Common Foreign and Security Policy? It seems to be easier to stress that the Commission, the Foreign Minister or both can submit recommendations to the Council.

<sup>19</sup> For the same problems of drawing any clear-cut line of distinction between what belongs to the Common Foreign and Security Policy and what belongs to other areas of the external policy of the Union, the exception should be deleted. Also, there is no reason why the European Parliament should not be consulted if an agreement with e.g. the United Nations or a city as it was the case with the City of Mostar would be negotiated.

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 internal rules and for association agreements and 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 decide to suspend the application of an agreement, and 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 of all the stages of the procedure described in this Article.

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

#### **Article 34**

1. By way of derogation from Article 33, the Council, acting unanimously on a recommendation from the European Central Bank or from the Commission, and following consultation with the European Central Bank with a view to reaching a consensus compatible with the objective of price stability, and after consultation with the European Parliament in accordance with the procedure laid down in paragraph 3 for the arrangements there referred to, may conclude formal agreements on a system of exchange rates for the euro in relation to non-Union currencies. The Council may, acting by a qualified majority on a recommendation from the European Central Bank or the Commission, and after consulting the European Central Bank, in an endeavour to reach a consensus consistent with the objective of price

stability, adopt, adjust or abandon the central rates of the euro within the exchange-rate system. The President of the Council shall inform the European Parliament of the adoption, adjustment or abandonment of the central rates of the euro.

2. In the absence of an exchange-rate system in relation to one or more third-country currencies as referred to in paragraph 1, the Council, acting by a qualified majority on a recommendation from the Commission after consulting the European Central Bank, may formulate general orientations for exchange-rate policy in relation to these currencies. These general orientations shall be without prejudice to the primary objective of the European System of Central Banks, to maintain price stability.

3. By way of derogation from Article 33, where agreements on matters relating to the monetary or exchange-rate system are to be the subject of negotiations between the Union and one or more States or international organisations, the Council shall, acting by a qualified majority on a recommendation from the Commission and after consulting the European Central Bank, decide the arrangements for the negotiation and for the conclusion of the agreements. These arrangements shall ensure that the Community expresses a single position. The Commission shall be fully associated with the negotiations.

4. Subject to paragraph 1, the Council shall, acting by a qualified majority on a proposal from the Commission and after consulting the European Central Bank, decide on the position occupied by the Union at international level in relation to questions having particular interest for the Economic and Monetary Union and on the Union's representation, while complying with the allocation of competences laid down in Articles X [formerly 99] and Y [formerly 105]. The Council may mandate the Commission to conduct negotiations on behalf of the Union.<sup>20</sup>

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

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<sup>20</sup> The external representation of the Union in EMU-affairs should be strengthened by opening up the possibility of mandating the Commission to negotiate on economic and monetary affairs.

## **CHAPTER 6: RELATIONS WITH INTERNATIONAL ORGANISATIONS AND THIRD COUNTRIES AND UNION DELEGATIONS**

### **Article 35**

1. The Union shall establish all appropriate forms of cooperation with the United Nations, the Council of Europe, the Organisation for Security and Cooperation in Europe and the Organisation for Economic Cooperation and Development. It shall also maintain such relations as are appropriate with all international organisations.

2. The Union's Minister for Foreign Affairs and the Commission shall be instructed to implement the above paragraph.

### **Article 36**

1. Union delegations in third countries and to international organisations shall represent the Union.

2. Union delegations shall operate under the authority of the Union's Minister for Foreign Affairs and in close cooperation with Member States' missions.

## PART II

### CHAPTER X: SOLIDARITY

#### Article X (implementation of the solidarity clause)

1. On the basis of a joint proposal by the Minister for Foreign Affairs and the Commission, the Council shall adopt acts defining a framework for the implementation of the solidarity clause referred to in Article X of Part One. These acts shall be adopted in accordance with the relevant provisions of the Constitution.
2. Should a Member State fall victim to a terrorist attack, the other Member States shall assist it at the request of its political authorities. To that end, the Member States shall coordinate between themselves in the Council.
3. For the purposes of this Article, the Council shall be assisted by the Political and Security Committee and by the Standing Committee on Internal Security, which shall, if necessary, submit joint opinions.
4. The European Council shall regularly assess the threats facing the Union, on the basis of a report from the Commission and the Minister for Foreign Affairs, in order to enable the Union to take effective action.