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

IV. DRAFT ARTICLES: ENHANCED COOPERATION

General Comments

The provisions on enhanced cooperation seem to be following the logic of Community orthodoxy thereby maintaining a certain clumsiness in using the flexibility for introducing new elements or areas of integration into the European Union.

On the positive side lies the fact that the possibility of raising the issue of authorising an enhanced cooperation before the European Council has been dropped, that the procedures have been simplified and the European Parliament and the Commission in their roles been strengthened.

However, there are still points where the role of the European Parliament should be stronger as yet foreseen. And, the exclusion of defence from enhanced cooperation is a problematique in its own which might be only acceptable in the framework of the logic of the draft constitution if the specific forms of flexibility as foreseen in Article 30, Part I, and the other relevant articles in Part II can be included in their present form into the final version of the European Constitution.

PART ONE OF THE CONSTITUTION

Article 32b (Enhanced cooperation)

1. Member States which wish to establish enhanced cooperation between themselves within the framework of the Union's non-exclusive competences may make use of its institutions and exercise those competences by applying the relevant provisions of the Constitution, subject to the limits and in accordance with the procedures laid down in this article and in Articles I to P of the Constitution.

Enhanced cooperation is aimed at furthering the values and objectives of the Union, at protecting and serving its interests and at reinforcing its process of integration including its international identity. Such cooperation shall be open to all Member States when it is being established and at any time, in accordance with Article L of the Constitution.¹

2. Authorisation to proceed with enhanced cooperation shall be granted ~~by the Council~~ 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 the Union as a whole and provided that it brings together at least one third of the (eight) Member States. The ~~Council~~ Institutions of the Union shall act in accordance with the procedure laid down in Article M of the Constitution.²

3. Only representatives of the Member States participating in enhanced cooperation shall take part in the adoption of acts adopted within the Council. All the Member States may, however, take part in the deliberations of the Council in accordance with the relevant institutional provisions.³

~~Unanimity shall be constituted by the participating States only.~~ A qualified majority shall be defined as a majority of the votes of the participating Member States, representing at least three fifths of the population of those States. Unanimity, should it be used, shall be constituted by the participating States only.⁴

¹ Enhanced cooperation should further also the values of the Union in accordance with Article 2, Part I of the Constitution. It should also serve the purpose of strengthening the Union's role and identity in the world.

² It is not only the Council granting enhanced cooperation. The establishment of enhanced cooperation involves the Commission, the Council and the European Parliament. It is for this reason that the "Council" in the last sentence should be replaced by "the institutions of the Union". Also, the Treaty of Nice defines the threshold of eight countries as the minimum number for establishing enhanced cooperation. This could be maintained even if the Union expanded further to include 28 or 30 Member States.

³ It needs to be assured that the ordinary institutional procedures involving the Commission and the European Parliament in decision-making remain in place even if in the Council only participating member states have the right to vote.

⁴ OMV should be put in the first place in accordance with the overall decision-making approach in the draft constitution. Unanimity should only be used in a limited number of cases.

4. Acts adopted in the framework of enhanced cooperation shall only bind those Member States taking part in such cooperation. They shall not be regarded as an *acquis* which has to be accepted by candidates for accession to the Union.