

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

**Brussels, 9 December 2003
(OR. en,fr)**

**CIG 60/03
ADD 1**

PRESID 14

ADDENDUM TO THE PRESIDENCY NOTE

from : Presidency

dated : 9 December 2003

to : Delegations

Subject : ***IGC 2003***

– ***Intergovernmental Conference (12–13 December 2003)***

ADDENDUM 1 to the Presidency proposal

ADDENDUM 1

Delegations will find attached Addendum 1 to the Presidency note contained in document CIG 60/03.

*
* *

INDEX

Annex 1	The Union's values: Rights of persons belonging to minority groups Equality between women and men.....	5
Annex 2	Equality of Member States in the application of Union law	6
Annex 3	Primacy of Union law.....	7
Annex 4	Explanations relating to the Charter of Fundamental Rights	8
Annex 5	The formations of the Council of Ministers	9
Annex 6	Draft decision of the European Council on the exercise of the Presidency of the Council of Ministers.....	10
Annex 7	The Minister for Foreign Affairs.....	11
Annex 8	European External Action Service	13
Annex 9	Procedures for appointing the President of the Commission, the President of the European Council and the Union Minister for Foreign Affairs	14
Annex 10	Multiannual financial framework.....	15
Annex 11	Budget procedure	16
Annex 12	Prudential supervision of credit institutions and other financial institutions by the European Central Bank.....	18
Annex 13	Appointment of members of the Executive Board of the European Central Bank	19
Annex 14	"Lamfalussy Procedure"	20
Annex 15	Simplified procedure for amending the Statute of the European Investment Bank.....	21
Annex 16	European Court of Justice control over procedural stipulations relating to excessive deficit	22
Annex 17	Provisions specific to Member States whose currency is the euro.....	23
Annex 18	Judicial cooperation in criminal matters	25
Annex 19	European Public Prosecutor's Office.....	28
Annex 20	Judicial cooperation in civil matters.....	29

Annex 21	Negotiation and conclusion of international agreements by Member States relating to the area of Freedom, Security and Justice.....	30
Annex 22	Common security and defence policy	31
Annex 23	Qualified majority voting in the field of the common foreign and security policy.....	36
Annex 24	Social clause	37
Annex 25	Social security	38
Annex 26	Taxation.....	39
Annex 27	Social policy	40
Annex 28	Economic, social and territorial cohesion	41
Annex 29	Transport	42
Annex 30	Technological research and development	43
Annex 31	Energy	44
Annex 32	Public health	45
Annex 33	Sport	47
Annex 34	Tourism	48
Annex 35	Simplified procedure for revising the Constitution: Movement from unanimity to a qualified majority and from the special legislative procedure to the ordinary legislative procedure	49
Annex 36	Simplified procedure for revising the Constitution: Amendment to internal policies	50
Annex 37	Overseas territories	51
Annex 38	Protocol on Denmark.....	52
Annex 39	Services of general interest.....	58
Annex 40	The small neighbouring States of the Union	59
Annex 41	Accession of the Union to the European Convention on Human Rights	60

Annex 42 Provisions relating to the institutions and bodies of the Union as regards
Bulgaria and Romania 61

Annex 43 Protection and welfare of animals 63

Annex 44 Miscellaneous 64

* * *

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

Article I-2

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

* * *

**EQUALITY OF MEMBER STATES IN
THE APPLICATION OF UNION LAW**

Article I-5, paragraph 2

2. Member States shall be treated equally in the application of Union law.

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

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

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

* * *

PRIMACY OF UNION LAW

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

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

* * *

**EXPLANATIONS RELATING TO THE
CHARTER OF FUNDAMENTAL RIGHTS**

5th paragraph of the Preamble

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

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

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

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

* * *

THE FORMATIONS OF THE COUNCIL OF MINISTERS

Article I-23

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

* * *

* Conference declaration providing for this list to be established on the basis of the decision of the Seville European Council.

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

Article 1

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

The Presidency of the different Council formations shall be shared equally among the Member States of the group performing their duty throughout the entire period referred to in the first paragraph.

Article 2

The Presidency of the General Affairs Council and the chair of the Permanent Representatives Committee shall be held for six months by each of the members of the group in turn.

Article 3

The chair of the preparatory bodies of the Council formations referred to in Article 1 shall fall to the Member State holding the Presidency, unless decided otherwise in accordance with the procedure laid down in Article 5.

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

Article 4

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

Article 5

The Council shall, by a qualified majority, adopt a European decision establishing the measures for the implementation of this decision. ²

* * *

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

² Conference declaration providing for the European Council to begin preparing the decision under Article 5 as soon as the Constitutional Treaty is signed and to give political approval within six months.

THE MINISTER FOR FOREIGN AFFAIRS

Article I-25

1. *(unchanged)*
2. *(unchanged)*
3. *(unchanged)*
4. In carrying out its responsibilities, the Commission shall be completely independent. **Without prejudice to Article I-27(2)**, the President, the European Commissioners, the Commissioners and the Union Minister for Foreign Affairs shall, in the discharge of their duties, neither seek nor take instructions from any government or other body.
5. The Commission, as a College, shall be responsible to the European Parliament. The Commission President shall be responsible to the European Parliament for the activities of the Commissioners. Under the procedures set out in Article III-243, the European Parliament may pass a censure motion on the Commission. If such a motion is passed, the European Commissioners and Commissioners must all resign **and the Union Minister for Foreign Affairs must resign from the Commission**. The Commission shall continue to handle everyday business until a new College is appointed.

Article I-26(3)

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

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

Article I-27

1. The European Council, acting by qualified majority, with the agreement of the President of the Commission, shall appoint the Union Minister for Foreign Affairs. The European Council may end his or her tenure by the same procedure.
2. The Union Minister for Foreign Affairs shall conduct the Union's common foreign and security policy. He or she shall contribute by his or her proposals to the development of that policy, which he or she shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.
- 3. The Union Minister for Foreign Affairs shall preside over the Council for Foreign Affairs.**
4. The Union Minister for Foreign Affairs shall be one of the Vice-Presidents of the Commission. He or she shall **ensure that the Union's action in external relations is consistent with the common foreign and security policy. He shall be responsible within the Commission for responsibilities falling to it in** external relations and for coordinating other aspects of the Union's external action. In exercising these responsibilities within the Commission, and only for these responsibilities, the Union Minister for Foreign Affairs shall be bound by Commission procedures **to the extent that this is consistent with the provisions of the above paragraphs 2 and 3.**

* * *

**EUROPEAN EXTERNAL ACTION
SERVICE**

Article III-197(3)

3. In fulfilling his or her mandate, the Union Minister for Foreign Affairs shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States. **The organisation and functioning of the central administration of the European External Action Service, and of the Union's delegations, shall be established by a European Decision of the Council. The Council shall decide after obtaining the opinion of the European Parliament and the consent of the Commission.**

* * *

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

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

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

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

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

* * *

MULTIANNUAL FINANCIAL FRAMEWORK

Article I-54

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

The European Council may adopt by a qualified majority a European Decision authorising the Council to decide unanimously on the adoption of the multiannual financial framework following the first financial framework referred to in paragraph 1 above.

* * *

BUDGET PROCEDURE

Article III-310

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

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

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

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

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

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

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

(a) approves the position of the Council, the European law establishing the budget shall be adopted;

(b) **has not taken a decision, the European law establishing the budget shall be deemed to have been adopted;**

(c) adopts amendments by a majority of its component members, the amended **draft** shall be forwarded to the Council and to the Commission. The President of the European Parliament, in agreement with the President of the Council, shall immediately convene a meeting of the Conciliation Committee. **However**, if within ten days of the draft being forwarded the Council informs the European Parliament that it has approved all its amendments, the Conciliation Committee shall not meet.

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

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

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

6. If, within the twenty-one days referred to in paragraph 5, the Conciliation Committee approves a joint text, the European Parliament, acting by a majority of the votes cast, and the Council¹ shall each have a period of fourteen days from **the date of that approval** in which to adopt **the European law establishing the budget in accordance with** the joint text.

7. If, within the twenty-one days referred to in paragraph 5, the Conciliation Committee does not approve a joint text or if, **within the fourteen days referred to in paragraph 6**, the Council rejects the joint text ¹ **or fails to take a decision on the joint text**, the Parliament may, within fourteen days, acting by a majority of its component members and three fifths of the votes cast, confirm its amendments. Where the Parliament amendment is not confirmed, the position of the Council on the budget **heading** which is the subject of the amendment shall be deemed to have been **adopted**

8. The Council may, **within a period of fourteen days from the date on which the European Parliament confirms its amendments**, reject ¹ the text resulting from the application of paragraph 7 and request ¹ that a new draft budget be submitted by the Commission. **If within that time the Council has not taken a decision, the European law establishing the budget shall be deemed to have been definitively adopted in accordance with the joint text.**

9. However, if the **European Parliament**, acting by a majority of its component members and three fifths of the votes cast, rejects the joint text **within the fourteen days referred to in paragraph 6**, it may ask for a new draft budget to be submitted by the Commission. **If, within that time limit, the European Parliament fails to take a decision, the European law establishing the budget shall be deemed to have been definitively adopted in accordance with the joint text.**

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

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

* * *

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

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

Article III-77(6)

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

* * *

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

Article III-289a

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

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

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

* * *

"LAMFALUSSY PROCEDURE"

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

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

* * *

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

Article III-299

The European Investment Bank shall have legal personality.

Its members shall be the Member States.

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

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

* * *

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

Article III-76(12)

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

* * *

**PROVISIONS SPECIFIC TO MEMBER STATES
WHOSE CURRENCY IS THE EURO**

Article III-88

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

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

2. *[unchanged]*

Article III-91(2)

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

(a) – (h) *[unchanged]*

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

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

Article III-91(4)

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

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

[..... remainder of paragraph unchanged]

* * *

JUDICIAL COOPERATION IN CRIMINAL MATTERS

Article III-158

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

Article III-171

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

European laws or framework laws shall establish measures to:

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

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

They shall concern:

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

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

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

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

Article III-172

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

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

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

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

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

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

* * *

EUROPEAN PUBLIC PROSECUTOR'S OFFICE

Article III-175 (new)

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

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

* * *

JUDICIAL COOPERATION IN CIVIL MATTERS

Article III-170

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

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

* * *

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

Declaration for incorporation in the Final Act

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

* * *

COMMON SECURITY AND DEFENCE POLICY

Article III-211 (2)

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

Permanent structured cooperation

Article I-40(6)

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

Article III-213

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

The Council shall adopt a European decision and shall confirm the admission confirming the participation of any State the Member State concerned which fulfils the criteria and makes the commitments referred to in Articles 2 1 and 3 2 of the above Protocol referred to in paragraph 1. The members of the The Council of Ministers representing the Member States participating in structured cooperation shall act by a qualified majority after consulting the Union Minister for Foreign Affairs. Only Members of the Council representing the participating Member States shall take part in the vote. A qualified majority shall be defined as a majority of the members of the Council representing the participating Member States, comprising at least three fifths of the population of those Member States ¹.

4. If a participating Member State no longer fulfils the criteria or is no longer able to meet the commitments made by it within this framework, referred to in Articles 1 and 2 of the Protocol mentioned in paragraph 1, the Council may decide, on the same conditions, adopt a European decision suspending the participation of to suspend the Member State concerned.

The Council shall act by a qualified majority. Only Members of the Council representing the participating Member States, with the exception of the Member State in question ², shall take part in the vote. A qualified majority shall be defined as a majority of the members of the Council representing the participating Member States, with the exception of the Member State in question, comprising at least three fifths of the population of those Member States.

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

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

o

o o

¹ Usual procedure which appears throughout the Constitution. Moreover, Article III-213(3) should be mentioned in Article 2(4) of the Protocol on the transitional provisions relating to the Institutions and bodies of the Union.

² Usual procedure: the representative in the Council of the Member State "in question" does not usually participate in the vote (see EMU, sanctions, withdrawal).

Closer cooperation on mutual defence

Article I-40(7)

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

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

Article III-214

(deleted)

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

THE HIGH CONTRACTING PARTIES,

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

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

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

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

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

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

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

RECOGNISING that the United Nations **Organisation** may ~~seek~~ **request** the Union's assistance for the urgent implementation of missions **undertaken** under Chapters ~~6 or 7~~ **VI and VII of the United Nations Charter**;

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

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

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

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

~~Article 1~~

~~Those Member States which declare their willingness to go faster and further in developing the Union's capability to undertake crisis management actions and operations, including the most demanding of these tasks, shall establish structured cooperation among themselves within the meaning of Article I-40(6) of the Constitution, to strengthen the capacity of the Union to play its role in the international arena.¹~~

Article 1

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

- (a) ~~engage~~ **proceed** more intensively ~~in the~~ **to** development of **its** defence capacities, ~~including~~ through the development of ~~their~~ **its** national contributions and participation, where appropriate, in multinational forces, in the main European equipment programmes, and in the activity of the **European agency in the field of defence capabilities development, research, acquisition and armaments (hereinafter referred to as the "Agency")** ², and

¹ This Article should be deleted: it is superfluous in the light of Article I-40(6), and is partly inaccurate ("*declare*").

² Precise name of this Agency as approved in Council Decision 2003/834/EC of 17 November 2003 creating a team to prepare for the establishment of the agency in the field of defence capabilities development, research, acquisition and armaments (OJ L 318, 3.12.2003, p. 19).

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

Article 2

To achieve the objectives laid down in Articles 1 and 2, Member States participating in **permanent** structured cooperation shall undertake to:

- (a) cooperate, ~~after~~ **as from** the entry into force of the Treaty establishing a Constitution for Europe, ~~on~~ **with a view to achieving approved** objectives concerning the level of investment expenditure on defence equipment, and regularly review these objectives in the light of the security environment and of the Union's international responsibilities;
- (b) bring their defence apparatus into line with each other as far as possible, particularly by harmonising the ~~statement~~ **identification** of their military needs, by pooling and, where appropriate, specialising their defence means and capabilities, and by encouraging cooperation in the fields of training and logistics;
- (c) take concrete measures to enhance the availability, interoperability, flexibility and deployability of their forces, in particular by identifying common objectives regarding the commitment of forces; ~~this may include a review of~~ , **including possibly reviewing their** national decision-making procedures;
- (d) work together to ensure that they take the necessary measures ~~are taken by the participating Member States~~ to make good, including through multinational approaches; and without prejudice to undertakings in this regard within NATO, ~~perceived~~ the shortfalls; ~~perceived~~ in the framework of the "Capability Development Mechanism" ¹;
- (e) take part, where appropriate, in the development of major joint or European equipment programmes in the framework of the ~~European Defence Capabilities~~ Agency.

Article 3

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

* * *

¹ This paragraph has been restructured for the sake of clarity.

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

Article III-201

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

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

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

* * *

SOCIAL CLAUSE

Article III-2a

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

* * *

SOCIAL SECURITY

Article III-21

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

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

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

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

* * *

TAXATION

Article III-62(2)

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

* * *

SOCIAL POLICY

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

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

* * *

ECONOMIC, SOCIAL AND TERRITORIAL COHESION

Article III-116

In order to promote its overall harmonious development, the Union shall develop and pursue its action leading to the strengthening of its economic, social and territorial cohesion. **In particular, the Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions. In pursuing this objective, particular attention shall be paid to rural areas and to areas which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density, and some island, cross-border and mountain areas.**

Article III-56
[unchanged]

* * *

TRANSPORT

Article III-134
(new paragraph)

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

* * *

TECHNOLOGICAL RESEARCH AND DEVELOPMENT

Article III-146(1)

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

Article III-149

1. A multiannual framework programme, setting out all the activities **financed by** the Union, shall be enacted by European laws. Such laws shall be adopted after consultation of the Economic and Social Committee.

2. *(unchanged)*

3. **A European law of the Council shall establish specific programmes to implement the framework programme** within each activity. Each specific programme shall define the detailed rules for implementing it, fix its duration and provide for the means deemed necessary. The sum of the amounts deemed necessary, fixed in the specific programmes, may not exceed the overall maximum amount fixed for the framework programme and each activity. **Such a law shall be adopted after consultation of the European Parliament and the Economic and Social Committee.**

4. **As a complement to the activities planned in the multiannual framework programme, a European law of the Council shall establish the measures necessary for the implementation of the European research area. Such a law shall be adopted after consultation of the European Parliament and the Economic and Social Committee.**

* * *

ENERGY

Article III-157

1. In establishing an internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim to:
 - (a) ensure the functioning of the energy market,
 - (b) ensure security of energy supply in the Union, and
 - (c) promote energy efficiency and saving and the development of new and renewable forms of energy.
2. The measures necessary to achieve the objectives in paragraph 1 shall be enacted in European laws or framework laws. Such laws shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

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

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

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

* * *

PUBLIC HEALTH

Article III-179

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

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

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

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

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

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

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

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

- (a) measures setting high standards of quality and safety of organs and substances of human origin, blood and blood derivatives; these measures shall not prevent any Member State from maintaining or introducing more stringent protective measures;
- (b) measures in the veterinary and phytosanitary fields which have as their direct objective the protection of public health;
- (c) **measures setting high standards of quality and safety for health products and devices for medical use.**

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

5. *(unchanged)*

6. *(unchanged)*

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

* * *

SPORT

Article III-182

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

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

2. Union action shall be aimed at:

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

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

4. (*unchanged*)

* * *

TOURISM

Article I-16

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

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

Article III-181a

(new)

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

* * *

**SIMPLIFIED PROCEDURE FOR REVISING THE
CONSTITUTION**

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

Article IV-7a¹
(new)

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

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

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

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

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

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

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

* * *

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

**SIMPLIFIED PROCEDURE FOR REVISING THE
CONSTITUTION**

AMENDMENT TO INTERNAL POLICIES

Article IV-7b
(new)

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

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

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

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

* * *

OVERSEAS TERRITORIES

Article IV-4, new paragraph 7

The European Council may, on the initiative of the Member State concerned, adopt a European decision amending the status, with regard to the Union, of a French or Netherlands overseas country or territory referred to in paragraphs 1, 2 and 3 of this Article, Article III-330 and Annex II. The European Council shall act unanimously after consulting the Commission.

* * *

PROTOCOL ON DENMARK

Amended Protocol No 5 on the position of Denmark

THE HIGH CONTRACTING PARTIES,

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

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

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

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

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

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

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

PART I

Article 1

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

Article 2

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

Article 3

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

Article 4

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

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

PART II

Article 5

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

PART III

Article 6

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

Article 7

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

PART IV

Article 8

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

Article 9

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

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

Annex to the Protocol

Article 1

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

Article 2

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

Article 3

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

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

Article 4

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

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

Article 5

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

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

Article 6

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

Article 7

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

o
o o

Declaration by the Conference in relation to the Protocol on Denmark

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

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

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

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

* * *

SERVICES OF GENERAL INTEREST

Article III-6

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

* * *

THE SMALL NEIGHBOURING STATES OF THE UNION

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

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

* * *

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

Article I-7

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

Article III-227(8)

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

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

* * *

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

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

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

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

MEMBER STATES	SEATS IN THE EP
Germany	99
United Kingdom	78
France	78
Italy	78
Spain	54
Poland	54
Romania	36
Netherlands	27
Greece	24
Czech Republic	24
Belgium	24
Hungary	24
Portugal	24
Sweden	19
Bulgaria	18
Austria	18
Slovakia	14
Denmark	14
Finland	14
Ireland	13
Lithuania	13
Latvia	9
Slovenia	7
Estonia	6
Cyprus	6
Luxembourg	6
Malta	5
TOTAL	786

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

2. Without prejudice to Article I-24(2) of the Constitution, the weighting of the votes of Romania and Bulgaria in the European Council and the Council shall be set at 14 and 10 respectively until 31 October 2009.

3. At the time of each accession, the threshold referred to in the Protocol on the transitional provisions relating to the Institutions and bodies of the Union shall be decided by the Council.

* * *

PROTECTION AND WELFARE OF ANIMALS

Article III-5a
(new text)

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

* * *

MISCELLANEOUS

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

Article III-209

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

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

Article III-305(1)

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

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

Article I-19

1. *[unchanged]*

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

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

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

3. *[unchanged]*

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

Protocol on subsidiarity

Article 6

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

Protocol on national Parliaments

Article 8

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

Declaration for incorporation in the Final Act
re Article 6 of the Protocol on the application of the principles of subsidiarity and proportionality and re Article 8 of the Protocol on the role of Member States' national parliaments in the European Union

Member States shall notify the Union's institutions of the addresses of the components of their national Parliaments with which institutions should correspond in accordance with the Protocol on the application of the principles of subsidiarity and proportionality, and the Protocol on the role of national parliaments in the European Union.

(E) CONVERGENCE CRITERIA

Article III-92(1)

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

- (a) *[unchanged]*
- (b) *[unchanged]*

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

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

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

Article III-267(3)

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

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

(G) IMPLEMENTATION OF THE COMMON COMMERCIAL POLICY

Article III-217(2)

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

(H) ENHANCED COOPERATION

Article III-324(1)

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

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

Article III-325(2)

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

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

Article III-326(2)

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

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

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

Article III-328 *(deleted)*

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

Article III-231

1. Should a Member State fall victim to a terrorist attack or a natural or man-made disaster, the other Member States shall assist it at the request of its political authorities. To that end, the Member States shall coordinate between themselves in the Council.
2. The arrangements for the implementation **by the Union** of the solidarity clause referred to in Article I-42 shall be defined by **a European decision adopted by** the Council acting on a joint proposal by the Commission and the Union Minister for Foreign Affairs. **The Council shall act in accordance with Article III-210(1) where this decision has defence implications.** The European parliament shall be informed.

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

(J) NATIONAL SECURITY

Article I-5(1)

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

Article III-163

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

Article III-283

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

(K) WITHDRAWAL FROM THE UNION - NEGOTIATOR

Article I-59(2)

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