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Valmistelukunnan jäsen Elmar Brok on toimittanut valmistelukunnan pääsihteerille liitteenä olevan esityksen.

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Constitution of the European Union

– Discussion Paper –

1 October 2002

*This informal discussion paper is based on the existing "acquis communautaire", on the EPP document "A Constitution for a strong Europe", on the European Parliament Report by Alain Lamassoure on the division of competences*

*between the European Union and the Member States, on the outcome of the meeting of the EPP Group in the Convention in Roquebrune in June 2002 as well as on what is currently being discussed within the Working groups of the Convention.*

*The character of the discussion paper is that of a "work in progress"; it also contains optional solutions and preliminary proposals. The text is meant to be further adjusted according to further developments in the discussion process. A need for a further streamlining of the text is evident, e.g. in the provisions on the Court of Justice, on legislation and on the budget (where as a rule, the *acquis communautaire* is reproduced), but will require further reflections.*

*This draft constitutional text is designed to help ensure that when the Convention's work will have been done; there will actually be a concrete result, namely an actual text to be presented. It is not designed to anticipate the final results, but merely to serve as a basis for further discussions within the Convention.*

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## **PREAMBLE**

The Member States and the peoples of the European Union,  
RESOLVED to mark a new stage in the process of European integration,  
which started with the establishment of the European Communities in 1951  
and 1957,  
RECALLING the historic importance of the ending of the division of the  
European continent and the need to create a firm basis for the construction  
of a permanently united Europe,  
CONSCIOUS of their common spiritual and moral heritage, of the indivisible,  
universal values of human dignity, freedom, equality and solidarity,  
CONFIRMING their attachment to the principles of liberty, democracy and  
the respect for human rights and fundamental freedoms and for the rule of  
law,  
RESPECTING the diversity of the cultures and traditions of the peoples of  
Europe as well as the national identities of the Member States and the  
organisation  
of their public authorities at national, regional and local levels,  
DETERMINED to place the individual at the heart of the activities of the  
European Union,  
IN VIEW of the urgent need to render the process of European integration  
and the functioning of the European institutions more efficient, more transparent  
and more comprehensible for the citizens of the Union,  
BASED UPON the achievements of the European Communities, in particular  
the Common Market established 31 December 1969, the Single European  
Market established 31 December 1992 and the economic and monetary  
union in the third stage of which the Community entered on 1 January  
1999 and which has hitherto led to the introduction of a single currency in  
twelve Member States,  
BASED UPON the achievements of the European Union as expressed in  
the common foreign and security policy as well as in police and judicial  
cooperation

in criminal matters, as established at the Maastricht intergovernmental conference, and further developed at the intergovernmental conferences at Amsterdam and Nice,

DETERMINED to develop, through the European Union, a common project of civilisation, which in the era of globalisation combines an open market economy with free competition with solidarity and respect for the environment (social market economy),

WITH REGARD TO the Charter of Fundamental Rights of the European Union as drawn up by the Fundamental Rights Convention set up by the Cologne European Council of 3/4 June 1999, which reaffirms the rights as they result, in particular from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights,

WITH REGARD TO the findings of the Convention on the Reform of the European Union created by the Laeken European Council on 15 December 2001,

FULL OF RESPECT FOR the special procedure, unprecedented in history, under which these two Conventions have laid the foundations for this Constitution

of the European Union with the collaboration of representatives of the European Parliament, the European Commission as well as the Parliaments and Governments of the Member States,

RECALLING that the representatives of the parliaments and governments of the applicant countries were fully participating in the proceedings of the Convention on the Reform of the European Union,

RECALLING that the Court of Justice of the European Communities has

qualified the Treaty establishing the European Community as constitutional charter of a Community based on the rule of law,  
HAVE DECIDED to merge the Treaties which form the foundations of the European Union and the European Communities into a Constitution of the European Union, to adapt the latter to the requirements of an enlarged Union and thus to complete the European Union as a Constitutional Union.

## **PART ONE. Charter of Fundamental Rights of the European Union**

### Title I Human dignity

#### **Article 1** (Human dignity)

Human dignity is inviolable. It must be respected and protected.

#### **Article 2** (Right to life)

(1) Everyone has the right to life.

(2) No one shall be condemned to the death penalty, or executed.

#### **Article 3** (Right to the integrity of the person)

(1) Everyone has the right to respect for his or her physical and mental integrity.

(2) In the fields of medicine and biology, the following must be respected in particular:

- the free and informed consent of the person concerned, according to the procedures laid down by law,
- the prohibition of eugenic practices, in particular those aiming at the selection of persons,
- the prohibition on making the human body and its parts as such a source of financial gain,
- the prohibition of the reproductive cloning of human beings.

#### **Article 4** (Prohibition of torture and inhuman or degrading treatment or punishment)

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

**Article 5** (Prohibition of slavery and forced labour)

- (1) No one shall be held in slavery or servitude.
- (2) No one shall be required to perform forced or compulsory labour.
- (3) Trafficking in human beings is prohibited.

Title II Freedoms

**Article 6** (Right to liberty and security)

Every Person has the right to liberty and security of person.

**Article 7** (Respect for private and family life)

Everyone has the right to respect for his or her private and family life, home and communications.

**Article 8** (Protection of personal data)

- (1) Everyone has the right to the protection of personal data concerning him or her.
- (2) Such data must be processed fairly for specified purposes on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
- (3) Compliance with these rules shall be subject to control by an independent authority.

**Article 9** (Right to marry and right to found a family)

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

**Article 10** (Freedom of thought, conscience and religion)

- (1) Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
- (2) The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

**Article 11** (Freedom of expression and information)

- (1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
- (2) The freedom and pluralism of the media shall be respected.

**Article 12** (Freedom of assembly and of association)

- (1) Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
- (2) Political parties at Union level contribute to expressing the political will of the citizens of the Union.

**Article 13** (Freedom of the arts and sciences)

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

**Article 14** (Right to education)

(1) Everyone has the right to education and to have access to vocational and continuing training.

(2) This right includes the possibility to receive free compulsory education.

(3) The freedom to found educational establishment with the due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

**Article 15** (Freedom to choose an occupation and right to engage in work)

(1) Everyone has the right to engage in work and to pursue freely chosen or accepted occupation.

(2) Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.

(3) Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

**Article 16** (Freedom to conduct a business)

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

**Article 17** (Right to property)

(1) Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her pos-

sessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.

(2) Intellectual property shall be protected.

**Article 18** (Right to asylum)

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with Constitutional Protocol No. 4.

**Article 19** (Protection in the event of removal, expulsion or extradition)

(1) Collective expulsions are prohibited.

(2) No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subject to the death penalty, torture or inhuman or degrading treatment or punishment.

Title III Equality

**Article 20** (Equality before the law)

Everyone is equal before the law.

**Article 21** (Non-discrimination)

(1) Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability,

age or sexual orientation shall be prohibited.

(2) Within the scope of application of Constitutional Protocols No. 1, No. 2 and No. 5, and without prejudice to the special provisions of this Constitution, any discrimination on grounds of nationality shall be prohibited.

**Article 22** (Cultural, religious and linguistic diversity)

The Union shall respect cultural, religious and linguistic diversity.

**Article 23** (Equality between men and women)

(1) Equality between men and women must be ensured in all areas, including employment, work and pay.

(2) The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the underrepresented sex.

**Article 24** (The rights of the child)

(1) Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

(2) In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

(3) Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

**Article 25** (The rights of the elderly)

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

**Article 26** (Integration of persons with disabilities)

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

Title IV Solidarity

**Article 27** (Workers' right to information and consultation within the undertaking)

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

**Article 28** (Right of collective bargaining and action)

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interest, including strike action.

**Article 29** (Right of access to placement services)

Everyone has the right of access to a free placement service.

**Article 30** (Protection in the event of unjustified dismissal)

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

**Article 31** (Fair and just working conditions)

(1) Every worker has the right to working conditions which respect his or her health, safety and dignity.

(2) Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

**Article 32** (Prohibition of child labour and protection of young people at work.)

(1) The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be favourable to young people and except for limited derogations.

(2) Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

**Article 33** (Family and professional life)

(1) The family shall enjoy legal economic and social protection.

(2) To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

**Article 34** (Social security and social assistance)

(1) The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.

(2) Everyone residing and moving legally within the Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.

(3) In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

**Article 35** (Health care)

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

**Article 36** (Access to services of general economic interest)

The Union recognises and respects access to services of general interests as provided for in national laws and practices, in accordance with this Constitution,  
in order to promote the social and territorial cohesion of the Union.

**Article 37** (Environmental protection)

A high level of environmental protection and the improvement of the quality

of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

**Article 38** (Consumer protection)

Union policies shall ensure a high level of consumer protection.

Title V Citizens' rights

**Article 39** (Right to vote and to stand as a candidate at elections to the European Parliament)

(1) Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.

(2) Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

**Article 40** (Right to vote and to stand as a candidate at municipal elections)

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that state.

**Article 41** (Right to good administration)

(1) Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

(2) This right includes:

- the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
- the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
- the obligation of the administration to give reasons for its decisions.

(3) Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

(4) Every person may write to the institutions of the Union in one of the languages of the Constitution and must have an answer in the same language.

**Article 42** (Right of access to documents)

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has a right of access to European Parliament, Council and Commission documents.

**Article 43** (Ombudsman)

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has a right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Union institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

**Article 44** (Right to petition)

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has a right to petition the European Parliament.

**Article 45** (Freedom of movement and of residence)

(1) Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

(2) Freedom of movement and residence may be granted, in accordance with Constitutional Protocol No. 1, to nationals of third countries legally resident in the territory of a Member State.

**Article 46** (Diplomatic and consular protection)

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same condition as the nationals of that Member State.

Title VI Justice

**Article 47** (Right to an effective remedy and to a fair trial)

(1) Everyone whose rights and freedoms guaranteed by Union law are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

(2) Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

(3) Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure access to justice.

**Article 48** (Presumption of innocence and right of defence)

(1) Everyone who has been charged shall be presumed innocent until proved guilty according to law.

(2) Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

**Article 49** (Principles of legality and proportionality of criminal offences and penalties)

(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which applicable at the time the criminal offence

was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.

(2) This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.

(3) The severity of penalties must not be disproportionate to the criminal offence.

**Article 50** (Right not to be tried or punished twice in criminal proceedings for the same criminal offence)

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

Title VII Scope of guaranteed rights

**Article 51** (Scope of the Charter)

(1) Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.

(2) The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.

(3) This Charter does not establish any new power or task for the Union, or modify powers and tasks defined by this Constitution.

**Art. 52** (Scope of guaranteed rights)

(1) Any limitation on the exercise of the rights and freedoms recognised by

this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

(2) Rights recognised by this Charter which are based on the provisions of the Constitutional Protocols annexed to this Constitution shall be exercised under the conditions and within the limits defined by these Protocols.

(3) Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

#### **Article 53** (Level of protection)

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

#### **Article 54** (Prohibition of abuse of rights)

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

## **PART TWO. Principles of the Union**

### Title I Foundations of the Union

#### **Art. 55** (Constitution; European Union)

- (1) This Constitution marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as efficiently, as openly and as closely to the citizen as possible.
- (2) The European Union established by this Constitution shall be founded on the citizens of the Union and the Member States.
- (3) The Union is based on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law.
- (4) This Constitution is founded on, and replaces, the Treaty establishing the European Community, the Treaty establishing the European Atomic Energy Community, the Treaty on European Union as well as all subsequent Treaty amendments and all Treaties of Accession. It maintains in full the acquis created by these Treaties and develops it further into a Constitutional Union.

#### **Article 56** (Legal personality)

The Union shall have legal personality.

#### **Article 57** (Supremacy of Union law)

Union law shall prevail over national law.

#### **Article 58** (Union loyalty)

- (1) Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Constitution or resulting from action taken by the Union. They shall facilitate the achievement of the Union's tasks.
- (2) Member States shall abstain from any measure which could jeopardise

the attainment of the objectives and rights laid down in this Constitution.

(3) The Union shall respect the national identities of the Member States, their constitutional and political structures and their own competences, and shall act with loyalty towards them.

**Article 59** (Principle of a Union governed by the rule of law)

(1) Member States undertake not to submit a dispute concerning the interpretation or application of this Constitution to any method of settlement other than those provided for in this Constitution.

(2) They always comply with the judgments of the Court of Justice without delay and in a complete manner.

Title II Tasks and objectives of the Union

**Article 60** (General tasks and objectives of the Union)

(1) The Union shall have as its task,

- a) to establish a common market;
- b) to establish an economic and monetary union;
- c) to create a common foreign and security policy;
- d) to bring about a common policy on police and judicial matters;
- e) to promote jointly the safety in the field of nuclear energy<sup>1</sup>.

(2) By implementing these activities, the Union shall have as its purpose,  
– to promote throughout the Union a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable

<sup>1</sup> Takes over the objectives of the EURATOM Treaty.

and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States and their regions;

- to assert the identity of the Union on the international scene;
- to maintain and develop the Union as an area of freedom, security and justice.

**Article 61** (Common market)

(1) For the purposes set out in Article 60, the activities of the Union shall include, as provided in Constitutional Protocol No. 1, and in accordance with the timetable set out therein, the establishment of a common market.

(2) The common market comprises a customs union, an internal market characterised by the abolition, as between Member States, of all obstacles to the free movement of goods, persons, services and capital, as well as policies which complement or flank the customs union and the internal market in accordance with the objectives set out in Article 60 paragraph 2, first indent.

(3) The primary purpose of all Union activities with regard to the common market shall be the elimination of all barriers to or discriminations (Article 21 paragraph 2) in trade and of all appreciable distortions of competition. Whenever practicable, the country of origin principle and the principle of mutual recognition shall be applied.

**Article 62** (Economic and monetary union)

(1) For the purpose set out in Article 60, the activity of the Union shall include, as provided in Constitutional Protocol No. 2, and in accordance with the timetable set out therein, the adoption of an economic policy which is based on the close coordination of Member States' economic policies under the surveillance of the Union, on the internal market and on the definition of common objectives, and conducted in accordance with the principle of an open market economy with free competition.

(2) Concurrently with the foregoing, and as provided in Constitutional Protocol No. 2 and in accordance with the timetable and the procedures set out

therein, this activity shall include the irrevocable fixing of exchange rates leading to the introduction of a single currency, the Euro, and the definition and conduct of a single monetary policy and exchange-rate policy the primary objective of both of which shall be to maintain price stability and, without prejudice to this objective, to support the general economic policies in the Union, in accordance with the principle of an open market economy with free competition.

(3) This activity of the Union shall entail compliance with the following guiding principles: stable prices, sound public finances and monetary conditions and a sustainable balance of payments.

**Article 63** (Common Foreign and Security Policy)

(1) For the purpose set out in Article 60, the activity of the Union shall include, as provided in Constitutional Protocol No. 3, a common foreign and security policy covering all areas of foreign and security policy, including defence policy.

(2) The objectives of the common foreign and security policy shall be:

- to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principle of the United Nations Charter;
- to strengthen the security of the Union in all ways;
- to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders;
- to promote international cooperation;
- to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.

**Article 64** (Common Policy on Police and Judicial Matters)

(1) As provided in Constitutional Protocol No. 4, and in accordance with the timetable set out therein, the Union shall pursue the objective to provide citizens with a high level of safety within an area of freedom, security and justice by a common policy on police and judicial matters, including criminal matters and the prevention of and the combat against racism and xenophobia.

(2) That objective shall be achieved by

- a) preventing and combating crime, organised and otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud,
- b) approximation, where necessary, of rules on criminal matters,
- c) a European Police Office (Europol) and a European Public Prosecutor, which shall act in close coordination with national police forces, customs authorities and other competent authorities in the Member States and at Union level;
- d) setting up a joint system for the control of the external borders of the Union, eventually leading to a European Border Control Authority.

**Article 65** (Common Policy of Safety in the Field of Nuclear Energy)

For the purpose set out in Article 60, the activity of the Union shall, in accordance with Constitutional Protocol No 5<sup>2</sup>, include the task of contributing to a raising of the standard of living in the Member States and to the development of relations with the other countries by creating the conditions necessary for the safety and the peaceful use of nuclear energy.

Title III Competences of the Union

**Article 66** (Division of competences between the Union and the Member States)

<sup>2</sup> Takes over the provisions of the EURATOM Treaty.

(1) Legislative and administrative competences in the Union are reserved to

the Member States insofar as this Constitution does not assign such competences to the Union.

(2) Any action taken by the Union shall be implemented, executed and applied by the Member States if not otherwise provided by this Constitution.

**Article 67** (Types of Union competences)

(1) The Union's competences are either exclusive or shared with the Member States.

(2) Exclusive Union competences are those which, by their very nature, are reserved for the Union and therefore only the Union, its institutions and bodies are empowered to act.

(3) The competences which the Union shares with the Member States are either concurrent or complementary.

Concurrent competences of the Union are those conferred upon the Union which the Member States may exercise as long as and insofar the Union has not yet done so.

Complementary competences of the Union are those conferred upon the Union to complement or support action taken by the Member States with a view to achieving one of the Union's objectives.

**Article 68** (Exclusive legislative competences of the Union)

The Union shall have the exclusive legislative competence on:

- the common foreign and security policy,
- the establishment of the rights and duties related to the citizenship of the Union, including the modalities of their exercise;
- the external trade policy, with regard to both goods and services and including the fixing of customs duties at the external borders of the Union;
- the monetary law of the Euro;
- the competition policy of the Union;
- the common policy of safety in the field of nuclear energy;
- air transport;

- the structural and cohesion policy of the Union;
- the funding of the Union budget;
- the legal regime governing the officials and servants of the Union;
- the rules governing the languages of the institutions of the Union;
- the establishment of decentralised bodies of the Union and their legal regime, including the possibility to set up a European Anti-Trust Authority;
- Union statistics.

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**Article 69** (Shared legislative competences)

(1) The Union shall have concurrent legislative competences with regard to:

- the establishment and functioning of the internal market; in this respect, the Union may only legislate if and insofar obstacles to the free movement of goods, persons, services and capital exist or may well arise within the Union, and if and insofar these obstacles result or may result in an appreciable distortion of competition;
- the protection of the environment;
- consumer protection;
- the common organisation of agricultural markets<sup>3</sup>;
- the common fisheries policy<sup>4</sup>;

<sup>3</sup> This proposal follows the Report by Alain Lamassoure (A5-0133/2002) on the division of competences between the European Union and the Member States, dated 24 April 2002;

currently, this field of policy is rather regarded as an exclusive competence.

<sup>4</sup> This proposal follows the Report by Alain Lamassoure (A5-0133/2002) on the division of competences between the European Union and the Member States, dated 24 April 2002;

currently, this field of policy is rather regarded as an exclusive competence.

- transport by rail, road, inland waterways and sea;
- trans-European networks;

- social policy;
- measures concerning visas, asylum, immigration and other policies related to the entry and movement of third-country nationals in the Union;
- the control of the external borders of the Union;
- the association of the overseas countries and territories in order to increase trade and promote jointly economic and social developments.

(2) The complementary competences of the Union shall include:

- education;
- vocational training;
- youth;
- research and technological development;
- culture;
- health protection;
- development cooperation;
- the control and supervision of national budgetary policies;
- industrial policy;
- employment policy;
- non-nuclear energy
- civil protection;

<sup>5</sup> This proposal follows the Report by Alain Lamassoure (A5-0133/2002) on the division of

competences between the European Union and the Member States, dated 24 April 2002;

currently, this field of policy is rather regarded as an exclusive competence.

- tourism;
- sport.

**Article 70** (Principles of subsidiarity and proportionality; political scrutiny and judicial control; proportionality in time)

(1) In areas which do not fall within its exclusive competence, the Union shall take action, in accordance with the principle of subsidiarity, only if and

insofar as the objectives of the proposed actions

- cannot be sufficiently achieved by the Member States and
- can, by reason of the scale or effects of the proposed actions, be more efficiently be achieved by the Union.

(2) Any action by the Union shall not go beyond what is necessary to achieve the objectives of this Constitution (principle of proportionality).

(3) The Commission shall forward its annual legislative programme (Article 103 paragraph 1) as well as all its legislative proposals to the European Parliament, the Council, the Parliaments of the Member States (national parliaments), the Committee of the Regions and the Economic and Social Committee without delay in order to allow for a political scrutiny whether both conditions set out in paragraph 1 as well as paragraph 2 have been satisfied (early-warning system). If the European Parliament, the Council, a national parliament, the Committee of the Regions or the Economic and Social Committee concludes that this is not the case, it may call upon the Commission to deliver a reasoned opinion on the compliance with the principles of subsidiarity and proportionality within a period of one month. This may lead the Commission to re-examine its proposal.

(4) Judicial control of the principles of subsidiarity and proportionality shall take place in accordance with Articles 126 and 131.

(5) Every five years it shall be re-examined whether the reasons for the adoption of Union legislation still persist. For this purpose, the Commission shall make a report which lists all existing Union legislation, the justifications for its continued existence or the reasons for a modification or abolition of a measure. The Commission shall forward this report to the European Parliament, the Council, the national parliaments, the Committee of the Regions and the Economic and Social Committee.

#### **Article 71** (External competences)

(1) In areas where the Union has legislative and administrative competences, foreign relations shall be conducted by the Union.

(2) Before the Union acts at international level, a Member State whose very important interests are at stake has to be heard in due time.

(3) In areas where the Member States have legislative and administrative competences, the Union has to be consulted in due time before a Member State acts at international level.

**Article 72** (Additional competences of the Union)

(1) If action by the Union should prove necessary to achieve one of the Union's objectives, and this Constitution has not provided the necessary competences, the European Parliament and the Council shall jointly take the appropriate measures on a proposal from the Commission. By way of derogation from Article 146, the assent of the majority of the members of the European Parliament and unanimity in the Council shall be required.

(2) The Court of Auditors shall be consulted on all proposals under this Article to ensure that the proposed Union action takes place with total budgetary transparency and that there is no duplication of bureaucratic efforts at Union and national level.

(3) Measures adopted under this Article shall expire after five years if they are not prolonged in accordance with the paragraphs 1 and 2.

Title IV Legal instruments of the Union

**Article 73** (Instruments of Union action)

(1) Within its field of competence, the Union shall act through Union acts, Union framework acts, Union regulations, Union decisions, Union recommendations or Union opinions.

(2) A Union act (enacted by the Union's legislature in accordance with Articles 145 et seq.) and a Union regulation (enacted by the Union's executive in accordance with Article 145 paragraph 3) shall have general application. They shall be binding in their entirety and directly applicable in all Member States.

(3) A Union framework act (enacted by the Union's legislature in accordance

with Articles 145 et seq.) shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

(4) A Union decision shall be binding in its entirety upon those to whom it is addressed. They shall be notified to those to whom they are addressed and shall take effect upon such notification.

(5) Union recommendations and Union opinions shall have no binding force.

**Article 74** (Obligation to state reasons)

(1) Union acts, Union framework acts, Union regulations and Union decisions shall state the reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained pursuant to this Constitution.

(2) The reason shall include an explanation why, from the point of view of the acting institution, a legal act complies with both conditions of the principle of subsidiarity and with the principle of proportionality (Article 70).

**Article 75** (Enforcement of Union decisions)

(1) Union decisions which impose a pecuniary obligation shall be enforceable.

(2) Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the government of each Member State shall designate for this purpose and shall make known to the Commission and to the Court of Justice.

(3) When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority.

(4) Enforcement may be suspended only by a decision of the Court of Justice. However, the courts of the country concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

## **PART THREE. Organisation of the Union**

### Title I Foundations of Union organisation

#### **Article 76** (Institutions of the Union)

(1) The tasks entrusted to the Union shall be carried out by the following institutions:

- the European Parliament,
- the Council of the European Union,
- the European Commission,
- the European Court of Justice,
- the European Court of Auditors.

Each institution shall act within the limits of the powers conferred upon it by this Constitution.

(2) In order to fulfil its tasks, the Union may, if necessary, establish bodies and provide them with legal personality by a Union act. Adoption of such a Union act shall require the European Parliament acting by the majority of its members and the Council acting unanimously.

#### **Article 77** (Committee of the Regions and Economic and Social Committee)

(1) The European Parliament, the Council and the Commission shall be assisted by a Committee of the Regions and an Economic and Social Committee acting in an advisory capacity.

(2) The Committee of the Regions shall represent the regional and local bodies who either hold a regional or local authority electoral mandate or are politically accountable to an elected assembly. It shall ensure that the Union gives due regard to the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels.

(3) The Economic and Social Committee shall represent the various economic and social components of organised civil society, and in particular include

representatives of producers, farmers, carriers, workers, dealers, craftsmen, professional occupations, consumers and the general interest. It shall ensure that the Union is in a constant dialogue and regularly with the organised civil society.

(4) The composition and responsibilities of these two Committees are set out in Constitutional Protocol No 6.

#### **Article 78** (European Central Bank)

(1) The European System of Central Banks (hereinafter referred to as "ESCB") and the European Central Bank (hereinafter referred to as "ECB") shall act within the limits of the tasks and competences conferred upon them by this Constitution and by the Statute of the ESCB and of the ECB (hereinafter referred to as "Statute of the ESCB").

(2) The ESCB shall be composed of the ECB and of the central banks of the Member States (hereinafter referred to as "national central banks").

(3) The ECB shall have legal personality.

(4) The ESCB shall be governed by the decision-making bodies of the ECB.

(5) When exercising the powers and carrying out the tasks and duties conferred upon them by this Constitution, Constitutional Protocol No. 2 and the Statute of the ESCB, neither the ECB, nor a national central bank, nor any member of their decision-making bodies shall neither seek nor take instructions from any Union institution or body, from any government of a Member State or from any other body. The Union institutions and bodies and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the ECB or of the national central banks in the performance of their tasks.

(6) The ECB shall make good any damage caused by its decision-making bodies or servants in the performance of their duties; Article 41 paragraph 3 shall apply accordingly.

**Article 79** (European Investment Bank)

(1) The European Investment Bank (hereinafter referred to as "EIB") shall act within the limits of the tasks and competences conferred upon it by this Constitution and by the Protocol on the Statute of the EIB (hereinafter referred to as "Statute of the EIB").

(2) The members of the EIB shall be the Member States.

(3) The EIB shall have legal personality.

(4) The EIB shall make good any damage caused by its decision-making bodies or servants in the performance of their duties; Article 41 paragraph 3 shall apply accordingly.

**Article 80** (Europol)

(1) The European Police Office (hereinafter referred to as "Europol") shall act within the limits of the tasks and competences conferred upon it by this Constitution and by the Europol-Agreement annexed to this Constitution as a Protocol.

(2) Europol shall have legal personality.

(3) Europol shall make good any damage caused by its decision-making bodies or servants in the performance of their duties; Article 41 paragraph 3 shall apply accordingly.

**Article 81** (Seat of the Union; symbols of Union identity)

(1) The seat of the Union shall be Brussels. The seat of the institutions of the Union, of the ECB, the EIB and Europol shall be governed by the "Protocol on the location of the seats of the institutions and of certain bodies and departments of the European Communities and Europol", annexed to this Constitution.

(2) The flag of the Union shall be a circle of twelve golden stars on a blue background.

(3) The anthem of the Union shall be the instrumental version of the Ode of Joy from the Ninth Symphony by Ludwig van Beethoven.

(4) 9 May shall be celebrated as Union day.

**Article 82** (Privileges and immunities)

(1) The Union shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the "Protocol of 8 April 1965 on the privileges and immunities of the European Communities", annexed to this Constitution.

(2) The same shall apply to the ECB, the EIB and Europol.

Title II Institutions of the Union

Chapter 1. The European Parliament

**Article 83** (Function and composition)

(1) The European Parliament shall form the House of Peoples in the legislative process of the Union.

(2) It shall consist of representatives of the peoples of the Member States brought together in the Union.

(3) The number of members of the European Parliament shall not exceed 732. From 2009, the number shall be limited to 700; Article 84 paragraph 2 subparagraph 2 shall apply accordingly.

**Article 84** (Electoral procedure)

(1) The representatives in the European Parliament of the peoples of the Member States brought together in the Union shall be elected by direct universal suffrage.

(2) The number of representatives elected in each Member State shall be as follows:

Belgium 22

Denmark 13

Germany 99

Greece 22

Spain 50  
France 72  
Ireland 12  
Italy 72  
Luxembourg 6  
Netherlands 25  
Austria 17  
Portugal 22  
Finland 13  
Sweden 18  
United Kingdom 72  
*[Bulgaria 17*  
*Cyprus 6*  
*Czech Republic 22*  
*Estonia 6*  
*Hungary 22*  
*Lithuania 8*  
*Latvia 12*  
*Malta 5*  
*Poland 50*  
*Romania 50*  
*Slovakia 13*  
*Slovenia 7]*

In the event of amendments to this paragraph, the number of representatives elected in each Member State must ensure appropriate representation of the peoples of the States brought together in the Union.

(3) Representatives shall be elected for a term of five years.

(4) The European Parliament shall draw up a proposal for elections by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States.

The Council shall, acting unanimously after obtaining the assent of the

European Parliament, which shall act by a majority of its members, lay down the appropriate provisions, which it shall recommend to Member States for adoption in accordance with their respective constitutional requirements.

(5) The European Parliament, after seeking an opinion from the Commission and with the approval of the Council acting by qualified majority, shall lay down by Union act the regulations and general conditions governing the performance of the duties of its members. The European Parliament shall govern all rules and conditions relating to the taxation of members or former members under the same procedure.

**Article 85** (Political parties at European level)

(1) In accordance with Article 11 paragraph 2, a Union act shall lay down the regulations governing political parties at European level and in particular the rules regarding their funding.

(2) The political parties shall constitute their internal organisation on a democratic basis.

(3) The political parties shall nominate their candidates for the European Parliament according to democratic procedures.

**Article 86** (Request to the Commission)

The European Parliament may, acting by a majority of its members, request the Commission to submit any appropriate proposal on matters on which it considers that a Union act is required for the purpose of implementing this Constitution.

**Article 87** (Committee of Inquiry)

(1) In the course of its duties, the European Parliament may, at the request of a quarter of its members, set up a temporary Committee of Inquiry to investigate,

without prejudice to the powers conferred by this Constitution on

other institutions or bodies, alleged contraventions or maladministration in the implementation of Union law, except where the alleged facts are being examined before a court and while the case is still subject to legal proceedings.

(2) The temporary Committee of Inquiry shall cease to exist on the submission of its report.

(3) The detailed provisions governing the exercise of the right of inquiry shall be determined by common accord of the European Parliament, the Council and the Commission.

### **Article 88** (Ombudsman)

(1) The European Parliament shall appoint an Ombudsman empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Union institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where the Ombudsman establishes an instance of maladministration,

he shall refer the matter to the institution concerned, which shall have a period of three months in which to inform him of its views. The Ombudsman shall then forward a report to the European Parliament and the institution concerned. The person lodging the complaint shall be informed of the outcome of such inquiries.

The Ombudsman shall submit an annual report to the European Parliament on the outcome of his inquiries.

(2) The Ombudsman shall be appointed after each election of the European Parliament for the duration of its term of office. The Ombudsman shall be

eligible for reappointment.

The Ombudsman may be dismissed by the Court of Justice at the request of the European Parliament if he no longer fulfils the conditions required for the performance of his duties or if he is guilty of serious misconduct.

(3) The Ombudsman shall be completely independent in the performance of his duties. In the performance of those duties he shall neither seek nor take instructions from any body. The Ombudsman may not, during his term of office, engage in any other occupation, whether gainful or not.

(4) The European Parliament shall, after seeking an opinion from the Commission and with the approval of the Council acting by a qualified majority, lay down by Union act the regulations and general conditions governing the performance of the Ombudsman's duties.

**Article 89** (Annual and extraordinary session)

(1) The European Parliament shall hold an annual session. It shall meet, without requiring to be convened, on the second Tuesday in March.

(2) The European Parliament may meet in extraordinary session at the request of its President, a majority of its members or at the request of the Council or of the Commission.

**Article 90** (Bureau of the Parliament; Rights of the members of the Commission and of the Council)

(1) The European Parliament shall elect its President and its Bureau from among its members.

(2) Members of the Commission may attend all meetings and shall, at their request, be heard on behalf of the Commission.

(3) The Commission shall reply orally or in writing to questions put to it by the European Parliament or by its members.

(4) The Council shall be heard by the European Parliament in accordance with the conditions laid down by the Council in its Rules of Procedure.

**Article 91** (Decision making; Quorum)

(1) Save as otherwise provided in this Constitution, the European Parliament shall act by an absolute majority of the votes cast.

(2) The Rules of Procedure shall determine the quorum.

**Article 92** (Rules of Procedure; Proceedings)

(1) The European Parliament shall adopt its Rules of Procedure, acting by a majority of its members.

(2) The proceedings of the European Parliament shall be published in the manner laid down in its Rules of Procedure.

**Article 93** (Annual general report)

The European Parliament shall discuss in open session the annual general report submitted to it by the Commission.

Chapter 2. The Council of the European Union

**Article 94** (Function of the Council)

(1) The Council shall form the House of States in the Union's legislative process.

(2) In addition and without prejudice to the competences of the Commission the Council ensures, together with the Commission, coordination of

- the general economic policies of the Member States;
- the common foreign and security policy;
- the common police and judicial policy.

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**Article 95** (Composition of the Council; President)

(1) The Council shall consist of one representative of each Member State at ministerial level, authorised to commit the government of that Member State.

(2) The office of President shall be held in turn by each Member State in the Council for a term of six months; the Council may decide unanimously a

longer term or by a qualified majority vote on an 18 months joint Presidency operated on the basis of strict equality between three states. The order in which the office of President shall be held shall be decided by the Council unanimously.

6 Corresponds to Article 202, first indent of the EC Treaty.

(3) The Council can be assisted by conferences consisting of departmental ministers. Where the Council takes decisions within the context of its tasks under Article 94 paragraph 1, these conferences shall not have any decision-making power.

**Article 96** (Convening the Council)

The Council shall meet when convened by its President on his own initiative or at the request of one of its members or of the Commission.

**Article 97** (Decision-making by the Council)

(1) Save as otherwise provided in this Constitution, the Council shall act by a majority of its members.

(2) Where the Council is required to act by a qualified majority, the assent of the majority of members of the Council representing 50 % of the total population of the Union is necessary.

**Article 98** (Voting pool)

Where a vote is taken, any member of the Council may also act on behalf of not more than one other member.

**Article 99** (European Council)

(1) The European Council shall provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof.

(2) The European Council shall bring together the Heads of State or Government of the Member States and the President of the Commission.

They shall be assisted by the Ministers for Foreign Affairs of the Member States and by a member of the Commission. The European Council shall meet at least twice a year, under the chairmanship of the Head of State or Government of the Member State which holds the Presidency of the Council.

(3) The European Council shall submit to the European Parliament a report after each of its meetings and a yearly written report on the progress achieved by the Union.

**Article 100** (COREPER; General Secretariat; Rules of Procedure)

(1) A committee consisting of the Permanent Representatives of the Member States shall be responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the Council. The Committee may adopt procedural decisions in cases provided for in the Council's Rules of Procedure.

(2) The Council shall adopt its Rules of Procedure.

(3) At the request of the Council, the Commission may carry out the duties of a General Secretariat whenever the Council does not act as House of States in the legislative process.

**Article 101** (Publicity of Council meetings)

Whenever the Council acts as House of States in the legislative process, it shall meet in public.

**Article 102** (Request to the Commission)

The Council may request the Commission to undertake any studies the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals.

## Chapter 3. The European Commission

### **Article 103** (Tasks of the Commission)

(1) The executive power of the Union shall be vested in the European Commission.

(2) In order to ensure the proper functioning and development of the Union, the Commission in addition shall:

- ensure that the provisions of this Constitution and the measures taken by the institutions pursuant thereto are applied;
- formulate recommendations or deliver opinions on matters dealt with in this Constitution, if it expressly so provides or if the Commission considers it necessary;
- exercise the powers conferred on it by the European Parliament and by the Council for the implementation of the rules laid down by them;
- ensure the consistency of the external representation of the Union, save as otherwise provided in this Constitution.

(3) The Commission shall support the non-legislative activities of the Council, as provided for in Article 100 paragraph 3.

### **Article 104** (Annual legislative programme; general report)

(1) At 1 November, the Commission shall forward the annual legislative programme of the Union for the following year to the European Parliament, the Council, the national parliaments, the Committee of the Regions and the Economic and Social Committee (Article 70 paragraph 2).

(2) The Commission shall publish annually, not later than one month before the opening of the session of the European Parliament, a general report on the activities of the Union.

### **Article 105** (Composition of the Commission)

(1) The members of the Commission shall be chosen on the grounds of their general competence. Their independence shall be beyond doubt.

(2) The Commission shall include one national of each of the Member States.

The number of members of the Commission may be altered, with the assent of the European Parliament, by the Council acting unanimously.

(3) Only nationals of Member States may be members of the Commission.

(4) The members of the Commission shall, in the general interest of the Union, be completely independent in the performance of their duties.

In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties. Each Member State undertakes to respect this principle and not to seek to influence the members of the Commission in the performance of their tasks.

The members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. In the event of any breach of these obligations, the Court of Justice may, on application by the Council or the Commission, rule that the member concerned be, according to the circumstances, either compulsorily retired in accordance with Article 109 or deprived of his right to a pension or other benefits in its stead.

**Article 106** (Election and appointment of the members of the Commission)

***OPTION 1:***

(1) The President of the Commission shall be elected by the European Parliament

by an absolute majority of its members. His appointment shall be approved by the Council.

(2) The other members of the Commission are nominated by the President

of the Commission by common accord with the respective Member State. They are elected by the European Parliament after having been heard individually

with regard to Article 105 paragraph 1. The appointment of the other members of the Commission shall be approved by the Council.

(3) Subject, if need be to Articles 107 to 109 and Article 111 paragraph 4, the term of office of the members of the Commission shall be a period of five years. Their term of office shall be renewable.

***OPTION 2:***

(1) The President of the Commission shall be proposed by the Council, acting by qualified majority, in view of the results of the European Parliament elections. On such proposal, the European Parliament elects the President by an absolute majority of its members.

(2) The other members of the Commission shall be nominated by the President of the Commission with the approval of the Council, acting by qualified majority. They are elected by the European Parliament after having been heard individually with regard to Article 105 paragraph 1.

(3) Subject, if need be to Articles 107 to 109 and Article 111 paragraph 4, the term of office of the members of the Commission shall be a period of five years. Their term of office shall be renewable.

**Article 107** (Motion of censure on the Commission)

(1) If a motion of censure on the activities of the Commission is tabled before it, the European Parliament shall not vote thereon until at least three days after the motion has been tabled and only by open vote.

(2) If the motion of censure is carried by a two-thirds majority of the votes cast, representing a majority of the members of the European Parliament, the members of the Commission shall resign as a body. They shall continue to deal with current business until they are replaced in accordance with Article 106. In this case, the term of office of the members of the Commission

appointed to replace them shall expire on the date on which the term of office of the members of the Commission obliged to resign as a body would have expired.

**Article 108** (Replacement during the term of office)

(1) Apart from normal replacement, or death, the duties of a member of the Commission shall end when he resigns or is compulsorily retired. The vacancy caused by a resigned, compulsorily retired or dead member shall be filled for the remainder of the member's term of office by a new member appointed in the procedure laid down in Article 106.

(2) In the event of resignation, compulsory retirement or death, the President shall be replaced for the remainder of his term of office according to the procedure laid down in Article 106.

(3) Save in the case of compulsory retirement under Article 109, members of the Commission shall remain in office until they have been replaced.

**Article 109** (Compulsory retirement)

If any member of the Commission no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct, the Court of Justice may, on application by the European Parliament, the Council or the Commission, compulsorily retire him.

**Article 110** (Rules of Procedure)

The Commission shall adopt its Rules of Procedure so as to ensure that both it and its departments operate in accordance with the provisions of this Constitution. The Commission shall publish these rules in the Official Journal of the European Union.

**Article 111** (Political guidance of the President; Commissioner for Foreign Relations)

(1) The Commission shall work under the political guidance of its President,

who shall decide on its internal organisation in order to ensure that it acts consistently, efficiently and on the basis of collegiality.

(2) The responsibilities incumbent upon the Commission shall be structured and allocated among its members by its President; when doing so, the President may also establish a hierarchy among the members of the Commission.

The President may reshuffle the allocation of those responsibilities and the hierarchy during the Commission's term of office. The members of the Commission shall carry out the duties devolved upon them by the President under his authority.

(3) The President shall appoint two Vice-Presidents from among the members of the Commission. The President of the Commission shall, by accord of the Council, charge one of the Vice-Presidents with the external representation of the Union. He shall bear the title "Commissioner for Foreign Relations".

(4) A member of the Commission shall resign if the President so requests.

#### **Article 112** (Decision-making)

(1) The Commission shall act by a majority of the number of members.

(2) A meeting of the Commission shall be valid only if the number of members laid down in its Rules of Procedure is present.

#### Chapter 4. The European Court of Justice

#### **Article 113** (The European Court of Justice; Court of Justice and Court of First Instance)

The Court of Justice and the Court of First Instance, each within its jurisdiction, shall ensure as the judicial authority of the Union that in the interpretation and application of this Constitution the law is observed.

#### **Article 114** (Composition of the Court of Justice)

(1) The Court of Justice shall consist of one judge per Member State.

(2) The Court of Justice shall sit in chambers or in a Grand Chamber, in accordance

with the rules laid down for that purpose in the Statute of the Court of Justice.

(3) The Court of Justice shall form two Grand Chambers to hear and determine actions pursuant to Article 126 paragraph 2 to 3 or Article 131 on grounds of lack of competence of the Union (Chamber on Competences) and to hear and determine actions pursuant to Article 126 paragraph 4 and Article 128 paragraph 3 (Fundamental Rights Chamber).

This is without prejudice to the jurisdiction of the Court of First Instance to hear and determine at first instance actions or proceedings referred to in Article 119 paragraph 1.

(4) Exceptionally, when provided for in the Statute, the Court of Justice may also sit as a full Court.

**Article 115** (Advocates-General)

(1) The Court of Justice shall be assisted by eight Advocates-General.

Should the Court of Justice so request, the Council may, acting unanimously and with obtaining the assent of the European Parliament, increase the number of Advocates-General.

(2) It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice, require his involvement.

**Article 116** (Appointment of Judges and Advocates-General; Terms of office)

(1) The Judges and Advocates-General of the Court of Justice shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence; they shall be appointed by the Council, acting by a qualified majority,

with obtaining the assent of the European Parliament for a term of eight years. Their term of office shall not be renewable.

(2) Every three years there shall be a partial replacement of the Judges. Eight and seven Judges shall be replaced alternately.

(3) Every three years there shall be a partial replacement of the Advocates-General. Four Advocates-General shall be replaced on each occasion.

(4) Retiring Judges and Advocates-General shall be eligible for reappointment.

(5) The Judges shall elect the President of the Court of Justice from among their number for a term of three years. He may be re-elected.

#### **Article 117** (Registrar)

The Court of Justice shall appoint its Registrar and lay down the rules governing its service.

#### **Article 118** (Court of First Instance)

(1) The Court of First Instance shall comprise at least one judge per Member State. The number of Judges shall be determined by the Statute of the Court of Justice. The Statute may provide for the Court of First Instance to be assisted by Advocates-General.

(2) The members of the Court of First Instance shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high judicial office. They shall be appointed by the Council, acting by a qualified majority with obtaining the assent of the European Parliament, for a term of eight years. Their term of office shall not be renewable. The membership shall be partially renewed every three years. Retiring members shall be eligible for reappointment.

(3) The Judges shall elect the President of the Court of First Instance from among their number for a term of three years. He may be re-elected.

(4) The Court of First Instance shall appoint its Registrar and lay down the rules governing its service.

(5) The Court of First Instance shall establish its Rules of Procedure in

agreement with the Court of Justice. Those Rules shall require the approval of the Council, acting by a qualified majority.

(6) Unless the Statute of the Court of Justice provides otherwise, the provisions of this Constitution relating to the Court of Justice shall apply to the Court of First Instance.

**Article 119** (Jurisdiction of the Court of First Instance)

(1) The Court of First Instance shall have jurisdiction to hear and determine at first instance actions or proceedings referred to in Articles 126, 128, 132, 133 and 135, with the exception of those assigned to a judicial panel and those reserved in the Statute for the Court of Justice. The Statute may provide for the Court of First Instance to have jurisdiction for other classes of action or proceeding.

Decisions given by the Court of First Instance under this paragraph may be subject to a right of appeal to the Court of Justice on points of law only, under the conditions and within the limits laid down by the Statute.

(2) The Court of First Instance shall have jurisdiction to hear and determine actions or proceedings brought against decisions of the judicial panels set up under Article 120.

Decisions given by the Court of First Instance under this paragraph may exceptionally

be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Union law being affected.

(3) The Court of First Instance shall have jurisdiction to hear and determine questions referred for a preliminary ruling under Article 130, in specific areas laid down by the Statute.

Where the Court of First Instance considers that the case requires a decision of principle likely to affect the unity or consistency of Union law, it may refer the case to the Court of Justice for a ruling.

Decisions given by the Court of First Instance on questions referred for a

preliminary ruling may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Union law being affected.

**Article 120** (Judicial panels at the Court of First Instance)

(1) Judicial panels may be attached to the Court of First Instance with jurisdiction to hear and determine in accordance with the conditions laid down by this Constitution.

The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Court of Justice or at the request of the Court of Justice and after consulting the European Parliament and the Commission, may create judicial panels to hear and determine at first instance certain classes of action or proceeding brought in specific areas. The decision establishing a judicial panel shall lay down the rules on the organisation of the panel and the extent of the jurisdiction conferred upon it.

(2) Decisions given by judicial panels may be subject to a right of appeal on points of law only or, when provided for in the decision establishing the panel, a right of appeal also on matters of fact, before the Court of First Instance.

(3) The members of the judicial panels shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office. They shall be appointed by the Council, acting unanimously.

(4) The judicial panels shall establish their Rules of Procedure in agreement with the Court of Justice. Those Rules shall require the approval of the Council, acting by a qualified majority. Unless the decision establishing the judicial panel provides otherwise, the provisions of this Constitution relating to the Court of Justice and the provisions of the Statute of the Court of Justice shall apply to the judicial panels.

**Article 121** (Appeal to the Court of Justice by the Commission)

(1) If the Commission considers that a Member State has failed to fulfil an obligation under this Constitution, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

(2) If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice.

**Article 122** (Appeal by a Member State)

(1) A Member State which considers that another Member State has failed to fulfil an obligation under this Constitution may bring the matter before the Court of Justice.

(2) Before a Member State brings an action against another Member State for an alleged infringement of an obligation under this Constitution, it shall bring the matter before the Commission.

(3) The Commission shall deliver a reasoned opinion after each of the States concerned has been given the opportunity to submit its own case and its observations on the other party's case both orally and in writing.

(4) If the Commission has not delivered an opinion within three months of the date on which the matter was brought before it, the absence of such opinion shall not prevent the matter from being brought before the Court of Justice.

**Article 123** (Effect and enforcement of judgments; Penalty payment)

(1) If the Court of Justice finds that a Member State has failed to fulfil an obligation

under this Constitution, the State shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

(2) If the Commission considers that the Member State concerned has not taken such measures it shall, after giving that State the opportunity to submit its observations, issue a reasoned opinion specifying the points on

which the Member State concerned has not complied with the judgment of the Court of Justice.

If the Member State concerned fails to take the necessary measures to comply with the Court's Judgment within the time-limit laid down by the Commission, the latter may bring the case before the Court of Justice. In doing so it shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court of Justice finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.

This procedure shall be without prejudice to Article 122.

**Article 124** (Unlimited jurisdiction; Penalties)

Union acts and Union regulations may give the Court of Justice unlimited jurisdiction

with regard to the penalties provided for in such acts or regulations.

**Article 125** (Other jurisdictions)

Without prejudice to other provisions of this Constitution, Union acts may be adopted to confer jurisdiction, to the extent that it shall determine, on the Court of Justice in disputes relating to the application of acts adopted on the basis of this Constitution which create Union industrial property rights by Union act.

**Article 126** (Action for annulment)

(1) The Court of Justice shall review the legality of acts adopted jointly by the European Parliament and the Council, of acts of the Council, of the Commission and of the ECB, other than recommendations and opinions, and of acts of the European Parliament intended to produce legal effects vis-à-vis third parties.

(2) It shall for this purpose have jurisdiction in actions brought by a Member

State, the European Parliament, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Constitution or of any rule of law relating to its application, or misuse of powers.

(3) The Court of Justice shall have jurisdiction under the same conditions in actions brought by the Court of Auditors, the Committee of the Regions, the Economic and Social Committee and the ECB for the purpose of protecting their prerogatives or claiming an infringement of Articles 66 to 72.

(4) Any natural or legal person may institute proceedings to review the legality of measures of the Union by alleging, in a substantiated manner, the infringement of a fundamental right granted to them by the Charter of Fundamental

Rights of the European Union (Part One of this Constitution).

Such proceedings may also be brought on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Constitution or of any rule of law relating to its application, or misuse of powers where the natural or legal person is directly and individually affected in its right under Article 6 of this Constitution.

(5) The proceedings provided for in this Article shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

#### **Article 127** (Declaration of nullity)

(1) If the action is well founded, the Court of Justice shall declare the act concerned to be void.

(2) In the case of a Union act, a Union framework act or a Union regulation, however, the Court of Justice shall, if it considers this necessary, state which of the effects of such act which it has declared void shall be considered as definitive.

**Article 128** (Action for failure to act)

(1) Should the European Parliament, the Council or the Commission, in infringement

of this Constitution, fail to act, the Member States and the other institutions of the Union may bring an action before the Court of Justice to have the infringement established.

(2) The action shall be admissible only if the institution concerned has first been called upon to act. If, within two months of being so called upon, the institution concerned has not defined its position, the action may be brought within a further period of two months.

(3) Any natural or legal person may, under the conditions laid down in the preceding paragraphs, complain to the Court of Justice to be infringed in a fundamental right granted to them by the Charter of Fundamental Rights (Part One of this Constitution) by a failure to act of the Union. Article 126

(4), second sentence shall apply accordingly.

(4) The Court of Justice shall have jurisdiction, under the same conditions, in actions or proceedings brought by the ECB in the areas falling within the latter's field of competence and in actions or proceedings brought against the latter.

**Article 129** (Obligation imposed by the judgment)

(1) The institution or institutions whose act has been declared void or whose failure to act has been declared contrary to this Constitution shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

(2) This obligation shall not affect any obligation which may result from the application of Article 41 paragraph 3.

(3) This article shall also apply to the ECB.

**Article 130** (Preliminary ruling)

(1) The Court of Justice shall have jurisdiction to give preliminary rulings concerning:

- a) the interpretation of this Constitution;
- b) the validity and interpretation of acts of the institutions of the Union and of the ECB;
- c) the interpretation of the statutes of bodies established by an act of the Union, where those statutes so provide.

(2) Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

(3) Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.

**Article 131** (Judicial ex-ante control)

(1) The European Parliament, the Council, the Commission, the ECB, a national parliament or the government of a Member State, the Committee of the Regions or the Economic and Social Committee may obtain the opinion of the Court of Justice as to whether a measure adopted by the Union is compatible within the competence provisions of Articles 66 to 72. In this case, proceedings need to be brought within a period of one month. The Court of Justice shall give its opinion within a period of two months; the entry into force of the measure shall be stayed during this period. Where the opinion of the Court of Justice is adverse, the measure may enter into force only in accordance with Article 180.

(2) The European Parliament, the Council, the Commission, the ECB or a Member State may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of this Constitution.

Where the opinion of the Court of Justice is adverse, the agreement may enter into force only in accordance with Article 180.

**Article 132** (Jurisdiction for compensation disputes)

The Court of Justice shall have jurisdiction in disputes relating to compensation for damage provided for in Article 41 paragraph 3.

**Article 133** (Staff cases)

(1) The Court of Justice shall have jurisdiction in disputes between the Union and its servants within the limits and under the conditions laid down in the staff regulations or the conditions of employment.

(2) The same shall apply for the servants of the ECB, the EIB and Europol.

**Article 134** (Jurisdiction in certain disputes concerning the ECB and the EIB)

The Court of Justice shall, within the limits hereinafter laid down, have jurisdiction in disputes concerning:

- a) the fulfilment by Member States of obligations under the Statute of the EIB. In this connection, the Board of Directors of the Bank shall enjoy the powers conferred upon the Commission in Articles 121 and 123;
- b) measures adopted by the Board of Governors of the EIB. In this connection, any Member State, the Commission or the Board of Directors of the Bank may institute proceedings under the conditions laid down in Article 126;
- c) measures adopted by the Board of Directors of the EIB. Proceedings against such measures may be instituted only by Member States or by the Commission, under the conditions laid down in Article 126, and solely on the grounds of non-compliance with the procedure provided for in Article 21 paragraph 2 and 5 to 7 of the Statute of the Bank;
- d) the fulfilment by national central banks of obligations under this Constitution and the Statute of the ESCB. In this connection the powers of the Council of the ECB in respect of national central banks shall be the

same as those conferred upon the Commission in respect of Member States by Articles 121 and 123. If the Court of Justice finds that a national central bank has failed to fulfil an obligation under this Constitution, that bank shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

**Article 135** (Jurisdiction to give judgment pursuant to an arbitration clause)

(1) The Court of Justice shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the Union, whether that contract be governed by public or private law.

(2) The same shall apply for contracts concluded by or on behalf of the ECB, the EIB or Europol.

**Article 136** (Jurisdiction to give judgment pursuant to a special agreement)

The Court of Justice shall have jurisdiction in any dispute between Member States which relates to the subject matter of this Constitution if the dispute is submitted to it under a special agreement between the parties.

**Article 137** (Jurisdiction of national courts or tribunals)

Save where jurisdiction is conferred on the Court of Justice by this Constitution, disputes to which the Union is a party shall not on that ground be excluded from the jurisdiction of the courts or tribunals of the Member States.

**Article 138** (Pleading of inapplicability)

Notwithstanding the expiry of the period laid down in Article 126 paragraph 5, any party may, in proceedings in which a Union act, a Union framework act or a Union regulation is at issue, plead the grounds specified in Article 126 paragraph 2 and 4 in order to invoke before the Court of Justice the inapplicability of these acts.

**Article 139** (No suspensory effect; Suspension)

Without prejudice to Article 131 paragraph 1, actions brought before the Court of Justice shall not have suspensory effect. The Court of Justice may, however, if it considers that circumstances so require, order that application of the contested act be suspended.

**Article 140** (Interim measures)

The Court of Justice may in any cases before it prescribe any necessary interim measures.

**Article 141** (Enforceability of judgments)

The judgments of the Court of Justice shall be enforceable under the conditions laid down in Article 75.

**Article 142** (Statute and Rules of Procedure)

- (1) The Statute of the Court of Justice is laid down in a separate protocol.
- (2) The Council may, acting unanimously at the request of the Court of Justice and after consulting the European Parliament and the Commission, or at the request of the Commission and after consulting the European Parliament and the Court of Justice, amend the Statute with exception of Title I.
- (3) The Court of Justice shall adopt its Rules of Procedure. This shall require the approval of the Council, acting by a qualified majority, and the assent of the European Parliament.

Chapter 5. The European Court of Auditors

**Article 143** (Composition of the Court of Auditors; Independence)

- (1) The Court of Auditors shall consist of one national from each Member State.
- (2) The members of the Court of Auditors shall be chosen from among persons who belong or have belonged in their respective countries to external audit bodies or who are especially qualified for this office. Their independence

must be beyond doubt.

(3) The members of the Court of Auditors shall be appointed for a term of six years. The Council, acting by a qualified majority after consulting the European Parliament, shall adopt the list of members drawn up in accordance with the proposals made by each Member State. The term of office of the members of the Court of Auditors shall be renewable.

They shall elect the President of the Court of Auditors from among their number for a term of three years. The President may be re-elected.

(4) The members of the Court of Auditors shall, in the general interest of the Union, be completely independent in the performance of their duties.

In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties.

(5) The members of the Court of Auditors may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.

(6) Apart from normal replacement, or death, the duties of a member of the Court of Auditors shall end when he resigns, or is compulsorily retired by a ruling of the Court of Justice pursuant to paragraph 7.

The vacancy thus caused shall be filled for the remainder of the member's term of office.

Save in the case of compulsory retirement, members of the Court of Auditors shall remain in office until they have been replaced.

(7) A member of the Court of Auditors may be deprived of his office or of his right to a pension or other benefits in its stead only if the Court of Justice, at the request of the Court of Auditors, finds that he no longer fulfils the requisite conditions or meets the obligations arising from his office.

(8) The provisions of the Protocol on the privileges and immunities of the European Communities applicable to the Judges of the Court of Justice shall also apply to the members of the Court of Auditors.

**Article 144** (Audit)

(1) The Court of Auditors shall examine the accounts of all revenue and expenditure of the Union. It shall also examine the accounts of all revenue and expenditure of all bodies set up by the Union insofar as the relevant constituent instrument does not preclude such examination.

The Court of Auditors shall provide the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions which shall be published in the Official Journal of the European Union. This statement may be supplemented by specific assessments for each major area of Union activity.

(2) The Court of Auditors shall examine whether all revenue has been received and all expenditure incurred in a lawful and regular manner and whether the financial management has been sound. In doing so, it shall report in particular on any cases of irregularity.

The audit of revenue shall be carried out on the basis both of the amounts established as due and the amounts actually paid to the Union.

The audit of expenditure shall be carried out on the basis both of commitments undertaken and payments made.

These audits may be carried out before the closure of accounts for the financial year in question.

(3) The audit shall be based on records and, if necessary, performed on the spot in the other institutions of the Union, on the premises of any body which manages revenue or expenditure on behalf of the Union and in the Member States, including on the premises of any natural or legal person in receipt of payments from the budget. For the purposes of the audit, the Court of Auditors shall have recourse to the national audit bodies or, if these do not have the necessary powers, the competent national departments. In

doing so, the Court of Auditors shall respect the independence of the national audit bodies according to the principle of loyal cooperation.

The other institutions of the Union, any bodies managing revenue or expenditures on behalf of the Union, any natural or legal person in receipt of payments from the budget, and the national audit bodies or, if these do not have the necessary powers, the competent national departments, shall forward to the Court of Auditors, at its request, any document or information necessary to carry out this task.

In respect of the EIB's activity in managing Union expenditure and revenue, the Court's rights of access to information held by the Bank shall be governed by an agreement between the Court, the Bank and the Commission.

In the absence of an agreement, the Court shall nevertheless have access to information necessary for the audit of Union expenditure and revenue managed by the Bank.

(4) The Court of Auditors shall draw up an annual report after the close of each financial year. It shall be forwarded to the other institutions of the Union and shall be published, together with the replies of these institutions to the observations of the Court of Auditors, in the Official Journal of the European Union.

The Court of Auditors may also, at any time, submit observations, particularly in the form of special reports, on specific questions and deliver opinions at the request of one of the other institutions of the Union.

It shall adopt its annual reports, special reports or opinions by a majority of its members. However, it may establish internal chambers in order to adopt certain categories of reports or opinions under the conditions laid down by its Rules of Procedure.

It shall assist the European Parliament and the Council in exercising their powers of control over the implementation of the budget.

The Court of Auditors shall draw up its Rules of Procedure. Those rules shall require the approval of the Council, acting by a qualified majority.

## Title III Legislation of the Union

### **Article 145** (Principles of legislation)

(1) The legislation of the Union shall be implemented through Union acts (Article 73 paragraph 2) and Union framework acts (Article 73 paragraph 3).

(2) Union acts and Union framework acts are adopted jointly by the European Parliament (House of Peoples) and by the Council (House of States).

Unless otherwise provided in this Constitution, they are adopted according to the procedure laid down in Article 146.

(3) Where authorised by this Constitution or by a Union act, the Commission may make Union regulations (Article 73 paragraph 2) while respecting content, purpose and limitation of the relevant authorisation.

### **Article 146** (Legislation procedure; Codecision)

(1) Proposals for Union acts and Union framework acts shall be submitted by the Commission to the European Parliament and the Council, unless otherwise provided for in this Constitution.

(2) The Council, acting by a qualified majority after obtaining the opinion of the European Parliament,

– if it approves all the amendments contained in the European Parliament's opinion, may adopt the proposed act thus amended;

– if the European Parliament does not propose any amendments, may adopt the proposed act;

– shall otherwise adopt a common position and communicate it to the European Parliament. The Council shall inform the European Parliament fully of the reasons which led it to adopt its common position.

If, within three months of such communication, the European Parliament:

a) approves the common position or has not taken a decision, the act in question shall be deemed to have been adopted in accordance with that common position;

b) rejects, by an absolute majority of its members, the common position, the proposed act shall be deemed not to have been adopted;

c) proposes amendments to the common position by an absolute majority of its members, the amended text shall be forwarded to the Council and the Commission, which shall deliver an opinion on those amendments.

(3) If, within three months of the matter being referred to it, the Council, acting by a qualified majority, approves all the amendments of the European Parliament, the act in question shall be deemed to have been adopted in the form of the common position thus amended; however, the Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion. If the Council does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee according to Article 147.

**Article 147** (Conciliation proceedings)

(1) The Conciliation Committee shall be composed of members of the Council and an equal number of members of the European Parliament. The respective majority of members sent to the Conciliation Committee by the Council and by the European Parliament must be appointed at the beginning of a legislative period as permanent members of the Conciliation Committee for the whole legislative period.

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.

(2) The Conciliation Committee shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council and by a qualified majority of the members of the European Parliament. In fulfilling this task, the Conciliation Committee shall address the common position on the basis of the amendments proposed by the European Parliament.

(3) If, within six weeks of its being convened, the Conciliation Committee approves a joint text, the European Parliament, acting by an absolute majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If either of the two institutions fails to approve the proposed act within that period, it shall be deemed not to have been adopted.

(4) Where the Conciliation Committee does not approve a joint text, the proposed act shall be deemed not to have been adopted.

(5) The periods of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council.

**Article 148** (Signature; Publication; Entering into force)

(1) Union acts and Union framework acts shall be signed by the President of the European Parliament and by the President of the Council and published in the Official Journal of the European Union. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following that of their publication.

(2) Union regulations adopted by the Commission in accordance with Article 145 paragraph 3, shall be signed by the President of the European Commission and published in the Official Journal of the European Union. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following that of their publication.

Title IV Budget of the Union

**Article 149** (Budget)

(1) All items of revenue and expenditure of the Union shall be included in estimates to be drawn up for each financial year and shall be shown in the budget.

(2) The revenue and expenditure shown in the budget shall be in balance.

**Article 150** (Financing from own resources)

(1) Without prejudice to other revenue, the budget shall be financed wholly from own resources.

(2) The total amount of own resources assigned to the Union is laid down in a decision of the Council, acting unanimously and after obtaining the assent of the European Parliament. This decision needs to be affirmed by the national parliaments representing two thirds of the Member States.

(3) Revenue from the following shall constitute own resources entered in the budget of the European Union:

a) levies, premiums, additional or compensatory amounts, additional amounts or factors and other duties established or to be established by the institutions of the Union in respect of trade with non-member countries within the framework of the common agricultural policy, and also contributions and other duties provided for within the framework of the common organisation of the markets in sugar;

b) Common Customs Tariff duties and other duties established or to be established

by the institutions of the Union in respect of trade with nonmember countries;

c) the application of a uniform rate valid for all Member States to the Value Added Tax assessment base which is determined in a uniform manner for Member States according to Union rules.

d) the application of a rate – to be determined pursuant to the budgetary procedure in the light of the total of all other revenue – to the sum of all the Member States' Gross National Product established in accordance with the Union rules;

e) revenue deriving from any new charges introduced within the framework of a common policy;

f) revenue deriving from a tax of the Union (status quo competence), if it is established by Union act; such a Union act shall be approved by the Council, acting unanimously, and the European Parliament assenting

the act by a majority of its members.

(4) Details concerning the system of own resources are laid down by Union act.

**Article 151** (Budgetary discipline at Commission proposals)

(1) With a view to maintaining budgetary discipline, the Commission shall not make any proposal for a legal act of the Union, or alter its proposals, or adopt any implementing measure which is likely to have appreciable implications for the budget without providing the assurance that that proposal or that measure is capable of being financed within the limits of the Union's own resources.

(2) The Union shall avoid excessive deficits. It respects the reference values, specified in the Protocol on the excessive deficit procedure for budgetary deficit and debts.

<sup>7</sup> Today, this is an own resource of the Union which would be already in accordance with

Council Decision of 31 October 1994 on the system of the European Communities' own resources and the present EC treaty

**Article 152** (Authorisation of expenditures)

(1) The expenditure shown in the budget shall be authorised for one financial year, unless the regulations made pursuant to Article 159 provide otherwise.

(2) In accordance with conditions to be laid down pursuant to Article 159, any appropriations, other than those relating to staff expenditure, that are unexpected at the end of the financial year may be carried forward to the next financial year only.

(3) Appropriations shall be classified under the different chapters grouping items of expenditure according to their nature or purpose and subdivided, as far as may be necessary, in accordance with the regulations made pursuant to Article 159.

(4) The expenditure of the European Parliament, the Council, the Commission and the Court of Justice shall be set out in separate parts of the budget, without prejudice to special agreements for certain common items of expenditure.

**Article 153** (Financial year; Draft budget; Adoption)

(1) The financial year shall run from 1 January to 31 December.

(2) Each institution of the Union shall, before 1 January, draw up estimates of its expenditure. The Commission shall consolidate these estimates in a preliminary draft budget. It shall attach thereto an opinion which may contain different estimates.

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

(3) The Commission shall place the preliminary draft budget before the Council not later than 1 September of the year preceding that in which the budget is to be implemented.

The Council shall consult the Commission and, where appropriate, the other institutions concerned whenever it intends to depart from the preliminary draft budget.

The Council, acting by a qualified majority, shall establish the draft budget and forward it to the European Parliament.

(4) The draft budget shall be placed before the European Parliament not later than 5 October of the year preceding that in which the budget is to be implemented.

The European Parliament shall have the right to amend the draft budget, acting by a majority of its members, and to propose to the Council, acting by an absolute majority of the votes cast, modifications to the draft budget relating to expenditure necessarily resulting from this Constitution or from acts adopted in accordance therewith.

If, within 45 days of the draft budget being placed before it, the European Parliament has given its approval, the budget shall stand as finally adopted.

If within this period the European Parliament has not amended the draft budget nor proposed any modifications thereto, the budget shall be deemed to be finally adopted.

If within this period the European Parliament has adopted amendments or proposed modifications, the draft budget together with the amendments or proposed modifications shall be forwarded to the Council.

(5) After discussing the draft budget with the Commission and, where appropriate,

with the other institutions concerned, the Council shall act under the following conditions:

a) the Council may, acting by a qualified majority, modify any of the amendments adopted by the European Parliament;

b) with regard to the proposed modifications:

– where a modification proposed by the European Parliament does not have the effect of increasing the total amount of the expenditure of an institution, owing in particular to the fact that the increase in expenditure which it would involve would be expressly compensated by one or more proposed modifications correspondingly reducing expenditure, the Council may, acting by a qualified majority, reject the proposed modification.

In the absence of a decision to reject it, the proposed modification shall stand as accepted;

– where a modification proposed by the European Parliament has the effect of increasing the total amount of the expenditure of an institution, the Council may, acting by a qualified majority, accept this proposed modification. In the absence of a decision to accept it, the proposed modification shall stand as rejected;

– where, in pursuance of one of the two preceding subparagraphs, the Council has rejected a proposed modification, it may, acting by a qualified majority, either retain the amount shown in the draft budget or fix another amount.

The draft budget shall be modified on the basis of the proposed modifications accepted by the Council.

If, within 15 days of the draft being placed before it, the Council has not modified any of the amendments adopted by the European Parliament and if the modifications proposed by the latter have been accepted, the budget shall be deemed to be finally adopted. The Council shall inform the European Parliament that it has not modified any of the amendments and that the proposed modifications have been accepted.

If within this period the Council has modified one or more of the amendments adopted by the European Parliament or if the modifications proposed by the latter have been rejected or modified, the modified draft budget shall again be forwarded to the European Parliament. The Council shall inform the European Parliament of the results of its deliberations.

(6) Within 15 days of the draft budget being placed before it, the European Parliament, which shall have been notified of the action taken on its proposed modifications, may, acting by a majority of its members and three-fifths of the votes cast, amend or reject the modifications to its amendments made by the Council and shall adopt but budget accordingly. If within this period the European Parliament has not acted, the budget shall be deemed to be finally adopted.

(7) When the procedure provided for in this Article has been completed, the President of the European Parliament shall declare that the budget has been finally adopted.

(8) However, the European Parliament, acting by a majority of its members and two-thirds of the votes cast, may, if there are important reasons, reject the draft budget and ask for a new draft to be submitted to it.

(9) A maximum rate of increase in relation to the expenditure of the same type to be incurred during the current year shall be fixed annually for the total expenditure other than that necessarily resulting from this Constitution or from acts adopted in accordance therewith.

The Commission shall, after consulting the Economic Policy Committee, declare what this maximum rate is as it results from:

- the trend, in terms of volume, of the gross national product within the Union,
  - the average variation in the budgets of the Member States
- and
- the trend of the cost of living during the preceding financial year.

The maximum rate shall be communicated, before 1 May, to all the institutions of the Union. The latter shall be required to conform to this during the budgetary procedure, subject to the provisions of the fourth and fifth subparagraphs of this paragraph.

If, in respect of expenditure other than that necessarily resulting from this Constitution or from acts adopted in accordance therewith, the actual rate of increase in the draft budget established by the Council is over half the maximum rate, the European Parliament may, exercising its right of amendment, further increase the total amount of that expenditure to a limit not exceeding half the maximum rate.

Where the European Parliament, the Council or the Commission consider that the activities of the Union require that the rate determined according to the procedure laid down in this paragraph should be exceeded, another rate may be fixed by agreement between the Council, acting by a qualified majority, and the European Parliament, acting by a majority of its members and three-fifths of the votes cast.

(10) Each institution shall exercise the powers conferred upon it by this Article, with due regard for the provisions of the Constitution and for acts adopted therewith, in particular those relating to the Union's own resources and to the balance between revenue and expenditure.

#### **Article 154** (Emergency budget)

(1) If, at the beginning of a financial year, the budget has not yet been voted, a sum equivalent to not more than one-twelfth of the budget

appropriations

for the preceding financial year may be spent each month in respect of any chapter or other subdivision of the budget in accordance with the provisions of the regulations made pursuant to Article 159; this arrangement shall not, however, have the effect of placing at the disposal of the Commission appropriations in excess of one-twelfth of those provided for in the draft budget in course of preparation.

(2) The Council may, acting by a qualified majority, provided that the other conditions laid down in the first subparagraph are observed, authorise expenditure

in excess of one-twelfth.

(3) If the decision relates to expenditure which does not necessarily result from this Constitution or from acts adopted in accordance therewith, the Council shall forward it immediately to the European Parliament; within 30 days the European Parliament, acting by a majority of its members and three-fifths of the votes cast, may adopt a different decision on the expenditure in excess of the one-twelfth referred to in the first subparagraph. This part of the decision of the Council shall be suspended until the European Parliament has taken its decision. If within the said period the European Parliament has not taken a decision which differs from the decision of the Council, the latter shall be deemed to be finally adopted.

(4) The decision referred to in the second and third paragraphs shall lay down the necessary measures relating to resources to ensure the application of this Article.

#### **Article 155** (Implementation of the budget)

(1) The Commission shall implement the budget, in accordance with the provisions of the regulations made pursuant to Article 159, on its own responsibility

and within the limits of the appropriations, having regard to the principle of sound financial management. Member States shall cooperate

with the Commission to ensure that the appropriations are used in accordance with the principles of sound financial management.

(2) The regulations shall lay down detailed rules for each institution concerning its part in effecting its own expenditure.

(3) Within the budget, the Commission may, subject to the limits and conditions laid down in the regulations made pursuant to Article 159, transfer appropriations from one chapter to another or from one subdivision to another.

#### **Article 156** (Accounting)

The Commission shall submit annually to the Council and to the European Parliament the accounts of the preceding financial year relating to the implementation of the budget. The Commission shall also forward them a financial statement of the assets and liabilities of the Union.

#### **Article 157** (Discharge)

(1) The European Parliament, acting on a recommendation from the Council which shall act by a qualified majority, shall give a discharge to the Commission in respect of the implementation of the budget. To this end, the Council and the European Parliament in turn shall examine the accounts and the financial statement referred to in Article 156, the annual report by the Court of Auditors together with the replies of the institutions under audit to the observations of the Court of Auditors, the statement of assurance referred to in Article 144 paragraph 1 subparagraph 2 and any relevant reports by the Court of Auditors.

(2) Before giving a discharge to the Commission, or for any other purpose in connection with the exercise of its powers over the implementation of the budget, the European Parliament may ask to hear the Commission give evidence with regard to the extension of expenditure or the operation of financial control systems. The Commission shall submit any necessary information to the European Parliament at the latter's request.

(3) The Commission shall take all appropriate steps to act on the observations in the decisions giving discharge and on other observations by the European Parliament relating to the execution of expenditure, as well as on comments accompanying the recommendations on discharge adopted by the Council.

(4) At the request of the European Parliament or the Council, the Commission shall report on the measures taken in the light of these observations and comments and in particular on the instructions given to the departments which are responsible for the implementation of the budget. These reports shall also be forwarded to the Court of Auditors.

**Article 158** (Transfer; Financial operations)

(1) The Commission may, provided it notifies the competent authorities of the Member States concerned, transfer into the currency of one of the Member States its holdings in the currency of another Member State, to the extent necessary to enable them to be used for purposes which come within the scope of this Constitution. The Commission shall as far as possible avoid making such transfers if it possess cash or liquid assets in the currencies which it needs.

(2) The Commission shall deal with each Member State through the authority designated by the State concerned. In carrying out financial operations the Commission shall employ the services of the bank of issue of the Member State concerned or of any other financial institution approved by that State.

**Article 159** (Financial regulations; Rules of procedure; Financial control)

A Union act, adopted after obtaining the opinion of the Court of Auditors, shall:

a) make financial regulations specifying in particular the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts;

- b) determine the methods and procedure whereby the budget revenue provided under the arrangements relating to the Union's own resources shall be made available to the Commission, and determine the measures to be applied, if need be, to meet cash requirements;
- c) lay down rules concerning the responsibility of financial controllers, authorising officers and accounting officers, and concerning appropriate arrangements for inspection.

**Article 160** (Combat of fraud detrimental to the Union)

(1) The Union and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Union through measures to be taken in accordance with this Article, which shall act as a deterrent and be such as to afford effective protection in the Member States.

(2) Member States shall take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests.

(3) Without prejudice to other provisions of this Constitution, the Member States shall coordinate their action aimed at protecting the financial interests of the Union against fraud. To this end they shall organise, together with the Commission, close and regular cooperation between the competent authorities.

(4) A Union act shall lay down, after consulting the Court of Auditors, the necessary measures in the fields of the prevention of and fight against fraud affecting the financial interests of the Union with a view to affording effective and equivalent protection in the Member States. These measures shall not concern the application of national criminal law or the national administration of justice.

(5) The Commission, in cooperation with Member States, shall each year submit to the European Parliament and to the Council a report on the measures taken for the implementation of this Article.

(6) The institutions of the Union shall cooperate, in their respective fields of competences, with the Commission to ensure an effective combat of fraud. The same shall apply to the ECB and the EIB insofar as they administer budgetary funds of the Union, with due regard to their financial independence and to Article 78 paragraph 4.

#### Title V External relations of the Union

##### **Article 161** (External representation of the Union)

(1) The Commission represents the Union in its external relations.

(2) It shall be for the Commission to ensure the maintenance of close relations with the organs of the United Nations and of its specialised agencies, with the Council of Europe and with the Organisation for Economic Cooperation and Development.

The Commission shall also maintain such relations as are appropriate with all international organisations.

(3) The Commission takes the decisions adopted under this Title or Constitutional

Protocol No. 3 into account. The Commission shall keep the European Parliament and the Council regularly informed regarding the state of the Union's external relations.

##### **Article 162** (Agreements with third states and organisations; Association of the European Parliament)

(1) The Commission shall make recommendations to the Council regarding the conclusion of agreements between the Union and one or more states or international organisations; the Council, after consulting the European Parliament,

shall authorise the Commission to open the necessary negotiations.

The Commission shall conduct these negotiations in consultation with special committees appointed by the Council to assist it in this task and within the framework of such directives as the Council may issue to it.

In exercising the powers conferred upon by this paragraph, the Council shall act by a qualified majority, except in the case where the first subparagraph of paragraph 2 provides that the Council should act unanimously.

(2) Subject to the powers vested in the Commission in this field it shall be decided on the signing, which may be accompanied by a decision on provisional application before entry into force, and on the conclusion of the agreements by the Council, acting by a qualified majority on a proposal from the Commission. The Council shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of internal rules and for the agreements referred to in Article 166.

By way of derogation from the rules laid down in paragraph 3, the same procedures shall apply for a decision to suspend the application of an agreement, and for the purpose of establishing the positions to be adopted on behalf of the Union in a body set up by an agreement, when that body is called upon to adopt decisions having legal effects, with the exception of decisions supplementing or amending the institutional framework of the agreement.

The European Parliament shall be immediately and fully informed on any decision under this paragraph concerning the provisional application or the suspension of agreements, or the establishment of the Union position in a body set up by an agreement.

(3) The Council shall conclude agreements, after the assent of the European Parliament has been obtained, when the agreements cover a field for which the procedure referred to in Article 146 is required for the adoption of internal rules.

By way of derogation from the rules laid down in subparagraph 1, agreements referred to in Article 166, other agreements establishing a specific institutional framework by organising cooperation procedures, agreements having important budgetary implications for the Union and agreements entailing amendments of an act adopted under the procedure referred to in Article 146 shall be concluded after the assent of the majority of the members of the European Parliament has

been obtained. The Council and the European Parliament may, in an urgent situation, agree upon a time-limit for the assent.

(4) When concluding an agreement, the Council may, by way of derogation from paragraph 2, authorise the Commission to approve modifications on behalf of the Union where the agreement provides for them to be adopted by a simplified procedure or by a body set up by the agreement; it may attach specific conditions to such authorisation.

(5) When the Council envisages concluding an agreement which calls for amendments to this Constitution, the amendments must first be adopted in accordance with the procedure laid down in Article 180.

(6) Agreements concluded under the conditions set out in this Article shall be binding on the institutions of the Union and the Member States.

**Article 163** (International monetary agreements; Association of the European Parliament and of the ECB)

(1) By way of derogation from Article 162, the Council may, acting unanimously on a recommendation from the ECB or from the Commission, and after consulting the ECB in an endeavour to reach a consensus consistent with the objective of price stability, after consulting the European Parliament, in accordance with the procedure in paragraph 3 for determining the arrangements, conclude formal agreements on an exchange-rate system for the Euro in relation to non-Union currencies. The Council may, acting by a qualified majority on a recommendation from the ECB or from the Commission, and after consulting the ECB in an endeavour to reach a consensus consistent with the objective of price stability, adopt, adjust or abandon the central rates of the Euro within the exchange-rate system. The President of the Council shall inform the European Parliament of the adoption, adjustment or abandonment to the Euro central rates.

(2) In the absence of an exchange-rate system in relation to one or more non-Union currencies as referred to in paragraph 1, the Council, acting by a qualified majority either on recommendation from the Commission and after

consulting the ECB or on a recommendation from the ECB, may formulate general orientations for exchange-rate policy in relation to these currencies. These general orientations shall be without prejudice to the primary objective of the ESCB to maintain price stability.

(3) By way of derogation from Article 162, where agreements concerning monetary or foreign exchange regime matters need to be negotiated by the Union with one or more States or international organisations, the Council, acting by a qualified majority on a recommendation from the Commission and after consulting the ECB, shall decide the arrangements for the negotiation and for the conclusion of such agreements. These arrangements shall ensure that the Union expresses a single position without prejudice to the allocation of powers laid down in Article 161 paragraph 1 and the fields of competence of the ESCB.

Agreements concluded in accordance with this paragraph shall be binding on the institutions of the Union, on the ECB and on Member States.

(4) Subject to paragraph 1, the Council shall, on a proposal from the Commission and after consulting the ECB, acting by a qualified majority decide on the position of the Union at international level as regards issues of particular relevance to economic and monetary union without prejudice to the allocation of powers laid down in Article 161 paragraph 1 and the fields of competence of the ESCB.

**Article 164** (International activities of the ESCB and the ECB)

(1) In the field of international cooperation involving the tasks entrusted to the ESCB, the ECB shall decide how the ESCB shall be represented.

(2) The ECB and, subject to its approval, the national central banks may participate in international monetary institutions within the fields of competence of the ESCB.

(3) The ECB is represented by its President.

(4) The ECB shall keep the Commission, the Council and the European Parliament regularly informed of its activities in the field of international

cooperation.

**Article 165** (International activities of the EIB)

(1) In the field of international cooperation involving the tasks entrusted to the EIB, the EIB is represented by its President.

(2) Within its fields of competence the EIB may participate in international institutions.

(3) The EIB shall keep the Commission, the Council and the European Parliament regularly informed of its activities in the field of international cooperation.

**Article 166** (Association with third States and international organisations)

The Union may conclude with one or more States or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure.

**Article 167** (Relation to previous treaties of the Member States; Union of the Benelux-States)

(1) The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of this Constitution.

(2) To the extent that such agreements are not compatible with this Constitution, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude.

(3) In applying the agreements referred to in the first paragraph, Member States shall take into account the fact that the advantages accorded under this Constitution by each Member State form an integral part of the

establishment

of the Union and are thereby inseparably linked with the creation of common institutions, the conferring of powers upon them and the granting of the same advantage by all the other Member States.

(4) The provisions of this Constitution shall not preclude the existence or completion of regional unions between Belgium and Luxembourg, or between Belgium, Luxembourg and the Netherlands, to the extent that the objectives of these unions are not attained by application of this Constitution.

## **PART FOUR Enhanced cooperation**

### **Article 168** (Preconditions for enhanced cooperation)

Member States which intend to establish enhanced cooperation between themselves may make use of the institutions, procedures and mechanisms laid down by this Constitution, provided that the proposed cooperation:

- a) is aimed at furthering the objectives of the Union, at protecting and serving their interests and at reinforcement their process of integration;
- b) respects this Constitution and the single framework of the Union;
- c) respects the *acquis communautaire*;
- d) remains within the limits of the powers of the Union and does not concern areas which fall within the exclusive competence of the Union;
- e) does not undermine the internal market as defined in Article 61 or the economic and social cohesion established in accordance with Article 68 eighth indent and shaped by the provisions of Constitutional Protocol No. 1;
- f) does not constitute a barrier to or discrimination in trade between the Member States and does not distort the conditions of competition between them;
- g) involves a minimum of eight Member States;
- h) respects the competences, rights and obligations of those Member States which do not participate therein;

- i) does not affect the provisions of the Protocol integrating the Schengen acquis into the framework of the European Union;
- j) is open to all Member States, in accordance with Article 173.

**Article 169** (Principle of last resort)

Enhanced cooperation may be undertaken only as a last resort, when it has been established within the Council that the objectives of such cooperation cannot be attained within a reasonable period by applying the relevant provisions of this Constitution.

**Art. 170** (Procedure for establishing enhanced cooperation)

(1) Member States which intend to establish enhanced cooperation between themselves in one of the areas referred to in this constitution shall address a request to the Commission, which may submit a proposal to the Council to that effect. In the event of the Commission not submitting a proposal, it shall inform the Member States concerned of the reasons for not doing so.

(2) The authorisation to establish enhanced cooperation as referred to in paragraph 1 shall be granted, in compliance with Articles 168 and 169 of this Constitution, by the Council, acting by a qualified majority, on a proposal from the Commission and after consulting the European Parliament.

When enhanced cooperation relates to an area covered by a field for which the procedure referred to in Article 146 of this Constitution is required, the assent of the European Parliament shall be required.

A member of the Council may request that the matter be referred to the European Council. After that matter has been raised before the European Council, the Council may act in accordance with the first subparagraph of this paragraph.

**Article 171** (Decision making in enhanced cooperation)

(1) For the purpose of the adoption of the acts and decisions necessary for

the implementation of enhanced cooperation referred to in Article 168 of this Constitution, the relevant institutional provisions of this Constitution shall apply. However, while all members of the Council shall be able to take part in the deliberations, only those representing Member States participating in enhanced cooperation shall take part in the adoption of decisions. The qualified majority shall be defined as the same proportion of the weighted votes and the same proportion of the number of the Council members concerned laid down in Article 97 paragraph 2 of this Constitution. Unanimity shall be constituted by only those Council members concerned. Such acts and decisions shall not form part of the Union acquis.

(2) Member States shall apply, as far as they are concerned, the acts and decisions adopted for the implementation of the enhanced cooperation in which they participate. Such acts and decisions shall be binding only on those Member States which participate in such cooperation and, as appropriate, shall be directly applicable only in those States. Member States which do not participate in such cooperation shall not impede the implementation thereof by the participating Member States.

**Article 172** (Financing enhanced cooperation)

Expenditure resulting from implementation of enhanced cooperation, other than administrative costs entailed for the institutions, shall be borne by the participating Member States, unless all members of the Council, acting unanimously, with the assent of the European Parliament decide otherwise.

**Article 173** (Openness for all Member States)

(1) When enhanced cooperation is being established, it shall be open to all Member States. The Commission and the Member States participating in enhanced cooperation shall ensure that as many Member States as possible are encouraged to take part.

(2) Any Member State which wishes to participate in enhanced cooperation shall notify its intention to the Council and the Commission, which shall give

an opinion to the Council within three months of the date of receipt of that notification. Within four months of the date of receipt of that notification the Commission shall take a decision on the request and on possible specific arrangements as it may deem necessary.

## **PART FIVE. General and Final Provisions**

### **Article 174** (Territorial application of the Constitution)

(1) This Constitution shall apply to the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.

(2) This Constitution shall apply to the French overseas departments, the Azores, Madeira and the Canary Islands.

However, taking account of the structural social and economic situation of the French overseas departments, the Azores, Madeira and the Canary Islands, which is compounded by their remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development, a Union act shall govern specific measures aimed, in particular, at laying down the conditions of application of this Constitution to those regions, including common policies.

The Union act according to subparagraph 2 shall take into account areas such as customs and trade policies, fiscal policies, free zones, agriculture and fisheries policies, conditions for supply of raw materials and essential consumer goods, State aids and conditions of access to structural funds and to horizontal Union programmes.

The Union act referred to in subparagraph 2 shall take into account the special characteristics and constraints of the outermost regions without

undermining the integrity and the coherence of the Union legal order, including the internal market and common policies.

(3) The special arrangements for association set out in Constitutional Protocol No. 1 shall apply to the overseas countries and territories listed in Annex III to this Constitution.

This Constitution shall not apply to those overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not included in the aforementioned list.

(4) The provisions of this Constitution shall apply to the European territories for whose external relations a Member State is responsible.

(5) The provisions of this Constitution shall apply to the Åland Islands in accordance with the provisions set out in Protocol No. 2 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

(6) Notwithstanding the preceding paragraphs:

a) this Constitution shall not apply to the Faeroe Islands;

b) this Constitution shall not apply to the Sovereign Base Area of the United Kingdom of Great Britain and Northern Ireland in Cyprus;

c) this Constitution shall not apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community signed on 22 January 1972.

**Article 175** (Serious breach by a Member State of fundamental principles of the Union)

(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 principles mentioned in Article 55 paragraph 3, and address appropriate recommendations to that State. Before making such a determination, the Council shall hear the Member State in question and, acting in accordance with the same procedure, may call on independent persons to submit within a reasonable time limit a report on the situation in the Member State in question.

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

(2) The Council, meeting in the composition of the Heads of State or Government and 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 principles mentioned in Article 55 paragraph 3, after inviting the government of 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 the representative of the government 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 this Constitution shall in any case continue to be binding on the 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 purpose of this Article, the Council shall act without taking into account the vote of the representative of the government 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. A qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned laid down in Article 97 paragraph 2.

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

(6) For the purpose of paragraph 1 and 2, the European Parliament shall act by a two-thirds majority of the votes cast, representing a majority of its members.

**Article 176** (System of property ownership)

Without prejudice to Article 17, this Constitution shall in no way prejudice the rules in Member States governing the system of property ownership.

**Article 177** (Priority of national provisions)

(1) The provisions of this Constitution shall not preclude the application of the following rules:

- a) no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security;
- b) any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the common market regarding products which are not intended for specifically military purposes.

(2) The Council may, acting unanimously on a proposal from the Commission, make changes to the list, which it drew up on 15 April 1958, of the products to which the provisions of paragraph 1 lit. b apply.

**Article 178** (Succession)

(1) The European Union established by this Constitution shall be the successor to the European Community, the European Atomic Energy Community

and the European Union established by the Treaty of Maastricht.

(2) When this Constitution enters into force, the European Community and the European Atomic Energy Community are dissolved. The European Union shall take over all the assets and liabilities of the European Community and the European Atomic Energy Community.

**Article 179** (Protocols as integral part of this Constitution)

(1) The protocols annexed to this Constitution by common accord of the Member States shall form an integral part thereof.

(2) Paragraph 1 shall also apply to protocols annexed to the Treaty establishing the European Community, the Treaty establishing the European Atomic Energy Community, the Treaty on European Union, a Treaty of Amendment or a Treaty of Accession. References to the Treaty on European Union or to the Treaties of the European Communities contained in these protocols shall be regarded as references to the corresponding provisions of this Constitution. The Commission shall draw up a consolidated version of these protocols.

**Art. 180** (Amendments of the Constitution)

(1) The government of any Member State, the European Parliament and the Commission may submit to the Council proposals for the amendment of the Constitution.

(2) The Amendment of the Constitution shall be prepared by a Constitutional Convention which shall be convened by the Council after consulting the European Parliament and the Commission, and which shall within one year draw up a final document containing a detailed draft text.

The Constitutional Convention shall be composed of:

- a Convention Chairman appointed by the Council with the approval of the European Parliament;
- a representative delegated by the government of each Member State;
- two representatives delegated by the national parliaments of each

Member State;

- 34 members of the European Parliament;
- four members of the European Commission.

Two delegates of the ECB shall also participate in the Constitutional Convention in the case of institutional changes in the monetary area.

The President of the European Court of Justice, the President of the European Court of Auditors, the President of the Committee of the Regions and the President of the Economic and Social Committee and the Ombudsman may each delegate one observer to the Constitutional Convention.

(3) The constitutional amendment adopted by the Constitutional Convention must be confirmed by a conference of representatives of the governments of the Member States. This conference shall be convened by the President of the Council immediately subsequent to the Convention.

(4) The constitutional amendment shall enter into force after having been assented by the European Parliament and being ratified by all Member States in accordance with their respective constitutional requirements.

#### **Article 181** (Accession of new Member States)

(1) Any European State which respects the principles set out in Article 55 paragraph 3 may apply to become a member of the Union.

(2) The application shall be addressed to the Council, which 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 members.

(3) The conditions of admission shall be the subject of an agreement between the Member States and the applicant State. Article 162 shall apply accordingly.

(4) Article 180 shall apply for the adjustments to the Constitution which such admission entails. The procedure as provided for in Article 180 paragraph 2 may be reduced to six months on a proposal from the Commission with the approval of the Council and the assent of the European Parliament.

**Article 182** (Period of validity)

This Constitution is established for an unlimited period.

**Article 183** (Ratification; Entry into force)

(1) This Constitution shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the Italian Republic.

(2) This Constitution shall enter into force on the first day of the month following the deposit of the instrument of ratification by the twelfth signatory state to take this step.

**Article 184** (Authentic text)

(1) This Constitution, drawn up in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, the texts in each of these languages being equally authentic, shall be deposited in the archives of the government of the Italian Republic, which will transmit a certified copy to each of the governments

of the other signatory States.

(2) Every citizen of the Union shall receive a free copy of this Constitution in the official language of the Member State in which he or she resides.

**Annex I: Constitutional Protocols concerning the Policies of the Union**

- Constitutional Protocol No. 1: Common Market
- Constitutional Protocol No. 2: Economic and Monetary Union
- Constitutional Protocol No. 3: Common Foreign and Security Policy
- Constitutional Protocol No. 4: Common Policy in Police and Judicial matters
- Constitutional Protocol No. 5: Common Policy of Safety in the Field of Nuclear Energy (former EURATOM Treaty)
- Constitutional Protocol No. 6: Institutional and Procedural Provisions

Constitutional Protocol No. 1: Common Market

*(will include the amended provisions of the Part Three, Title I-VI, VIIIXX,  
and Part IV EC Treaty)*

Constitutional Protocol No. 2: Economic and Monetary Union

***(will include the adapted provisions of Part Three, Title VII of the EC Treaty; the Statute of the ESCB and other EMU-related Protocols could be added)***

Constitutional Protocol No. 3: Common Foreign and Security Policy  
*(will include the amended provisions of Title V of the EU Treaty)*

Constitutional Protocol No. 4: Common Policy in Police and Judicial  
Matters  
*(will include the amended provisions of Title VI of the EU Treaty)*

Constitutional Protocol No. 5: Common Policy of Safety in the Field of  
Nuclear Energy (former EURATOM Treaty)  
*(will include the amended provisions of the EURATOM Treaty)*

Constitutional Protocol No. 6: Institutional and Procedural Provisions  
***(will include the provisions on the Economic and Social Committee  
and the Committee of the Regions and further institutional provisions)***

## **ANNEX II: List of further Protocols Annexed to the Constitution**

*(some of these Protocols could be integrated into Constitutional Protocols No. 1-6)*

- Protocol on the enlargement of the European Union
- Protocol on the location of seats of the institutions and of certain bodies and departments of the European Communities and Europol
- Protocol on the role of national parliaments in the European Union
- Protocol on the Statute of the Court of Justice of the European Community
- Protocol integrating the Schengen acquis into the framework of the European Union
- Protocol on the position of Denmark
- Protocol on the Statute of the European Investment Bank
- Protocol on the excessive deficit procedure
- Protocol on the application of certain aspects of Article 14 (ex-Article 7 a) of the Treaty establishing the European Community to the United Kingdom and Ireland
- Protocol on the position of the United Kingdom and Ireland
- Protocol on Article 17 (ex-Article J.7) of the Treaty on the European Union
- Protocol on the acquisition of property in Denmark
- Protocol on Article 141 (ex-Article 119) of the Treaty establishing the European Community
- Protocol on the Statute of the European Systems of Central Banks and on the European Central Bank
- Protocol on the Statute of the European Monetary Institute
- Protocol on the convergence criteria referred to in Article 121 (ex-Article 109 j) of the Treaty establishing the European Community
- Protocol on Denmark
- Protocol on Portugal
- Protocol on certain provisions relating to Denmark
- Protocol on France
- Protocol on the transition to the third stage of economic and monetary

union

- Protocol on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland
- Protocol on economic and social cohesion
- Protocol on asylum for nationals of Member States of the European Union
- Protocol on the application of the principles of subsidiarity and proportionality
- Protocol on external relations of the Member States with regard to the crossing of external borders
- Protocol on the system of public broadcasting in the Member States
- Protocol on protection and welfare of animals
- Protocol on the financial consequences of the expiry of the ECSC Treaty and on the research fund for coal and steel
- Protocol on Article 67 of the Treaty establishing the European Community
- Protocol (new) on the status of churches and non-confessional organisations (= Declaration No 11 annexed to the final act of Amsterdam)
- Protocol (new) on the integration of Europol in the organisational structure of the European Union

**ANNEX III: List of Overseas Countries and Territories**  
*(text not reproduced)*



**EPP CONVENTION GROUP**

Mr  
Valéry Giscard d 'Estaing  
President of the European Convention

Dear Mr President

We have now entered the second phase of the Convention, which is the moment for discussion of the various contributions made since the beginning of our work. Our ultimate goal is to conclude our work in the Convention with a concrete result, namely an actual text to be presented. In order to contribute to this process in a constructive way I transmit to you a first draft of our deliberations for a constitutional text.

The character of the discussion paper, prepared for the EPP Convention Group, is clearly that of a "work in progress"; it therefore contains optional solutions and preliminary proposals. The text is meant to be adjusted according to further developments also with the political family. However, rather than wait for these developments to be concluded, I feel we should also share this "work in progress" with the Presidium and the Convention. It is not designed to anticipate the final results, but merely to serve as a basis for further discussions within the Convention and is meant as a help for the Presidium especially for the preparation of the "skeleton paper".

Sincerely yours,

Elmar Brok  
Chairman of the EPP Group in the Convention