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MATHIAS JOPP / SASKIA MATL
INSTITUT FÜR EUROPÄISCHE POLITIK

AMENDMENTS TO THE ARTICLES OF THE DRAFT CONSTITUTION

Reproduced are only amended articles or amended paragraphs of longer articles!

General comments

Today, we are sending the final set of amendments to the European Constitution with a view to the Convention's ongoing work and the plenary meeting on 9 – 10 July, 2003. Our suggestions for amendment of Parts III and IV of the Constitution are based partially on earlier made proposals for changing the provisions on Home and Justice Affairs, the European Court and the CFSP/ESDP. They focus now on strengthening the procedures (between Commission, Council and Parliament) and the decision-making capability of the Union. Although the Convention has already successfully concluded Parts I and II of the Constitution (with a legal personality for the Union, the inclusion of the Charter of Fundamental Rights, a clearer definition of competences, a hierarchy and simplification of Laws, an established balance between the European Parliament and the Council in the legislative procedure, the abandonment of the pillar structure etc.), Part III of the Constitution is not less relevant since it affects the heart of the policy interests of the member states. One of the biggest risks here is the temptation to more frequently include the recourse to unanimity in Part III of the Constitution or, at least, to reserve the right for a national veto since each member state has its specific concerns in the various policy fields of the Union. Instead, amendments of Part III must focus on moving considerably beyond the Nice Treaty towards the strengthening of transparency and parliamentary democracy and enhancing the decision-making and action capability of the Union through:

- a wider application of qualified majority voting
- elimination of national veto options,
- simplification of the authorisation procedure for enhanced cooperation,
- extension of enhanced cooperation into the defence policy field.

Particular attention needs to be paid to decision-making in the CFSP and the ESDP. Basing the Foreign and Security Policy of the Union for the next twenty years – that might be well the period in which the European citizens will live under this Constitution – on the principle of unanimity leads to nowhere, at least not beyond what is provided by the lowest common denominator among 25, 27 or 30 member states. If the Europeans want to exercise collectively any influence on world affairs, they need to change the present system. Hence, the best option would be to introduce qualified majority voting into the CFSP and to maintain unanimity with constructive abstention for defence policy (as we suggested in our previous amendment to Article 9, of the old Part II, Title B). As a compromise between generalising QMV on CFSP matters or maintaining the unanimity principle we suggest now for Article III-196 (ex-Article 9) to use superqualified majority voting as a general rule and, by derogation from this rule, qualified majority voting in particular cases which include the Council acting on the basis of a joint proposal of the Foreign Minister and the European Commission as suggested by the Convention working group VII and the majority of the Plenary.

As far as Part IV of the Constitution is concerned, it is still very much worth the effort to try to reach an agreement on future amendments to this Constitution requiring a quorum of four fifths of the member states.

The full text of our Commented Amendments to the Constitution can be found and downloaded under <http://www.iep-berlin.de/forschung/verfassung/dokumente/index.htm>

DRAFT TEXT – PART THREE

TITLE III INTERNAL POLICIES AND ACTION CHAPTER I INTERNAL MARKET

SECTION 6 FISCAL PROVISIONS

Article III-59 (ex Article 93)

1. A European law or framework law ~~of the Council~~ shall lay down measures for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation provided that such harmonisation is necessary for the functioning of the internal market and to avoid distortion of competition. The Council shall act ~~unanimously~~ with qualified majority after the consent of the European Parliament ~~and after consulting the European Parliament and~~ the Economic and Social Committee.¹

~~2. Where the Council, acting unanimously on a proposal from the Council, finds that the measures referred to in paragraph 1 relate to administrative cooperation or to combating tax fraud, it shall act, notwithstanding paragraph 1, by a qualified majority when adopting the European law or framework law adopting these measures.~~

CHAPTER II ECONOMIC AND MONETARY POLICY

SECTION 1 ECONOMIC POLICY

Article III-66 (ex Article 4)

1. For the purposes set out in Article I-3, the activities of the Member States and the Union shall include, as provided in the Constitution, ~~and in accordance with the timetable set out therein,~~ the adoption of an economic policy which is based on the close coordination of Member States' economic policies, on the internal market and on the definition of common objectives, and conducted in accordance with the principle of an open market economy with free competition.

2. Concurrently with the foregoing, and as provided in the Constitution and in accordance with ~~the timetable and~~ the procedures set out therein, these activities shall include a single currency, the euro, and the definition and conduct of a single monetary policy and exchange-rate policy, the primary objective of both of which shall be to maintain price stability and, without prejudice to this objective, to support

¹ In the field of taxation qualified majority voting should be applied in a Union of 25, 27 or more member states.

the general economic policies in the Union, in accordance with the principle of an open market economy with free competition.

(...)

SECTION 2 MONETARY POLICY

Article III-74 (ex Article 105)

(...)

6. A European law or framework law may confer upon the European Central Bank specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings. Such law or framework law shall be adopted by the Council acting unanimously after the consent of the European Parliament and after consultation of the European Central Bank.²

Article III-75 (ex Article 106)

(...)

2. Member States may issue euro coins subject to approval by the European Central Bank of the volume of the issue. The Council may adopt regulations laying down measures to harmonise the denominations and technical specifications of all coins intended for circulation to the extent necessary to permit their smooth circulation within the Union. Such law or framework law shall be adopted by the Council after consultation of the European Parliament and the European Central Bank.

Article III-76 (ex Article 107)

(...)

5. Articles 5.1, 5.2, 5.3, 17, 18, ~~19.1, 22, 23, 24, 26, 32.2, 32.3, 32.4, 32.6, 33.1(a)~~ and 36 of the Statute of the European System of Central Banks may be amended by a European law: Article 19.1, 26, 32.2, 32.3, 32.4, 32.6 and 33.1(a) of the Statute may be amended by the Council acting unanimously after the consent of the European Parliament.³

In both cases the amendments shall be based:

² Conferring new tasks on the ECB should, due to their constitutional nature, not be a matter of the ordinary legislative procedure.

³ Articles 19.1, 26, 32.2, 32.3, 32.4, 32.6 and 33.1(a) should not be amended by the ordinary legislative procedure due to their constitutional nature.

- (a) either on a proposal from the Commission after consultation of the European Central Bank;
- (b) or on a recommendation from the European Central Bank after consultation of the Commission.

SECTION 3a
PROVISIONS SPECIFIC TO MEMBERS OF THE EUROZONE

Article III-85c

1. In order to secure the euro's place in the international monetary system, Member States which are members of the Eurozone shall coordinate their action among themselves and with the Commission with a view to adopting common positions within the competent international financial institutions and conferences. ~~They~~ The Member States and, wherever possible, the Commission shall defend and promote those common positions.

Where appropriate, the European Central Bank, without prejudice to its independence, shall be fully associated with that coordination.

2. On the basis of that coordination, the Council, on a proposal from the Commission and after having consulted the European Central Bank, may adopt appropriate measures to ensure unified representation within the international financial institutions and conferences.⁴

(...)

**CHAPTER III
POLICIES IN OTHER SPECIFIC AREAS**

SECTION 3
ECONOMIC, ~~AND~~ SOCIAL ~~AND TERRITORIAL~~ COHESION
(...)

SECTION 4
AGRICULTURE AND FISHERIES

Article III-122 (ex Article 37)

(...)

3. The Council, acting on a proposal from the Commission and after having consulted the European Parliament, shall adopt the European regulations or decisions on fixing

⁴ The role of the Commission and of the European Central Bank in external representation of the Eurozone should be strengthened wherever possible due to the limited responsibility in monetary matters of Member States which have introduced the common currency.

prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities.⁵

(...)

CHAPTER IV AREA OF FREEDOM, SECURITY AND JUSTICE

1

SECTION 1 GENERAL PROVISIONS

Article III–154 (ex Article 2)

The European Council shall define the strategic guidelines for ~~legislative and operational planning~~ the policy of the Union within the area of freedom, security and justice.

Article III–160 (ex Article 8)

The acts referred to in Sections 4 and 5 of this Chapter shall be adopted:

- (a) on a proposal from the Commission, or
- (b) on the initiative of ~~a quarter~~ one fifth of the Member States.

SECTION 2 POLICIES ON BORDER CHECKS, ASYLUM AND IMMIGRATION

Article III–161 (ex Article 10)

(...)

1. The Union shall develop a policy with a view to:

(...)

(c) the gradual introduction of a integrated management system for external borders, including the development of a European border police for the support of national border controls.⁶

2. For this purpose, a European law or framework law shall establish measures concerning:

(...)

(d) any measure necessary for the gradual establishment of an integrated management system for external borders and the development of European border police;

⁵ Amendment in accordance with Art. 37.2 TEC.

⁶ There is a need for a unitarian European border control system best to be governed by a European authority for guaranteeing equal security standards at all borders for the protection of the borderless single market.

(...)

SECTION 4 JUDICIAL COOPERATION IN CRIMINAL MATTERS

Article III-170 (ex Article 20)

1. In order to combat serious crime having a cross-border dimension, as well as crimes affecting the interests of the Union, a European law ~~of the Council may shall~~ establish a European Public Prosecutor's Office from Eurojust. ~~The Council shall acting unanimously after approval by the European Parliament.~~⁷

(...)

TITLE V THE UNION'S EXTERNAL ACTION CHAPTER I PROVISIONS HAVING GENERAL APPLICATION

Article III-189 (ex 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 decisions of the European Council 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 may concern the relations of the Union with a specific country or region or may be thematic in approach. They shall define their duration, and the means to be made available by the Union and the Member States.

The European Council shall act ~~unanimously~~ by consensus on a recommendation from the Council, adopted by the latter under the arrangements laid down for each area. European decisions of the European Council shall be implemented by the Council in accordance with the procedures provided for in the Constitution.⁸

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.⁹

⁷ It should be taken for granted that a European Prosecutor's Office will be established by a European law under the ordinary legislative procedure.

⁸ The European Council establishes the guidelines of the EU's external actions, the Council is taking the necessary decisions for implementing these.

⁹ The link between a joint proposal and the use of qualified majority voting in the Council should be stressed in accordance with the suggestion of the Convention working group VII and discussion in the Convention plenary.

CHAPTER II COMMON FOREIGN AND SECURITY POLICY

SECTION 1 COMMON FOREIGN POLICY

Article III-192 (ex Article 5)

1. The Union's Minister for Foreign Affairs, who shall chair the Foreign Affairs Council, shall contribute through his proposals to ~~wards~~ the preparation of decisions on the common foreign and security policy and shall ensure implementation of the European decisions adopted by the European Council and the Council.

(...)

3. In exercising his mandate the Foreign Minister is supported by a Common diplomatic service of the Union, as explained in a declaration annexed to the Constitution, which is closely cooperating with the services of the Member States.¹⁰

Article III-196 (ex Article 9)¹¹

1. European decisions under this Chapter shall be taken by the Council acting ~~unanimously by superqualified majority of two thirds of the Member States representing two thirds of the EU population. 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 European decision, but shall accept that the latter commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position. If the members of the Council qualifying their abstention in this way represent at least one third of the Member States representing at least one third of the population of the Union, the decision shall not be adopted.~~

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

¹⁰ Amendment in analogy to the recommendations of working group VII.

¹¹ A Union with 25, 27 or more Member States will not succeed in developing a Common Foreign and Security Policy by making decisions in principle by unanimity. The logic of the above amendment is a combination of superqualified majority with qualified majority and unanimity with constructive abstention where defence issues are implied. The blocking minority in the case of a reasoned abstention mirrors in reverse the super qualified majority required for decisions under this Chapter. The veto option of a member state against the use of qualified majority needs to be abandoned by the possibility of the European Council deciding by qualified majority.

(a) when adopting European decisions on Union actions and positions on the basis of a European decision of the European Council relating to the Union's strategic interests and objectives, as defined in [Article III-189(1)] of this Title;

(b) when adopting a decision on a Union action or position, on a proposal which the Minister or the Minister and the Commission jointly puts forward to it ~~following a specific request to him from the European Council made at its own initiative or that of the Minister;~~

(c) when adopting any European decision implementing a Union action or position;

(d) when adopting a European decision concerning the appointment of a special representative in accordance with [Article III-198 (ex 11)] of this Chapter.

If a member of the Council declares that, for vital and stated reasons of national policy, it intends to oppose the adoption of a European decision to be taken by qualified majority, a vote shall not be taken. ~~The~~ The Foreign Minister and the President 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 Council may, acting by a qualified majority, request that the matter be referred to the European Council for decision by ~~qualified majority unanimity~~.¹²

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.

4. ~~Paragraphs 2 and 3 shall not apply to~~ Decisions having military or defence implications shall be taken by the Council acting unanimously. Abstentions by members present in person or represented shall not prevent the adoption of such decisions.

When abstaining in a consensus decision, 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 European decision, but shall accept that the latter commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position. If the members of the Council qualifying their abstention in this way represent at least one third of the Member States representing at least one third of the population of the Union, the decision shall not be adopted.

SECTION 2 THE COMMON SECURITY AND DEFENCE POLICY

¹² The veto option needs to be abandoned in the enlarged Union, but before the European Council will decide by qualified majority on the case in question the Union's Foreign Minister and the President of the European Council should try to mediate between the respective state and the other member states.

Article III-205 (ex Article 17)

(...)

2. The Council, acting ~~unanimously in accordance with article III-196.4 and after after consulting the European Parliament~~, shall adopt European decisions relating to the tasks referred to in paragraph 1, 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.¹³

Article III-206 (ex Article 18)

(...)

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 adopted by the Council under [Article III-205(2) (ex 17(2))], the Member States participating shall refer the matter to the Council forthwith. In such cases, the Council shall adopt the necessary European decisions and inform the European Parliament on its decisions.

Article III-207 (ex Article 19)

1. The European Armaments, Research and ~~Military~~ Capabilities Agency, subject to the Council's authority, shall have as its task to:

(a) contribute to identifying the Member States' civil and military capability objectives and evaluating observance of the capability commitments given by the Member States;¹⁴

(b) promote harmonisation of operational needs and adoption of effective, compatible procurement methods;

(c) propose multilateral projects to fulfil the objectives in terms of military capabilities, ensure effective coordination of the programmes implemented by the Member States and management of specific cooperation programmes;

(d) support defence technology research, ~~and coordinate and plan joint research activities and the study of technical solutions meeting future operational needs where~~

¹³ It should be stressed that already under the Nice Treaty the Council can act on decisions having military or defence implications by unanimity involving constructive abstention. It is therefore necessary to point to Article 196.4 and not to state that defence decisions need to be taken unanimously. 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. The right of the European Parliament needs to be made explicit.

¹⁴ The Headline Goals for the civil crisis management capabilities of the Union are often neglected but need to be included as an important means of crisis management in the Constitution.

necessary through making own contributions or providing within its budgetary limits individual funding for joint research activities;

(e) contribute to identifying and, if necessary, implementing ~~any useful~~ measures for strengthening the industrial and technological base of the European defence sector and for improving considerably the effectiveness of military expenditure.

(f) contribute to the development of a European Armaments market and a European armaments policy, including common aspects of arms export control policy¹⁵

2. The Agency shall be open to all Member States wishing to be part of it. The Council, acting by qualified majority and after the consent of the European Parliament, shall adopt a European decision defining the Agency's budget, 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. The Agency shall carry out its tasks in liaison with the Commission where necessary.¹⁶

Article III-208 (ex Article 20)

The Member States listed in ~~Protocol~~ 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 the most demanding tasks, hereby establish structured cooperation between themselves within the meaning of [Article I-40(6)]. The military capability criteria and commitments which those Member States have defined are set out in that ~~Protocol~~ Declaration.¹⁷

(...)

3. When the Council adopts European decisions relating to matters covered by such cooperation, only the representatives of the Member States taking part in structured cooperation shall participate in the deliberations and the adoption of such European decisions. The Minister for Foreign Affairs shall attend the deliberations. The representatives of the other Member States shall be duly and regularly informed by the Minister for Foreign Affairs of developments in cooperation. The Minister shall submit to the European Parliament an annual report on structured cooperation.

(...)

SECTION 3 FINANCIAL PROVISIONS

¹⁵ In order to give the Armaments Agency a long term objective the perspective of a European Armaments policy and a European armaments market needs to be included into this article on the tasks of the Agency.

¹⁶ The rights of the European Parliament need to be strengthened wherever financial aspects are involved as is the case when the Agency will be set up.

¹⁷ The protocol would require an amendment of this Constitution if a member state wishes to participate in structured cooperation.

Article III-210 (ex Article 22)

(...)

3. A European decision ~~of by~~ the Council acting unanimously after the consent of the European Parliament shall establish the specific procedures for guaranteeing rapid access to appropriations in the Union budget for urgent financing of initiatives in the framework of the common foreign and security policy, and in particular for preparatory activities for tasks as referred to in [Article I-40(1)].

[Preparatory activities for tasks as referred to in [Article I-40(1)] 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 European decisions establishing:

(a) the procedures for setting up and financing the fund, in particular the amounts allocated to the fund and the procedures for reimbursement;

(b) the procedures for administering the fund;

(c) the financial control procedures.

When it is planning a task as referred to in [Article I-40(1)] 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 preparatory fund will become an integral part of the Union's budget.¹⁸

CHAPTER III COMMON COMMERCIAL POLICY

Article III-212 (ex Article 24)

(...)

3. Where agreements with one or more States or international organisations need to be negotiated, the relevant provisions of [Article III-222 (ex 33)] of this Title shall apply. The Commission shall make recommendations to the Council, which after

¹⁸ 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. The provisions on the start-up fund should therefore either be deleted or, alternatively, a transitory arrangement, as suggested in this amendment, should be foreseen in the Constitution. This would imply an automatism after a period of X years for transferring the start up fund into the EU-budget or a specific procedure involving Council and Parliament.

consulting the European Parliament 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.

(...)

~~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 provisions for which unanimity is required for the adoption of internal rules.~~

(...)

CHAPTER IV COOPERATION WITH THIRD COUNTRIES AND HUMANITARIAN AID

SECTION 2 ECONOMIC, FINANCIAL AND TECHNICAL COOPERATION WITH THIRD COUNTRIES

Article III-217 (ex Article 29)

When the situation in a third country requires urgent financial aid from the Union, the Council shall adopt the necessary ~~European~~ decisions on a proposal from the Commission after consulting the European Parliament. The three institutions involved shall, in principle, agree on a fast track procedure covering situations of emergency aid.¹⁹

CHAPTER VI INTERNATIONAL AGREEMENTS

Article III-222 (ex Article 33)

(...)

7. The Council shall conclude agreements on the proposal of the agreement negotiator. Except where agreements relate exclusively to the common foreign and security policy, the Council shall not conclude any agreement until the European Parliament has been consulted. The Parliament shall deliver its opinion within a time-limit which the Council may lay down according to the urgency of the matter. In the absence of an opinion within that time-limit, the Council may act. The European Parliament's consent shall be required for association agreements, for Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms and for agreements establishing a specific institutional

¹⁹ There is no reason why it should not be possible to establish a fast track procedure, notably between Council and Parliament, whenever an urgent decision with budgetary implications is required.

framework by organising cooperation procedures, agreements with important budgetary implications for the Union, including those on trade and cooperation, 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 consent.²⁰

(...)

TITLE VI
THE FUNCTIONING OF THE UNION
CHAPTER I
PROVISIONS GOVERNING THE INSTITUTIONS

SECTION 1
THE INSTITUTIONS

Subsection 5
The European Court of Justice

Article III-255 (ex Article 222)

The European Court of Justice shall be assisted by eight Advocates-General. Should the European Court of Justice so request, the Council, acting ~~unanimously~~ by qualified majority, may increase the number of Advocates-General.

(...)

Article III-258 (ex Article 224a)

A panel shall be set up in order to give an opinion on candidates' suitability to perform the duties of Judge and Advocate-General of the European Court of Justice and the High Court before the governments of the Member States take the decisions referred to in [Articles III-256 and III-257 (ex 223 and 224)]. The panel shall organise a public hearing with the candidates before formulating its opinion on the basis of its non-public deliberations.

The panel shall comprise seven persons chosen from among former members of the European Court of Justice and the High Court, members of national supreme courts and lawyers of recognised competence, ~~one~~ three of whom shall be proposed by the European Parliament. The Council shall appoint the members of the panel and establish its operating rules pursuant to a European decision adopted on a proposal from the President of the European Court of Justice after having consulted the European Parliament.²¹

²⁰ Trade and Cooperation agreements which have direct or indirect financial implications should also be subject to the consent of the European Parliament.

²¹ The panel could become an important bridge towards a more open and democratic appointment procedure for Europe's Judges and Advocates-General if more transparency and greater involvement of the European Parliament would be envisaged.

Article III-260 (ex Article 225a)

1. A European law under the ordinary legislative procedure may establish specialised courts attached to the High Court to hear and determine at first instance certain classes of action or proceeding brought in specific areas. It shall be adopted either on a proposal from the Commission after consultation of the European Court of Justice or at the request of the European Court of Justice after consultation of the Commission.

(...)

4. The members of the specialised courts shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office. They shall be appointed by the Council, acting ~~unanimously~~ by qualified majority.

(...)

Article III-278(ex Article 240a)

The European Court of Justice shall ~~not only~~ have jurisdiction on procedural matters with respect to Articles [I-39 and I-40] and the provisions of [Chapter II of Title V of Part Three] concerning the common foreign and security policy.²²

CHAPTER II FINANCIAL PROVISIONS

SECTION 1 THE MULTIANNUAL FINANCIAL FRAMEWORK

Article III-304 (new)

(...)

3. The financial framework shall lay down any other provisions required for the annual budgetary procedure to run smoothly including a flexibility mechanism for matching unforeseen but necessary tasks.

4. Where no European law of the Council establishing a new financial framework has been adopted by the end of the previous financial framework, the ceilings and other provisions corresponding to the last year of that framework shall be extended until such time as that law is adopted. The Conciliation Committee should be convened as quickly as possible for reaching agreement between the two parts of the budgetary authority.

²² The procedures (and not the content) of Title V of the Constitution should be subject to supervision by the Court of Justice in case of their breach by an EU institution or a member state.

(...)

SECTION 3 IMPLEMENTATION OF THE BUDGET AND DISCHARGE

Article III-309 [ex Article 274]

The Commission shall implement the budget ~~in cooperation with the Member States,~~ in accordance with the European law referred to in [Article III-314 (ex 279)], on its own responsibility and within the limits of the appropriations allocated, having regard to the principles of sound financial management. Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with those principles.²³

(...)

SECTION 4 COMMON PROVISIONS

(...)

Article III-316 (new)

Regular meetings between the Presidents of the European Parliament, the Council and the Commission ~~shall~~ may be convened ~~on the initiative of the Commission~~ under the budgetary procedures referred to in this Chapter. The Presidents ~~shall~~ may take all the necessary steps to promote consultation and the reconciliation of the Institutions' positions to facilitate the implementation of the provisions of this Chapter.

CHAPTER III ENHANCED COOPERATION

Article III-318 (ex Article I)

The provisions of Article [I-43] of the Constitution and Articles [III-319 to III-325] below shall not apply to the conduct of military operations in crisis management and the forms of cooperation in the area of defence governed specifically by Article III-206 and Article III-209. ~~the forms of cooperation in the area of defence provided for by Article [I-40]. Such forms of cooperation shall be governed specifically by Articles [III-206 to III-209 (ex 18 to 21)].~~²⁴

Article III-319 (ex Article J)

²³ The Commission is responsible for implementing the budget.

²⁴ Enhanced cooperation should be extended to the area of defence as far as armaments and military cooperation are concerned.

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.²⁵~~

Article III-322 (ex Article M)²⁶

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. In the area of freedom, security and justice these Member States can submit a proposal to the Council aiming at the authorisation of a specific enhanced cooperation.

Authorisation to proceed with enhanced cooperation shall be granted by a decision of the Council with simple majority, acting on a proposal from the Commission or the interested states and after obtaining the consent of the European Parliament with the majority of the votes cast.

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, 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.

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

TITLE VII COMMON PROVISIONS

²⁵ The wording of these two sentences sounds much too restrictive, underlining the opposite of what is intended under enhanced cooperation aiming at deepening the internal market (and integration as such) and not undermining it.

²⁶ In the area of freedom, security and justice Member States should have a right of initiative. The procedure for authorising enhanced cooperation should be significantly facilitated in order to overcome the present "strait jacket" mostly preventing recourse on enhanced cooperation. In the area of Title V the Council should be able to act by qualified majority in order to authorise enhanced cooperation. Otherwise enhanced cooperation might never take place in CFSP and ESDP. If the European parliament gives its consent to enhanced cooperation in matters of economic policy or justice and home affairs it would mean to follow a certain logic when requiring the consultation of the Parliament for authorising enhanced cooperation in CFSP and ESDP.

Article III-329 (ex Article 283)

The Staff Regulations of Union officials and the Conditions of Employment of other servants of the Union shall be laid down by law. The law shall be adopted by the Council after consultation of the European Parliament and the other Institutions concerned.

Article III-338 (ex Article 296)

1. The Constitution shall not preclude the application of the following rules:

(a) no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security;

(b) ~~any Member State's policies may take such steps as it considers necessary for the protection of the essential interests of its security~~ which are connected with the production of or trade in arms, munitions and war material; ~~such steps~~ shall not adversely affect the conditions of competition in the internal market regarding products which are not intended for specifically military purposes.²⁷

(...)

²⁷ Amendments with a view to the setting up of an Armaments Agency and the development of structured cooperation. The Convention may further wish to consider this Article in the context of common defence and the provisions existing already under Article III-209.

DRAFT TEXT – PART FOUR

Article IV-5 (ex Article E) Protocols

The protocols annexed to this ~~Treaty~~ Constitution shall form an integral part thereof.

Article IV-6 (ex Article F) Procedure for revising the Treaty establishing the Constitution

(...)

2. If the European Council, after consulting the European Parliament and the Commission, adopts by a simple majority a decision in favour of examining the proposed amendments, the President of the European Council shall convene a Convention composed of one representatives of ~~the~~ each Heads of State or Government of the Member States, two representatives of each of the national Parliaments of the Member States, ~~of the Heads of State or Government of the Member States, an equal number of representatives~~ of the European Parliament and five representatives of the Commission. The European Central Bank shall also be consulted in the case of Institutional changes in the monetary area. The European Council may decide by a ~~simple~~ 3/5 majority after the consent of the European Parliament not to convene the Convention should this not be justified by the extent of the proposed amendments. In the latter case, the European Council shall define the terms of reference for the conference of representatives of the governments of the Member States.

The Convention, which elects its President from its members, shall examine the proposals for amendments and shall adopt by consensus a recommendation to the conference of representatives of the governments of the Member States provided for in paragraph 3.

3. The conference of representatives of the governments of the Member States shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to the ~~Treaty establishing the~~ Constitution.

The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.

4. If, two years after the signature of the Treaty establishing the Constitution, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter shall be referred to the European Council. By derogation from §3 the amendments may come into effect if the European Council so decides by 5/6 majority after consultation of the Court of Justice and the consent of the European Parliament.

~~**Declaration in the Final Act of signature of the Treaty establishing the Constitution**~~

~~If, two years after the signature of the Treaty establishing the Constitution, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter will be referred to the European Council.~~