

NOTE

from: Presidency
dated: 10 June 2004
to: Delegations

Subject: IGC 2003
– Presidency proposal following the Ministerial meeting on 24 May 2004

1. Delegations will find attached a revised set of draft texts which were previously submitted to Ministers as document CIG 76/04. The Presidency has as far as possible taken into account the further comments made by Ministers at their meetings on 17-18 May and 24 May, and has added in this document some additional points on which there now appears to be broad consensus. These texts also include a series of purely technical/legal adjustments which appear in shaded characters. In addition, all modifications of texts compared to texts in doc. CIG 50/03 are in bold.
2. The Presidency considers that this document represents a fair balance between the different views of delegations. However, it submits the document in advance of the Ministerial meeting on 14 June in order to ensure that no fundamental problems remain, and to avoid further discussion on these issues at the meeting of the IGC at the level of Heads of State or Government on 17/18 June.
3. Delegations' attention is drawn to the fact that in certain cases, such as the Part III articles on the Commission, further adjustments might be required as a direct consequence of the outcome of the discussions on the remaining issues.

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

Article I-2

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

Article III-2

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

Declaration for incorporation in the Final Act
re Article III-2

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

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THE OBJECTIVES OF THE UNION

Article I-3 (3)

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

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**EQUALITY OF MEMBER STATES
BEFORE THE CONSTITUTION**

Article I-5

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

2. **Following Pursuant to** 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 acts of the institutions of 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.

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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.

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PRINCIPLE OF PARTICIPATORY DEMOCRACY

Article I-46 (4)

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

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**THE CONFIGURATIONS FORMATIONS OF THE
COUNCIL OF MINISTERS**

Article I-23

1. The Council shall meet in different configurations formations.
2. The General Affairs Council shall ensure consistency in the work of the different Council configurations 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 elaborate 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 configurations 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 configurations 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 by a European decision of the European Council. The European Council shall act by a qualified majority.

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**DRAFT DECISION OF THE EUROPEAN COUNCIL ON THE EXERCISE
OF THE PRESIDENCY OF THE COUNCIL OF MINISTERS¹**

Article 1

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

Each member of the group shall in turn chair for a six-month period all **configurations formations** of the Council, with the exception of the Foreign Affairs **configuration formation**. The other members of the group shall assist the Chair in all its responsibilities on the basis of a common programme. Members of the team may decide alternative arrangements among themselves.

Article 2

The Committee of Permanent Representatives shall be chaired by a representative of the member of the group chairing the General Affairs Council.

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

The chair of the preparatory bodies of the Council **configurations formations** referred to in Article 1 shall fall to the member of the group chairing the related **configuration formation**, unless decided otherwise in accordance with the procedure laid down in Article 4.

Article 3

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

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

Article 4

The Council shall, ~~by a qualified majority,~~¹ adopt a European decision establishing the measures for the implementation of this decision.

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

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

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¹ The Council will act by a qualified majority since, under Article I-22(3), qualified majority is the normal voting rule, unless otherwise specified.

**TECHNICAL ADAPTATIONS TO PROVISIONS OF
PART III ON THE EUROPEAN COMMISSION**

Article III-243

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.

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 and the Union Minister for Foreign Affairs shall resign from the Commission. They shall remain in office and** continue to deal with current business until **they are** replaced in accordance with Articles I-25 and I-26. 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.

Subsection 4

The European Commission

Article III-250

~~The Members of the Commission shall be appointed for a period of five years, subject, if need be, to Articles III-243, III-252 and III-253.¹~~

Article III-251

The Members of the Commission shall refrain from any action incompatible with their duties. Member States shall respect their independence and shall not seek to influence them 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, acting by a simple majority, or the Commission, rule that the person concerned be, according to the circumstances, either compulsorily retired in accordance with Article III-253 or deprived of his or her right to a pension or other benefits in its stead.

¹ This provision on the duration of the term of office is not necessary as it is already provided for in Article I-25(5).

Article III-252

1. Apart from normal replacement, or death, the duties of a **Member of the Commission** shall end when he or she resigns or is compulsorily retired.
 2. A vacancy caused by resignation, compulsory retirement or death shall be filled for the remainder of the **Member's** term of office by a new **Member of the same nationality** appointed by the **Council, with the agreement of the President of the Commission, after consulting the European Parliament and** in accordance with **the criteria set out in Article I-26(6), first subparagraph.**
- The Council may, acting unanimously on a proposal of the President of the Commission, decide that such a vacancy needs not to be filled, in particular when the remainder of the Member's term of office is short.**
3. In the event of resignation, compulsory retirement or death, the President shall be replaced for the remainder of his or her term of office, in accordance with Article I-26.
 4. **In the event of resignation, compulsory retirement or death, the Union Minister for Foreign Affairs shall be replaced for the remainder of his or her term of office, in accordance with Article I-27.**
 5. In the case of the resignation of all **the Members of the Commission**, they shall remain in office **and continue to deal with current business** until they have been replaced, for the remainder of their term of office, in accordance with Articles I-25 and I-26.

Article III-253

If any **Member of the Commission** no longer fulfils the conditions required for the performance of his or her duties or if he or she has been guilty of serious misconduct, the Court of Justice may, on application by the Council, acting by a simple majority, or by the Commission, compulsorily retire him or her.

Article III-254

Without prejudice to Article I-27(4), the responsibilities incumbent upon the Commission shall be structured and allocated among its members by its President, in accordance with Article I-26(3). The President may reshuffle the allocation of those responsibilities 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 or her authority.

Article III-255

The Commission shall act by a majority of **its Members**. The Rules of Procedure shall determine the quorum.

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TRANSITIONAL PROVISIONS

Provisions to be inserted in the Protocol on the transitional provisions relating to the institutions and bodies of the Union

TITLE 3

Provisions concerning the Commission, including the Union Minister for Foreign Affairs

Article 4

Provisions concerning the Commission

The Members of the Commission in office on the date of entry into force of the Treaty establishing a Constitution for Europe shall remain in office until the end of their term of office. However, on the day of the appointment of the Union Minister for Foreign Affairs, the term of office of the Member having the same nationality as the Union Minister for Foreign Affairs shall end.

TITLE 4

Provisions concerning the Secretary-General of the Council, High Representative for the common foreign and security policy and the Deputy Secretary-General of the Council

Article 5

The terms of office of the Secretary-General of the Council, High Representative for the common foreign and security policy and the Deputy Secretary-General of the Council shall end on the date of entry into force of the Treaty establishing a Constitution for Europe. The Council shall appoint a Secretary-General in conformity with Article III-247(2) of the Constitution.

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THE MINISTER FOR FOREIGN AFFAIRS

Article I-27

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

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**EUROPEAN EXTERNAL ACTION
SERVICE**

Article III-197 (3)

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

**Declaration for incorporation in the Final Act
re Article III-197**

The Conference declares that, as soon as the **Treaty establishing a Constitution for Europe** is signed, the Secretary-General of the Council, High Representative for the common foreign and security policy, the Commission and the Member States, should begin preparatory work on the European External Action Service.

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

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

The Conference considers that, **in accordance with the provisions under the terms** of the Constitution, the European Parliament and the European Council **are jointly responsible 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. In accordance with Article I-26(1), these consultations will focus on the backgrounds of the candidates for **President the Presidency** of the Commission, taking account of the elections to the European Parliament, in accordance. 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.

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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 1st July, draw up estimates of its expenditure **for the following financial 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 1st September 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 1st October of the year preceding that in which the budget is to be implemented. The Council of Ministers shall inform the European Parliament fully of the reasons which led it to adopt its position.

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

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

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

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

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

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

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

6. If, within the twenty-one days referred to in paragraph 5, the Conciliation Committee **agrees on a joint text**, the European Parliament ¹ and the Council ² shall each have a period of fourteen days from **the date of that agreement** in which to **approve** the joint text.

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

- (a) **the European Parliament and the Council both approve the joint text or fail to take a decision, or if one of these institutions approves the joint text while the other one fails to take a decision, the European law establishing the budget shall be deemed to be definitively adopted in accordance with the joint text, or**
- (b) **the European Parliament, acting by a majority of its members, and the Council both reject the joint text, or if one of these institutions rejects the joint text while the other one fails to take a decision, a new draft budget shall be submitted by the Commission, or**
- (c) **the European Parliament, acting by a majority of its members, rejects the joint text while the Council approves it, a new draft budget shall be submitted by the Commission, or**
- (d) **the European Parliament approves the joint text whilst the Council rejects it, the Parliament may, within fourteen days from the date of the rejection by the Council and acting by a majority of its members and three-fifths of the votes cast, decide to confirm all or some of the amendments referred to in paragraph 4 (c). Where a Parliament amendment is not confirmed, the position agreed in the Conciliation committee on the budget heading which is the subject of the amendment shall be retained. The European law establishing the budget shall be deemed to be definitively adopted on this basis.**

8. **If, within the twenty-one days referred to in paragraph 5, the Conciliation Committee does not agree on a joint text, a new draft budget shall be submitted by the Commission.**

9. 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.

¹ p.m.: Under Article III-240, **save as otherwise provided for in the Constitution**, the European Parliament shall act by a majority of the votes cast.

² p.m.: Under Article I-22(3), decisions of the Council shall be taken by qualified majority.

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

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

**Declaration for incorporation in the Final Act
re Article III-308(4)**

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

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

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STRUCTURAL FUNDS

Article III-119

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

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

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

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

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

Article III-77 (6)

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

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**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~~ **consulting** 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.

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"LAMFALUSSY PROCEDURE"

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

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

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

Article III-299

The European Investment Bank shall have legal personality.

Its members shall be the Member States.

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

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

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PROVISIONS SPECIFIC TO MEMBER STATES WHOSE CURRENCY IS THE EURO
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Article III-88

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

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

2. *[unchanged]*

Article III-91(2)

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

(a) – (h) *[unchanged]*

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

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

Article III-91(4)

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

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

[..... remainder of paragraph unchanged]

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JUDICIAL COOPERATION IN CIVIL MATTERS

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.

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EUROJUST

Article III-174 (2)

2. European laws shall determine Eurojust's structure, operation workings, field scope of action and tasks. Those tasks may include:
- (a) the initiation of criminal investigations as well as proposing the initiation of prosecutions conducted by competent national authorities, particularly those relating to offences against the financial interests of the Union;
 - (b) the coordination of investigations and prosecutions referred to in point (a) above;
 - (c) the strengthening of judicial cooperation, including by resolution of conflicts of jurisdiction and by close cooperation with the European Judicial Network.

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

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

**Declaration for incorporation in the Final Act concerning the negotiation and conclusion
of international agreements by Member States relating to
the Area of Freedom, Security and Justice**

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

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**EUROPEAN COURT OF JUSTICE
JURISDICTION IN CFSP**

Article III-282

The Court of Justice of the European Union shall not have jurisdiction with respect to Articles I-39 and I-40, the provisions of Chapter II of Title V concerning the common foreign and security policy **and Article III-194 in so far as it concerns the common foreign and security policy.**

However, the Court shall have jurisdiction to monitor compliance with Article III-209 and to rule on proceedings, brought in accordance with the conditions laid down in Article III-270(4), reviewing the legality of European decisions providing for restrictive measures against natural or legal persons, adopted by the Council on the basis of Chapter II of Title V.

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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 produce major consequences or require amendment of the objective, scope and conditions for the task determined in the European decisions referred to in paragraph 1. In such cases, the Council shall adopt the necessary European decisions.

Permanent structured cooperation

Article I-40 (6)

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

Article III-213

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

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

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

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

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

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

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¹ The drafting of this sentence will have to be adapted in the light of the final drafting of Article I-24 on the definition of qualified majority.

² The drafting of this sentence will have to be adapted in the light of the final drafting of Article I-24 on the definition of qualified majority.

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 **assets**; 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 States **in accordance with the principle of a single set of forces**;

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

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

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

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

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

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

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

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

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

Article 1

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

- (a) proceed more intensively to develop its defence capacities through the development of its national contributions and participation, where appropriate, in multinational forces, in the main European equipment programmes, and in the activity of the European agency in the field of defence capabilities development, research, acquisition and armaments (hereinafter referred to as the "Agency"), and
- (b) have the capacity to supply by 2007 at the latest, either at national level or as a component of multinational force groups, targeted combat units for the missions planned, structured at a tactical level as combat formations, with support elements including transport and logistics, capable of carrying out the tasks referred in Article III-210, within a period of 5 to 30 days, in particular in response to requests from the United Nations Organisation, and which can be sustained for an initial period of 30 days and be extended up to at least 120 days.

Article 2

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

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

Article 3

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

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**SOCIAL CLAUSE AND
SOCIAL DIALOGUE**

Article III-2a (new)

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

Article I-47

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

* * *

SOCIAL POLICY

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

The Conference confirms that the policies described in Article III-107, without prejudice to the other provisions of the Constitution, 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.

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ECONOMIC, SOCIAL AND TERRITORIAL COHESION
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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.

Among the regions concerned, particular attention shall be paid to rural areas, areas affected by industrial transition, and areas which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density, and island, cross-border and mountain areas.

**Declaration for incorporation in the Final Act
re Article III-116**

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

Article III-56 (3) (a)

3. The following may be considered to be compatible with the internal market:

- (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, **and of the regions referred to in Article III-330, in view of their structural, economic and social situation.**

**Declaration for incorporation in the Final Act
re Article III-56 (2) (c)**

The Conference notes that the provisions of Article III-56.2c shall be interpreted in accordance with the existing case law of the Court of Justice regarding the applicability of the provisions to aid granted to certain areas of the Federal Republic of Germany affected by the former division of Germany.

* * *

TRANSPORT

Article III-134
(*new paragraph 3*)

3. When the European law or framework laws referred to in **the second paragraph 2** 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.

Declaration for incorporation in the Final Act
re Article III-141

The Conference notes that the provisions of Article III-141 shall be applied in accordance with the current practice. The term "the measures that are required in order to compensate for the economic disadvantages caused by the division of Germany to the economy of certain areas of the Federal Republic affected by that division" shall be interpreted in accordance with the existing case law of the Court of Justice.

* * *

TECHNOLOGICAL RESEARCH AND DEVELOPMENT

Article III-146 (1)

1. The Union's action shall aim to strengthen **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.

Declaration for incorporation in the Final Act
re Article III-146

The Conference agrees that the Union's action in the area of research and technological development **will shall** pay due respect to the fundamental orientations and choices of the research policies of the Member States.

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.

The framework programme shall:

- (a) establish the scientific and technological objectives to be achieved by the activities provided for in Article III-147 and **fix lay down** the relevant priorities;
- (b) indicate the broad lines of such activities;
- (c) **fix lay down** the maximum overall amount and the detailed rules for the Union's financial participation in the framework programme and the respective shares in each of the activities provided for.

2. *(unchanged)*

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

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

* * *

ENERGY

Article I-13: Areas of shared competence

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

Article III-157

1. In establishing an internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim to:
- (a) ensure the functioning of the energy market,
 - (b) ensure security of energy supply in the Union, and
 - (c) promote energy efficiency and saving and the development of new and renewable forms of energy.
2. **Without prejudice to the application of other provisions of the Constitution**, the objectives of paragraph 1 shall be **achieved by measures** enacted in European laws or framework laws. Such laws **or framework 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**, its choice between different energy sources and the general structure of its energy 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 of and combating serious cross-border threats to health.**

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

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

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

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

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

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

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

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

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

6. *(unchanged)*

7. Union action 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 specific 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)*

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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;
- (d) tourism;**
- (e) education, youth, sport and vocational training;
- (f) civil protection.
- (g) administrative cooperation.

SECTION 3A (new)

TOURISM

Article III-181a
(new)

- 1. The Union shall complement the action of the Member States in the tourism sector, in particular by promoting the competitiveness of Union **undertakings enterprises** in that sector.**
- 2. To that end, Union action shall be aimed at:**
 - (a) encouraging the creation of a favourable environment for the development of **undertakings 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.**

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OVERSEAS TERRITORIES

Article IV-4, new (7)

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

Declaration **for incorporation in the Final Act**
re Article IV-4

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

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PROTOCOL ON DENMARK

Amended Protocol No 5 on the position of Denmark

THE HIGH CONTRACTING PARTIES,

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

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

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

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

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

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

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

PART I

Article 1

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

Article 2

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

Article 3

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

Article 4

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

¹ The drafting of this sentence will have to be adapted in the light of the final drafting of Article I-24 on the definition of qualified majority.

PART II

Article 5

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

PART III

Article 6

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

Article 7

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

PART IV

Article 8

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

Article 9

1. At any time and without prejudice to Article 8 Denmark may, in accordance with its constitutional requirements, notify the other Member States that with effect from the first day of the month following the notification Part I of this Protocol shall consist of the provisions in the Annex to this Protocol.
2. Six months after the date on which such notification takes effect all Schengen *acquis* and measures adopted to build upon this *acquis*, which until then have been binding on Denmark as obligations under international law, shall be binding upon Denmark as Union law.

Annex to the Protocol

Article 1

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

Article 2

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

Article 3

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

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

Article 4

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

¹ The drafting of this sentence will have to be adapted in the light of the final drafting of Article I-24 on the definition of qualified majority.

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 **builds 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 **builds is building** upon the Schengen *acquis*.

Article 6

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

Article 7

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

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Declaration for incorporation in the Final Act 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 **in accordance with respect of** Part I and Part II of the Protocol on the position of Denmark.

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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 **competences 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.

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THE SMALL NEIGHBOURING STATES OF THE UNION

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

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

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

Article I-7

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

Article III-227 (8)

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

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

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

1. The agreement relating to the accession of the Union to the European Convention on Human Rights provided for in Article I-7(2), paragraph 2 of the Constitution shall ~~take into account~~ make provision for preserving the following the specific characteristics of the Union and Union law, in particular with regard to:
 - the specific arrangements for the Union's possible participation in the control bodies of the European Convention on Human Rights,
 - the mechanisms necessary to ensure that proceedings by non-Member States and individual applications are correctly addressed to Member States and/or the Union as appropriate;
2. The agreement referred to in paragraph 1 shall ensure that accession shall not affect the competences of the Union and the powers of its institutions. It shall ensure that nothing therein shall affects the situation of Member States in relation to the European Convention on Human Rights, in particular in relation to the Protocols to the Convention, measures taken by Member States derogating from the Convention in accordance with Article 15 thereof and reservations to the Convention made by Member States in accordance with Article 57 thereof.
3. Nothing in the agreement referred to in paragraph 1 shall affect Article III-281(2), paragraph 2 of the Constitution.

Declaration for incorporation in the Final Act
re Article I-7 (2)

The Conference agrees that the Union's accession to the European Convention on Human Rights should be arranged in such a way as to preserve the specific features of Community Union law. In this connection, the Conference notes the existence of a regular dialogue between the Court of Justice of the European Union and the European Court of Human Rights; such dialogue could be reinforced when the European Union accedes to the European Convention on Human Rights.

* * *

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

**Declaration for incorporation in the Final Act 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 **will shall** be as follows.

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

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

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

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

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

* * *

PROTECTION AND WELFARE OF ANIMALS

Article III-5a
(new text)

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

* * *

CAPITAL AND PAYMENTS

Article III-47 (4) (new paragraph)

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

* * *

RESTRICTIVE MEASURES

Article III-49

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

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

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

Article III-224

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

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

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

**Declaration for incorporation in the Final Act
re Articles III-49 and III-224**

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

* * *

AUTHENTIC TEXTS AND
TRANSLATIONS

Article IV-10 new (2)

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

Declaration for incorporation in the Final Act
re Article IV-10 (2)

The Conference recommends that those Member States wishing to avail themselves of the possibility recognised in ~~paragraph two of~~ Article IV-10(2) communicate to the Council, within six months from the date of the signature of the Treaty, the language or languages into which translations of the Treaty ~~will shall~~ be made.

* * *

**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 for** the Council **should to** 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 consulting the European Parliament and the Commission, and the European Central Bank in the case of institutional changes in the monetary area.**
- 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.**

* * *

ENHANCED COOPERATION ¹
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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).

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¹ The Presidency considers that the issue of Article III-328 requires further discussion by Ministers.

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. ¹

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 initiative of the European Parliament and with its consent, a European decision establishing the composition of the European Parliament, respecting the principles referred to in the first sub-paragraph.

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.

¹ The drafting of these two last sentences may have to be adapted to reflect the outcome of the IGC discussion on European Parliament seats.

(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 obligation to notify measures transposing a European framework law, it may, when it deems appropriate, **specify the amount of a the** lump sum or penalty payment **to be paid by the Member State concerned which it considers appropriate in the circumstances.**

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

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

Article III-231

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

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

Declaration for incorporation in the Final Act re Articles I-42 and III-231

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

(H) NATIONAL SECURITY AND DATA PROTECTION

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 **the maintenance of maintaining** law and order and the safeguarding **of** internal security.

Article III-283

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

Declaration for incorporation in the Final Act re Article I-50

The Conference declares that, whenever rules on protection of personal data to be adopted on the basis of Article I-50 could have direct implications for national security, due account will have to be taken of the specific characteristics of the matter. It recalls that the legislation presently applicable includes specific derogations in this regard.

(I) WITHDRAWAL FROM THE UNION-NEGOTIATOR

Article I-59 (2)

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

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DECLARATION BY MEMBER STATES ¹

Declaration by the Federal Republic of Germany and the Republic of Austria

Germany and Austria note that the core provisions of the Treaty establishing the European Atomic Energy Community have not been substantially amended since its entry into force and need to be brought up to date. They therefore support the idea of a Conference of the Representatives of the Governments of the Member States, which should be convened as soon as possible.

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¹ The Presidency includes this proposed Member State Declaration for the sake of completeness. Other Member States wishing to be associated with this Declaration should so indicate.