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AMENDMENTS TO THE ARTICLES OF THE DRAFT CONSTITUTION (SECOND
READING)

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DRAFT TEXT – PART ONE

TITLE I: DEFINITION AND OBJECTIVES OF THE UNION

Article I-1: Establishment of the Union

1. Reflecting the will of the citizens and States of Europe to build a common future, this Constitution establishes an ever closer ~~the~~ European Union, ~~on which shall administer common competences conferred on it by the member states.~~ ~~the Member States confer competences to attain objectives they have in common.~~ The Union shall coordinate the policies by which the Member States aim to achieve the ~~se~~ Union objectives, and shall exercise in the Community way the competences they confer on it through this Constitution based on the common experience within five decades of integration.¹

(...)

¹ It is absolutely necessary to eliminate the intergovernmental approach in the present form of Art. I-1. It is a wrong understanding of the Union when stressing that member states confer on it or not some competences to achieve or not some common objectives. The Union is based on nearly half a century of integration with an 'acquis institutionnel' and 'politique' now enshrined (and improved) in this Constitution. The amendments must stress the ever closer Union (in the minimum to be mentioned in the Preamble since it is old Treaty language), and

Article I-3: The Union's objectives

1. (...)

2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, an economic and monetary union and a single market where competition is free and undistorted.²

(...)

4. To assert its international identity and in defending Europe's independence and interests, the Union shall uphold and promote its values and interests with in the wider world, the Union shall through a common external relations policy, in particular a common foreign, security and defence policy based on solidarity and mutual loyalty.³ It shall contribute to peace, security, the sustainable development of the earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and protection of human rights and in particular children's rights, as well as to strict observance and development of international law, including respect for the principles of the United Nations Charter.

(...)

the fact that the Constitution as such empowers the Union to act.

² The important achievement of EMU, after 30 years of monetary integration, should be included in the article on the purpose of the Union.

³ CFSP and ESDP should be mentioned in connection with the objectives of the Union.

TITLE III: UNION COMPETENCES AND ACTIONS

Article I-9: Fundamental principles

(...)

2. ~~Under the principle of conferral, t~~ The Union shall act within the limits of the competences conferred upon it by the Member States established by it the Constitution to attain the objectives set out in the Constitution. Competences not conferred upon the Union in the Constitution remain with the Member States.⁴

(...)

Article I-10: Union law

1. The Constitution, and law adopted by the Union's Institutions ~~in exercising competences conferred on it,~~ shall have primacy over the law of the Member States.

(...)

Article I-11: Categories of competence

(...)

3. The Union shall have **competence to coordinate** the economic and employment policies of the Member States.⁵
4. The Union shall have competence to define and implement a common foreign and security policy, including the progressive framing of a common defence policy and a common defence.⁶

⁴ Again, the competences of the Union and their limits are defined in this Constitution.

⁵ Either the Union has a competence to coordinate or not. To ensure others coordinating themselves is rather artificial - and hence the amendment.

⁶ It is necessary to include a common defence into this paragraph and also bringing the wording of this paragraph in line with all the other articles on CFSP and ESDP in this Constitution (Art.

(...)

Article I-13: Areas of shared competence

(...)

2. Shared competence applies in the following principal areas:⁷

- internal market as far as not covered by article I-12,
- area of freedom, security and justice,
- agriculture and fisheries, excluding the conservation of marine biological resources,
- transport on land, sea and air and trans-European networks,
- energy,
- social policy, for aspects defined in Part Three,
- economic and social cohesion,
- environment,
- consumer protection,
- common safety concerns in public health matters.

(...)

Article I-14: The coordination of economic and employment policies

1. The Union shall adopt measures to ~~ensure~~ coordinate ~~ion~~ of the economic policies of the Member States, in particular by adopting broad guidelines for these policies. The Member States shall coordinate their economic policies within the Union.

(...)

3. The Union shall adopt measures to ~~ensure~~ coordinate ~~ion~~ of the employment policies of the

39-40, Part I; Title V, Part III).

⁷ It is still necessary to define more precisely what is covered under shared competences with a view to the detailed provisions of the EC-Treaty.

Member States, in particular by adopting guidelines for these policies.

4. The Union may adopt initiatives to ~~ensure~~ coordinate ~~ion of~~ Member States' social policies.

Article I-15: The common foreign and security policy

1. The Union's competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union's security, including the progressive framing of a common defence policy, ~~which might lead~~ ing to a common defence.⁸
2. Member States shall actively and unreservedly support the Union's common foreign and security policy in a spirit of loyalty and mutual solidarity and shall comply with the acts adopted by the Union in this area. They shall refrain from any action contrary to the Union's interests or likely to impair its effectiveness.

Article I-17: Flexibility clause

1. If action by the Union should prove necessary within the framework of the policies defined in Part Three to attain one of the objectives set by this Constitution, and the Constitution has not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall ~~take the appropriate measures~~ decide to make use of this flexibility clause. For the implementation of the decision through appropriate measures the Council and the Parliament shall act following the rules of the Constitution in the particular policy field.⁹
- ~~23.~~ Using the procedure for monitoring the subsidiarity principle referred to in Article I-9(3), the Commission shall draw Member States' national Parliaments' attention to proposals based on this Article.

⁸ The amendment deletes the vague formulation of the Amsterdam and Nice Treaties, outdated in view of the possibility of closer cooperation in Part III of the Constitution.

⁹ Once the decision of applying the flexibility clause has been made, the follow-up decision should be made in accordance with the legislative or other procedures as established by this constitution.

34. Provisions adopted on the basis of this Article may not entail harmonisation of Member States' laws or regulations in cases where the Constitution excludes such harmonisation.



TITLE V: EXERCISE OF UNION COMPETENCE

Chapter I: Common provisions

Article I-33: Legislative acts

1. European laws and European framework laws shall be adopted, on the basis of proposals from the Commission, jointly by the European Parliament and the Council acting with qualified majority under the ordinary legislative procedure as set out in Article [ex 251]. If the two institutions cannot reach agreement on an act, it shall not be adopted.
2. In the specific cases provided for by the Constitution, European laws and European framework laws shall be adopted by the European Parliament with the participation of the Council, or by the Council with the participation of the European Parliament, in accordance with special legislative procedures. These special exemptions shall cease to exist within 5 years [8years] after the entry into force of this constitution. [shall be reviewed in the framework of the next revision of the constitution].

(...)

Article I-36: Implementing acts

(...)

3. The law shall lay down in advance rules and general principles for the mechanisms ~~for~~ of control ~~by Member States~~ over implementing acts of the Union.¹⁰

(...)

¹⁰ The wording of this article is quite misleading when implying that the control over the implementation of the Unions acts is only a task of the member states. The amendment clarifies this point.

Chapter II : Specific provisions

Article I-39: Specific provisions for implementing common foreign and security policy

1. The European Union shall conduct a common foreign and security policy, based on the development of mutual political solidarity among Member States, the identification of questions of general interest and the achievement of an ever-increasing degree of convergence and coherence of Member States' actions.

2. The European Council shall identify define the Union's strategic interests and ~~determine the~~ objectives of its common foreign and security policy. The Council of Ministers shall decide on frame this policy within the framework of the strategic guidelines established by the European Council and in accordance with the arrangements in Part Three of the Constitution.

- (...)

6. The European Parliament shall be regularly consulted on the main aspects and basic choices of the common foreign and security policy, and shall be kept informed of how it evolves. The views of the European Parliament should be duly taken into consideration by the Foreign Minister and the Council. ¹¹

7. Decisions relating to the common foreign and security policy shall be adopted by the European Council and the Council of Ministers by qualified majority or consensus [unanimity with constructive abstention], unanimously, except in the cases referred to following the provisions in Part Three of the Constitution. Decisions Discussion shall be based on a proposal from a Member State, from the Union's Minister for Foreign Affairs or from the Minister with the Commission's support or from the Minister and the Commission jointly. —Laws and framework laws are excluded. ¹²

¹¹ This is one way of strengthening the role of the European Parliament in the CFSP.

¹² It should be tried again, first to push through that decisions in the CFSP can be taken by QMV as a general rule. Should it not be possible to succeed with this objective, the fall back position would be to insist on decisions by consensus (not unanimously). A further fall back position would be unanimity with constructive abstention as a general rule. There should be fierce resistance against any move backwards crossing the line drawn by the Nice Treaty in Article 23 TEU. The wording on laws and framework laws can be deleted since they are anyway excluded under the CFSP where only “decisions” are taken (see Art. 32, 5th sentence on

Article I-40: Specific provisions for implementing common defence policy

1. The common security and defence policy shall be an integral part of the common foreign and security policy. It shall provide the Union with an operational capability drawing on assets civil and military. The Union may use them on missions outside the Union for peace-keeping, conflict prevention, crisis-management, and strengthening international security in accordance with the principles of the United Nations Charter. The performance of these tasks shall be undertaken using mainly capabilities provided by the Member States.

(...)

3. Member States shall make civilian and military capabilities available to the Union for the implementation of the common security and defence policy, to contribute to the objectives defined by the Council. Those Member States which together establish multinational forces may also make those forces available to the common security and defence policy.
Member States shall undertake progressively to improve their military capabilities.

A European Armaments, Research and Military Capabilities Agency shall be established to identify operational requirements, to put forward measures to satisfy those requirements, to contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, to participate in defining a European capabilities and armaments policy, and to assist the Council in evaluating the improvement of military capabilities. In the framework of financial means attributed to the agency, it may support arms procurement processes in their initial stage.¹³

(...)

European decisions).

The article in its present wording adds to confusion about various forms of initiative by establishing the new type of the Minister's initiative with the Commission's support whereby deleting the joint initiative. One may argue about the fact whether there are four types of initiatives or not (MS, Minister, joint proposal, Minister with support of COM), but excluding the joint proposal of the Minister and the Commission is unacceptable with a view to cutting down the use of QMV.

¹³ In order to prevent the Agency becoming a paper tiger, the amendment on funding incentives should be considered, perhaps with the fall back position of giving the Agency the task of "assisting" the Member States in the initial funding of joint armaments projects. It is in any case necessary to set incentives in armaments cooperation without which, as the last twenty years of experience in this field shows, progress is difficult to be achieved.

Chapter III: Enhanced cooperation

Article I-43: Enhanced cooperation

1. (...)

Enhanced cooperation shall aim to further the values and objectives of the Union, protect and serve its interests and reinforce its integration process 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 [...] of Part Three of the Constitution. ¹⁴

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~~ eight [six] of the Member States. The Council shall act in accordance with the procedure laid down in Article [...] of Part Three of the Constitution. ¹⁵

3. Only representatives of the Member States participating in enhanced cooperation shall take part in the adoption of acts adopted within the Council. All Member States may, however, take part in the deliberations of the Council in accordance with the relevant institutional provisions. ¹⁶

~~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. ¹⁷

¹⁴ 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.

¹⁵ The Treaty of Nice defines the threshold of eight countries as the minimum number for establishing enhanced cooperation. This should not be overthrown but perhaps an even smaller number of states be considered to make avantgarde processes also in an enlarged Union possible.

¹⁶ 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.

¹⁷ QMV should be put in the first place in accordance with the overall decision-making approach. Unanimity should only be used in a limited number of cases.

TITLE VI: THE DEMOCRATIC LIFE OF THE UNION

Article I-45: The principle of representative democracy

(...)

4. Political parties at European level are important as a factor for integration within the Union. They contribute to forming European political awareness and to expressing the will of Union citizens. In the framework of the legislative procedure, regulations should be adopted on political parties at European level and the rules of their funding.¹⁸

(...)

Article I-49: Transparency of the proceedings of the Union's Institutions

(...)

3. Any citizen of the Union, man or woman, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union's Institutions, bodies and agencies in whatever form they are produced, ~~in accordance with the conditions laid down in Part Three.~~¹⁹
4. A European law, to be made within two years of entry into force of this constitution, shall lay down the general principles and limits which, on grounds of public or private interest, govern the right of access to such documents.²⁰

(...)

¹⁸ Political Parties at European level are one of the most important factors of developing a European polity.

¹⁹ „in accordance with the conditions laid down in Part Three” should be deleted since a European law (I-49.4) shall govern the right of access to EU documents.

²⁰ It needs to be stressed that the European law in question should be made within a certain period of time in order to prevent significant delays in citizen’s access to EU documents.

~~Article X~~²¹

- ~~1. The Congress of the Peoples of Europe shall provide a forum for contact and consultation in European political life. It shall meet at least once a year. Its meetings shall be public. The President of the European Parliament shall convene and chair them.~~
- ~~2. The Congress shall not intervene in the Council's legislative procedure.~~
- ~~3. The President of the European Council shall report on the state of the Union. The President of the Commission shall present the annual legislative programme.~~
- ~~4. One third of the Congress shall be members of the European Parliament; two thirds shall be representatives of national Parliaments. The total shall not exceed seven hundred.~~

²¹ This article should be deleted or, instead, reference be made to COSAC and the definition of its role in the protocol on the national parliaments. Should the attempt to delete this article fail, the fall back position must focus on an amendment putting the European Parliament and national parliaments on an equal footing concerning the composition of the Congress.

TITLE VII: THE UNION'S FINANCES

Article I-53: The Union's resources²²

(...)

3. A European law of the Council shall lay down the limit of the Union's resources and may establish new categories of resources or abolish an existing category. That law shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements. The Council shall act on a proposal of the Commission by super-qualified majority (2/3 of Member states and 3/5 of the Union's population) ~~unanimously~~ after consulting with the consent of the European Parliament.
4. A European law of the Council shall lay down the detailed arrangements relating to the Union's resources. The Council shall act by qualified majority [super qualified majority] on a proposal of the Commission after obtaining the consent of the Parliament.

Article I-54: The multiannual financial framework

(...)

2. A European law of the Council shall lay down the multiannual financial framework. The Council shall act on a proposal of the Commission by qualified majority [super-qualified majority] after obtaining the consent of the European Parliament, which shall be given by a majority of its component members.²³

(...)

Article I-55: The Union's budget

²² The amendments in this article are suggested to strengthen the EP's role on the decisions over the Union's resources (assent or consent of the European Parliament). Secondly, since both discussion circles of the Convention are in favour of moving to augmented qualified majority or qualified majority, QMV should be the rule for the Council in paragraph 3 and 4 of this article and superqualified majority (eg. 3/5 of MS and 4/5 of Union's population) the fall back position.

²³ The basics of the law-making procedure should be stressed: QMV in the Council on the basis of a Commission proposal and after consent of the EP (see also Art. 272 TEC)

The European Parliament and the Council shall, on a proposal from the Commission and in accordance with the arrangements laid down in Article [ex 272], adopt the European law determining the Union's annual budget.

Should there be a disagreement between the two components of the budgetary authority, the Council would have the last word on the revenues, the European Parliament on all expenditures.²⁴

²⁴ This article requires an amendment in the sense of a complementation for two reasons: to fix the competence of the Parliament on being involved in decision-making on **all** expenditures of the Union (thereby abolishing the split between obligatory and non-obligatory expenditures), and to define the rule in case of disagreement of the two parts of the budgetary authority.

TITLE IX: UNION MEMBERSHIP

Article I-58: Suspension of Union membership rights

(...)

5. For the purposes of this Article, the Council and the European Council shall act without taking into account the vote of the Member State in question. Abstentions by members present in person or represented shall not prevent the adoption of decisions referred to in paragraph 2.²⁵

(...)

~~[[Article I-59: Voluntary withdrawal from the Union~~²⁶

(...)

2. A Member State which decides to withdraw shall notify the European Council of its intention; the European Council shall examine that notification. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

²⁵ It is absolutely necessary to include in this paragraph the European Council. Otherwise, the unanimity requirement of paragraph 2 will turn the whole procedure into a farce. In the Nice Treaty this did not pose any problems since the Council was acting in the composition of the Heads of state and government.

²⁶ This dangerous article should be deleted for reasons of potential negative implications for the Brussels negotiation system (threatening postures), Monetary Union and other policies and commitments. If the elimination option fails the fall back position must focus on: strengthening the procedure, containing negative implications through a quick and clear procedure for suspending the rights of the MS in question and closing the file in a short period of ½ a year. Otherwise the Union may be paralysed for months and years. Also, the re-entry clause must be sharpened. It is not possible that states come and leave the Union as they want depending on election results and respective government policies. Hence, the right to apply again for membership should be granted only after a period of 5 [10] years. The whole intention of tightening this article would be to underline the seriousness of such a move by a member state and, hence, preventing the abuse of this right in ordinary Union business.

The rights of the Member state in question shall be frozen from the time when the European Council has received the exit notification. The representative of the withdrawing Member State shall not participate in Council or European Council discussions or decisions concerning it.

3. This Constitution shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, half a year ~~two years~~ after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, decides to extend this period.
4. ~~If a~~ A State which has withdrawn from the Union may ~~asks~~ to re-join after a period of 5 [10] years from the date of entry into force of the withdrawal agreement.; ~~†~~That request shall be subject to the procedure referred to in Article I-57. ¶

PROTOCOL ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY

(...)

6. (...)

Where reasoned opinions on a Commission proposal's non-compliance with the principle of subsidiarity represent at least ~~one~~ two-thirds of all the votes allocated to the Member States' national Parliaments and their chambers, the Commission shall review its proposal. This threshold shall be at least a two quarters in the case of a Commission proposal or an initiative emanating from a group of Member States under the provisions of Article [...] of Chapter X of Part Three of the Constitution on the area of freedom, security and justice.²⁷

(...)

²⁷ The thresholds of one third and one quarter are not high enough and risk a paralysis of EU-legislation being already complex and slow. Hence the threshold of two-thirds and two quarters.