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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 TWO OF THE CONSTITUTION, SECTION D**

### **Article I (Special forms of cooperation in the CFSP)**

The provisions of Article 32b of Part One and Articles J to P of Part Two shall not apply to structured, closer or other forms of specific (enhanced) cooperation ~~the forms of cooperation~~ in the area of defence provided for by Article 30 of Part One and governed specifically by Articles 18 to 21 of Title I B of Part Two.<sup>1</sup>

#### Stronger Alternative:

The provisions of Article 32b of Part One and Articles J to P of Part Two shall also apply to the area of defence with the exception of the specific forms of cooperation provided for by Article 30 of Part One and governed specifically by Articles 18 to 21 of Title I B of Part Two.

### **Article J (General conditions)**

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

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

### **Article K (Relations with non-participants)**

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

### **Article L (Principle of openness)**

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<sup>1</sup> A closer link needs to be established between Article I and the specific forms of enhanced cooperation in the area of defence. The point is that defence should not be excluded from enhanced cooperation. Article I in its present form is only acceptable if it is guaranteed that Article 30, Part I of the Constitution, and Article 18-21, Part II of the Constitution, can be included in the present form in their final version of the Constitution (with respect to structured and closer cooperation and the establishment of groups acting on behalf of the Union).

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

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

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

#### **Article M (Authorising procedure)**

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

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

2. In the framework of the common foreign and security policy, the request of the Member States which wish to establish enhanced cooperation between themselves shall be addressed to the Council. It shall be forwarded to the Minister for Foreign Affairs and the Commission, who shall give an opinion on whether the enhanced cooperation is consistent with the Union's common foreign and security policy; and ~~to the Commission, which shall~~

~~give its opinion in particular on whether the enhanced cooperation proposed is consistent~~ with other Union policies. It shall also be forwarded to the European Parliament for information.<sup>2</sup>

Authorisation to proceed with enhanced cooperation shall be granted by a decision of the Council, acting by a qualified majority after having consulted the European Parliament.<sup>3</sup>

#### **Article N (Procedure for the participation of other Member States at a later stage)**

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

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

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

2. In the framework of the common foreign and security policy, the Council shall confirm the participation of the Member State concerned, after consulting the Minister for

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<sup>2</sup>The Foreign Minister and the Commission should both give their opinion on the consistency with the CFSP and other Union policies. This would conform with the possibility, as foreseen in the draft constitution, of individual or joint initiatives of the Foreign Minister and the Commission in the CFSP. Also, there does not always exist a clear distinction between CFSP affairs and external relations or other policies such as monetary or agricultural policies with respect to their implications for world trade and development.

<sup>3</sup>The European Parliament should be involved also in the CFSP when authorising enhanced cooperation. Since establishing enhanced cooperation could well lead to developing new elements of integration in the CFSP it is difficult to imagine that this would happen without the European Parliament having been consulted.

Foreign Affairs. It shall note where necessary that any conditions of participation have been fulfilled. The Council may also adopt transitional arrangements acting on a proposal from the Minister for Foreign Affairs. However, if the Council considers that any conditions of participation have not been fulfilled, it shall indicate the measures to be taken to fulfil those conditions and shall set a deadline for re-examining the request for participation.

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

3. Wherever the Council acts under the provisions of this article on a proposal of the Commission or the Foreign Minister, the European Parliament shall be consulted for giving its opinion within a period of 3 months.<sup>4</sup>

#### **Article O (Funding)**

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~~ by qualified majority after ~~consulting~~ obtaining the assent of the European Parliament, decide otherwise.<sup>5</sup>

#### **Article P (Principle of consistency)**

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

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<sup>4</sup> Again, the involvement of the European Parliament should be secured, notably in the case of the Council acting on a proposal of the Commission or the Foreign Minister.

<sup>5</sup> Following the logic of including fully the European Parliament in decision-making on the expenditures of the Union, no special arrangement should be made under the CFSP for funding through the EU budget. Hence, the Parliament should give its assent for the financing from the EU budget of the non-administrative costs of enhanced cooperation. Also, the Council should be able to act by using QMV in order to facilitate decision-making on funding. Better funding possibilities may raise the attractiveness for a number of countries to bear the risks of moving forward in certain EU policy areas.