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Part 2 of 2

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FAJAPS (GFM)

**PM/03/004**

**PRIME MINISTER**

Mr. Gove

cc JSW

MD

MNR

RG

TF

JB

KC

**Convention On The Future Of Europe**

1. I have seen a copy of Peter Hain's helpful minute to you of 19 December about the state of negotiations in the Convention and the prospects for the next few months.
2. I think that Peter and his team - Patricia Scotland, John Tomlinson, Linda Mcavan and Gisela Stuart – are doing an exceptional job for us, as are the supporting officials in No 10, FCO, UKREP and Cabinet Office. The British delegation has played a genuinely leading role in the Convention to date. Joschka Fischer was only half joking when he said that he was joining the Convention to prevent the British agenda from dominating.
3. I have a few comments on the substance. As Peter says, the most difficult phase is still to come. From now on, the Convention will be negotiating the Articles of the proposed Constitutional treaty. They will start from the recommendations of the working groups. We shall need to protect gains – for example, the subsidiarity mechanism and the hard-won outcome on the Charter. We will also have to see off the re-emergence of themes we have managed to neutralise but not kill off - for example, communitisation of CFSP, QMV for tax harmonisation. This will mean:

- using our influence with Giscard and John Kerr. We have passed to Kerr texts for the early Articles of the Constitutional Treaty and FCO lawyers are working up the remainder. Your contacts with Giscard will be important. As Peter says, you may need to speak firmly to him about those ideas which we can't accept; and

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- supporting Gisela on the Praesidium. The Praesidium will become increasingly important as the forum in which the proposals for new Treaty Articles are pre-negotiated. We have increased FCO support for Gisela (though this has to be subtly managed as she formally represents national parliaments not HMG);
- building alliances. Peter and the team have laid the foundations. But they will increasingly need your and my support. The Elysee Treaty celebrations on 22 January may produce some difficult Franco-German proposals. Given Joscka Fischer's deeply held views, I agree with Peter that your influence with Schroeder will be crucial. We will be working on joint initiatives with the French in the run-up to the Anglo-French summit on 4 February. As for other alliances, our work with the Spaniards is paying off. They, together with the Estonians, are co-sponsoring Peter's paper on Social Europe; and they are working with us to kill off the idea of a single President of Europe. I am seeing my Italian counterpart next week. I have asked Denis MacShane and FCO officials to step up work with the accession countries.

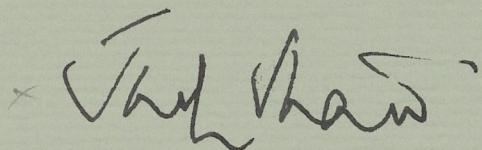
4. On the key institutional issues, I am sure Peter is right that the end game will be a triangular deal around the Council and Commission Presidents and the High Representative. We need to keep a careful eye on Franco-German manoeuvring on this (particularly if Fischer manages to persuade the French to support the single President idea), but we must hold our nerve. A full-time elected Chair of the European Council is, in my judgement, achievable. We mustn't settle for "compromise" ideas like a notional President, who is selected from serving members of the European Council, and keeps his day job. Nor should we give the impression that we are prepared to pay a high price for securing this post. We may need to accept some form of EP election of the Commission President: though if so, we should insist on a consensual figure, who commands at least a two-thirds majority in the European Parliament. And we may need to look again at double-hatting the High Representative (but only in a form that preserves the inter-governmentalism of CFSP). But – as Peter says – either of these concessions is for rather later in the game. And we must avoid paying twice for our elected Chairman of the European Council.

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5. On future meetings, I am continuing to chair fortnightly meetings of the Convention team. But I agree with Peter on the value of your holding another meeting of Ministers and the Convention team soon.
6. Finally, I plan to make one or two speeches on European issues in the next few months including on institutional issues, asylum, and the future of CFSP and ESDP. I will be in touch with relevant Cabinet colleagues and No 10 officials as we work up texts.
7. I am copying this minute to Peter Hain, Patricia Scotland, Denis MacShane, Sally Morgan, Alastair Campbell, Roger Liddle, Stephen Wall and Nigel Sheinwald.

A handwritten signature in black ink, appearing to read "Jack Straw".

(JACK STRAW)

Foreign and Commonwealth Office  
14 January 2003

**RESTRICTED**

From: Stephen Wall  
Date: 10 January 2003

**PRIME MINISTER**

Jonathan Powell  
Alastair Campbell  
Sally Morgan  
Jeremy Heywood  
David Manning  
Roger Liddle  
Matthew Rycroft  
Steve Morris  
Sir Andrew Turnbull  
Sir Nigel Sheinwald  
Martin Donnelly

**FRANCO-GERMAN VIEWS ON FUTURE OF EU**

Silberberg rang to brief me on German discussions with the French yesterday.

They are close to agreement on the following lines:

(i)

There would be a President of the Union – more or less a ceremonial figure, rather like the President of Germany. He or she would represent the Union at purely formal occasions and might have some role as a go-between in the event of disagreement between the two real top dogs who would be: (a) a permanent President of the European Council elected for two-and-a-half or five years and with the kind of powers that we envisage; (b) the President of the Commission elected by the European Parliament on the basis of names agreed by the European Council ie the Parliament could only chose somebody that the European Council had agreed in the first place.

*Wk  
wants this  
just  
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confusion?*

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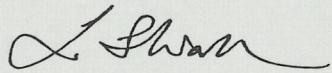
- 2 -

- (ii) Foreign Policy. There would be a single Minister of Foreign Affairs for the EU replacing Solana and Patten but the Germans have bought our and the French view that he should be answerable to the Council and not to the Commission. Other than for defence policy, there should be QMV in the foreign affairs field but with an emergency brake.
- (iii) The Presidency. The EU Foreign Minister would preside over the Foreign Affairs Council. The Secretary-General of the Council would chair the GAC. There would be elected chairs for ECOFIN, JHA Council and the eurogroup. The French and Germans will leave open in their paper what the position would be on other Councils in order not to offend the smalls.

Comment

These are very much steps in the right direction as far as we are concerned. In particular, there now seems to be no question of a combined figure heading the European Council and the Commission. The ceremonial president of the Union is a compromise that has enabled that to happen. It is somewhat otiose but I think we should live with it at this stage in order to get the rest pretty much as we like it.

Silberberg enjoined me to secrecy on these proposals but wanted you to be aware of them before you see Schröder on Saturday.



**STEPHEN WALL**

**CONFIDENTIAL**

See



10 DOWNING STREET  
LONDON SW1A 2AA

THE PRIME MINISTER

23rd Dec.

Dear Peter,

'Many thanks  
for the note on the European  
Convention. I agree with your  
assessment and we shall take  
stock again in the New Year.'

Best wishes,

Yours ever,  
Tony

J



Prin Mawr

Personal

✓  
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RL  
EC  
SM  
JW  
JP

PRIME MINISTER

19 December 2002

I agree with Peter on

X p. 2

AM

23/12/02

### CONVENTION ON THE FUTURE OF EUROPE

I thought now might be a good opportunity to assess where we have got to and where we need to go over the coming months in the Convention.

Our team has worked hard: speaking in the plenaries and lobbying in the Working Groups. And we have banked significant gains: notably on subsidiarity, the Charter and Justice and Home Affairs. Patricia's efforts have made a real difference to the latter two.

In other areas, we have secured Working Group outcomes which, though less than ideal, we can reasonably live with. For example, I have worked closely with Jean-Luc Dehaene, chair of the External Relations Group. And it has paid dividends : Dehaene's final report is relatively helpful to us even though we were in a small minority in the Group discussions, and there was enormous pressure to communiteise CFSP, either through the front or back doors.

On economic governance, Linda McAvan MEP worked well to stalemate the working group on tax harmonisation *et al*. But we will need to keep a close eye on this as Giscard has already his intention to push ahead regardless..

I share your concerns about the new Social Working Group: some key issues are at stake here. Early meetings suggest that we are in as good a position as it is realistic to hope for. I have a good relationship with Chair George Katiforis and he is keen to do business with us. And our lobbying has ensured a reasonable balance in the membership. We are pushing our domestic social inclusion agenda and cross referencing to the Lisbon objectives. I have also pushed on equal opportunities (especially gender and race) and sustainable development which has interestingly outflanked the comrades who seem curiously backmarkers, pre-occupied is they are with what used to be called a 'labourist' agenda.

But the Group will inevitably be dominated by MEPs, who, unlike many Government Representatives, always turn up for meetings. Their focus is on social protection for workers and extension of Community competence. Ours is on full employment and competitiveness with good social standards and



national flexibility. We have a real battle to fight here. We have produced a draft paper that we hope to agree with like-minded Member States and candidates (especially the Germans, Spanish, Irish, Dutch, Poles and Estonians). A paper submitted with such wide Member State support would be hard for Giscard to ignore.

The March to September period was successful for us. We established our credibility and were taken seriously by others. But I had been warning for some time that we could expect rockier times ahead, and the press coverage of the arrival of the French and German Foreign Ministers in the Convention has borne me out. On the one hand, this is a backhanded compliment to the successes of the British team. On the other it poses a bigger challenge, though even this is mitigated by the reality that the Foreign Ministers at the Convention rarely manage to be there except for set-piece plenary events when they come and go. (This is true for Ana de Palacio and Louis Michel too.) By contrast Patricia and I work the Convention continuously, including on the crucial Working Groups.

However the relative quiescence of Government Representatives means we often end up doing the heavy lifting for the Council, and at Working Group meetings have even fewer allies present. The Swedes are the only consistently forceful allies. In plenary debates on a couple of occasions Giscard's team has specifically asked me to make tough points. It would be good if you could repeatedly press the Spanish and Italian Ministers to speak more: when they do, they are invariably good.

As I discussed with you on the plane to Cardiff, the endgame now looks to me to be a triangular deal around the issues of a President of the Council, European Parliament/Congress election of the Commission President and some form of "double-hatting" for the High Representative. In your contacts with other leaders, whilst holding back for the endgame, our position should be carefully staked out. Others are already manoeuvring around this deal: the Germans are clearly expecting us to pay twice for the President of the Council by agreeing to both EP election of the Commission President and a Commission orientated double-hatted High Representative. We may wish to be flexible on the Commission President election/ratification provided the Council has the final say. But not yet.

We must resist the "one President" (Council and Commission) idea touted by some sections of the French and German governments, and favoured by many MEPs and some small governments. This would either be a Commission takeover of the Council or fatally damage the Commission's independence. Fischer is obsessed with this and your influence with Schroeder will be crucial, preferably well before the Elysee Summit in mid-January.



## Wales Office | Swyddfa Cymru

So big battles lie ahead, especially on the detailed drafting of the constitutional text. It remains to be seen what level of consensus the final Convention output will command. We must keep our nerve and ensure that we get sufficient opportunity both in the Convention and the IGC to keep our red lines intact. We are facing the challenges we always knew we would face. We are still reasonably well placed and I remain hopeful of a saleable outcome.

Your own role will become increasingly crucial from the New Year onward, because the constitutional text will begin to be negotiated line by line from then. We need a 'game plan' where you can prioritise key Convention issues with other Leaders, and Jack and Denis the same with Foreign and Europe Ministers. Your session with Giscard will be important, though it might require some franker messages than were delivered at the last couple of dinners: he has shown a capability of ruthless manoeuvring in ways we oppose as well as ways we support. A stock take/strategy meeting along the lines of the one you held a couple of months ago would also be useful if you have time.

Meanwhile FCO officials are doing an excellent job – even if overstretched at times, because the pressure can be huge. The Whitehall contribution is good – although a little slow at times. The UK team is held in high regard in the Convention. I would like to pass on my thanks for Roger's support. He has done some especially valuable networking with the PES and has provided me with the sort of out-of-the-box thinking which has added real value to the team.

I am copying this note to Jack Straw, Patricia Scotland, Sally Morgan, Alistair Campbell, Roger Liddle, Stephen Wall and Nigel Sheinwald.

A handwritten signature in black ink, appearing to read "Peter Hain".

Peter Hain

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**FAXED**

**From:** Stephen Wall  
**Date:** 20 December 2002

**PRIME MINISTER**

**cc:** Jonathan Powell  
Alastair Campbell  
Sally Morgan  
Jeremy Heywood  
Roger Liddle  
Matthew Rycroft  
Steven Morris  
Sir Andrew Turnbull  
Sir Nigel Sheinwald  
Martin Donnelly

#### **EUROPEAN CONVENTION: END OF YEAR UPDATE**

You might welcome an update on the Convention as the year draws to an end.

In terms of public perceptions, it has been a game of two halves. From the spring onwards we were widely thought to have been making the running. Peter Hain quickly built up an excellent reputation at the Convention as a forceful speaker and effective networker. The fact that he so clearly represented your views worked in our favour: other Member States with less authoritative representatives found that their voices were drowned out in the Convention cacophony. Pascal Lamy claimed in *Le Monde* that we were “leading the dance.”

The appointment of first Fischer then de Villepin as the German and French representatives suggested that others were rattled. Following this the Franco-German motor spluttered into life, with joint proposals on defence and JHA. The Smalls too showed their concern about the “intergovernmental” direction of the Convention, and, with the Dutch as ring leaders, sought to concert more and

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develop joint positions. This was reflected in a (not too bad) Benelux joint paper in December, with which various countries, including the Poles, associated themselves. Finally, the Commission Communication and Feasibility Study presented to the Convention in December showed that they too were determined to bring the Convention back into an integrationist orbit. But Peter is still seen as one of the leading players.

On substance too, there have been mixed results.

The subsidiarity working group recommended the establishment of an early warning mechanism, whereby national Parliaments examine whether new EU legislation respects the principles of subsidiarity and proportionality. We need to pin down the details, e.g. to oblige the Commission to withdraw or amend proposals that national Parliaments do not like. But the proposition seems to be largely accepted, with even the Commission including it in their Communication on the Convention – apparently the only part of the document that stayed in from the first draft.

On JHA, we largely succeeded in driving through our positive vision of delivering arrangements which will get more results on asylum and immigration, while respecting our red lines on our borders protocol. There is still an argument to be had on how far JHA is communitarised and how far we extend QMV. But we are not alone on this. The idea of a European Public Prosecutor has not gone away. Whitehall (including the Attorney) hates the idea of an individual with prosecuting powers and prefer to focus on strengthening the Eurojust system of cooperation between judicial authorities. I am trying to persuade them to go a step further and accept that member states would take an obligation to prosecute

in certain circumstances, while leaving it to them to do the prosecuting. If we do not go this far we will not take the trick.

Although there is much work still to be done, Patricia Scotland managed a much better than expected result on the Charter. The horizontal clauses of the Charter have been amended to make it clear that the Charter informs citizens about existing rights in the Treaties, ECHR and national law, but does not itself create new competences for the EU. The Attorney General will be testing the precise language to see whether it does the trick in the New Year. The challenge will be to agree a way of incorporating the whole Charter, including the Commentary, without putting the text of the Charter in the Treaty itself.

The idea of a Constitution for the European Union is now largely accepted here. This has been a genuine evolution in public opinion in an area that was, until very recently, taboo. There are, as you would expect however, a number of outstanding difficulties.

Despite the lack of consensus in the Economic Governance working group, there is strong pressure in the Convention (including from Giscard, the French and the Germans) to extend QMV to aspects of tax which could impact on the single market, and to formalise the Eurogroup as body within Ecofin. We are preparing advice on how to manage this.

The working group on “Social Europe” is the only one yet to report back to Plenary. Indeed, it was only set up after a deal between the two main parties in the Parliament, resulting from pressure by the French and others. The aim for many will be to win back ground that they have lost in the Charter working

group, which successfully “tied back” socio-economic rights in the Charter to their roots in the Treaties or common constitutional traditions. We are taking this group very seriously – not least because some would like to use it to harmonise labour laws and industrial relations legislation. But we have our own agenda too, based on the social rights already reflected in the Lisbon process and on the need to combat social exclusion. We hope to submit a joint paper with the Spanish and others in the New Year.

The final reports on External Relations and Defence are being debated in Plenary today. Although a number of uncomfortable issues have been raised – mutual defence guarantees, more QMV in CFSP and a greater role for the Commission – the final reports were not too bad. We are close to the French and Germans on many aspects of Defence – an EU capabilities agency to encourage investment and plug gaps in our capabilities; a co-ordinated EU response to terrorist attacks; and the need to update the Petersberg tasks. There will still be difficult debates about EU Embassies and the need for EU representation in international fora in the External Relations context, but these ought to be manageable. And the conclusion of Berlin Plus at Copenhagen has rightly returned the focus to the imminent reality of ESDP, rather than unrealistic and irrelevant debates about institutions or mutual defence.

On the big institutional questions, there is still all to play for.

Your proposal for an elected Chair of the European Council is liked by some, but hated by several. The Smalls see it as a means of the large Member States taking over the EU and remain attached for domestic political reasons to the principle of rotation. Aznar still supports, as does Chirac, and (apparently) Schroeder.

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*We must  
spell  
this  
strongly*

Fischer meanwhile is touting the idea of the Commission President chairing the European Council (a single "President of Europe"). This could yet provide the basis of a Franco-German compromise at their summit on 22 January, although many in Paris and Berlin continue to dislike the idea for the same reasons we do. We are talking to both sides to dissuade them: Italy and Spain remain opposed.

There is still pressure for a double-hatted external relations representative for the Union, to be called a "Secretary of the Union", "EU Foreign Minister" or, as now, "High Representative". I am fairly confident that the debate is moving in a helpful direction – i.e. towards a model whereby the Hi Rep would be a Commissioner, but answerable to the European Council and independent from (i.e. could not be outvoted by) the other Commissioners. This would amount to a "reverse take-over" and could actually help the development of CFSP by allowing the Council greater access to the Commission budget. ✓

The third aspect of the institutions triangle is the nomination of the Commission President by the Parliament (and confirmation by the European Council). This idea has widespread support from Schroeder, the Commission, the EP, and the Smalls. Others, in particular the Danes, are pushing the idea of an electoral college of MPs and MEPs. We could mitigate its worst effects by insisting that a nomination must be passed by a large majority in Parliament (thus avoiding the President being hostage to one political group or another) or by going along with the electoral college, which closely resembles Giscard's Congress.

As I have mentioned to you, I think we could cut a deal with the French and Germans involving these three aspects. I will be seeing my opposite numbers from Paris and Berlin again in the week after the holidays, partly to remind them

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that a deal is possible (if they avoid anything too dramatic on 22 January). How we sell the Chair of the European Council to the Smalls will be more difficult. I agree with Roger that we need a road show in the New Year to the candidate countries to establish which of them can be rallied to our camp. We are organising this. Prior to Copenhagen they have tended to tell each of the 15 what they think we wanted to hear. Yes, they are quite nationalistic; but they also recognise that the EU is the goose that lays their golden eggs. They will not want to alienate the Commission.

In any case, as instructed, we are firming up joint work with the Spanish, Italians and candidate countries. We aim to put a joint package together on the institutions with the Spanish in the New Year, and try to sell it to Rome too. We are working in other areas with both, including on Social Europe.

On process, as Giscard said at Copenhagen, we are now halfway through the "study phase." The first two Plenaries of the New Year will be devoted to the institutions (20 and 21 January), and to Social Europe, and the Regions on 6 and 7 February. In addition, the Secretariat will begin drafting chunks of text to fill out the outline Treaty presented by Giscard on 21 October. These will be debated in turn by the Plenary.

The Convention will have seen drafts of all the sections by April, with a view to Giscard drawing together Part I of the draft Treaty before Easter (18 April). We expect the drafting of Part II of the constitution to continue in parallel, with the assistance of an expert legal committee drawn from all three institutions. So a full draft of the complete Treaty should be ready for consideration by early May.

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2003 will be a busy and crucial year therefore, which will place a strain in particular on Peter Hain, Patricia Scotland and, increasingly, Gisela Stuart. It would be good if you had the time to chair another meeting on the Convention early in the New Year, not least as a pep talk for the UK team.

*Ril*

*S. Wall*

✓

**STEPHEN WALL**

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*Copay*

**From:** Roger Liddle  
**Date:** 19 December 2002

**PRIME MINISTER**

**Cc:** Jonathan Powell  
Stephen Wall  
Alastair Campbell  
Sally Morgan  
Andrew Adonis  
Peter Hyman  
Matthew Rycroft  
Francis Campbell  
Steve Morris

**CONVENTION: SWEDEN AND FINLAND**

Three days in Sweden and Finland brought home some of the problems we face.

Persson's people are all basically on side but they are going weak at the knees. They believe the price for our securing an elected President of the European Council may prove too high. They fear that the Germans will insist on an election of the Commission President by the Parliament – an outcome they view with deep misgiving. Even if a two-thirds majority requirement avoids a partisan Commission, they fear we still risk too big an increase in the Parliament's power. We would be setting up an institutionalised conflict between an intergovernmental pillar of European governments built around the Council and a Community pillar where the Commission would feel its primary accountability lay to the Parliament.

The solution Lena Hejm-Wallen wants to explore is a procedure that involves national Parliaments in the election of the Commission President without 'creating a new institution' ie. not Giscard's Congress. Maybe the right of

nomination could be put in the hands of national Parliaments. Alternatively the EP might draw up a shortlist from which a college of national Parliamentarians could make the choice. **Do you think there's anything in exploring these type of formulae?**

In Helsinki I was thoroughly "conventioned" by our excellent new Ambassador, Matthew Kirk. He got me meetings with all the key officials in Europe, the Finnish Convention representatives, Parliamentarians who play a key role in European policy and Prime Minister Lipponen himself.

I found most of my Finnish interlocutors open-minded about the argument for change. Your Cardiff speech has made a big impact on even the far-flung 'cognoscenti'. The exception was the academic whom Lipponen curiously appointed to the Convention as his personal representative, who is a head-banging federalist.

**Lipponen was anxious to emphasise to me that Finland does not have a closed mind.** However he came across, probably deliberately, as hard edged in his opposition to the elected President of the European Council. He characterised support for this proposition as coming from people who want to "reduce the Commission to a secretariat". *In recent years the Commission had been pushed right down there in importance* (he said with a dramatic hand gesture) *and an elected Council President is intended to push it down even more*". He listened carefully to the arguments I put but I was struck by his strength of feeling, especially as in the European Council Lipponen is one of your strongest admirers: I remember the generous tribute he paid to you at the PES gathering in October.

Lipponen also said that he was working with Verhofstadt to build a consensus amongst the smalls to oppose the Council President idea with the Benelux and including the Visegrad countries.

How can we deal with this strength of opposition? I have three ideas.

- First we must do our best to prevent the Visegrad from coming out strongly for the “small state” pro-Commission position. Now that they have secured accession, they will feel much more confident about expressing their views. We should spend some time in the early part of next year trying to soften potential opposition from them. Stephen agrees with this and thinks we should also deploy Denis McShane. We may have the best chance with the Poles, but they are not on side yet: Danuta Hubner, their Europe Minister, is unpersuaded. The Visegrad countries face difficult referenda on accession. It may be possible to link subtly your willingness to campaign in their referenda to their acceptance of a common European vision.
- Secondly we need urgently to develop our paper building on the ideas in your Cardiff speech about how we would like to see the role of the Commission strengthened, as part of strengthening the institutions all round. An outline of this was prepared for your Copenhagen brief (see attached). Personally I think that to be credible, we will have to be more forward than the current Whitehall wisdom on strengthening the Commission’s powers over secondary “implementing” legislation, with a right of call back by the EP. This is great Amato enthusiasm. We should consider a joint paper with the Swedes and the Finns, who share our

concern to uphold a strong Commission policing the Single Market. Such a paper would bolster Persson's morale to keep afloat the case for an elected Council President.

- Thirdly I think you will need to exert further personal influence among the smalls, and get across how important the Council President is to you politically in the UK. They have the sense to recognise that you need to be bought into a successful Convention outcome. They also want Britain fully engaged in Europe in order to counter French influence and Chiracian domination which for many of them, is their real bogey. I think Lipponen himself deserves some attention, though he does face an election in March in which the outcome is uncertain. In particular it may be important for you to have another go at Verhofstadt and Miller as well as the Czech and Hungarian.

*Signed electronically*  
Roger Liddle  
20/12/02

**ROGER LIDDLE**

## COUNCIL

- Old rotating system has reached its limits – inhibits Council from being a good partner for the Commission and the EP; lacks continuity with partners overseas.
- Could move to a form of “team Presidency” which allows the Chairs of principal Councils to be divided among Member States by equal rotation for a decent length of time. Teams will always have a majority of small countries. Means greater buy-in for all than six monthly presidency once every fifteen years.
- Chair of European Council would be responsible for co-ordinating work of the team, helping deliver Strategic Agenda framed by European Council and Commission, and representing the EU abroad, above the Hi Rep. Could be elected by simple majority of member states on European Council.
- Internally: Would take action to resolve political impasses on EU legislation by liaising with the Heads of State and Government, taking blocked issues to the GAERC. Would prepare the European Council by chairing the GAERC. Would help ensure continued political commitment by all to a strategic agenda. And would sell the benefits of the EU to its citizens.
- Externally: would represent the Council abroad, including by preparing and attending EU summits with major powers, replacing the rotating Presidency at the G8 and acting as an interlocutor with foreign leaders. That doesn't just mean Bush, but Putin and Hu. This would leave the Hi Rep to concentrate on detailed negotiations, delegating upwards when the situation requires it. Need a step change in our relations with China, Russia, India, Latin America.

### COMMISSION

- No change in balance of power: but strengthen all institutions.
- Commission should keep its right of initiative.
- Strengthen Commission's role in ensuring level playing field on implementation and enforcement.
- Consider better management procedures.
- But do not destroy unique nature of Commission: neither government nor bureaucracy.

### EUROPEAN PARLIAMENT

- Open to further extension of co-decision, and to the idea that it should apply in cases where QMV is the rule in the Council.
- Open too to the idea of improving the way the EU's budget is set through more effective decision making between Council and Parliament. It does not make sense to spend over 40% of our budget on agriculture, and it is right that the Parliament's voice should be heard in all annual decisions on EU spending.
- Also favour strengthening role of national Parliaments in the Union and national MPs' links with MEPs.

### EUROPEAN COURT OF JUSTICE

- We should look at ways of speeding up its decisions, eg better fast tracking for priority cases.
- And we should look at effectiveness of the fines system.
- Should not reverse burden of proof (ie even member states should be innocent until proved guilty). But ECJ could have power to impose time limits on implementation of the judgements with fines following automatically.



Personal

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FC  
LOR  
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SP  
SW

19 December 2002

**PRIME MINISTER**

### **CONVENTION ON THE FUTURE OF EUROPE**

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I share your concerns about the new Social Working Group: some key issues are at stake here. Early meetings suggest that we are in as good a position as it is realistic to hope for. I have a good relationship with Chair George Katiforis and he is keen to do business with us. And our lobbying has ensured a reasonable balance in the membership. We are pushing our domestic social inclusion agenda and cross referencing to the Lisbon objectives. I have also pushed on equal opportunities (especially gender and race) and sustainable development which has interestingly outflanked the comrades who seem curiously backmarkers, pre-occupied is they are with what used to be called a 'labourist' agenda.

But the Group will inevitably be dominated by MEPs, who, unlike many Government Representatives, always turn up for meetings. Their focus is on social protection for workers and extension of Community competence. Ours is on full employment and competitiveness with good social standards and



national flexibility. We have a real battle to fight here. We have produced a draft paper that we hope to agree with like-minded Member States and candidates (especially the Germans, Spanish, Irish, Dutch, Poles and Estonians). A paper submitted with such wide Member State support would be hard for Giscard to ignore.

The March to September period was successful for us. We established our credibility and were taken seriously by others. But I had been warning for some time that we could expect rockier times ahead, and the press coverage of the arrival of the French and German Foreign Ministers in the Convention has borne me out. On the one hand, this is a backhanded compliment to the successes of the British team. On the other it poses a bigger challenge, though even this is mitigated by the reality that the Foreign Ministers at the Convention rarely manage to be there except for set-piece plenary events when they come and go. (This is true for Ana de Palacio and Louis Michel too.) By contrast Patricia and I work the Convention continuously, including on the crucial Working Groups.

However the relative quiescence of Government Representatives means we often end up doing the heavy lifting for the Council, and at Working Group meetings have even fewer allies present. The Swedes are the only consistently forceful allies. In plenary debates on a couple of occasions Giscard's team has specifically asked me to make tough points. It would be good if you could repeatedly press the Spanish and Italian Ministers to speak more: when they do, they are invariably good.

As I discussed with you on the plane to Cardiff, the endgame now looks to me to be a triangular deal around the issues of a President of the Council, European Parliament/Congress election of the Commission President and some form of "double-hatting" for the High Representative. In your contacts with other leaders, whilst holding back for the endgame, our position should be carefully staked out. Others are already manoeuvring around this deal: the Germans are clearly expecting us to pay twice for the President of the Council by agreeing to both EP election of the Commission President and a Commission orientated double-hatted High Representative. We may wish to be flexible on the Commission President election/ratification provided the Council has the final say. But not yet.

We must resist the "one President" (Council and Commission) idea touted by some sections of the French and German governments, and favoured by many MEPs and some small governments. This would either be a Commission takeover of the Council or fatally damage the Commission's independence. Fischer is obsessed with this and your influence with Schroeder will be crucial, preferably well before the Elysee Summit in mid-January.



So big battles lie ahead, especially on the detailed drafting of the constitutional text. It remains to be seen what level of consensus the final Convention output will command. We must keep our nerve and ensure that we get sufficient opportunity both in the Convention and the IGC to keep our red lines intact. We are facing the challenges we always knew we would face. We are still reasonably well placed and I remain hopeful of a saleable outcome.

Your own role will become increasingly crucial from the New Year onward, because the constitutional text will begin to be negotiated line by line from then. We need a 'game plan' where you can prioritise key Convention issues with other Leaders, and Jack and Denis the same with Foreign and Europe Ministers. Your session with Giscard will be important, though it might require some franker messages than were delivered at the last couple of dinners: he has shown a capability of ruthless manoeuvring in ways we oppose as well as ways we support. A stock take/strategy meeting along the lines of the one you held a couple of months ago would also be useful if you have time.

Meanwhile FCO officials are doing an excellent job – even if overstretched at times, because the pressure can be huge. The Whitehall contribution is good – although a little slow at times. The UK team is held in high regard in the Convention. I would like to pass on my thanks for Roger's support. He has done some especially valuable networking with the PES and has provided me with the sort of out-of-the-box thinking which has added real value to the team.

I am copying this note to Jack Straw, Patricia Scotland, Sally Morgan, Alistair Campbell, Roger Liddle, Stephen Wall and Nigel Sheinwald.

A handwritten signature in black ink, appearing to read "Peter Hain".

Peter Hain

The Rt Hon Patricia Hewitt MP  
Secretary of State for Trade and Industry



The Rt Hon Peter Hain MP  
Secretary of State for Wales  
Gwydyr House  
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16 December 2002

*Dear Peter,*

### CONVENTION ON THE FUTURE OF EUROPE: COMPETENCE ISSUES

I am writing to express my serious concern about the scope for the Convention on the Future of Europe to make decisions on competence that could have a significant impact on domestic policy. In particular there is a real risk of:

- (i) Community competence in sensitive areas of domestic policy, and
- (ii) future external agreements determining EU internal and domestic policies rather than vice versa.

I can well understand the case for considering how the Community might build on its good record in areas where it has already proved that it can achieve helpful outcomes which raise productivity, for example on trade in goods and services. However, there are definite traps with domestic implications which lie behind any change to existing rules as agreed at Nice. My officials have alerted their Whitehall counterparts in FCO and elsewhere to these. They include not only the sensitive area of tax, which you will be aware of, but other issues such as third country access to the UK health and social services market, international environmental and transport policy, the right to agree bilateral investment treaties with third countries (of which the UK has over 90 in force); intellectual property (which could have implications for the British Film industry); educational services; and more generally, the right of the UK to participate fully in international organisations such as the International Labour Organisation.

The Working Group Report on External Action has called for an extension of qualified majority voting to apply to all aspects of the Common Commercial Policy (CCP) which by implication will weaken, if not remove entirely, the safeguards and derogations agreed at Nice. Taken in conjunction with the Group's recommendation of putting some of the European Court of Justice's



case law on external competence into the Treaty itself, but in a potentially much more expansive manner, I believe this opens a significant back door through which the Commission would be able to introduce measures in areas where the Community currently has no internal competence, or has not exercised its internal competence. Furthermore, it could constrain Member States' ability to conclude bilateral agreements with third countries even though the Community has not acted externally in the same area. For example, the UK would thus no longer be able to enter into bilateral agreements on matters such as the provision of health or education services or mutual recognition agreements with third countries on legal services. This would have fundamental implications for UK red line areas.

Part of the solution would be to ensure that the carefully crafted derogations negotiated at Nice are retained. We should, in particular, ensure that we retain

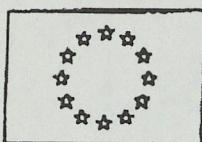
- (i) the requirement for unanimity - or at least a higher hurdle than QMV – for agreements which relate to a field in which there are as yet no internal rules
- (ii) the ability of Member States to conclude external agreements on issues where the Community has no internal competence to legislate, or has not yet exercised its powers.
- (iii) the provision that an agreement may not be concluded by the Council if it includes provisions which go beyond the Community's internal powers. This ensures that the first move in any area is on the basis of an agreed internal policy.

The outcome of Nice was a carefully balanced one. It is likely that other countries, for example France on audio-visual, will have their own reasons for resisting change. Obviously we can enter into alliances of convenience. I accept that within the Convention we should seek to look positively at new proposals, but the fundamental issues behind the HMG position at Nice remain valid today. The UK has a wide range of separate domestic policy reasons for being very cautious about any change, and I think that this needs to be clearly articulated at the next Convention plenary session this week that will discuss the external action report.

I am copying this to the Prime Minister, Members of EP, Sir Andrew Turnbull and Sir Nigel Sheinwald.

*Bert wsls,  
Patricia*

PATRICIA HEWITT



EUROPEAN COMMISSION

GROUP OF POLICY ADVISERS

From Lord Simon's Office

Brussels, 12 December 2002  
PMS D(2001)

## ISSUES PAPER

*1. Is there a crisis in the European model of development?*

Whatever the terminology, whether social market economy, mixed economy, the European model of development has certain well known characteristics. Historically, it has been based on the reconciliation of two potentially contradictory principles: liberty and social justice. Following the American model, liberty is both political (civil and democratic rights) and economic (the market). But social justice also holds a central place to limit as far as possible inequality and to ensure social cohesion to the greatest extent possible. Through social protection systems, the collectivity protects its members against major risks: illness, old-age, accident, unemployment. The collectivity achieves this through the direct provision of services and the redistribution of a significant portion of national income. The whole is implemented through the action of public authorities: the welfare state.

Periodically, questions about the viability of the European model come to public attention. Known under various names (Eurosclerosis, reformstau...), they tend to subside during the periods when growth recovers such as the second half of the 1980s and again in the latter part of the 1990s. However such questions never totally disappear and with each successive downturn they come back. They tend to take a heavily ideological form concerning the extent to which Europe needs more liberalisation or "deregulation", with particular energy devoted to the labour market, and a lesser commitment to redistribution.

Recent events in the US, with the collapse of the stock market bubble and well-publicised failures of corporate governance, have also revised the popular view of the efficiency of the US economic model. The need for an ethical basis to the actions of very powerful companies deploying vast resources across the globe has become evident. Modern capitalism relies to an unprecedented extent on trust and the confidence of citizens in economic institutions. Combined with the higher degree of income inequality and lesser social cohesion, the attractiveness of the US as a model for Europe has probably declined.

At EU level, the dichotomy between economic efficiency and a high level of social protection has always been rejected, most recently at the Lisbon European Council and the strategy for transition towards the knowledge economy that it set out. However, the precise interaction of the economic and social dimensions of the European model, to which we must add the environmental, has never been spelt out.

It appears that both the EU and Member States have been relying on an essentially linear model of development. The economy has been the engine of growth, with technological innovations increasing productivity and capital accumulation, thus creating the conditions and means for social progress and higher incomes for a significant part of the population.

European welfare states have had considerable success in ensuring security for citizens from many of the ills that mankind has suffered through the ages. However, it has not been successful in preventing the emergence of new forms of exclusion. Certain of the problems that it was designed to alleviate, such as mass unemployment of a cyclical nature, appear to have been dealt with through an adequate mix of fiscal and monetary policies. Long-term structural unemployment among specific categories of the population persists and is not really addressed by existing unemployment compensation schemes.

A more fundamental issue concerns the fact that the main beneficiaries of the welfare state are not those in greatest need of help and indeed the employment-social protection nexus may actually work to increase exclusion rather than to promote social integration. The proliferation of insider-outsider mechanisms represents a growing facet of the current European model.

At a time of greater structural change, there is an obvious need for strengthened provision of social services, but the hard budget constraint of the growth and stability pact allied with a rejection of higher taxes, albeit at very different levels within the EU, makes it difficult to extend existing provision. New requirements, for instance high quality child care for working mothers, needed to ensure that the EU employment targets are met, have also been neglected in favour of the preservation of the status quo.

A rethink of environmental protection from a specific policy area heavily biased towards regulation will be required. Instead of trying to impose environmental constraints on existing production and consumption patterns, it would appear that such patterns will need to be changed radically to meet the objective of sustainable development.

All of these considerations point to a fundamental rethink of the economic development path, European welfare states and environmental policy. They do not imply that the objectives of social cohesion and a high level of protection of the environment need to be subordinated to economic growth but that it will only be possible to achieve one or other of our objectives if the others are met simultaneously and not sequentially.

Current policies are heavily concentrated on the remedial. One has only to think of the redistribution of income through the tax and benefit systems, the concentration of health expenditure on therapies and the emphasis on clean ups of environmental pollution. The limits of remedial action as well as their expense are becoming clear. If Europe does not wish to abandon its high standards in the field of social and environmental protection, much greater attention will need to be focused on causes and prevention rather than remedial action.

The main conclusions from this analysis are :

- a) that the key issues related with sustainable development are not to be found in isolated single dimensions (the economic, the social, the environmental) but rather in the different way in which they interact with each other and on their effective integration.
- b) that the problems are of a dynamic rather than a static nature. For example the environmental issues are perceived as worsening over time due to the certain « bad practices » of producers (economic actors) and consumers (modern life styles). Or that if economic growth is consistently slower or stagnant then the social consensus cannot be taken for granted.

What we know about the reasons for which the socio-economic machinery does not work as it used to, is partial and uneven. Some specific aspects are better known than others: for example we know about the role of immigration in supplying human resources to a

This in turn leads to an increased consumption of goods and services, which stimulates further growth and innovations.

The role of policies within this framework is to accompany and facilitate this process (left to market forces), to provide fair rules of the game, a public administration, and to take care of the inequities it creates (the individuals excluded, the areas lagging behind...) within a democratic framework requiring the consensus of a majority. The Single Market Programme and Monetary Union were supposed to galvanise the EU economy and so contribute to maintaining the European model of development.

The socio-economic mechanism just described has shown some strains of its own in the recent period: it has not maintained the sustained growth of the past; manufacturing industries have lost their leading role and it is not yet clear whether the new economy is able to "replace" this sector as motor of development; ageing has created new constraints in the labour market and the cost of social security. Worrying trends in terms of a rise in xenophobia and growing support for populist and sometimes racist political parties has occurred, demonstrating that the policy mix in Europe is still far from ideal.

There have been three drivers of change which in the last twenty years or so have become difficult to consider as « new parts » which could simply be incorporated, with minor adaptations, to the existent understanding of the workings of the socio-economic machinery: one is the growing environmental concerns, the second is the slowing down of social progress (in terms of incomes and welfare services) and the third is the inability to promote or diffuse a similar socio-economic development in certain regions or countries in the world.

Either spontaneously or through policies, with top down or bottom up approaches, these new drivers have proved extremely resilient to deal with, using the conventional « tool-boxes » inherited from the postwar experience. On the other hand, ignoring these drivers or dealing with them as additional or residual components has not made the socio-economic development work as it used to, while the perception that problems are getting worse and receive inadequate responses has increased.

Enlargement adds another dimension to the question. The practicality of extending the existing European model of development to candidate countries is in doubt and even its desirability. Any alternative approach must also take into account the needs of candidate countries and be readily applicable by them.

## 2. What approach could lead to a more productive outcome?

Starting from the position that a European model of development needs to integrate a high level of economic development with reinforced social cohesion and better protection of the environment, much better understanding of the different processes involved is required. It can no longer be taken for granted that the current model of economic development will be sustainable or that markets will necessarily deliver the correct composition and level of output at full employment. This implies a rethinking of how our economy should function and whether the different regulatory and fiscal instruments that public authorities have at their disposal are being used adequately.

Static equilibrium models of development with painless and costless transition from one stable equilibrium to another clearly do not correspond to the era of rapid structural change and high friction costs that we are experiencing. Growth models emphasising dynamic elements, in particular entrepreneurship and innovation as well as the importance of intangible investments rather than physical capital seem to capture the current climate more effectively. However, their implications in terms of the distribution of income, social cohesion and environmental sustainability are not yet clear.

fast growing labor market, but we know very little about what happens when immigration needs coexist with high unemployment rates. We know how consumers behave when they are earning more in a city than what they used to earn on a farm, but we know very little about how they behave when their incomes become lower and often more irregular.

### 3. How are EU policies responding?

The Lisbon strategy tried courageously to address the problems of the interaction between different components of the economic and social domains through the integration of objectives and later in Göteborg by incorporating the environmental objectives.

However:

- Integration on the basis of existing very specialized sectoral approaches has proved difficult and has looked more like a juxtaposition of problems;
- the optimistic solution prevailed (the most competitive economy, with cohesion, etc) and it was thought that the new economy would make unnecessary to find other and more politically difficult solutions;
- setting a date for enlargement accelerated the general perception of the inadequacies of each policy but rigidified it in an acquis that was suited for the old problems rather than the new ones.

### 4. What can the Round Table do?

At the present time, there is a need for an overtly political approach to Europe's problems that the current institutions are not delivering. Institutional reform will only make sense if the shape of the European project is clear. A Round Table could act as a catalyst for debate by identifying the key issues to be addressed in a novel way and by making recommendations as to how the EU can go about tackling them. This points to an independent, politically oriented rather than an experts group. In view of the scale and complexity of the problem to be addressed, it will only be successful if it draws on existing expertise and devotes sufficient attention to careful analysis of the issue of integration and coherence between policies. Members of the group are selected on the basis of their capacity for independent thought and ability to challenge received wisdom.

Peter M. Smith  
Adviser

European Policy : FUTURE OF EUROPE PT 10

Annex I

EUROPEAN CONVENTION PLENARY SESSION - BRUSSELS

ROGER LIDDELL BRIEF

niceday by Guilbert



- No.181088 Red
- No.181126 Blue
- No.181164 Green
- No.181203 Yellow
- No.181242 Pink
- No.181089 Buff
- No.181127 Orange
- No.181165 Assorted

**BRUSSELS**  
**27-28 FEBRUARY**

**Thursday 27 February**

1600hrs Depart by taxi for Waterloo (Ref: XD8792)  
1627hrs Dep Waterloo  
2010hrs Arr Bruxelles  
UKRep transport to Dorint and onwards to EP, Plenary

2000hrs PES Dinner (+ Bns Scotland)  
EP members' salon

Overnight at Dorint

**Friday 28 February**

0800hrs Breakfast meeting hosted by Dutch  
Dorint Hotel

0930hrs Convention Plenary

1300hrs Lunch with Andrew Duff MEP  
Meet at Members' Restaurant (Mob: (0044) 77 03 47 16 59)

1415hrs Taxi to Bruxelles Midi  
1456hrs Dep Bruxelles Midi  
1639hrs Arr Waterloo

**EUROPEAN CONVENTION PLENARY SESSION**  
**Thursday 27 February – Friday 28 February 2003**

Baroness Scotland  
Clair Smith  
Catherine Royle  
Joe Griffin  
Roger Liddle

Parliamentary Secretary, LCD  
PS/Baroness Scotland  
FCO  
CO  
No10

**ARRIVALS**

**Wednesday 26 February**

**BD157 ETD Zaventem 2245hrs**

Baroness Scotland  
Clair Smith

**Eurostar ETD Gare du Midi 2137hrs**

Catherine Royle

**Thursday 27 February**

**Eurostar ETD Gare du Midi 1037hrs**

Joe Griffin

**Eurostar ETD Gare du Midi 1802hrs**

Roger Liddle

**DEPARTURES**

**Friday 28 February**

**BA395 ETD Zaventem 1535hrs**

Baroness Scotland  
Clair Smith

**BA flight to Rome ETD 12h35**

Roger Liddle

**Eurostar ETD Gare du Midi 1456hrs**

Catherine Royle  
Joe Griffin

## ACCOMMODATION

Dorint hotel

Bld Charlemagne 11-19

1040 Brussels Tel: (00 32 2) 231 09 09 Fax: (00 32 2) 230 33 71

NAME	ARRIVAL	DEPARTURE
Baroness Scotland (VIP)	Wednesday 26 February	Friday 28 February
Clair Smith	Wednesday 26 February	Friday 28 February
Roger Liddle	Thursday 27 February	Friday 28 February
Catherine Royle	Wednesday 26 February	Friday 28 February
Gisela Stuart	Tuesday 25 February Thursday 27 February	Wednesday 26 February Friday 28 February
Vanda Knowles	Thursday 27 February	Friday 28 February

\*The UKRep negotiated rate with the Dorint hotel is 150 Eur B & B, for more information you can visit the hotel web site on <http://www.dorint.be>

*Joe Griffin does not require accommodation.*

## SCHEDULE

### Wednesday 26 February

2245hrs Baroness Scotland and Clair Smith arrive at Zaventem. Met by Ian Phipps.  
To Dorint hotel.

### Thursday 27 February

0930hrs Transport on standby at Dorint hotel to take Baroness Scotland and Clair Smith to the EP.

1000hrs Baroness Scotland attends PES meeting in the EP, room A3G2.

1100hrs Transport on standby at EP to take Baroness Scotland and Clair Smith to the Justus Lipsius.

1130hrs Baroness Scotland attends meeting of Government Representatives, Justus Lipsius building.

1345hrs Transport on standby at the JL to take Baroness Scotland, Clair Smith, Catherine Royle and Joe Griffin to the EP.

- 1415hrs Baroness Scotland attends meeting of the British Convention members in the EP room 5G 315, Spinelli Building.
- 1500hrs Convention plenary starts in the European Parliament building, room 3C 50, Spaak Building.
- 1800hrs Transport on standby at Gare di Midi - pick up Roger Liddle drop off luggage and proceed to EP, Plenary.
- 2000hrs Convention ends
- 2000hrs Baroness Scotland attends PES dinner, EP members' salon
- 2130hrs Jaguar on standby at EP to collect Baroness Scotland. To Dorint hotel.

**Friday 28 February**

- 0800hrs Baroness Scotland attends breakfast meeting hosted by the Dutch with Government Representatives from DK, Irl, SE, Fin and P, in the Dorint hotel (Catherine Royle to accompany).
- 0830hrs Transport on standby at Dorint hotel to take Baroness Scotland, Clair Smith, Catherine Royle and Roger Liddle to the European Parliament building
- 0930hrs Convention plenary starts, European Parliament room 3C 50, Spaak building.
- 1130hrs Transport on standby to pick-up Roger Liddle to Zaventem.
- 1300hrs Convention plenary ends.
- 1300hrs Car on standby at EP to take Baroness Scotland and Clair Smith to Zaventem.

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END

HOUSE OF LORDS

SESSION 2002–03  
9th REPORT

SELECT COMMITTEE ON  
THE EUROPEAN UNION

THE FUTURE OF EUROPE:  
CONSTITUTIONAL TREATY—DRAFT  
ARTICLES 1–16

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*Ordered to be printed 25 February 2003*

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# NINTH REPORT

25 FEBRUARY 2003

By the Select Committee appointed to consider European Union documents and other matters relating to the European Union.

ORDERED TO REPORT

## THE FUTURE OF EUROPE: CONSTITUTIONAL TREATY—DRAFT ARTICLES 1–16

CONV 528/03 Draft of Articles 1 to 16 of the Constitutional Treaty

### PART 1: INTRODUCTION

#### Purpose of Report

1. The purpose of this Report is to bring to the attention of the House the draft Treaty Articles now being discussed in the Convention on the Future of Europe. The text of many if not all of the draft Articles is likely to change over the coming weeks and months. Nonetheless the Committee<sup>1</sup> takes the view that the House might welcome sight of the text as soon as possible together with the preliminary reactions and observations of the Committee.

2. It seems likely that the text of the new Treaty will appear in stages. As drafts of groups of Articles are settled by the Praesidium, the Convention steering group, they will be made available for discussion in the Convention plenary. The objective is to reach consensus on a draft (complete) Treaty by the end of June. Bringing forward draft Articles in groups may not be ideal—they cannot be considered in the round and the effect of the broad provisions in Part One (Constitutional Structure) of the draft Treaty may not be comprehensible without seeing the detail in Part Two (Union Policies and their Implementation).<sup>2</sup> But it appears to be the most practical way of achieving that objective and of enabling the fullest debate in the Convention, national parliaments and more generally.

3. Set out below is the text of each of the first 16 Articles. Each Article is followed by an Explanatory note (the text of which has been prepared by the Convention Secretariat) and a Commentary added by the Committee.

4. The ordering of the first 16 Articles follows that of the Preliminary draft Constitutional Treaty<sup>3</sup> (“the skeleton text”) published in October last year. The skeleton text is reproduced in Appendix 2.

5. We make this Report to the House for information.

<sup>1</sup> See Appendix 1 for membership of the European Union Committee and of Sub-Committee E (Law and Institutions) which undertook the detailed scrutiny work.

<sup>2</sup> It is also proposed that there will be a Part Three (General and Final Provisions).

<sup>3</sup> Doc. CONV 369/02. 28 October 2002.

## PART 2: ANALYSIS OF ARTICLES 1–16 OF THE CONSTITUTIONAL TREATY

**TITLE I: Definition and objectives of the Union****Article 1: Establishment of the Union**

1. Reflecting the will of the peoples and the States of Europe to build a common future, this Constitution establishes a Union [entitled ...], within which the policies of the Member States shall be coordinated, and which shall administer certain common competences on a federal basis.
2. The Union shall respect the national identities of its Member States.
3. The Union shall be open to all European States whose peoples share the same values, respect them and are committed to promoting them together.

**Explanatory note**

*"This Article establishes the Union and describes its fundamental characteristics. In response to requests made at the plenary, the wording proposed is designed to adequately express the dual dimension of a Union of States and of peoples of Europe in terms appropriate to a Constitutional Treaty."*

*Because of its fundamental political importance, it was deemed advisable to emphasise in Article 1 the Union's respect for the national identity of its Member States; Article 9(6) then lists certain features of national identity which more specifically require respect in the legal sense when the Union is exercising its competences.*

*It also seems appropriate already to list the conditions for membership of the Union in Article 1, although the procedures for accession of new Member States, suspension of rights and withdrawal from the Union would be dealt with in more detail in Title X."*

**COMMENTARY**

6. A preliminary point that needs to be made is that no draft preamble has yet been produced. Any preamble could be purely formal, reciting the history of the formation of the text that follows. But it might also contain (general) statements relating to the nature and objectives of the Union. Any such statements might colour the later Articles and could be used as an aid to interpretation, for example before the Court of Justice.

7. Article 1(1) leaves a space for the name of the Union to be inserted. It will be recalled that last October's skeleton text floated four possibilities: European Community, European Union, United States of Europe, and United Europe. We favour the retention of "European Union". It is well-known and the least controversial.

8. As the Explanatory note indicates, Article 1(1) has been crafted so as to "express the dual dimension of a Union of States and of peoples of Europe". But the new Treaty will be, and the Union will be established by an agreement between independent sovereign States, entered into by representatives of the governments of Member States. Whether and how the "peoples of Europe" will be consulted on the final text in advance of ratification will be a matter for the constitutional requirements of individual Member States. Given the paramount importance of this Treaty each Member State will no doubt consider through referendums or other constitutional means how best to ensure that the new Constitution reflects "the will of the peoples of Europe". The term "peoples" is itself unclear (see paragraph 16 below).

9. Article 1(1) also defines the fundamental twofold function of the Union: coordinating the policies of the Member States; and administering certain common competences. It is noteworthy that the Article speaks of the policies of Member States being coordinated but only *certain* common competences being administered. Further, the draftsman has retained the words "on a federal basis" from the skeleton text. This phrase has, not unexpectedly, attracted much media attention and undoubtedly will be the subject of controversy. And, indeed, the words raise questions as to the intended basic character of the Union. "Federal" may have a different meaning in other languages and imply different things in the different national political cultures and psyches. The German, *föderal*, suggests decentralisation and a significant degree of regional autonomy whereas for some the English word, federal, when used in a European context, imports a high degree of centralisation. We wonder

whether “on a devolved/delegated basis” might not be nearer to what the draftsman had in mind. “At the Union level” might be a less politically sensitive alternative.

10. Article 1(2) is not new. It restates what is presently Article 6(3) of the Treaty on European Union (TEU). Cultural diversity is specifically recognised in Article 3(3) (below). Article 1(2) is repeated verbatim in Article 9(6), but there the statement is amplified to show how the obligation relates to the political and constitutional structures of the Member States.

11. Article 1(3) replaces Article 49 of the TEU (“Any European State which respects the principles set out in Article 6(1) [TEU] may apply to become a member of the Union”). It is noteworthy that while the Union appears to remain a Union of States the criterion for membership is defined by reference to “peoples sharing” the same values as the Union (set out in Article 2 – below) rather than “States respecting” those values. The change from “may apply” to “shall be open” also raises a question as to the continuing nature of the requirement in Article 1(3), especially if there is included in the new Treaty some provision for “expulsion” or withdrawal of States of the Union (see Articles 43-46 of the skeleton treaty).

12. Finally, as has been noted by a number of commentators, Article 1 contains no equivalent to the second paragraph of Article 1 of the TEU: “This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe ...”. This is a significant omission. It waits to be seen whether such words will be reintroduced, perhaps via the preamble—“an ever closer union among the peoples of Europe” was mentioned in the first preambular statement to the Treaty of Rome. The reason for the omission may, however, be that the framers of the Constitution take the view that the desired “ever closer union” has been achieved.

## Article 2: The Union's values

1. The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.

### Explanatory note

*“This Article concentrates on the essentials – a short list of fundamental European values. Further justification for this is that a manifest risk of serious breach of one of those values by a Member State would be sufficient to initiate the procedure for alerting and sanctioning the Member State (see Article 45 of the preliminary draft Treaty which would incorporate the mechanism set out in Article 7 TEU), even if the breach took place in the field of the Member State's autonomous action (not affected by Union law). This Article can thus only contain a hard core of values meeting two criteria at once: on the one hand, they must be so fundamental that they lie at the very heart of a peaceful society practising tolerance, justice and solidarity; on the other hand, they must have a clear non-controversial legal basis so that the Member States can discern the obligations resulting therefrom which are subject to sanction.”*

*That does not, of course, prevent the Constitution from mentioning additional, more detailed elements which are part of the Union's "ethic" in other places, such as, for instance, in the Preamble, in Article 3 on the general objectives of the Union, in the Charter of Fundamental Rights (which, unlike this Article, does not, however, apply to autonomous action by the Member States), in Title VI on "The democratic life of the Union" and in the provisions enshrining the specific objectives of the various policies.”*

### COMMENTARY

13. Article 2 is derived from Article 6 TEU. Some of the language has changed. So the Union now has “values”, rather than “principles”, to be respected. “Human dignity” has been added to “liberty, democracy, the rule of law and respect for human rights”. Respect for human dignity is also assured by Article 1 of the EU Charter of Fundamental Rights.<sup>4</sup> That “human dignity” should be added and take precedence is justifiable. The preamble to the 1948 Universal Declaration of Human Rights provides: “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”.

<sup>4</sup> Article 1 of the Charter declares that “human dignity is inviolable. It must be respected and protected”.

14. The second sentence is new. The Union's aim to be "a society at peace" is not to be found in the earlier texts. Its inclusion reflects the endeavours of the founding fathers of the European Coal and Steel Community (ECSC) and the (then) Common Market, and takes on an added significance in the light of the forthcoming enlargement (particularly to the East) and further enlargement (into the Balkans) now beginning to be discussed. "Justice" and "solidarity" are terms already found in the Treaties. But "tolerance" is new. It is unclear what its practice is intended to embrace in the context of the Union.

### Article 3: The Union's objectives

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall work for a Europe of sustainable development based on balanced economic growth and social justice, with a free single market, and economic and monetary union, aiming at full employment and generating high levels of competitiveness and living standards. It shall promote economic and social cohesion, equality between women and men, and environmental and social protection, and shall develop scientific and technological advance including the discovery of space. It shall encourage solidarity between generations and between States, and equal opportunities for all.
3. The Union shall constitute an area of freedom, security and justice, in which its shared values are developed and the richness of its cultural diversity is respected.
4. In defending Europe's independence and interests, the Union shall seek to advance its values in the wider world. It shall contribute to the sustainable development of the earth, solidarity and mutual respect among peoples, eradication of poverty and protection of children's rights, strict observance of internationally accepted legal commitments, and peace between States.
5. These objectives shall be pursued by appropriate means, depending on the extent to which the relevant competences are attributed to the Union by this Constitution.

#### Explanatory note

*"The philosophy of this Article is to set out the general objectives justifying the very existence of the Union and its action for its citizens in a more cross-sectoral fashion and not to list the specific objectives pursued by the various policies of the Union which are to be found in Part Two of the Treaty."*

*The fundamental difference between this Article and Article 2 therefore needs to be emphasised: while Article 2 enshrines the basic values which make the peoples of Europe feel part of the same "union", Article 3 sets out the main aims justifying the creation of the Union for the exercise of certain powers in common at European level."*

#### COMMENTARY

15. The Union's objectives are currently listed in Article 2 TEU and Article 2 TEC. Some of those listed in the new Article 3 are new, some well-established. The objective of promoting peace may be new. The TEU currently includes, as an objective of Common Foreign and Security Policy (CFSP): "to preserve peace and strengthen international security". The new reference in Article 3(1) may be intended to be more extensive but is not out of keeping with statements in the earlier Treaties. The Treaty of Paris (ECSC) referred to the safeguarding of world peace, the Treaty of Rome to "an increase in stability", and the Maastricht Treaty to "the historic importance of the ending of the division of the European continent". Does Article 3(1) "peace" mean peace in the EU or peace internationally or both? Should it be distinguished from "peace between States" in Article 3(4)?

16. "The well-being of its [the Union's] peoples" is new. Its meaning is also unclear. Does "peoples" refer to EU citizens only? Or does it also include third country nationals and, if so, only those lawfully in the Union? How does "peoples" differ from Member States or nations? What about minorities?

17. Article 3(2) refers to "sustainable development based on balanced economic growth and social justice". Currently in Article 2 TEC we have "harmonious, balanced and sustainable development of economic activities", and, in Article 2 TEU, "balanced and sustainable development in particular through the creation of an area without internal frontiers". The new reference to "sustainable

"development" appears to be a more general, broader term encompassing both economic and social policies.

18. There is language in the first sentence of Article 3(2) which may be understood as meaning that all Member States have an obligation to enter the Euro zone. We return to this issue when considering Article 13.

19. The term "social justice" is new, as is "aiming at full employment". Article 2 TEC refers to "a high level of employment and social protection". The new text may be controversial. The meaning of "full employment" is unclear and there are concerns that this objective could impinge on national economic policy. The reference to "scientific and technological advance including the discovery of space" is also new.<sup>5</sup> The provision would have significant financial implications if the underlying intention is that the EU should commit resources to a space research programme on US or Russian lines.

20. Solidarity has often been used in the Treaties, in various contexts<sup>6</sup>, but "solidarity between generations" is new and is of uncertain meaning. "Equal opportunities for all" is also a new objective.

21. Article 3(3) includes a reference to cultural diversity. But this has not previously been linked with the notion of an area of freedom, security and justice. Article 151(1) TEC provides: "The Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore".

22. Article 3(4) is new and emphasises the "external" dimension of EU policies and the potential role of the EU as an international actor with one voice ("defending Europe's independence and interests"). Some of the terms are unclear. For example, what is sustainable development "of the earth" and to what extent is it different from "sustainable development" in Article 3(2)? Is Article 3(2) referring to sustainable development within the EU and Article 3(4) to sustainable development globally?

23. The various references to "peace" (Articles 2, 3(1) and (4)) raise similar questions. "Independence", "values" and "peace" can all be found in Article 11 TEU, which states as CFSP objectives:

- to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the UN Charter
- to strengthen the security of the Union in all ways
- to preserve peace and strengthen international security
- to promote international cooperation
- to develop and consolidate democracy and the rule of law

So "peace" can be found in the CFSP context, where it is linked to external action. But the word is now used to refer also to the EU itself. Article 2, setting out the Union's values, provides that the Union's aim is "a society at peace" (see Article 2 above).

24. Article 3(5) refers to the pursuit of the Union's objectives by "appropriate means, depending on the extent to which the relevant competences are attributed to the Union by this Constitution". It is unclear what is meant by "appropriate" in this context, and in particular whether Article 3(5) is doing anything more than stating the requirement that the Union must abide by the principles of conferral, subsidiarity and proportionality set out in Article 8(1).

25. It is noteworthy that Article 3 does not include, as an objective of the Union, "to maintain in full the *acquis communautaire* and build on it ...". The no-ratchetting back provision (currently the fifth objective listed in Article 2 TEU) was a key element in the compromise reached at Maastricht between those Member States who wanted a federal Europe and those who did not. The omission is significant and, it would seem, not accidental. The new Treaty may not contain an explicit repatriation clause. But Article 12(3), considered further below, appears to contemplate the possibility of certain competences being returned to Member States ("Where the Union ... ceases to exercise its competence ... the Member States may exercise theirs").

<sup>5</sup> The Commission has recently published a Green Paper on European Space policy (COM (R003) 17 final). It gives an overview of the state of the European space sector and poses a series of questions as to how the Union's role in this area should evolve, with particular reference to the respective roles of the Commission and the European Space Agency (ESA). The Green Paper suggests that it might be desirable to grant the Union competence in space and seeks views on this.

<sup>6</sup> There are references to solidarity in the preambles to both the TEU and TEC. The term is also used in Article 11(2) TEU and Article 2 TEC.

**Article 4: Legal personality**

1. The Union shall have legal personality.

**Explanatory note**

*"In accordance with the recommendation from Working Group III (CONV 305/02), this Article confers legal personality on the Union.*

*An Article on the Union's legal capacity (see Article 282 TEC), given its highly technical nature, should appear in Part Two of the Constitutional Treaty."*

**COMMENTARY**

26. The European Community has legal personality (Article 281 TEC) and has, in each of the Member States, "the most extensive legal capacity accorded to legal persons under their laws" (Article 282 TEC). Articles 184-5 of the Euratom Treaty are in identical terms to Articles 281-2 TEC. The Community therefore has capacity, within its field of competence, to enter into obligations binding in international law. The Community is party to a wide variety of international agreements and is also a member of a number of international organisations. However, the Treaties do not expressly confer legal personality on the European Union and consequently, some have argued, the Union has no power to enter into obligations binding in international law or to belong to international organisations.

27. In its Report, *The Future of the EU Charter of Fundamental Rights*<sup>7</sup>, the Committee agreed with the recommendation of Convention Working Group III<sup>8</sup> that the Union should expressly be granted legal personality. It would, for example, facilitate EU, as opposed to EC, accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). This is addressed further in Article 5(2) (below).

<sup>7</sup> 6th Report, 2002-03, HL paper 48.

<sup>8</sup> CONV 305/02.

**TITLE II: Fundamental rights and citizenship of the Union****Article 5: Fundamental rights**

1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out [in the second part of/in a Protocol annexed to] this Constitution.<sup>9</sup>
2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

**Explanatory note**

*"The text proposed reflects two central recommendations by Working Group II (CONV 354/02), on the one hand to incorporate in the Constitution the Charter of Fundamental Rights so that it has constitutional status and is legally binding and, on the other hand, to enable the Union to accede to the European Convention on Human Rights.*

*As to the technique for incorporating the Charter, the fact that the complete text (with all the drafting adjustments mentioned in the Working Group's final report) will appear either in a separate second part of the Constitution or as a Protocol annexed to it will safeguard its fully binding legal nature and allow the general rules concerning future amendments of the Constitution to be applied to the Charter. Moreover, that technique will also keep the structure of the Charter intact and avoid making the first part of the Constitution more lengthy. At the same time, the reference to the Charter in the first few articles of the Constitution will underline its constitutional status.*

*The legal basis in paragraph 2 enabling the Union to accede to the ECHR also expressly provides that accession must not affect the division of competences between the Union and the Member States, in line with a recommendation from Working Group II. Only the European Convention on Human Rights is mentioned in this paragraph because of the fact that a Court of Justice opinion in 1996 had rejected Community competence to accede to that Convention on the basis of considerations specific to it. This paragraph is not therefore intended to rule out the possibility of Union accession to other international conventions relating to human rights on the basis of the competences conferred in Part Two of the Treaty.*

*Paragraph 3 draws on Article 6(2) TEU as it now stands and is intended to indicate clearly that, in addition to the Charter, Union law recognises additional fundamental rights as general principles resulting from two sources – the European Convention on Human Rights on the one hand and the constitutional traditions common to the Member States on the other. As stressed by various members of the Convention in Working Group II (see pages 9 and 10 of the final report, CONV 354/02) and at the plenary, the usefulness of this provision is to make clear that incorporation of the Charter does not prevent the Court of Justice from drawing on those two sources to recognise additional fundamental rights which might emerge from any future developments in the ECHR and common constitutional traditions. That is in line with classic constitutional doctrine which never interprets the catalogues of fundamental rights in constitutions as being exhaustive, thus permitting the development, through case-law, of additional rights as society changes."*

**COMMENTARY**

28. We note that the Charter will be "an integral part of the Constitution". As we said in our recent report on the future of the Charter<sup>10</sup>, modern constitutions contain bills of rights and the Charter could fulfil that role for the Union. As the Explanatory note indicates, the intention is to make the Charter legally binding. But not all the provisions of the Charter are capable of creating legally enforceable rights (some Charter Articles contain political aspirations) and even where they are those rights will be valueless if not supported by adequate remedies. We have called on the Government to urge the Convention to undertake work on remedies, as a matter of urgency. We consider this to be a matter of critical importance and are pleased to note that a "circle of discussion" on the Court of Justice has now

<sup>9</sup> A footnote to the draft Treaty states: "The full text of the Charter, with all the drafting adjustments given in Working Group II's final report (CONV 354/02) will be set out either in a second part of the Constitution or in a Protocol annexed thereto, as the Convention decides".

<sup>10</sup> *The Future Status of the EU Charter of Fundamental Rights*. 6th Report, 2002-03, HL paper 48.

been established,<sup>11</sup> which will look, *inter alia*, at individual access to the Community Courts (*ie* the standing rule in Article 230(4) TEC).

29. A footnote to Article 5(1) provides: “The full text of the Charter, with all the drafting adjustments given in Working Group II’s final report<sup>12</sup> will be set out either in a second part of the Constitution or in a Protocol annexed thereto, as the Convention decides”. Whether the Charter is set out in Part 2 of the new Treaty or in a separate Protocol is largely cosmetic. Provided that the new Treaty contains a provision equivalent to Article 311 TEC, the legal effect will be the same. But from a legal draftsman’s viewpoint integration via a protocol would be the simpler. This is because the Charter was prepared as a coherent whole and has its own preamble. What is more important is that the necessary “drafting adjustments” are made to safeguard the division of competences between the Member States and the Union, as well as the supremacy of the ECHR. Provision also needs to be made to give the revised Explanatory Note to the Charter authoritative status. The importance of this was stressed in our recent Report.

30. Article 5(2) would help prepare the way to EU accession to the ECHR.<sup>13</sup> As we indicated in our recent Report, accession by the Union to the ECHR is likely to be difficult. There are many technical and political hurdles to be overcome. But Article 5(2) is an important and significant first step, which we welcome.

31. The question, raised in the Explanatory note, whether Article 5(2) should be amended so as to make clear that the Union could accede to other international conventions relating to human rights, should be answered positively. We recommend that the words “or any other international human rights instrument” should be inserted after the words “that Convention” in the second sentence of Article 5(2).

32. Whether the purpose of Article 5(3) would be better met by an amendment of the Charter itself should be considered. But if the Article remains (and we agree that it would be undesirable to appear to limit the sources on which the Court could draw in developing the general principle of respect for human rights) it should be amended by the insertion of the words “in particular” after “as guaranteed” and the addition, after the reference to the ECHR, of the words “and any other international human rights instrument to which Member States are party”. Finally, Article 5(3) points to the need to ensure that, as we said in our recent Report, the so-called “horizontal clauses”,<sup>14</sup> in the Charter are clear and unambiguous, especially as regards the relationship between Charter rights and ECHR rights.

#### **Article 6: Non-discrimination on grounds of nationality**

1. In the field of application of this Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

#### **Explanatory note**

*“This Article takes over unchanged the prohibition on all discrimination on grounds of nationality, which is currently enshrined in Article 12 TEC. In line with the structure of the current EC Treaty and of the Charter, this prohibition is here placed in a separate Article rather than forming part of the provision on citizenship of the Union. Because of its fundamental importance for the development of Union law, this provision must be placed in Part One of the Constitution. The legal basis for rules prohibiting discrimination on grounds of nationality (see second paragraph of Article 12 of the current TEC) would be placed in Part Two of the Treaty, as would the current Article 13 TEC, which creates a legal basis for combating certain other forms of discrimination.”*

<sup>11</sup> Doc. CONV 543/03.

<sup>12</sup> CONV 354/02.

<sup>13</sup> The question of Community accession to the ECHR has a long history. A formal proposal was put to the Council by the Commission in 1979 and renewed in 1990. Four years later, the Council decided to ask the ECJ for a formal opinion as to whether Community accession to the ECHR would be compatible with the EC Treaty. The Court’s view (in *Opinion 2/94* [1996] ECR I-1759) was that as Community law then stood accession would require Treaty amendment. In particular, no Treaty provision conferred on the Community institutions “any general power to enact rules on human rights or to conclude international conventions in this field”. There was no express or implied power for such purpose and Article 235 (now Article 308), though designed to fill gaps where no specific powers existed, did not permit the adoption of provisions that would in effect amount to Treaty amendment. Accession would entail the entry of the Community “into a distinct international institutional system as well as integration of all the provisions of the Convention into the Community legal order” and, as such, would be of “constitutional significance”.

<sup>14</sup> This term and the issues surrounding these clauses are explained in paras 88-92 of our Report on the future of the Charter.

## COMMENTARY

33. Non-discrimination *between citizens of the Union* on grounds of nationality is a fundamental and well-established principle of Community law. The wording of Article 6 is similar to Article 12(1) TEC, the main change being the replacement of the word "Treaty" by "Constitution". If what is to be prohibited is discrimination between citizens of the Union, that could be made clear.

### Article 7: Citizenship of the Union

1. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship; it shall not replace it. All citizens of the Union, women and men, shall be equal before the law.
2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in this Constitution. They shall have:
  - the right to move and reside freely within the territory of the Member States;
  - the right to vote and to stand as a candidate in elections to the European Parliament and in municipal elections in their Member State of residence under the same conditions as nationals of that State;
  - the right to enjoy, in the territory of a third country in which the Member State of which they are a national is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;
  - the right to petition the European Parliament, to apply to the Ombudsman, and to write to the institutions and advisory bodies of the Union in any of the Union's languages and to obtain a reply in the same language.
3. These rights shall be exercised in accordance with the conditions and limits defined by this Constitution and by the measures adopted to give it effect.

#### Explanatory note

*"The definition of citizenship of the Union in paragraph 1 follows that given in the current EC Treaty. This paragraph also establishes the principle of equality between all European citizens.*

*The citizens' rights listed in paragraph 2 include all those currently appearing in the "citizenship" part of the EC Treaty. The right of access to documents of the institutions, at present established in Article 255 of the TEC, would be placed in the Titles on "the democratic life of the Union" or "Union institutions" of the Constitutional Treaty. This could also be the case for the right to good administration established by the Charter (Article 41), since the Charter grants that right to "every person".*

*More detailed provisions and the legal bases relating to the definition of the conditions for and limits on the exercise of those rights (see Article 18(2); the second sentences of Article 19(1) and (2); the second sentence of Article 20; Article 194 and Article 195 TEC) would appear in Part Two of the Treaty. The same would apply to the provision of the current Article 22 TEC concerning the possible subsequent development of citizens' rights."*

## COMMENTARY

34. The notion of EU citizenship is not new, having been introduced by the Maastricht Treaty. Article 17 TEC expressly provides, as does the new text, that Union citizenship complements and does not replace national citizenship. Nationality remains a matter over which individual Member States have and retain control. In addition to the rights given to nationals of Member States by the EC Treaty, Union citizenship confers six particular rights listed in the new Article 7(2) (*nb* the last indent contains three separate rights). Those six rights are, as the Explanatory note indicates, presently to be found in Articles 18-21 TEC.

35. What is new is the third sentence of Article 7(1): "All citizens of the Union, women and men, shall be equal before the law". Is this intended to restate the principle of equality as between men and women or that of equality before the law of all individuals? The drafting, at least in the English text, is ambiguous. The former principle is stated to be an objective of the Union in Article 3(2). The French text (the original) suggests that it is the latter and that "women and men" has been used to avoid gender-specific words in other language versions. The principle can be found in a number of Member

States' constitutions<sup>15</sup> and is currently set out in Article 20 of the Charter.<sup>16</sup> Importantly, the principle has been regarded by the Court of Justice as a general principle of Community law.<sup>17</sup> The third sentence of Article 7(1) thus appears to be consolidating existing Community law.

### TITLE III: The Union's competences

#### *Title III: The Union's competences*

##### **Explanatory note**

*"The Nice European Council called on the Convention to consider "how to establish and monitor a more precise delimitation of powers between the European Union and the Member States, reflecting the principle of subsidiarity". More specifically, the Laeken European Council called on the Convention to consider "how the division of competence can be made more transparent", "whether there needs to be any reorganisation of competence" and "how to ensure that a redefined division of competence" is maintained and "ensure at the same time that the European dynamic does not come to a halt".*

*These questions have been discussed in plenary sessions and in Working Groups. On the basis of those discussions, the Praesidium has drawn up a draft text of articles the aim of which is, inter alia, to:*

*Define clearly the fundamental principles governing the limits of the competences between the Union and the Member States and the way in which the Union's competences are to be used (as well as the rules for applying those principles).*

*Determine the different categories of the Union's competences. The key factor in establishing those categories is the extent of the legislative competence conferred on the Union in relation to that of the Member States, according to whether such competence is conferred on the Union alone (exclusive competence) or shared between the Union and the Member States (shared competence), or whether it continues to lie with the Member States (areas for supporting action).*

*Indicate the areas covered by each category of competences. The lists of areas of shared competence are not exhaustive, which takes account of the Convention's wish not to establish a fixed catalogue of competences. The reference in Article 12 to "principal areas" avoids having to define in detail each area of shared competence. The exact definition, and the extent of each area, are determined by the relevant provisions of Part Two.*

*In line with the wish of a large number of members of the Convention, include a provision introducing a measure of flexibility in order to enable the Union to react in unforeseen circumstances. But that flexibility is restricted to the areas already specified in Part Two. The provision requires that the Member States' national parliaments be informed explicitly whenever the Commission proposes to use the flexibility clause."*

### COMMENTARY

36. Title III (Articles 8-16) deals with the division of competences between the Union and the Member States. At its core lies the threefold classification: exclusive competence/shared competence/supporting action. What is especially noteworthy is that Title III does not seek to allocate competences in the way that a federal constitution might. Indeed it puts the principle of conferral at the head of the list of principles governing the relationship between the Union and the Member States.

37. How far Title III fulfils the demands of the Laeken European Council (transparency, reorganisation, maintenance of the division of competence and dynamism) is debatable. As will be explained below when dealing with the specific Articles, the basic threefold classification may be controversial, not least the definition of exclusive competence. Further, economic policy and the CFSP appear to be special cases outside the general scheme. More work may be needed to secure an

<sup>15</sup> For example, Article 3(1) of the German Constitution.

<sup>16</sup> Article 20 of the Charter is entitled "Equality before the law" and states: "Everyone is equal before the law".

<sup>17</sup> Case C-292/97 *Karlsson* [2000] ECR I-2737.

adequate level of transparency. Any comment on the reorganisation of competences must necessarily await the debate on the detailed content of Part Two of the new Treaty.

38. Whether the right balance is struck between the maintenance of any “redefined division of competence” and ensuring that “the European dynamic does not come to a halt” turns in large part on Article 16, entitled “Flexibility clause”. Some confusion may arise here. “Flexibility” was one of the buzzwords of the Amsterdam Inter-Governmental Conference (IGC) and Treaty. It manifested itself in Title VII of the TEU—“Provisions on Closer Cooperation”. This sets out mechanisms to allow groups of Member States to take forward closer cooperation among themselves in certain circumstances. Whether close cooperation will have a place in the Treaty waits to be seen. The “Flexibility clause” in Article 16 is, as will be seen, quite different and potentially controversial.

#### **Article 8: Fundamental principles**

1. The limits and use of Union competences are governed by the principles of conferral, subsidiarity, proportionality and loyal cooperation.
2. In accordance with the principle of conferral, the Union shall act within the limits of the competences conferred upon it by the Constitution to attain the objectives the Constitution sets out. Competences not conferred upon the Union by the Constitution remain with the Member States.
3. In accordance with the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.
4. In accordance with the principle of proportionality, the scope and form of Union action shall not exceed what is necessary to achieve the objectives of the Constitution.
5. In accordance with the principle of loyal cooperation, the Union and the Member States shall, in full mutual respect, assist each other to carry out tasks which flow from the Constitution.

#### **Explanatory note**

*“Article 8 lists and defines, clearly and explicitly, the fundamental principles governing the limits and exercise of competences.”*

#### **COMMENTARY**

39. The exercise of Union competences is to be governed by four principles: conferral, subsidiarity, proportionality and loyal cooperation. This is not new, but the terminology now being used (in particular “loyal cooperation”) may raise concerns.

40. Article 8(2) defines the principle of conferral. Article 5(1) TEC currently states that “the Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein”.<sup>18</sup> The wording in 8(2) is similar (with the replacement of Union by Constitution etc), but a new sentence has been added: “Competences not conferred upon the Union by the Constitution remain with the Member States”. Its inclusion reflects the opinion of the Convention Working Group on Complementary Competences<sup>19</sup> that the new Treaty must ensure that powers not allocated to the Union remain within the Member States and that this should be expressly stated in the Treaty. Such an amendment would in itself “establish an assumption in favour of national competence”.

41. Article 8(3) defines subsidiarity, a term introduced into the Union Treaty vocabulary by the Maastricht Treaty to address the substantial increase in EC/EU competence brought about by the Single European Act and the Maastricht Treaty by restraining the use made by the Community of some of its competences. Article 5(2) TEC states: “In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by

<sup>18</sup> The principle of conferred powers is also reflected in Article 7(1) TEC, last sentence.

<sup>19</sup> CONV 375/1/02.

the Community". It is/may be significant that Article 8(3) refers to "Union" and not "Community". There may not in future be a distinction between them, thus making the principle more widely applicable to Union activity.

42. Article 8(3) makes clear that the principle of subsidiarity only applies "in areas which do not fall within its [the Union's] exclusive competence". The division of competences (exclusive/shared/supporting) is addressed in Article 10. The identification of the Union's exclusive competence is the subject of Article 11 and, as we explain below, may be controversial, especially for the relationship between the Union and the Member States, but also for the involvement of national parliaments in the control of Union legislation.

43. The principle of proportionality (Article 8(4)) is a well-established principle in Community law. The Court of Justice has ruled on proportionality both in challenges to Community action<sup>20</sup> and in challenges to Member State action within the scope of the Treaties.<sup>21</sup> The principle currently finds legislative expression in Article 5(3) TEC (inserted by the Maastricht Treaty): "Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty". The wording of Article 8(4) is slightly expanded and provides that the principle applies to "the scope and form of Union action" (rather than "any action by the Community"). There is no explicit reference to the "content" of any action, but this would seem not to be necessary. Any application of the principle and appraisal of the "scope and form" of a measure would necessarily have to involve consideration of its "content". Finally, the reference to "the objectives of the Constitution" should be to "the objectives of the Union" (see Article 3).

44. Article 8(5) defines the principle of loyal cooperation. Some commentators have suggested that this is new. Although the term does not appear as such in the current Treaties the principle is well-established and can be seen in both the TEC and the TEU. Article 10 TEC encompasses the principle, stating that: "Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks." The principle, and indeed the word "loyalty", can be found in Article 11(2) TEU: "The Member State shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity". The implications of "loyalty" in the context of the Common Foreign and Security Policy are considered in paragraph 75 below.

45. But Article 8(5) appears at first sight to change the focus significantly. It is not just about Member States fulfilling Treaty obligations, but emphasises that the principle involves two-way cooperation between the Union on the one hand and Member States on the other. Again this is not new. The Court of Justice has long recognised that the duty of cooperation is a mutual one.<sup>22</sup> The Article might nonetheless be seen as reinforcing the position of Member States, in view of the now explicit reference to cooperation and assistance "in full mutual respect".

<sup>20</sup> For example, on proportionality and human rights, see Case 44/79 *Hauer v Land Rheinland-Pfalz* [1970] ECR 3727.

<sup>21</sup> Case 36/75 *Rutili v Ministre d'Interieur* [1975] ECR 1219.

<sup>22</sup> Case 230/81 *Luxembourg v European Parliament* [1983] ECR 255, Case C-2/88 *Zwartfeld and Others* [1990] ECR I-3365.

### Article 9: Application of fundamental principles

1. The Constitution, and law adopted by the Union Institutions in exercising competences conferred on it by the Constitution, shall have primacy over the law of the Member States.
2. In exercising the Union's non-exclusive competences, the Institutions shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Constitution. The procedure set out in the Protocol shall enable national parliaments to ensure compliance with the principle of subsidiarity.<sup>23</sup>
3. In exercising the Union's competences, the Institutions shall apply the principle of proportionality as laid down in the same Protocol.
4. Member States shall take all appropriate measures, general or particular, to ensure fulfilment of the obligations flowing from the Constitution or resulting from actions taken by the Union Institutions.
5. In accordance with the principle of loyal cooperation, Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the objectives set out in the Constitution. The Union shall act loyally towards the Member States.
6. The Union shall respect the national identities of its Member States, inherent in their fundamental structures and essential State functions, especially their political and constitutional structure, including the organisation of public administration at national, regional and local level.

#### Explanatory note

*"Article 9 contains certain rules for the application of those principles. The inclusion of a reference to the role of the national parliaments is intended to highlight their importance in monitoring the principle of subsidiarity, in accordance with the conclusions of the Working Group chaired by Mr Méndez de Vigo. The Praesidium's conclusions further to the plenary debate on the Working Group's recommendations will be incorporated in the Protocol on the application of the principles of subsidiarity and proportionality."*

*The existing principle according to which Member States implement European Union law is also incorporated in this Article.*

*Paragraph 6 on the Union's respect for national identities develops a principle set out in Article 1 of the Constitution."*

#### COMMENTARY

46. Article 9(1) consolidates the doctrine of the supremacy or primacy of Community law. It is well established that in the event of a conflict between Community law and national law, Community law is supreme and has primacy over national law, irrespective of the source, status or date of that law.<sup>24</sup> It is also clear from the jurisprudence of the ECJ that the primacy of Community law applies irrespective of the status of the national law or the organ of the Member State involved.<sup>25</sup> In this context Community law includes the Treaty and rules made under it. Article 9(1) refers to the Constitution and the laws adopted under it. The implications for the Common Foreign and Security Policy (CFSP) need further consideration.

47. Articles 9(2) and (3) deal with the *application* of the principles of subsidiarity and proportionality, which are defined in Article 8(3) and (4) (see above). The Union shall apply these principles "as laid down in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Constitution". This will replace the existing Protocol on subsidiarity and proportionality and is expected to recognise the role of national parliaments in monitoring the application of subsidiarity. The precise form of action by national parliaments in this context is subject to much debate at present. There have been proposals to create an "early warning mechanism", in cases where a number of national parliaments have subsidiarity concerns - which they can raise with

<sup>23</sup> A new version of the Protocol is expected to be circulated shortly.

<sup>24</sup> Case 6/64 *Costa v ENEL* [1964] ECR 585.

<sup>25</sup> Case 106/77 *Italian Finance Administration v Simmenthal* [1978] ECR 629.

the Commission (the “yellow card”). What is more controversial is whether national parliaments will have the ability to block a Commission proposal on subsidiarity grounds (the “red card”). It has also been suggested that national parliaments should be able to challenge measures in the Court of Justice for non-compliance with subsidiarity.

48. A separate issue (raised in part by the difference in wording of Article 9(2) and (3)) is the apparent distinction between checks on subsidiarity (which national parliaments can do) and checks on proportionality (which are not for national parliaments but are left to the Community Courts). In practice it may be difficult to draw a clear line between subsidiarity and proportionality issues, as the examination of subsidiarity may involve issues of proportionality. We believe that Article 9 and the Protocol should be amended to require the views of national parliaments on both subsidiarity and proportionality to be sought.

49. The wording of Article 9(4) is similar to the first sentence of Article 10 TEC. The difference is that “Constitution” and “Union institutions” have replaced “Treaty” and “Community institutions”.

50. Article 9(5) is another facet of the principle of loyal cooperation set out in Article 8(5). The wording of the first sentence is similar to the second sentence of Article 10 TEC (again with the words “Union” and “Constitution” replacing “Community” and “Treaty”). This conduct is now expressly labelled as “loyal cooperation”. What is added is the phrase “the Union shall act loyally towards the Member States”. This, as mentioned above, consolidates a “two-way” duty of loyal cooperation.

51. The first part of Article 9(6) repeats Article 1(2) of the draft Treaty, and is the exact wording of Article 6(3) TEU. The novelty is that Article 9(6) goes further to flesh out what national identity in this context entails. Emphasis is placed on political identity, rather than cultural or ethnic identity.

#### **Article 10: Categories of competence**

1. When the Constitution confers on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union.
2. When the Constitution confers on the Union a competence shared with the Member States in a specific area, the Union and the Member States shall have the power to legislate and adopt legally binding acts in this area. The Member States shall exercise their competence only if and to the extent that the Union has not exercised its.
3. The Union shall have competence to coordinate the economic policies of the Member States.
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.
5. In certain areas and in the conditions laid down in the Constitution, the Union shall have competence to carry out actions to coordinate, supplement or support the actions of the Member States, without thereby superseding their competence in these areas.
6. The Union shall exercise its competences to implement the policies defined in Part Two of the Constitution in accordance with the provisions specific to each area which are there set out.

#### **Explanatory note**

*“This Article lists and describes the different categories of the Union's competences, stating for each category what the consequences of the Union's exercise of its competences are for the competences of the Member States.”*

*“The common foreign and security policy and coordination of the Member States' economic policies are given separate paragraphs, in order to reflect the specific nature of the Union's competences in those areas.”*

#### **COMMENTARY**

52. This Article defines the three basic categories of competence: exclusive competence; shared competence; and supporting action. It also confirms that the Union has competence to coordinate the economic policies of Member States and to define and implement a common foreign and security policy (CFSP). The Explanatory note justifies the express reference to economic policy and CFSP as

being necessary “to reflect the specific nature of the Union’s competences in those areas”. The “specific nature” is not itself identified. Articles 10(3) and (4) seem out of place in a provision dealing with the categorisation of competences as they are expressed to confer, rather than to classify, competences. It may simply be that these two policies do not fit within the basic threefold classification. The uncertainty is compounded by the way in which Article 12(1) defines “shared competence”, apparently including the Article 10(3) (Article 13) and 10(4) (Article 14) competences. Given these uncertainties it is difficult to see the logical justification for the inclusion of paragraphs (3) and (4) in Article 10. Some reference to them may be needed for political reasons but the way they are expressed in this Article hardly makes the division of competence “more transparent” as requested by the Laeken European Council. The Constitution must be clear on issues of such importance.

### Article 11: Exclusive competences

1. The Union shall have exclusive competence to ensure the free movement of persons, goods, services and capital, and establish competition rules, within the internal market, and in the following areas:
  - customs union,
  - common commercial policy,
  - monetary policy for the Member States who have adopted the euro,
  - the conservation of marine biological resources under the common fisheries policy.<sup>26</sup>
2. The Union shall have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union, is necessary to enable the Union to exercise its competence internally, or affects an internal Union act.

#### Explanatory note

*“The list in paragraph 1 of the areas of the Constitution in which the Union has exclusive competence goes beyond the present situation, as it includes the entire common commercial policy. This reflects the conclusion of Mr Dehaene’s Group that Article 133(6) of the Nice Treaty should be deleted.”*

*Paragraph 2 of this Article reflects the case law of the Court of Justice on the Union’s exclusive competence to conclude international agreements.”*

#### COMMENTARY

53. Article 11 seeks to describe, and define, those areas where the Union has exclusive competence. It deals with internal (Article 11(1)) and external competence (Article 11(2)), which are two separate but related subjects. As will be explained below, it is possible for the Union to have exclusive *external* competence in an area where the Union and Member States have shared *internal* competence under the Treaty.

54. The syntax of Article 11(1) is problematic. The relationship between the four specific “areas” listed and ensuring free movement within the internal market is unclear. The Article could be read as meaning that the Union only has exclusive competence in the four specific areas to the extent that such competence ensures free movement within the internal market but this would raise the question as to how the conservation of marine biological resources might ensure those freedoms. We read the Article as intending to give the Union exclusive competence (a) to ensure free movement etc within the internal market and, additionally, (b) in the four specified areas.

55. If our interpretation of Article 11(1) is correct, the reference to ensuring free movement within the internal market raises substantial concerns. Free movement has always been a key element of the Community and now the Union. Similarly the competition rules can be traced back to the Treaty of Rome. The Community has both extensive powers to legislate to ensure free movement (for example Article 95 (goods and services)) and competition rules, which we would expect to see restated in Part Two of the new Treaty. But we doubt whether it is the case that Member States are, by virtue of the Community’s competence, prohibited from legislating on any matter which might relate to the free

<sup>26</sup> This derives from EC Treaty Articles dealing with agriculture, Regulations adopted establishing the common fisheries policy and Article 102 of the Act concerning the conditions of Accession and the Adjustments of the Treaties. See Cases 3, 4 and 6/76 *Kramer and others* [1976] ECR 1279.

movement of persons, goods, services and capital, or establishing competition, within the internal market. For example, all Member States have company laws. Are they prohibited from amending those laws if the consequence would be to affect the right of establishment in a positive way? Or only if that was intended?

56. What the reference to free movement etc may mean is that the Union is to have exclusive competence to adapt measures specifically designed to permit freedom of movement (*eg* rules on the mutual recognition of qualifications) but not rules which may have an incidental effect on freedom of movement but are designed with another object in mind. It is unclear. Further, the draft Treaty is itself internally inconsistent. While Article 11(1) would suggest the Union has exclusive competence in relation to the internal market, Article 12 (Shared competence) lists “internal market” as one of the “principal areas” of shared competence (Article 12(4)).

57. The reference to the competition rules is similarly confused and confusing. The Treaty already contains substantive competition rules (Articles 81 and 82 TEC) as well as powers to apply and implement them (Article 83). Article 83(2) (e) TEC expressly contemplates the co-existence of Community law and national competition laws and both inevitably will apply “within the internal market”. We doubt that it is the draftsman’s intention to exclude the application of national competition laws and indeed the latest Community regulation to be agreed on the implementation of Articles 81 and 83 TEC expressly contemplates the application of national laws alongside the Community rules.<sup>27</sup> The intention might be to give the Union exclusive competence to adapt competition rules which apply where trade between Member States is affected (*ie* where Articles 81 and 82 are engaged) but even that would limit Member States’ existing powers.

58. If all that the reference in Article 11(1) to free movement within the internal market is trying to say is that there are important rules on the subject in the Treaty and the Union has been given powers to legislate, that does not need saying. Article 11(1) is either a tautology or, on at least one construction, a substantial extension of competence.

59. Article 11(2) seeks to consolidate the law on exclusive external competence. The Community’s competence to conclude international agreements arises from two sources: (i) express provisions in the Treaty (for example, Article 133 enables the Community to enter into tariff and trade agreements within the scope of the Common Commercial Policy). Other examples can be found in Article 111 (monetary and foreign exchange agreements), Article 155 (TENs), Article 174 (Environment) and Article 181 (Development Cooperation); and (ii) the jurisprudence of the European Court of Justice (the Court has held that external competence may flow from other provisions of the Treaty and measures adopted within the framework of those provisions).<sup>28</sup> The existence of “internal rules”<sup>29</sup> or of unexercised Treaty powers<sup>30</sup> to adopt such rules confers external competence to the Community.

60. The Community’s ability to conduct external relations is restricted, as a matter of law, to those areas where it has competence (exclusive or shared). On the other hand, where and to the extent that the Community has competence, Member States’ freedom of action is limited. They may not enter into agreements between themselves or with third States on the same subject matter. This is a consequence of the supremacy/primacy of Community law—Member States cannot prejudice the operation of Community law by entering into external obligations. Where the transfer of competence is partial, because the Treaty expressly preserves Member States’ competence (*eg* Article 174(4) TEC) or the internal rules do not occupy the whole field, then the Community and the Member States share competence. Both will be parties to the international agreement, which is commonly referred to as a “mixed agreement”. Internal and external competence are therefore directly related.

61. The precise extent of Community competence in relation to a particular subject or agreement is frequently a matter of concern and debate between the Commission and the Member States. The external competence implications of a proposal may therefore influence Member States’ decisions on the adoption or extension of internal rules.

<sup>27</sup> Reg 1/2003 of 16 December 2002. [2003] 05 L1/1.

<sup>28</sup> Opinion 1/94, *WTO* [1994] ECR I-5267.

<sup>29</sup> *AETR*, Case 22/70 *Commission v Council* [1971] ECR 263.

<sup>30</sup> *Rhine navigation*. Opinion 1/76 [1977] ECRA 741.

### Article 12: Shared competences

1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles 11 and 15.
2. The scope of shared competences is determined by the provisions of Part Two.
3. Where the Union has not exercised or ceases to exercise its competence in an area of shared competence, the Member States may exercise theirs.
4. Shared competence applies in the following principal areas:
  - internal market
  - area of freedom, security and justice
  - agriculture and fisheries
  - transport
  - trans-European networks
  - energy
  - social policy
  - economic and social cohesion
  - environment
  - public health, and
  - consumer protection.
5. In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to implement programmes; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.
6. In the areas of development cooperation and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.

#### Explanatory note

*"Areas in which there are shared competences are identified by their exclusion from the areas of exclusive competence and the areas for supporting action. The reference in paragraph 2 to Part Two of the Constitution is a link to the specific provisions of that Part determining the extent and intensity of Union competence in each area."*

*The inclusion of energy in the list of areas of shared competence requires the creation of a specific legal basis for that area in Part Two of the Constitution as no such legal basis exists in the current Treaties (thus far acts relating to this area have been adopted on the basis of Article 308).*

*The areas of development cooperation and research and technological development (and space) appear in separate paragraphs to indicate that even though the Union exercises its competence in these areas exhaustively, Member States still retain their competences. Despite the importance and scale of Union programmes for development aid and research the Constitution does not envisage the abolition of national programmes."*

#### COMMENTARY

62. The list of shared competences is indicative and not exhaustive. And Article 13(2) makes it clear that the details will be set out in Part Two of the new Treaty.

63. Article 12(3) sets out the relationship between the Union and Member States where competence is shared. Member States may exercise their competence where the EU has not exercised or ceases to exercise competence. This statement may require some expansion and qualification. As the commentary to the draft Treaty prepared by Professor Dashwood indicates,<sup>31</sup> a distinction may need to

<sup>31</sup> The text of the draft Dashwood Treaty has now been published in the European Law Review: (2003) 28 E.L.Rev. 3.

be drawn between “pre-emptive” EU legislation, where Member States are precluded from exercising any independent competence to derogate from or supplement the harmonised norms and “minimum harmonisation”, where Member States are free to enact more stringent measures. If Article 12(3) does not expressly include or in practice permit such a distinction, Member States could not act in any case of shared competence where the Union has acted (this may also be inferred from 12(5) and 12(6), where Member States’ freedom to act is expressly reserved). This might have significant implications, especially for areas such as the harmonisation of civil and criminal law within the context of the creation of an area of freedom, security and justice.

64. A further question raised by Article 12(3) is: when will the Union have ceased to act? How in practice will that be discerned?

65. Article 12(4) identifies eleven “principal areas” of shared competence. They are not new. The EC Treaty already includes extensive provisions on the internal market (most notably Article 95 TEC), the establishment of which has been a fundamental Community objective, especially since the 1980s and the Single European Act. The concept of the EU as an “area of freedom, security and justice” (AFSJ) was introduced in the Amsterdam Treaty, following the establishment of a Justice and Home Affairs competence for the EU in Maastricht. There are currently provisions on the AFSJ (which is also, according to draft Article 3(3), a Union objective) in both the First (Title IV TEC—Articles 61-69) and the Third Pillar (Title VI TEU—Articles 29-42). Agriculture—including the establishment of a Common Agricultural Policy (CAP)—is covered in Articles 32-38 TEC, transport in Articles 70-80 TEC and trans-European networks in Articles 154-156 TEC. The Treaty also includes provisions on economic and social cohesion (Articles 158-162 TEC), the environment (Articles 174-176 TEC), and consumer protection (Article 153 TEC).

66. The inclusion of energy is noteworthy. There is a reference to energy in the context of trans-European networks, and Article 3(u) TEC lists ‘measures in the field of energy’ as an EC activity. Article 175(2) (in the environment title) also contains a reference to energy. The present Treaty references therefore are not as substantial as in relation to other areas listed in Article 12(4). It remains to be seen whether an energy title will be added at the next Inter-Governmental Conference (there was pressure to include such a title during the Amsterdam IGC). Extension of Union competence in matters of energy policy would have major consequences for domestic policies and therefore needs to be considered carefully.

67. Public health and social policy are also noteworthy, but for a different reason. These are areas where the current Treaty provisions provide for both shared and supporting competence. The Community’s powers relating to public health are currently set out in Article 152 TEC and are a mix of shared and supporting competences. Article 152(1), for example, envisages the Community taking action to complement national policies. Article 152(4) enables the adoption of measures (by co-decision of the Council and the European Parliament) setting standards of quality and safety *inter alia* of blood and blood derivatives. It is presumably the power given by Article 152(4) which has led to the classification of public health as a shared competence.

68. The Treaty contains an extensive list of provisions on social policy (Articles 136-148 TEC). The Treaty grants the EC supporting/complementary competence regarding health and safety at work, working conditions, social security and social protection of workers, protection of workers where their employment contract is terminated, representation and collective defence of the interests of workers and employers, conditions for employment for legally resident third-country nationals, the information and consultation of workers, the integration of persons excluded from the labour market and equality between men and women with regard to labour market opportunities and treatment at work (Article 137). There are also provisions enabling coordinating action on employment, labour law and working conditions, vocational training, social security, prevention of occupational accidents and diseases, occupational hygiene and the right of association and collective bargaining (Article 140 TEC). Last, but not least, the Treaty includes the well-established principle of equal pay without discrimination based on sex (Article 141 TEC) which, according to the ECJ, is a fundamental principle of EC law.<sup>32</sup>

69. What is not clear is what effect, if any, the inclusion of public health and social policy in Article 12(4) has. Is it intended to elevate public health and aspects of social policy (Articles 137 and 141 TEC) from areas of supporting/coordinating/complementary EC action to areas of shared competence? The answer is probably not, but careful scrutiny of the relevant Articles in Part Two of the new Treaty will be needed to identify the extent, if any, of any change.

70. The approach of Articles 12(5) and (6), as mentioned above, differs from that in Articles 12(3) and (4) in that it is expressly provided that in certain policy areas the exercise of Community competence “may not prevent” Member States from exercising their competence. The policy areas in

<sup>32</sup> Case 43/75 *Defrenne v Sabena* [1976] ECR 455.

Article 12(5) are research, technological development and space. While the Treaty contains a series of provisions on research and technological development (Articles 163-173), the reference to space is new. Article 12(6) refers to development cooperation and humanitarian aid. The TEC contains a separate Title on development cooperation (Title XX Articles 177-181). Article 180 TEC provides that the Community and Member States shall "consult each other on their aid programmes" and Member States "shall contribute if necessary to the implementation of Community aid programmes". A new Title on "economic, financial and technical cooperation with third countries" (Title XXI—Article 181a) has been added in the Nice Treaty, presumably also covering aspects of humanitarian aid. However, there is no specific reference to "humanitarian" aid in either of these Titles.

#### **Article 13: The coordination of economic policies**

1. The Union shall coordinate the economic policies of the Member States, in particular by establishing broad guidelines for these policies.
2. The Member States shall conduct their economic policies, taking account of the common interest, so as to contribute to the achievement of the objectives of the Union.
3. Specific provisions shall apply to those Member States which have adopted the euro.

#### **Explanatory note**

*"While, for those Member States which have adopted the euro, monetary policy falls within the exclusive competence of the Union, the economic policies of the Member States remain within the competence of the latter, in accordance with the conclusions of Mr Haensch's Working Group."*

*In this area Union competence consists in coordinating national policies. In view of the importance of such coordination the Praesidium considered that it merited a separate Article."*

#### **COMMENTARY**

71. Article 13(1) is not new and can be traced back to Article 99 TEC, which requires Member States to regard their economic policies as a matter of common concern and to "co-ordinate them within the Council". Article 99(2) TEC empowers the Council to formulate broad guidelines for those policies. The main change is therefore that under the Constitution it would be the Union which would coordinate economic policies rather than the Member States doing so within the Council. Depending on how Part Two of the new Treaty allocates responsibilities between the Institutions, this would not appear to involve any major change.

72. Similarly Article 13(2) appears to derive from Article 98 TEC ("Member States shall conduct their economic policies with a view to contributing to the achievement of the objectives of the Community, as defined in Article 2 [TEC], and in the context of the broad guidelines referred to in Article 99(2) [TEC]"). Whether "taking account of the common interest" under the new Article 13(2) will be distinguishable from regarding economic policies as a matter of common concern as required by Article 99 TEC might be a debating point and at first sight seems unlikely to be of any significance in practice.

73. Article 13 is factually accurate and implies that some States may continue as Members of the Union without adopting the euro. This is a helpful clarification of the *status quo*. It is implicitly reinforced by Article 11(1), which states that the Union shall have exclusive competence in relation to the "monetary policy for the Members States who have adopted the euro".

#### **Article 14: The common foreign and security policy**

1. Member States shall actively and unreservedly support the Union's common foreign and security policy in a spirit of loyalty and mutual solidarity. They shall refrain from action contrary to the Union's interests or likely to undermine its effectiveness.

#### **Explanatory note**

*"This Article seeks to identify Member States' specific obligations in exercising their competences in this area."*

## COMMENTARY

74. Article 14 is similar to Article 11 TEU. The main difference is that now Member States should support the Union's "common foreign and security policy", rather than the Union's "external and security policy". It is not clear whether the meaning is identical or whether it signifies a broadening of scope. Article 10(4) makes clear that the term includes a common defence policy. The second sentence has been simplified (current Article 11 reads: "... likely to impair its effectiveness *as a cohesive force in international relations*"). The reference to Member States working together "to enhance and develop their mutual political solidarity" has been dropped. But this wording may appear in the specific CFSP section.

75. Though the new wording is broadly similar to existing Treaty Articles, we are concerned that the new Treaty structure (seemingly collapsing the current three Pillars into one) should not fundamentally change the nature of, and the extent of Member States' obligations in respect of, the CFSP. The new Treaty might give the impression that authority in these matters derives from the Constitution and not from the Member States. We will pursue with the Government the case that CFSP should remain intergovernmental. Further, we will carefully scrutinise the wording of all the new CFSP Articles. The obligation for Member States to "actively and unreservedly support" the CFSP will presumably in practice be qualified by the requirement for unanimity before CFSP measures are taken. However, recent events focus attention on the strength and potential width of the commitment contained in Article 14 as well as the strategic and budgetary implications.

**Article 15: Areas for supporting action**

1. The Union may take coordinating, complementary or supporting action. The scope of this competence is determined by the provisions of Part Two.
2. The areas for supporting action are:
  - employment
  - industry
  - education, vocational training and youth
  - culture
  - sport
  - protection against disasters
3. The Member States shall coordinate their national employment policies within the Union.
4. Legally binding acts adopted by the Union on the basis of the provisions specific to these areas in Part Two cannot entail harmonisation of Member States' laws or regulations.

**Explanatory note**

*"As in the case of shared competences, the reference to Part Two is to indicate that the extent and intensity of Union competence in each area are determined by the specific provisions of that Part and to ensure that there are no changes as compared with the current situation other than those expressly decided on by the Convention."*

*The inclusion of "sport" and "protection against disasters" in the list of areas for supporting action follows on from the conclusions of Mr Christophersen's Group and involves the creation of a specific legal basis for those two areas in Part Two, given that there is no such basis in the current Treaties (thus far acts in the area of civil protection have been adopted on the basis of Article 308)."*

## COMMENTARY

76. The EC Treaty already envisages coordinating or supporting action on employment (Articles 125-130), industry (Article 157), education, vocational training and youth (Articles 149 and 150) and culture (Article 151).

77. Employment in this context, it appears, would be given the widest interpretation but be limited to those matters referred to in Article 125-130. "Employment", in the broad sense, may also be covered by economic policy (where there is a separate obligation to coordinate policies—see Article 13) and the provisions on social policy (currently Articles 136-145 TEC), in particular Article 137 TEC which enables supporting and complementary action in a range of matters affecting workers, the

work place and the labour market. It may be difficult to distinguish between, and keep separate, what is an "employment" and what is a "social policy" measure in this context. This distinction is important, as "social policy" is considered as an area of "shared" (and not "supporting") competence in the draft Treaty (Article 12(4)). This may imply that EU competence for action under Article 137 is now transformed from "supporting" to "shared".

78. Article 15(2) anticipates "sport" and "protection against disasters" becoming established as new areas of Union competence. On sport, the main EU action thus far consisted of the Declaration on sport of the Amsterdam Treaty and the Declaration "on the specific characteristics of sport and its social function in Europe", which was annexed to the Conclusions of the Nice Summit. EC action on civil protection, on the other hand, has been thus far only been possible under Article 308 TEC.

79. Article 15(3) would impose an obligation on Member States to coordinate their national employment policies within the Union. Currently "Member States and the Community shall ... work towards developing a coordinated strategy for employment" (Article 125 TEC) with the Community being able to contribute to a high level of employment by encouraging cooperation between Member States (Article 127 TEC) and the Council being able to adopt incentive measure designed to encourage cooperation between Member States (Article 129 TEC).

80. Article 15(4) states, as general rule, that supporting action in the areas listed in Article 15(2) does not permit the harmonisation of Member States' laws or regulations. Specific examples of this rule can currently be found in Article 129 (employment), Article 150(4) (vocational training), and Article 151(5) (culture).

#### Article 16: Flexibility clause

1. If action by the Union should prove necessary within the framework of the policies defined in Part Two 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 assent of the European Parliament, shall take the appropriate measures.
2. Using the procedure for monitoring the subsidiarity principle referred to in Article 9, the Commission shall draw Member States' national parliaments' attention to proposals based on this Article.
3. 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.

#### Explanatory note

*"In view of the Convention's desire to ensure that the implementation of this provision respects the limits of the competences conferred on the Union by the Constitution, paragraph 1 states that this provision may be used only "within the framework of the policies defined in Part Two".*

*The procedure involving European Parliament assent is proposed (by way of derogation from the conclusions of Mr Amato's Group, which decided that codecision should be the general rule for the adoption of legislative acts and that assent should be reserved for the conclusion of international agreements) and also unanimity for the Council vote. The possibility of a qualified majority could be examined during the Convention's general debate on the question. This procedure is being proposed in order to restrict the use of this provision, while at the same time expediting matters when it is necessary to have recourse to it.*

*Paragraph 2 follows up the proposals by Mr Mendez de Vigo's Group.*

*Paragraph 3 seeks to introduce into the Constitution a limitation on the scope of the flexibility clause which reflects current Court of Justice case law."*

#### COMMENTARY

81. As mentioned above (paragraph 38) the title of this Article may be confusing. Flexibility is sometimes used to mean closer cooperation. Article 16 is derived from Article 308 TEC. Article 308 TEC is a major source of the mistrust which many people feel towards the existing Community and Union. The inclusion of a similar provision in Article 16 raises a number of questions, both of principle and of detail.

82. First, the inclusion of a catch-all/fall back clause such as is being proposed casts doubt on the value of drawing up a list of competences. Even if it is accepted that that list cannot be definitive (the list in Article 11 above cannot by definition be exhaustive and that in Article 12 is merely illustrative) the desirability of including a provision which will inevitably affect the respective competences of the Union and the Member States needs the most careful consideration. There is also a danger that any "flexibility" clause could be used as a way of bypassing the need to amend the Constitution and the parliamentary democratic control and national constitutional requirements that would imply. On the other hand the absence of a power for the Union to take action might lead the Court of Justice to construe existing powers more widely and possibly even develop a theory of implied powers.

83. The experience of Article 308 TEC (formerly Article 235 EC and once known as "*la petite révision*"), sometimes linked with other Treaty Articles, has been that the power has been used extensively over a range of matters (including social policy, the environment, consumer protection, external affairs and institutional and financial matters).<sup>33</sup> In addition to filling in gaps<sup>34</sup> in the Treaty, some quite substantial policy and regulatory measures have been developed and adopted where the "Treaty has not provided the necessary powers". For example, the creation of a Community trademark<sup>35</sup> and the European company,<sup>36</sup> establishing a Community action programme in the field of civil protection,<sup>37</sup> and creating a rapid-reaction mechanism (humanitarian aid).<sup>38</sup> The new Article 16 would be wider in scope. It would apply to the Union (not just the Community/First Pillar) and therefore confer power to act in relation to the Common Foreign and Security Policy (CFSP—Second Pillar) and Police and Judicial Cooperation (Third Pillar). The power would be exercisable at the initiative of the Commission, a factor which is politically significant in the context of the CFSP.

84. There are some safeguards in Article 16. First, any measure must be adopted by unanimity in the Council. Second, parliamentary control is strengthened. Article 16(1) requires the assent of the European Parliament and Article 16(2) makes explicit reference to national parliaments. As regards the role of the Parliament, it might be questioned why co-decision should not apply. The reason given in the Explanatory note (that it might slow down the procedure) seems unconvincing. Why should action under this provision be any more urgent than action under any other provision? Further, Article 16(2) is a weak provision, requiring only that the Commission draw Member States' national parliaments' attention to proposals. It seems clear to us that if national parliaments are to have a meaningful role in this context then their views on the *vires* and merits should also be respected.

85. Finally, Article 16(3) prohibits the use of Article 16 to harmonise national laws where that is excluded by the Constitution. Article 16 cannot be used to get round Article 15(4).

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<sup>33</sup> See *The Residual Competence: Basic Statistics on Legislation with a Legal Basis in Article 308 EC*. A working document prepared by the Swedish Institute for European Policy Studies and submitted to the Convention Working Group V. Working Document 19.

<sup>34</sup> For example, Council Regulation No 1103/97 [1997] OJ L162/1, relating to the introduction of the euro.

<sup>35</sup> Council Regulation No 40/94 [1994] OJ L349/83.

<sup>36</sup> Council Regulation No 2157/2001 [2001] OJ L294/1.

<sup>37</sup> Council Decision of 9 December 1999 [1999] OJ L327/53.

<sup>38</sup> Council Regulation No 381/2001 [2001] OJ L57/5.

## APPENDIX 1

*Membership of the European Union Committee and Sub-Committee E (Law and Institutions)*

The members of the European Union Committee are:

Baroness Billingham  
Lord Brennan  
Lord Cavendish of Furness  
Lord Dubs  
Lord Grenfell (Chairman)  
Lord Hannay of Chiswick  
Baroness Harris of Richmond  
Lord Jopling  
Lord Lamont of Lerwick  
Baroness Maddock  
Lord Neill of Bladen  
Baroness Park of Monmouth  
Lord Radice  
Lord Scott of Foscote  
Earl Selborne  
Lord Shutt of Greetland  
Baroness Stern  
Lord Williamson of Horton  
Lord Woolmer of Leeds

The members of Sub-Committee E (Law and Institutions) are:

Lord Brennan  
Lord Fraser of Carmyllie  
Lord Grabiner  
Lord Henley  
Lord Lester of Herne Hill  
Lord Mayhew of Twysden  
Lord Neill of Bladen  
Lord Plant of Highfield  
Lord Scott of Foscote (Chairman)  
Baroness Thomas of Walliswood  
Lord Thomson of Monifieth

APPENDIX 2

*Preliminary draft Constitutional Treaty, drawn up by the Praesidium, which the President presented at the European Convention's plenary session on 28 October 2002 (CONV) 369/02*

## Kate Hemmings

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**From:** Matthew.Taylor@fco.gsi.gov.uk  
**Sent:** 25 February 2003 17:39  
**To:** [REDACTED]  
**Subject:** Alternate Body Parts containing the same information

**Importance:** Low



ATT1829237.htm

I attach the results so far in our exercise of analysing the amendments to articles 1-16. This amounts to tables for Articles 1,2, 4, 5, 6, 7, 9, 11, 13 and 14.

I'll get a full set out as soon as is practicable (its a big task), perhaps with a covering note drawing out the strands. This could usefully incorporate the results of the telegram instrucing posts to delve into their hosts' position. If anyone has any comments on what we have so far, please let me know.

<<03.03.25 - art 1 fiche.doc>> <<03.03.25 - art 2 fiche.doc>> <<03.03.25 - art 4 fiche.doc>> <<03.03.25 - art 5 fiche.doc>> <<03.03.25 - art 6 fiche.doc>> <<03.03.25 - art 7 fiche.doc>> <<03.03.25 - art 9 fiche.doc>> <<03.03.25 - art 11 fiche.doc>> <<03.03.25 - art 13 fiche.doc>> <<03.03.25 - art 14 fiche.doc>>

Matthew Taylor  
First Secretary (Future of Europe)  
UK Representation to the European Union  
Tel: 00 32 2 282 8937 (W) 00 32 486 090070 (M)

Art	Praesidium draft	Hain Comments	Bigs	Smalls and applicants	Others
1.1.	Reflecting the will of the peoples and the States of Europe to build a common future, this Constitution establishes a Union [entitled...], within which the policies of the Member States shall be coordinated, and which shall administer certain common competences on a federal basis.	"Reflecting the will of the peoples and States of Europe to build a common future, the High Contracting parties establish a European Union [by/under] this Constitution within which the Member States shall co-ordinate certain policies at a European level to achieve goals that they can not achieve on their own. To this end the Member States shall confer certain of their competences on the Union, which shall administer those competences in common."	<b>Spain:</b> replace "peoples" with "citizens". <b>Italy:</b> "an ever closer Union of the peoples and States"; delete "federal basis". <b>France:</b> "to create an ever closer union...a federation of nation states" <b>Germany:</b> "Federation of nation states." Add "ever closer union" and reference to "citizens".	<b>Estonia, Poland, Greece, Portugal, Ireland, Slovakia, Austria, Slovenia:</b> delete "on a federal basis". <b>Poland, Portugal, Belgium:</b> reinsert "ever closer Union". <b>Netherlands:</b> "and within which the policies of the Member States shall be coordinated." <b>Portugal, Sweden:</b> reference to "high contracting parties". <b>Greece:</b> replace "peoples" with "citizens"	<b>Spini, Paciotti, Voggenhuber, Kiljunen, Vanhanen, Costa, Wuermeling, Altamaier, Tomlinson:</b> delete "federal". <b>Duhamel et al, Meyer, Brok and EPP:</b> replace "peoples" with "citizens". <b>Van Lanker et al, Meyer, Lequiller:</b> "ever closer union"
1.2.	The Union shall respect the national identities of its Member States.			<b>Finland:</b> "in particular their political and constitutional structure, organisation of the public authorities at national regional and local level, as well as their cultural and linguistic diversity."	<b>Brok and EPP:</b> reference to "languages, the status of churches and non-confessional organisations". <b>Lamassoure, McCormick:</b> reference to regions.

				<b>Greece, Poland, Portugal:</b> merge with 9.6. <b>Ireland:</b> “identities and sovereignty” <b>Belgium, Slovenia:</b> reference to “regional diversity”. <b>Greece:</b> “whose governmental institutions and practice respect the democratic principle and the rule of law and whose peoples...” <b>Sweden:</b> delete reference to “peoples”.	<b>Duff:</b> delete.  <b>Lamassoure:</b> insert reference to possibility of leaving EU. <b>Tomlinson:</b> delete reference to “peoples”. <b>Einem:</b> delete.
1.3.	The Union shall be open to all European States whose peoples share the same values, respect them and are committed to promoting them together.	“The Union shall be open to all European States which share and respect the values on which the Union is founded [and which are committed to promoting them together].”	France, Germany: delete reference to “peoples”.		

<b>Art</b>	<b>Praesidium draft</b>	<b>Hain Comments</b>	<b>Bigs</b>	<b>Smalls and Applicants</b>	<b>Others</b>
2.	The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.	Delete second sentence – better left to Preamble.	<b>Spain:</b> Insert “equality”; “fundamental rights”; delete “society at peace”. <b>Italy:</b> reference to jewish-christian value; delete second sentence. <b>France:</b> “principles” rather than “values”; “fundamental rights”. <b>Germany:</b> revert to Article 6 TEU.	<b>Finland, Ireland:</b> “fundamental rights” <b>Finland:</b> add “equality” <b>Greece:</b> delete second sentence; add “peace” to list in first sentence. <b>Poland:</b> delete second sentence. <b>Hungary:</b> reference to rights of national minorities. <b>Belgium:</b> add equality, justice, tolerance and solidarity. Delete second sentence. <b>Portugal:</b> Delete “aim is a society at peace.”	<b>Beres et al:</b> “Fundamental rights” <i>A number of francophone members suggest changing “human rights” (droit de l’homme) to something non-gender specific.</i> <b>Muscardini:</b> add reference to the “Greco-Roman, Judeo-Christian, secular and liberal” tradition. <b>Einem:</b> add “social justice, “equality, in particular between men and women”. <b>Kiljunen and Vanhanen:</b> add “equality, the rights of minorities and the disabled, and transparency.”

<b>Art</b>	<b>Praesidium draft</b>	<b>Hain Comments</b>	<b>Bigs</b>	<b>Smalls and applicants</b>	<b>Others</b>
4.	The Union shall have legal personality.	Can only accept if special arrangements for CFSP and some aspects of JHA are protected.	None.	<b>Poland:</b> merge into Article 1.  Proposals for Article 4 bis: <b>Portugal</b> (use of languages), <b>Finland</b> (Primacy of Union law and Loyal Cooperation)	<b>Kirkhope and Heathcoat-Amory:</b> Delete  Proposals for Article 4 bis: <b>EPP</b> (defence solidarity clause)

<b>Art</b>	<b>Praesidium draft</b>	<b>Hain comments</b>	<b>Bigs</b>	<b>Smalls</b>	<b>Others</b>
5.1.	The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out [in the second part of/in a Protocol annexed to] this Constitution.	“The Union recognises the rights, freedoms and principles in the Charter of Fundamental Rights. The scope, applicability and legal effect of the Charter are described in Part VII of that Charter.”	<p><b>Spain, France:</b> incorporation of Charter as second part of the Constitution (1 bis solution)</p> <p><b>Italy:</b> include Charter as protocol. New subsection 2, Charter only applicable if does not give rise to rights against MSt governments??</p> <p><b>Germany:</b> Charter to be incorporated into Part I</p>	<p><b>Ireland, Finland, Sweden, Latvia:</b> Charter to be included as a protocol</p> <p><b>Denmark:</b> amend “integral part” to Union respects rights, freedoms and principles in Charter....”. Charter to be attached as protocol</p> <p><b>Netherlands:</b> delete. (cannot accept incorporation if Charter results in direct claims by citizens against MSt governments)</p> <p><b>Belgium, Poland:</b> Charter to be included as second part of the Constitution (1 bis solution)</p> <p><b>Lithuania, Luxembourg:</b> Contents of Charter to be included in Title I or II of Treaty</p>	<b>ELDR (Duff et al):</b> Charter to be incorporated as second chapter of Part I  <b>PES:</b> Second part of Constitution . Also include phrase “the fundamental rights of the European Union are set out in the Charter”  <b>PPE:</b> contents of Charter to be included in Title I or II of the Treaty

	5.2.	The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.	"The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not <u>extend</u> the Union's competences as defined by this Constitution."	<b>France:</b> Enabling clause to be included in Part II of Treaty	<b>Poland:</b> delete. Enabling clause to be included in Part II of Treaty  <b>Ireland:</b> amend article so clear that accession will not affect competences of Union  <b>Finland, Sweden:</b> "The Union shall seek accession"  <b>Belgium:</b> Union to be given right to accede to other international human rights conventions	<b>PES:</b> delete. Legal personality of Union is sufficient to accede  <b>EPP:</b> "The Union shall request to accede"  <b>Duff et al:</b> Union to be given right to accede to other international human rights conventions
	5.3.	Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.	Delete.	<b>Germany:</b> Modify. Reproduce wording of existing Art 6(2) TEU. Switch subsections 2 and 3	<b>Poland:</b> delete  <b>Netherlands:</b> insert reference to Charter	<b>EPP, PES:</b> delete. Unnecessary if Charter is incorporated

<b>Art</b>	<b>Praesidium draft</b>	<b>Hain Comments</b>	<b>Bigs</b>	<b>Smalls and Applicants</b>	<b>Others</b>
6.	In the field of application of this Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.	"In the field of application of this Constitution and without prejudice to any of its specific provisions, any discrimination between nationals of Member States on grounds of nationality shall be prohibited."	<b>Germany:</b> delete – already in Charter. <b>Spain:</b> precision on nationals of Member States.	Greece: delete – already in Charter. <b>Spain:</b> precision on nationals of member states.	<b>Brok and EPP,</b> <b>Duhamel and PES,</b> <b>Voggenhuber</b> and a number of others: delete – already in Charter. <b>Muscardini,</b> <b>Maccormick:</b> reference to disabled:

<b>Art</b>	<b>Praesidium draft</b>	<b>Hain Comments</b>	<b>Bigs</b>	<b>Smalls and Applicants</b>	<b>Others</b>
7.1.	Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship; it shall not replace it. All citizens of the Union, women and men, shall be equal before the law.	None.	<p><b>Spain:</b> Art 6 of Draft Treaty to be included within this section. All paras with the exception of Art 7(1) could be deleted if Charter is incorporated</p> <p><b>Germany:</b> delete final sentence. Delete Arts 7(2), (3). Covered by Charter.</p>	<p><b>Ireland:</b> add new Art 7.2</p> <p>“In the field of application of this Constitution and without any prejudice to any of its specific provisions, any discrimination on grounds on nationality shall be prohibited</p>	<p><b>EPP (Brok et al):</b> delete final sentence</p> <p><b>PES (Duhamel, McAvan et al), MacLennan:</b> delete second sentence</p> <p><b>Paciotti, Kaufmann, Fayot, Di Rupo (MEPs):</b> Amend so European Citizenship can be given after 5 years of residence</p>
7.2.	Citizens of the Union shall enjoy the rights and be subject to the duties provided for in this Constitution. They shall have: <ul style="list-style-type: none"><li>• The right to move and reside freely</li></ul>	None.		<p><b>Ireland:</b> Add reference to right to receive reply in same Treaty language (Irish speakers)</p> <p>Add new tiret “ the right to good administration”</p>	<p>Most amendments in favour of deleting as replicates Charter.</p> <p><b>PES members:</b> include a reference to the Charter or Part II of the Constitutional Treaty</p>

	<p>within the territory of the Member States;</p> <ul style="list-style-type: none"><li>• The right to vote and to stand as a candidate in elections to the European Parliament and in municipal elections in their Member State of residence under the same conditions as nationals of that State;</li><li>• The right to enjoy, in the territory of a third country in which the Member State of which they are a national is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;</li></ul>			<p><b>Finland:</b> redundant as reproduces Charter</p>	<p>after “provided for in this Treaty”. Delete remainder of subsection</p>
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	<ul style="list-style-type: none"> <li>The right to petition the European Parliament, to apply to the Ombudsman, and to write to the institutions and advisory bodies of the Union in any of the Union's languages and to obtain a reply in the same language.</li> </ul>				
7.3.	<p>These rights shall be exercised in accordance with the conditions and limits defined by this Constitution and by the measures adopted to give it effect.</p>	None		Belgium: delete	PES members: delete

<b>Art</b>	<b>Praesidium draft</b>	<b>Hain Comments</b>	<b>Bigs</b>	<b>Smalls and Applicants</b>	<b>Others</b>
9.1.	The Constitution, and law adopted by the Union institutions in exercising competences conferred on it by the Constitution, shall have primacy over the law of the law of the Member States.	Delete.	<b>Spain</b> – move to Art 8. <b>Germany</b> – delete and move elements elsewhere.	<b>Portugal, Austria</b> – move to Art 8. <b>Belgium</b> – move to Art 1. <b>Finland</b> – delete Article by moving elements elsewhere.	
9.2.	In exercising the Union's non-exclusive competences, the Institutions shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Constitution. The procedure set out in the Protocol shall enable national parliaments to ensure compliance with the principle of subsidiarity.	"In exercising the Union's non-exclusive competences, the Institutions shall apply the principles of subsidiarity and proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality annexed to this Constitution. The procedure set out in the Protocol shall enable national parliaments to ensure compliance with these principles."		<b>Ireland:</b> "monitor application of" rather than "ensure compliance with." <b>Belgium</b> – delete reference to mechanism.	<b>Maccormick:</b> delete reference to "national" parliaments. <b>Beres and others:</b> add reference to European Parliament. <b>McAvan:</b> add reference to Committee of the Regions.
9.3.	In exercising the	Delete.		<b>Ireland:</b> delete.	<b>Kiljuner, Vanhanen,</b>

	Union's competences, the Institutions shall apply the principle of proportionality as laid down in the same Protocol.			Paciotti, Spini: delete
9.4.	Member States shall take all appropriate measures, general or particular, to ensure fulfilment of the obligations flowing from the Constitution or resulting from actions taken by the Union Institutions.	Delete.	Ireland: delete. Portugal: add reference to "loyal cooperation".	Tomlinson, Paciotti, Spini: delete.
9.5.	In accordance with the principle of loyal cooperation, Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the objectives set out in the Constitution. The Union shall act loyally towards the Member	Delete.	Austria – move to Art 8(5) Portugal: delete	Tomlinson, Paciotti, Spini: delete.

States.

9.6

The Union shall respect the national identities of its Member States, inherent in their fundamental structures and essential State functions, especially their political and constitutional structure, including the organisation of public administration at national, local and regional level.

Add: "and their responsibilities for the maintenance of law and order and for national security."

**Spain:** delete reference to "essential state functions".

**Italy:** delete "inherent in", replace "especially" with "in particular".

**Portugal:** delete Austria – add "their choices regarding language, national citizenship, territory, legal status of churches and religious societies, national defence and the organisation of armed forces."

**Kiljunen and Vanhanen:** delete. Brok and others, Einem: reference to languages, the status of churches. **Teufel:** reference to regions.

Art	Praesidium Draft	Hain Comments	Bigs	Smalls and Applicants	Others
11.1	<p>The Union shall have exclusive competences to ensure the free movement of persons, goods, services and capital, and establish competition rules, within the internal market, and in the following areas:</p> <ul style="list-style-type: none"> <li>• Customs union;</li> <li>• Common commercial policy;</li> <li>• Monetary policy for the Member States who have adopted the euro;</li> <li>• The conservation of marine biological resources under the common fisheries policy.</li> </ul>	<p>“The Union shall have exclusive competence in the following areas”</p> <ul style="list-style-type: none"> <li>• “Common commercial policy, except as provided in Article [equivalent of present Art 133.]”</li> </ul>	<p><b>Spain:</b> add Agricultural Common Market organisations to list</p> <p><b>Germany:</b> delete “and establish competition rules, within the internal market”</p> <p><b>France:</b> insert express exclusion for agreements on audio-visual and cultural services, social services, education and public health</p>	<p><b>Ireland :</b> move “within the internal market” so follows “exclusive competences”, insert “scope of which is determined by Part II” before bullets (similar amendments from <b>Netherlands, Finland</b>)</p> <p><b>Sweden:</b> delete from “to ensure” until “in the following areas”</p> <p><b>Belgium:</b> add “external representation of the Union, rights and obligations arising from EU citizenship, access to the territory of the Union</p>	<p><b>EPP group:</b> add exchange rate policy through ECB, monetary law for states which have adopted Euro, definition of tasks, priorities and objectives of Structural Funds; Union Statistics; rules to ensure functioning of EU Institutions; funding of EU budget</p> <p><b>PES members (Duhaemel, Haensch et al):</b> add financing of Union budget (receipts and expenditure)</p> <p><b>Duff et al:</b> remove reference to internal market with the exception of fiscal policy</p> <p><b>Nagy, Voggenhuber and Lichtenburger:</b> add external action and</p>

					defence
11.2	The Union shall have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union, is necessary to enable the Union to exercise its competence internally, or affects an internal Union act.	Delete.	<b>Spain:</b> before legislative act, add "Constitution". Before "is necessary" add "or where not explicitly foreseen"  <b>France:</b> delete	<b>Ireland:</b> delete  <b>Finland:</b> rephrase so reflects current ECJ case-law	<b>Tomlinson:</b> delete

Art	Praesidium Draft	Hain Comments	Bigs	Smalls	Others
13.1	The Union shall coordinate the economic policies of the Member States, in particular by establishing broad guidelines for these policies.	"Member States shall conduct their economic policies with a view to contributing to the achievement of the objectives of the Union and coordinate them in accordance with procedures for multilateral surveillance established by the Council."	<b>Italy:</b> add to the end "on the basis of dispositions included in the second part of the constitution". <b>Germany:</b> re-draft: "The MS co-ordinate their economic policies within (the framework) of the Union..." <b>Spain:</b> re-draft: "the Union oversees the co-ordination of.." <b>France:</b> re-draft: "the MS conduct their economic policies, taking into account the common interest, so as to contribute to the achievement of the objectives of the Union".	<b>Netherlands:</b> replace entire article with: "The Union and the MS shall co-ordinate economic policies, taking into account the common interest, so as to contribute to the achievement of the objectives of the Union". <b>Greece:</b> include reference to employment policy. <b>Sweden:</b> as per Germany. <b>Estonia:</b> as per UK. <b>Finland:</b> delete entire article and instead include co-ordination of economic policies as an area for supporting action (all areas of Union action – except CFSP – should be included in the 3 basic competence categories).	EPP: add "and employment guidelines. And by closely supervising compliance with the requirement of sound public finances". PES: include reference to social and employment policy. <b>MacLennan</b> replace entire article: "With a view to achieving the objectives of the Constitution, the Union shall have the competence to assist the co-ordination by the member states of their economic policies in accordance with agreed guidelines".
13.2.	The Member States shall conduct their economic policies, taking account of the common	Delete.	<b>Spain:</b> "...conduct and co-ordinate...within the Council..." <b>France:</b> "MS co-ordinate	<b>Ireland:</b> replace with "the MS shall regard their economic policies as a matter of common	PES: replace "economic policies" with "economic, social and employment policies"

interest, so as to contribute to the achievement of the objectives of the Union.

13.3. Specific provisions shall apply to those Member States which have adopted the euro.

Delete.

their economic policies within the framework of the Union, notably by establishing the main guidelines of these policies”.

concern and shall co-ordinate them so as to contribute to the achievements of the objectives of the Union”.

**EPP:** add to end “in accordance with the principles of subsidiarity and an open market economy with free competition”.

**Borrell, Carnero, Garrido:** add at the beginning “within the framework of economic policy co-ordination”.

Art	Praesidium draft	Hain Comments	Bigs	Smalls and Applicants	Others
14.	Member States shall actively and unreservedly support the Union's common foreign and security policy in a spirit of loyalty and mutual solidarity. They shall refrain from action contrary to the Union's interests or likely to undermine its effectiveness.	<p>"The Union shall implement common action on behalf of the Member States in the areas of the common foreign, security and defence policy through non-legislative [means] [instruments] in order:</p> <ul style="list-style-type: none"> <li>• to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the Charter of the United Nations;</li> <li>• to strengthen the security of the Union in all ways, while not prejudicing the specific character of the security and defence policy of certain Member</li> </ul>	<p><b>France:</b> propose existing Art 11 TEU language "The Union shall define and implement" a CFSP in all areas of foreign policy and security. Add reference to reinforcing and developing mutual solidarity (existing Art 11(2) language).</p> <p><b>Italy:</b> add <u>defence</u> to title of Art 14. Add reference to a CFSP defined and implemented according to the different provisions of Part II.</p>	<p><b>Austria:</b> Article is too weak to define a strong CFSP.</p> <p><b>Portugal:</b> restates Art 11 TEU language. Adds including "progressive framing of common defence policy".</p> <p><b>Ireland:</b> delete Praesidium draft. Propose new Art14(1) to give objectives and principles of CFSP. New Art14(2) to restate Art 11 TEU language. Adds "might lead to common defence, should the European Council so decide". New Art14(3) Union competence in CFSP will not prevent MS competence.</p> <p><b>Bulgaria:</b> same as France.</p> <p><b>Finland:</b> delete Arts 11-15. Replace with a new Art 3bis which</p>	<p><b>PES:</b> restate existing Art 11 TEU language. Add MS cannot intervene where the Union has exclusive external competence.</p> <p><b>EPP:</b> Reverse first sentence of Art 14(1) to put Union in the driving seat: "The Union's CFSP shall be...". Add new Art 14(2) excluding individual external action by MS where "against interests of the Union" or ruled out by Council. Note calls for CFSP to be a shared competence.</p> <p><b>Duff, Rupel, Dini et al.:</b> take out "actively and unreservedly [support]" as unrealistic. Add Art 14(2) reference to common defence policy.</p> <p><b>Lamassoure:</b> deal</p>

States and respecting the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), including those on external borders;

- to promote international cooperation;
- to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.

defines the Union's activities (updating existing Art2 TEU) and links these to Part II legal bases.

**Slovakia:** add new Art 14(2) Union action only excludes MS action if ruled out by European Council.  
**Greece:** refer to the "Union's common european foreign security and defence policy".

with CFSP on a different basis or in a separate Treaty.

**Lequiller:** insert Art 11 TEU objectives.

**Heathcoat-Amory, Bonde et al:** delete Art 14.

**McAvan:** makes Art 10(4) new Art 14(1) and adds "progressive framing of a common defence policy".

## Kate Hemmings

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**From:** Lyons, Sarah (The Wales Office) [Sarah.Lyons@wales.gsi.gov.uk]  
**Sent:** 25 February 2003 14:06  
**To:** 'Catherine Royle (E-mail)'  
**Cc:** 'Stephen Wall (E-mail)'; 'Roger Liddle (E-mail)'; 'Kim Darroch (E-mail)'; 'Nick Baird (E-mail)'; 'Tim Barrow (E-mail)'; 'David Dunn (E-mail)'; 'Joe Griffin (E-mail)'; 'Jill Parkinson (E-mail)'; 'Sian Price (E-mail)'; 'emma.wade@fco.gov.uk'; 'Jonathan Sinclair (E-mail)'; 'Tom Drew (E-mail)'; 'Matthew Taylor (E-mail)'; 'Libby Green (E-mail)'; 'nick.banner@fco.gov.uk'; 'shelagh.brooks@fco.gov.uk'; 'elizabeth.green@fco.gov.uk'; 'michael.aron@fco.gov.uk'; 'paul.mcgrade@cabinet-office.x.gsi.gov.uk'; 'nicola.wilson@fco.gov.uk'; 'clair.smith@lcdhq.gsi.gov.uk'; 'stephen.cave@fco.gov.uk'; 'sarah.hall@lcdhq.gsi.gov.uk'; 'croyle@gtnet.gov.uk'  
**Subject:** Convention meeting: 25 Feb

**Importance:** High

Peter Hain chaired the weekly Convention meeting on 12 Feb. The main points were as follows:

### Plenary

\* The draft interventions were being cleared in Whitehall and blue cards being prepared. Peter said he hoped that any blue carding would be in response to the debate in the plenary, not just for the sake of making a point.

### UK-Spanish Paper on institutions

\* The paper was now nearly final - we now needed to do a final check (eg. ensuring that the reference to a "Supreme Court" had been removed). Libby mentioned that the Foreign Secretary might trail the paper in an interview with the Times this week. Stephen thought that the PM would be content with this.

### ECJ Group

\* Tom gave a readout of the ECJ Group. The first two meetings had held hearings, the next meeting would consider access to justice. After a further two meetings, the Group would report to the Praesidium. The format was favouring us at present - at yesterday's meeting, only 5 people, including Patricia and Dastis, had turned up.

### Praesidium

\* Tom said that tomorrow's Praesidium would aim to finish discussion on the subsidiarity Protocol and discuss national parliamentary access to the ECJ. Proportionality now appeared in the text of the Protocol but Gisela had not been successful on the red card. We were now back to a yellow card (based on objections from a third of national parliaments) but without teeth. In discussion, it was agreed that politically, the mechanism must have some teeth, ie. the Commission must be obliged to do something if a third of parliaments objected. For one thing, it would make it difficult for MS to agree in the Council if their parliaments had objected to the proposal. And Laeken specifically called for a greater role for national parliaments: Gisela should insist on a yellow card with teeth in the Praesidium. We should produce some language for this and play hard ball in the Praesidium. [Action: Convention Unit]

\* Stephen mentioned that Gisela felt that she didn't have the arguments to push our amendments to Arts 1-16. She was also concerned about how we were handled competences and the interaction with Part II of the Treaty [Action: Tom].

AOB

\* Peter mentioned the De Vries letter to Giscard. How should we handle the proposal for an open drafting group? Tom said it was not yet clear whether the Praesidium would propose short drafting groups in response to the plenary discussion this week. The question was whether we could resource any Group. We were usually at an advantage in the groups compared to the plenary.

\* Stephen wondered whether we had enough support on the major principle that the Member States confer powers on the Union (not vice versa). Kim thought we might get a better audience for this in the IGC.

\* In a discussion about our overall approach, it was agreed that while we needed to make a wide range of amendments at present, we should start considering what really matters to us. Stephen suggested that we might then let others lead on areas that really mattered to them (eg. the French on CCP). Peter thought we should start thinking about the bigger picture, including where our bottom lines might be. [Action: Tom and me to start looking at Arts 1-16]

#### Next meetings

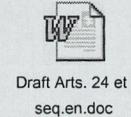
- \* Thurs 6th March at 9.30
- \* Tues 11th March at 11.30
- \* Wed 19th March 3pm
- \* Wed 26th March 11am

Sarah

## Kate Hemmings

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**From:** KNOWLES, Vanda [KNOWLESV@parliament.uk]  
**Sent:** 25 February 2003 13:22  
**To:** Catherine Royle (E-mail); Joe Griffin (E-mail); Roger Liddle (E-mail); Thomas Drew (E-mail)  
**Subject:** FW: Praesidium meeting: 26 February



Draft Arts. 24 et  
seq.en.doc



Subsidiarity  
Protocol.en.doc

-----Original Message-----

From: Fouhy Marian [mailto:Marian.Fouhy@consilium.eu.int]  
Sent: 25 February 2003 11:29  
Subject: Praesidium meeting: 26 February

In view of the Praesidium meeting on 26 February, members will find attached  
the English version of draft Articles 24 to 33 and the English version of  
the  
Subsidiarity Protocol.

Kind regards  
Marian Fouhy  
Convention Secretariat  
tel. + 32 2 285 50 72  
fax + 32 2 285 50 73

PLEASE NOTE: THE ABOVE MESSAGE WAS RECEIVED FROM THE INTERNET.

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**Draft of Articles 24 to 33 of the Constitutional Treaty**

**INTRODUCTION**

In the opening Articles of the Constitution, the Convention addressed matters relating to the Constitution's nature, values, objectives and competences. With the (attached) draft of Title V on the exercise of competences, the Praesidium now asks Convention members to examine the means of action available to the Union for the performance of its tasks.

The simplification of the Union's instruments was a key component of the Laeken Declaration. The Convention devoted two plenary sessions, those on 23 and 24 May and on 12 and 13 September, to the matters raised in it. A working group was then established and the Convention discussed its conclusions at its plenary session on 5 December 2002.

The draft of Title V of the Constitution (Articles 24 et seq.) which the Praesidium is submitting for the attention of Convention members is based on the conclusions of Working Group IX on Simplification in the light of the discussion held in the Convention.

A broad consensus had welcomed the Working Group's proposal to reduce radically the number of legal instruments available to the Union for the exercise of its competences and to give these instruments names which were more readily understandable to the public. The proposed instruments also respond to the concern voiced by a number of Convention members that a hierarchy of legislation be introduced into the Constitution.

Hence the distinction in the draft between legislative acts, European laws and European framework laws, and non-legislative acts, European regulations and European decisions. Recommendations and opinions will, as is currently the case, be non-binding acts. Also in compliance with the conclusions of Working Group IX, and for the sake of clarity for citizens, when a legislative procedure is in progress the second paragraph of Article 24 restricts recourse to acts other than those listed in that Article.

The instruments defined in Article 24 apply in all areas of the Constitution, including those which currently fall under the second and third pillars. However, in line with Working Group IX's report, they could be subject to special rules to be specified in Articles 29, 30 and 31 in the light of the conclusions of the other Working Groups and discussions in the Convention.

### **Legislative procedure**

Laws and framework laws, the definition of which corresponds to that of regulations and decisions in the current Article 249 TEC, are jointly adopted by the two institutions sharing legislative powers, the European Parliament and the Council, under the codecision procedure. The Praesidium proposes styling the codecision procedure the "legislative procedure", a name which is more fitting for its new status as the general rule for the adoption of legislation and more comprehensible for citizens. Article 25(2) accommodates the exceptions to this rule, thus reflecting the concern voiced by the Working Group and a considerable number of Convention members. These exceptions will be specifically set out in the provisions of Part Two of the Constitution and will be submitted for consideration by the Convention in due course.

In order to take into account the conclusions of Working Group IX, only the essential components of the legislative procedure will be included in Part One of the Constitution: parity between the Parliament and Council, the legislative initiative of the Commission and the transparency of the procedure. The detailed description will be the subject of a specific provision in Part Two which, with some changes, will correspond to the current Article 251. The obligation to act in public also concerns the Council when, in exceptional cases, it adopts legislative acts under a procedure other than the legislative procedure.

In accordance with the conclusions of Working Group X, in the area of police and judicial cooperation in criminal matters the legislative procedure is subject to special rules, particularly in respect of the right of initiative. Although these are already mentioned in Article 25, they will be addressed in greater detail in Article 31.

## **Non-legislative acts**

Non-legislative acts are adopted by the two institutions exercising executive powers, i.e. either the Council or the Commission. This concerns European regulations, the definition of which takes up that of the current Article 249 TEC, and European decisions, with a broader definition than the current Article 249. In accordance with the conclusions of Working Group IX, decisions should become the only legal instrument of the Common Foreign and Security Policy under the provisions of Article 29.

Regulations and decisions serve to implement not only legislative acts but also certain specific provisions of the Constitution. Indeed, in certain cases the Commission, but in particular the Council, adopts non-legislative acts directly on the basis of the Treaty. Working Group IX's report mentions some criteria for identifying this type of act<sup>1</sup> which should be specifically laid down in Part Two of the Constitution. The European Central Bank will also adopt regulations and decisions in the course of fulfilling its duties, as is already the case today.

## **Delegated acts**

Working Group IX proposed creating a new category of act, delegated acts, which supplement or amend certain non-essential elements of legislative acts. The aim is to encourage the legislator to concentrate on the fundamental aspects, preventing laws and framework laws from being over-detailed. The legislator may decide to delegate the more technical aspects, while subjecting this delegation to stringent conditions enabling it, if necessary, to retrieve its power to legislate. Convention members found this proposal to be of interest; some sought further clarification.

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<sup>1</sup> See the technical note below, p. 10.

The draft of Article 27 specifies and defines the conditions and rules for delegation. Following a majority view within Working Group IX and the Convention, the Commission is the only institution to which power may be delegated. It is the legislator which, on a case-by-case basis, decides on the objectives, content and scope of the delegation, which may not under any circumstances cover the essential elements of an area. For the sake of transparency, the conditions of application for the delegation, also to be decided by the legislator on a case-by-case basis, are listed in the Constitution, as are the voting arrangements for their implementation in the European Parliament and the Council. As these are acts of a legislative nature, they will take the form of regulations, hence the specific name of delegated regulations.

### **Implementing acts**

Regulations and decisions are also used for the implementation of legislative acts. The draft of Article 28 is a clarification of Article 202 TEC, which currently governs implementing powers exercised at Community level.

Article 28 first of all states the general rule: the Union's acts are implemented by the Member States. This rule flows from the application in this area of the principle already enshrined in a more general context in Article 9 of the Constitution. The exception, justified by the need for uniform implementing conditions, is constituted by the conferral of implementing powers on the Commission or, as appropriate, on the Council, particularly in respect of the CFSP.

Lastly, Article 28 establishes the legal basis for the adoption of control mechanisms for implementing powers when these are exercised by the Commission (this concerns the current "committee procedure" decision). Although Working Group IX did not address the possibility of amending this legal basis, the Praesidium, in the light of views expressed by a number of Convention members, proposes that it be subject to the legislative procedure. The Praesidium considers that if re-examination of specific control mechanisms (committee procedure) for implementing acts proves necessary, it should be conducted under the provisions of Part Two.

## **Special rules for the implementation of certain policies**

Articles 29, 30 and 31, concerning special rules for the implementation of the common foreign and security policy, common defence policy and police and criminal justice policy respectively, will be presented with the relevant chapters of Part Two of the Constitution in order to facilitate overall comprehension.

## **Common provisions**

Article 32 states that the principle of proportionality governs the choice of a particular legal act for the exercise of competences. This Article also takes up the principle of stating the reasons for acts which is currently contained in Article 253 TEC.

Article 33 contains provisions relating to the promulgation, publication and entry into force of acts (which are essential for guaranteeing legal certainty). It adapts the current Article 254 to the new legal instruments.

## **TITLE V: EXERCISE OF UNION COMPETENCE**

### **Article 24: The legal acts of the Union**

1. In exercising the competences conferred on it in the Constitution, the Union shall use as legal instruments, in accordance with the provisions of Part Two, European laws, European framework laws, European regulations, European decisions, recommendations and opinions.

A European law shall be a legislative act having general application. It shall be binding in its entirety and directly applicable in all Member States.

A European framework law shall be a legislative act which shall be binding, as to the result to be achieved, on the Member States to which it is addressed, but shall leave the national authorities entirely free to choose the form and means of achieving that result.

A European regulation shall be a non-legislative act having general application for the implementation of legislative acts and of certain specific provisions of the Constitution. It shall be binding in its entirety and directly applicable in all Member States.

A European decision shall be a non-legislative act, binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.

Recommendations and opinions adopted by the institutions shall have no binding force.

2. When considering proposals for legislative acts, the European Parliament and the Council shall refrain from adopting acts not provided for by the Constitution.

### **Article 25: Legislative acts<sup>2</sup>**

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 in accordance with the rules of the legislative procedure referred to in Article X (*Part Two of the Constitution*). If the two institutions cannot reach agreement on an act, it shall not be adopted.

Specific provisions shall apply in the cases referred to in Article Z (*ex-third pillar*).

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<sup>2</sup> Article 29 will stipulate that legislative acts cannot be used for the CFSP.

2. In the specific cases provided for by the Constitution, European laws and European framework laws shall be adopted by the Council.
3. When acting under any procedure for the adoption of a European law or a European framework law, the European Parliament and the Council shall meet in public.

#### **Article 26: Non-legislative acts**

The Council and the Commission or the European Central Bank shall adopt European regulations or European decisions in the cases referred to in Articles 27 and 28 and in cases specifically laid down in the Constitution.

#### **Article 27: Delegated regulations**

1. European laws and European framework laws may delegate to the Commission the power to enact delegated regulations in order to supplement or amend certain non-essential elements of the law or framework law.

The objectives, content and scope of the delegation shall be explicitly defined in the laws and framework laws. A delegation may not cover the essential elements of an area. These shall be reserved for the law or framework law.

2. The conditions of application to which the delegation is subject shall be explicitly determined in the law or framework law; they shall consist of one or more of the following possibilities:

- the European Parliament and the Council may decide to revoke the delegation in the cases laid down by the law or framework law;
- the delegated regulation may enter into force only if no objection has been expressed by the European Parliament or the Council within a period set by the law or framework law;
- the provisions of the delegated regulation are to lapse after a period set by the law or framework law. They may be extended, on a proposal from the Commission, by decision of the European Parliament and of the Council.

For the purposes of the preceding paragraph, the European Parliament shall act by a majority of its members, and the Council by a qualified majority.

## Article 28: Implementing acts

1. Member States shall adopt all measures of national law necessary to implement the Union's legally binding acts.
2. Where uniform conditions for the implementation of the Union's binding acts are needed, those acts may confer implementing powers on the Commission or, as appropriate and in the cases provided for in Article [CFSP], on the Council.
3. Implementing acts of the Union may be subject to control mechanisms which shall be consonant with principles and rules laid down in advance by the European Parliament and the Council in accordance with the legislative procedure.
4. Implementing acts of the Union shall take the form of European implementing regulations or European implementing decisions.

## Article 29: [Common foreign and security policy]

## Article 30: [Common defence policy]

## Article 31: [Police and criminal justice policy]

## Article 32: Principles common to acts of the Union

1. Unless the Constitution contains a specific stipulation, the institutions shall decide, in compliance with the procedures applicable, on the type of act to be adopted in each case, in accordance with the principle of proportionality set out in Article 8.
2. European laws, European framework laws, European regulations and European decisions shall state the reasons on which they are based and shall refer to any proposals or opinions required by this Constitution.

## Article 33: Publication and entry into force

1. European laws and European framework laws adopted in accordance with the legislative procedure shall be signed by the President of the European Parliament and by the President of the Council. In other cases they shall be signed by the President of the Council. European Union laws and European Union framework laws shall be published in the Official Journal of the European Union and shall enter into force on the date specified in them or, in the absence of such a stated date, on the twentieth day following that of their publication.

2. European regulations of the Commission or of the Council and European decisions which do not specify those to whom they are addressed or which are addressed to all Member States shall be published in the Official Journal of the European Union and shall enter into force on the date specified in them or, in the absence of such a stated date, on the twentieth day following that of their publication.
  3. Other decisions shall be notified to those to whom they are addressed and shall take effect upon such notification.
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## **TECHNICAL COMMENTS**

### Article 24

*This Article lists the instruments which the Institutions may use to implement competences. The list is an exhaustive one, which applies to all areas covered by the Constitution in accordance with the provisions of Part Two. In the case of the common foreign and security policy, the common defence policy and the policy on police matters and crime, the report from Working Group IX had envisaged maintaining their specific characteristics while harmonising the legal instruments. Those characteristics will be the subject of Articles 29, 30 and 31.*

*The definitions of the new instruments are in line with the proposals of Working Group IX, the acts themselves having been classified into two groups: legislative and non-legislative.*

*The definitions of laws and framework laws reproduce the current definitions of regulations and directives under Article 249 of the TEC<sup>3</sup>.*

*The full titles are European law and European framework law. The Working Group's conclusions proposed "European Union law and European Union framework law". The titles proposed here take account of the need to distinguish Union laws from national laws, which was the priority for the Working Group, but is without prejudice to the name which the Convention will give to the European entity.*

*The definition of a European regulation reproduces the current definition of regulations in Article 249<sup>4</sup> applied, as a non-legislative act, to the implementation of legislative acts and certain specific provisions of the Constitution.*

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<sup>3</sup> The second and third paragraphs of Article 249 specify that "a regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States. A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods".

<sup>4</sup> See footnote 3.

*The definition of a European decision – again in line with Working Group IX's conclusions corresponds to the definition in Article 14 ECSC<sup>5</sup>. Unlike the definition in Article 249<sup>6</sup>, it is not necessary to indicate those to whom it is addressed. One aim of this broader definition is to make decisions the legal instrument in the CFSP area, in place of "the joint action" and the "common position".*

*Paragraph 2 limits the use of non-standard acts, which is in line with Working Group IX's conclusions. The Working Group considered that non-standard acts (resolutions, conclusions, declarations, etc.), while they had no binding force, nonetheless afforded the Institutions a degree of flexibility which should be safeguarded. However, the Working Group suggested including in the Treaty a rule whereby the legislator (Parliament/Council) should refrain from adopting non-standard acts on a given subject when legislative proposals or initiatives on the same subject had been submitted to it. Such a rule already appears in Article 7<sup>7</sup> of the Council's Rules of Procedure. The aim is to avoid the impression that the Union legislates through a multiplicity of non-standard instruments.*

#### Article 25

*As proposed in Working Group IX's report and accepted by the plenary, the general decision-making rule is that laws and framework laws are to be adopted under the codecision procedure, as currently referred to in Article 251 TEC.*

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<sup>5</sup> The second paragraph of Article 14 ECSC specifies that "decisions shall be binding in their entirety".

<sup>6</sup> The fourth paragraph of Article 249 TEC specifies that "a decision shall be binding in its entirety upon those to whom it is addressed".

<sup>7</sup> The second paragraph of Article 7 of the Council's Rules of Procedure specifies that "Where legislative proposals or initiatives are submitted to it, the Council shall refrain from adopting acts which are not provided for by the Treaties, such as resolutions or declarations other than those referred to in Article 9" (the declarations referred to in Article 9 are those entered in Council minutes relating to the adoption of legislative acts).

*Neither the discussions in the Working Group nor those in the plenary could settle the name of that procedure. The Working Group's report notes the proposal that it should be called "legislative procedure" but also that some members preferred "codecision procedure". The Praesidium proposes the name "legislative procedure" as this is more comprehensible to members of the public and in order to emphasise that this procedure is the general rule for the adoption of legislative acts.*

*The report of Working Group IX recommends that decision-taking procedures should be listed and their key elements outlined in Part One of the Constitutional Treaty, whereas a detailed description of the way they operate should be given in Part Two. The procedure as outlined in Article 25 is therefore limited to the key elements: Commission initiative, joint decision of the Parliament and the Council, parity between the two institutions and transparency. The detailed rules are to be laid down in Part Two of the Treaty.*

*In accordance with Working Group X's conclusions, specific procedural rules are laid down for the area covered by the present third pillar. They concern the right of initiative which could also be exercised by the Member States in accordance with rules to be determined in Article 31.*

*Working Group IX recommended generalising qualified-majority voting in the Council in all cases where the legislative (former codecision) procedure applies. This rule will need to be reflected in the adjustments to Part Two of the Constitution. The majorities in the Council and in Parliament, which, moreover, change from stage to stage of the legislative procedure, are aspects of the latter's detailed rules.*

*Paragraph 2 recognises that there are exceptions to the general rule that legislative acts are adopted by the codecision procedure. Those exceptions must be expressly specified in Part Two of the Constitution. Only the institution that takes the decision is mentioned, namely the Council. The question has arisen as to whether the Parliament's role (consultation) and the Commission's initiative should not also be mentioned.*

*The Praesidium has elected not to do so in order to highlight the exceptional nature of this procedure and avoid giving the impression that it might be an alternative for the adoption of legislative acts. Acts will of course be adopted in accordance with the provisions of Part Two, particularly in the case of legislative initiative and opinions.*

*It should also be noted that the Working Group's report proposes that Article 251 should be simplified and its wording amended in order to make clear the parity between Parliament and Council.*

*Lastly, the codecision procedure is the only procedure that need be considered here. In all other cases (decision taken by the Council acting unanimously or by a qualified majority, alone or after receiving the Parliament's opinion or its assent), the procedure corresponds to each institution's general decision-making rules or to special voting rules laid down in given legal bases.*

#### Article 26

*This Article covers all non-legislative acts, in particular (last sentence) cases where the Council and the Commission adopt non-legislative acts directly on the basis of the Treaty.*

*Where acts are adopted by the Commission, there can be no question as to whether an act is legislative or non-legislative in nature, since it is not able to adopt legislative acts. However, when an act is adopted by the Council, a question arises as to whether it is:*

- a legislative act that is exceptionally adopted by a procedure other than codecision;*  
*or*
- a non-legislative act adopted by the Council directly on the basis of the Treaty.*

*The issue has repercussions in cases where the current Treaty explicitly provides which instrument (currently a regulation or a directive) is to be used. With a legislative act, these will need to be replaced by law and framework law; with a non-legislative act, the terms regulation or decision will need to be used. In practice the legal bases in the Treaties rarely specify the instrument to be used and when they do, there can be no doubt as to its nature, as it is always a legislative act. Of course, if acts adopted directly on the basis of the Constitution were classified as "non-legislative", codecision would not apply in any case.*

*Conversely, where provisions do not specify any particular instrument, the issue would have no repercussions, since the procedure is determined by each specific legal basis. In any case, once the list of exceptions to the legislative procedure has been decided on, the other legal bases providing for the Council to take the decision would result in non-legislative acts.*

*Lastly, if it were decided that the European Council should be given the status of an institution in the proper sense and given the power to adopt legal acts, it would have to be mentioned in this article as an enactor of non-legislative acts of the Union.*

*The European Central Bank also adopts non-legislative acts in carrying out its task as is now already the case in accordance with Article 110<sup>8</sup>.*

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<sup>8</sup> Paragraph 1 of Article 110 specifies that: "In order to carry out the tasks entrusted to the ESCB, the ECB shall, in accordance with the provisions of this Treaty and under the conditions laid down in the Statute of the ESCB:

- make regulations to the extent necessary to implement the tasks defined in Article 3.1, first indent, Articles 19.1, 22 and 25.2 of the Statute of the ESCB and in cases which shall be laid down in the acts of the Council referred to in Article 107(6);
- take decisions necessary for carrying out the tasks entrusted to the ESCB under this Treaty and the Statute of the ESCB;
- make recommendations and deliver opinions".

## Article 27

*This paragraph takes on board Group IX's recommendations on delegated acts. The component parts of the definition are as follows:*

- It is always the legislator (via the law or framework law) who decides on a case-by-case basis whether recourse is to be had to delegation.*
- It is also the legislator who decides on a case-by-case basis on the scope of the delegation as well as on the objectives and content.*
- It is imperative that the essential features of the issue in question be covered in the legislative act. They may in no circumstances be the subject of the delegated act*
- Control mechanisms are determined by the legislator on a case-by-case basis by reference to an exhaustive list laid down in Article 27 itself.*

## Article 28

*The first sentence clearly sets out the principle that competence for the implementation of Union acts belongs to the Member States. The second sentence concerns the exception to this principle, namely implementation by the institutions of the Union where uniform implementing conditions are necessary. It essentially repeats and clarifies the third indent of Article 202 TEC<sup>9</sup>.*

*Article 28 maintains the status quo as regards the adoption of implementing acts: as a general rule they are adopted by the Commission and exceptionally by the Council. The specific case of the CFSP is dealt with by means of a reference to the Article concerned.*

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<sup>9</sup> In accordance with the third indent of Article 202 TEC, the Council "shall [...] confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down. The Council may impose certain requirements in respect of the exercise of these powers. The Council may also reserve the right, in specific cases, to exercise directly implementing powers itself. The procedures referred to above must be consonant with principles and rules to be laid down in advance by the Council, acting unanimously on a proposal from the Commission and after obtaining the Opinion of the European Parliament."

*As regards the means of monitoring the implementing acts (committee procedure), the text proposed takes Article 202 as its starting point. The proposed decision-making procedure is codecision. It should be remembered that the present procedure is unanimity within the Council plus ordinary consultation of the European Parliament. Although Group IX discussed the decision-making procedure, it made no recommendations on the subject.*

*However, the Group pointed out that if the concept of the delegated act were to be adopted, the procedures for monitoring the implementing acts would need to be simplified and, in particular, the Council call-back procedure under the regulatory committee procedure abolished.*

#### *Distinction between delegated acts and implementing acts*

*Working Group IX recommended the introduction of a new category of delegated acts in response to the frequent criticism of the excessive detail in Community legislation and the inflexibility and slowness of procedures. Group IX's report states that "the excessive detail in Community legislation has often been criticised within the Convention. This excessive detail has been considered inappropriate, in particular in certain economic areas in which an ability to adapt to a changing environment is very important. The Community legislator is thus confronted with a dual requirement: that of producing legislation whose democratic legitimacy is beyond dispute, something which can only be guaranteed by legislative procedures, and that of responding rapidly and effectively to the challenges and demands of the real world and therefore retaining a degree of flexibility.*

*At present there is no mechanism which enables the legislator to delegate the technical aspects or details of legislation whilst retaining control over such delegation. As things stand, the legislator is obliged either to go into minute detail in the provisions it adopts, or to entrust to the Commission the more technical or detailed aspects of the legislation as if they were implementing measures, subject to the control of the Member States, in accordance with the provisions of Article 202 TEC."*

To remedy this situation, the Group proposed "a new type of "delegated" act which, accompanied by strong control mechanisms, could encourage the legislator to look solely to the essential elements of an act and to delegate the more technical aspects to the executive, provided that it had the guarantee that it would be able to retrieve, in some way, its power to legislate."

Some thought that the problem could be resolved more simply by giving the legislator (the European Parliament and the Council) a right of call-back over implementing acts (Article 202 TEC). In its conclusions, the Working Group rejected that option for the following reasons:

- implementing acts fall in principle within the competence of the Member States and are only exceptionally adopted by the Commission (or in certain cases by the Council)
- for the same reason, implementing acts adopted by the Commission are subject to monitoring by committees made up of representatives of the Member States
- implementing acts are consequently not matters which concern the legislator.

In that context and on such premises the Group recommended resolving the problem by introducing a new category of acts (to be found in various guises in the Constitutions of a number of Member States).

### Article 32

It is helpful to refer to the proportionality principle in this context since it constitutes the criterion which determines the choice of instrument. The intention is to provide a transparent reply to the question of how a decision is taken on the intensity of action by the Union.

The second paragraph draws on the wording of the current Article 253 TEC<sup>10</sup>.

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<sup>10</sup> Article 253 stipulates that "Regulations, directives and decisions adopted jointly by the European Parliament and the Council, and such acts adopted by the Council or the Commission, shall state the reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained pursuant to this Treaty."

### Article 33

*This Article corresponds to the text of the current Article 254 TEC, which has been revised in the light of the earlier draft articles. Although the preliminary draft Constitution makes no provision for such an article, it needs to be introduced since the conditions for entry into force of laws (promulgation and publication) are fundamental constitutional factors for legal security.*

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[Protocol] on the application of the principles of subsidiarity and proportionality

THE HIGH CONTRACTING PARTIES,

WISHING to ensure that decisions are taken as closely as possible to the citizens of the Union;

DETERMINED to establish the conditions for the application of the principles of subsidiarity and proportionality enshrined in Article 7 of the Constitution and to establish a system for monitoring the application by the Institutions of the said principles,

HAVE AGREED UPON the following provisions which shall be annexed to the Constitution:

1. Each Institution shall ensure respect for the principles of subsidiarity and proportionality.
2. The application of the principles of subsidiarity and proportionality shall respect the general provisions and the objectives of the Treaty, particularly as regards the full maintenance of the Union's acquis and the institutional balance; it shall not affect the principles developed by the Court of Justice regarding the relationship between national and Community law, and it should take into account Article X of the Constitution, according to which "the Union shall provide itself with the means necessary to attain its objectives and carry through its policies".
3. Union action shall be justified only if the objectives of the proposed action cannot be sufficiently achieved by Member States' action and could be better achieved by action on the part of the Union, because the issue under consideration has transnational aspects, or because action at national level alone, or lack of Union action, would conflict with the requirements of the Treaty, or because action at Union level would have obvious advantages, by reason of its scale or effects, as compared with action at Member State level.
4. The form of Union action must not go beyond what is required for satisfactory achievement of the objective of the measure and for effective enforcement. The Union shall legislate only to the extent necessary, preferring framework laws to laws or detailed measures, and leaving the maximum scope for national decision.
5. Before proposing legislative acts the Commission shall consult widely, except in cases of particular urgency or confidentiality. Such consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged.
6. The Commission shall send all its legislative proposals and its amended proposals to the national parliaments of the Member States at the same time as to the Union legislator. Upon their adoption, the European Parliament and the Council shall send their legislative resolutions and common positions respectively to the national parliaments of the Member States.

7. The Commission shall justify its proposal with regard to the principle of subsidiarity. Any legislative proposal should contain a sheet setting out circumstantiated aspects making it possible to appraise compliance with the principle of subsidiarity. This sheet should contain some assessment of its financial impact, and in the case of a framework law, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level must be substantiated by qualitative and, wherever possible, quantitative indicators. The Commission shall take due account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved.
8. Any national parliament of a Member State may, within six weeks from the date of transmission of the Commission's legislative proposal, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the proposal in question does not comply with the principle of subsidiarity. It will be for each national parliament to make the internal arrangements for consulting each chamber in the case of bicameral parliaments and/or, where appropriate, regional parliaments with legislative powers.
9. The European Parliament, the Council and the Commission shall take due account of the reasoned opinions of the national parliaments.

Where at least one third of national parliaments issue reasoned opinions on the Commission proposal's non-compliance with the principle of subsidiarity, the Commission shall review its proposal. After such review, the Commission may decide to maintain, amend or withdraw its proposal. The Commission shall give reasons for its decision.

10. The national parliaments of the Member States may also, during the period between the convening of the Conciliation Committee meeting and the holding of that meeting, issue a reasoned opinion stating why they consider either that the Council's common position does not comply with the principle of subsidiarity or that the European Parliament's amendments do not so comply. At the Conciliation Committee meeting, the European Parliament and the Council shall take the fullest account of the opinions expressed by the national parliaments of the Member States.
11. The Court of Justice shall have jurisdiction to hear actions brought by Member States on grounds of infringement of the principle of subsidiarity, where necessary at the request of their national parliaments, in accordance with their respective constitutional rules and article [currently Article 230] of the Constitutional Treaty. The Committee of the Regions may also bring such proceedings as regards legislative acts on which it was consulted.
12. The Commission shall submit each year to the European Council, the European Parliament and the Council a report on the application of Article 7(3) of the Constitution. This annual report shall also be forwarded to the Committee of the Regions and to the Economic and Social Committee.

## Kate Hemmings

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**From:** Smith, Clair [Clair.Smith@LCDHQ.GSI.GOV.UK]  
**Sent:** 25 February 2003 10:11  
**To:** 'Lyons, Sarah (The Wales Office)'; 'thomas.drew@fco.gov.uk'; Smith, Clair; 'matthew.taylor@fco.gov.uk'  
**Cc:** 'catherine.royle@fco.gov.uk'; 'nick.baird@fco.gov.uk'; 'elizabeth.green@fco.gov.uk'; 'libby.green@fco.gov.uk'; 'nicola.wilson@fco.gov.uk'; 'joe.griffin@cabinet-office.x.gsi.gov.uk'; 'RLiddle@no10.x.gsi.gov.uk'; 'jonathan.sinclair@fco.gov.uk'; 'ian.phipps@fco.gov.uk'; 'steve.grant@fco.gov.uk'; Hall, Sarah; Thomas, Natalie (The Wales Office); Jones, Cherie (The Wales Office); Maya. Sivagnanam (E-mail)  
**Subject:** RE: Convention plenary:27- 28 February

BS will be there, to cover - we were already under the impression that Peter wasn't going to be there, so were expecting to cover interventions anyway.

-----Original Message-----

From: Lyons, Sarah (The Wales Office)  
[mailto:Sarah.Lyons@wales.gsi.gov.uk]  
Sent: 24 February 2003 13:00  
To: 'thomas.drew@fco.gov.uk'; 'clair.smith@lcdhq.gsi.gov.uk'; 'matthew.taylor@fco.gov.uk'  
Cc: 'catherine.royle@fco.gov.uk'; 'nick.baird@fco.gov.uk'; 'elizabeth.green@fco.gov.uk'; 'libby.green@fco.gov.uk'; 'nicola.wilson@fco.gov.uk'; 'joe.griffin@cabinet-office.x.gsi.gov.uk'; 'RLiddle@no10.x.gsi.gov.uk'; 'jonathan.sinclair@fco.gov.uk'; 'ian.phipps@fco.gov.uk'; 'steve.grant@fco.gov.uk'; 'sarah.hall@lcdhq.gsi.gov.uk'; Thomas, Natalie (The Wales Office); Jones, Cherie (The Wales Office)  
Subject: Convention plenary:27- 28 February  
Importance: High

Tom, Clair, Matthew

Change of arrangements I'm afraid - Peter will not be coming to the plenary on Friday. No 10 have decided that he needs to be with the PM in Swansea at the Welsh Labour Party Conference (where a large demo on Iraq is planned).

Peter would be very grateful if Patricia could ensure that she covers the debate on competences (she will have to abandon most of her bilaterals) and make the intervention for him.

Sarah

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EUROPEAN POLICY: FUTURE OF EUROPE: PRO - Annex II

The European Convention Secretariat - Reactions to Draft Articles  
1 to 16 of the Constitutional Treaty - Analysis (Conv 574/03)



- No.181088 Red**
- No.181126 Blue**
- No.181164 Green**
- No.181203 Yellow**
- No.181242 Pink**
- No.181089 Buff**
- No.181127 Orange**
- No.181165 Assorted**

*Des file*

THE EUROPEAN CONVENTION  
THE SECRETARIAT

Brussels, 21 February 2003

CONV 574/03

**FORWARDING NOTE**

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from              Secretariat  
to              The Convention  
Subject :      **Reactions to Draft Articles 1 to 16 of the Constitutional Treaty**  
                  **- Analyses**

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Members will find in the attached annex synthetic analyses and suggestions on Draft Articles 1 to 16 as circulated in doc.CONV 528/03.

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**FICHE D'ANALYSE DES PROPOSITIONS D'AMENDEMENTS**  
**A L'ARTICLE I§1**

**ARTICLE I§1: ETABLISSEMENT DE L'UNION**

*« Inspirée par la volonté des peuples et des Etats d'Europe de bâtir leur avenir commun, cette Constitution établit une Union [appelée...], au sein de laquelle les politiques des Etats membres sont coordonnées, et qui gère, sur le mode fédéral, certaines compétences communes ».*

**I. EXAMEN DES AMENDEMENTS PAR THEME**

- Souligner que la décision de constituer une Union est consécutive d'une volonté des États et des peuples/citoyens d'Europe.  
Haenel + Badinter + Andiukaitis + Hain + Abitbol + Farnleitner + Puwak
- Remplacer peuples par citoyens / ajouter « citoyens » en sus de « peuples »  
Palacio + Follini + Korcok + Arabadjiev + Fischer + Katiforis + Szajer (+ référence aux « nations »)
- Suppression de la référence au « mode fédéral »  
Hain + Kohout + Farnleitner + Hololei + Kirkhope + Hübner ( à la place « in the joint interest ») + Fini + Vanhanen + Kiljunen + Olesky + Costa + 3 Conventionnels portugais + Korcok + Wuermeling + Altmaier + Kacin + Horvat + Schlueter + Queiro + Rupel + Tomlinson + Muscardini + Oguz + Hololei + Kelam + 3 Conventionnels + Schlueter (exercice en commun des compétences )
- Mention « Hautes parties contractantes »  
Lopes + Hain + Hjelm-Wallen + 5 suédois
- Remplacer Constitution par « Traité »ou « Traité Constitutionnel »  
Heatcoat-Amory + Korcok + Kalniete + 5 Conventionnels lituaniens + Schlueter + Queiro
- Reprise de la formule « union sans cesse plus étroite »  
Villepin + Michel + 5 Conventionnels belges + Lopes + Van Lancker + Meyer + Fini + Hübner + Lequiller + Kuneva + Fischer + Severin (I bis/6)

● **Nouvelle formulation / définition de l'Union « Fédération d'Etats nations »**  
Villepin + Fischer + Kuneva

- **Nombreuses prises de position sur le nom. Le cas où le nom retenu est celui « d'Union européenne »**  
Fini + Kiljunen + 3 finlandais + Korcok + 3 slovaques + 6 lituaniens + Duff + Queiro + Muscardini + Katiforis + Attalides
- **Introduction d'une mention selon laquelle les décisions doivent être prises le plus près possibles des citoyens**  
Tiilikainen + 3 finlandais

## **II. LISTE ET DETAIL DES AMENDEMENTS**

I (1)/ 1 DUHAMEL + 7 Conventionnels

- Union européenne d'Etat et de citoyens
- Réécriture de la fin de la phrase en conservant le sens

I (1)/ 2 SÖDERMAN (observateur)

- Insistance sur la coopération entre Etats –membres + décisions prises le plus près possible des citoyens

I (1)/ 3 BORRELL + 2 Conventionnels

- Suppression «avenir commun» et réécriture limitée de l'article I

I (1)/ 4 KROUPA

- Remplacer «fédéral» par «supranational»

I (1)/ 5 VAN LANCKER + 6 Conventionnels

- Insérer Union sans cesse plus étroite
- Mettre en premier référence aux compétences fédérales puis en second la coordination des politiques communes

I (1)/ 6 ROCHE

- Supprimer la seconde partie de la phrase (référence à la gestion fédérale)

I (1) / 7 FARNLEITNER

- Suppression « fédéral »

I (1) / 8 AVGERINOS

I (1) / 9 PUWAK

- Citoyen + Union européenne

I (1) / 10 PACIOTTI + SPINI

- Union européenne + suppression « fédéral »

1) / 11 ZIELENIEC

- Citoyen

I (1) / 12 ANDRIUKAITIS

- Ajouter que l'allocation des pouvoirs provient des Etats membres et de leurs citoyens

I (1) / 13 PIETERS

- Amendement linguistique

I (1) / 14 ABITBOL

- Refonte rédactionnelle

I (1) / 15 HAENEL + BADINTER

- Refonte de l'article

I (1) / 16 HAIN

- Refonte de l'article I pour insister sur la décision des peuples et des Etats de créer une Union européenne

- Suppression de la référence au «mode fédéral»

I (1) / 17 KAUFMANN

I (1) / 18 de VILLEPIN

- Reprise «Union sans cesse plus étroite»

I (1) / 19 MICHEL + 5 Conventionnels

- Union sans cesse plus étroite.

I (1) / 20 LOPES

- Introduction des « Hautes parties contractantes »

I (1) / 21 KOHOUT

- Suppression « fédéral »

I (1) / 22 KELAM + 3 Conventionnels

I (1) / 23 SEPPANEN

I (1) / 24 MEYER

- « Citoyens » au lieu de « peuples »

- Union sans cesse plus étroite

I (1) / 25 HOLOLEI

- Suppression « fédéral »

I (1) / 26 KIRKHOPE

- Mettre « communauté» à la place « d'Union ».

I (1) / 27 VOGGENHUBER + LICHTENBERGER

- Refonte article + suppression « fédéral »

I (1) / 28 PALACIO

- Remplacer « peuples » par « citoyens »

I (1) / 29 HUBNER

- « Union sans cesse plus étroite » + « dans l'intérêt commun » à la place du mot « fédéral »

I (1) / 30 FINI

- Union sans cesse plus étroite
- Dénomination = Union européenne

I (1) / 31 KILJUNEN + VANHANEN

- « Union européenne »
- « Décisions prises le plus près possible du citoyen »
- Suppression « mode fédéral »

I (1) / 32 OLESKY

- Suppression « mode fédéral »

I (1) / 33 TIILIKANEN + PELTOMAKI

- Introduction d'une référence aux « décisions prises le plus près possible des citoyens »
- Constitution européenne marque « une nouvelle étape »
- Union européenne

I (1) / 34 FOLLINI

- Remplacer « peuples » par « citoyens »
- Réécriture de la fin de l'alinéa en conservant le sens

I (1) / 35 MACCORMICK

- Rappel que l'Union existe déjà
- Introduction d'une référence à la « liberté de l'information »

I (1) / 36 HEATHCOAT-AMORY

- Reprendre le terme de « traité »
- Union doit être « Europe des démocrates »
- Réécriture substantielle

I (1) / 37 BELOHORSKA + 3 Conventionnels slovaques

- Union européenne

I (1) / 38 COSTA + 3 Conventionnels portugais

- Supprimer « mode fédéral »

I (1) / 39 KORCOK

- Remplacer « peuples » par « citoyens »

I (1) / 40 KALNIETE + 5 conventionnels lituaniens  
- « Traité Constitutionnel »

I (1) / 41 WUERMELING + ALTAMAIER  
- Suppression « mode fédéral »

I (1) / 42 LEQUILLER  
- Union sans cesse plus étroite

I (1) / 43 KACIN + HORVAT  
- « Union de citoyens, de peuples et d'Etat »  
- Suppression « mode fédéral »

I (1) / 44 KUNEVA  
- Union sans cesse plus étroite  
- Fédération sans cesse plus étroite

I (1) / 45 ARABADJIEV  
- Citoyens

I (1) / 46 DUFF + 4 Conventionnels  
- Union européenne  
- Modification rédactionnelle

I (1) / 47 NAGY  
- Réécriture

I (1) / 48 SCHLUTER  
- Traité  
- Suppression « mode fédéral »

I (1) / 49 QUEIRO  
- Union européenne  
- Suppression « mode fédéral »

I (1) / 50 HJELM-WALLEN + 5 suédois  
- Traité  
- Hautes parties contractantes

I (1) / 51 BONDE + 9 Conventionnels  
- Réécriture de l'article « Europe des démocraties »

I (1) / 52 WITTBRODT  
- Réécriture limitée de la fin de l'article

I (1) / 53 RUPEL  
- Suppression « mode fédéral »

I (1) / 54 de VRIES + 5 Conventionnels néerlandais  
- Réécriture de la fin de l'article sans en changer le sens

I (1) / 55 FISCHER  
- Ajouter « citoyens »  
- Union sans cesse plus étroite  
- Fédération d'Etats Nations

I (1) / 56 Lord TOMLINSON  
- Suppression « mode fédéral »

I (1) / 57 BROK + 12 Conventionnels du PPE  
- Citoyens  
- Réécriture de la fin de l'article  
I (1) / 58 MUSCARDINI  
- Suppression « mode fédéral »

I (1) / 59 KATIFORIS  
- Remplacer 'peuples et Etats d'Europe » par « citoyens européens»  
- Référence à « Union de peuples et d'Etats », appelée « Union européenne

I (1) / 60 ATTALIDES  
- Dénomination « Union Européenne »

I (1) / 61 OGUZ  
- Supprimer « sur le mode fédéral »

I (1) / 62 HOLOLEI  
- Supprimer « sur le mode fédéral »

I (1) / 63 SZAJER  
- Référence aux citoyens et aux nations

I (1) / 64 KELAM + 3 Conventionnels  
- Supprimer « sur le mode fédéral »

I (1) / 65 SCHÜLTER  
- Supprimer « sur le mode fédéral »  
- Remplacer « Constitution » par « traité Constitutionnel »

I (1) / 66 SEPPÄNEN

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**FICHE D'ANALYSE DES PROPOSITIONS D'AMENDEMENTS**  
**A L'ARTICLE I§2**

**ARTICLE I§2: ETABLISSEMENT DE L'UNION**

« *L'Union respecte l'identité nationale de ses Etats membres* ».

**I. EXAMEN DES AMENDEMENTS PAR THEME**

- Préciser (avec rédactions parfois légèrement différentes) que l'identité nationale comprend, selon le cas, « les structures » Constitutionnelles / l'organisation des pouvoirs publics au niveau local et régional / les choix linguistiques / autonomie locale / Statut des Eglises
- M. Michel + 5 Conventionnels belges + observateurs + Lopes + Hübner + Einem + Kiljunen + Vanhanen + Cushnahan + Olesky + Tiilikainen + Peltomaki + Follini + Costa (+ 3 portugais) + Santer + 2 luxembourgeois + Lequiller + Frendo + Bonde + 8 Conventionnels + Wittbrodt + Fogler + Brok + 12 Conventionnels PPE + Katiforis + Serracino-Inglott (+ Inguanez) + Chabert + 5 Conventionnels
- Ajouter respect de la « souveraineté »  
Andriukaitis + Conventionnels lituaniens + Roche + Abitbol + Kirkhope + Queiro + Bonde + 8 Conventionnels
- Insistance sur la diversité culturelle/ héritage culturel  
Kohout + Lopes + Santer + 2 luxembourgeois + Chabert + 5 Conventionnels
- Ajouter respect de l'identité des peuples ou des nations  
Fini + Balazs + Szajer

**II. LISTE ET DETAIL DES AMENDEMENTS**

I (2)/1 ECKSTEIN-KOVACS

- Administration autonome

I (2)/ 2 LAMASSOURE

- Refonte substantielle avec fusion de l'article 9-6. Insérer notion de vote des régions + solidarité «sans cesse plus étroite»

I (2)/ 3 MACCORMICK

- Autonomie des régions et des collectivités locales

I (2)/ 4 ANDRIUKAITIS + 3 Conventionnels

- Ajouter l'Union respecte l'identité et la souveraineté.de ses Etats membres

2)/ 5 ROCHE

- Idem amendement précédent

I (2)/ 6 CHABERT + 5 Conventionnels

- Diversité linguistique et autonomie locale et régionale

I (2) / 7 PIETERS

I (2) / 8 ABITBOL

- Refonte de l'article

I (2) / 9 HAENEL + BADINTER

- Amendement rédactionnel

I (2) / 10 KAUFMANN

I (2) / 11 MICHEL + 5 CONVENTIONNELS

- Diversité régionale, culturelle et linguistique

I (2) / 12 LOPES

- Nombreux rajout en référence à l'identité nationale, promotion de la richesse de la diversité culturelle

I (2) / 13 KOHOUT

- Diversité

I (2) / 14 KIRKHOPE

- Respect de la souveraineté

I (2) / 15 VOGGENHUBER + LICHTENBERGER

I (2) / 16 BALAZS

- Respect de l'identité nationale des peuples et des Etats membres

I (2) / 17 HUBNER

- Respect des structures nationales et constitutionnelles

I (2) / 18 FINI

- Respect de l'identité nationale des peuples

I (2) / 19 EINEM

- Insérer un développement des composantes de l'identité

I (2) / 20 KILJUNEN + VANHANEN

- Précision sur la notion d'identité nationale

(2) / 21 CUSHNAHAN

- Précision sur la notion d'identité nationale

I (2) / 22 OLESKY

- Rédaction légèrement différente, idem

I (2) / 23 TIILIKAINEN + PELTOMÄKI

- Précision sur la notion d'identité nationale

I (2) / 24 FOLLINI

- Refonte substantielle avec fusion de l'article 9-6. Insérer notion de vote des régions + solidarité  
«sans cesse plus étroite»

I (2) / 25 HEATHCOAT-AMORY

- Réécriture de l'article

I (2) / 26 COSTA + 3 Conventionnels portugais

- Précision sur la notion d'identité nationale

I (2) / 27 SANTER + 2 Conventionnels luxembourgeois

- Rédaction différente sur la diversité culturelle

I (2) / 28 LEQUILLER

- Précision sur le contenu de l'identité nationale

I (2) / 29 KUNEVA

- Précision sur la notion d'identité nationale

I (2) / 30 DUFF + 4 Conventionnels

- Suppression car ne trouve pas sa place dans l'établissement de l'Union

I (2) / 31 NAGY

I (2) / 32 SCHÜLTER

- Ajout sur la prise de décision proche des citoyens

I (2) / 33 QUEIRO

- Souveraineté + égalité entre Etats membres

I (2) / 34 FRENDÖ + 2 maltais

- Renvoi à l'article 9-6

I (2) / 35 BONDE + 8 Conventionnels

- Précision sur la notion d'identité nationale (Idem en substance)

I (2) / 36 WITTBRODT + FOGLER

- Précision sur la notion d'identité nationale + « statut des églises et des communautés religieuses »

I (2) / 37 RUPEL

- Ajout des identités régionales

I (2) / 38 DOLORES

- Précision sur la notion d'identité nationale + « statut des églises et des communautés religieuses »

I (2) / 39 BROK + 12 Conventionnels PPE

- Référence aux structures politiques et constitutionnelles, langues, statut des Eglises et des organisations non confessionnelles

I (2) / 40 KATIFORIS

- Fusion avec l'article 9-6 du traité Constitutionnel

I (2) / 41 SZAJER

- Référence aux nations

I (2) / 42 SERRACINO-INGLOTT + INGUANEZ

- Préciser identité nationale conformément à l'article 9 (6) du traité Constitutionnel

I (2) / 43 CHABERT + 5 Conventionnels

- Référence à la diversité culturelle et linguistique et au principe d'autonomie locale et régionale

I (2) / 44 SCHLUETER

- Référence à la transparence et au principe de proximité (voir art1 TUE)

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**FICHE D'ANALYSE DES PROPOSITIONS D'AMENDEMENTS**  
**A L'ARTICLE I§3**

**ARTICLE I§3: ETABLISSEMENT DE L'UNION**

*« L'Union est ouverte à tous les Etats européens dont les peuples partagent les mêmes valeurs, qui les respectent, et qui s'engagent à les promouvoir en commun ».*

**I. EXAMEN DES AMENDEMENTS PAR THEME**

- Suppression de la mention des « peuples »  
Villepin + Lopes + Hain + Tomlinson

**II. DETAIL DES AMENDEMENTS**

I (3)/ 1 LAMASSOURE

Insertion de la possibilité de quitter l'Union.

I (3)/ 2 BORRELL + 2 Conventionnels

Amendement rédactionnel.

I (3) / 3 PIETERS

I (3) / 4 ABITBOL

Statut d'association pour les Etats dont le territoire ne se trouve qu'en partie en Europe.

I (3) / 5 HAENEL + BADINTER

I (3) / 6 HAIN

Suppression « peuples » et doutes sur la fin de la phrase.

I (3) / 7 KAUFMANN

I (3) / 8 de VILLEPIN

- Suppression de la mention des peuples

I (3) / 9 LOPES

Renforcement des conditions de l'engagement des pays tiers qui veulent rejoindre l'Union.

I (3) / 10 VOGGENHUBER + LICHTENBERGER

I (3) / 11 BALAZS

Rappel des critères de Copenhague.



I (3) / 12 EINEM  
Suppression.

I (3) / 13 KILJUNEN + VANHANEN  
Rédactionnel

I (3) / 14 CUSHNAHAN

I (3) / 15 FOLLINI

I (3) / 16 BERGER

I (3) / 17 HEATHCOAT-AMORY

I (3) / 18 COSTA + 3 Conventionnels

I (3) / 19 KORCOK

I (3) / 20 TEUFEL

I (3) / 21 KACIN + HORVAT

I (3) / 22 QUEIRO

- Suppression de l'Union

I (3) / 23 HJELM-WALLEN + 5 Conventionnels

- Suppression « peuples »

I (3) / 24 BELOHORSKA + 8 Conventionnels

- Assouplir les critères d'admission

I (3) / 25 VANDERLINDEN + 3 Conventionnels

I (3) / 26 WITTBRODT

- Ajout « principes »

I (3) / 27 FISCHER

- Suppression « peuples »

I (3) / 28 Lord TOMLINSON

- Suppression « peuples »

- Référence aux valeurs de l'article 2 de la Constitution

I (3) / 29 KATIFORIS

- Référence au principe démocratique et à l'Etat de droit

I (3 ) / 30 ATTALIDES

- « ... même valeurs et objectifs »

I (3) / 31 OGUZ

- Référence aux valeurs de l'article 2 de la Constitution

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**FICHE D'ANALYSE DES PROPOSITIONS D'AMENDEMENTS**  
**A L'ARTICLE I bis**

**ARTICLE 1 bis**

*(nouveau)*

**I. EXAMEN DES AMENDEMENTS PAR THEME**

Rédaction d'un nouvel alinéa précisant selon les cas

- l'emblème
- la devise
- la fête de l'Europe
- l'hymne
- les capitales (Bruxelles, Luxembourg, Strasbourg)
- la monnaie de l'Union
- divers

**II. DETAIL DES AMENDEMENTS**

I bis / 1 LAMASSOURE

Insertion des capitales de l'Union (Bruxelles, Luxembourg, Strasbourg) + drapeau + monnaie + hymne + fête de l'Union (9 mai).

I bis / 2 BERES + 5 Conventionnels

Insertion Emblème + hymne + devise (paix, égalité, liberté) + fête de l'Europe (9 mai).

I bis / 3 PIETERS

I bis / 4 HAENEL + BADINTER

Insertion devise + emblème + hymne

I bis / 5 SKAARUP

- Seulement référence à la chrétienté

I bis / 6 SEVERIN

- Rajouter référence à « ever closer Union »

I bis / 7 EARL OF STOCKTON

- Référendum dans tous les Etats membres dont la Constitution le permet

I bis / 8 HEATCOAT-AMORY

- Référence à l'OMC (organisation mondiale du Commerce)

I bis / 9 HJELM-WALLEN + 5 Conventionnels

- Référence à la transparence et à la Subsidiarité (article 1 TEU)

I bis / 10 LEQUILLER

- Devise + emblème, hymne, monnaie et jour férié

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**FICHE D'ANALYSE DES PROPOSITIONS D'AMENDEMENTS**  
**A L'ARTICLE II**

**ARTICLE 2: LES VALEURS DE L'UNION**

*"L'Union se fonde sur les valeurs de respect de la dignité humaine, de liberté, de démocratie, de l'état de droit, et de respect des droits de l'Homme, valeurs qui sont communes aux Etats membres. Elle vise à être une société paisible pratiquant la tolérance, la justice et la solidarité."*

**I. EXAMEN DES AMENDEMENTS PAR THÈMES**

- Ajouter l'égalité parmi les valeurs figurant dans la première phrase
  - Duhamel + 9 Conventionnels + Dybkjaer + Gabaglio + Andiukaitis + Vassiliou + Michel + 5 Conventionnels belges + Puwak + Pacioti + Spini + Conventionnels portugais + Katiforis + Voggenhuber + Lichtenberger + Giannakou + Einem + Tiilikainen + Peltomaki (introduction dans la seconde phrase) + Kiljunen + Vanhanen + Svensson + Palacio + Kaufmann
- Ajouter "égalité entre hommes et femmes"
  - Dolores + Costa + 3 conventionnels Portugais + McAvan + Einem + Wittbrodt + Fogler
- Intégration de tout ou partie des valeurs de la 2ème phrase ("paix, tolérance, justice, solidarité") parmi les valeurs figurant dans la première phrase et suppression de la seconde phrase
  - Michel + 5 Conventionnels belges + Lopes + Puwak+ Pacioti + Spini + Katiforis + Voggenhuber + Lichtenberger + Costa + 3 conventionnels Portugais + McAvan + Frendo + Serracino + Inguanez + Hubner
- Ajouter "pluralisme" (Lequiller), "diversité" (Wurmeling + Altmaier), "diversité culturelle et linguistique" (McCormick + Figel) "respect des handicapés, des minorités" (Kiljunen + Vanhanen) "justice sociale" (Voggenhuber + Lichtenberger + Einem), "transparence"(Kiljunen + Vanhanen + Svensson), "diversité culturelle" (Duff + 3 conventionnels + MacLennan), "identités nationales et régionales" (Duff + 3 conventionnels + MacLennan), "minorités nationales " (Balazs)
- Introduction d'une référence au fait religieux selon diverses propositions : référence à Dieu (modèle constitution polonaise) / référence au Christianisme /mention des racines judéochrétiennes / tradition greco-romaine, judéo-chrétienne, laïque et libérale
  - Kroupa +Skaarup + Fini+ Follini + Teufel + Korcok + Muscardini + Brok +Wittbrodt + Fogler + Teufel + 16 conventionnels, Brok + Conventionnels PPE,



**Ajouter ou remplacer droits de l'Homme par droits fondamentaux ou libertés fondamentales**

- Villepin + Roche + Puwak+ Tiliikainem+ Peltomaki + Tillikainen + Peltomaki + Berès + groupe socialiste + Kuneva + Tiilikainen + Peltomaki+ Rupel+ Duff + 3 conventionnels + Maclennan + Palacio
- **Préciser "valeurs universelles" ou "valeurs universelles et indivisibles"**
- Duhamel + 9 Conventionnels + Lenmarker
- **Remplacer "valeurs" par "principes" ou indiquer "sur les principes de respect de"**
- Villepin + Kuneva
- **Séparation Églises / État**
- Bérès + Di Rupo

**II. DÉTAILS DES AMENDEMENTS :**

**(II)/ 1 Deleg. Socialiste- DUHAMEL+ 9 convent.**

Ajouter "l'égalité, la solidarité et la justice" parmi les valeurs communes.

**(II)/ 2 M. ABITBOL**

Refonte totale de l'article 2 et introduction de nombreux nouveaux concepts, comme l'interdiction d'ingérence dans l'expression du suffrage universel des Etats membres.

**(II)/3 M. BORRELL+ 2 convent**

Ajouter "l'égalité, la promotion de la dignité" et valeurs "universelles et indivisibles"

**(II)/4 M. DUHAMEL**

Amendement rédactionnel

**(II)/5 Mme DYBKJAER**

Ajouter "égalité, en particulier entre hommes et femmes"

**(II)/6 M. ECKSTEIN**

Ajouter après Droit de l'homme, y compris le droit aux minorités nationaux

**(II)/7 M. GABAGLIO- Observateur-**

Ajouter "justice sociale" et égalité entre femmes et hommes'

**(II)/8 M. HAENEL+ BADINTER**

Ajouter "solidarité" "égalité" + promotion de ces valeurs dans le monde. suppression 2ème phrase

**(II)/9 M. KROUPA**

Ajouter nouveau paragraphe reprenant la Constitution polonaise avec la référence à Dieu

**(II)/10 M. MACCORMICK**

Ajouter à la 2ème phrase une mention du respect de la diversité culturelle et linguistique

**(II)/11 M. LENMARKER**

Ajouter valeurs universelles

**(II)/12 M. ANDRIUKAITIS+ 3 convent.**

Ajouter égalité

**(II)/13 M. ROCHE**

Ajouter après droit, et l'homme et libertés fondamentales

**(II)/ 14 M. HAIN**

Supprimer 2ème phrase qui pourrait être reprise dans le préambule

**(II) /15 Mme BERES+ 17 convent.**

Ajouter dignité de la personne, supprimer droit de l'homme pour droits fondamentaux

**(II) /16 M. CRAVINHO**

Ajouter pluralisme

**(II) /17 M. VASSILIOU**

Ajouter l'égalité entre hommes et femmes

**(II) /18 Mme PACIOTTI + M. SPINI**

Ajouter "égalité", suppression de la seconde phrase et intégration de "solidarité" et "justice" dans la première.

**(II) /19 M. LOPES (gouvernement Portugal)**

Supprimer mention de valeur

Nouvelle réduction pour la seconde phrase permettant d'introduire la tolérance, la justice, la solidarité et l'égalité entre Etats membres.

**(II) /20 M. MICHEL + 5 conventionnels belges**

Suppression 2ème phrase (idem M. Hain)

Intégration valeurs de solidarité, d'égalité, de tolérance et de justice dans la première phrase.

**(II) /21 M. de VILLEPIN (gouvernement français)**

Remplacer valeurs par principes

ajouter référence aux libertés fondamentales

**(II) /22 Mme PUWAK**  
droit fondamentaux + solidarité + égalité homme-femme

**(II) /23 M. FRENDÖ**  
Ajout solidarité + justice

**(II) 24 Mme BERES+ Di RUPO**  
Séparation Églises et Etat

**(II) 25 M. KIKHOPE**  
Remplacer "Union" par "Communauté"

**(II) 26 M. KOHOUT**  
Suppression seconde phrase

**(II) 27 M. SKAARUP**  
Introduction d'une référence au "christianisme, enraciné dans l'histoire européenne"

**(II) 28 M. ZIELENIEC**  
Modification de la seconde phrase afin d'introduire un lien avec les valeurs.

**(II) 29 M. FINI**  
Mention des racines judéo-chrétiennes de l'Union

**(II) 30 M. FAYOT**  
Extension de la phrase 2 pour ajouter la non-discrimination, l'égalité hommes-femmes et le développement durable

**(II) 31 M. FOLLINI**  
Mention de la tradition religieuse

**(II) 32 M. TILIIKAINEN+ M PELTOMAKI**  
Ajouter "valeurs fondamentales"

**(II) 33 Mme. BERES + AUTRES CONVENT. Corrigendum**  
dignité de la personne + droits fondamentaux

**(II) 34 M. FIGEL**  
mention des particularités nationales

**(II) 35 M. HEATHCOAT-AMORY**  
suppression de la dignité (terme subjectif) + référence aux droits de l'hommes "tels que figurant dans les lois nationales"

**(II) 36 Mme AZEVEDO + 3 CONV. Portugal**  
ajout "égalité entre hommes et femmes" + "solidarité"

**(II) 37 M. KORCOK + M. FIGEL + M. MIGAS + Mme MARTINAKOVA**  
Référence constitution polonaise

**(II) 38 M. FISCHER**  
- Reprise de l'article 6 TUE

**(II) 39 Mme DOLORES**  
Refonte de l'article + introduction de l'égalité hommes femmes de la solidarité

**(II) 40 M. KATIFORIS**  
introduction des valeurs de la seconde phrase dans la première

**(II) 41 M. VOGGENHUBER+ LICHTENBERGER**  
Suppression de la seconde phrase et introduction des valeurs correspondantes dans la première + "justice sociale", "pluralité" et "égalité"

**(II) 42 Mme GIANNAKOU**  
Ajouter "égalité" + "droits fondamentaux"

**(II) 43 Mme MUSCARDINI**  
Ajouter référence à la tradition "greco-romaine, judéo-chrétienne, laïque et libérale"

**(II) 44 M. COSTA+3 Représ. Assemblée Portugal**  
Ajouter "solidarité" + "égalité hommes-femmes"

**(II) 45 Mme McAVAN**  
Ajouter "égalité entre hommes et femmes" + "solidarité et justice" et suppression de la seconde phrase.

**(II) 46 M. EINEM**  
Ajouter "justice sociale", "égalité, en particulier entre hommes et femmes", "solidarité" dans la première phrase mais tout en maintenant la seconde.

**(II) 47 Mme BONDE + 8 conventionnels**  
Ajouter au début une mention de "l'Europe des démocraties" + "et en particulier la démocratie" à la fin de la seconde. Le reste sans changement.

**(II) 48 M. FIGEL**  
Mention de la culture et de la souveraineté

**(II) 49 Mme KUNEVA**  
Ajouter "libertés fondamentales" et "principes"

**(II) 50 M. FRENDÖ**  
Supprimer seconde phrase et introduire les éléments correspondants dans la première

**(II) 51 M. LEQUILLER**  
Introduire la valeur de "pluralisme"

**(II) 52 Mme TIILIKAINEN + M. PELTOMAKI**

Introduire "égalité" dans la seconde phrase + "ajouter "droits fondamentaux"

**(II) 53 M. SERRACINO-INGLOTT+ M. INGUANEZ**

Suppression de la seconde phrase et introduction dans la première

**(II) 54 M. KILJUNEN + M VANHANEN**

"Egalité" + "droits des minorités" + "handicapés" + "transparence"

**(II) 55 M. SVENSSON**

Ajouter "transparence", "égalité", "vérité", "savoir"

**(II) 56 M. WITTBRODT + Mme FOGLER**

Ajouter "égalité des hommes et des femmes

Ajouter un paragraphe faisant référence à Dieu (modèle constitution polonaise)

- Ajouter un paragraphe sur le principe de solidarité entre les Etats Membres.

**(II) 57 M. TEUFEL**

Ajouter un paragraphe faisant référence à Dieu (modèle constitution polonaise)

**(II) 58 M. RUPEL**

Ajouter "libertés fondamentales"/ fundamental freedoms

**(II) 59 M. DUFF + M. RUPEL + M. HELMINGER + M. SZENT-IVANYI**

Référence aux valeurs "partagées", droits "fondamentaux", et à la diversité culturelle

Ajouter un second paragraphe se référant aux identités nationales et régionales

**(II) 60 M. BALAZS**

Référence à la protection des minorités nationales

**(II) 61 M. BROK and others on behalf of EPP Convention Group**

Référence à Dieu (modèle de la Constitution polonaise)

**(II) 62 M. HÜBNER**

Ajouter "tolérance, justice et solidarité" dans la première phrase

**(II) 63 Mme PALACIO**

Référence à l'égalité, et aux droits "fondamentaux"

**(II) 64 M. WUERMELING + M. ALMAIER**

Référence à la diversité

**(II) 65 Mme KAUFMANN**

Référence notamment à l'égalité et aux valeurs partagées par les États membres

**(II) 66 M. MACLENNAN**

Référence aux valeurs "partagées", droits "fondamentaux", et à la diversité culturelle  
Ajouter un second paragraphe se référant aux identités nationales et régionales

**(II) 67 M. OLEKSY**

Référence à la dimension spirituelle

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## FICHE D' ANALYSE DES PROPOSITIONS D'AMENDEMENTS

### A L'ARTICLE III§1

#### Article 3§1: Les objectifs de l'Union

"*Le but de l'Union est de promouvoir la paix, ses valeurs et le bien-être de ses peuples.*"

#### I. EXAMEN DES AMENDEMENTS

##### **III§1/ 1 M. BORRELL+ 2 conv**

##### *Ajout complémentaire à l'article 1*

Modification de l'ordre afin de mettre les valeurs en premier

Ajouter "l'Union renonce à la guerre"

indiquer dans un nouvel alinea notamment que l'Union renonce à la guerre

##### **III§1/2 M. ABITBOL**

Refonte de l'article

##### **III§1/3 M. HAENEL +M. BADINTER**

Alina limité à la paix+ "elle l'oeuvre pour l'assurer dans le monde"

##### **III§1/4 M. HAIN**

Suppression et reprendre dans le préambule

##### **III§1/5 M. ZIELENIEC**

Ajouter "European way of life"

##### **III§1/6 M. VOGGENHUBER**

remplacer "peuples par citoyens

##### **III§1/7 M. de VILLEPIN**

Ajouter "diversité culturelle, développement durable et préservation de l'acquis de la construction européenne.

##### **III§1/8 M. MICHEL + 5 conventionnels**

Ajouter "sécurité"

##### **III§1/9 M. LOPES**

Remplacer "values" par principes" et ajouter "bien-être économique et social"

##### **III§1/10 M. KAUFMANN**

Ajouter sur base de ses valeurs. Ajouter maintenir la paix et garantir le bien-être

##### **III§1/11 M. FINI**

Réferente de l'article 1

**III§1/12 M. KIRHOPE**  
Remplacer "Union par Communauté"

**III§1/13 M COSTA+ M D'OLIVEIRA**  
Refonte de l'article.

**III§1/14 M KVIST**  
Ajouter soutenir

**III§1/15 Mme MUSCARDINI**  
Ajouter (avant le bien-être) la protection, ajouter le respect de la personne et de la vie humaine

**III§1/16 M LEQUILLER**  
Ajouter en préservant l'acquis de la construction européenne

**III§1/17 Mme DOLORES**  
Ajouter : respect des valeurs fondamentales, la paix dans la société et entre les nations

**III§1/18 M DUFF**  
Supprimer paragraphe 1

**III§1/19 M Mac CORMICK**  
Remplacer peuples par citoyens

**III§1/20 Mme KUNEVA**  
Supprimer « ses valeurs et le bien-être de ses peuples » et ajouter : les valeurs sur lesquelles elle se fonde, la diversité culturelle, le développement durable, en préservant l'acquis de la construction européenne

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**FICHE D' ANALYSE DES PROPOSITIONS D' AMENDEMENTS**  
**A L'ARTICLE III§2**

**Article 3§2: Les objectifs de l'Union**

*"L'Union œuvre pour une Europe du développement durable fondée sur une croissance économique équilibrée et la justice sociale, dans le cadre d'un marché unique et d'une union économique et monétaire, visant le plein emploi et générant de hauts niveaux de compétitivité et de hauts niveaux de vie. Elle promeut la cohésion économique et sociale l'égalité entre les hommes et les femmes ainsi que la protection de l'environnement et la protection sociale et favorise le progrès scientifique et technique, notamment la découverte de l'espace. Elle encourage la solidarité entre les générations et entre les États et l'égalité des chances pour tous."*

**I. EXAMEN DES AMENDEMENTS :**

**(III) §2/1 M. KRISTENSEN**

Ajouter de nombreux exemples de non-discrimination sur la base de la race  
Suppression référence à l'espace"

**(III) §2/2 M. DUHAMEL**

Ajouter "haut niveau de vie"

**(III) §2/3 Mme DYBKJAER + version révisée**

Reprise et extension des interdictions de non-discrimination issue de l'actuel article 13 TUE

**(III) §2/4 M. FAYOT**

"Éradication de la grande pauvreté, promotion de l'inclusion sociale et le plein emploi"

**(III) §2/5 M. GAGLIO Observateur**

Réécriture

**(III) §2/6 M. SODERMAN Observateur- dans 3 versions linguistiques**

Parmi les objectifs: \_une bonne administration"

**(III) §2/7 M. BORRELL + 2 CONV**

Ajouter "cohesion territoriale"- lutte contre la pauvreté- service public- protection du milieu ambient

**(III) §2/8 M. CARNERO**

Ajouter la non-discrimination liée à la nationalité origine sociale et ethnique, orientation sexuelle.

**(III) §2/9 M. CRAVINHO- Observateur**

Services d'intérêt général - Cohesion territoriale

**(III) §2/10 M. HAIN**

Refonte et suppression de la référence à l'espace

**(III) §2/11 M. HAENEL+ M.BADINTER**

Ajouter "coopération interregionale et transfrontalière"

**(III) §2/12 M. ABITBOL**

Réécriture de l'alinéa

**(III) §2/13 M.VASSILIOU**

Idem amendement Carnero

**(III) §2/14 M. ROCHE**

Amendement rédactionnel

**(III) §2/15 M. HOLOLEI**

Supprimer la référence à la découverte de l'espace

**(III) §2/16 M. LOPES**

Supprimer la référence au progrès scientifique et technique et à la découverte de l'espace.  
Amendements rédactionnels.

**(III) §2/17 Mme PUWAK**

Formule plus courte. Référence aux services d'intérêt général et à la protection des enfants

**(III) §2/18 M. CHABERT + 5 Conventionnels**

Ajouter une référence à la cohésion territoriale, à la coopération inter-régionale et transfrontalière, et à la solidarité entre autorités régionales et locales

**(III) §2/19 M. MICHEL + 5 Conventionnels**

Ajouter une référence à la protection de l'environnement, à la convergence des performances économiques, à la protection sociale et la santé publique, à la qualité du travail, à la lutte contre la pauvreté et l'exclusion sociale, ainsi que toutes formes de discriminations, aux services d'intérêt général, et à la promotion de l'égalité entre les hommes et les femmes.

**(III) §2/20 M. de VILLEPIN**

Nouvel article se référant notamment au modèle social européen

**(III) §2/21 M. FARNLEITNER**

Amendement rédactionnel et référence à l'économie sociale de marché

**(III) §2/22 M. VOGGENHUBER+ Mme LICHTENBERGER**

Ajouter référence à la protection de l'environnement, économie sociale de marché, santé publique, services sociaux et services d'intérêt général, protection des consommateurs et protection des animaux.

**(III) §2/23 M. ZIELENIEC**

Nouvel article très court

**(III) §2/24 M. DUHAMEL + 9 Conventionnels**

Ajouter référence à économie sociale de marché, protection sociale, qualité du travail, santé publique, service d'intérêt général, etc.

**(III) §2/25 M. STOCKTON**

Ajouter référence à la promotion du libre échange dans un monde plus large

**(III) §2/26 Mme TIILIKAINEN + M. PELTOMAKI**

Ajouter référence à la qualité de l'environnement, et à la richesse de la diversité culturelle

**III) §2/27 M. FAYOT**

Ajouter une référence au développement de services d'intérêt général de haut niveau

**III) §2/28 M. FISCHER**

Référence à l'économie sociale de marché, et à l'amélioration de la qualité de l'environnement, etc.

**III) §2/29 Mme MUSCARDINI**

Référence à la non discrimination sur base du handicap, la protection de l'enfance et des personnes âgées. Supprimer la référence à la découverte de l'espace

**III) §2/30 M. SVENSSON**

Supprimer la référence à la découverte de l'espace. Référence à la protection environnement, qualité du travail, protection des enfants. Extension de l'interdiction de discrimination à d'autres critères (religion, origine ethnique, etc.)

**III) §2/31 M. de VRIES + 4 Conventionnels**

Supprimer la référence à la découverte de l'espace. Référence à protection sociale, de la santé publique et de la protection sociale. Haut niveau d'emploi.

**III) §2/32 M. FRENDÖ**

Référence à la cohésion territoriale.

**III) §2/33 M. KUNEVA**

Nouvel article. Référence au modèle social européen.

**III) §2/34 Mme DOLORES**

Référence à la cohésion territoriale.

**III) §2/35 M. KACIN + HORVAT**

Référence au développement social, la cohésion territoriale et à la solidarité entre régions

**III) §2/36 M. LEQUILLER (3 Amendements)**

Ajouter référence à un niveau élevé de protection sociale, lutte contre la pauvreté et l'exclusion sociale et contre toute forme de discrimination, services d'intérêt général. Ajouter référence à la qualité du travail, la santé publique, la formation tout au long de la vie. Référence à cohésion territoriale.

**III) §2/37 Mme BELOHORSKA + 8 Conventionnels**  
Référence à l'Europe des démocraties.

**III) §2/38 M. KILJUNEN + M VANHANEN**  
Supprimer la référence à la découverte de l'espace. Référence à la richesse et diversité culturelle.

**III) §2/39 M. DUFF + 4 conventionnels**  
Référence à la protection de l'environnement comme un des éléments du développement durable. Extension de l'interdiction de discrimination à d'autres critères (religion, origine ethnique, etc.). Référence à la promotion de l'éducation et la culture. Supprimer la référence à la découverte de l'espace, etc.

**III) §2/40 M. Mac CORMICK**  
Ajouter référence à la protection de l'environnement, économie sociale de marché, santé publique, services sociaux et services d'intérêt général, protection des consommateurs et protection des animaux.

**III) §2/41 M. THORNING-SCHMIDT**  
Référence à la protection de l'environnement comme un des éléments du développement durable

**III) §2/42 M. ARABADJIEV**  
Référence à l'économie sociale de marché

**III) §2/43 M. SIGMUND +BRIESCH + FRERICHS (observateurs)**  
Nouvel article

**III) §2/44 M. RUPEL + M. LENARCIC**  
Extension de l'interdiction de discrimination à d'autres critères (religion, origine ethnique, etc.)

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**FICHE D' ANALYSE DES PROPOSITIONS D'AMENDEMENTS**  
**A L'ARTICLE III§3**

**Article 3§3: Les objectifs de l'Union**

*"L'Union forme un espace de liberté, de sécurité et de justice à l'intérieur duquel ses valeurs communes sont cultivées et la richesse de sa diversité culturelle respectée."*

**I. EXAMEN DES AMENDEMENTS PAR THEME**

**III§3/ 1 M. MacCORMICK**  
Ajouter diversité linguistique

**III§3/ 2 M. BORRELL+2 convent**  
Idem McCornick

**III§3/ 3 M. ECKSTEIN-KOVACS**  
Idem Mc Cormick + "diversité religieuse"

**III§3/ 4 M VASTAGH**  
Ajouter "respect et protection de la diversité culturelle et des minorités"

**III§3/ 5 M ROCHE**  
Ajouter "richesse de la diversité historique et juridique"

**III§3/ 6 M HAIN**  
Réécriture de l'alinéa pour le centre sur la problématique de l'espace de sécurité et de justice

**III§3/ 7 M HAENEL+ BADINTER**  
Diversité culturelle et linguistique, apprentissage des langues, sauvegarde de patrimoine et promotion de la culture.

**III§3/ 8 M ABITBOL**  
Diversité linguistique + défense de la diversité culturelle au plan mondial

**III§3/ 9 Mme TIILIKAINEN M. PELTOMAKI**  
Remplacer « à l'intérieur duquel ses valeurs communes sont cultivées et la richesse de sa diversité culturelle respectée » par la libre circulation des personnes dans des conditions d'un haut degré de sécurité et de justice accessible à tous.

**III§3/ 10 M ATTALIDES**  
Ajouter héritage commun

**III§3/ 11 M LOPES**

Remplacer « à l'intérieur duquel ses valeurs communes sont cultivées et la richesse de sa diversité culturelle respectée » par la lutte contre le racisme et la xénophobie, le développement des principes communs et un haut degré de sécurité

**III§3/ 12 M MICHEL + 5 conventionnels**

Supprimer « cultivées et la richesse de sa diversité culturelle », ajouter promues à la fin de la phrase.

**III§3/ 13 M. DUFF + 4 Conventionnels**

Idem Mme Hubner + Ajouter une référence à la lutte contre le racisme et la xénophobie

**III§3/ 14 M de VILLEPIN**

Supprimer « et la richesse de sa diversité culturelle respectée »

**III§3/ 15 M FARNLEITNER**

Supprimer « à l'intérieur duquel ses valeurs communes sont cultivées ». Ajouter le développement et la diversité linguistique et régional.

**III§3/ 16 M VOGGENHUBER + Mme LICHTENBERGER**

Ajouter au respect, aussi la promotion.

**III§3/ 17 M FRENDÖ**

Refonte de l'article.

**III§3/ 18 M de VRIES + 4 Conventionnels**

Reformulation du paragraphe : le maintien et le développement de l'Union en tant qu'espace de liberté, sécurité et justice est un objectif de l'Union.

**III§3/ 19 MKILJUNEN+ VANHANEN**

Idem Mme Tiilikainen et M. Peltomaki

**III§3/ 20 Mme KUNEVA**

Refonte de l'article. Paragraphe 3 devient paragraphe 4 qui devient idem M. de Villepin.

**III§3/ 21 M EINEM**

Refonte de l'article. Paragraphe 3 devient paragraphe 4. Remplacer forme par offre aux citoyens. Ajouter référence à la libre circulation des personnes et à l'asile.

**III§3/ 22 Mme GIANNAKOU**

Idem M. Attalides

**III§3/ 23 M. KATIFORIS**

Refonte de l'art. Paragraphe 3 devient paragraphe 2. Supprimer la référence aux valeurs communes et ajouter encouragée à la fin de la phrase

**III§3/ 24** M MacCORMICK  
Idem M. Voggenhuber et Mme Lichtenberger

**III§3/ 25** Mme DOLORES  
Idem M. Frendo

**III§3/ 26** Mme BELOHORSKA + 8 Conventionnels  
Changement de l'Union en Europe des Démocraties. Ajout de pleinement respectée

**III§3/ 27** Mme MUSCARDINI  
Ajouter diversité linguistique ainsi que toute spécificité et tradition nationale

**III§3/ 28** M LEQUILLER  
Ajouter diversité linguistique et après « respectée » ajouter favorisée  
**III§3/29** Mme KAUFMANN  
Refonte du paragraphe

**III§3/ 30** M. BROK + 12 Conventionnels  
Ajouter dans l'intérêt des ces citoyens

**III§3/ 31** M.SANTER + 2 conventionnels  
Supprimer la référence à la diversité culturelle qui est reprise dans l'ar. 1er

**III§3/ 32** M. TEUFEL  
Idem M. Brok

**III§3/ 33** M. KIRKHOPE  
Supprimer le paragraphe

**III§3/ 34** Mme AZEVEDO + M. PEREIRA  
Refonte de l'article. Refonte du paragraphe avec ajout de la lutte contre le racisme et la xénophobie, développement des valeurs communes et un niveau élevé de sécurité

**III§3/ 35** M. COSTA + D' OLIVERIA MARTINS  
Idem Mme Azevedo + ajout niveau élevé de qualité dans l'application de la justice

**III§3/ 36** M. FINI  
Refonte de l'article. Le paragraphe 3 devient le 4ème tiret.

**III§3/ 37** M. HUBNER  
Supprimer « à l'intérieur duquel ses valeurs communes sont cultivées et la richesse de sa diversité culturelle respectée », remplacer « forme » par promeut

**III§3/ 38** M. RUPEL+ LENARCIC  
Ajouter diversité linguistique

**III§3/ 39 M. CUSHNAHAN**

Idem M. Rupel

**III§3/ 40 M. TIMMERMANS**

Ajouter une référence à la promotion du bien-être des peuples

**III§3/ 41 M. DUHAMEL +9 conventionnels**

Ajouter référence à la libre circulation des personnes, au contrôle aux frontières extérieures, à l'asile, immigration, prévention de criminalité et lutte contre la xénophobie et le racisme

**III§3/ 42 M. HAENEL + M BADINTER**

Refonte de l'article

**III§3/ 43 M. SERRACINO-INGLOTT**

Refonte de l'article

**III§3/ 44 M. PACIOTTI + SPINI**

Refonte du paragraphe. Ajout d'une référence à la libre circulation des personnes, au contrôle aux frontières extérieures, à l'asile, immigration, prévention de criminalité et lutte contre la xénophobie et le racisme, accès à la justice,

**III§3/ 45 M. VASTAGH**

Ajouter le respect et la protection des minorités

**III§3/ 46 M. DUFF**

Idem Mme Hubner + Ajouter une référence à la lutte contre le racisme et la xénophobie

**III§3/ 47 M. OLEKSY**

Supprimer « à l'intérieur duquel ses valeurs communes sont cultivées et la richesse de sa diversité culturelle respectée »

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**FICHE D'ANALYSE DES PROPOSITIONS D'AMENDEMENTS**  
**A L'ARTICLE III§4**

**Article 3§4 Les objectifs de l'Union**

*"Pour défendre l'indépendance et les intérêts de l'Europe, l'Union s'efforce de promouvoir ses valeurs dans le reste du monde. Elle contribue au développement durable de la planète, à la solidarité et au respect mutuel entre les peuples, à l'élimination de la pauvreté et à la protection des droits des enfants, au strict respect des engagements de droit international, ainsi qu'à la paix entre les États."*

**I. EXAMEN DES AMENDEMENTS PAR THEME**

**III§4/ 1 M.BORRELL+ 2 CONVENT**

"Établir un ordre mondial juste et démocratique"

**III§4/ 2 M. LENNMARKER**

Ouverture de l'Europe sur le monde

Valeurs universelles

Coopération et libre-commerce

**III§4/ 3 M. HAIN**

promotion/protection des droits de l'homme

Introduction d'une référence à la PESC et à la politique de défense.

**III§4/ 4 M. HAENEL+ BADINTER**

progrès de connaissances, de la recherche scientifique et de la technologie

**III§4/ 5 M.ABITBOL**

Rédaction nouvelle

**III§4/ 6 M. ROCHE**

Réécriture fondée sur les conclusions du groupe "Action extérieure"

**III§4/ 7 M. VASSILIOU**

Introduction de partenariat avec des pays et des organisations régionales et globales

**III§4/ 8 M. FARNLEITNER**

Ajouter respect des droits de l'Homme et des libertés fondamentales y compris ...

**III§4/ 9 M. ZIELENIEC**

Supprimer « promouvoir ses valeurs dans le reste du monde », remplacer droits des enfants par droits de l'Homme, supprimer « strict respect des engagements de droit international », supprimer « entre les Etats »

**III§4/ 10 M. VOGGENHUBER + Mme LICHTENBERGER**

Supprimer la première phrase, Ajouter entre les Etats (après respect mutuel), remplacer droits des enfants par droits de l'Homme

**III§4/ 11 M.BARNIER**

Supprimer « l'Union s'efforce de » et ajouter et à la place. Ajouter une référence à la politique étrangère et de sécurité commune et à la politique de défense commune  
Ajouter également avant le développement durable.

**III§4/ 12 M. FIGEL**

Ajouter une référence aux instruments de la PESC

**III§4/ 13 M. LOPES**

Reformulation du paragraphe. Ajouter valeurs communes, intérêts fondamentaux, intégrité. Remplacer valeurs par principes. Ajouter une référence à la Charte des Nations Unis et promotion de la coopération internationale

**III§4/ 14 M. de VILLEPIN**

Ajouter la solidarité et l'assistance mutuelle entre ses membres face aux menaces qui pèsent sur leur sécurité commune

**III§4/ 15 M KELAM + 3 Conventionnels**

Remplacer indépendance par sécurité

**III§4/ 16 M. MICHEL + 5 CONVENTIONNELS**

Reformulation du paragraphe. Ajouter : référence à l'identité et à la sécurité, référence à la Charte des Nations Unies, droits de la personne, consolidation de la démocratie et de l'Etat de droit, (paix) entre les peuples, l'insertion harmonieuse et progressive des pays en voie de développement dans l'économie mondiale

**III§4/ 17 M. LEQUILLER**

Ajouter droits de l'Homme

**III§4/ 18 M VAN DER LINDEN + 3 Conventionnels**

Ajouter que l'Union contribue à la construction de la Justice international

**III§4/ 19 M DUFF**

Reformulation du paragraphe. Remplacer défendre par promouvoir. Ajouter maladie après pauvreté. Remplacer droits des enfants par droits de l'Homme. Ajouter développement du droit international

**III§4/ 20 Mme MUSCARDINI**

Ajouter promotion à protection, ajouter référence à la Convention des droits de l'enfant

**III§4/ 21 M Mac CORMICK**

Idem M. Voggenhuber

**III§4/ 22 Mme GIANNAKOU**

Ajouter identité. Ajouter référence à la politique commune de relations extérieures, en particulier la PESC fondée sur la solidarité et loyauté mutuelle. Ajouter grande pauvreté. Ajouter la promotion de l'inclusion sociale.

**III§4/ 23 Mme DOLORES**

Refonte de l'art. Paragraphe 4 inchangé devient paragraphe 3

**III§4/ 24 M SERRACINO-INGLOTT**

Refonte de l'ordre du paragraphe + remplacer s'efforce par s'attache. Ajouter droits de l'Homme.

**III§4/ 25 M SVENSSON**

Refonte du paragraphe. Ajouter l'Union ouverte sur le monde, supprimer engagement. Ajouter droits de l'Homme, paix globale, référence à la Charte des Nations Unies, valeurs fondamentales

**III§4/ 26 M FRENDÖ**

Idem Mme Dolores

**III§4/ 27 Mme BELOHORSKA+ 8 Conventionnels**

Suppression de la première phrase. Remplacement de l'Union par coopération entre les Etats membres

**III§4/ 28 M. FISCHER**

Ajouter référence à la solution des problèmes environnementaux au niveau global et régional

**III§4/ 29 M. BROK**

Ajouter identité. Ajouter référence à la politique commune de relations extérieures, en particulier la PESC fondée sur la solidarité et loyauté mutuelle (Idem Mme Giannokou). + Ajouter : libre échange

**III§4/ 30 M. EINEM**

Refonte de l'article. Paragraphe 4 avec de très légères modifications devient paragraphe 5

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**FICHE D'ANALYSE DES PROPOSITIONS D'AMENDEMENTS**  
**A L'ARTICLE III§5**

**Article 3§5: Les objectifs de l'Union**

*"Ces objectifs sont poursuivis par des moyens appropriés, en fonction des compétences que la présente constitution confère à l'Union à cet effet."*

**I. EXAMEN DES AMENDEMENTS PAR THEME**

**(III) §5/1 M. DUHAMEL**

Modification rédactionnelle

**(III) §5/2 M. HAENEL+BADINTER**

Suppression

**(III) §5/3 M. MICHEL + 5 conventionnels**

Inchangé, mais ajout d'un paragraphe 6

**(III) §5/4 Mme MUSCARDINI**

Ajouter référence au respect des compétences des Etats membres

**(III) §5/5 Mme BELOHORSKA + 8 Conventionnels**

Refonte du paragraphe. Remplacer L'Union par l'Europe des Démocraties, et remplacer la présente Constitution par cet accord fondé sur le droit international

**(III) §5/6 Mme KUNEVA**

Paragraphe 5 inchangé devient paragraphe 6

**(III) §5/7 M EINEM**

Paragraphe 5 inchangé devient paragraphe 6

**(III) §5/8 M GIBERYEN**

Remplacer Constitution par traité constitutionnel

**(III) §5/9 M DUFF**

Ajouter une référence à la conformité avec la pratique d'ouverture et de bonne gouvernance

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## FICHE D'ANALYSE DES PROPOSITIONS D'AMENDEMENTS

### ARTICLE 4

#### ARTICLE 4: Personnalité juridique

« *L'Union dispose de la personnalité juridique.* »

#### I. EXAMEN DES AMENDEMENTS PAR THÈME :

- L'Union "dispose" de la personnalité juridique  
*Amendement IV / 1 (Abitbol)*

Commentaire : amendement déjà accepté

- Article accepté sous réserve de l'examen des dispositions relatives à la PESC  
*Amendement IV / 2 (Hain)*
- Suppression de l'article (sans explication)  
*Amendement IV / 3 (Kirkhope)*
- Suppression de l'article : contre la personnalité juridique  
*Amendement IV / 6 (Heathcoat-Amory)*
- Ajouter "which in no way supplants the existing legal and treaty obligations of the Members States"  
*Amendement IV / 7 (Earl of Stockton)*
- Transfert de cet article dans la seconde partie, à fusionner avec les articles 281 et 282 du TCE)  
*Amendement IV / 5 (Olesky)*
- Intégrer cette disposition dans l'article 1er du traité constitutionnel  
*Amendement IV / 4 (Hübner)*

#### II. LISTE DES AMENDEMENTS

*IV / 1 (ABITBOL)  
IV / 2 (HAIN)  
IV / 3 (KIRKHOPE)  
IV / 4 (HÜBNER)  
IV / 5 (OLESKY)  
IV / 6 (HEATHCOAT-AMORY)  
IV / 7 (EARL OF STOCKTON)*

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## **FICHE D'ANALYSE DES PROPOSITIONS D'AMENDEMENTS**

### **ARTICLE 4 bis (4 ter, ...)**

#### ***NOUVELLE DISPOSITION***

##### **I. EXAMEN DES AMENDEMENTS PAR THÈME :**

- Disposition sur la primauté du droit de l'Union (principe autonome ne concernant pas seulement l'attribution des compétences) -

*Amendement IV bis / 8 (Brok + 15 conventionnels PPE)*

*Amendement IV bis / 2 (Kiljunen et Vanhanen)*

*Amendement IV bis / 3 (Tiilikainen et Peltomaki)*

*Amendement IV bis / 4 (Figel)*

*Amendement IV bis / 5 (Rupel)*

*Amendement IV bis / 6 (Wittbrodt, Fogler)*

*V. aussi : Amendement III ..... (Membres belges de la Convention)*

- Disposition sur le principe de coopération loyale (principe autonome ne concernant pas seulement l'attribution des compétences)

*Amendement IV bis / 9 (Brok + 15 conventionnels PPE)*

*Amendement IV bis / 3 (Tiilikainen et Peltomaki)*

*Amendement IV bis / 4 (Figel)*

*Amendement IV bis / 6 (Wittbrodt, Fogler)*

- Nouvelle clause de solidarité (défense collective ou autre circonstances)

*Amendement IV bis / 10 (Brok + 15 conventionnels PPE)*

*Amendement IV bis / 4 (Figel)*

*Amendement IV bis / 6 (Wittbrodt, Fogler)*

*Amendement IV bis / 7 (Costa, Eduarda Azevedo, d'Oliveira Martins, Nazaré Pereira)*

- Intégrer nouvel article relatif à une base juridique pour établir le régime linguistique des institutions

*Amendement IV-bis / 1 (Lopes)*

*Voir aussi Amendement VII (2) / 7 (Pieters)*

I. **LISTE DES AMENDEMENTS**

*IV bis / 1 (LOPES)*  
*IV bis / 2 (KILJUNEN ET VANHANEN)*  
*IV bis / 3 (TIILIKAINEN ET PELTOMAKI)*  
*IV bis / 4 (FIGEL)*  
*IV bis / 5 (RUPEL)*  
*IV bis / 6 (WITTBRODT, FOGLER)*  
*IV bis / 7 (COSTA, EDUARDA AZEVEDO, D'OLIVEIRA MARTINS, NAZARÉ PEREIRA)*  
*IV bis / 8 (BROK + 15 CONVENTIONNELS PPE)*  
*IV bis / 9 (BROK + 15 CONVENTIONNELS PPE)*  
*IV bis / 10 (BROK + 15 CONVENTIONNELS PPE)*

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## **FICHE D'ANALYSE DES PROPOSITIONS D'AMENDEMENTS**

### **ARTICLE 5 § 1**

#### **ARTICLE 5: Droits fondamentaux**

*Art. 5 § 1 « La Charte des Droits Fondamentaux fait partie intégrante de la Constitution. La Charte figure [dans la deuxième partie de / dans un protocole annexé à] de celle-ci. »*

#### **I. EXAMEN DES AMENDEMENTS PAR THÈME :**

- **Intégrer le contenu de la Charte dans le titre I, ou au titre II de la Constitution**  
*Amendement V(1) / 8 (membres lithuaniens de la Convention : Andriukaitis, Gricius, Jusys, Martikonis)*  
*Amendement V(1) / 29 (Meyer) : (y compris le préambule)*  
*Amendement V(1) / 38 (Brok + 15 conventionnels PPE)*  
*Amendement V(1) / 41 (Santer, Helminger, Fayot)*  
*Amendement V(1) / 44 (Severin)*
- **Intégrer la Charte comme première partie de la Constitution**  
*Amendement V(1) / 9 (Farnleitner)*  
*Amendement V(1) / 11 (Muscardini)*  
*Amendement V(1)/ 18 (Teufel) + ajouter un nouveau paragraphe précisant que les droits fondamentaux ne modifient pas les compétences.*  
*Amendement V(1) 14 (Kaufmann)*  
*Amendement V(1) 34 (Fischer)*
- **Intégrer la Charte comme deuxième partie de la Constitution (= Partie 1 bis)**  
*Amendement V(1)/1 (Borrell + 2 conv.)*  
*Amendement V(1) / 4 (Membres socialistes du Parlement européen : Duhamel, McAvan, Marinho, Van Lancker, Hänsh, Beres, Carnero, Paciotti, Thorning/Schmidt-*  
*Amendement V(1) / 11 bis (Puwak)*  
*Amendement V(1) / 12 (Membres belges de la Convention : Michel, de Gucht, di Rupo, Van Lancker, Chevalier, Nagy)*  
*Amendement V(1) / 16 (Olesky)*  
*Amendement V(1) / 17 (Voggenhuber, Lichtenberger)*  
*Amendement V(1) / 22 (Palacio)*  
*Amendement V(1) / 28 (Cushnahan)*  
*Amendement V(1) / 30 (Hübler), + formule plus solennelle*  
*Amendement V(1) / 35 (Giannakou)*  
*Amendement V(1) / 42 (Lequiller) : suppression des dispositions redondantes*  
*Amendement V(1) / 45 (Dini)*  
*Amendement V(1) 46 (Duff, Rupel, Helminger, MacLennan, Szent-Ivanyi) : second chapter of part one.*



## Intégrer la Charte comme protocole

*Amendement V(1)/2 (Kroupa)*

*Amendement V(1) / 10 (Roche)*

*Amendement V (1) / 13 (Kiljunen et Vanhanen)*

*Amendement V (1) / 15 (Tiliikainen et Peltomaki)*

*Amendement V (1) / 20 (Schlüter)*

*Amendement V (1) /25 (Membres lettons de la Convention : Kalniete, etc.)*

*Amendement V (1) / 27 (Hjelm-Wallen, Lekberg, Lennmarker, Petersson et Kvist)*

*Amendement V (1) / 24 (Korcok)*

*Amendement V (1) / 31 (Fini)*

*Amendement V (1) / 33 (Oguz)*

- La charte "est" partie intégrante de la Constitution (sans préciser l'emplacement)

*Amendement V (1) / 3 (Haenel, Badinter)*

*Amendement V (1) / 19 (Figel) : "shall be an integral part"*

*Amendement V (1) / 23 (Svensson)*

- Autre formule : "Les droits fondamentaux de l'Union européenne sont énoncés dans la Charte..."

*Amendement V(1) / 4 (Membres socialistes du Parlement européen : Duhamel, McAvan, Marinho, Van Lancker, Hänsch, Beres, Carnero, Paciotti, Thorning-Schmidt-*

- Autre formule : "L'Union respecte la charte des droits fondamentaux annexée au présent traité et la CEDH"

*Amendement V (1) et (2) / 5 (Abitbol)*

- Autre formule : "Le traité constitutionnel fait référence à la Charte des droits fondamentaux"

*Amendement V (1) / 6 (Muscardini)*

- Autre formule : reprendre l'article 51, § 1 de la Charte

*Amendement V (1) / 32 (Katiforis)*

- Autre formule : "L'Union reconnaît les droits, libertés et principes établis dans la charte des droits fondamentaux...;"

*Amendement V (1) / 39 (Costa, Eduarda Azevedo, d'Oliveira Martins, Nazaré Pereira)*

*Amendement V (1) / 20 (Schlüter) : "L'Union respecte..."*

- Rejet de l'expression "la Charte fait partie intégrante de la Constitution"

*Amendement V (1) / 7 (Hain)*

*Amendement V (1) / 37 (Tomlinson)*

*Amendement V (1) / 20 (Schlüter) : "L'Union respecte..."*

- Prévoir renvoi préjudiciel sur base de la Charte

*Amendement V (1) / 21 (Giberyen)*

**Modifier référence à "constitution" par "traité constitutionnel"**

*Amendement V (1) / 25 (Membres lettons de la Convention : Kalniete, etc.)*

*Amendement V (1) / 21 (Giberyen)*

*Amendement V (1) / 24 (Korcok). Voir aussi Amendement V (2) / 24*

*Amendement V (1) / 20 (Schlüter)*

**- Supprimer (pour ne pas conférer de valeur juridique à la Charte)**

*Amendement V (1) / 26 (Heathcoat-Amory)*

*Amendement V (1) / 40 (Kirkhope))*

**- Intégration de la Charte à condition qu'elle ne procure pas de droits contre leur gouvernements**

*Amendement V (1) / 36 (de Bruin, van Dijk)*

*Amendement V (1) / 43 (Fini) : application dans la mesure de la compatibilité avec l'ordre juridique des États membres.*

**II. LISTE DES AMENDEMENTS**

*V (1) / 1 (BORRELL + 2 CONV.)*

*V (1) / 2 (KROUPA)*

*V (1) / 3 (HAENEL, BADINTER)*

*V (1) / 4 (MEMBRES SOCIALISTES DU PARLEMENT EUROPÉEN : DUHAMEL,*

*MCAVAN, MARINHO, VAN LANCKER, HÄNSH, BERES, CARNERO,*

*PACIOTTI, THORNING/SCHMIDT-*

*V (1) ET (2) / 5 (ABITBOL)*

*V (1) / 6 (MUSCARDINI)*

*V (1) / 7 (HAIN)*

*V (1) / 8 (MEMBRES LITHUANIENS DE LA CONVENTION : ANDRIUKAITIS, GRICIUS, JUSYS, MARTIKONIS)*

*V(1) / 9 (FARNLEITNER)*

*V (1) / 10 (ROCHE)*

*V(1) / 11 (MUSCARDINI)*

*V (1) / 11 BIS (PUWAK)*

*V (1) / 12 (MEMBRES BELGES DE LA CONVENTION : MICHEL, DE GUCHT, DI RUPO, VAN LANCKER, CHEVALIER, NAGY)*

*V (1) / 13 (KILJUNEN ET VANHANEN)*

*V (1) / 14 (KAUFMANN)*

*V (1) / 15 (TIIKKAINEN ETPELTOMAKI)*

*V (1) / 16 (OLESKY)*

*V (1) / 17 (VOGGENHUBER, LICHTENBERGER)*

*V (1) / 18 (TEUFEL)*

*V (1) / 19 (FIGEL)*

*V (1) / 20 (SCHLÜTER)*

*V (1) / 21 (GIBERYEN)*

*V (1) / 22 (PALACIO)*

*V (1) / 23 (SVENSSON)*

*V (1) / 24 (KORCOK)*  
*V (1) / 25 (MEMBRES LETTONS DE LA CONVENTION : KALNIETE, ETC.)*  
*V (1) / 26 (HEATHCOAT-AMORY)*  
*V (1) / 27 (HJELM-WALLEN, LEKBERG, LENNMARKER, PETERSSON ET KVIST)*  
*V (1) / 28 (CUSHNAHAN)*  
*V (1) / 29 (MEYER)*  
*V (1) / 30 (HÜBNER)*  
*V (1) / 31 (FINI)*  
*V (1) / 32 (KATIFORIS)*  
*V (1) / 33 (OGUZ)*  
*V (1) / 34 (FISCHER)*  
*V (1) / 35 (GIANNAKOU)*  
*V (1) / 36 (DE BRUIN, VAN DIJK)*  
*V (1) / 37 (TOMLINSON)*  
*V (1) / 38 (BROK + 15 CONVENTIONNELS PPE)*  
*V (1) / 39 (COSTA, EDUARDA AZEVEDO, D'OLIVEIRA MARTINS, NAZARÉ PEREIRA)*  
*V (1) / 40 (KIRKHOPE))*  
*V (1) / 41 (SANTER, HELMINGER, FAYOT)*  
*V (1) / 42 (LEQUILLER)*  
*V (1) / 43 (FINI)*  
*V (1) / 44 (SEVERIN)*  
*V (1) / 45 (DINI)*  
*V (1) / 46 (DUFF)*

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## **FICHE D'ANALYSE DES PROPOSITIONS D'AMENDEMENTS**

### **ARTICLE 5 § 2**

#### **ARTICLE 5: Droits fondamentaux**

*Art. 5 § 2 « L'Union peut adhérer à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales. L'adhésion à cette Convention ne modifie pas les compétences de l'Union telles que définies par la présente Constitution. »*

#### **I. EXAMEN DES AMENDEMENTS PAR THÈME :**

- **Etendre la compétence de l'Union de conclure d'autres accords internationaux en matière de droits de l'homme**

*Amendement V (2) / 2 (Söderman)*

*Amendement V (2) / 7 (Membres belges de la Convention : Michel, de Gucht, di Rupo, Van Lancker, Chevalier, Nagy)*

*Amendement (V) 2 / 8 (Paciotti)*

*Amendement V (2) / 10 (Kaufmann) + intervertir les paragraphes 2 et 3*

*Amendement V (2) / 11 (Voggenhuber, Lichtenberger)*

*Amendement (V) 2 / 21 (Mac Cormick)*

*Amendement V (2) 30 (Duff, Rupel, Helminger, MacLennan, Szent-Ivanyi)*

- **Ajouter un nouveau paragraphe permettant l'adhésion de l'Union à d'autres conventions établies dans le cadre du Conseil de l'Europe**

*Amendement V (2)/ 1 (Eckstein-Kovacs)*

*Amendement V (2)/ 22 (Szajer))*

- **Supprimer car la personnalité juridique de l'Union suffit.**

*Amendement V (2) / 3 (Haenel et Badinter)*

*Amendement V(2) / 4 (Membres socialistes du Parlement européen : Duhamel, McAvan, Marinho, Van Lancker, Hänsch, Beres, Carnero, Paciotti, Thorning-Schmidt-*

Commentaire : La jurisprudence de la Cour requiert une attribution explicite de compétence pour que l'Union puisse adhérer à la CEDH

- **Préciser dans un paragraphe distinct que ni l'adhésion à la CEDH, ni la Charte n'affecte les compétences de l'Union**

*Amendement V (2) / 5 (Lennmarker)*

Voir aussi : *Amendement V(1) / 10 (Roche)*

*Amendement V (1) 18 (Teufel)*

Commentaire : Une telle disposition figure déjà à l'article 51, § 1 de la Charte

- Changer "modifier" ("affect") par "extend" ("étendre")
  - Amendement V (2) / 6 (Hain)*
  - Amendement V (2) / 28 (Tomlinsson)*
- Ajouter ou remplacer par "n'affecte pas le partage des compétences entre l'Union et ses États membres"
  - Amendement V (2) / 12 (Teufel)*
  - Amendement V (2) / 27 (Oguz)*
- Base juridique à intégrer dans la seconde partie du traité constitutionnel, ou dans les dispositions finales
  - Amendement V (2) / 8 bis (De Villepin)*
  - Amendement V (2) / 23 (Hübner)*
- Autre formule plus impérative : "The Union shall take the necessary steps to accede..."; etc.
  - Amendement V (2) / 9 (Kiljunen et Vanhanen)*
  - Amendement V (2) / 14 (Svensson)*
  - Amendement V (2) / 20 (Hjelm-Wallen, Petersson, Lekberg, Lennmarker, Kvist) : "The Union shall seek accession..."*
  - Amendement V (2) / 16 (Van der Linden, Timmermans, Van Eekelen, van Dijk) : "The Union wants to accede..."*
  - Amendement V (2) / 17 (Tiliikainen et Peltomaki)*
  - Amendement V (2) / 18 (Arabadjiev) : "The Union shall accede..."*
  - Amendement V (2) / 26 (Brok + 15 conventionnels PPE) : "The Union shall request to accede..."*
- Supprimer
  - Amendement V (2) / 19 (Giberyen)*
  - Amendement V (2) / 25 (Heathcoat-Amory)*

*Voir : Amendement V (1) / 40 (Kirkhope - sans explication)*
- Modification linguistique
  - Amendement V (2) / 29 (Duhamel)*
  - Amendements V (2) / 13 (Schlüter) et V (2) / 24 (Korčok) : "Constitution" devient "Traité constitutionnel".*

## II. LISTE DES AMENDEMENTS

*V (2) / 1 (ECKSTEIN-KOVACS)*  
*V (2) / 2 (SÖDERMAN)*  
*V (2) / 3 (HAENEL ET BADINTER)*  
*V (2) / 4 (MEMBRES SOCIALISTES DU PARLEMENT EUROPÉEN : DUHAMEL, MCAVAN, MARINHO, VAN LANCKER, HÄNSH, BERES, CARNERO, PACIOTTI, THORNING-SCHMIDT)*  
*V (2) / 5 (LENNMARKER)*  
*V (2) / 6 (HAIN)*

*V (2) / 7 (MEMBRES BELGES DE LA CONVENTION : MICHEL, DE GUCHT, DI RUPO,  
VAN LANCKER, CHEVALIER, NAGY)*  
*(V)2 / 8 (PACIOTTI)*  
*V (2) / 8 BIS (DE VILLEPIN)*  
*V (2) / 9 (KILJUNEN ET VANHANEN)*  
*V (2) / 10 (KAUFMANN)*  
*V (2) / 11 (VOGGENHUBER, LICHTENBERGER)*  
*V (2) / 12 (TEUFEL)*  
*V (2) / 13 (SCHLÜTER)*  
*V (2) / 14 (SVENSSON)*  
*V (2) / 16 (VAN DER LINDEN, TIMMERMANS, VAN EKELEN, VAN DIJK)*  
*V (2) / 17 (TIIKKAINEN ET PELTOMAKI)*  
*V (2) / 18 (ARABADJIEV)*  
*V (2) / 19 (GIBERYEN)*  
*V (2) / 20 (HJELM-WALLEN, PETERSSON, LEKBERG, LENNMARKER, KVIST)*  
*(V) 2 / 21 (MAC CORMICK)*  
*V (2)/ 22 (SZAJER)*  
*V (2) / 23 (HÜBNER)*  
*V (2) / 24 (KORČOK)*  
*V (2) 25 (HEATHCOAT-AMORY)*  
*V (2) / 26 (BROK + 15 CONVENTIONNELS PPE)*  
*V (2) / 27 (OGUZ)*  
*V (2) / 28 (TOMLINSSON)*  
*V (2) / 29 (DUHAMEL)*  
*V (2) /30 (DUFF)*

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## FICHE D'ANALYSE DES PROPOSITIONS D'AMENDEMENTS

### ARTICLE 5 § 3

#### ARTICLE 5: Droits fondamentaux

*Art. 5 § 3 « Les droits fondamentaux, tels qu'ils sont garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et tels qu'ils résultent des traditions constitutionnelles communes aux Etats membres, font partie du droit de l'Union en tant que principes généraux. »*

##### I. EXAMEN DES AMENDEMENTS PAR THÈME :

- Supprimer car plus nécessaire avec l'intégration de la Charte dans le traité

*Amendement V(3) / 2 (Haenel et Badinter)*

*Amendement V(3) / 3 (Membres socialistes du Parlement européen : Duhamel, McAvan, Marinho, Van Lancker, Hänsch, Beres, Carnero, Paciotti, Thorning-Schmidt)*

*Amendement (V) (3) / 5 (Muscardini)*

*Amendement V (3) / 15 (Brok + 15 conventionnels PPE)*

*Amendement V (3) / 10-11 (Hübner)*

Voir aussi Amendemement V (1) / 16 (Olesky)

- Supprimer : ne pas formaliser ces principe jurisprudentiels communautaires pour éviter de l'étendre à la PESC

*Amendement V (3) / 4 (Hain)*

- Supprimer: "en tant que principes généraux"

*Amendement V(3)/1 (Borrell + 2 conv.)*

- Modifier "droit de l'Union" par "droit constitutionnel de l'Union" (*Verfassungsrechts der Union*)

*Amendement V (3) / 6 (Kaufmann) : + intervertir les paragraphes 2 et 3 de l'article 5.*

- Ajouter une référence à la Charte des droits fondamentaux (tout en supprimant la référence au paragraphe 1 de l'article 5)

*Amendement V (3) / 17 (de Bruijn, van Dijk)*

- Modifier en reproduisant les termes l'article 6, § 2 du TUE

*Amendement V (3) / 16 (Fischer) : + intervertir le deuxième et le troisième paragraphe de l'article 5 du traité constitutionnel*

- Supprimer

*Amendement V (3) / 12-13 (Heathcoat-Amory)*

Voir Amendement V (1) / 40 (Kirkhope)

### **Interversion des paragraphes**

*Amendement V (3) / 7 (Teufel) : voir V (2) / 12 (Teufel)*

*Amendement V (3) / 8 (Giberyen)*

- **Ajouter un quatrième paragraphe concernant le droit des enfants**

*Amendement V (3) / 14 (Muscardini)*

- **Préciser les relations entre la Cour de justice et la Cour européenne des droits de l'Homme**

*Amendement V (3) / 9 (Balazs)*

Commentaire: Cette disposition s'inspire largement l'article 6, § 2 du TUE actuel.

## **II. LISTE DES AMENDEMENTS**

*V (3) / 1 (BORRELL + 2 CONV.)*

*V (3) / 2 (HAENEL ET BADINTER)*

*V(3) / 3 (MEMBRES SOCIALISTES DU PARLEMENT EUROPÉEN : DUHAMEL, MCAVAN, MARINHO, VAN LANCKER, HÄNSH, BERES, CARNERO, PACIOTTI, THORNING-SCHMIDT)*

*V (3) / 4 (HAIN)*

*(V) (3) / 5 (MUSCARDINI)*

*V (3) / 6 (KAUFMANN)*

*V (3) / 7 (TEUFEL)*

*V (3) / 8 (GIBERYEN)*

*V (3) / 9 (BALAZS)*

*V (3) / 10-11 (HÜBNER)*

*V (3) / 12-13 (HEATHCOAT-AMORY)*

*V (3) / 14 (MUSCARDINI)*

*V (3) / 15 (BROK + 15 CONVENTIONNELS PPE)*

*V (3) / 16 (FISCHER)*

*V (3) / 17 (DE BRUIJN, VAN DIJK)*

*V (3) / 18 (DUFF)*

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## FICHE D'ANALYSE DES PROPOSITIONS D'AMENDEMENTS

### ARTICLE 6

#### ARTICLE 6: Non-discrimination en raison de la nationalité

*« Dans le domaine d'application de la présente Constitution, et sans préjudice des dispositions particulières qu'elle prévoit, est interdite toute discrimination exercée en raison de la nationalité. »*

#### I. EXAMEN DES AMENDEMENTS PAR THÈME :

- Ajouter, comme critères de discrimination interdites, "sex, race, ethnic or social origin, religion, sexual orientation, disability or age"  
*Amendement VI/1 (Kristensen)*

Ajouter un nouveau paragraphe ou nouvelle phrase similaire pour d'autres raisons de discriminations interdites, "sexe, race ou origine ethnique, religion ou les convictions, handicap, âge ou orientation sexuelle

*Amendement VI / 2 (Eckstein-Kovacs)*

*Amendement VI /17 (Cushnahan)*

*Amendement VI (18) (Mc Cormick)*

*Amendement VI (26) (Sigmund, Briesch et Frerichs - Observateurs)*

*Amendement VI (32) (Tajani)*

- Ajouter, comme critère de discrimination interdite, le sexe  
*Amendement VI / 3 (Dykbjaer)*

- Ajouter "et du handicap"

*Amendement VI / 7 (Muscardini)*

- Supprimer l'article 6 car il figure déjà dans la charte des droits fondamentaux (art. 21, § 2 de la Charte). Impression erronée que le traité n'interdit qu'un type de discrimination.

*Amendement VI / 28 (Brok + 15 conventionnels PPE)*

*Amendement VI / 5 (Membres socialistes du Parlement européen : Duhamel, McAvan, Marinho, Van Lancker, Hänsch, Beres, Carnero, Paciotti, Thorning-Schmid)*

*Amendement VI / 12 (Membres belges de la Convention : Michel, de Gucht, di Rupo, Van Lancker, Chevalier, Nagy)*

*Amendement VI/4 (Haenel et Badinter)*

*Amendement VI / 9 (Farleitner)*

*Amendement VI / 13 (Paciotti)*

*Amendement VI / 15 (Kaufmann)*

*Amendement VI / 16 (Hubner)*

*Amendement VI / 19 (Oleksy)*

*Amendement VI / 20 (Voggenhuber, Lichtenberger)*

*Amendement VI / 23 (Figel)*

*Amendement VI / 25 (Serracino-Inglott, Inguanez)  
Amendement VI / 27 (Frendo)  
Amendement VI / 29 (Dolores Cristina)  
Amendement VI / 30 (Fischer)  
Amendement VI / 31 (Katiforis) : conséquence de l'intégration éventuelles des articles de la Charte au titre II du traité constitutionnel*

- **En revanche, un Conventionnel insiste pour conserver l'article 6**  
*Amendement VI / 11 (Vassiliou)*
- **Préciser dans l'article 6 qu'il s'agit uniquement de non discrimination entre les ressortissants nationaux des États membres, ou intégrer cet article dans l'article 7 sur la citoyenneté**  
*Amendement VI / 8 (Hain)  
Amendement VI / 10 (Roche)  
Amendement VI / 21 (Palacio) : article 7§ 2*
- **Nouvel article 6 : renvoi aux droits ouverts par la citoyenneté européenne**  
*Amendement VI / 6 (Abitbol)*
- **Ajouter : "all persons shall be equal before the law" (au lieu de figurer à l'article 7, § 1)**  
*Amendement VI / 14 (Kiljunen et Vanhanen) : le principe d'égalité devant la loi ne concerne pas que les citoyens.*
- **Préciser à la fin de l'article : "... à l'exception de l'exercice de droits liés directement à la souveraineté de l'État membre concerné**  
*Amendement VI / 33 (Giberyen)*
- **Supprimer l'article ("conséquences inconsidérées")**  
*Amendement VI / 22 (Heathcoat-Amory)-*
- **Modifier "Constitution" par "traité simplifié" ("simplifying treaty"), et ajouter "wherever reasonable and possible")**  
*Amendement VI / 24 (Kirkhope)*

## II. LISTE DES AMENDEMENTS

*VI / 1 (KRISTENSEN)  
VI / 2 (ECKSTEIN-KOVACS)  
VI / 3 (DYKBJAER)  
VI / 4 (HAENEL ET BADINTER)  
VI / 5 (MEMBRES SOCIALISTES DU PARLEMENT EUROPÉEN : DUHAMEL, MCAVAN, MARINHO, VAN LANCKER, HÄNSH, BERES, CARNERO, PACIOTTI, THORNING-SCHMID)  
VI / 6 (ABITBOL)  
VI / 7 (MUSCARDINI)  
VI / 8 (HAIN) VI / 9 (FARLEITNER)*

*VI / 10 (ROCHE)  
VI / 11 (VASSILIOU)  
VI / 12 (MEMBRES BELGES DE LA CONVENTION : MICHEL, DE GUCHT, DI RUPO,  
VAN LANCKER, CHEVALIER, NAGY)  
VI / 13 (PACIOTTI)  
VI / 14 (KILJUNEN ET VANHANEN)  
VI / 15 (KAUFMANN)  
VI / 16 (HUBNER)  
VI / 17 (CUSHNAHAN)  
VI / 18 (MC CORMICK)  
VI / 19 (OLEKSY)  
VI / 20 (VOGGENHUBER, LICHTENBERGER)  
VI / 21 (PALACIO) : ARTICLE 7§ 2  
VI / 22 (HEATHCOAT-AMORY)  
VI / 23 (FIGEL)  
VI / 24 (KIRKHOPE)  
VI / 25 (SERRACINO-INGLOTT, INGUANEZ)  
VI / 26 (SIGMUND, BRIESCH ET FRERICHS - OBSERVATEURS)  
VI / 27 (FRENDO)  
VI / 28 (BROK + 15 CONVENTIONNELS PPE)  
VI / 29 (DOLORES CRISTINA)  
VI / 30 (FISCHER)  
VI / 31 (KATIFORIS)  
VI / 32 (TAJANI)  
VI / 33 (GIBERYEN)*

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## FICHE D'ANALYSE DES PROPOSITIONS D'AMENDEMENTS

### ARTICLE 7 § 1

#### ARTICLE 7 : La citoyenneté de l'Union

*Art. 7 § 1 « Possède la citoyenneté de l'Union toute personne ayant la nationalité d'un Etat membre. La citoyenneté de l'Union s'ajoute à la citoyenneté nationale et ne la remplace pas. Toutes les citoyennes et tous les citoyens de l'Union sont égaux devant la loi. »*

#### I. EXAMEN DES AMENDEMENTS PAR THÈME :

- Suppression de la seconde phrase (notamment car redondance art. 20 de la Charte)  
*Amendement VII (1) / 2 (Membres socialistes du Parlement européen : Duhamel, McAvan, Marinho, Van Lancker, Hänsch, Beres, Carnero, Paciotti, Thorning-Schmid)  
Amendement VII (1) / 5 (Paciotti)  
Amendement VII (1) / 6 (Kiljunen et Vanhanen)  
Amendement VII (1) / 7 (Kaufmann)  
Amendement VII (1) / 10-11 (Mc Lennan)  
Amendement VII (1) / 12 (Korcok)  
Amendement VII (1) / 24 (Duff, Rupel, Helminger, Szent-Ivanyi)*
- Supprimer car redondance avec la Charte  
*Amendement VII (1) / 3 (Farnleitner) : Autrement, préciser que l'égalité des citoyennes et citoyens sont égaux "dans le champ d'application de la Constitution"  
Amendement VII (1) / 23 (Oleksey)*
- Préciser "...égaux devant toutes les lois de l'Union et de ses États membres"  
*Amendement VII (1) / 4 (Lamassoure)*
- Préciser "égalité devant la loi" : loi nationale ou lois européennes (dans le champs d'application de la Constitution) ?  
*Amendement VII (1) / 8-9 (Kohout)*
- Supprimer toute la troisième phrase  
*Amendement VII (1) / 19 (kiljunen, Vanhanen)  
Amendement VII (1) / 20 (Figel)  
Amendement VII (1) / 21 (Fischer)  
Amendement VII (1) / 22 (Brok + 13 conventionnels)  
Amendement VII (1) / 24 (Duff, Rupel, Helminger, Szent-Ivanyi)*
- Remplacer la référence aux citoyennes et citoyens par "Tous les citoyens"  
*Amendement VII (1) / 10-11 (Mc Lennan)  
Amendement VII (1) / 15 (Tiliikainen et Peltomaki)*

- Ajouter un paragraphe reprenant l'article 6 proposé sur la non discrimination sur base de la nationalité

*Voir aussi : Amendement VII (2) 13 (Palacio)  
Amendement VII (2) / 5 (Roche)*

- Ajouter la possibilité de citoyenneté européenne après 5 années de résidence  
*Amendement VII (1) 5 (Paciotti).  
Amendement VII (1) / 7 (Kaufmann)  
Amendement VII (1) / 18 (Ben Fayot, Di Rupo).*
- *Voir aussi :* Amendement VII (2) / 6 (Beres, Duhamel, Floch, Paciotti, Van Lancker).  
*Amendement VII (2) / 12 (Borrell + 2 conv.) : nouveau Art. 7, § 4.*
- Extension de la citoyenneté aux réfugiés et apatrides  
*Amendement VII (1) / 13 (Voggenhuber, Lichtenberger)*
- Suppression de l'article (citoyenneté et un attribut de l'Etat)  
*Amendement VII (1) 16 (Heathcoat-Amory)  
Amendement VII (1) 17 (Gyberyen)*
- Modifications rédactionnelles  
*Amendement VII (1) / 1 (Haenel et Badinter) : (plus proche de l'art. 17 TCE actuel)  
Amendement VII (1) / 14 (Kirkhope)*

## II. LISTE DES AMENDEMENTS

*VII (1) / 1 (HAENEL ET BADINTER)  
VII (1) / 2 (Membres socialistes du Parlement européen : DUHAMEL, MCAVAN, MARINHO, VAN LANCKER, HÄNSH, BERES, CARNERO, PACIOTTI, THORNING-SCHMID)  
VII (1) / 3 (FARNLEITNER)  
VII (1) / 4 (LAMASSOURE)  
VII (1) / 5 (PACIOTTI)  
VII (1) / 6 (KILJUNEN ET VANHANEN)  
VII (1) / 7 (KAUFMANN)  
VII (1) / 8-9 (KOHOUT)  
VII (1) / 10-11 (MC LENNAN)  
VII (1) / 12 (KORČOK)  
VII (1) / 13 (VOGGENHUBER, LICHTENBERGER)  
VII (1) / 14 (KIRKHOPE)  
VII (1) / 15 (TILIKAINEN ET PELTOMAKI)  
VII (1) 16 (HEATHCOAT-AMORY)  
VII (1) 17 (GYBERYEN)  
VII (1) / 18 (BEN FAYOT, DI RUPO).*

*VII (1) / 19 (KILJUNEN, VANHANEN)*  
*VII (1) / 20 (FIGEL)*  
*VII (1) / 21 (FISCHER)*  
*VII (1) / 22 (BROK + 13 CONVENTIONNELS)*  
*VII (1) / 23 (OLEKSY)*  
*VII (1) / 24 (DUFF)*

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## **FICHE D'ANALYSE DES PROPOSITIONS D'AMENDEMENTS**

### **ARTICLE 7 § 2**

#### **ARTICLE 7 : La citoyenneté de l'Union**

*Art. 7 § 2 « Les citoyennes et citoyens de l'Union jouissent des droits et sont soumis aux devoirs prévus par la présente Constitution. Ils ont:*

- *le droit de circuler et de séjourner librement sur le territoire des Etats membres;*
- *le droit de vote et d'éligibilité aux élections au Parlement européen ainsi qu'aux élections municipales dans l'Etat membre où ils résident, dans les mêmes conditions que les ressortissants de cet Etat;*
- *le droit de bénéficier, sur le territoire d'un pays tiers où l'Etat membre dont ils sont ressortissants n'est pas représenté, de la protection des autorités diplomatiques et consulaires de tout Etat membre dans les mêmes conditions que les nationaux de cet Etat;*
- *le droit de pétition devant le Parlement européen, de s'adresser au médiateur de l'Union, ainsi que d'écrire aux institutions et aux organes consultatifs de l'Union dans une des langues de l'Union et de recevoir une réponse dans la même langue. »*

#### **I. EXAMEN DES AMENDEMENTS PAR THÈME :**

- **Supprimer car double emploi avec la charte**

*Amendement VII(2) / 2 (Haenel et Badinter.)  
Amendement VII (2) / 4 (Farnleitner)  
Amendement VII (2) / 10 (Kaufmann)  
Amendement VII (2) / 17 (Fischer)  
Amendement VII (2) / 19 (Tilikainen, Peltomäki) : sous forme de question  
Amendement VII (2) / 23 (Voggenhuber, Lichtenberger)  
Amendement VII (2) / 22 (Figel)  
Amendement VII (2) / 24 (Katiforis) : dans l'hypothèse de l'intégration des articles de la Charte dans le traité constitutionnel  
Amendement VII (2) / 25 (Brok + 13 conv.)  
Amendement VII (2) / 26 (Duff, Rupel, Helminger, Szent-Ivanyi)*

*Voir aussi : Amendement VII (1) / 23 (Oleksy)*

- **Supprimer car double emploi avec la Charte, mais faire référence à la Charte, ou le cas échéant, la deuxième partie du traité constitutionnel**
- Amendement VII(2) / 3 (Membres socialistes du Parlement européen : Duhamel, McAvan, Marinho, Van Lancker, Hänsch, Beres, Carnero, Paciotti, Thorning-Schmid)  
Amendement VII (2) / 6 (Beres, Duhamel, Floch, Paciotti, Van Lancker).  
Amendement VII (2) / 8 (Membres belges de la Convention : Michel, de Gucht, di Rupo, Van Lancker, Chevalier, Nagy)  
Amendement VII (2) / 9 (Paciotti)*

● **Remplacer par un paragraphe permettant une avancée vers le concept de "citoyenneté" de résidence**

*Amendement VII (2) / 6 (Beres, Duhamel, Floch, Paciotti, Van Lancker)*

*Dans le même sens, voir.*

*Amendement VII (2) / 12 (Borrell + 2 conv.) : nouveau Art. 7, § 4*

*Amendement VII (1) / 5 (Paciotti);*

*Amendement VII (1) / 7 (Kaufmann)*

- **Ajouter un droit au "référendum européen" et "initiative populaire européenne"**  
*Amendement VII(2) / 1 (Borrell + 2 conv.)*
- **Ajouter le droit à une bonne administration, a l'instar de l'art. 41 de la Charte**  
*Amendement VII (2) / 5 (Roche)*
- **Ajouter le droit à la protection judiciaire (+ référence à la Charte et modifications linguistiques)**  
*Amendement VII (2) / 14 (Maclennan)*
- **Préciser que le droit de pétition peut s'effectuer dans les langues de traduction du traité (art. 314)**  
*Amendement VII (2) / 5 (Roche)*
- **Remplacer le quatrième tiret afin d'étendre le droit à s'adresser aux institutions ainsi que d'avoir accès aux documents dans toutes les langues officielles de l'Union**  
*Amendement VII (2) / 7 (Pieters)*

*Voir aussi : Amendement IV bis / 1 (Lopes) :*

- **A quoi se réfère l'indication aux "devoirs" des citoyens ?  
Fusion des paragraphes 2 et 3.**  
*Amendement VII (2) / 11 (Kohout)*
- **Ajouter un paragraphe reprenant l'article 6 proposé sur la non discrimination sur base de la nationalité**  
*Amendement VII (2) / 13 (Palacio)*
- **Suppression des expressions "Citoyens de l'Union" et "Constitution"**  
*Amendement VII (2) / 20 (Heathcoat-Amory)*
- **Modifications linguistiques**  
*Amendement VII (2) / 15-16 (Fini)*  
*Amendement VII (2) /18 (Kirkhope) : remplacer "Union" par "Communauté", et "constitution" par "traité simplifié"*  
*Amendement VII (2) / 21 (Giberyen) : remplacer "Constitution" par traité constitutionnel*

## LISTE DES AMENDEMENTS

VII(2) / 1 (BORRELL + 2 CONV.)  
VII (2) / 2 (HAENEL ET BADINTER.)  
VII (2) / 3 (*Membres socialistes du Parlement européen : DUHAMEL, MCAVAN, MARINHO, VAN LANCKER, HÄNSH, BERES, CARNERO, PACIOTTI, THORNING-SCHMID*)  
VII (2) / 4 (FARNLEITNER)  
VII (2) / 5 (ROCHE)  
VII (2) / 6 (BERES, DUHAMEL, FLOCH, PACIOTTI, VAN LANCKER)  
VII (2) / 7 (PIETERS)  
VII (2) / 8 (*MEMBRES BELGES DE LA CONVENTION : MICHEL, DE GUCHT, DI RUPO, VAN LANCKER, CHEVALIER, NAGY*)  
VII (2) / 9 (PACIOTTI)  
VII (2) / 10 (KAUFMANN)  
VII (2) / 11 (KOHOUT)  
VII (2) / 12 (BORRELL + 2 conv.)  
VII (2) / 13 (PALACIO)  
VII (2) / 14 (MACLENNAN)  
VII (2) / 15-16 (FINI)  
VII (2) / 17 (FISCHER)  
VII (2) / 18 (KIRKHOPE)  
VII (2) / 19 (*TIILIKAINEN, PELTOMÄKI*) : SOUS FORME DE QUESTION  
VII (2) / 20 (HEATHCOAT-AMORY)  
VII (2) / 21 (GIBERYEN)  
VII (2) / 22 (FIGEL)  
VII (2) / 23 (VOGGENHUBER, LICHTENBERGER)  
VII (2) / 24 (KATIFORIS)  
VII (2) / 25 (BROK + 13 CONV.)  
VII (2) / 26 (DUFF, RUPEL, HELMINGER, SZENT-IVANYI)

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## **FICHE D'ANALYSE DES PROPOSITIONS D'AMENDEMENTS**

### **ARTICLE 7 § 3**

#### **ARTICLE 7 : La citoyenneté de l'Union**

*Art. 7 § 3 « Ces droits s'exercent dans les conditions et limites définies par la présente Constitution, et par les dispositions prises pour son application. »*

#### **I. EXAMEN DES AMENDEMENTS PAR THÈME :**

##### **- Supprimer car double emploi avec la charte**

*Amendement VII (3) / 1 (Haenel et Badinter.)*

*Amendement VII (3) / 2 (Membres socialistes du Parlement européen : Duhamel, McAvan, Marinho, Van Lancker, Hänsch, Beres, Carnero, Paciotti, Thorning-Schmid)*

*Amendement VII (3) / 3 (Membres belges de la Convention : Michel, de Gucht, di Rupo, Van Lancker, Chevalier, Nagy)*

*Amendement VII (3) / 4 (Paciotti)*

*Kaufmann VII (3) / 5 (Kaufmann)*

*Amendement VII (3) / 6 (Palacio) : dans l'hypothèse de l'intégration des articles de la Charte dans le traité constitutionnel*

*Amendement VII (3) / 10 (Voggenhuber, Lichtenberger)*

*Amendement VII (3) / 7 (Macleenan)*

*Amendement VII (3) / 15 (Figel)*

*Amendement VII (3) / 16 (Fischer)*

*Amendement VII (3) / 17 (Brok + 13 conventionnels)*

*Amendement VII (2) / 18 (Duff, Rupel, Helminger, Szent-Ivanyi)*

*Voir aussi : Amendement VII (1) / 23 (Oleksy)*

##### **- Énumération non limitative des droits des citoyens (ajouter "notamment")**

*Amendement VII (3) / 6 (Palacio)*

##### **- Référence à la loi européenne pour établir les limites aux droits**

*Amendement VII (3) / 8-9 (Fini)*

##### **- Ajouter " ... au niveau européen et national"**

*Amendement VII (3) / 14 (Earl of Stockton)*

##### **- Autres**

*Amendement VII (3) / 11-12 (Kirkhope) : changer "constitution" par "traité simplifié"*

*Amendement VII (3) / 13 (Giberyen) : changer "constitution" par "traité constitutionnel"*

## LISTE DES AMENDEMENTS

VII (3) / 1 (HAENEL ET BADINTER.)

VII (3) / 2 (Membres socialistes du Parlement européen : DUHAMEL, MCAVAN, MARINHO, VAN LANCKER, HÄNSH, BERES, CARNERO, PACIOTTI, THORNING-SCHMID)

VII (3) / 3 (Membres belges de la Convention : MICHEL, DE GUCHT, DI RUPO, VAN LANCKER, CHEVALIER, NAGY)

VII (3) / 4 (PACIOTTI)

VII (3) / 5 (KAUFMANN)

VII (3) / 6 (PALACIO)

VII (3) / 7 (MACLEENAN)

VII (3) / 8-9 (FINI)

VII (3) / 10 (VOGGENHUBER, LICHTENBERGER)

VII (3) / 11-12 (KIRKHOPE)

VII (3) / 13 (GIBERYEN)

VII (3) / 14 (EARL OF STOCKTON)

VII (3) / 15 (FIGEL)

VII (3) / 16 (FISCHER)

VII (3) / 17 (BROK + 13 CONVENTIONNELS)

VII (3) / 18 (DUFF)

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**FICHE D'ANALYSE DES PROPOSITIONS D'AMENDEMENTS**  
**A L'ARTICLE 8**

**TITRE III: Les compétences de l'Union**

**Article 8: Principes fondamentaux**

- "1. *La délimitation et l'exercice de compétences de l'Union sont régis par les principes d'attribution, de subsidiarité, de proportionnalité et de coopération loyale.*
2. *Selon le principe d'attribution, l'Union agit dans les limites des compétences qui lui sont attribuées par la Constitution en vue d'atteindre les objectifs qu'elle établit. Toute compétence non attribuée à l'Union par la Constitution appartient aux Etats membres.*
3. *Selon le principe de subsidiarité, dans les domaines qui ne relèvent pas de sa compétence exclusive, l'Union intervient seulement et dans la mesure où les objectifs de l'action envisagée ne peuvent pas être atteints de manière suffisante par les Etats membres, mais peuvent, en raison des dimensions ou des effets de l'action envisagée, être mieux obtenus au niveau de l'Union.*
4. *Selon le principe de proportionnalité, le contenu et la forme de l'action de l'Union n'excèdent pas ce qui est nécessaire pour atteindre les objectifs de la Constitution.*
5. *Selon le principe de coopération loyale, l'Union et les Etats membres se respectent et s'assistent mutuellement dans l'accomplissement des missions découlant de la Constitution."*

**I. EXAMEN DES AMENDEMENTS**

VIII(1)/1 HAIN : supprimer «the limits»

KIRKHOPE : remplacer «Union par» Communauté

VOGGENHUBER ET LICHTENBERGER : ajouter les principes de cohérence et d'intégration.

ERNANI : supprimer

VIII(2)/1 HAIN : Ajouter phrase spécifiant que les pouvoirs de l'Union découlent du transfert de compétences par les Etats membres.

Dans le même sens : ROCHE (VIII(2)/2)

ERNANI: ajouter phrase au début : «La délimitation des compétences de l'Union est régie par le principe d'attribution».



**KILJUNEN ET VANHANEN** : ajouter référence à la compétence externe de l'Union.

**VIII(3)/1 (BORRELL + 2 conv.)** : changement définition principe subsidiarité.  
Pas acceptable. Changement substantiel par rapport à la définition actuelle.

**VIII(3)/2 (HAIN)** : référence aux autorités régionales et locales  
Dans le même sens : **MCCORMICK** (VIII(3)/3), Farnleitner (VIII(3)/4).

**VIII(3)/5(Del Soc.: DUHAMEL et 8 autres)** : supprimer «seulement et».

**VILLEPIN** : remplacer «mais peuvent» par «et peuvent donc».

**VOGGENHUBER ET LICHTENBERGER** : ajouter phrase sur la possibilité pour les Etats membres de prendre des mesures en matière d'environnement.

**ERNANI** : ajouter une phrase au début : «L'exercice des compétences de l'Union est régie par les principes de subsidiarité, proportionnalité et coopération loyale». Ajouter un nouveau paragraphe sur la primauté du droit de l'Union.

**VOGGENHUBER ET LICHTENBERGER** : ajouter définition des principes de cohérence et d'intégration.

**VIII(5)-1 ROCHE** : rédaction plus détaillée du principe de coopération loyale.  
Pas nécessaire. Choix politique.  
Dans le même sens : **FARNLEITNER**

**PACCIOTTI ET SPINI** : ajouter une nouvelle phrase : Les Etats membres s'abstiennent de mesures contre les objectifs de l'Union.

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## FICHE D'ANALYSE DES PROPOSITIONS D'AMENDEMENTS

### A L'ARTICLE 9

#### Article 9: Application des principes fondamentaux

- "1. *La Constitution et le droit adopté par les Institutions de l'Union dans l'exercice des compétences qui lui sont attribuées par celle-ci ont la primauté sur le droit des États membres.*
2. *Dans l'exercice des compétences non exclusives de l'Union, les Institutions appliquent le principe de subsidiarité conformément au Protocole sur l'application des principes de subsidiarité et de proportionnalité annexé à la Constitution. La procédure prévue dans ce Protocole permet aux Parlements nationaux des États membres de veiller au respect du principe de subsidiarité.*
3. *Dans l'exercice des compétences de l'Union, les Institutions appliquent le principe de proportionnalité conformément à ce même Protocole.*
4. *Les États membres prennent toutes mesures générales ou particulières propres à assurer l'exécution des obligations découlant de la Constitution ou résultant des actes des Institutions de l'Union.*
5. *Conformément au principe de coopération loyale, les États membres facilitent à l'Union l'accomplissement de sa mission et s'abstiennent de toutes mesures susceptibles de mettre en péril la réalisation des buts de la Constitution. L'Union agit avec loyauté vis-à-vis des États Membres.*
6. *L'Union respecte l'identité nationale de ses États membres liée à leur structure fondamentale et aux fonctions essentielles d'un État, et notamment sa structure politique et constitutionnelle, y compris l'organisation des pouvoirs publics au niveau national, régional et local."*

#### I. EXAMEN DES AMENDEMENTS PAR THEME

##### 1. Amendements portant sur tout l'article

###### a) Supprimer l'article:

*Parti Lux. ADR, Tiliikainen et Peltomäki, Fischer (conformément à leurs amendements à l'article 8).*

###### b) Réduire l'article à l'obligation des États membres de prendre les mesures nécessaires à la réalisation de leurs obligations découlant de la Constitution:

*Olesky*

###### c) Réécriture complète:

*D. Cristina, Frendo, Serracino-Inglott et Inguanez*

**Amendements portant sur le paragraphe 1: primauté du droit de l'Union**

- a) Supprimer le paragraphe: Palacio, Farnleitner (en rapport à amendement à article 8),  
*Heathcoat-Amory, Kohout, Hain, Lopes.*
- b) Supprimer la référence au droit dérivé:  
*Lord Tomlinson:*
- c) Supprimer les mots "par celle-ci":  
*Duhamel, Paciotti et Spini.*
- d) Remplacer tout le paragraphe par
  - "Union law prevails over national law":  
*Brok et autres, Fayot, Korcok.*
  - "l'étendue des compétences attribuées à l'Union est déterminée par les dispositions de la Partie III":  
*Michel et autres.*
  - nouveau texte  
*Kaufmann:*
- e) Remplacer
  - "sur le droit" par "sur la législation":  
*Muscardini*
  - "The procedure" par "The political early-warning procedure":  
*Brok et autres*
  - Ajouter à la fin "dans la mesure où ils ne sont pas contraires aux dispositions constitutionnelles nationales":  
*Muscardini*
- f) Ajouter une première phrase sur la primauté de la Constitution sur le droit dérivé et les traités d'adhésion:  
*Berger*

**3. Amendements portant sur le paragraphe 2: principe de subsidiarité**

- a) Supprimer le paragraphe:  
*Kiljunen et Vanhanen, Hain, Kaufmann*
- b) Nouveau texte:  
*Heathcoat-Amory*
- c) Supprimer les mots "dans l'exercice des compétences non-exclusives":  
*Duff et autres, Paciotti et Spini*
- d) Supprimer la dernière phrase:  
*Michel et autres*
- e) Remplacer "to ensure compliance" par : "to convey early in the legislative process their view on the compliance of a legislative proposal":  
*Attalides*
- f) Supprimer
  - la dernière phrase:  
*Giannakou*
  - la limitation aux Parlements nationaux:  
*Mac Cormick*
- g) Ajouter
  - dans la dernière phrase le Comité des Régions à côté des Parlements nationaux:  
*McAvan*
  - dans la dernière phrase le Parlement européen à côté des Parlements nationaux:  
*Berès et autres*
  - "le droit de" devant ""veiller":  
*Azevedo et autres.*
- h) Fusionner les para. 2 et 3:  
*Kohout, Kiljunen et Vanhanen*

**4. Amendements portant sur le paragraphe 3: principe de proportionnalité**

- a) Supprimer le paragraphe: Kiljunen et Vanhanen, Hain, Paciotti et Spini, Kaufmann



#### **Amendements portant sur le paragraphe 4: mise en œuvre du droit de l'Union**

- a) Supprimer le paragraphe: Kiljunen et Vanhanen, Hain.
- b) Nouveau texte remplaçant les para. 4 et 5:  
*Kaufmann*
- c) Ajouter une réserve au cas où les actes de l'Union seraient contraires aux dispositions constitutionnelles des États membres :  
*Muscardini*
- d) Ajouter:
  - une référence au principe de coopération loyale:  
*Lopes.*
  - une dernière partie de phrase : pas de charges administratives supplémentaires pour les États membres:  
*Earl of Stockton*

#### **6. Amendements portant sur le paragraphe 5: principe de coopération loyale**

- a) Supprimer le paragraphe:  
*Lord Tomlinson, Hain, Paciotti et Spini, Lopes.*
- b) Limiter le texte à l'obligation d'abstention :  
*Kiljunen et Vanhanen*
- c) Supprimer la partie relative à l'obligation d'abstention par les Etats membres:  
*Earl of Stockton*
- d) Ajouter que les États membres ont le droit de ne pas participer aux décisions ou initiatives qui peuvent heurter leurs intérêts nationaux légitimes:  
*Muscardini*
- e) Ajouter une exception pour les États membres ayant voté contre:  
*Heathcoat-Amory*
- f) Ajouter à la fin une obligation pour l'Union de respecter les intérêts vitaux des États membres, etc:  
*Queiro*
- g) Supprimer la dernière phrase et remplacer par nouveau texte:  
*Heathcoat-Amory*

7. Amendements portant sur le paragraphe 6: respect de l'identité nationale

- a) Supprimer le paragraphe:  
*Kiljunen et Vanhanen*
- b) Remplacer le paragraphe par "the Union shall respect the political and constitutional structures of the Member States, including the organisation of public administration at national, regional and local level":  
*Duff et autres, Paciotti et Spini.*
- c) Nouveaux textes:  
référence aux langues, statut des Eglises et organisations non confessionnelles.  
*Brok et autres:*  
*Heathcoat-Amory,*  
*Kaufmann.*
- d) Le déplacer afin d'en faire le premier paragraphe:  
*Hjelm-Wallén*
- e) Supprimer :
  - "liée à leur structure fondamentale et aux fonctions essentielles d'un Etat":  
*Haenel et Badinter*
  - "liée à" et remplacer "et notamment" par "en particulier":  
*Fini*
  - "nationale" :  
*Szajer*
  - "et notamment sa structure politique et constitutionnelle":  
*Giannakou*
- f) Ajouter
  - "leur souveraineté" après "lié à": *Lord Tomlinson, Muscardini, Hain.*
  - une référence aux compétences régionales et communales:  
*Teufel*
  - le respect de la diversité culturelle, linguistique et territoriale des Etats membres:  
*McAvan, Figel*
  - le respect de l'intégrité territoriale:  
*Korcok et autres.*
  - obligation de l'Union de respecter le principe de subsidiarité dans les matières culturelles et éthiques:  
*Figel*

- respect du droit constitutionnel des Etats membres.  
*Costa et autres*
- "au niveau territorial" (?):  
*Muscardini*
- à la fin: "*and their responsibilities for the maintenance of law and order and for national security*":  
*Hain*

#### 8. Ajout de paragraphes nouveaux:

- Relatif au respect par l'Union des Eglises et religions:  
*Einem*
- Cartes jaunes et rouges pour les Parlements nationaux:  
*Heathcoat-Amory*

#### II. AUTRES AMENDEMENTS

- Remplacer le mot "*the Constitution*" par "*the Treaty*":  
*Hololei.*
- Remplacer le mot "*Constitution*" par "*the Constitutional Treaty*Korcok.**
- Remplacer le mot "*institutions*" par "*institutions de l'Union*: Brok et autres, Korcok et autres.  
*Para.1 : Roche*  
*Para.2 : Paciotti et Spini, Roche*  
*Para 5: Vander Linden et autres, Michel et autres.*  
*Para. 6: Queiro, Haenel et Badinter*  
*Para. 2, 3 et 5: Berès et autres*

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**FICHE D'ANALYSE DES PROPOSITIONS D'AMENDEMENTS**  
**A L'ARTICLE 10**

**Article 10: Catégories de compétences**

- "1. Lorsque la Constitution attribue à l'Union une compétence exclusive dans un domaine déterminé, celle-ci seule peut légiférer et adopter des actes juridiquement obligatoires, les Etats membres ne pouvant le faire eux-mêmes que par habilitation de l'Union.*
- 2. Lorsque la Constitution attribue à l'Union une compétence partagée avec les Etats membres dans un domaine déterminé, l'Union et les Etats membres ont le pouvoir de légiférer et d'adopter des actes juridiquement obligatoires dans ce domaine. Les Etats membres exercent leur compétence seulement et dans la mesure où l'Union n'a pas exercé la sienne.*
- 3. L'Union dispose d'une compétence pour coordonner les politiques économiques des Etats membres.*
- 4. L'Union dispose d'une compétence pour la définition et la mise en œuvre d'une politique étrangère et de sécurité commune, y compris la définition progressive d'une politique de défense commune.*
- 5. Dans certains domaines et dans les conditions prévues par la Constitution, l'Union a la compétence pour mener des actions pour coordonner, compléter ou appuyer l'action des Etats membres sans pour autant remplacer leur compétence dans ces domaines.*
- 6. L'Union exerce ses compétences pour mettre en œuvre les politiques définies dans la Partie II de la Constitution conformément aux dispositions spécifiques à chaque domaine prévues dans celle-ci."*

**I. EXAMEN DES AMENDEMENTS PAR THEME**

**1. Amendements généraux**

- a) Ajout d'un nouveau paragraphe explicatif et qui spécifie que les compétences sont attribuées à l'Union par les Etats Membres, que l'Union exerce ses compétences conformément à la Constitution et que l'exercice des compétences par l'Union ne limite pas celle des Etats membres, sauf pour ce qui est des compétences exclusives.  
*Hain, Tomlinson, Heathcoat-Amory*
- b) Ajout d'un nouveau paragraphe sur la compétence en matière de liberté, sécurité et justice  
*de Vries et autres (néerlandais).*

2. Paragraphe 1. Définition de la compétence exclusive

- a) Supprimer le paragraphe  
*Heathcoat-Amory*
- b) Spécifier que les compétences exclusives sont attribuées à l'Union par les Etats membres  
*Roche, Haethcoat-Amory*
- c) Supprimer la référence à la nécessité d'une habilitation de l'Union pour que les Etats membres puissent agir  
*Katiforis ; McAvan.*
- d) Référence spécifique à l'habilitation de l'Union en explicitant ses objectifs, contenu et portée qui doivent être déterminés dans l'instrument d'habilitation  
*Palacio*
- e) Référence à l'habilitation conforme aux procédures applicables par l'Union  
*Tiilikainen et Peltomäki*
- f) Consultation préalable des Etats membres avant que l'Union légifère dans ces domaines  
*Muscardini*

3. Amendements paragraphe 2 : Définition de compétences partagées.

- a) Remplacer la dernière phrase par phrase qui prévoit que lorsque l'Union a exercé sa compétence, les Etats membres doivent respecter les obligations fixées par la Constitution ou par les actes adoptés par l'Union  
*Tiilikainen et Peltomäki, Kuneva, Kiljunen et Vanhanen, Balazs*
- b) Référence à la conclusion d'accords internationaux  
*Giannakou, Brok et autres (PPE)*
- c) Remplacer «légiférer et adopte des actes juridiquement obligatoires» par «fixe les règles générales ou coordonne les politiques des Etats membres»  
*Berès et autres, Michel et autres (belges).*
- d) Référence à la compétence des Etats membres lorsque l'Union a cessé d'exercer sa compétence  
*Brok et autres (PPE)*
- e) Supprimer la dernière phrase relative à l'exercice de sa compétence par les Etats membres  
*Balaz*
- f) Référence au principe de subsidiarité  
*Fini, Queiró*

4. Amendements paragraphe 3 : coordination des politiques économiques

a) **Suppression du paragraphe**

*Tiilikainen et Peltomäki, Kohout, Berès et autres, Hain, Ernani Duff et autres, Earl of Stokton, Svensson, Kiljunen et Vanhanen, Nagy*

b) **Référence à la compétence des Etats membres pour coordonner ensemble avec l'Union**  
*De Vries et autres (néerlandais)*

c) **Ajouter politique sociale et emploi**

*Duhamel et autres (socialistes), Borrell et autres, Gabaglio, Michel et autres (belges), Paciotti et Spini (demandent aussi ajout du fiscal), Lequiller (sauf pour le social), Santer et autres (emploi)*

d) **Remplacer «l'Union cordonnée» par «les Etats membres coordonnent au sein de l'Union».**

*Roche, Teufel, Heathcoat-Amory, Fischer.*

e) **L'Union établit des lignes directives pour assister les Etats membres dans la coordination de ses politiques économiques**

*Tomlinson, Queiró*

5. Amendements paragraphe 4 : politique extérieure et de sécurité commune

a) **Supprimer le paragraphe**

*Ernani, Earl of Stokton, Svensson, Nagy, Heathcoat-Amory, Duff et autres .*

b) **Rédaction plus détaillée reprenant en partie le texte actuel du traité**  
*Hain ; Farnleitner.*

c) **Référence aux principes et objectifs du Traité**  
*Roche.*

d) **Référence à la clause de solidarité mutuelle**  
*Farnleitner.*

e) **Ajouter politique de défense**  
*Dini ; Brok et autres (PPE) ; Borrell et autres, Santer et autres, Figel*

f) **Supprimer référence à l'existence d'une compétence**  
*Tomlinson, Kiljunen, Vanhanen*

g) Ajouter nécessité décision unanime des Etats membres  
*Queiró*

h) Ajouter nécessité d'un mandat du Conseil Européen  
*Tomlinson*

6. **Amendements paragraphe 5 : définition des domaines d'appui**

a) Ajouter référence à l'interdiction d'harmonisation dans ces domaines  
*Tiilikainen et Peltomäki ; Ernani, Teufel, Kiljunen, Vanhanen*

b) Ajouter référence aux autorités locales ou territoriales  
*MacCormick,*

c) Ajouter liste domaines  
*Nagy*

7. **Amendements paragraphe 6 : référence à la partie II**

a) Ajouter référence aux formes et instruments d'action prévus dans la partie II  
*Teufel*

b) Ajouter priorité droits de la nation en cas de conflit  
*Heathcoat-Amory*

**II. AUTRES AMENDEMENTS**

- Référence aux articles 11, 12, 13, 14 et 15 dans les paragraphes 1, 2, 3, 4 et 5 respectivement  
*Serracino-Inglot ; Dolores Cristina ; Frendo;*

- Remplacer Constitution par «traité simplifié» et «Union» par «communauté»  
*Kirkhope.*

- Remplacer Constitution par «traité constitutionnel» (parti ADR) ou par «Traité  
*Henrik Hololei ; Heathcoat-Amory*

- Amendement rédactionnel paragraphe 2.  
*Lord Tomlinson ; Teufel*

- Ajouter une phrase qui spécifie que l'Union exerce trois catégories de compétences : exclusives, partagées et complémentaires  
*McAvan*

- Remplacer «Union» par «Europe des démocraties» (Berlorska et autres)
- Supprimer «seulement et» dans le paragraphe 2.
- Remplacer «disposera» par «dispose»:  
Borrell et autres (problème de traduction)
- Amendement rédactionnel paragraphe 5  
*Queiró*
- Remplacer «Constitution» par «Traité»  
*Heathcoat-Amory*
- Ajouter référence aux coûts administratifs  
*Heathcoat-Amory*
- Ajouter référence à procédure de modification identique pour la partie I et II  
*Heathcoat-Amory*
- Eviter double emploi art. 10 paragraphe 3 et article 10 paragraphe 4 avec les articles 13 et 14.  
*Kohout*

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**FICHE D'ANALYSE DES PROPOSITIONS D'AMENDEMENTS**  
**A L'ARTICLE 11**

**Article 11: Les compétences exclusives**

- "1. *L'Union dispose d'une compétence exclusive pour assurer la libre circulation des personnes, marchandises, services et capitaux et établir les règles de concurrence, au sein du marché intérieur, ainsi que dans les domaines suivants:*
- *l'Union douanière,*
  - *la politique commerciale commune,*
  - *la politique monétaire pour les Etats membres qui ont adopté l'euro,*
  - *la conservation des ressources biologiques de la mer dans le cadre de la politique commune de la pêche.*
2. *L'Union dispose d'une compétence exclusive pour la conclusion d'un accord international lorsque cette conclusion est prévue dans un acte législatif de l'Union, qu'elle est nécessaire pour permettre à l'Union d'exercer sa compétence au niveau interne, ou qu'elle affecte un acte interne de l'Union."*

**I. EXAMEN DES AMENDEMENTS PAR THEME**

**1. Amendements généraux**

- a) Supprimer l'article  
*Ernani*

- b) Réserve générale sur l'article  
*Kuneva*

**2. Paragraphe 1. : Domaines de compétence exclusive**

a) Suppression de certains domaines :

- libre circulation  
*Hain, Farnleitner, Tiilikainen et Peltomäki, Hjelm-Wallén*
- concurrence au sein du marché intérieur  
*Hain, Farnleitner, Tiilikainen et Peltomäki, Hjelm-Wallén et autres, Fischer*
- politique commerciale commune  
*Kirkhope*
- ressources biologiques de la mer  
*MacCormick, Kirkhope, Heathcoat-Amory*
- politique monétaire  
*Berlohorská et autres, Kirkho et autres (suédois), Kiljunen et Vanhanen*
- marché intérieur à l'exception de la politique fiscale  
*Duff et autres*



b) Ajout de nouveaux domaines

- définition et mise en œuvre de la politique extérieure et de défense  
*Voggenhuber et Lichtenberger, Borrell et autres (socialistes espagnols) Marinho et autres*
- espace commun de liberté et sécurité  
*Voggenhuber et Lichtenberger, Borrell et autres, Marinho et autres, Nagy*
- budget  
*Voggenhuber et Lichtenberger, Duhamel et autres (socialistes), Marinho et autres, Nagy*  
*Borrell et autres, Brok et autres*
- représentation externe de l'Union  
*Michel et autres (belges), Voggenhuber et Lichtenberger*
- obligations découlant de la citoyenneté  
*Michel et autres (belges)*
- accès au territoire de l'Union  
*Michel et autres (belges)*
- organisation commune de marché des produits agricoles  
*Palacio, Lequiller*
- politiques structurelles et de cohésion  
*Borrell et autres, Marinho et autres, Brok et autres (PPE), Figel*
- statistiques de l'Union  
*Brok et autres (PPE), Figel*
- Loi monétaire et politique de change par le moyen de la BCE  
*Brok et autres, Figel*
- Politique agricole commune et de pêche  
*Azevedo et autres (parlementaires portugais)*
- Règles pour assurer le fonctionnement des Institutions  
*Brok et autres, Figel*
- Politique extérieure et de défense  
*Nagy, Voggenhuber et Lichtenberger*

c) Faire une référence à la partie II de la Constitution

*Tilikainen et Peltomäki, de Vries et autres (néerlandais), Roche*

d) Ajouter «en principe»

*Teufel, Belohorska et autres*

e) Après «euro» ajouter exception pour les cas où l'on affecte les politiques des Etats avec opt-out

*Heathcoat-Amory*

3. **Paragraphe 2. : Compétence exclusive pour la conclusion d'accords internationaux**

- a) Supprimer le paragraphe  
*Tomlinson*
- b) Exclure du champ d'application de cette disposition les accords définis par l'article 12 paragraphe 4 comme relevant de la compétence partagée
- c) Supprimer et remplacer par un paragraphe établissant que l'Union agit en représentation des Etats membres lorsque c'est prévu dans le traité ou lorsque ceux-ci l'autorisent d'un commun accord.  
*Heathcoat-Amory*

**II. AUTRES AMENDEMENTS**

- Remplacer «Union» par «Communauté»  
*Kirkhope*
- Remplacer «dans un acte» par «dans cette constitution»  
*Borrell et autres*
- Remplacer «exclusives» par «propres»  
*Borrell et autres, Marinho et autres*
- Remplacer «personnes» par «citoyens»  
*Fini*
- Changer l'ordre du paragraphe 2.  
*Tiilikainen et Peltomäki, Kiljunen et Vanhanen*
- Remplacer «Union» par «Europe des démocraties»
- Ajouter référence à l'article 10 paragraphe 1.  
*Duff et autres*
- Ajouter après «union douanière» «orientée vers un espace de libre échange»  
*Kirkhope*

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**FICHE D'ANALYSE DES PROPOSITIONS D'AMENDEMENTS**  
**A L'ARTICLE 12**

**«Article 12 : Les compétences partagées»**

- "1. *L'Union dispose d'une compétence partagée avec les États membres lorsque la Constitution lui attribue une compétence qui ne relève pas des domaines visés aux articles 11 et 15.*
2. *L'étendue des compétences partagées de l'Union est déterminée par les dispositions de la Partie II.*
3. *Lorsque l'Union n'a pas exercé ou cesse d'exercer sa compétence dans un domaine de compétence partagée, les États membres peuvent exercer la leur.*
4. *Les compétences partagées entre l'Union et les États membres s'appliquent aux principaux domaines suivants :*
  - *le marché intérieur*
  - *l'espace de liberté, de sécurité et de justice*
  - *l'agriculture et la pêche*
  - *les transports,*
  - *les réseaux transeuropéens*
  - *l'énergie*
  - *la politique sociale*
  - *la cohésion économique et sociale*
  - *l'environnement*
  - *la santé publique, et*
  - *la protection des consommateurs.*
5. *Dans les domaines de la recherche, du développement technologique et de l'espace, l'Union a une compétence pour mener des actions, notamment la mise en œuvre de programmes, sans que l'exercice de cette compétence puisse avoir pour effet d'interdire aux États membres d'exercer les leurs.*
6. *Dans les domaines de la coopération au développement et de l'aide humanitaire, l'Union a une compétence pour entreprendre des actions et pour mener une politique commune, sans que l'exercice de cette compétence puisse avoir pour effet d'interdire aux États membres d'exercer les leurs."*

**I. EXAMEN DES AMENDEMENTS PAR THEME**

**1. Amendements généraux**

- a) **Supprimer l'article**  
*Ernani*

- b) Ajout d'un nouveau paragraphe sur la politique sociale  
*Haenel et Badinter*
- c) Ajouter un paragraphe avec compétences des États membres  
*ADR*
- d) Nécessité d'accord à l'unanimité pour mener des actions dans ces domaines  
*Kirkhope*

2. **Paragraphe 1 : Définition des cas de compétence partagée**

- a) Supprimer le paragraphe  
*Brok et autres (PPE)*
- b) Supprimer référence à l'article 15  
*Katiforis*

3. **Paragraphe 2 : Référence à la Partie II de la Constitution**

- a) Supprimer le paragraphe  
*Hain ; Michel et autres ; Fini ; Tomlinson*
- b) Inclure la référence à la partie II dans le paragraphe 4  
*Roche*  
ou comme paragraphe final  
*Brok et autres*

4. **Paragraphe 3 : Cas de non-exercice ou de cessation d'exercice de compétence par l'Union**

- a) Supprimer le paragraphe  
*Hain ; Palacio ; Kohout ; Hübner ; Tani ; Hübner ; Tomlinson ; Belohorska et autres ; Kuneva*  
*Brok et autres*
- b) Changer énoncé  
*Fischer*
- c) Reprendre la définition du principe de subsidiarité  
*Parti Lux ADR*

5. **Paragraphe 4 : Domaines de compétence partagée**

- a) Supprimer le paragraphe  
*Hain ; Michel et autres ; Hübner ; Tillikainen et Peltomäki ; Tomlinson ; Kuneva*

3) Ajout de nouveaux domaines :

- Fiscalité  
*Duhamel et autres ; Floch ; Borrell et autres ; Paciotti et Spini ; Haenel et Badinter*
- Services intérêt général  
*Duhamel et autres ; Floch ; Borrell et autres ; Paciotti et Spini ; Haenel et Badinter*
- Égalité femmes-hommes  
*Duhamel et autres ; Floch ; Borrell et autres ; Paciotti et Spini ; Haenel et Badinter*
- Industrie  
*Duhamel et autres ; Floch ; Borell et autres ; Paciotti et Spini ; Haenel et Badinter*
- Emploi  
*Duhamel et autres ; Floch ; Borrell et autres ; Paciotti et Spini ; Berès et autres ;*
- Cohésion territoriale  
*Duhamel et autres ; Floch ; Borrell et autres ; Paciotti et Spini ; Haenel et Badinter*
- Protection catastrophes  
*Borrell et autres*
- Santé  
*Vogenhuber et Lichtenbergen*
- Sécurité et protection de l'environnement des installations nucléaires, sécurité nucléaire et non-prolifération, énergie soutenable  
*Vogenhuber et Lichtenbergen*
- Coordination des politiques économiques, sociales et d'emploi (nouveau paragraphe)  
*Berès et autres ;*
- Lutte contre la discrimination  
*Cunhaban ; McAvan*
- Tourisme  
*Cunhaban*
- Recherche scientifique et espace  
*Fini*
- Coopération au développement et aide humanitaire  
*Fini*
- Propriété intellectuelle  
*Giannakou, Brok et autres*
- Lutte contre la drogue  
*Giannakou*
- Prévention et lutte contre la fraude affectant les intérêts financiers de l'Union  
*Giannakou*
- Politique étrangère et de sécurité commune  
*Dini*
- Harmonisation de lois dans le marché intérieur  
*Brok et autres*
- Remplacer "espace de liberté, de sécurité et de justice" par "visas, asile, immigration et autres politiques liées à la libre circulation de personnes" (Fischer) ou détailler d'avantage son contenu  
*Giannakou ; Brok et autres*

c) Supprimer des domaines :

Marché intérieur

*Voggenhuber et Lichtenbergen* ;

- Espace de liberté, sécurité et justice

*Kirkhope ; Belohrska et autres ; De Vriés et autres*

- Agriculture

*Balazs* ;

- Pêche

*Kirkhope*

- Transport

*Kirkhope ; Belohrska et autres*

- Réseaux transeuropéens

*Roche*

- Santé publique

*Roche ; Belohrska et autres*

- Énergie

*Kirkhope ; Fischer ; Belohrska et autres*

- Politique sociale

*Kirkhope ; Belohrska et autres*

- Cohésion économique et sociale

*Kirkhope*

- Exclure de la santé publique les services et soins médicaux

*Hjelm Wallen et Petersson*

d) Pour une énumération limitative

*Fini*

6. Paragraphe 5 : recherche, développement technologique et espace

a) Supprimer le paragraphe

*Fini ; Hübner ; Tiilikainen et Peltomäki ; Roche ; Kuneva*

b) Supprimer référence aux compétences des États membres

*Berès et autres* ;

c) Ad article séparé

*Hain*

7. Paragraphe 6 : coopération au développement

a) Supprimer référence aux compétences des États membres

*Berès et autres*

b) Supprimer

*Fini ; Hübner ; Tiilikainen et Peltomäki ; Kuneva*

c) Ajouter article séparé

*Hain*

## **II. AUTRES AMENDEMENTS**

- Remplacer "Union" par "Communauté"  
*Kirkhope*
- Ajouter "notamment" dans la première ligne du paragraphe 4  
*Palacio*
- Remplacer "may" par "shall"
- Remplacer "Constitution" par "Traité constitutionnel"  
*ADR*  
ou "Traité"  
*Hololei*
- Reformulation du paragraphe 5  
*Dolores Cristina et Serracino-Inglott*
- Reformulation des paragraphes 1 et 2  
*Tiilikainen et Peltomäki*
- Placer espace de liberté, sécurité et justice dans un paragraphe séparé  
*Hjelm-Wallen et Petersson*
- Paragraphe 5 : recherche "et" développement technologique  
*McAvan*
- Remplacer "Union" par "Europe des démocraties"  
*Belohorska et autres*
- Spécifier davantage le contenu de certains des domaines de compétence partagée  
*Brok et autres*
- Spécifier d'avantage paragraphe 5  
*De Vries et autres*

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**FICHE D'ANALYSE DES PROPOSITIONS D'AMENDEMENTS**  
**A L'ARTICLE 13**

**Article 13: La coordination des politiques économiques**

- "1. *L'Union coordonne les politiques économiques des États membres, notamment en établissant les grandes orientations de ces politiques.*
2. *Les États membres conduisent leurs politiques économiques, en prenant en compte l'intérêt commun, en vue de contribuer à la réalisation des objectifs de l'Union.*
3. *Des dispositions spécifiques s'appliquent aux États membres qui ont adopté l'euro."*

**I. EXAMEN DES AMENDEMENTS PAR THEME**

**1. Amendements portant sur tout l'article**

a) Supprimer l'article

*Tiliikainen et Petltomäki, Lord Tomlinson, Berès, Duhamel et autres avec nouvel alinéa 4bis à l'art. 12: ajouter cette matière comme domaine d'appui), Kaufmann, Roche.*

b) Modification du titre:

"Coordination des politiques économique, sociales et de l'emploi":

*Michel, De Gucht et autres, Borrell et autres, McAvan, Duhamel et autres.*

"Coordination des politiques économique et de l'emploi":

*Sigmund et autres*

c) Remplacer tout l'article par:

"The Union and the Member States shall coordinate the economic policies, taking account of the common interest, so as to contribute to the achievement of the objectives of the Union"

*De Vries et autres.*

*"Member States shall conduct their economic policies with a view to contributing to the achievement of the objectives of the Union and coordinate them in accordance with procedures for multilateral surveillance established by the Council"*

*Hain, Hololei.*

*"With a view to achieving the objectives of the Constitution, the Union shall have the competence to assist the co-ordination by the member states of their economic policies in accordance with agreed guidelines"*

*McLennan.*

- d) Ajout d'un nouveau paragraphe : 2bis "Die Mitgliedstaaten betrachten die Beschäftigung als gemeinsames Anliegen und koordinieren ihre Politiken auf der Grundlage gemeinsamer Leitlinien, um so zur Erfüllung der Ziele der Union beizutragen"  
*Siegmund et autres.*

2. Amendements portant sur le paragraphe 1:

a) Supprimer

*De Vries et autres*

b) Ajouter à la fin du texte:

- "sur base des dispositions figurant dans la deuxième partie de la constitution  
*Fini,*
- "et les lignes directrices pour l'emploi".
- "and by closely supervising compliance with the requirement of sound public finances  
*Brok et autres.*

c) Remplacer:

- "politiques économiques" par : "politiques économiques, en ce compris leurs politiques pour l'emploi":  
*Katiforis*
- "politiques économiques, sociales et de l'emploi":  
*Einem, McAvan, Michel et autres, Duhamel et autres, Borrell et autres, Haenel et Badinter*
- "politiques économiques, fiscales et de l'emploi":  
*Paciotti et Spini*
- "l'Union coordonne les politiques économiques des États membres" par "l'Union a compétence afin de coordonner les politiques économiques des États membres":  
*Lopes*
- "les États membres coordonnent leurs politiques économiques au sein [ou dans le cadre] de l'Union":  
*Fischer, Hjelm-Wallén et autres, Kuneva (mais inverse para. 1 et 2)*
- "les États membres coordonnent leurs politiques économiques, sociales et de l'emploi au sein de l'Union":  
*MacAvan*
- "les États membres coordonnent leurs politiques économiques conformément aux dispositions de la deuxième partie":  
*Teufel*
- "Les États membres coopèrent concernant les politiques économiques":  
*Belohorska et autres*
- "en établissant" par "en proposant":  
*Muscardini*

3. Amendements portant sur le paragraphe 2:

a) Remplacer le paragraphe par :

"The Member States shall regard their economic policies as a matter of common concern and shall coordinate them so as to contribute to the achievement of the objectives of the Union

*Roche*

b) Remplacer : "politiques économiques " par "politiques économiques, sociales et de l'emploi":

*Michel et autres, Duhamel et autres, Borrell et autres, Haenel et Badinter, MacAvan, Einem*  
" politiques économiques, fiscales et de l'emploi":

*Paciotti et Spini*

"l'intérêt commun" par "l'intérêt commun et la justice sociale":

*Brok et autres, Giannakou*

c) Ajouter à la fin du texte:

"in accordance with the principles of subsidiarity and a open market economy with free competition":

*Lennmarker, Brok et autres*

4. Amendements portant sur le paragraphe 3:

Ajouter au début: Dans le cadre de la coordination des politiques économiques"  
*Borrell et autres*

II. AUTRES AMENDEMENTS

Paragraphe 3: remplacer "ont adopté"" par "adoptent"

*Paciotti et Spini*

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**FICHE D'ANALYSE DES PROPOSITIONS D'AMENDEMENTS**  
**A L'ARTICLE 14**

**Article 14: La politique étrangère et de sécurité commune**

*"Les Etats membres appuient activement et sans réserves la politique étrangère et de sécurité commune de l'Union dans un esprit de loyauté et de solidarité mutuelle. Ils s'abstiennent de toute action contraire aux intérêts de l'Union ou susceptible de nuire à son efficacité."*

**I. EXAMEN DES AMENDEMENTS PAR THEME**

a) **Suppression de l'article 14**

*Lamassoure - Voggenhuber et Lichtenberger - Kirkhope - Nagy - Earl of Stockton – Belohorska  
Et autres*

b) **Propositions de textes alternatifs remplaçant le texte actuel**

*Hain – Roche - Heathcoat-Amory – MacLennan - Abitol*

c) **Introduction de la PESC dans les compétences partagées avec dispositions spécifiques**  
*Dini*

d) **Ajout : référence à "la défense"**

*Fini, Borrell, Carnero et Lopez Garrido - MacLennan - Duff, Rupel et Szent-Ivanyi - Costa, Azevedo, d'Oliveira Martins et Nazaré Pereira (parlementaires portugais) - Roche – Lopez – Katiforis – Mc Avan*

e) **Ajout : définition (des objectifs) de la PESC**

*Lequiller - Hain - Roche - Zieleniec - Farnleitner*

f) **Ajout : la PESC couvre tous les domaines de la politique étrangère et de sécurité**

*Duhamel, Marinho, Van Lancker, Hansch, Beres, Berger, Carnero et Thorning Schmidt - de Villepinn - Kuneva*

g) **Ajout : les EM oeuvrent de concert au renforcement et au développement de leur solidarité mutuelle**

*de Villepin - Kuneva*

h) **Suppression : "et sans réserve"**

*Muscardini - Queiro – Mc Avan - Kvist*

- i) **Ajout : obligation pour les EM de se concerter au niveau européen avant de définir des positions nationales**  
*Van der Linden, Timmermans et Van Eeckelen (parlementaires néerlandais)*
- j) **Ajout : l'exercice par l'Union de sa compétence dans la PESC exclu une action d'un Etat membre si cette action est contraire aux intérêts de l'Union ou si le Conseil en décide ainsi**  
Brok, Szajer, Teufel, Van der Linden, Kroupa, Santer, Cushnahan, Almeida Garrett, Altmaier, Figel, Kauppi, Maij Weggen, Rac, Wurmeling
- k) **Ajout : l'exercice par l'Union de sa compétence dans la PESC n'empêche pas les EM d'exercer la leur.**  
*Roche - Heathcoat Amory -*
- l) **Ajout : l'exercice par l'Union de sa compétence dans la PESC exclue une action des EM uniquement dans le cas où le Conseil européen en décide ainsi**  
*Korcok, Figel, Migas et Martinakova (membres slovaques)*
- m) **Ajout : les EM ne peuvent pas intervenir là où l'Union a une compétence exclusive**  
*Duhamel, Marinho, Van Lancker, Hansch, Beres, Berger, Carnero et Thorning Schmidt*
- n) **Ajout : l'Union possède une compétence en matière de la PESC**  
*Kaufmann - Balazs*

## II. AUTRES AMENDEMENTS

- Proposition de rédaction  
*Cushnahan - Duff, Rupel et Szent-Ivany*

*Une personne (Vassiliou) s'est exprimée en faveur de l'article tel quel.*

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**FICHE D'ANALYSE DES PROPOSITIONS D'AMENDEMENTS**  
**A L'ARTICLE 15**

**Article 15 : Les domaines d'action d'appui**

- "1. *L'Union peut mener des actions de coordination, de complément ou d'appui. L'étendue de cette compétence est déterminée par les dispositions de la Partie II.*
2. *Les domaines d'action d'appui sont :*
  - *l'emploi*
  - *l'industrie*
  - *l'éducation, la formation professionnelle et la jeunesse*
  - *la culture*
  - *le sport*
  - *la protection contre les catastrophes.*
3. *Les États membres coordonnent au sein de l'Union leurs politiques nationales en matière d'emploi.*
4. *Les actes juridiquement obligatoires adoptés par l'Union sur la base des dispositions spécifiques à ces domaines dans la Partie II, ne peuvent pas comporter d'harmonisation des dispositions législatives et réglementaires des États membres."*

**I. EXAMEN DES AMENDEMENTS PAR THEME**

**1. Amendements généraux**

- a) Supprimer l'article  
*Voggenhuber et Lichtenberger ; Ernani ; Nagy*
- b) Remplacer "actions d'appui" par "compétences complémentaires"  
*Borrell et autres ; Giannakou ; Haenel ; Santer et autres ; Azevedo et autres*
- c) Remplacer "actions d'appui" par "compétences subsidiaires"  
*Dini*
- d) Remplacer "actions d'appui" par "actions de coordination, de complément ou d'appui"  
*Villepin ; Lequiller*

**2. Amendements paragraphe 1 : Définition et étendue des domaines d'action d'appui**

- a) Ajouter référence à la compétence des États membres dans les domaines d'action d'appui  
*Hain ; Tomlinson*
- b) Remplacer "peut mener" par "a compétence"  
*Michel et autres*
- c) Supprimer la référence à la Partie II  
*Hain ; Michel et autres*

3. Amendements paragraphe 2 : énumération des domaines d'appui

a) Supprimer paragraphe

*Tomlinson*

b) Domaines à ajouter :

- Protection attaques terroristes

*Hain*

- Réseaux transeuropéens

*Hain ; Roche ; Villepin*

- Coopération policière

*Hain ; Roche*

- Protection consommateurs

*Hain ; Roche*

- Recherche

*Roche*

- Médias

*Borrell et autres ; Duhaneel et autres*

- Tourisme

*Palacio ; Lequiller ; Borrell et autres ; Paciotti et Spini ; Dini ; Duhamel et autres ; Duff et autres*

- Protection diversité culturelle, linguistique et religieuse de l'Union

*Eckstein - Kovács*

- Moyens de communication

*Paciotti et Spini*

- Coordination des politiques économiques

*Kiljunen et Vanhanem ; Tilikainen et Peltomäki*

- Santé publique

*Kiljunen et Vanhanem ; Tilikainen et Peltomäki ; Heathnoat-Amory ; Pigel et autres*

- Recherche et développement technologique

*Kiljunen et Vanhanem ; Tiilikainen et Peltomäki ; Teufel*

- Coopération au développement

*Kiljunen et Vanhanem ; Tiilikainen et Peltomäki ; Teufel*

- Protection civile (au lieu de protection contre les catastrophes)

*Fini ; Villepin ; Teufel ; Brok et autres ; Palacio*

- La coopération douanière

*Villepin*

- Coordination de politiques économiques

*Tilikainen et Peltomäki*

- Lutte contre la drogue

*Brok et autres*

- Bien-être des enfants et des jeunes

*De Vries et autres*

- Cohésion territoriale

*De Vries et autres*

- Énergie  
*Kirkhope*
  - Transports  
*Kirkhope*
  - Coopération transfrontière  
*Duff et autres*
  - Aide en cas de circonstances extraordinaires  
*Svensson*
- c) **Domaines à supprimer**
- Emploi  
*Palacio ; Gabaglio ; Borrell et autres ; Paciotti et Spini ; Michel et autres ; Dini (si emploi est ajouté à l'art. 13) ; Heathcoat-Amory*
  - Industrie  
*Paciotti et Spini ; Haenel*
  - Sport  
*Hjelm-Wallen et autres ; Svensson*
  - Éducation  
*Heathcoat-Amory*
  - Formation personnelle  
*Heathcoat-Amory*
  - Jeunesse  
*Heathcoat-Amory*
  - Culture  
*Heathcoat-Amory*
  - Sport  
*Heathcoat-Amory*
- d) **Énumération non-limitative**  
*Dolores ; Duff et autres ; Serracino-Inglott*

#### 4. Amendements paragraphe 3 : coordination politiques d'emploi

- a) **Supprimer paragraphe**  
*Hain ; Roche ; Duhamel et autres ; Farnleitner ; Paciotti et Spini ; Villepin ; Michel et autres ; Tilikainen et Peltomäki ; Tomlinson ; Teufel ; Gabaglio ; Santer et autres*
- b) **Ajouter une référence aux objectifs de l'Union, à la promotion de l'emploi comme question d'intérêt commun et à l'élaboration d'une stratégie commune dans ce domaine**  
*Palacio*
- c) **Ajouter "dans le cadre d'une stratégie pour l'emploi"**  
*Hjelm-Wallen et autres*

- 4) Remplacer par "obligation pour les États membres de partager les bonnes pratiques en matière d'emploi"  
*Heathcoat-Amory*

- e) Remplacer "coordonner" par "peuvent coordonner"  
*Earl of Stockton*

5. **Amendements paragraphe 4 : exclusion d'harmonisation**

- a) Supprimer paragraphe  
*Borrell et autres*

- b) Référence spécifique au maintien des compétences des États membres  
*Roche*

- c) Ajouter "sauf exception prévue par la partie II"  
*Villepin ; Kuneva ; Lequiller*

- d) Passer à l'article 10 § 5  
*Tilikainen et Peltomäki ; Kohout*

**II. AUTRES AMENDEMENTS**

- Remplacer "Union" par "Communauté"  
*Kirkhope*
- Ajouter référence à la Partie II au début du paragraphe 1  
*Kiljunen et Vanhanen ; Fini ; Tiilikainen et Peltomäki*
- Réorganiser paragraphe 2  
*Dolores*
- Spécifier d'avantage tous ou certains domaines relevant des actions d'appui  
*Teufel ; Brok et autres ; Kirkhope ; Svensson*
- Remplacer "Union" par "Europe des démocraties"  
*Belohrska et autres*
- Fusionner les paragraphes 1 et 2 et mettre référence à la Partie II dans un paragraphe indépendant  
*Tilikainen et Peltomäki ; Svensson*  
Nouvelle rédaction du paragraphe 4  
*Brok et autres ; De Vries*
- Ajouter dans le § 1 une référence à l'article 10 § 5  
*Duff et autres*

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**FICHE D'ANALYSE DES PROPOSITIONS D'AMENDEMENTS**  
**A L'ARTICLE 16**

**Article 16: Clause de flexibilité**

- "1. Si une action de l'Union apparaît nécessaire dans le cadre des politiques définies dans la Partie II pour réaliser l'un des objectifs fixés par la présente Constitution, sans que celle-ci ait prévu les pouvoirs d'action requis à cet effet, le Conseil, statuant à l'unanimité sur proposition de la Commission et après avis conforme du Parlement européen, prend les dispositions appropriées.
2. La Commission, dans le cadre de la procédure de contrôle du principe de subsidiarité visée à l'article 9, attire l'attention des Parlements nationaux des Etats membres sur les propositions basées sur le présent article.
3. Les dispositions adoptées sur la base du présent article ne peuvent pas comporter une harmonisation des dispositions législatives et réglementaires des Etats membres dans les cas où la Constitution exclut une telle harmonisation."

**I. EXAMEN DES AMENDEMENTS PAR THEME**

**1. Amendement généraux**

a) Supprimer tout l'article

*Belohorska, Zahradil, Bonde, Heathcoat-Amory, Abitbol, Skaarup, Dalgaard, Seppänen, Gormley*

b) Ajouter un nouveau paragraphe : "la Cour des Comptes européenne sera consultée sur toutes les propositions basées sur cet article afin d'assurer que l'action de l'Union se développe dans la pleine transparence budgétaire et que des duplications d'ordre administratif ne se produisent pas au niveau de l'Union et des pays membres".

*Brok + 14*

**2. Paragraphe 1. Champ d'application et procédure**

a) Supprimer "dans le cadre des politiques définies dans la Partie II"

*de Vries (+ de Bruijn, van Dijk); Fini, Giannakou, Brok + 14 Conv. (Szájer, Teufel, Van der Linden, Kroupa, Tajani, Cushnahan, Santer, Almeida Garrett, Altmaier, Figel, Follini, Kauppi, Maij-Weggen, Rack); Farleitner*

*dans le même esprit Fischer, qui ne demande pas la suppression de cette partie, mais voudrait être sûr qu'elle ne privera pas l'Union de la flexibilité nécessaire.*



- b) Effacer "sur proposition de la Commission et après avis conforme du Parlement européen" et ajouter un nouveau paragraphe : "lorsque la Commission dispose d'un droit d'initiative exclusif, le Conseil n'agit que sur la base d'une proposition de la Commission et après avis conforme du Parlement européen".  
*Dick Roche ; Hain ;*
- c) Remplacer la phrase "prend les dispositions appropriées" par la phrase "décide d'avoir recours à cette clause de flexibilité"  
*Giannakou; Brok + 14*
- d) Insérer un nouveau paragraphe : "sur la base de cette décision, le PE et le Conseil, selon les modalités prévues par la procédure législative, prendront les mesures appropriées"  
*Giannakou, Figel*
- dans le même esprit Katiforis, qui demande une référence à la codécision, et Michel + 5 Conventionnels belges (de Gucht, di Rupo, Van Lancker, Chevalier, Nagy): "en codécision avec le PE statuant à la majorité de...]"*
- e) Ajouter à la fin du paragraphe la phrase suivante : "la présente disposition s'applique également à la restitution de compétences de l'UE au niveau des Etats membres"  
*Meyer*
- f) Remplacer "après avis conforme du PE" par "le Conseil statuant à l'unanimité et le PE prendront les mesures appropriées"  
*Borrell, Cisneros, López Garrido*
- g) Remplacer "après avis conforme du Parlement européen" par "après consultation du PE"  
*Hjelm-Wallén, Lekberg, Petersson, Kvist*
- h) Remplacer "avis conforme du PE" par "avis"  
*Queiró ; Palacio*
- i) Ajouter après "après avis conforme du Parlement européen" : "statuant à la majorité absolue de ses membres"  
*Heathcoat-Amory*
- j) Remplacer "le Conseil statuant à l'unanimité" par "statuant à la majorité qualifiée"  
*Kunева ; Katiforis ; Duhamel + Marinho, Van Lancker, Berès, Berger, Carnero, Paciotti ; Follini ; Haenel et Badinter ; Spini, Ernâni Lopes ; Voggenhuber, Lichtbenberg ; Einem*
- k) Remplacer "statuant à l'unanimité" par : "statuant à la majorité renforcée"  
*Michel + de Gucht, di Rupo, Van Lancker, Chevalier, Nagy ; Costa + Azevedo, d'Oliveira Martins, Pereira*



**m) Supprimer "à l'unanimité"**

*Duff + MacLennan, Szent-Iványi*

- m) Ajouter après "sur proposition de la Commission" : "ou du Conseil"**  
*Muscardini*
- n) Ajouter après "après avis conforme du Parlement européen" : "et après consultation des Parlements nationaux"**  
*Muscardini*
- o) Ajouter après "après avis conforme du Parlement européen" : "et après consultation du Comité des Régions et du Comité économique et social"**  
*Farnleitner ; Einem*
- p) Ajouter après "avis conforme du Parlement européen" : "et, le cas échéant, après référendum"**  
*Earl of Stockton*
- q) Ajouter après "avis conforme du Parlement européen" : "lorsque les Constitutions nationales ou des référendums le permettent, et pourvu que ces actions n'empêchent pas un Etat membre d'agir de manière unilatérale afin de promouvoir ses propres intérêts"**  
*Kirkhope*
- r) Remplacer "Si une action de l'Union apparaît nécessaire dans le cadre des politiques définies dans la Partie II" par "Si, dans le cadre du Marché commun, de l'Union économique et monétaire, ou dans la mise en œuvre de politiques communes ou des activités [mentionnées à l'art. 3 bis de cette Constitution]"**  
*Kiljunen + Vanhanen ; Tiilikainen + Peltomaki* ;
- s) Remplacer "Si une action de l'Union apparaît nécessaire dans le cadre des politiques définies dans la Partie II" par "Pour compléter une de ses compétences dans le cadre du marché intérieur et de l'Union économique et monétaire ou pour abroger un acte dépassé"**  
*Teufel*
- t) Ajouter "l'autorisation de ces actions expirera automatiquement après un an"**  
*Heathcoat-Amory*
- u) Ajouter "La validité de ces actions durera 3 ans. Pendant cette période les compétences nécessaires seront transférées à l'Union".**  
*Wuermeling + Altmaier*

**3. Paragraphe 2 : contrôle de la subsidiarité**

- a) Ajouter après "dans le cadre de la procédure de contrôle du principe de subsidiarité" : "et de proportionnalité"  
*Fini ; Hain ; McAvan*
- b) Ajouter après "attire l'attention des Parlements des Etats membres" "et du Comité des Régions"  
*McAvan*
- c) Supprimer le paragraphe  
Kuneva, Katiforis, Duhamel + Marinho, Van Lancker, Berès, Berger, Carnero, Paciotti, Spini, Kaufmann ; Farnleitner
- d) Ajouter après "Commission" : "ou le Conseil des Ministres"  
*Muscardini*
- e) Ajouter après "attire l'attention" : " du Conseil européen"  
*Muscardini*
- f) Ajouter après "attire" : "immédiatement"  
*Teufel*
- g) Ajouter après "l'attention des Parlements nationaux des Etats membres sur les propositions basées sur le présent article" : " et leur donne l'occasion de se prononcer"  
*Teufel*
- h) Ajouter : "l'action sera annulée si un parlement national ne donne pas son accord"  
*Heathcoat-Amory*

**4. Paragraphe 3. : Exclusion d'harmonisation**

- a) Supprimer le paragraphe  
Kuneva, Katiforis, Duhamel + Marinho, Van Lancker, Berès, Berger, Carnero, Paciotti, Spini
- b) Ajouter après "les dispositions adoptées sur la base du présent article" : "ne peuvent pas comporter un élargissement de la portée des compétences de l'Union au-delà du cadre général de cette Constitution, ni dans la substance un amendement à celle-ci"  
*Kiljunen + Vanhanen ; Tiilikainen + Peltomaki*
- c) Ajouter après "les dispositions adoptées sur la base du présent article" : "ne peuvent pas modifier les compétences de l'Union"  
*Lennmarker*

- d) Supprimer après "ne peuvent pas comporter une harmonisation des dispositions législatives et réglementaires des Etats membres": "dans le cas où la Constitution exclut une telle harmonisation".

*Wuermeing + Altmaier*

## II. AUTRES AMENDEMENTS

- Remplacer "dans le cadre des politiques définies dans la Partie II" par : "Partie III"  
article 16 § 1

*Michel + 5 belges ; Voggenhuber, Lichtenberg*

- Ajouter avant "Constitution" : "cette" article 16 § 3  
*Kaufmann*

- Remplacer "may not entail" par "cannot ensure" article 16 § 3  
(*Il paraît plutôt un problème linguistique en anglais : la version française se lit ainsi "ne peuvent pas"*)  
*Earl of Stockton ; Kirkhope*

- Clarifier la phrase "attire l'attention des Parlements nationaux" (aucune suggestion n'a été donnée)  
*Kohout*
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