

SUMMARY SHEET OF PROPOSALS FOR AMENDMENTS CONCERNING
UNION MEMBERSHIP
DRAFT ARTICLES 43 TO 46

1. THEMATIC ANALYSIS OF AMENDMENTS (SUMMARY)

The Secretariat received 90 proposals for amendments concerning the draft Articles relating to Title X (Articles 43 to 46 of the Constitution). The topics most frequently raised regarding these four articles may be summarised as follows:

1. Article 43: The main topic mentioned is the request, made by several members of the Convention, to delete this Article in the present Title since, according to them, the first sentence does no more than repeat draft Article 1(3) and the second sentence of this draft simply states the obvious, and it would be better if it were deleted (a suggestion endorsed by several other members of the Convention). As to the substance, several proposals for amendments show trends towards reverting or moving closer to the wording of Article 49(1), the first sentence of the current Article 49 TEU. It is therefore proposed in particular that, as a condition for membership, it should be sufficient for the candidate State itself to respect Union values (whereas the Praesidium draft contains not only this condition but adds another to the effect that Union values must also be shared by the peoples of the candidate State). However, there are also amendments which, compared to the Praesidium proposal, make the conditions for Union membership more stringent.

2. Article 44: The proposed amendments to this draft Article, which are relatively few, take different directions.

3. Article 45: The proposed amendments to this draft Article are also few in number and are, on the whole, of a fairly disparate nature. One recurring topic is the request that the position of the European Parliament in the sanction procedure be enhanced, for example by extending its right of initiative or its assent prerogatives. Furthermore, some ask for an exact reproduction of the full text of the Treaty of Nice, including as regards the possibility of an experts' report and the formula for calculating the qualified majority in that Article (the latter aspect is linked to the question of the

qualified majority voting system, which is to be discussed further by the Convention).

4. The majority of proposed amendments concerns Article 46 on the right of voluntary withdrawal from the Union.

The main question raised in this respect is whether this Article should be retained or deleted, as requested by a number of Convention members

Most of the other proposed amendments submitted accept such an Article but move towards limiting, by comparison with the Praesidium's draft, the possibility of voluntary withdrawal and/or making its consequences more severe. In this regard it is proposed in particular that:

- the right of withdrawal should be limited to exceptional situations (in particular, a reform of the Constitution);
- provision be made that it could not take effect automatically, but only when agreement between the Union and the withdrawing State is effectively concluded;
- some supplement these conditions with the rule of unanimity within the Council for examining the withdrawal request or the conclusion of an agreement, thus giving each Member State a *de facto* right of veto over withdrawal;
- that a provision be added on the the Union's legal responsibility vis-à-vis the withdrawing State;
- or that provision be made for a "waiting period" during which the State which has withdrawn is no longer able to make another request to accede to the Union.

On the other hand, some amendments serve to facilitate withdrawal, in particular by reducing to one year the period after which the right of withdrawal takes effect in the absence of an agreement.

Lastly, it should be noted that some members of the Convention submitted a proposal ¹ for inserting in Title X an additional Article creating the status of "associate Member" of the Union open to European States which are not or would no longer be Member States.

¹ This proposed amendment by *Mr Duff + 20 members of the Convention* is listed as amendment No 23 under Article 46.

II. DETAILED ANALYSIS OF AMENDMENTS ARTICLE-BY-ARTICLE

Article 43: Criteria to be eligible for Union membership

The Union shall be open to all European states whose people share the values referred to in Article 2, and who respect them and are committed to promoting them together. Accession to the Union implies acceptance of its Constitution.

THEMATIC EXAMINATION OF AMENDMENTS

- Deletion of the whole Article (on the grounds that the first sentence duplicates Article 1(3) and the second sentence states the obvious)
Meyer (Amd. 7), Farnleitner + 3 (Amd. 9), Duff + 21 (Amd. 16), Lopes + Lobo Antunes (Amd. 20)
- Deletion of the second sentence
Santer + 4 (Amd. 6), Demiralp (Amd.10), Fischer (Amd.21), Hjelm-Wallén + 3 (Amd. 23), Fini (Amd. 25), Oleksy (Amd.26), de Vries + de Bruijn (Amd. 27), Kaufmann (Amd.29)
- Suggested return to the wording of the present Article 49 § 1 TEU
Fischer (Amd. 21), Queiró (Amd. 14), Hjelm-Wallén + 3 (Amd.23), Teufel (Amd. 30)
- Delete "the Union shall be open" (in order to avoid the impression that a State is entitled to accede once it meets the conditions for accession)
Wuermeling (Amd. 4), Azevedo + Pereira (Amd. 18), Fini (Amd. 25), Teufel (Amd. 30)
- Amend the first sentence to provide that it is (only) the applicant States themselves (and not their peoples too) which must share or respect Union values.
Heathcoat-Amory (Amd. 3), Berger + 2 (Amd. 8), Timmermans + 3 (Amd. 13), Queiró (Amd. 14), Brok + 34 (Amd.15), Roche (Amd.17), Fischer (Amd. 21), Svensson (Amd. 22), Hjelm-Wallén + 3 (Amd. 23), Hain (Amd. 24), de Vries + de Bruijn (Amd. 27), Bonde + Heathcoat-Amory (Amd.28)
- Add the sharing of Union objectives as defined in Article 3 as an additional condition of membership
Korcok + Migas (Amd. 11), Attalides (Amd. 19)
- Alternative wording for membership conditions: "all European States which are able and committed to fulfil all that is required from Member States by this Constitution"
de Vries + de Bruijn (Amd. 27)
- Make it clear that the territory of the candidate State must be situated, at least in part, in Europe
Earl of Stockton (Amd. 12)
- Accession implies acceptance of the Constitution *and of the Union acquis*
Vastagh (Amd. 2)

- Accession implies acceptance of the Constitution in accordance with accession arrangements (namely, the possibility for an acceding State to negotiate opt-outs)
Heathcoat-Amory (Amd. 3), Bonde + Heathcoat-Amory (Amd. 28)
- Provide that accession must be confirmed by a referendum in the applicant State
Kirkhope (am 1)
- Replace the words "Constitution" with "simplifying Treaty" and "Union" with "Community"
Kirkhope (Amd. 1) (Mr Kirkhope makes the same amendment also under the other Articles of Title X)

Article 44: Procedure for applying for Union membership

Any European State which wishes to become a member of the Union may address its application to the Council. The European Parliament and the national parliaments shall be notified of this application. The Council shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members. The conditions and arrangements for admission shall be the subject of an agreement between the Member States and the applicant State. That agreement shall be subject to ratification by all the contracting States, in accordance with their respective constitutional requirements.

EXAMINATION OF AMENDMENTS BY SUBJECT

- Provide for the fact that the opening of accession negotiations requires a unanimous decision of the Council after receiving the assent of the Parliament (absolute majority of members); according to one amendment, this decision should also be ratified by all the Contracting States
Lamassoure (Amd. 2), Wuermeling (Amd. 3)
- Delete notification of national parliaments
Berger + 6 (Amd. 4)
- Add notification of the Commission
van der Linden + 3 (Amd. 6)
- Provide for a normal majority (i.e. simple majority) for the assent of the European Parliament
Berger + 6 (Amd. 4)
- Submit for the assent of the European Parliament not only the application for accession but also the accession agreement. The same purpose is served by amendments calling for accession to be by agreement between the Union and the applicant State, while providing for this agreement to be ratified by all the Member States.
Fini (Amd. 9), Berger + 6 (Amd. 4), Avgerinos + 2 (Amd. 7)
- Provide that the necessary adjustments to the Constitution and to Union law are also the subject of the accession agreement.
Farnleitner + 3 (Amd. 5), Lopes + Lobo Antunes (Amd. 8)
- Lay down that accession must be ratified by referendum in all the Contracting States whose Constitutions allow such a referendum
Kirkhope + Stockton (Amd. 1)
- Linguistic amendments
van der Linden + 3 (Amd. 6)

Article 45: Suspension of Union membership rights

- 1. On a reasoned proposal by one third of the Member States, by the European Parliament or by the Commission, the Council, acting by a majority of four fifths of its members after obtaining the assent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values mentioned in Article 2. Before making such a determination, the Council shall hear the Member State in question and, acting in accordance with the same procedure, may address recommendations to that State.*

The Council shall regularly verify that the grounds on which such a determination was made continue to apply.

- 2. The European Council¹, acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the assent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of values mentioned in Article 2, after inviting the Member State in question to submit its observations.*
- 3. Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of this Constitution to the Member State in question, including the voting rights of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.*

The obligations of the Member State in question under the Constitution shall in any case continue to be binding on that State.

- 4. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken under paragraph 3 in response to changes in the situation which led to their being imposed.*
- 5. For the purposes of this Article, the Council shall act without taking into account the vote of the Member State in question. Abstentions by members present in person or represented shall not prevent the adoption of decisions referred to in paragraph 2.*

This paragraph shall also apply in the event of voting rights being suspended pursuant to paragraph 3.

- 6. For the purposes of paragraphs 1 and 2, the European Parliament shall act by a two-thirds majority of the votes cast, representing a majority of its Members.*

¹ Depending on the articles on the European Council in the section on the Institutions.

THEMATIC EXAMINATION OF AMENDMENTS

In general

- Deletion of the Article
Skaarup (Amd. 4)
- Replace the idea of "values" with "principles"
Lopes + Lobo Antunes (Amd. 13)
- Add the idea of "principles" to that of "values"
Santer + 4 (Amd. 7),
- Provide for an obligation on the Council to review the decisions it takes pursuant to this Article at least every six months
Kohout (Amd.14)
- Add a paragraph on sanctions against a Union institution
Heathcoat-Amory (Amd. 5), Heathcoat-Amory + Bonde (Amd. 17)
- Drafting amendments
Muscardini (Amd. 6)

Paragraph 1.

- Delete the Commission's right of initiative
Kirkhope + Stockton (Amd. 1)
- Conseil must decide unanimously
Muscardini (Amd. 6)
- Lay down that recommendations may be addressed *after* determination
Kaufmann (Amd. 18)
- Establish a right for the State concerned to bring the matter before the Court of Justice
Vastagh (Amd. 2)
- Provide for the possibility of a report by independent persons
Farnleitner + 3 (Amd. 10), Lopes + Lobo Antunes (Amd. 13)

Paragraph 2.

- Establish a right of initiative for the European Parliament in this paragraph.
Borrell + 2 (Amd. 3), Berger + 9 (Amd. 8), Kaufmann (Amd. 18)
- Lay down that the grounds for the proposal must be stated (as in paragraph 1).
Avgerinos + 2 (Amd. 11)
- The Council must decide by a four-fifths majority.
Berger + 9 (Amd. 8)

Paragraph 3.

- The Council must decide unanimously
Muscardini (Amd. 6)
- Submit the sanctions for the assent of the European Parliament
Borrell + 2 (Amd. 3), Kaufmann (Amd. 18)
- Possibility of a *complete or partial* suspension of rights
de Vries + de Bruijn (Amd. 16)
- Suspension only of *the exercise* of certain rights
Vastagh (Amd. 2)
- Lay down that the obligations of the State concerned are no longer binding in the event of sanctions against it
Kirkhope + Stockton (Amd. 1)

Paragraph 4.

- Submit the amendment or the lifting of sanctions for the assent of the European Parliament
Borrell + 2 (Amd. 3)

Paragraph 5.

- Include the sentence of Article 7 TEU on the calculation of the qualified majority.
Santer + 4 (Amd. 7), Hübner (Amd. 15), de Vries + de Bruijn (Amd. 16)

Paragraph 6.

- Provide only for the absolute majority of members for votes in the European Parliament
Berger + 9 (Amd. 8)

Article 46 : Voluntary withdrawal from the Union

1. *Any Member State may decide to withdraw from the European Union in accordance with its own constitutional requirements.*
2. *A Member State which decides to withdraw shall notify the Council of its intention. Once that notification has been given, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the assent of the European Parliament.*

The withdrawing State shall not participate in the Council's discussions or decisions concerning it.

3. *This Constitution shall cease to apply to the State in question as from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2.*

THEMATIC EXAMINATION OF AMENDMENTS

In general

- Deletion of the Article
Voggenhuber + 3 (Amd. 2), Santer + 2 (Amd. 10), Meyer (Amd. 11), Farnleitner + Tusek (Amd. 15), Brok + 21 (Amd. 21), Avgerinos + 2 (Amd.22), Lopes + Lobo Antunes (Amd. 26), Fischer (Amd. 27), Van Lancker (Amd. 29), de Vries + de Bruijn (Amd. 33)
- Do not establish a unilateral right of withdrawal but only a (negotiable) right to request withdrawal (in accordance with most of these amendments, this means that withdrawal cannot take effect until a withdrawal agreement has been concluded. In this regard see also the amendments mentioned *below* under paragraph 3, first indent)
Lamassoure (Amd. 5), Haenel (Amd. 7), Kaufmann (Amd. 36), de Villepin (Amd. 37)
- Limit the right of withdrawal to the scenario in which the withdrawing State does not approve an amendment to the Constitution (or, as with one amendment, where it does not approve a change to the composition of the Union)
Lamassoure (Amd. 5), de Villepin (Amd. 37)
- Provide for a "waiting period" in the case of a request to rejoin the Union by a State which has withdrawn (periods of from 5 to 20 years from the date of withdrawal of the State are mentioned)
Vastagh (Amd. 3), Lamassoure (Amd. 5)
- Any procedure governing the right of withdrawal must be determined by the Council after receiving the assent of the European Parliament rather than by the Constitution itself.
Migas (Amd. 17)

- Proposal also to establish a Member State's right to suspend its own membership of the Union for a limited period
Muscardini (Amd. 9)
- Specify that withdrawal does not preclude bilateral agreements between the withdrawing State and other Member States
Stockton (Amd.18)
- Drafting amendments
Borrell + 2 (Amd. 4), Einem (Amd. 12), Kaufmann (Amd. 36)
- Proposal for a new Article 46a establishing the status of "associate member" of the Union
Duff + 20 Convention members (Amd. 23)

Paragraph 1

(cf. also above amendments proposing to limit the circumstances in which a right of withdrawal may exist, see earlier)

- Specify that the right to withdraw exists under international law
Tiilikainen + 2 (Amd. 20), Kiljunen + Vanhanen (Amd. 28)
- Delete "in accordance with its own constitutional requirements"
Duhamel + Paciotti (Amd. 8)

Paragraph 2

- The European Council shall act unanimously when considering a request for withdrawal (but the withdrawal agreement shall then be concluded by qualified majority)
de Villepin (Amd. 37)
- Conclusion of the withdrawal agreement shall require unanimity within the Council
Demiralp (Amd.16), Tiilikainen + 2 (Amd. 20), Roche (Amd.24), Kiljunen + Vanhanen (Amd. 28)
- Consultation of the European Parliament shall suffice when concluding the withdrawal agreement
Queiró (Amd. 19)
- In the absence of any withdrawal agreement, a clause shall be included on the legal consequences for the Member State or on the rights and obligations of natural and legal persons (certain amendments set out to define the withdrawing State's responsibility for any damage caused to the Union)
Badinter (Amd. 13), Azevedo + Pereira (Amd. 25), Lekberg + Lennmarker (Amd. 34)
- The withdrawal agreement should be concluded by the Member States, not by the Union
Lekberg + Lennmarker (Amd. 34)
- The withdrawing Member State and the Union (or, the Community, in the amendment's terminology), shall aim to maintain their existing trade links
Kirkhope + Stockton (Amd. 1)

- The withdrawing State shall not participate in the Council's discussions concerning its withdrawal, but in all other discussions.
Heathcoat-Amory (Amd.6), Queiró (Amd. 19), Fini (Amd. 32), Heathcoat-Amory + Bonde (Amd. 35)
- Once notification has been given, the withdrawing State shall in no way participate in the Council's discussions
Kaufmann (Amd. 36)
- Nor shall the withdrawing State participate in the Council's discussions on legislative acts due to enter into force 2 years after withdrawal
Kirkhope + Stockton (Amd. 1)

Paragraph 3

- No withdrawal shall enter into force without a withdrawal agreement
Haenel (Amd. 7), Tiilikainen + 2 (Amd. 20), Kaufmann (Amd. 36), de Villepin (Amd. 37)
- Entry into force of withdrawal only *one year* after notification
Vastagh (Amd. 3), Heathcoat-Amory (Amd.6), Heathcoat-Amory + Bonde (Amd. 35)
- In the absence of any agreement, the Court of Justice shall give a ruling on the dispute between the Union and the withdrawing State; the Court shall also have jurisdiction to hear and determine actions relating to the interpretation and execution of withdrawal agreements.
Badinter (Amd. 13)

Proposals to include an Article 46a:

- Proposal for a new Article 46a on "associate membership"
Duff + 20 Convention members (Amd. Article 46 a(1))

LIST OF AMENDMENTS TO ARTICLE 43

1. KIRKHOPE
2. VASTAGH
3. WUERMELING
4. MUSCARDINI
5. SANTER + 4 CONVENTION MEMBERS
6. MEYER
7. BERGER + 2 CONVENTION MEMBERS
8. FARNLEITNER + 3 CONVENTION MEMBERS
9. DEMIRALP
10. KORCOK + MIGAS
11. THE EARL OF STOCKTON
12. TIMMERMANS + 3 CONVENTION MEMBERS
13. QUEIRÓ
14. BROK + 34 CONVENTION MEMBERS
15. DUFF +21 CONVENTION MEMBERS
16. ROCHE
17. AZEVEDO + NAZARÉ PEREIRA
18. ATTALIDES
19. LOPES + LOBO ANTUNES
20. FISCHER
21. SVENSSON
22. HJELM-WALLÉN + 3 CONVENTION MEMBERS
23. HAIN
24. FINI
25. OLESKY

26. DE VRIES + DE BRUIJN
27. HEATHCOAT-AMORY + BONDE
28. KAUFMANN
29. TEUFEL

LIST OF AMENDMENTS TO ARTICLE 44

1. KIRKHOPE
2. LAMASSOURE
3. WUERMELING
4. BERGER + 6 CONVENTION MEMBERS
5. FARNLEITNER + 3 CONVENTION MEMBERS
6. VAN DER LINDEN + 3 CONVENTION MEMBERS
7. AVGERINOS + 2 CONVENTION MEMBERS
8. LOPES + LOBO ANTUNES
9. FINI
10. KAUFMANN

LIST OF AMENDMENTS TO ARTICLE 45

1. KIRKHOPE
2. VASTAGH
3. BORRELL
4. SKAARUP
5. HEATHCOAT-AMORY + BONDE
6. MUSCARDINI
7. SANTER + 4 CONVENTION MEMBERS
8. BERGER + 9 CONVENTION MEMBERS
9. FARNLEITNER + 3 CONVENTION MEMBERS
10. AVGERINOS + 2 CONVENTION MEMBERS
11. ROCHE
12. LOPES + LOBO ANTUNES
13. KOHOUT
14. HÜBNER
15. DE VRIES + DE BRUIJN
16. KAUFMANN

LIST OF AMENDMENTS TO ARTICLE 46

1. KIRKHOPE
2. VOGGENHUBER + 3 CONVENTION MEMBERS
3. VASTAGH
4. BORRELL
5. LAMASSOURE
6. HEATHCOAT-AMORY + BONDE
7. DUHAMEL + PACIOTTI
8. MUSCARDINI
9. SANTER + 2 CONVENTION MEMBERS
10. MEYER
11. EINEM
12. BADINTER
13. HAENEL
14. FARNLEITNER + TUSEK
15. DEMIRALP
16. MIGAS
17. THE EARL OF STOCKTON
18. QUEIRÓ
19. TIILIKAINEN + 2 CONVENTION MEMBERS
20. BROK + 21 CONVENTION MEMBERS
21. AVGERINOS + 2 CONVENTION MEMBERS
22. DUFF + 20 CONVENTION MEMBERS
23. ROCHE
24. AZEVEDO + NAZARÉ PEREIRA
25. LOPES + LOBO ANTUNES

26. FISCHER
 27. KILJUNEN + VANHANEN
 28. VAN LANCKER
 29. HAIN
 30. HÜBNER
 31. FINI
 32. DE VRIES + DE BRUIJN
 33. LEKBERG + LENNMARKER
 34. KAUFMANN
 35. DE VILLEPIN
-