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**CONFERENCE
OF THE REPRESENTATIVES
OF THE GOVERNMENTS
OF THE MEMBER STATES**

Brussels, 13 May 2004

CIG 75/04

PRESID 17

NOTE

from: Presidency
dated: 13 May 2004
to: Delegations

*Subject: IGC 2003
– Discussion at Ministerial Meeting, 17/18 May 2004*

1. The Presidency has circulated to delegations a series of draft texts on which there seems to be a likelihood of broad consensus in the context of overall agreement (CIG XX/04). The principle of nothing is agreed until everything is agreed applies. However, the Presidency does not believe that further discussion of these points at Ministerial level is necessary at this stage.
2. The Presidency would intend the Ministerial meeting on 17/18 May to focus on a number of other areas where it considers that further discussion would now be useful.
3. These include a small number of issues which were discussed by Focal Points at their meeting on 4 May on which further adjustments to the texts were considered necessary by some:
Formations of the Council of Ministers and Exercise of the Presidency of the Council of Ministers; Multiannual Financial Framework; Budget Procedure; Explanations relating to the Charter of Fundamental Rights; European Court of Justice control over procedural stipulations relating to Excessive Deficit; and the Common Commercial Policy. Texts in these areas are set out in Part I of the present document.

4. Outstanding issues also include the **scope of qualified majority voting**. While the Presidency is not yet making new proposals, relevant texts in this area produced by the Italian Presidency are included in Part II of this document for ease of reference.

5. The Presidency notes that the issue of **the future composition of the Commission** can only be finally resolved as part of a balanced outcome on the major institutional questions. However, the Presidency also considers that it would be useful for Ministers to address the future composition of the Commission and, to this end, presents some ideas set out in Part III of this document.

6. To facilitate the most efficient and productive discussion, the Presidency would ask delegations to intervene only on those issues of particular concern to them or where there is a particular point they wish to raise.

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PART I

Formations of the Council of Ministers and the Exercise of the Presidency of the Council of Ministers (see Annex 1)

1. The Presidency maintains the approach proposed by the Italian Presidency, after several discussions at Ministerial level, whereby three Member States, working together as a team, would provide the Presidency of the Council's different formations (other than Foreign Affairs) for a period of 18 months. In particular, it would welcome Ministers' views on whether, within this arrangement:
 - each Member State in the team should hold the Presidency of a number of formations for the full 18 month period, with the Presidency of the General Affairs Council and of Coreper rotating among them at six-monthly intervals; or
 - each Member State in turn, with assistance from the other Member States in the team, should chair all formations for a six month period; or
 - each Member State in the team should hold the Presidency of a number of formations within each six month period, with the Presidency of the Council's formations rotating among the members of the team at six-monthly intervals so that each Member State has an opportunity to chair each formation during the team's term in office.

In response to the wish of many to provide for greater flexibility in the future, the Presidency has proposed that it be possible to amend these provisions by QMV.

Multianual Financial Framework (see Annex 2)

2. The Presidency has proposed some clarification to the text of Article I-54. However some delegations wish to return to the rule of unanimity combined with a “passerelle” providing for the introduction of QMV. If this option were chosen, a Declaration which states that the "passerelle" will be used once there is a satisfactory decision on Own Resources could be envisaged.

Budget Procedure (see Annex 3)

3. In the current paper, the Presidency maintains for now the text it submitted to Focal Points, which is essentially a clarification of the proposal made by the Italian Presidency in its post-Naples document.

However, on the basis of discussion to date it appears that, while the proposal is acceptable to many delegations, it will not attract sufficient consensus. Conversely, while some delegations support a "tie-break" mechanism, it appears that others, including the European Parliament, find this unacceptable.

There is general agreement that the Constitution's provisions in regard to the budget must secure and maintain inter-institutional balance. However, proposed changes to other aspects of the Union's financial arrangements, including the giving of Treaty status to the multiannual financial framework and the abolition of the distinction between obligatory and non-obligatory expenditure, make it impossible to maintain the existing balance in the precise terms in which it is currently defined.

The Presidency is considering an approach which would be designed strongly to encourage and facilitate the achievement of agreement in the Conciliation Committee. It would be important in this context that both Council and Parliament be able as a general rule to endorse the outcome of the conciliation process. The Presidency sees that this could be more complex in the case of the Parliament and how it might be guaranteed could require further reflection. In the event of a failure to reach agreement in the Conciliation Committee, the Commission might be required to table a new draft budget. The situation which would apply if either or both institutions rejected or failed to adopt the Conciliation Committee's proposal would also need to be addressed. Should a new budget not be adopted in time, Article III-311 (provisional twelfths) would in any event apply.

Charter of Fundamental Rights (see Annex 4)

4. The texts as they stand appear to be broadly acceptable. However a small number of delegations wish to transfer the reference to the explanations concerning the Charter from the preamble to the body of the text. Those delegations also wish to clarify in the explanations that Article II-21 contains both rights and principles. The Presidency would welcome Ministers' views.

European Court of Justice control over procedural stipulations relating to Excessive Deficit (see Annex 5)

5. The Presidency notes that this issue will require further consideration. The text proposed by the Italian Presidency is included for ease of reference.

The Common Commercial Policy (see Annex 6)

6. To ensure legal consistency, the Presidency has proposed amendments to the existing text providing for parallelism between the voting rules for external agreements and internal legislation.

A number of delegations have particular concerns in relation to trade in educational, health and social services. The views of delegations on how these concerns can be addressed would be welcome.

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ANNEXES to PART I

THE FORMATIONS OF THE COUNCIL OF MINISTERS

Article I-23

1. **The Council shall meet in different formations.**
2. **The General Affairs Council shall ensure consistency in the work of the different Council formations. It shall prepare and ensure the follow-up to meetings of the European Council, in liaison with the President of the European Council and the Commission.**
3. **The Foreign Affairs Council shall flesh out the Union's external action on the basis of strategic guidelines laid down by the European Council and ensure that the Union's action is consistent.**
4. **The European Council shall adopt by a qualified majority a European decision establishing the list of other Council formations.**
5. **The Council shall meet in public when it deliberates and votes on a draft legislative act. To this end, each Council meeting shall be divided into two parts, dealing respectively with deliberations on Union legislative acts and non-legislative activities.**
6. **The Presidency of Council formations, other than that of Foreign Affairs, shall be held by Member State representatives in the Council on the basis of equal rotation, in accordance with the conditions established ~~unanimously~~ by a European decision of the European Council. The European Council shall act by qualified majority.**

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**DRAFT DECISION OF THE EUROPEAN COUNCIL ON THE EXERCISE
OF THE PRESIDENCY OF THE COUNCIL OF MINISTERS ¹**

Article 1

The Presidency of the Council, with the exception of the Foreign Affairs formation, shall be held by pre-established groups of three Member States for a period of 18 months. The groups shall be made up on a basis of equal rotation among the Member States, taking into account their diversity and geographical balance within the Union.

The Presidency of each Council formation shall rotate between the members of the group so that each chairs each Council formation for one six-month period during the eighteen-month period. The other members of the group shall assist the Presidency in all its responsibilities, including through the assumption of certain functions of the Presidency, on the basis of a common programme. Members of the team may decide alternative arrangements among themselves.

Article 2

The Presidency of the preparatory bodies of the Council formations referred to in Article 1 shall fall to the Member State holding the Presidency of the related formation, unless decided otherwise in accordance with the procedure laid down in Article 4.

The Presidency of the Committee of Permanent Representatives shall be held by a representative of the Member State holding the Presidency of the General Affairs Council.

The Presidency of the Political and Security Committee shall be held by a representative of the Union Minister for Foreign Affairs.

Article 3

The General Affairs Council shall ensure consistency and continuity in the work of the different Council formations in the framework of multiannual programmes in cooperation with the Commission. The Member States holding the Presidency shall take all necessary measures for the organisation and smooth operation of the Council's work, with the assistance of the General Secretariat of the Council.

Article 4

The Council shall, by a qualified majority, adopt a European decision establishing the measures for the implementation of this decision.

¹ The draft decision will be adopted on the day the Treaty enters into force.

Declaration for incorporation into the Final Act concerning the European Council decision on the exercise of the Presidency of the Council of Ministers

The Conference declares that the European Council should begin preparing the European decision establishing the procedures for implementing the decision on the exercise of the Presidency of the Council of Ministers as soon as the treaty establishing the Constitution is signed and should give its political approval within six months.

* * *

MULTIANNUAL FINANCIAL FRAMEWORK

Article I-54

1. The multiannual financial framework shall ensure that Union expenditure develops in an orderly manner and within its own resources limits. It shall determine the amounts of the annual ceilings on appropriations for commitments by category of expenditure in accordance with of Article III-308.
2. A European law of the Council shall lay down the multiannual financial framework. The Council shall act after obtaining the consent of the European Parliament, which shall be given by a majority of its component members.
3. The annual budget of the Union shall comply with the multiannual financial framework.
4. The Council of Ministers shall act unanimously when adopting the first multiannual financial framework **following the financial perspective in force on the date the treaty establishing the Constitution is signed.**

* * *

BUDGET PROCEDURE

Article III-310

European laws shall establish the Union's annual budget in accordance with the following provisions:

1. Each Institution shall, before 1 May, draw up estimates of its expenditure for the following year. The Commission shall consolidate these estimates in a draft budget which may contain different estimates.

The draft budget shall contain an estimate of revenue and an estimate of expenditure.

2. The Commission shall submit a proposal containing the draft budget to the European Parliament and to the Council not later than 15 June of the year preceding that in which the budget is to be implemented.

The Commission may amend the draft budget during the procedure until such time as the Conciliation Committee, referred to in paragraph 5 below, is convened.

3. The Council shall adopt its position ¹ on the draft budget and forward it to the European Parliament not later than 1 September of the year preceding that in which the budget is to be implemented. The Council of Ministers shall inform the European Parliament fully of the reasons which led it to adopt its position.

4. If, within forty-two days of such communication, the European Parliament:

- (a) approves the position of the Council, the European law establishing the budget shall be adopted;
- (b) has not taken a decision, the European law establishing the budget shall be deemed to have been adopted;
- (c) adopts amendments by a majority of its component members, the amended draft shall be forwarded to the Council and to the Commission. The President of the European Parliament, in agreement with the President of the Council, shall immediately convene a meeting of the Conciliation Committee. However, if within ten days of the draft being forwarded the Council informs the European Parliament that it has approved all its amendments, the Conciliation Committee shall not meet.

¹ p.m.: Under Article I-22(3), decisions of the Council shall be taken by qualified majority.

5. The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of members representing the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the members representing the European Parliament within twenty-one days of its being convened, on the basis of the positions of the European Parliament and the Council.

The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council.

6. If, within the twenty-one days referred to in paragraph 5, the Conciliation Committee agrees on a joint text, the European Parliament, acting by a majority of the votes cast, and the Council¹ shall each have a period of fourteen days from the date of that agreement in which to approve the joint text.

7. If within the period of fourteen days referred to in paragraph 6:

(a) the European Parliament and the Council both approve the joint text or fail to take a decision, or if one of these institutions approves the joint text **while** the other one fails to take a decision, the European law establishing the budget shall be deemed to **be finally** adopted in accordance with the joint text, **or**

(b) the European Parliament, acting by a majority of members and three-fifths of the votes cast, and the Council both reject the joint text, or if one of these institutions rejects the joint text while the other one fails to take a decision, either may ask for a new draft budget to be submitted by the Commission, or

(c) the European Parliament, acting by a majority of its members and three-fifths of the votes cast, rejects the joint text while the Council approves it, the European Parliament may ask for a new draft budget to be submitted by the Commission, or

(d) The European Parliament approves the joint text, whilst the Council rejects the joint text, the Parliament may, within fourteen days and acting by a majority of its members and three-fifths of the votes cast, decide to confirm all or some of the amendments referred to in paragraph 4 (c). Where a Parliament amendment is not confirmed, the position of the Council on the budget heading which is the subject of the amendment shall be deemed to **be** adopted.

8. If, within the twenty-one days referred to in paragraph 5, the Conciliation Committee does not agree on a joint text, the European Parliament may, within fourteen days, acting by a majority of its component members and three fifths of the votes cast, decide to confirm all or some of its amendments. Where a Parliament amendment is not confirmed, the position of the Council on the budget heading which is the subject of the amendment shall be deemed to **be** adopted.

¹ p.m.: Under Article I-22(3), decisions of the Council shall be taken by qualified majority.

9. Where all or some of the amendments of the European Parliament are confirmed in accordance with paragraph 7(d) or paragraph 8, the Council may, within a period of fourteen days from the date of the European Parliament's decision, reject ¹ the amended text and request ¹ that a new draft budget be submitted by the Commission. If within that period, the Council does not take a decision, the European law establishing the budget shall be deemed to **be finally** adopted.

10. When the procedure provided for in this Article has been completed, the President of the European Parliament shall declare that the European law establishing the budget has been definitively adopted.

11. Each institution shall exercise the powers conferred upon it under this Article in compliance with the provisions of the Constitution and the acts adopted thereunder, with particular regard to the Union's own resources and the balance between revenue and expenditure.

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| <p style="text-align: center;">EXPLANATIONS RELATING TO THE CHARTER OF FUNDAMENTAL RIGHTS</p> |
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5th paragraph of the Preamble

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter **and updated under the responsibility of the Praesidium of the European Convention.**

**Declaration for incorporation in the Final Act
concerning the explanations relating to the Charter of Fundamental Rights**

The Conference takes note of the explanations relating to the Charter of Fundamental Rights prepared at the instigation of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention, as set out below.

(...) [reproduction of the explanations contained in CONV 828/1/03 REV 1 of 31 July 2003, which will be published in the "C" series of the Official Journal of the European Union.]

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**EUROPEAN COURT OF JUSTICE CONTROL OVER
PROCEDURAL STIPULATIONS RELATING TO
EXCESSIVE DEFICIT**

Article III-76 (12)

12. The right to bring actions provided for in Articles III-265 and III-266 may, as regards paragraphs 1 to 6, only be exercised as to the procedural stipulations in those paragraphs.

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| COMMON COMMERCIAL POLICY |
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Article III-217

1. The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action.

2. European laws ~~or framework laws~~ shall establish the measures **defining the framework for implementing** the common commercial policy.

3. Where agreements with one or more States or international organisations need to be negotiated and concluded, the provisions of Article III-227 shall apply subject to the special provisions of this Article.

The Commission shall make recommendations to the Council of Ministers, which shall authorise the Commission to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Union policies and rules.

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee and to the European Parliament on the progress of negotiations.

4. For the negotiation and conclusion of the agreements referred to in paragraph 3, the Council shall act by qualified majority.

For the negotiation and conclusion of agreements in the fields of trade in services ~~involving the movement of persons~~ and the commercial aspects of intellectual property, **as well as foreign direct investment**, the Council shall act unanimously where such agreements include provisions for which unanimity is required for the adoption of internal rules.

The Council shall also act unanimously for the negotiation and conclusion of agreements in the field of trade in cultural and audiovisual services, where these risk prejudicing the Union's cultural and linguistic diversity.

5. The negotiation and conclusion of international agreements in the field of transport shall be subject to the provisions of Section 7 of Chapter III of Title III and Article III 227.

6. The exercise of the competences conferred by this Article in the field of commercial policy shall not affect the delimitation of competences between the Union and the Member States, and shall not lead to harmonisation of legislative or regulatory provisions of Member States insofar as the Constitution excludes such harmonisation.

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PART II

The Scope of Qualified Majority Voting (see Annexes 8 to 14)

1. The Presidency notes the desire of all partners to find a balanced compromise which responds to the general wish for further extension of majority voting, while, at the same time, responding also to the wishes of some who prefer to see unanimity retained in a number of sensitive areas.

For ease of reference, and in order to assist the discussion, the Presidency has reproduced the draft texts proposed by the Italian Presidency in this area. It has had an opportunity to ascertain the views of delegations on these matters through extensive consultations, which are continuing. However, the Presidency considers that it would be appropriate for Ministers to have a collective discussion before it proceeds to propose new texts. The issues include: **judicial cooperation in criminal matters and the related question of the European Public Prosecutor; CFSP; taxation; social security; own resources; and the passerelle provision in enhanced cooperation** (the deletion of which was proposed by the Italian Presidency).

The Presidency would welcome Ministers' views on how a balanced outcome can best be ensured.

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ANNEXES to PART II

JUDICIAL COOPERATION IN CRIMINAL MATTERS

Article III-158

1. The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal traditions and systems of the Member States.
2. *(unchanged)*
3. *(unchanged)*
4. *(unchanged)*

Article III-171

1. Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgements and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in paragraph 2 and in Article III-172.

European laws or framework laws shall establish measures to:

- (a) establish rules and procedures to ensure the recognition throughout the Union of all forms of judgments and judicial decisions;
- (b) prevent and settle conflicts of jurisdiction between Member States;
- (c) encourage the training of the judiciary and judicial staff;
- (d) facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.

2. **To the extent necessary** to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, European framework laws may establish minimum rules. **Such rules shall take into account the differences between the legal traditions and systems of the Member States and in particular between the common-law systems and the others.**

They shall concern:

- (a) mutual admissibility of evidence between Member States;
- (b) the rights of individuals in criminal procedure;
- (c) the rights of victims of crime;
- (d) any other specific aspects of criminal procedure which the Council has identified in advance by a European decision. The Council shall act unanimously after obtaining the consent of the European Parliament.

Adoption of **the minimum rules referred to in this paragraph** shall not prevent Member States from maintaining or introducing a higher level of protection **of individuals**.

Where a member of the Council considers that a draft European framework law as referred to in this paragraph would infringe the fundamental principles of its legal system, it may request that the draft law be referred to the European Council. In this case, the procedure referred to in Article III-302 shall be suspended. After discussion, the European Council may:

- (a) refer the draft back to the Council, which shall terminate the suspension of the procedure referred to in Article III302, or
- (b) request the Commission or the group of Member States from which the draft framework law emanates to submit a new draft; in that case, the act originally proposed shall be deemed not to have been adopted.

Article III-172

1. European framework laws may establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with cross-border dimensions resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money-laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.

On the basis of developments in crime, the Council may adopt a European decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European Parliament.

2. If the approximation of criminal legislation proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, European framework laws may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned. Such framework laws shall be adopted by the same procedure as was followed for the adoption of the harmonisation measures in question, without prejudice to Article III-165.

3. Where a member of the Council considers that a draft European framework law referred to in paragraphs 1 or 2 would infringe the fundamental principles of its legal system, it may request that the draft law be referred to the European Council for discussion. In that case, where the procedure referred to in Article III-302 is applicable, it shall be suspended. After discussion, the European Council may:

- (a) refer the draft back to the Council, which terminates the suspension of the procedure referred to in Article III-302 where it is applicable, or**
- (b) request the Commission or the group of Member States from which the draft framework law emanates to submit a new draft; in that case, the act originally proposed shall be deemed not to have been adopted.**

* * *

EUROPEAN PUBLIC PROSECUTOR'S OFFICE

Article III-175

1. In order to combat crimes affecting the **financial** interests of the Union, a European law of the Council may establish a European Public Prosecutor's Office from Eurojust. The Council shall act unanimously after obtaining the consent of the European Parliament.
2. The European Public Prosecutor's Office shall be responsible for investigating, prosecuting and bringing to judgment, where appropriate in liaison with Europol, the perpetrators of and accomplices in offences against the Union's financial interests, as determined by the European law provided for in paragraph 1. It shall exercise the functions of prosecutor in the competent courts of the Member States in relation to such offences.
3. The European law referred to in paragraph 1 shall determine the general rules applicable to the European Public Prosecutor's Office, the conditions governing the performance of its functions, the rules of procedure applicable to its activities, as well as those governing the admissibility of evidence, and the rules applicable to the judicial review of procedural measures taken by it in the performance of its functions.
4. **The European Council may adopt a European decision amending paragraph 1 in order to extend the powers of the European Public Prosecutor's Office to include serious crime having a cross-border dimension and amending accordingly paragraph 2 as regards the perpetrators of and accomplices in serious crimes affecting more than one Member State. The European Council shall act unanimously after consultation of the European Parliament and the Commission.**

The European Council's decision shall not enter into force until it has been approved by the Member States, in accordance with their respective constitutional rules.

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**QUALIFIED MAJORITY VOTING IN THE FIELD
OF THE COMMON FOREIGN AND SECURITY POLICY**

Article III-201

1. *(unchanged)*
2. By way of derogation from paragraph 1, the Council shall act by qualified majority:
 - (a) when adopting a European decision defining a Union action or position on the basis of a European decision of the European Council relating to the Union's strategic interests and objectives, as referred to in Article III-194(1);
 - (b) when adopting, **on a proposal from the Union Minister for Foreign Affairs**, a European decision defining a Union action or position, ~~on a proposal which the Union Minister for Foreign Affairs has presented following a specific request to him or her from the European Council made on its own initiative or that of the Minister;~~
 - (c) when adopting a European decision implementing a European decision defining a Union action or position;
 - (d) when adopting a European decision concerning the appointment of a special representative in accordance with Article III-203.

If a member of the Council declares that, for vital and stated reasons of national policy, it intends to oppose the adoption of a European decision to be adopted by qualified majority, a vote shall not be taken. The Union Minister for Foreign Affairs will, in close consultation with the Member State involved, search for a solution acceptable to it. If he or she does not succeed, the Council may, acting by a qualified majority, request that the matter be referred to the European Council for decision by unanimity.

3. *(unchanged)*
4. *(unchanged)*

* * *

TAXATION

Article III-62 (2)

2. Where the Council, acting unanimously on a proposal from the Commission, finds that the measures referred to in paragraph 1 relate to administrative cooperation or combating tax fraud and tax evasion **and that they do not affect the fiscal regimes of the Member States**, it shall act, **by way of derogation from** paragraph 1, by a qualified majority, when adopting a European law or framework law laying down those measures.

* * *

SOCIAL SECURITY

Article III-21

1. In the field of social security, European laws or framework laws shall establish such measures as are necessary to bring about freedom of movement for workers by introducing a system to secure for employed and self-employed migrant workers and their dependants:

- (a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries;
- (b) payment of benefits to persons resident in the territories of Member States.

2. Where a Member of the Council considers that a draft European framework law referred to in paragraph 1 would infringe the fundamental principles of its social security system or would significantly affect the overall financial balance of that system, it may request that the matter be referred to the European Council. In that case, the procedure referred to in Article III-302 shall be suspended. After discussion, the European Council may:

- (a) refer the draft back to the Council, which shall terminate the suspension of the procedure referred to in Article III-302, or**
- (b) request the Commission to submit a new draft; in that case, the act originally proposed shall be deemed not to have been adopted.**

* * *

OWN RESOURCES

Article I-53

1. The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.
2. Without prejudice to other revenue, the Union's budget shall be financed wholly from its own resources.
3. A European law of the Council shall lay down the limit of the Union's own resources and may establish new categories of own resources or abolish an existing category. The Council shall act unanimously after consulting the European Parliament. That law shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements.
4. A European law of the Council shall lay down the modalities relating to the Union's own resources. The Council shall act after obtaining the consent of the European Parliament.

* * *

ENHANCED COOPERATION

Article III-328

~~Where a provision of the Constitution which may be applied in the context of enhanced cooperation stipulates that the Council shall act unanimously, the Council, acting unanimously in accordance with the arrangements laid down in Article I 43(3), may, on its own initiative, decide to act by qualified majority.~~

~~Where a provision of the Constitution which may be applied in the context of enhanced cooperation stipulates that the Council of Ministers shall adopt European laws or framework laws under a special legislative procedure, the Council of Ministers, acting unanimously in accordance with the arrangements laid down in Article I 43(3), may, on its own initiative, decide to act under the ordinary legislative procedure. The Council of Ministers shall act after consulting the European Parliament.~~

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PART III

1. The Presidency is not for now proposing Treaty language on the key issue of the composition of the Commission.
2. However, it is assumed on the basis of previous discussions under the Italian Presidency and of bilateral contacts that the proposal made by the Convention for a system involving both European Commissioners and Commissioners does not represent a basis for consensus. Accordingly, a range of appropriate technical changes need to be made to the Convention text. A revised draft containing these changes is set out in Annex 15. Consequential changes will also need to be made to the related provisions of Part III.
3. The Presidency is also proposing, in view of the broad consensus on this point, to alter the Convention's proposal that Member States should list three possible candidates for the post of Commissioner.
4. Delegations will see that certain amendments previously proposed relating to the treatment of the Foreign Minister in Articles I-25 and I-26 have for ease of reference been consolidated into this text.

Composition of the Commission

5. The Presidency is aware that for many delegations this issue can only be resolved in the context of an overall settlement of the institutional issues. However, it believes that it may already be possible to identify likely elements of consensus, on the assumption that a satisfactory outcome is found to the other outstanding issues.

6. In its report to the March European Council, the Presidency stated that *“There is general agreement that the Commission has to be composed and organised in a manner which both underpins its political legitimacy across the Union, and enables it to act effectively. Many delegations, emphasising the first of these criteria, support the idea that there should be one national from each Member State in the Commission. Others, noting that the principle of a reduced Commission, on the basis of equal rotation, is already contained in the Treaty of Nice, argue that the Commission must be smaller if it is to function effectively, in the interests of the Union as a whole. The Presidency believes that the two perspectives can be reconciled.”*
7. In his oral presentation to his colleagues, and subsequently in his report to the European Parliament, the President of the European Council said that *"these two perspectives could be reconciled through maintaining for an extended period a Commission comprising one national of each Member State, moving thereafter to a reduced size on the basis of equal rotation."*
8. The Presidency believes that it would be appropriate to maintain a Commissioner comprising one national of each Member State for two full terms from the present, that is until 2014.
9. The Presidency believes that, rather than defer until later a decision on the precise future composition of a smaller Commission, it would be preferable to resolve the matter now, with a view to avoiding further protracted debate in the future and to offering citizens the greatest possible clarity.
10. Various possible options have been mooted in regard to the size of the Commission, including the Convention's proposal of a fifteen-member college (including the Commission President and the Minister for Foreign Affairs). Some have suggested that membership should be expressed not as a fixed number but as a proportion of the total number of Member States (for example, one-half or two-thirds). This has some attractions, but it would have the consequence that as the Union grew so too would the size of the Commission.

11. The Presidency recalls that in previous discussions several delegations have expressed interest in the concept of an eighteen-member college, which would in a Union of twenty-seven result in a situation where the nationals of any one Member State were present in two out of every three colleges.
12. Irrespective of which option is chosen, in the Presidency's view it will be essential to ensure, and to make entirely clear in the Constitution, as was agreed in the Treaty of Nice, that a reduced Commission would be appointed on the basis of strictly equal rotation among the Member States.

* * *

Transitional Arrangements for the Commission and the Union Minister for Foreign Affairs

Ministers' attention is drawn to the need to complete the draft Constitution with provisions to secure the transition between the present and future institutional structure.

Part IV of the draft Constitution, as established by the Convention, provided for the repeal of the basic EU and EC Treaties, without providing for the necessary succession and legal continuity arrangements. The IGC Legal Experts Group accordingly drafted provisions to that effect (document CIG 50/03, Articles IV-3 and IV-3a, as well as "Protocol on the transitional provisions relating to the Institutions and bodies of the Union"); however, no suggestion was made by the Legal Experts Group for the **Commission** and the **Minister for Foreign Affairs**, given the political choices that such transitional provisions imply.

The draft Constitution as currently drafted envisages that the provisions regarding the Commission and the Minister for Foreign Affairs would take effect on 1 November 2009. Specific provisions will need to be put in place to cover the period from the entry into force of the Constitution and that date.

The Presidency will bring forward proposals in due course.

ANNEX to PART III

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| THE COMMISSION |
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Article I-25: The European Commission

1. The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Constitution, and measures adopted by the Institutions under the Constitution. It shall oversee the application of Union law under the control of the Court of Justice of the European Union. It shall execute the budget and manage programmes. It shall exercise coordinating, executive and management functions, as laid down in the Constitution. With the exception of the common foreign and security policy, and other cases provided for in the Constitution, it shall ensure the Union's external representation. It shall initiate the Union's annual and multiannual programming with a view to achieving interinstitutional agreements.
2. Except where the Constitution provides otherwise, Union legislative acts can be adopted only on the basis of a Commission proposal. Other acts are adopted on the basis of a Commission proposal where the Constitution so provides.
3. *[Text to be proposed in light of discussions.]*
4. In carrying out its responsibilities the Commission shall be completely independent. **Without prejudice to Article I-27(2)**, the Members of the Commission shall neither seek nor take instructions from any government or other institution, body, office or agency. They shall refrain from any action incompatible with their duties or the performance of their tasks.
5. The Commission, as a college, shall be responsible to the European Parliament. The Commission President shall be responsible to the European Parliament for the activities of the Commissioners. Under the procedures set out in Article III-243, the European Parliament may pass a censure motion on the Commission. If such a motion is passed, the Members of the Commission must all resign **and the Union Minister for Foreign Affairs must resign from the Commission**. The Commission shall continue to handle everyday business until a new college is nominated.

Article I-26: The President of the European Commission

1. Taking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, deciding by qualified majority, shall put to the European Parliament its proposed candidate for the Presidency of the Commission. This candidate shall be elected by the European Parliament by a majority of its members. If this candidate does not receive the required majority support, the European Council shall within one month propose a new candidate to the European Parliament, following the same procedure.

2. The Council, acting by a qualified majority and by common accord with the nominee for President, shall adopt the list of the other persons whom it intends to appoint as Members of the Commission, drawn up in accordance with the proposals made by each Member State.

The President and the other Members of the Commission thus nominated shall be subject as a body to a vote of approval by the European Parliament. After approval by the European Parliament, the President and the other Members of the Commission shall be appointed by the Council, acting by a qualified majority.

3. The President of the Commission shall:

- (a) lay down guidelines within which the Commission is to work;
- (b) decide on the internal organisation of the Commission, ensuring that it acts consistently, efficiently and on a collegiate basis;
- (c) appoint Vice-Presidents from among the members of the College.

Members of the Commission shall resign if the President so requests. **The Union Minister for Foreign Affairs / Vice-President shall resign if the President so requests with the European Council's agreement.**

**CONFERENCE
OF THE REPRESENTATIVES
OF THE GOVERNMENTS
OF THE MEMBER STATES**

Brussels, 13 May 2004

CIG 76/04

PRESID 18

NOTE

from: Presidency
dated: 13 May 2004
to: Delegations

*Subject: IGC 2003
– Presidency proposals following the meeting of "focal points" on 4 May 2004*

Following the meeting of "focal points" on 4 May 2004, delegations will find attached a series of draft texts on which there seems to be a likelihood of broad consensus in the context of an overall agreement.

While the Presidency continues to operate on the basis of the principle that nothing is agreed until everything is agreed, it does not believe that further discussion at Ministerial level is necessary at this stage.

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THE UNION'S VALUES
RIGHTS OF PERSONS BELONGING TO
MINORITIES
EQUALITY BETWEEN WOMEN AND MEN

Article I-2

The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights, **including the rights of persons belonging to minorities**. These values are common to the Member States in a society **in which** pluralism, **non-discrimination**, tolerance, justice, solidarity and **the principle of equality between women and men prevail**.

Article III-2

In all the activities referred to in this Part, the Union shall aim to eliminate inequalities, and to promote equality, between men and women.

Declaration re Article III-2

The Conference agrees that, in its general efforts to eliminate inequalities between men and women, the Union shall aim in its different policies to combat all kinds of domestic violence. The Member States should take all necessary measures to prevent and punish these criminal acts and to support and protect the victims.

* * *

THE OBJECTIVES OF THE UNION

Article I-3 (3)

3. The Union shall work for the sustainable development of Europe based on balanced economic growth and **price stability**, a social market economy, highly competitive and aiming at full employment and social progress, and with a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

* * *

**EQUALITY OF MEMBER STATES
BEFORE THE CONSTITUTION**

Article I-5

1. **The Union shall respect the equality of Member States before the Constitution as well as their** national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including those for ensuring the territorial integrity of the State, and for maintaining law and order and safeguarding internal security.

2. Following the principle of loyal cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Constitution.

The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations flowing from the Constitution or resulting from the Union Institutions' acts.

The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.

* * *

PRIMACY OF UNION LAW

Declaration for incorporation in the Final Act
re Article I-5a

The Conference notes that the provisions of Article I-5a reflect existing Court of Justice case law.

* * *

**PRINCIPLE OF PARTICIPATORY
DEMOCRACY**

Article I-46 (4)

4. Not less than one million citizens coming from a significant number of Member States may take the initiative of inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Constitution. A European law shall determine the provisions for the procedures and conditions required for such a citizens' initiative, **including the minimum number of Member States from which they must come.**

* * *

THE MINISTER FOR FOREIGN AFFAIRS

Article I-27

1. The European Council, acting by qualified majority, with the agreement of the President of the Commission, shall appoint the Union Minister for Foreign Affairs. The European Council may end his or her tenure by the same procedure.

2. The Union Minister for Foreign Affairs shall conduct the Union's common foreign and security policy. He or she shall contribute by his or her proposals to the development of that policy, which he or she shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.

3. The Union Minister for Foreign Affairs shall preside over the Council for Foreign Affairs.

4. The Union Minister for Foreign Affairs shall be one of the Vice-Presidents of the Commission. He or she shall **ensure the consistency of the Union's external action. He or she shall** be responsible **within the Commission** for **responsibilities falling to it in** external relations and for coordinating other aspects of the Union's external action. In exercising these responsibilities within the Commission, and only for these responsibilities, the Union Minister for Foreign Affairs shall be bound by Commission procedures **to the extent that this is consistent with the provisions of the above paragraphs 2 and 3.**

* * *

**EUROPEAN EXTERNAL ACTION
SERVICE**

Article III-197 (3)

3. In fulfilling his or her mandate, the Union Minister for Foreign Affairs shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States **and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States. The organisation and functioning of the European External Action Service shall be established by a European Decision of the Council on a proposal from the Union Minister for Foreign Affairs. The Council shall act after consulting the European Parliament and after obtaining the consent of the Commission.**

Declaration for incorporation into the Final Act re Article III-197

The Conference declares that preparatory work aiming at establishing the European External Action Service shall begin as soon as the Treaty establishing the Constitution is signed.

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**PROCEDURES FOR APPOINTING THE PRESIDENT OF
THE COMMISSION, THE PRESIDENT OF THE
EUROPEAN COUNCIL AND
THE UNION MINISTER FOR FOREIGN AFFAIRS**

**Declaration for incorporation in the Final Act
re Article I-26**

The Conference considers that, under the terms of the Constitution, the European Parliament and the European Council hold joint responsibility for the smooth running of the process leading to the election of the President of the European Commission. Prior to the decision of the European Council, representatives of the European Parliament and of the European Council will thus conduct the necessary consultations in the framework deemed the most appropriate. These consultations will focus on the backgrounds of the candidates for the Presidency of the Commission, taking account of the elections to the European Parliament, in accordance with Article I-26(1). The arrangements for such consultations may be determined in due course by mutual agreement between the European Parliament and the European Council.

**Declaration for incorporation in the Final Act
re Articles I-21, I-26 and I-27**

In choosing the persons called upon to hold the offices of President of the European Council, President of the Commission and Union Minister for Foreign Affairs due account is to be taken of the need to respect the geographical and demographic diversity of the Union and its Member States.

* * *

**FINANCIAL FRAMEWORK (PART III):
PHASING IN**

**Draft Declaration to the Final Act of the Conference
re Article III-308(4)**

Article III-308(4) of the Constitution provides that where no European law of the Council establishing a new financial framework has been adopted by the end of the previous financial framework, the ceilings and other provisions corresponding to the last year of that framework shall be extended until such time as that law is adopted.

The Conferences states that if no European law of the Council establishing a new financial framework has been adopted by the end of 2006 and where the Act of Accession of 16 April 2003 provides for a phasing-in period for the allocation of appropriations to the new Member States ending in 2006, the allocation of funds as from 2007 will be established on the basis of the same criteria being applied for all Member States.

* * *

STRUCTURAL FUNDS

Article III-119

1. Without prejudice to Article III-120, European laws shall define the tasks, the priority objectives and the organisation of the Structural Funds – which may involve grouping the Funds –, the general rules applicable to them and the provisions necessary to ensure their effectiveness and the coordination of the Funds with one another and with the other existing financial instruments.

A Cohesion Fund set up by a European law shall provide a financial contribution to projects in the fields of environment and trans-European networks in the area of transport infrastructure.

In all cases, such European laws shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

2. The first provisions on the structural funds and the Cohesion Fund to be adopted following those in force on the date on which the Treaty establishing the Constitution is signed shall be established by a European law of the Council. The Council shall decide unanimously after obtaining the consent of the European Parliament.

* * *

COORDINATION OF ECONOMIC POLICY

Article I-14 (1)

1. The Member States shall co-ordinate their economic policies within the Union. To this end, measures, in particular broad guidelines for these policies, shall be adopted by the Council.

* * *

**PRUDENTIAL SUPERVISION OF CREDIT
INSTITUTIONS AND OTHER FINANCIAL
INSTITUTIONS BY THE EUROPEAN CENTRAL BANK**

Article III-77 (6)

6. European laws **of the Council** may confer upon the European Central Bank specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings. **The Council shall act unanimously** after **consulting** the European Central Bank **and the European Parliament**.

* * *

**APPOINTMENT OF MEMBERS OF THE EXECUTIVE
BOARD OF THE EUROPEAN CENTRAL BANK**

Article III-289a

1. *[unchanged]*
2. (a) The Executive Board shall comprise the President, the Vice-President and four other members.
- (b) The President, the Vice-President and the other members of the Executive Board shall be appointed **by the European Council, acting by a qualified majority**, from among persons of recognised standing and professional experience in monetary or banking matters, on a recommendation from the Council, after it has consulted the European Parliament and the Governing Council of the European Central Bank.

Their term of office shall be eight years and shall not be renewable.

Only nationals of Member States may be members of the Executive Board.

* * *

"LAMFALUSSY PROCEDURE"

Declaration for incorporation in the Final Act
re Article I-35

The Conference takes note of the Commission's intention to continue to consult experts appointed by the Member States in the preparation of delegated regulations in the financial services area, in accordance with its established practice.

* * *

**SIMPLIFIED PROCEDURE FOR AMENDING
THE STATUTE OF
THE EUROPEAN INVESTMENT BANK**

Article III-299

The European Investment Bank shall have legal personality.

Its members shall be the Member States.

The Statute of the Bank is laid down in a Protocol.

A European law of the Council may amend the Statute of the Bank. The Council shall act unanimously, either at the request of the Bank and after consulting the European Parliament and the Commission, or on a proposal from the Commission and after consulting the European Parliament and the Bank.

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| <p style="text-align: center;">PROVISIONS SPECIFIC TO MEMBER STATES WHOSE CURRENCY IS THE EURO</p> |
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Article III-88

1. In order to ensure that economic and monetary union works properly, and in accordance with the relevant provisions of the Constitution, **the Council shall, in accordance with the relevant procedure from among those referred to in Articles III-71 and III-76, adopt** measures specific to those Member States whose currency is the euro:

- (a) to strengthen the coordination of their budgetary discipline and surveillance of it;
- (b) to set out economic policy guidelines for them, while ensuring that they are compatible with those adopted for the whole of the Union and are kept under surveillance.

2. *[unchanged]*

Article III-91(2)

2. The following provisions of the Constitution shall not apply to Member States with a derogation:

(a) – (h) *[unchanged]*

- (i) **European decisions establishing common positions on matters of particular interest for economic and monetary union within the competent international financial institutions and conferences (Article III-90(1));**
- (j) **measures to ensure unified representation within the international financial institutions and conferences (Article III-90(2));**

In the Articles referred to above, "Member States" shall therefore mean Member States whose currency is the euro.

Article III-91(4)

4. The voting rights of members of the Council representing Member States with a derogation shall be suspended for the adoption by the Council of the measures referred to in the Articles listed in paragraph 2, **and in the following instances:**

- (a) **recommendations made to those Member States whose currency is the euro in the framework of multilateral surveillance, including on stability programmes and warnings (Article III-71(4));**
- (b) **measures relating to excessive deficits concerning those Member States whose currency is the euro (Article III-76(6), (7), (8) and (11)).**

[..... remainder of paragraph unchanged]

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| JUDICIAL COOPERATION IN CIVIL MATTERS |
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Article III-170

1. The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States.
2. To this end, European laws or framework laws shall lay down measures, **particularly when necessary for the proper functioning of the internal market**, aimed at ensuring:
 - (a) the mutual recognition and enforcement between Member States of judgments and decisions in extrajudicial cases;
 - (b) the cross-border service of judicial and extrajudicial documents;
 - (c) the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction;
 - (d) cooperation in the taking of evidence;
 - (e) **effective** access to justice;
 - (f) **the elimination of obstacles to** the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States;
 - (g) the development of alternative methods of dispute settlement;
 - (h) support for the training of the judiciary and judicial staff.
3. Notwithstanding paragraph 2, measures concerning family law with cross-border implications shall be laid down in a European law or framework law of the Council. The Council shall act unanimously after consulting the European Parliament.

The Council, on a proposal from the Commission, may adopt a European decision determining those aspects of family law with cross-border implications which may be the subject of acts adopted by the ordinary legislative procedure. The Council shall act unanimously after consulting the European Parliament.

* * *

EUROJUST

Article III-174 (2)

2. European laws shall determine Eurojust's structure, workings, scope of action and tasks. Those tasks may include:

- (a) **proposing** the initiation **of**, and **coordinating**, criminal investigations and prosecutions conducted by competent national authorities, particularly those relating to offences against the financial interests of the Union;
- (b) the strengthening of judicial cooperation, including by resolution of conflicts of jurisdiction and by close cooperation with the European Judicial Network.

European laws shall also determine arrangements for involving the European Parliament and Member States' national Parliaments in the evaluation of Eurojust's activities.

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**NEGOTIATION AND CONCLUSION OF INTERNATIONAL
AGREEMENTS BY MEMBER STATES RELATING TO THE
AREA OF FREEDOM, SECURITY AND JUSTICE**

Declaration for incorporation in the Final Act

The Conference confirms that Member States may negotiate and conclude agreement with third countries or international organisations in the areas covered by Sections 3, 4 and 5 of Chapter IV of Title III of Part III of the Treaty establishing a Constitution for Europe insofar as such agreements comply with Union law.

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| COMMON SECURITY AND DEFENCE POLICY |
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Article III-211 (2)

Member States participating in the task shall keep the Council regularly informed of its progress on their own initiative or at the request of another Member State. Those States shall inform the Council immediately should the completion of the task involve major consequences or require amendment of the objective, scope and conditions for the task determined in the European decisions referred to in paragraph 1. In such cases, the Council shall adopt the necessary European decisions.

Permanent structured cooperation**Article I-40(6)**

Those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments in this area with a view to the most demanding missions shall establish **permanent** structured cooperation within the Union framework. Such cooperation shall be governed by Article III-213. **It shall not affect the provisions of Article III-210.**

Article III-213

1. Those Member States which wish to participate in the permanent structured cooperation defined in Article I-40(6), which fulfil the criteria and have made the commitments on military capabilities set out in the Protocol **on permanent structured cooperation** shall notify their intention to the Council and to the Union Minister for Foreign Affairs.
2. **Within three months following such notification, the Council shall adopt a European decision establishing permanent structured cooperation and determining the list of participating Member States. The Council shall act by a qualified majority after consulting the Union Minister for Foreign Affairs.**
3. **Any Member State which, at a later stage, wishes to participate in the permanent structured cooperation shall notify its intention to the Council and to the Union Minister for Foreign Affairs.**

The Council shall adopt a European decision confirming the participation of the Member State concerned which fulfils the criteria and makes the commitments referred to in Articles 1 and 2 of the Protocol referred to in paragraph 1. The Council shall act by a qualified majority after consulting the Union Minister for Foreign Affairs. Only Members of the Council representing the participating Member States shall take part in the vote. A qualified majority shall be defined as a majority of the members of the Council representing the participating Member States, comprising at least three fifths of the population of those Member States.

4. If a **participating Member State no longer fulfils the criteria or is no longer able to meet the commitments, referred to in Articles 1 and 2 of the Protocol mentioned in paragraph 1**, the Council may **adopt a European decision suspending the participation of the Member State concerned.**

The Council shall act by a qualified majority. Only Members of the Council representing the participating Member States, with the exception of the Member State in question, shall take part in the vote. A qualified majority shall be defined as a majority of the members of the Council representing the participating Member States, with the exception of the Member State in question, comprising at least three fifths of the population of those Member States.

5. Any **participating Member State** which wishes to withdraw from **permanent structured cooperation shall notify its intention to the Council, which shall take note that the Member State in question has ceased to participate.**

6. **The European decisions and recommendations by the Council adopted within the framework of structured cooperation, other than those provided for in paragraphs 2 to 5, shall be adopted by unanimity. For the purposes of this paragraph, unanimity shall be constituted by the votes of the representatives of the participating Member States only.**

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Closer cooperation on mutual defence

Article I-40(7)

If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. **This shall not prejudice the specific character of the security and defence policy of certain Member States.**

Commitments and cooperation in this area shall be consistent with commitments under NATO, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation.

Article III-214 (deleted)

Protocol on permanent structured cooperation established by Articles I-40(6) and III-213 of the Constitution

THE HIGH CONTRACTING PARTIES,

Having regard to Articles I-40(6) and III-213 of the Constitution,

RECALLING that the Union is pursuing a common foreign and security policy based on the achievement of growing convergence of action by Member States.

RECALLING that the common security and defence policy is an integral part of the common foreign and security policy; that it provides the Union with operational capacity drawing on assets civil and military; that the Union may use such assets on missions referred to in Article III-210 outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter; that the performance of these tasks is to be undertaken using capabilities provided by the Member State in accordance with the principle of a single set of forces;

RECALLING that the common security and defence policy of the Union does not prejudice the specific character of the security and defence policy of certain Member States;

RECALLING that the common security and defence policy of the Union respects the obligations under the North Atlantic Treaty of those Member States; which see their common defence realised in the North Atlantic Treaty Organisation, which remains the foundation of the collective defence of its members, and is compatible with the common security and defence policy established within that framework;

CONVINCED that a more assertive Union role in security and defence matters will contribute to the vitality of a renewed Atlantic Alliance, in accordance with the Berlin Plus arrangements;

DETERMINED to ensure that the Union is capable of fully assuming its responsibilities within the international community;

RECOGNISING that the United Nations Organisation may request the Union's assistance for the urgent implementation of missions undertaken under Chapters VI and VII of the United Nations Charter;

RECOGNISING that the strengthening of the security and defence policy will require efforts by Member States in the area of capabilities;

CONSCIOUS that embarking on a new stage in the development of the European security and defence policy involves a determined effort by the Member States concerned;

RECALLING the importance of the Minister for Foreign Affairs being fully involved in proceedings relating to permanent structured cooperation;

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

Article 1

The permanent structured cooperation referred to in Article I-40(6) of the Constitution shall be open to any Member State which undertakes, from the date of entry into force of the Treaty establishing a Constitution for Europe, to:

- (a) proceed more intensively to develop its defence capacities through the development of its national contributions and participation, where appropriate, in multinational forces, in the main European equipment programmes, and in the activity of the European agency in the field of defence capabilities development, research, acquisition and armaments (hereinafter referred to as the "Agency"), and

- (b) have the capacity to supply by 2007 at the latest, either at national level or as a component of multinational force groups, targeted combat units for the missions planned, structured at a tactical level as combat formations, with support elements including transport and logistics, capable of carrying out the tasks referred in Article III-210, within a period of 5 to 30 days, in particular in response to requests from the United Nations Organisation, and which can be sustained for an initial period of 30 days and be extended up to at least 120 days.

Article 2

To achieve the objectives laid down in Article 1, Member States participating in permanent structured cooperation shall undertake to:

- (a) cooperate, as from the entry into force of the Treaty establishing a Constitution for Europe, with a view to achieving approved objectives concerning the level of investment expenditure on defence equipment, and regularly review these objectives in the light of the security environment and of the Union's international responsibilities;
- (b) bring their defence apparatus into line with each other as far as possible, particularly by harmonising the identification of their military needs, by pooling and, where appropriate, specialising their defence means and capabilities, and by encouraging cooperation in the fields of training and logistics;
- (c) take concrete measures to enhance the availability, interoperability, flexibility and deployability of their forces, in particular by identifying common objectives regarding the commitment of forces, including possibly reviewing their national decision-making procedures;
- (d) work together to ensure that they take the necessary measures to make good, including through multinational approaches, and without prejudice to undertakings in this regard within NATO, the shortfalls, perceived in the framework of the "Capability Development Mechanism";
- (e) take part, where appropriate, in the development of major joint or European equipment programmes in the framework of the Agency.

Article 3

The Agency shall contribute to the regular assessment of participating Member States' contributions with regard to capabilities, in particular contributions made in accordance with the criteria to be established *inter alia* on the basis of Article 2, and shall report on at least once a year. The assessment may serve as a basis for Council recommendations, and decisions adopted in accordance with Article III-213 of the Constitution.

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**SOCIAL CLAUSE AND
SOCIAL DIALOGUE**

Article III-2a

In defining and implementing the policies and actions referred to in this Part, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.

Article I-47

The European Union recognises and promotes the role of the social partners at Union level, taking into account the diversity of national systems; it shall facilitate dialogue between the social partners, respecting their autonomy. **The Tripartite Social Summit for Growth and Employment shall contribute to social dialogue.**

* * *

SOCIAL POLICY

Declaration for incorporation in the Final Act re Article III-107

The Conference confirms that the policies described in Article III-107 fall essentially within the competence of the Member States. Measures to provide encouragement and promote coordination to be taken at Union level in accordance with this Article shall be of a complementary nature. They shall serve to strengthen cooperation between Member States and not to harmonise national systems. The guarantees and practices existing in each Member State as regards the responsibility of the social partners will not be affected.

* * *

ECONOMIC, SOCIAL AND TERRITORIAL COHESION

Article III-116

In order to promote its overall harmonious development, the Union shall develop and pursue its action leading to the strengthening of its economic, social and territorial cohesion.

In particular, the Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions. In this context, particular attention shall be paid to rural areas, areas affected by industrial transition, and areas which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density, and some island, cross-border and mountain areas.

Declaration re Article III-116

The Conference considers that the reference in Article III-116 to island areas can include island states in their entirety, subject to the necessary criteria being met.

Article III-56 (3) (a)

3. The following may be considered to be compatible with the internal market:
- (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, **and of the regions referred to in Article III-330, in view of their structural, economic and social situation.**

* * *

TRANSPORT

Article III-134
(new paragraph)

When the European law or framework laws referred to in the second paragraph are adopted, account shall be taken of cases where their application might seriously affect the standard of living and level of employment in certain regions, and the operation of transport facilities.

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| TECHNOLOGICAL RESEARCH AND DEVELOPMENT |
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Article III-146 (1)

1. The Union's action shall aim to strengthen ~~the~~ **its** scientific and technological bases, by **achieving a European research area in which researchers, scientific knowledge and technology circulate freely**, and encourage it to become more competitive, **including in its industry**, while promoting all the research activities deemed necessary by virtue of other Chapters of the Constitution.

Article III-149

1. A multiannual framework programme, setting out all the activities **financed** by the Union, shall be enacted by European laws. Such laws shall be adopted after consultation of the Economic and Social Committee.
2. *(unchanged)*
3. **A European law of the Council shall establish specific programmes to implement the framework programme** within each activity. Each specific programme shall define the detailed rules for implementing it, fix its duration and provide for the means deemed necessary. The sum of the amounts deemed necessary, fixed in the specific programmes, may not exceed the overall maximum amount fixed for the framework programme and each activity. **Such a law shall be adopted after consulting the European Parliament and the Economic and Social Committee.**
4. **As a complement to the activities planned in the multiannual framework programme, a European law of the Council shall establish the measures necessary for the implementation of the European research area. Such a law shall be adopted after consulting the European Parliament and the Economic and Social Committee.**

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| ENERGY |
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Article I-13: Areas of shared competence

2. Shared competence applies in the following principal areas:
- (a) internal market,
 - (b) social policy, for aspects defined in Part III,
 - (c) economic, social and territorial cohesion,
 - (d) agriculture and fisheries, excluding the conservation of marine biological resources,
 - (e) environment,
 - (f) consumer protection,
 - (g) transport,
 - (h) trans-European networks,
 - ~~(i) energy,~~
 - (j) area of freedom, security and justice,
 - (k) common safety concerns in public health matters, for aspects defined in Part III.

Article III-157

~~1. In establishing an internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim to:~~

- ~~(a) ensure the functioning of the energy market,~~
- ~~(b) ensure security of energy supply in the Union, and~~
- ~~(c) promote energy efficiency and saving and the development of new and renewable forms of energy.~~

~~2. The measures necessary to achieve the objectives in paragraph 1 shall be enacted in European laws or framework laws. Such laws shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.~~

~~Such laws or framework laws shall not affect a Member State's right to determine the conditions for exploiting its energy resources and the structure of its supply, without prejudice to Article III-130(2)(e).~~

Declaration for incorporation in the Final Act re Article III-157

~~The Conference believes that Article III-157 does not affect the right of the Member States to take the necessary measures to ensure their energy supply under the conditions provided for in Article III-16.~~

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| PUBLIC HEALTH |
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Article III-179

1. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.

Action by the Union, which shall complement national policies, shall be directed towards improving public health, preventing human illness and diseases, and obviating sources of danger to physical and mental health. Such action shall cover:

- (a) the fight against the major health scourges, by promoting research into their causes, their transmission and their prevention, as well as health information and education;
- (b) **monitoring, early warning and combating serious threats to health when they may affect more than one Member State.**

The Union shall complement the Member States' action in reducing drugs-related health damage, including information and prevention.

2. The Union shall encourage cooperation between the Member States in the areas referred to in this Article and, if necessary, lend support to their action. **It shall in particular, encourage cooperation between the Member States to improve the complementarity of their health services in cross-border areas.**

Member States shall, in liaison with the Commission, coordinate among themselves their policies and programmes in the areas referred to in paragraph 1. The Commission may, in close contact with the Member States, take any useful initiative to promote such coordination, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.

3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of public health.

4. By way of derogation from Article I-11(5) and Article I-16(a) and in accordance with Article I-13(2)(k), European laws or framework laws shall contribute to the achievement of the objectives referred to in this Article by establishing the following measures in order to meet common safety concerns:

- (a) measures setting high standards of quality and safety of organs and substances of human origin, blood and blood derivatives; these measures shall not prevent any Member State from maintaining or introducing more stringent protective measures;

- (b) measures in the veterinary and phytosanitary fields which have as their direct objective the protection of public health;
- (c) **measures setting high standards of quality and safety for medical products and devices for medical use.**
- (d) **measures concerning monitoring, early warning and combating serious threats to health when they affect more than one Member State.**

European laws or framework laws shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

5. European laws or framework laws may also establish incentive measures designed to protect and improve human health and in particular to combat the major cross-border health scourges, **as well as measures which have as their direct objective the protection of public health regarding tobacco and the abuse of alcohol. These European laws or framework laws cannot provide for any harmonisation of the laws and regulations of the Member States. They shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.**

6. *(unchanged)*

7. Union action ~~in the field of public health~~ shall respect the responsibilities of the Member States **for the definition of their health policy and** for the organisation and delivery of health services and medical care. **The responsibilities of the Member States shall include the management of health services and medical care and the allocation of the resources assigned to them.** Measures referred to in paragraph 4(a) shall not affect national provisions on the donation or medical use of organs and blood.

* * *

SPORT

Article III-182

1. The Union shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and complementing their action. It shall fully respect the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity.

The Union shall contribute to the promotion of European sporting issues, **while taking account of its special nature, its structures based on voluntary activity and its social and educational function.**

2. Union action shall be aimed at:

- (a) developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States;
- (b) encouraging mobility of students and teachers, inter alia by encouraging the academic recognition of diplomas and periods of study;
- (c) promoting cooperation between educational establishments;
- (d) developing exchanges of information and experience on issues common to the education systems of the Member States;
- (e) encouraging the development of youth exchanges and of exchanges of socio-educational instructors and encouraging the participation of young people in democratic life in Europe;
- (f) encouraging the development of distance education;
- (g) developing the European dimension in sport, by promoting fairness **and openness in sporting competitions** and cooperation between bodies **responsible for sports**, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially young sportsmen and sportswomen.

3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the field of education **and sport**, in particular the Council of Europe.

4. *(unchanged)*

* * *

TOURISM

Article I-16

The Union shall have competence to carry out supporting, coordinating or complementary action. Such action shall, at European level, be:

- (a) protection and improvement of human health;
- (b) industry;
- (c) culture;
- (c)a tourism;**
- (d) education, youth, sport and vocational training;
- (e) civil protection.
- (f) administrative cooperation.

Article III-181a
(new)

- 1. The Union shall complement the action of the Member States in the tourism sector, in particular by promoting the competitiveness of Union enterprises in that sector.**
- 2. To that end, Union action shall be aimed at:**
 - (a) encouraging the creation of a favourable environment for the development of enterprises in this sector;**
 - (b) promoting cooperation between the Member States, particularly by the exchange of good practice;**
- 3. A European law or framework law shall establish specific measures to complement actions within the Member States to achieve the objectives referred to in this Article, excluding any harmonisation of the laws and regulations of the Member States.**

* * *

OVERSEAS TERRITORIES

Article IV-4, new (7)

7. The European Council may, on the initiative of the Member State concerned, adopt a European decision amending the status, with regard to the Union, of a French, Netherlands or Danish overseas country or territory referred to in paragraphs 2 and 3 of this Article. The European Council shall act unanimously after consulting the Commission.

Declaration of the Conference
re Article IV-4

The High Contracting Parties agree that the European Council, in application of Article IV-4(7) of the Constitution, will take a European decision leading to the modification of the status of Mayotte with regard to the Union in order to make this territory an outermost region in the meaning of Articles IV-4(2) and III-330 of the Constitution, when the French authorities notify the European Council and the Commission that the evolution currently underway in the internal status of the island allows.

* * *

PROTOCOL ON DENMARK

Amended Protocol No 5 on the position of Denmark

THE HIGH CONTRACTING PARTIES,

RECALLING the decision of the Heads of State or Government, meeting within the European Council at Edinburgh on 12 December 1992, concerning certain problems raised by Denmark on the Treaty on European Union,

HAVING NOTED the position of Denmark with regard to citizenship, economic and monetary union, defence policy, and justice and home affairs as laid down in the Edinburgh decision,

CONSCIOUS of the fact that a continuation under the Constitution of the legal regime originating in the Edinburgh decision will significantly limit Denmark's participation in important areas of cooperation of the Union, **and that it would be in the best interest of the Union to ensure the integrity of the *acquis* in the area of freedom, security and justice,**

WISHING therefore to establish a legal framework that will provide an option for Denmark to participate in the adoption of measures proposed on the basis of Part III, Title III, Chapter IV of the Constitution and welcoming the intention of Denmark to avail itself of this option when possible in accordance with its constitutional requirements,

NOTING that Denmark will not prevent the other Member States from further developing their cooperation with respect to measures not binding on Denmark,

BEARING IN MIND the **Protocol on the Schengen *acquis* integrated into the framework of the European Union,**

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

PART I

Article 1

Denmark shall not take part in the adoption by the Council of proposed measures pursuant to Part III, Title III, Chapter IV of the Constitution. The unanimity of the members of the Council, with the exception of the representative of the government of Denmark, shall be necessary for the decisions of the Council which must be adopted unanimously. **For the purposes of this Article, a qualified majority shall be defined as a majority of the members of the Council representing the participating Member States, comprising at least three fifths of the population of the participating Member States**¹.

Article 2

None of the provisions of Part III, Title III, Chapter IV of the Constitution, no measure adopted pursuant to that Chapter, no provision of any international agreement concluded by the Union pursuant to that Chapter, and no decision of the Court of Justice of the European Union interpreting any such provision or measure shall be binding upon or applicable in Denmark; and no such provision, measure or decision shall in any way affect the competencies, rights and obligations of Denmark; and no such provision, measure or decision shall in any way affect the *acquis communautaire* and of the Union nor form part of Union law as they apply to Denmark.

Article 3

Denmark shall bear no financial consequences of measures referred to in Article 1, other than administrative costs entailed for the institutions.

Article 4

1. Denmark shall decide within a period of 6 months after the adoption of a measure to build upon the Schengen *acquis* covered by Part I of this Protocol whether it will implement this measure in its national law. If it decides to do so, this measure will create an obligation under international law between Denmark and the other Member States bound by the measure.
2. If Denmark decides not to implement a measure of the Council as referred to in paragraph 1, the Member States **bound by that measure and Denmark** will consider appropriate **steps** to be taken.
3. Denmark shall maintain the rights and obligations existing before the entry into force of the Constitution with regard to the Schengen *acquis*.

¹ **This paragraph requires a transitional provision on the definition of a qualified majority before 1 November 2009 which, in accordance with the legal-technical approach proposed by the Working Party of IGC Legal Experts in document CIG 50/03 (and its ADD 1), should appear in a single "Protocol on transitional provisions". However, transferring such transitional provisions to the "Protocol on transitional provisions", which has been approved by all other delegations, raises issues of political opportuneness for the delegations of Spain and Poland. In accordance with the Working Party's approach, the transfer will be made if those issues of political opportuneness have been resolved.**

PART II

Article 5

With regard to measures adopted by the Council pursuant to Articles I-40, III-196(1) and Articles III-210 to III-215 of the Constitution, Denmark does not participate in the elaboration and the implementation of decisions and actions of the Union which have defence implications. Therefore Denmark shall not participate in their adoption. Denmark will not prevent the other Member States from further developing their cooperation in this area. Denmark shall not be obliged to contribute to the financing of operational expenditure arising from such measures, nor to make military capabilities available to the Union.

PART III

Article 6

This Protocol shall also apply to measures remaining in force by virtue of Article IV-3 of the Constitution, which were covered by the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community prior to the entry into force of the Constitution.

Article 7

Articles 1, 2 and 3 shall not apply to measures determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States, or measures relating to a uniform format for visas.

PART IV

Article 8

At any time Denmark may, in accordance with its constitutional requirements, inform the other Member States that it no longer wishes to avail itself of all or part of this Protocol. In that event, Denmark will apply in full all relevant measures then in force taken within the framework of the Union.

Article 9

1. At any time and without prejudice to Article 8 Denmark may, in accordance with its constitutional requirements, notify the other Member States that with effect from the first day of the month following the notification Part I of this Protocol shall consist of the provisions in the Annex to this Protocol.

2. Six months after the date on which such notification takes effect all Schengen *acquis* and measures adopted to build upon this *acquis*, which until then have been binding on Denmark as obligations under international law, shall be binding upon Denmark as Union law.

Annex to the Protocol

Article 1

Subject to Article 3, Denmark shall not take part in the adoption by the Council of measures proposed pursuant to Part III, Title III, Chapter IV of the Constitution. The unanimity of the members of the Council, with the exception of the representative of the government of Denmark, shall be necessary for the decisions of the Council which must be adopted unanimously. **For the purposes of this Article, a qualified majority shall be defined as a majority of the members of the Council representing the participating Member States, comprising at least three fifths of the population of the participating Member States.**¹

Article 2

In consequence of Article 1 and subject to Articles 3, 4 and 6 none of the provisions in Part III, Title III, Chapter IV of the Constitution, no measure adopted pursuant to that Chapter, no provision of any international agreements concluded by the Union pursuant to that Chapter, no decision of the Court of Justice of the European Union interpreting any such provision or measure shall be binding upon or applicable in Denmark; and no such provision, measure or decision shall in any way affect the competencies, rights and obligations of Denmark; and no such provision, measure or decision shall in any way affect the *acquis communautaire* and of the Union nor form part of Union law as they apply to Denmark.

Article 3

1. Denmark may notify the President of the Council in writing, within three months after a proposal or initiative has been presented to the Council pursuant to Part III, Title III, Chapter IV of the Constitution, that it wishes to take part in the adoption and application of any such proposed measure, whereupon Denmark shall be entitled to do so.

2. **If after a reasonable period of time a measure referred to in paragraph 1 cannot be adopted with Denmark taking part, the Council may adopt such measure in accordance with Article 1 without the participation of Denmark. In that case Article 2 applies.**

Article 4

Denmark may at any time after the adoption of a measure pursuant to Part III, Title III, Chapter IV of the Constitution notify its intention to the Council and the Commission that it wishes to accept that measure. In that case, the procedure provided for in Article III-326(1) of the Constitution shall apply *mutatis mutandis*.

¹ See the footnote in relation to Article 1 of Part I of the Protocol.

Article 5

1. Notification pursuant to Article 4 shall be submitted no later than 6 months after the final adoption of a measure if this measure is building upon the Schengen *acquis*. In case Denmark does not submit a notification in accordance with Articles 3 or 4 regarding measures building upon the Schengen *acquis*, the Member States **bound by those measures and Denmark** will consider appropriate **steps** to be taken.

2. A notification pursuant to Article 3 or Article 4 with respect to measures building upon the Schengen *acquis* shall be deemed irrevocably to be a notification pursuant to Article 3 with respect to any further proposal or initiative aiming to build upon that measure to the extent that such proposal or initiative is building upon the Schengen *acquis*.

Article 6

Where, in cases referred to in this Part, Denmark is bound by a measure adopted by the Council pursuant to Part III, Title III, Chapter IV of the Constitution, the relevant provisions of the Constitution shall apply to Denmark in relation to that measure.

Article 7

Where Denmark is not bound by a measure adopted pursuant to Part III, Title III, Chapter IV of the Constitution, it shall bear no financial consequences of that measure other than administrative costs entailed for the institutions unless the Council, acting unanimously after consulting the European Parliament, decides otherwise.

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Declaration by the Conference in relation to the Protocol on Denmark

The Conference **notes** that with respect to legal acts to be adopted by the Council acting alone or jointly with the European Parliament and containing provisions applicable to Denmark as well as provisions not applicable to Denmark because they have a legal basis to which Part I of the Protocol on Denmark applies, Denmark declares that it will not use its voting right to prevent the adoption of the provisions which are not applicable to Denmark.

Furthermore, the Conference **notes** that on the basis of the Declaration by the Conference on Articles I-42 and III-231 of the Constitution Denmark declares that Danish participation in actions or legal acts pursuant to Articles I-42 and III-231 will take place with respect of Part I and Part II of the Protocol on the position of Denmark.

* * *

SERVICES OF GENERAL INTEREST

Article III-6

Without prejudice to Articles I-5, III-55, III-56 and III-136, and given the place occupied by services of general economic interest as services to which all in the Union attribute value as well as their role in promoting social and territorial cohesion, the Union and the Member States, each within their respective powers and within the scope of application of the Constitution, shall take care that such services operate on the basis of principles and conditions, in particular economic and financial, which enable them to fulfil their missions. European laws shall define these principles and conditions **without prejudice to the competence of Member States, in accordance with the Constitution, to provide, to commission and to fund such services.**

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THE SMALL NEIGHBOURING STATES OF THE UNION

Declaration for incorporation in the Final Act re Article I-56

The Union will take into account the particular situation of small-sized States which maintain specific relations of proximity with it.

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**ACCESSION OF THE UNION TO THE EUROPEAN
CONVENTION ON HUMAN RIGHTS**

Article I-7

1. [unchanged]
2. The Union **shall accede** to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competencies as defined in the Constitution.
3. [unchanged]

Article III-227 (8)

8. The Council of Ministers shall act by a qualified majority throughout the procedure.

It shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements and the agreements referred to in Article III-221 with the States which are candidates for accession.

Protocol relating to Article I-7 (2)
on the accession of the Union to the European Convention on Human Rights

1. The agreement relating to the accession of the Union to the European Convention on Human Rights provided for in Article I-7, paragraph 2 of the Constitution shall take into account the following:

the specific characteristics of the Union and Union law, in particular with regard to:

- the specific arrangements for the Union's possible participation in the control bodies of the European Convention on Human Rights,
- the mechanisms necessary to ensure that proceedings by non-Member States and individual applications are correctly addressed to Member States and/or the Union as appropriate;

2. The agreement referred to in paragraph 1 shall ensure that nothing therein shall affect the situation of Member States in relation to the European Convention on Human Rights, in particular in relation to the Protocols to the Convention, measures taken by Member States derogating from the Convention in accordance with Article 15 thereof and reservations to the Convention made by Member States in accordance with Article 57 thereof.

3. Nothing in the agreement referred to in paragraph 1 shall affect Article III-281, paragraph 2 of the Constitution.

Draft declaration relating to Article I-7(2)

The Conference agrees that the Union's accession to the European Convention on Human Rights should be arranged in such a way as to preserve the specific features of Community law. A system should be introduced for liaison between the Court of Justice and the European Court of Human Rights in order to avoid, as far as possible, any discrepancies in case law.

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**PROVISIONS ON THE INSTITUTIONS AND BODIES OF
THE UNION FOR BULGARIA AND ROMANIA**

**Declaration of the Conference on the Protocol
on the transitional provisions relating to the Institutions and bodies of the Union**

The common position which will be taken by the Member States at the conferences on the accession to the Union of Romania and/or Bulgaria regarding the allocation of seats in the European Parliament and the weighting of votes in the European Council and the Council shall be as follows.

1. If the accession to the Union of Romania and/or Bulgaria takes place before the entry into force of the European Council Decision referred to in Article I-19(2) of the Constitution, the allocation of seats in the European Parliament throughout the 2004-2009 parliamentary term will be in accordance with the following table for a Union of 27 Member States.

| MEMBER STATES | SEATS IN THE EP |
|----------------|-----------------|
| Germany | 99 |
| United Kingdom | 78 |
| France | 78 |
| Italy | 78 |
| Spain | 54 |
| Poland | 54 |
| Romania | 35 |
| Netherlands | 27 |
| Greece | 24 |
| Czech Republic | 24 |
| Belgium | 24 |
| Hungary | 24 |
| Portugal | 24 |
| Sweden | 19 |
| Bulgaria | 18 |
| Austria | 18 |
| Slovakia | 14 |
| Denmark | 14 |
| Finland | 14 |
| Ireland | 13 |
| Lithuania | 13 |
| Latvia | 9 |
| Slovenia | 7 |
| Estonia | 6 |
| Cyprus | 6 |
| Luxembourg | 6 |
| Malta | 5 |
| TOTAL | 785 |

The Treaty of Accession to the Union will therefore, by way of derogation from Article I-19(2) of the Constitution, stipulate that the number of members of the European Parliament may temporarily exceed 736 for the remainder of the 2004 to 2009 Parliamentary term.

2. In Article 2(2) of the Protocol on the transitional provisions relating to the Institutions and bodies of the Union, the weighting of the votes of Romania and Bulgaria in the European Council and the Council will be set at 14 and 10 respectively.

3. **At the time of each accession, the threshold referred to in the Protocol on the transitional provisions relating to the institutions and bodies of the Union will be calculated according to the provisions of Article 2(3) of that Protocol.**

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PROTECTION AND WELFARE OF ANIMALS

Article III-5a

(new text)

In formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall pay full regard to the welfare requirements of animals, as sentient beings, while respecting the legislative or administrative provisions and customs of Member States relating in particular to religious rites, cultural traditions and regional heritage.

* * *

CAPITAL AND PAYMENTS

Article III-47 (4)

4. In the absence of a European law or framework law foreseen in article III-46 (3), the Council may adopt a European decision confirming that restrictive tax measures adopted by a Member State concerning one or more third countries are to be considered compatible with the Constitution in so far as they are justified by one of the objectives of the Union and compatible with the proper functioning of the internal market. The Council shall act unanimously on a proposal from the Commission.

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| RESTRICTIVE MEASURES |
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Article III-49

Where necessary to achieve the objectives set out in Article III-158, ~~in particular~~ as regards preventing and combating ~~organised crime~~, terrorism and **related activities** ~~trafficking in human beings~~, European laws shall define a framework for administrative measures with regard to capital movements and payments, such as the freezing of funds, financial assets or economic gains belonging to, or owned or held by, natural or legal persons, groups or non-state entities.

The Council, on a proposal from the Commission, shall adopt European regulations or European decisions in order to implement the laws referred to in the first paragraph.

The acts referred to in this article shall include necessary provisions on legal safeguards.

Article III-224

1. Where a European decision, adopted on the basis of Chapter II of this Title, provides for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from the Union Minister for Foreign Affairs and the Commission, shall adopt the necessary European regulations or decisions. It shall inform the European Parliament thereof.

2. Where a European decision adopted on the basis of Chapter II of this Title so provides, the Council may adopt restrictive measures under the procedure referred to in paragraph 1 against natural or legal persons and non-State groups or bodies.

3. **The acts referred to in this article shall include necessary provisions on legal safeguards.**

Declaration

The Conference recalls that the respect for fundamental rights and freedoms implies, in particular, that proper attention is given to the protection and observance of the due process rights of the individuals or entities concerned. For this purpose and in order to guarantee a thorough judicial review of decisions subjecting an individual or entity to restrictive measures, such decisions must be based on clear and distinct criteria. These criteria should be tailored to the specifics of each restrictive measure.

* * *

**AUTHENTIC TEXTS AND
TRANSLATIONS**

Article IV-10 (2)

This Treaty may also be translated into any other languages as determined by Member States among those which, in accordance with their constitutional order, enjoy official status in all or part of their territory. A certified copy of such translations shall be provided by the Member States concerned to be deposited in the archives of the Council.

Declaration of the conference (ad Article IV-10 (2)) to be included in the final act

The Conference recommends that those Member States wishing to avail themselves of the possibility recognised in paragraph two of Article IV-10 communicate to the Council, within six months from the date of the signature of the Treaty, the language or languages into which translations of the Treaty shall be made.

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**SIMPLIFIED PROCEDURE FOR REVISING THE
CONSTITUTION**

**MOVEMENT FROM UNANIMITY TO A QUALIFIED MAJORITY
AND FROM THE SPECIAL LEGISLATIVE PROCEDURE TO
THE ORDINARY LEGISLATIVE PROCEDURE**

Article IV-7a¹
(new)

1. Where Part III provides that the Council should act by unanimity in a given area or case, the European Council may adopt a European decision authorising the Council to act by a qualified majority in that area or in that case.

This paragraph shall not apply to decisions with military implications or those in the area of defence.

2. Where Part III provides for European laws and framework laws to be adopted by the Council according to a special legislative procedure, the European Council may adopt a European decision allowing for the adoption of such European laws or framework laws according to the ordinary legislative procedure.

3. Any initiative taken by the European Council on the basis of paragraphs 1 or 2 shall be notified to the national Parliaments of the Member States. If a national Parliament makes known its opposition within six months of the date of such notification, the European decision referred to in paragraphs 1 or 2 shall not be adopted. In the absence of opposition, the European Council may adopt the decision.

For the adoption of the European decisions referred to in paragraphs 1 and 2, the European Council shall act by unanimity after obtaining the consent of the European Parliament, which shall be given by a majority of its component members.

Article I-22 - The Council of Ministers
(paragraph 4 deleted)

Article I-33 - Legislative acts
(paragraph 4 deleted)

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¹ Article IV-7a (duration) of document 50/03 is renumbered "IV-7c".

**SIMPLIFIED PROCEDURE FOR REVISING THE
CONSTITUTION**

AMENDMENT TO INTERNAL POLICIES

Article IV-7b

(new)

1. The Government of any Member State, the European Parliament or the Commission may submit to the European Council proposals for revising all or part of the provisions of Title III of Part III on the internal policies of the Union.

2. The European Council may adopt a European decision amending all or part of the provisions of Title III of Part III. The European Council shall act by unanimity after consulting the European Parliament and the Commission.

Such a decision shall not come into force until it has been approved by the Member States in accordance with their respective constitutional requirements.

3. The European decision referred to in paragraph 2 may not increase the competencies attributed to the Union by this Treaty.

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| ENHANCED COOPERATION |
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Article III-324, paragraph 1

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

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

Article III-325, paragraph 2

2. **The request of the Member States which wish to establish enhanced cooperation between themselves within the framework of the common foreign and security policy shall be addressed to the Council. It shall be forwarded to the Union Minister for Foreign Affairs, who shall give an opinion on whether the enhanced cooperation contemplated is consistent with the Union's common foreign and security policy, and to the Commission, which shall give its opinion in particular on whether the enhanced cooperation proposed is consistent with other Union policies. It shall also be forwarded to the European Parliament for information.**

Authorisation to proceed with enhanced cooperation shall be granted by a European decision of the Council **acting unanimously**.

Article III-326, paragraph 2

2. Any Member State which wishes to participate in enhanced cooperation in progress in the framework of the common foreign and security policy shall notify its intention to the Council, the Union Minister for Foreign Affairs and the Commission.

The Council shall confirm the participation of the Member State concerned, after consulting the Union Minister for Foreign Affairs and after noting where necessary that the conditions of participation have been fulfilled. The Council, on a proposal from the Union Minister for Foreign Affairs, may also adopt any transitional measures necessary with regard to the application of the acts already adopted within the framework of enhanced cooperation. However, if the Council considers that the conditions of participation have not been fulfilled, it shall indicate the arrangements to be adopted to fulfil those conditions and shall set a deadline for re-examining the request for participation.

For the purposes of this paragraph, the Council shall act **unanimously and** in accordance with Article I-43(3).

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MISCELLANEOUS

(A) NON-INTERFERENCE BETWEEN CFSP PROCEDURES AND THOSE OF OTHER AREAS OF THE UNION'S ACTIVITIES

Article III-209

The implementation of the common foreign and security policy shall not affect **the application of the procedures and the extent of the powers of the institutions laid down by the Constitution for the exercise of the Union** competencies listed in Articles I-12 to I-14 and I-16. Similarly, the implementation of the policies listed in those Articles shall not affect **the application of the procedures and the extent of the powers of the institutions laid down by the Constitution for the exercise of the Union** competencies under this Chapter.

(B) PUBLIC ACCESS TO DOCUMENTS OF THE EUROPEAN INVESTMENT BANK

Article III-305 (1)

The Institutions, bodies, offices and agencies of the Union shall ensure transparency in their work and shall, in application of Article I-49, lay down in their rules of procedure the specific provisions for public access to documents. The Court of Justice of the European Union, the European Central Bank **and the European Investment Bank** shall be subject to the provisions of Article I-49(3) **and to the present Article only** when exercising their administrative tasks.

(C) RIGHT TO VOTE IN ELECTIONS TO THE EUROPEAN PARLIAMENT

Article I-19

1. *[unchanged]*

2. **The European Parliament shall be composed of representatives of the Union's citizens. They shall not exceed seven hundred and thirty-six in number.** Representation of citizens shall be degressively proportional, with a minimum threshold of four members per Member State.

Sufficiently in advance of the European Parliamentary elections in 2009, and, as necessary thereafter for further elections, the European Council shall adopt by unanimity, on the basis of a proposal from the European Parliament and with its consent, a European decision establishing the composition of the European Parliament, respecting the principles set out in the first paragraph above.

2a. The members of the European Parliament shall be elected for a term of five years by direct universal suffrage in a free and secret ballot.

3. *[unchanged]*

(D) ROLE OF NATIONAL PARLIAMENTS – PROTOCOLS ON SUBSIDIARITY AND NATIONAL PARLIAMENTS

Protocol on subsidiarity

Article 6

Each national Parliament shall have two votes, shared out on the basis of the national parliamentary system. In the case of a bicameral Parliamentary system, each of the two chambers shall have one vote.

Protocol on national Parliaments

Article 8

Where the national Parliamentary system is not unicameral, Articles 1 to 7 shall apply to the component chambers.

(E) CONVERGENCE CRITERIA

Article III-92 (1)

At least once every two years, or at the request of a Member State with a derogation, the Commission and the European Central Bank shall report to the Council on the progress made by the Member States with a derogation in fulfilling their obligations regarding the achievement of economic and monetary union. These reports shall include an examination of the compatibility between each of these Member States' national legislation, including the statutes of its national central bank, and Articles III-80 and III-81 and the Statute of the European System of Central Banks and the European Central Bank. The reports shall also examine whether a high degree of sustainable convergence has been achieved, by analysing how far each of these Member States has fulfilled the following criteria:

- (a) *[unchanged]*
- (b) *[unchanged]*
- (c) the observance of the normal fluctuation margins provided for by the exchange-rate mechanism **of the European monetary system** for at least two years, without devaluing against the euro;
- (d) *[unchanged]*

The four criteria mentioned in this paragraph and the relevant periods over which they are to be respected are developed further in the Protocol on the convergence criteria. The reports of the Commission and the European Central Bank shall also take account of the results of the integration of markets, the situation and development of the balances of payments on current account and an examination of the development of unit labour costs and other price indices.

(F) DETERMINATION OF THE PENALTY PAYMENTS IMPOSED BY THE COURT OF JUSTICE

Article III-267 (3)

When the Commission brings a case before the Court of Justice of the European Union pursuant to Article III-265 on the grounds that the State concerned has failed to fulfil its obligations to notify measures transposing a European framework law, it may, when it deems appropriate, **specify the amount of a lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.**

If the Court **finds that there is an infringement it may impose a lump sum or penalty payment on the Member State concerned not exceeding the amount specified by the Commission. The payment obligation shall take effect on the date set by the Court in its judgment.**

(G) SOLIDARITY CLAUSE (ARTICLES I-42 AND III-231)

Article III-231

1. Should a Member State fall victim to a terrorist attack or a natural or man-made disaster, the other Member States shall assist it at the request of its political authorities. To that end, the Member States shall coordinate between themselves in the Council.
2. The arrangements for the implementation by **the Union** of the solidarity clause referred to in Article I-42 shall be defined by a **European decision adopted by the Council** acting on a joint proposal by the Commission and the Union Minister for Foreign Affairs. **The Council shall act in accordance with Article III-201(1) where this decision has defence implications.** The European parliament shall be informed.

For the purposes of this **paragraph** and without prejudice to Article III-247, the Council shall be assisted by the Political and Security Committee with the support of the structures developed in the context of the common security and defence policy and by the Committee referred to in Article III-162, which shall, if necessary, submit joint opinions.
3. The European Council shall regularly assess the threats facing the Union in order to enable the Union **and its Member States** to take effective action.

Declaration by the Conference on Articles I-42 and III-231 of the Constitution

Without prejudice to the measures adopted by the Union to comply with its solidarity obligation towards a Member State which is the object of terrorist attack or the victim of natural or man-made disaster, none of the provisions of Articles I-42 and III-231 of the Constitution is intended to affect the right of **another** Member State to choose the **most** appropriate means to comply with its own solidarity obligation towards that Member State.

(H) NATIONAL SECURITY

Article I-5 (1)

1. The Union shall respect the national identities of the Member States, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including those for ensuring the territorial integrity of the State, and for maintaining law and order and safeguarding **national** security.

Article III-163

This Chapter shall not affect the exercise of the responsibilities incumbent upon Member States with regard to maintaining law and order and safeguarding **internal** security.

Article III-283

In exercising its powers regarding the provisions of Sections 4 and 5 of Chapter IV of Title III concerning the area of freedom, security and justice, the Court of Justice of the European Union shall have no jurisdiction to review the validity or proportionality of operations carried out by the police or other law-enforcement services of a Member State or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of **internal** security.

(I) WITHDRAWAL FROM THE UNION-NEGOTIATOR

Article I-59 (2)

2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be **negotiated in accordance with Article III-227(3); it shall be concluded** by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.