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CONFERENCE OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES

Brussels, 24 November 2003 (04.12)
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CIG 54/03

NOTE

from :	IGC Secretariat
dated :	24 November 2003
to :	Working Party of IGC Legal Experts
Subject :	***IGC 2003*** ***Adjustment of the Accession Treaties and Acts of Accession and of their Protocols*** ***- editorial and legal comments***

Delegations will find attached a note from the Commission on the methodology for the adjustment of the Accession Treaties and Acts of Accession.

THE ACCESSION TREATIES

Identification of those provisions which remain relevant and must be incorporated into the Constitution

INTRODUCTION

1. Article IV-2(2) of the draft Constitution provides that the five Treaties on Accession to the Communities and to the Union are to be repealed as from the date of entry into force of the Constitution, in the same way as the founding Treaties and the successive acts and treaties amending them.

   However, a Protocol [XX] annexed to the Constitution is intended to contain the provisions of those Treaties which are to remain in force and whose legal effects are to be preserved in the circumstances laid down in that Protocol.

2. The aim of the present document is to identify, in the Accession Treaties:

   those provisions which remain relevant and which must be preserved or incorporated in the Constitution as they stand;

   those provisions which may be repealed on the grounds that they are obsolete, have lapsed, or have been consolidated or covered by later provisions or by the Constitution itself.

3. Section One of this document gives a general overview of the structure of the Accession Treaties and of provisions likely to be repealed or maintained, with the exception of the most recent Accession Treaty (2003). Given its topical nature, that Treaty is analysed in more detail in Section Two. Section Three indicates the methods which have been used to incorporate or adjust those provisions which remain relevant. Finally, through the Accession Treaties, the new Member States have also acceded to the European Atomic Energy Community (Euratom); specific observations on this are to be found in Section Four.

A precise identification of those provisions of primary legislation in each Accession Treaty which need to be incorporated is set out in the Annexes to this note (the Annex relating to the 2003 Accession Treaty will be forwarded later). These Annexes are the result of an initial analysis. Commission and Council staff are continuing to examine the various Accession Treaties, so as to ensure that no provision which is still relevant is omitted. Delegations are nevertheless requested to inform the IGC Secretariat of any items to be added to the list of provisions in the Annexes to this note, or any amendments to be made to them.

4. In this note, the Accession Treaties and Acts of Accession are indicated by the abbreviations TA and AA, followed by the year of signing.

Thus:

TA 1972 and AA 1972 refer to the Accession Treaty and Act of Accession of Denmark, Ireland and the United Kingdom [1];

TA 1979 and AA 1979 refer to the Accession Treaty and Act of Accession of Greece [2];

TA 1985 and AA 1985 refer to the Accession Treaty and Act of Accession of Spain and Portugal [3];

TA 1994 and AA 1994 refer to the Accession Treaty and Act of Accession of Austria, Finland and Sweden [4];

TA 3003 and AA 2003 refer to the Accession Treaty and Act of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia [5].

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1 OJ L 73, 27.3.1972
2 OJ L 291, 19.11.1979
3 OJ L 302, 15.11.1985
4 OJ C 241, 29.8.1994
5 OJ L 236, 23.9.2003 and OJ C 227E, 23.9.2003

I. GENERAL COMMENTS ON THE FIRST FOUR ACCESSION TREATIES

5. The Accession Treaties all have an almost identical structure: they comprise the Treaty itself, the Act concerning the conditions of accession, a large number of Annexes to the Act of Accession, Protocols and finally a Final Act of the Conference to which all the Declarations are annexed.

6. The **Accession Treaties** as such contain only three Articles each, providing for actual accession to the Communities (for TA 1985 and TA 1994, accession to the Union and to the Communities), referring to the Acts of Accession for the conditions of admission and the adjustments to the Treaties, setting the date on which the Accession Treaty is to enter into force, and providing for the adjustment procedure should a candidate State not accede.

   On the date when the Constitution comes into force, the Member States which have acceded to the Communities and to the Union will be members of the European Union not by virtue of the Accession Treaties, but by virtue of the fact that, with the six original Member States, they are the High Contracting Parties concluding the Treaty establishing a Constitution for Europe, which will constitute the new legal foundation for the Union. The EC Treaty and the Treaty on European Union will be repealed.

   As a result, the three Articles of the Accession Treaties have become legally void and may be repealed (without prejudice to the Euratom issue: see Section IV below).

   However, the successive accessions and the dates on which they took place need to be reiterated – perhaps in the recitals of Protocol [XX] – so as to confirm that the rights and obligations resulting from the law of the European Community and the European Union for Member States other than the original six, date only from their respective dates of accession.

7. The **Acts** concerning the conditions of accession consist of five parts:

   (i) principles;
   (ii) adjustments to the Treaties;
   (iii) adaptations to acts adopted by the Institutions;
   (iv) transitional measures;
   (v) provisions relating to the implementation of the Act of Accession.

   (i) The Articles on **principles** set out the general effects of accession (the new Member States are placed in an identical legal situation to the old ones) and the obligations on the new Member States (they must make the same undertakings as the old Member States).

Since the Constitution (Article IV-3) maintains in force the entire *acquis* in respect of all the Member States, these Articles are in principle superfluous. However, there might be a case for maintaining the definitions and articles intended to specify the status in law of certain provisions of the Accession Treaties [6] for as long as those provisions remain in force (this problem arises in more acute fashion for the latest Accession Treaty; see Section II below).

The question also arises of whether the new Member States have already effectively fulfilled all their commitments to accede to the conventions between the Member States (particularly those laid down in Article 293 TEC (ex Article 220) and those coming under the "third pillar") and international agreements with third countries, particularly "mixed agreements". In the absence of certainty in this respect, the effects of those provisions should be maintained by a general formula "extending" those obligations, which could read as follows: *"The Member States which have acceded to the European Communities or to the European Union established by the Treaty on European Union shall remain bound, under the conditions laid down in the respective acts of accession, to accede to the agreements or conventions concluded before their accession between the Member States, or concluded before their accession by the Member States and the European Community with third countries. The Union and its other Member States shall provide every assistance in this respect."*

The Articles in each Act of Accession which make clear the position of the new Member States in relation to international agreements which they concluded before their accession (application of Article 307 TEC (ex Article 234)) are obsolete, since that provision has been incorporated in the Constitution (Article III-341).

(ii) The part on **adjustments to the Treaties** contains amendments to the provisions on the institutions and bodies, which are wholly covered by the institutional provisions of the Constitution.

It also provides for the adjustment of the territorial scope of the Treaties; those adjustments have been incorporated in Article IV-4 of the Constitution. However, Article 28 of AA 1972, on Gibraltar, and Article 25 of AA 1985, on the Canary Islands, Ceuta and Melilla, are permanent adjustments to the Treaties and therefore remain relevant [7].

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6 In particular, the "rule" that adjustments to acts of secondary legislation are themselves secondary legislation and may be amended again according to the procedure laid down for amendments to the act of secondary legislation in question.

7 Other provisions relating to the territorial application of Union law are to be found in the Protocols annexed to the Accession Treaties. It should also be pointed out that some provisions on specific policies set out particular arrangements applicable to certain territories (for example, point VI of Annex II to AA 1972 as regards Gibraltar; Article 155, the third paragraph of Article 185, the fourth paragraph of Article 186 and the second paragraph of Article 187 of AA 1985 as regards the Canary Islands, Ceuta and Melilla).

(iii) The part on the **adaptations to acts adopted by the institutions** consists of two provisions [8] referring to Annexes I and II of the Act of Accession. Those provisions and Annexes could be repealed.

The purpose of Annex I to each Act of Accession is to adjust the wording of a great number of acts of secondary legislation in force at the time of accession. Annex II to each Act of Accession contains a limited number of acts of the institutions which need to be amended in conformity with the guidelines set out in that Annex and in accordance with a more flexible procedure [9].

The majority of these adaptations (particularly those made by, or by virtue of, the oldest Acts of Accession) have no doubt become obsolete in the meantime; nevertheless, others remain relevant today. Whatever the case, since Article IV-3(3) maintains in force the entire *acquis*, adaptations to acts of secondary legislation effected by or by virtue of Annexes I and II to the Acts of Accession are also maintained. However, so that there is no room for doubt, there might be a case for confirming this explicitly in Article IV-3 of the Constitution [10].

(iv) Part Four of each Act of Accession contains the **transitional measures**. The provisions in this part are in effect only for a limited period, generally indicated in the provision in question [11]. The transitional periods for the first four Acts of Accession have all ended; the provisions on the transitional measures and the Annexes relating to them are therefore obsolete.

However there are certain exceptions, which are listed in the Annexes to this note.

(v) The last part of each Act of Accession comprises **provisions relating to the implementation of the Act**. These are:

measures on the setting up of the institutions: these provisions are obsolete, since the institutions have in the meantime been established in their new configuration;

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8 Articles 29 and 30 of AA 1972; Articles 21 and 22 of AA 1979; Articles 26 and 27 of AA 1985; Articles 29 and 30 of AA 1994.

9 Namely the procedure laid down for the adjustment of acts of the institutions adopted between the signing of the Act of Accession and the date of accession: Article 153 of AA 1972; Article 146 of AA 1979; Article 396 of AA 1985; Article 169 of AA 1994.

10 To this end, the first sentence of Article IV-3(3) could read: *"The acts of the Institutions, bodies, offices and agencies adopted, or amended, on the basis of the treaties and acts repealed by Article IV-2 shall remain in force."*

11 The first two Acts of Accession also contain a general clause to the effect that – unless otherwise stipulated – the application of the transitional measures was to terminate at the end of 1977 (Article 9(2) of AA 1972) and 1985 respectively (Article 9(2) of AA 1979). The next two Acts of Accession contain such general clauses in relation to agriculture: the transitional measures were to cease to apply in principle at the end of 1995 (Article 67(3) and Article 233(3) of AA 1985) and 1999 respectively (Article 137(3) of AA 1995).

provisions on the applicability of the acts of the institutions: these provisions are generally obsolete [12] since they were intended to govern the legal situation of the new Member States in relation to acts of the institutions adopted before their accession (these provisions concern the notification of acts and time limits for transposition and in certain cases postpone dates of application – these time limits have expired in the meantime). However, it does seem necessary to maintain in force the provision which, for each accession, stipulates that the texts of the acts of the institutions adopted before accession and drawn up in the languages of the new Member States at accession are also authentic [13].

final provisions: these provisions have also become void.

8. The **Annexes** to the Acts of Accession, other than Annexes I and II (see paragraph 7(iii) above), relate to transitional provisions in Parts Four and Five. They should be treated in the same way as the provisions of the Acts of Accession to which they refer, and are therefore obsolete.

9. The **Protocols** need to be examined on a case-by-case basis to determine whether they are transitional or permanent in nature. They may be transitional because they refer to a date or because they refer to a factual situation. The Annexes to this note make appropriate suggestions.

It should be noted that the four Acts of Accession include a protocol which amends the Protocol on the statute of the European Investment Bank. Those amendments have been integrated into the text of the Protocol on the EIB which has already been forwarded to the Working Party of IGC Legal Experts (CIG 48/03).

10. Finally, the **declarations** which are annexed to the Final Acts of the Conferences which drew up the Accession Treaties will be treated in the same way as the declarations annexed to the original Treaties and to the successive Treaties revising them (see CIG 47/03). The text of these declarations will be sent to the Working Party of IGC Legal Experts for examination.

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12 On the other hand, Article 172 of AA 1994, which governs the continuity of implementation of EEA provisions in the area of competition and of decisions taken by the EFTA Surveillance Authority, is not obsolete.

13 Article 155 of AA 1972; Article 147 of AA 1979; Article 397 of AA 1985; Article 170 of AA 1994.

II. COMMENTS ON THE 2003 ACCESSION TREATY

11. Article IV-2(2) of the draft Constitution does not distinguish between Accession Treaties and therefore provides that the most recent Accession Treaty, signed on 16 April 2003, will also be repealed. Those of its provisions which remain relevant could be preserved by incorporation into Protocol [XX] annexed to the Constitution.

12. The structure of the most recent Accession Treaty is essentially the same as that of previous Accession Treaties. All the comments made above in paragraphs 6 to 10, except for 7(iv) and 8, on the four first Accession Treaties therefore apply in principle. However, given that this Treaty would have to be repealed only a short time after its entry into force, a number of additional comments are required.

paragraph 7(i): Act – principles. These provisions have in principle become superfluous. However, in line with what was observed above, Articles 5 and 6 of AA 2003, on the undertakings by the new Member States to accede to international conventions and agreements, will probably not yet have become obsolete when the Constitution enters into force.

Furthermore, Article 3 of AA 2003 – and Annex I referring to it – which describes the conditions for the application of the Schengen *acquis* to the new Member States, will have to be preserved.

Finally, the part on principles contains definitions and Articles intended to make clear the status in law of the acts adjusted or amended by the Act of Accession (in particular that adjustments to acts of secondary legislation are themselves secondary legislation and may be further amended in conformity with the procedure laid down for the amendment of the act of secondary legislation in question: Articles 1, 8 and 9 of AA 2003). These Articles have no autonomous scope but determine the scope of other provisions of the Acts of Accession. As a fair number of the transitional provisions will have to be maintained in force, it is suggested that the effect of these horizontal provisions should also be preserved by wording the Protocol which will maintain in force those other provisions of the Acts of Accession accordingly.

paragraph 7(ii): Act – adjustments to the Treaties. These provisions are wholly covered by the Constitution, with the exception of Article 18 of AA 2003 which contains an amendment to Article 57 TEC; this should be incorporated in Article III-46.

paragraph 7(iii): Act – adaptations to acts adopted by the institutions. Under a different title ("Permanent provisions"), Part Three of AA 2003 and the Annexes to which that Part refers have essentially the same objective as Part Three of the previous Acts of Accession: to adapt the Union's secondary legislation in force on the date of accession, or, in other cases, to lay down how secondary legislation may be amended.

Annex II (like Annex I to the other Acts of Accession) is no longer relevant, since it is covered by Article IV-3(3) of the Constitution.

On the other hand, this is not the case for **Annex III** (comparable to Annex II to the other Acts of Accession) which provides for certain adaptations of secondary legislation in conformity with a more flexible procedure that are not certain to have been wholly implemented on the date when the Constitution comes into force.

Similarly, **Annex IV**, which sets out the conditions for the application of certain provisions of the EC Treaty and of secondary legislation, will have to be maintained since it is intended to produce effects without any limit in time.

paragraph 7(iv): Act – transitional measures. See paragraph 13 below.

paragraph 7(v): Act – provisions relating to implementation. The observations set out above are also relevant to the most recent Act of Accession; consequently, the provisions on the legal force of the versions of the acts of the institutions in the languages of the new Member States must be maintained (Article 58 of AA 2003).

Some of the provisions on the setting up of the institutions are likely to have an effect well beyond the date on which the Constitution enters into force since they determine the length of the term of office of the members of those institutions and bodies. However, these provisions do not have to be maintained insofar as they will be covered by Article IV-3(2) of the Constitution (as drafted by the Working Party of IGC Legal Experts).

paragraph 8: Annexes. Most of the Annexes relate to the transitional provisions and should be treated in the same way – see paragraph 13 below.

paragraphs 9 and 10: Protocols and Declarations: The observations set out above are also relevant to the most recent Accession Treaty.

13. **Identification of transitional measures**

A special feature of the most recent Accession Treaty is that a large number of provisions or Protocols, notwithstanding their transitional nature, will remain relevant, in some cases for many years to come (up to twelve years).

The selection of which of these transitional provisions will remain relevant and which will be obsolete on the date on which the Constitution enters into force depends largely on what that date is, which is as yet unknown [14]. It is obvious that the later that date of entry into force, the more provisions there will be which do not have to be incorporated.

If entry into force is before 1 January 2006, practically all the transitional provisions will have to be incorporated. On the other hand, if it is after 31 December 2006, the number of relevant transitional provisions will be relatively limited; a good number of the transitional provisions of the most recent Accession Treaty do in fact expire on 31 December 2006.

However, it seems necessary to allow for the most optimistic hypothesis, namely that of entry into force not long after the date on which the Constitution is signed, and only to exclude those transitional provisions which will certainly have lost their relevance following accession or because of the entry into force of the Constitution.

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[14] Unlike the Accession Treaty, the Constitution does not fix a date for its entry into force: that depends on the date on which the instruments of ratification of the Treaty establishing a Constitution for Europe are deposited by the last Member State to complete that formality: the Constitution will come into force on the first day of the second month following that deposit (see Article IV-8).

III. INCORPORATION AND ADJUSTMENT OF THE PROVISIONS OF THE ACCESSION TREATIES

14. By virtue of Article IV-2, the provisions of the Accession Treaties which are incorporated in Protocol [XX] will remain in force. There are two ways to "incorporate" the provisions of the Accession Treaties: either a protocol annexed to the Constitution reproducing the entire text of the provisions in question, or a protocol referring to the provisions concerned which is limited to listing them and laying down the procedures necessary to adjust them. In this respect a distinction may be made between permanent and transitional provisions.

15. It is proposed that the full text of the **permanent provisions** of the Accession Treaties which must be preserved should appear in the Protocol. These provisions, just as much as the Articles of the Constitution and the Protocols annexed to it, are in fact provisions of primary legislation whose scope is not limited in time. For reasons of transparency they ought therefore to be incorporated in the Protocol. This would actually involve a fairly limited number of provisions.

    Where appropriate, the text of these permanent provisions will have to be adjusted to the context of the Constitution, by replacing any references to the EC and EU Treaties with references to the relevant provisions of the Constitution and by adjusting the provisions to the new legal environment of the Constitution (instruments, procedures).

    Article IV-2 provides that these provisions will be set out "in Protocol [XX]". However, it is proposed that an examination should be made of whether – for the sake of consistency and clarity – some provisions should not be inserted into certain Protocols which are already annexed to the Constitution [15]. The possibility of incorporating all or some of the permanent provisions of the Acts of Accession in thematic protocols should also be examined; it is, for example, proposed that all the provisions on the territorial application of the Constitution should appear together in a single protocol (and that some of Article IV-4 of the Constitution could perhaps be transferred to it) [16].

16. For the **transitional provisions**, bearing in mind the time constraints and the scale of the adjustment operation, the best solution would be to insert in Protocol [XX] – which will establish the list of transitional provisions being maintained in force – a clause authorising the Council, under a procedure to be determined, to establish the necessary adjustments (following the example of the authorisation given in Article 2(2) of the Accession Treaties to adjust the Act of Accession if one of the candidate countries does not ratify the Accession Treaty).

    Finally, a simplified procedure should be envisaged allowing those transitional provisions which have been maintained in force to be repealed once they become obsolete. In that way the volume of the provisions of primary legislation could be reduced without needing to revise the Treaties.

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15 For example, it would seem logical to put the provisions of the Protocol on the acquisition of secondary residences in Malta (annexed to AA 2003) with those of the Protocol on the acquisition of property in Denmark (currently annexed to the EC Treaty).

16 The text of Article IV-4(6)(b) has been adjusted by the Working Party of IGC Legal Experts to take account of AA 2003 concerning the British Sovereign Base Areas in Cyprus.

17. So that the distinction proposed above can be applied, the Annexes to this note distinguish between "permanent" provisions and "transitional" provisions.

IV. THE ACCESSION TREATIES AND EURATOM

18. By means of the Accession Treaties, new Member States have each time become parties to the Treaty establishing the European Atomic Energy Community (Euratom) [17]. The Convention has now decided to keep that Community and its personality distinct from that of the Union. There is therefore a need to consider how to maintain the effects of these Accession Treaties in relation to Euratom, despite their repeal by virtue of Article IV-2 [18].

19. There is a need to ensure that the Euratom Treaty, as amended by the Protocol amending the Euratom Treaty, continues to take account of successive accessions and their consequences. In this respect it should be noted that the draft Protocol (as revised by the Working Party of IGC Legal Experts) refers in its recitals to the Euratom Treaty in the version in force at the time of entry into force of the Treaty establishing the Constitution, which thus also includes any amendments made by all the Accession Treaties.

    Nonetheless, there seems to be a need to add a provision to the Protocol on the Euratom Treaty listing the successive accessions to Euratom and confirming their general effects. To this end, it is proposed that a provision be added to the Euratom Protocol in order to maintain the effects of Article 1 of each TA and Part One of each Act of Accession (relating to principles) in relation to the Euratom Treaty.

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17 The first three Accession Treaties provide that the new Member States *"become members of the (E)EC and of the EAEC and Parties to the Treaties establishing these Communities"* (Article 1(1) of TA 1972, TA 1979 and TA 1985); the last two Accession Treaties - subsequent to the Maastricht Treaty - provide that the new Member States *"become members of the European Union and Parties to the Treaties on which the Union is founded..."* (Article 1(1) of TA 1994 and TA 2003).

18 It should be remembered that the Working Party of Legal Experts has not taken the route suggested by the IGC Secretariat of formulating Article IV-2 in such a way as to exempt those provisions which amend the Euratom Treaty from the repeal of the existing Treaties.

20. Regarding Euratom secondary legislation, the situation is different from that of secondary legislation adopted by virtue of the EC Treaty. Since the Euratom Treaty is not being repealed, acts of Euratom secondary legislation will not be affected by the entry into force of the Constitution. However, the amendments to Euratom secondary legislation made by the Acts of Accession (by Annex I, or in the case of AA 2003, by Annex II), and the transitional measures which might still be relevant, would be repealed unless they are maintained in force. It is therefore proposed that Protocol [XX] should contain a clause preserving the legal effects of the Acts of Accession as regards Euratom secondary legislation [19]. In this context, it is also necessary to preserve, in relation to acts of Euratom secondary legislation, the effects of the provisions of the Acts of Accession which specify that the texts of the acts of the institutions adopted before accession and drawn up in the languages of the new Member States at accession, are also authentic [20].

21. Finally, as regards the Protocols annexed to the Accession Treaties which relate more especially to Euratom, it should be noted that:

Protocols No 25, No 26 and No 28 to TA 1972, Protocol No 6 to TA 1979 and Protocols No 13 and No 22 to TA 1985 on the exchange of information in the field of nuclear energy should be incorporated;

Protocol No 29 to TA 1972 on the Agreement with the International Atomic Energy Agency is obsolete.

Furthermore, Protocol No 4 to TA 2003 on the Ignalina nuclear power plant in Lithuania and Protocol No 9 to TA 2003 on unit 1 and unit 2 of the Bohunice V1 nuclear power plant in Slovakia will still be relevant when the Constitution enters into force. They should therefore be preserved, either by stipulating in the Protocol on the Euratom Treaty that those two Protocols have not been repealed but are now annexed to the Euratom Treaty, or by incorporating them in Protocol [XX].

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19 Following the model of Article IV-3(3), this clause could read as follows: " *The amendments made by the Treaties referred to in Article IV-2(2) of the Constitution to the acts of the Institutions, bodies, offices and agencies adopted on the basis of the Treaty establishing the European Atomic Energy Community shall remain in force. Their legal effects shall be preserved unless and until those amendments are repealed, annulled or amended in implementation of that Treaty.*".

20 Article 155 of AA 1972; Article 147 of AA 1979; Article 397 of AA 1985; Article 170 of AA 1994; Article 58 of AA 2003.

Annex I

Treaty concerning the accession of Denmark, Ireland and the United Kingdom

I. Provisions of primary legislation which remain relevant and must be incorporated

Article 28 AA	This provision concerns Gibraltar. It is still relevant as it governs Gibraltar's special status with regard to certain parts of Community legislation on agriculture and turnover taxes.
Article 155 AA	This provision establishes that texts of the acts adopted before accession and drawn up in the Danish and English languages will, from the date of accession, be authentic under the same conditions as the texts drawn up in the original languages. This provision must be preserved.
Protocol No 2	This Protocol concerns the Faroe Islands. It is still relevant by virtue of its Article 4 which governs the status of Danish nationals resident in the Faroe Islands.
Protocol No 3	This Protocol concerns the Channel Islands and the Isle of Man. It is still relevant as it governs the special status of the Channel Islands and the Isle of Man in customs matters, the field of citizenship and the free movement of persons.
Protocol No 25	This Protocol concerns the exchange of information with Denmark in the field of nuclear energy. Although it has not been implemented for many years, it is still legally relevant.
Protocol No 26	This Protocol concerns the exchange of information with Ireland in the field of nuclear energy. Although it has not been implemented for many years, it is still legally relevant.
Protocol No 28	This Protocol concerns the exchange of information with the United Kingdom in the field of nuclear energy. Although it has not been implemented for many years, it is still legally relevant.
Protocol No 30	This Protocol concerns Ireland. It is still relevant.

II. Provisions of primary legislation not requiring incorporation

TA	The provisions of this Treaty are now obsolete, have lapsed or are redundant for the reasons given in the cover note.

AA With the exception of Articles 28 and 155, the provisions of this Act are now obsolete, have lapsed or are redundant for the reasons given in the cover note.

Protocol No 1	This Protocol concerns the Statute of the European Investment Bank. Owing to the consolidation of the Protocol on the Statute of the European Investment Bank (see CIG 48/03), it is redundant.
Protocol No 4	This Protocol concerns Greenland: it was repealed by Article 4 of the Treaty amending, with regard to Greenland, the Treaties establishing the European Communities (OJ L 29/3, 1.2.1985)
Protocol No 6	This Protocol, on certain quantitative restrictions relating to Ireland, is obsolete.
Protocol No 7	This Protocol, on imports of motor vehicles and the motor vehicle assembly industry in Ireland, is obsolete.
Protocol No 8	This Protocol, on phosphorus (CCT subheading No 28.04 C IV), is obsolete.
Protocol No 9	This Protocol, on aluminium oxide and hydroxide (alumina) (CCT subheading No 28.20 A), is obsolete.
Protocol No 10	This Protocol, on tanning extracts of wattle (mimosa) (CCT subheading No 32.01 A) and tanning extracts of chestnut (CCTsubheading No ex 32.01 C), is obsolete.
Protocol No 11	This Protocol, on plywood (CCT heading No ex 44.15), is obsolete.
Protocol No 12	This Protocol concerns wood pulp (CCT subheading No 47.01 A II). Its provisions have been transposed into the Combined Nomenclature.
Protocol No 13	This Protocol concerns newsprint (CCT subheading 48.01 A). Its provisions have been transposed into the Combined Nomenclature.
Protocol No 14	This Protocol concerns unwrought lead (CCT subheading 78.01 A). Its provisions have been transposed into the Combined Nomenclature.

Protocol No 15 This Protocol, on unwrought zinc (CCT subheading 79.01 A), is obsolete.

Protocol No 16 This Protocol, on markets and trade in agricultural products, is obsolete.

Protocol No 17 This Protocol, on the import of sugar by the United Kingdom from the exporting countries and territories referred to in the Commonwealth Sugar Agreement, is obsolete.

Protocol No 18 This Protocol, on the import of New Zealand butter and cheese into the United Kingdom, is obsolete.

Protocol No 19 This Protocol concerns spirituous beverages obtained from cereals. It has lapsed following the introduction of the common organisation of the market in cereals (see Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals, OJ L 181/21, 1.7.1992).

Protocol No 22 This Protocol on relations between the European Economic Community and the Associated African and Malagasy States and also the independent developing Commonwealth countries situated in Africa, the Indian Ocean, the Pacific Ocean and the Caribbean lapsed by virtue of the first Lomé Convention.

Protocol No 23 This Protocol, on the application by the new Member States of the generalised tariff preference scheme applied by the European Economic Community, is obsolete.

Protocol No 24 This Protocol, on the participation of the new Member States in the funds of the European Coal and Steel Community, lapsed once the ECSC Treaty expired.

Protocol No 29 This Protocol concerns the Agreement with the International Atomic Energy Agency: on 15 April 1973 Denmark and Ireland acceded to the Agreement between certain Member States of the Community jointly with the EAEC and the International Atomic Energy Agency on the application of the guarantees provided for in the Treaty on the Non-Proliferation of Nuclear Weapons.

Annex II

Treaty concerning the accession of Greece

I. Provisions of primary legislation which remain relevant and must be incorporated

Article 147 AA This Article specifies that the texts of the acts of the institutions adopted before accession and drawn up in the Greek language will also be authentic. This provision should be preserved.

Protocol No 3 This Protocol concerns the granting by the Hellenic Republic of exemption of customs duties on the import of certain goods. It is still relevant as it contains no specific time limit for the measures.

Protocol No 4 This Protocol is on cotton. It is still relevant as application of its provisions is not limited in time.

Protocol No 6 This Protocol concerns the exchange of information with the Hellenic Republic in the field of nuclear energy. Although it has not been implemented for many years, it is still legally relevant.

Protocol No 7 This Protocol concerns the economic and industrial development of Greece. It is still relevant as application of its provisions is not limited in time.

II. Provisions of primary legislation not requiring incorporation

TA	The provisions of this Treaty are now obsolete, have lapsed or are redundant for the reasons given in the cover note.
AA	With the exception of Article 147, the provisions of the AA are now obsolete, have lapsed or are redundant for the reasons given in the cover note.
Protocol No 1	This Protocol concerns the Statute of the European Investment Bank. Owing to the consolidation of the Protocol on the Statute of the European Investment Bank (see CIG 48/03), it is redundant.
Protocol No 2	This Protocol concerns the definition of the basic duty for matches falling within heading No 36.06 of the Common Customs Tariff. Since it refers to a transitional provision of AA 1979, it is now obsolete.
Protocol No 5	This Protocol concerns the participation of the Hellenic Republic in the funds of the European Coal and Steel Community. It lapsed once the ECSC Treaty expired.

Annex III

Treaty concerning the accession of Spain and Portugal

I. Provisions of primary legislation which remain relevant and must be incorporated

Articles 25, 155 and 185 to 187 AA

These Articles concern the special status of the Canary Islands, Ceuta and Melilla. Insofar as they must be preserved, they require technical adjustment.

Article 25 AA refers to Protocol No 2 on the conditions for applying the rules on the free movement of goods, commercial policy and customs legislation to the Canary Islands, Ceuta and Melilla. It also sets the principle of non-application of the common agricultural policy and the common fisheries policy to these territories, without prejudice to Article 155 of the Act which constitutes a legal basis for adjusting the exemption arrangements for these territories with regard to fisheries.

Article 25(4) of the Act, however, provides a legal basis for including these territories in the customs territory of the Community and extending certain provisions of Community law to them [21]. This was the basis for adopting the Regulation of 26 June 1991 amending the arrangements for the Canary Islands laid down by the Act of Accession [22] which in particular establishes a transitional period for the gradual introduction of the Common Customs Tariff which expired on 31 December 2000. Article 25(4) was last cited by a Regulation of 30 May 2001 intended to extend the transitional period by one year [23].

It seems that all subsequent regulation on the matter comes under Article 299(2) of the TEC, not the Treaty of Accession [24], although that does not in itself render the above provisions obsolete.

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21 See also, on the basis of Article 25(3), Regulation No 2915/86 of 16 September 1986, amended by Regulation No 3240/88 of 18 October 1998.

22 Regulation No 1911/91 on the application of the provisions of Community law to the Canary Islands, *Official Journal* L 171, 29.6.1991.

23 Regulation No 1105/2001 amending Regulation No 1911/91, *Official Journal* L 151/1, 7.6.2001.

24 See, for example, the following acts:
– Regulation No 1454/2001 of 28 June 2001 introducing specific measures for certain agricultural products for the Canary Islands and repealing Regulation (EEC) No 1601/92, *Official Journal* L 198, 21.7.2001 (this Regulation was subsequently repealed by Regulation No 1782/2003 of 29 September 2003).
– Council Decision of 20 June 2002 on the AIEM tax applicable in the Canary Islands (2002/546/EC), *Official Journal* L 179, 9.7.2002.
– Council Regulation (EC) No 704/2002 of 25 March 2002 temporarily suspending autonomous Common Customs Tariff duties on imports of certain industrial products and opening and providing for the administration of autonomous Community tariff quotas on imports of certain fishery products into the Canary Islands, *Official Journal L 111, 26.4.2002.*

Article 155 AA was last used by a Council Regulation of 12 December 1996 [25].

Articles 185 to 187 AA relate to the definition of the Union's own resources.

Protocol No 2

This Protocol, on the Canary Islands and Ceuta and Melilla, provides for special arrangements for the application of the TEC to these territories with regard to the free movement of goods, commercial policy and customs legislation. It contains many legal bases.

Article 3(3) enables the Council to adopt each year provisions opening and allocating tariff quotas of fisheries products for these territories. It was last specifically cited in September 1996 [26]. Article 4(1)(b) refers to provisions opening and allocating quotas of agricultural products for the Canary Islands [27].

Article 9 authorises the Council to adopt the provisions implementing the Protocol, and in particular to define the rules of origin applicable to trade. This Article was specifically cited in the Regulation of 15 December 1989 [28], amending the Regulation of 7 March 1988 [29], which was then entirely recast by the Regulation of 5 December 2000 for Ceuta and Melilla [30]. This Regulation is the last to cite Protocol No 2 as a whole.

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25 Regulation (EC) No 150/97 of 12 December 1996 on the conclusion of an Agreement on cooperation in the sea fisheries sector between the European Community and the Kingdom of Morocco and laying down provisions for its implementation, *Official Journal* L 030, 31.1.1997.

26 Regulation No 1822/96 of 16 September 1996 opening and providing for the administration of Community tariff quotas for certain fishery products originating in Ceuta (1996 – 1997), *Official Journal* L 241, 21.9.1996.

27 Regulation No 1391/87 of 18 May 1987 concerning certain adjustments to the arrangements applied to the Canary Islands, *Official Journal* L 133, 22.5.1987.

28 Council Regulation (EEC) No 3902/89 of 15 December 1989 modifying with regard to the values expressed in ecus in Regulation (EEC) No 1135/88 concerning the definition of the concept of 'originating products' and methods of administrative cooperation in trade between the customs territory of the Community, Ceuta, Melilla and the Canary Islands, *Official Journal* L 375, 23.12.1989, p. 5.

29 Council Regulation (EEC) No 1135/88 of 7 March 1988 concerning the definition of the concept of 'originating products' and methods of administrative cooperation in the trade between the customs territory of the Community, Ceuta and Melilla and the Canary Islands, *Official Journal* L 114, 2.5.1988, p. 1.

30 Regulation (EC) No 82/2001 of 5 December 2000 concerning the definition of the concept of "originating products" and methods of administrative cooperation in trade between the customs territory of the Community and Ceuta and Melilla. It is specified in a recital that it is no longer necessary to have special rules of origin for the Canary Islands.

Protocol No 8	This Protocol on Spanish patents provides for a transitional period until 1 January 1992 (obligation to accede to the Munich Convention and the Luxembourg Convention). However, it is still relevant as Spain has not yet acceded to the Luxembourg Convention.
Protocol No 12	This Protocol concerns the regional development of Spain. It remains relevant as application of its provisions is not limited in time.
Protocol No 13	This Protocol concerns the exchange of information with the Kingdom of Spain in the field of nuclear energy. Although it has not been implemented for many years, it remains legally relevant.
Protocol No 14	This Protocol amends Protocol No 4 on cotton annexed to the Act concerning the conditions of accession of the Hellenic Republic. Like the latter, it remains relevant.
Protocol No 19	This Protocol on Portuguese patents provides for a transitional period until 1 January 1992 (obligation to accede to the Munich Convention and the Luxembourg Convention). However, it is still relevant as Portugal has not yet acceded to the Luxembourg Convention.
Protocol No 21	This Protocol concerns the economic and industrial development of Portugal. It remains relevant as application of its provisions is not limited in time.
Protocol No 22	This Protocol concerns the exchange of information with the Portuguese Republic in the field of nuclear energy. Although it has not been implemented for many years, it remains legally relevant.

II. Provisions of primary legislation not requiring incorporation

TA	The provisions of this Treaty are now obsolete, have lapsed or are redundant for the reasons given in the cover note.
AA	With the exception of Articles 25, 155 and 185 to 187, the provisions of this Act are now obsolete, have lapsed or are redundant for the reasons given in the cover note.
Protocol No 1	This Protocol concerns the statute of the European Investment Bank. Owing to the consolidation of the Protocol on the Statute of the European Investment Bank (see CIG 48/03), it is redundant.
Protocol No 3	This Protocol, on the exchange of goods between Spain and Portugal for the period during which the transitional measures are applied, has lapsed.
Protocol No 4	This Protocol, on a mechanism for additional responsibilities within the framework of fisheries agreements concluded by the Community with third countries, provided for specific customs arrangements in respect of fishing activities undertaken by vessels flying the flag of a Member State in the territorial waters of a third country. It has not legally lapsed, but it has never been implemented.
Protocol No 5	This Protocol concerns the participation of Spain and Portugal in the funds of the European Coal and Steel Community. It lapsed once the ECSC Treaty expired.
Protocol No 6	This Protocol concerns annual Spanish tariff quotas on the import of motor vehicles falling within subheading 87.02 A I b) of the Common Customs Tariff referred to in Article 34 of the Act of Accession. It has lapsed. Article 1 of the Protocol provides for the end of quotas on 31 December 1988.
Protocol No 7	This Protocol concerns Spanish quantitative quotas. It has lapsed (see Article 43 of the Act which provided for a transitional period).
Protocol No 9	This Protocol concerns trade in textile products between Spain and the Community as at present constituted. It has lapsed. Transitional period until 31 December 1989.
Protocol No 10	This Protocol concerns the restructuring of the Spanish iron and steel industry. It has lapsed (see Article 52 of the Act which provided for a period of three years after the date of accession and the reference to the ECSC Treaty which has expired).
Protocol No 11	This Protocol concerns pricing rules. It has lapsed, in view of the fact that it relates to the ECSC Treaty which has expired.

Protocol No 15 This Protocol concerns the definition of Portuguese basic duties for certain products. It has lapsed (see Article 190 of the Act which provided for a transitional period until 1 January 1993).

Protocol No 16 This Protocol concerns the granting by the Portuguese Republic of exemption from customs duties on the import of certain goods. It has lapsed. Last deadline: 30 November 1993.

Protocol No 17 This Protocol concerns trade in textile products between Portugal and the other Member States of the Community. It has lapsed. Application time limit: 31 December 1988.

Protocol No 18 This Protocol concerns the arrangements for the import into Portugal of motor vehicles coming from other Member States. It has lapsed, since it refers to the establishment of annual quotas for 1986 and 1987.

Protocol No 20 This Protocol concerns the restructuring of the Portuguese iron and steel industry. It has lapsed (see Article 212 of the Act which provided for a period of five years after the date of accession and the reference to the ECSC Treaty which has expired).

Protocol No 23 This Protocol concerns the arrangements for the import into Portugal of motor vehicles coming from third countries. It has lapsed. Special arrangements applicable until 31 December 1987.

Protocol No 24 This Protocol concerns agricultural structures in Portugal. It has lapsed. Programme with a total duration of ten years.

Protocol No 25 This Protocol concerns the application to Portugal of production disciplines introduced under the common agricultural policy. It has become redundant: it only applied before the "second stage". It has been superseded by the reform of the agricultural policy.

Annex IV

Treaty on the accession of Austria, Finland and Sweden

I. Provisions of primary legislation which remain relevant and must be incorporated

Article 108 AA This provision provides that own resources accruing from VAT are to be calculated and checked as though the Åland Islands were included in the territorial scope of the Sixth Directive on the harmonisation of the laws of the Member States relating to turnover taxes. This provision should be seen together with Protocol No 2 (to be kept, see below) and Declaration No 32.

Article 141 AA This provision provides that the Commission may authorise Finland to grant national aids to producers where there are serious difficulties resulting from accession which remain after full utilisation of the provisions of Articles 138, 139, 140 and 142 AA and of the other measures resulting from the rules existing in the Community. This provision remains relevant insofar as the authorisation concerned may be extended, under the same procedure.

Article 142 AA According to this provision, the Commission authorises Finland and Sweden to grant long-term national aids with a view to ensuring that agricultural activity is maintained in specific regions. These regions should cover the agricultural areas situated to the north of the 62nd Parallel and some adjacent areas south of that parallel affected by comparable climatic conditions rendering agricultural activity particularly difficult. By definition the climatic conditions are of a permanent nature.

Article 143 AA This provision stipulates that the Commission must be notified of the aids provided for in Articles 138 to 142 AA and of any other national aid subject to Commission authorisation under this Act. This provision remains relevant as a result of maintaining Articles 141 and 142 AA.

Article 144 AA This provision concerns aids applied in the new Member States prior to accession and provides that only those communicated to the Commission by 30 April 1995 will be deemed to be "existing aids" within the meaning of Article 93(1) of the EC Treaty. It remains relevant in order to preserve the definition of aids classified as "existing".

Article 148 AA This provision contains the legal basis enabling the Council to adopt the necessary provisions to implement the Title on agriculture (including adaptations to the provisions themselves). Insofar as Article 151 is maintained this provision should be preserved.

Article 149 AA This provision contains the legal basis enabling the Council to extend the period expiring on 31 December 1997 for transitional measures which are necessary to facilitate the transition from the existing regime in the new Member States to that resulting from application of the common organisation of the markets. Insofar as this measure is still applicable (the Council adopted a Decision on this basis in October 2003) it should be maintained.

Article 151 AA This provision refers to the conditions laid down in Annex XV and must be preserved as that Annex contains some time limits which have not yet expired, or which are open-ended [31].

Article 172(4), (5) and (7) AA This provision concerns decisions taken by the EFTA Surveillance Authority which must remain valid after accession (unless the Commission takes a duly motivated decision to the contrary, in accordance with the basic principles of Community law). This provision remains relevant as such decisions are not covered by Article IV-3 of the Constitution.

Protocol No 2 This Protocol concerns the special status enjoyed by the Åland islands. It remains relevant as it is presumed that the territory of the Åland islands should continue to be excluded from the territorial application of the Constitution provisions in the fields of harmonisation of the laws of the Member States on turnover taxes and on excise duties and other forms of indirect taxation. The Protocol provides that if the Commission considers that these derogations are no longer justified it will submit appropriate proposals to the Council.

Protocol No 3 This Protocol concerns the exclusive rights that may be granted to the Sami people for reindeer husbandry within traditional Sami areas. It remains relevant as it contains the legal basis for such rights.
NB.: The procedure provided for by the Protocol – the Council acting unanimously on a proposal from the Commission after consulting the European Parliament and the Committee of the Regions – needs to be reviewed.

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[31] Points VII.D.1, VII. D.2(c) (31 December 2004/Austria), IX.3 (quantitative limits / Finland, Sweden), IX.5(d) and (e) to (h) and X.(a) to (c).

Protocol No 9 This Protocol concerns road, rail and combined transport in Austria. Part I (definitions) and Part II (rail and combined transport including the Annexes) remain relevant as they contain permanent commitments [32]. Part III concerns road transport and provides essentially for the system of "ecopoints". Despite the fact that this system will expire on 31 December 2003 and will be replaced by new arrangements, Part III [33] should also be incorporated, for two reasons: firstly, because it is the basis for a number of secondary legislation acts, and, secondly, because the new arrangements will also refer to Part III.

Protocol No 10 This Protocol concerns the use of specific Austrian terms of the German language in the framework of the European Union. It remains relevant.

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32 See, for example, Article 3: "The Community and the Member States concerned shall, within the framework of their respective competences, adopt and closely coordinate measures for the development and promotion of rail and combined transport for the trans-Alpine carriage of goods", or Article 4: "When establishing the guidelines provided for in Article 129c of the EC Treaty, the Community shall ensure that the axes defined in Annex 1 form part of the trans-European networks for rail and combined transport and are furthermore identified as projects of common interest." Annex 2 contains measures which the Community, Austria, Germany, and Italy undertake to implement (by the end of 2010 in the case of the Brenner route). Annex 3 concerns the additional railway capacity that the Community and the Member States concerned will use their best endeavours to develop and utilise (by the end of 2010 in the case of the Brenner axis).

33 At least Article 11(1) and Article 14(2) should be preserved (legal basis for any control methods including electronic systems applicable after 31 December 1996). Lastly, Article 16 (Part IV), on the functioning of the Committee composed of the representatives of the Member States, could be deleted as the new arrangements will provide for a new Committee, but it will be necessary to check that the duties of both committees are identical.

II. Provisions of legislation not requiring incorporation

TA	The provisions of this Treaty are now obsolete, have lapsed or are redundant for the reasons given in the cover note.
AA	With the exception of Articles 108, 141 to 144, 148, 149 and 151 and Article 172(4), (5) and (7), and those provisions of Annex XV referred to in footnote 31, the provisions of this Act are now obsolete, have lapsed or are redundant for the reasons given in the cover note.
Protocol No 1	This Protocol concerns the statute of the European Investment Bank. Owing to the consolidation of the Protocol on the Statute of the European Investment Bank (see CIG 48/03), it is redundant.
Protocol No 5	This Protocol concerns the participation of Austria, Finland and Sweden in the funds of the European Coal and Steel Community. It lapsed once the ECSC Treaty expired.
Protocol No 6	This Protocol lays down special provisions for Objective 6 in the framework of the Structural Funds in Finland and Sweden. It has become obsolete (December 1999 deadline, new Council Regulation).
Protocol No 8	This Protocol concerns elections to the European Parliament in Austria, Finland and Sweden during the interim period. It is outdated.

CONFERENCE OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES

Brussels, 1 December 2003

CIG 58/03

COVER NOTE

from:	J.-C. Trichet, President of the European Central Bank
dated:	26 November 2003
to:	F. Frattini, President of the European Council
Subject:	***IGC 2003*** ***– Introduction of a new article into the Constitution to allow for the amendment of the European System of Central Bank's basic constitutional rules by a simplified procedure***

According to the information at my disposal, the European Commission has proposed to the Italian Presidency to widen the scope of Article 10.6 of the Statute of the European System of Central Banks and of the European Central Bank by introducing a new Article III-79(7) into the Constitution. This proposal, which I understand is to be considered at the Ministerial 'Conclave' in Naples on 28/29 November 2003, reads as follows:

'Article III-84, paragraphs 1 and 2a of the Constitution, and Articles 10 to 12 and 43 of the Statute of the European System of Central Banks and the European Central Bank may be amended by a decision of the European Council, acting unanimously: (a) either on a Commission proposal after consultation of the European Parliament and the European Central Bank; (b) or on a recommendation from the European Central Bank after consultation of the European Parliament and the Commission.'

The Governing Council of the ECB is seriously concerned about this proposal. It would significantly expand the scope of the current simplified amendment procedure to change Article 10.2 of the Statute, so as to encompass any change to the basic provisions governing the decision-making bodies of the ECB. It would also do away with the need for each Member State to ratify, as currently foreseen in Article 10.6 of the Statute. This would imply a far-reaching change to the current constitution of the ESCB, which the Governing Council cannot support.

The success of European monetary union depends on the soundness of its institutional framework. Basic constitutional rules for the ESCB, such as those contained in Articles 10 to 12 of the Statute, should be solid and stable. They should not therefore be subject to a simplified amendment procedure.

Finally, I would reiterate that the proposal would imply an 'institutional change in the monetary area'. It should, therefore, be formally submitted to the ECB for its ipinion under Article 48 of the Treaty on European Union before the IGC determines by common accord the amendments to be made to the Treaty.

(complimentary close)

CONFERENCE OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES

Brussels, 2 December 2003

CIG 59/03

COVER NOTE

from:	R. BRIESCH, President of the European Economic and Social Committee
dated:	6 November 2003
to:	F. FRATTINI, President of the European Council
Subject:	***IGC 2003*** ***– Points where the EESC is calling for changes to the draft treaty establishing a constitution for europe***

The European Economic and Social Committee (EESC) has recently adopted, by a very large majority, an opinion setting out its expectations for the intergovernmental conference. In particular, the opinion puts forward some proposals regarding the EESC's status and its advisory role within the European institutions.

I have pleasure in enclosing a memo which presents and explains our proposals. These take the form of five requests for amendments to the draft constitutional treaty, and are designed to consolidate the EESC's position and role in the Union's future architecture and to raise its profile.

I would be extremely grateful if you could secure the Italian Presidency's support for these requests, so as to ensure that they are taken into consideration by the conference which you are chairing.

The fourth request, which deals with the tasks of the EESC, is particularly important to us. Its inclusion in the future constitution would give the EESC a clear and solid mandate to achieve its various tasks. We believe it essential that the current mandate, which was established in 1957, be modernised and updated.

I would also stress that none of the five requests calls into question the consensus achieved at the Convention or the general balance of the draft constitutional treaty; on the contrary, they are fully in keeping with it. Moreover, the numerous contacts we have already had with members of other Member State governments lead us to believe that any move by the Presidency to table these proposals – and in particular, the fourth one – would be favourably received.

I would be very happy to explain the EESC's requests to you in person.

(Complimentary close).

European Economic and Social Committee

POINTS WHERE THE EESC IS CALLING FOR CHANGES TO THE DRAFT TREATY ESTABLISHING A CONSTITUTION FOR EUROPE

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1. **Amend name as follows**: "*European* Economic and Social *Council*"

This change of name aims to highlight the European character of the Committee and its specific place in the institutional framework of the Union, distinguishing it, on the one hand, from its counterparts in the Member States and, on the other hand, from sectoral committees, advisory or otherwise, set up by or dependent on the institutions.

2. **Insert, in Article I-18 (2), advisory bodies in the list of institutions and bodies constituting "*the Union's institutional framework*"**

The European Economic and Social Committee and the Committee of the Regions contribute fully, within the competences devolved to them by the Constitution, to the attainment of the objectives referred to in Article 18(1). By enabling organised civil society and local and regional authorities to participate effectively in the process of shaping, implementing and monitoring Community policies, they are helping to boost the democratic legitimacy of the Union, in the general interest of the latter and of the Member States, in accordance with Article I-31 of the draft Constitution.

Consequently these two advisory committees are an integral part of the Union's single institutional framework and should be mentioned in Article 18(2).

3. **Maintain parity with the Committee of the Regions by also granting the EESC the right to bring an action before the Court of Justice to safeguard its prerogatives (Article III-270 (3))**

The EESC and CoR represent two distinct – but equally important - dimensions of the life and democracy of the Union and have different representative roles: organised civil society on the one hand and local and regional authorities on the other. They should therefore be treated equally and have the same rights and prerogatives.

4. **Insert a (new) Article III-297 as follows:**

"As part of the advisory function conferred on it by Article I-31 of the Constitution, the European Economic and Social Council shall:

assist the Union's legislative and executive institutions in the process of decision- and policy-making and in their implementation;

assist the European Union in organising the social dialogue at the joint request of the social partners and while respecting their autonomy;

facilitate dialogue between the Union and the organisations representing civil society in accordance with the principles laid down in Article I-46 (1 and 2);

support the Union's external action by maintaining dialogue with civil society organisations in non-EU countries and blocs."

The EESC is an instrument for strengthening the Union's democratic legitimacy by enabling civil society organisations to be effectively involved in the process of Community policy- and decision-making. Such a provision would make it possible to define the Committee's tasks clearly. It would therefore usefully complement the provisions on the Union's advisory bodies and democratic life.

5. **Enlarge the areas in which the EESC must be consulted to include the following:**

Application of the non-discrimination principle (Article III-7)
The broad economic policy guidelines (Article III-71)
The common asylum and immigration policy (Articles III-167 and III-168)
Culture (Article III-181).

The composition of the EESC and the expertise of its members means that these are areas in which it already, either through optional referrals or on its own initiative, makes an important and recognised contribution. Providing for its mandatory consultation would be one way of acknowledging this contribution and helping to raise the profile of its work in these areas. It would also give tangible form to the Union's wish to further reinforce the democratic legitimacy of Community policies.

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CONFERENCE OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES

Brussels, 14 January 2004 (16.01)
(OR. fr)

CIG 64/04

COVER NOTE

from :	Mr Julian PRIESTLEY, Secretary-General of the European Parliament
date :	7 January 2004
to :	Mr Javier SOLANA, Secretary-General/High Representative
Subject :	***IGC 2004***
	– ***European Parliament Resolution on the progress report on the Intergovernmental Conference***

At its part-session on 3 and 4 December 2003 the European Parliament adopted the following in accordance with Article 37 of its Rules of Procedure:

– a Resolution on the Council and Commission statements on the preparation of the European Council in Brussels on 12 and 13 December 2003 [1],

and decided to forward the text thereof to the Council, and

– a Resolution on the progress report on the Intergovernmental Conference,

and decided to forward the text thereof to the Italian Presidency and to the Intergovernmental Conference.

On behalf of the President of the European Parliament, I enclose the abovementioned Resolutions, and would be very grateful if you would forward the documents to those concerned.

(complimentary close)

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1 See 5263/04.

P5_TA-PROV(2003)0549

Progress report on the Intergovernmental Conference

European Parliament resolution on the progress report on the Intergovernmental Conference

The European Parliament,

– having regard to the draft Treaty establishing a Constitution for Europe of 18 July 2003, prepared by the European Convention,

– having regard to its resolution of 24 September 2003 on the draft Treaty establishing a Constitution for Europe and the European Parliament's opinion on the convening of the Intergovernmental Conference (IGC)[1],

– having regard to its resolution of 20 November 2003 on the financial provisions in the draft Treaty establishing a Constitution for Europe[2],

– having regard to the Italian Presidency proposals (CIG 52/1/03),

– having regard to Rule 37 of its Rules of Procedure,

A. recalling that the Convention was composed of representatives of parliaments, European institutions and governments, which together achieved with difficulty compromises on many fine points of balance in the constitutional structure, and that substantial changes by the governments acting alone would be unacceptable,

B. whereas the text of the draft Treaty establishing a Constitution for Europe should remain the basis for the final and overall IGC agreement,

C. whereas certain sectoral Council formations are bringing forward their own suggestions, thereby undermining the basis for stable negotiations,

1. Calls on the Heads of State and Government to continue their efforts and overcome their differences in order to arrive at a balanced and positive result on 13 December 2003;

2. Expresses its concern at the calling into question by certain Member States of the Convention's proposals for institutional reform; recalls that any solution found to the reform of the three institutions must respect the balance between representation and efficiency;

3. Recalls its support for the proposals in the draft Constitution regarding the definition of 'qualified majority'; perceives nonetheless a margin for compromise on the proposed figures provided that such a compromise respects the principle of the double majority and the lowering of the threshold fixed at Nice;

4. Welcomes the Italian Presidency's proposal to extend qualified-majority voting within

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1 P5_TA(2003)0407.
2 P5_TA(2003)0517.

the CFSP in order to achieve a balanced overall outcome on decision-making procedures;

5. Welcomes the Presidency proposals, in particular with regard to introducing a horizontal clause on social policy (Article III-2a), recognising the competences of Member States in relation to services of general interest (Article III-6) and introducing in Article I-2 equality between women and men, which must, however, be recognised as a value and not merely as a principle;

6. Insists that there be no retreat from the Convention proposals for a measured extension of qualified-majority voting; stresses the importance of the Convention text on simplified procedures to move from unanimity to qualified-majority voting or from a special legislative procedure to the ordinary legislative procedure (general bridging clause);

7. Deplores the apparent decision to do away with the Legislative Council, which was intended to effect a clearer separation between the Council's law-making and executive functions, and to guarantee full transparency of the legislative process, and hopes that at least the option of introducing the Legislative Council at a later stage will be maintained;

8. Warns the IGC not to call into question the general balance achieved in the Convention on the financial and budgetary provisions; rejects any attempt to weaken Parliament's current budgetary rights as this would be a major attack on Parliament's core principles;

9. Reiterates its support for the proposals in the draft Constitution concerning the composition of the Commission; considers there to be a danger that appointing one Commissioner per Member State would impart an intergovernmental character to it;

10. Calls on the IGC to uphold the compromise reached in the Convention whereby the Union's Foreign Minister, as a full Vice-President of the Commission, presides over a joint administration comprising Commission, Council and national officials within the Commission and chairs the Foreign Affairs Council;

11. Believes that a proposal to limit the remit of the public prosecutor to the fight against fraud affecting the Union's financial interests must be accompanied by the application of the ordinary legislative procedure;

12. Insists on the importance of incorporating a light and flexible procedure to revise Part III of the Constitution;

13. Firmly backs the intention to convene a Euratom Treaty Revision Conference in order to repeal the obsolete and outdated provisions of the Treaty, notably concerning the lack of democratic decision-making procedures;

14. Instructs its President to forward this resolution to the Italian Presidency, the Council, the Commission, the parliaments of the Member States and the Intergovernmental Conference.