



Statewatch

EU Constitutional annotation no 2

Part III, Title V: EU External Policies

The following text includes the entire text of the final Title V of Part III of the proposed EU constitution concerning external relations, with annotations indicating how the proposed Constitution compares to the current Treaties, practice and case law.

It is important to compare the text to existing practice to see what would change, particularly in light of the widespread misunderstanding in the press as to how the Constitution would differ from the current position.

The changes in this area would include particularly a move to a stronger defence policy, extensive powers for the proposed EU foreign minister, an expansion of the scope of the EU's common commercial policy, application of the rules on 'first pillar' treaties to 'third pillar' treaties (concerning criminal law and policing matters) merger of and more extensive powers for the European Parliament over treaties and legislation (except as regards foreign and defence policy).

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TITLE V

THE UNION'S EXTERNAL ACTION

CHAPTER I PROVISIONS HAVING GENERAL APPLICATION

Article III-193¹

1. The Union's action on the international scene shall be guided by, and designed to advance in the wider world, the principles which have inspired its own creation, development and enlargement: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, equality and solidarity, and for international law in accordance with the principles of the United Nations Charter.

The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations, which share these values. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.

2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:

- (a) safeguard the common values, fundamental interests, security, independence and integrity of the Union;
- (b) consolidate and support democracy, the rule of law, human rights and international law;
- (c) preserve peace, prevent conflicts and strengthen international security, in conformity with the principles of the United Nations Charter;
- (d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;
- (e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;
- (f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;
- (g) assist populations, countries and regions confronting natural or man-made-disasters;
- (h) promote an international system based on stronger multilateral cooperation and good global governance.

3. The Union shall respect the principles and pursue the objectives listed in paragraphs 1 and 2 in the development and implementation of the different areas of the Union's external action covered by this Title and the external aspects of its other policies.

The Union shall ensure consistency between the different areas of its external action and between these and its other policies. The Council of Ministers and the Commission, assisted by the Union Minister for Foreign Affairs, shall ensure that consistency and shall cooperate to that effect.

¹ New; but see Arts. 11(1) EU and 131 177, and 181a EC which set out objectives in certain areas. For para 3 (sub-para 1) see Art. 178 EC, which requires other EC measures to be consistent with development policy; and for the consistency requirement (sub-para 2) see Art 3 EU.

Article III-194²

1. On the basis of the principles and objectives referred to in Article III-193, the European Council shall identify the strategic interests and objectives of the Union.

European decisions of the European Council on the strategic interests and objectives of the Union relate to the common foreign and security policy and to other areas of the external action of the Union. Such decisions may concern the relations of the Union with a specific country or region or may be thematic in approach. They shall define their duration, and the means to be made available by the Union and the Member States.

The European Council shall act unanimously on a recommendation from the Council of Ministers, adopted by the latter under the arrangements laid down for each area. European decisions of the European Council shall be implemented in accordance with the procedures provided for by the Constitution.

2. The Union Minister for Foreign Affairs, for the field of common foreign and security policy, and the Commission, for other fields of external action, may submit joint proposals to the Council of Ministers.

CHAPTER II COMMON FOREIGN AND SECURITY POLICY

Article III-195³

1. In the context of the principles and objectives of its external action, the Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy.

2. The Member States shall support the common foreign and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity.

The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.

The Council of Ministers and the Union Minister for Foreign Affairs shall ensure that these principles are complied with.

3. The Union shall conduct the common foreign and security policy by:

- (a) defining the general guidelines;
- (b) adopting European decisions on:
 - (i) actions of the Union,
 - (ii) positions of the Union,
 - (iii) implementation of actions and positions;

² Para 1 is based on Art. 13(2) and 13(3), sub-para 2 EU on ‘common strategies’; note that the renaming of these acts as ‘European decisions’ makes clear that they are binding; explicitly clear that they can cover all of current three pillars; explicit reference to thematic common strategies.

³ Paras 1 and 2 are Art. 11 EU with CFSP objectives removed to Art III-193; also a reference to the Foreign Minister has been added. Para 3 is an updated version of Art. 12 EU.

(c) strengthening systematic cooperation between Member States in the conduct of policy.

Article III-196⁴

1. The European Council shall define the general guidelines for the common foreign and security policy, including for matters with defence implications.

If international developments so require, the President of the European Council shall convene an extraordinary meeting of the European Council in order to define the strategic lines of the Union's policy in the face of such developments.

2. The Council of Ministers shall adopt the European decisions necessary for defining and implementing the common foreign and security policy on the basis of the general guidelines and strategic lines defined by the European Council.

Article III-197⁵

1. The Union Minister for Foreign Affairs, who shall chair the Council of Ministers for Foreign Affairs, shall contribute through his proposals towards the preparation of the common foreign and security policy and shall ensure implementation of the European decisions adopted by the European Council and the Council of Ministers.

2. For matters relating to the common foreign and security policy, the Union shall be represented by the Union Minister for Foreign Affairs. He shall conduct political dialogue on the Union's behalf and shall express the Union's position in international organisations and at international conferences.

3. In fulfilling his 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.⁶

Article III-198⁷

1. Where the international situation requires operational action by the Union, the Council of Ministers shall adopt the necessary European decisions. Such decisions shall lay down the objectives, the scope, the means to be made available to the Union, if necessary the duration, and the conditions for implementation of the action.

If there is a change in circumstances having a substantial effect on a question subject to such a European decision, the Council of Ministers shall review the principles and objectives of the action and adopt the necessary European decisions. As long as the Council of Ministers has not acted, the European decision on action by the Union shall stand.

2. Such European decisions shall commit the Member States in the positions they adopt and in the conduct of their activity.

⁴ Para. 1, sub-para 1 is Art. 13(1) EU. Para. 1, sub-para 2 is new, but confirms practice and is based on ability to call Council quickly in Art. 22(2) EU. Para. 3 is Art. 13(3) EU, sub-para 1.

⁵ New; replaces Art. 18 EU (representation) and Art. 26 EU (High Representative).

⁶ [*note in constitution:*] See the Declaration on the creation of a European External Action Service in Annex III.

⁷ Art. 14 EU on Joint Actions; identical in substance except for deletion of Art. 14(4) on possible request to Commission to make proposals for implementation.

3. Whenever there is any plan to adopt a national position or take national action pursuant to a European decision as referred to in paragraph 1, information shall be provided in time to allow, if necessary, for prior consultations within the Council of Ministers. The obligation to provide prior information shall not apply to arrangements which are merely a national transposition of European decisions.

4. In cases of imperative need arising from changes in the situation and failing a new European decision, Member States may make the necessary arrangements as a matter of urgency, having regard to the general objectives of the European decision referred to in paragraph 1. The Member State concerned shall inform the Council of Ministers immediately of any such arrangements.

5. Should there be any major difficulties in implementing a European decision as referred to in this Article, a Member State shall refer them to the Council of Ministers which shall discuss them and seek appropriate solutions. Such solutions shall not run counter to the objectives of the action or impair its effectiveness.

Article III-199⁸

The Council of Ministers shall adopt European decisions which shall define the approach of the Union to a particular matter of a geographical or thematic nature. Member States shall ensure that their national policies conform to the positions of the Union.

Article III-200⁹

1. Any Member State, the Union Minister for Foreign Affairs, or the Minister with the support of the Commission, may refer to the Council of Ministers any question relating to the common foreign and security policy and may submit proposals to it.

2. In cases requiring a rapid decision, the Union Minister for Foreign Affairs, of the Minister's own motion or at the request of a Member State, shall convene an extraordinary meeting of the Council of Ministers within forty-eight hours or, in an emergency, within a shorter period.

Article III-201¹⁰

1. European decisions referred to in this Chapter shall be adopted by the Council of Ministers acting unanimously. Abstentions by members present in person or represented shall not prevent the adoption of such decisions.

When abstaining in a vote, any member of the Council of Ministers may qualify its abstention by making a formal declaration. In that case, it shall not be obliged to apply the European decision, but shall accept that the latter commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position.

⁸ Art. 15 EU on Common Positions; identical in substance.

⁹ Amends Art. 22 EU to give Council Presidency and Commission powers to Foreign Minister.

¹⁰ Amends Art. 23 EU; changes are: revised threshold for abstainers blocking decision (para. 1, sub-para. 2); the prospect of QMV following a proposal from the Minister, in certain conditions (para 2(b)); the 'emergency brake' applies where *vital* reasons, rather than *important* reasons, of national policy are at stake; the Foreign Minister has a mediating role when the brake is pulled; and the European Council has the power to extend QMV (para. 3), but note this does not apply to defence (para. 4).

If the members of the Council of Ministers qualifying their abstention in this way represent at least one third of the Member States representing at least one third of the population of the Union, the decision shall not be adopted.

2. By derogation from paragraph 1, the Council of Ministers shall act by qualified majority:

(a) when adopting European decisions on Union actions and positions on the basis of a European decision of the European Council relating to the Union's strategic interests and objectives, as referred to Article III-194(1);

(b) when adopting a decision on a Union action or position, on a proposal which the Minister has put to it following a specific request to him from the European Council made on its own initiative or that of the Minister;

(c) when adopting any European decision implementing a Union action or position;

(d) when adopting a European decision concerning the appointment of a special representative in accordance with Article III-203.

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

3. The European Council may decide unanimously that the Council of Ministers shall act by a qualified majority in cases other than those referred to in paragraph 2.

4. Paragraphs 2 and 3 shall not apply to decisions having military or defence implications.

Article III-202¹¹

1. When the Union has defined a common approach within the meaning of Article I-39(5), the Union Minister for Foreign Affairs and the Ministers for Foreign Affairs of the Member States shall coordinate their activities within the Council of Ministers.

2. The diplomatic missions of the Member States and the delegations of the Union shall cooperate in third countries and in international organisations and shall contribute to formulating and implementing a common approach.

Article III-203¹²

The Council of Ministers shall, whenever it deems it necessary, appoint, on the initiative of the Union Minister for Foreign Affairs, a special representative with a mandate in relation to particular policy issues. The special representative shall carry out his mandate under the authority of the Union Minister for Foreign Affairs.

¹¹ New clause; but see Art. III-207 below.

¹² Art. 18(5) EU amended re Foreign Minister appointment and control of representatives; note that in practice Joint Actions specify that the representatives are responsible to the High Representative.

Article III-204¹³

The Union may conclude agreements with one or more States or international organisations pursuant to this Chapter, in accordance with the procedure described in Article III-227.

Article III-205¹⁴

1. The Union Minister for Foreign Affairs shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy, including the common security and defence policy, and shall ensure that the views of the European Parliament are duly taken into consideration. The European Parliament shall be kept regularly informed by the Union Minister for Foreign Affairs of the development of the common foreign and security policy, including the common security and defence policy. Special representatives may be involved in briefing the European Parliament.

2. The European Parliament may ask questions of the Council of Ministers and of the Union Minister for Foreign Affairs or make recommendations to them. Twice a year it shall hold a debate on progress in implementing the common foreign and security policy, including the common security and defence policy.

Article III-206¹⁵

1. Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the Union's positions in such fora. The Union Minister for Foreign Affairs shall organise this coordination.

In international organisations and at international conferences where not all the Member States participate, those which do take part shall uphold the Union's positions.

2. Without prejudice to paragraph 1 and Article III-198(3), Member States represented in international organisations or international conferences where not all the Member States participate shall keep the latter, as well as the Union Minister for Foreign Affairs, informed of any matter of common interest.

Member States which are also members of the United Nations Security Council shall concert and keep the other Member States and the Union Minister for Foreign Affairs fully informed. Member States which are members of the Security Council will, in the execution of their functions, defend the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter.

When the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the Union Minister for Foreign Affairs be asked to present the Union's position.

¹³ Replaces Art. 24 EU; the procedural details have been moved. Note that there is no longer reference to treaties which are 'necessary' or which 'implement' the CFSP Title.

¹⁴ Art. 21 EU, slightly amended to include references to the Foreign Minister (who replaces the Council Presidency as interlocutor), to add possibility of special representatives contacting the EP and to require a twice-annual (rather than annual) debate.

¹⁵ Art. 19 EU, with two amendments: the Foreign Minister organises the coordination, and the Member States in the Security Council must allow him/her to speak on the EU's behalf.

Article III-207¹⁶

The diplomatic and consular missions of the Member States and the Union delegations in third countries and international conferences, and their representations to international organisations, shall cooperate in ensuring that the European decisions relating to Union positions and actions adopted by the Council of Ministers are complied with and implemented. They shall step up cooperation by exchanging information and carrying out joint assessments.

They shall contribute to the implementation of the provisions referred to in Article I-8(2) on the rights of European citizens to protection in the territory of a third country and the measures adopted pursuant to Article III-11.

Article III-208¹⁷

Without prejudice to Article III-247, a Political and Security Committee shall monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council of Ministers at the request of the Council, or of the Union Minister for Foreign Affairs, or on its own initiative. It shall also monitor the implementation of agreed policies, without prejudice to the responsibility of the Union Minister for Foreign Affairs.

Within the scope of this Chapter, this Committee shall exercise, under the responsibility of the Council of Ministers and of the Union Minister for Foreign Affairs, political control and strategic direction of crisis management operations, as defined in Article III-210.

The Council of Ministers may authorise the Committee, for the purpose and for the duration of a crisis management operation, as determined by the Council of Ministers, to take the relevant measures concerning the political control and strategic direction of the operation.

Article III-209¹⁸

The implementation of the common foreign and security policy shall not affect the competences listed in Articles I-12 to I-14 and I-16. Likewise, the implementation of the policies listed in those articles shall not affect the competence referred to in Article I-15.

The Court of Justice shall have jurisdiction to monitor compliance with this Article.

¹⁶ Art. 20 EU, amended to refer to Union delegations instead of Commission delegations, and to update cross-reference to EU citizens' consular protection rights (the obligation of Member States to negotiate agreements on this issue in the current Art. 20 EC would be replaced by a power to adopt an EU law by Council QMV and consultation of EP). This would presumably be within ECJ jurisdiction.

¹⁷ Art. 25 EU, amended to include references to Foreign Minister and delete reference to Art. 47 EU; but see Art. III-209.

¹⁸ New, but in effect a successor clause to Art. 47 EU, although note different wording.

SECTION 1

THE COMMON SECURITY AND DEFENCE POLICY

Article III-210¹⁹

1. The tasks referred to in Article I-40(1), *in the course of which the Union may use civilian and military means*, shall include *joint disarmament operations*, humanitarian and rescue tasks, *military advice and assistance tasks*, *conflict prevention and peace-keeping tasks*, tasks of combat forces in crisis management, including peacemaking, and *post-conflict stabilisation*. *All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories.*

2. The Council of Ministers, acting unanimously, shall adopt European decisions relating to the tasks referred to in paragraph 1, defining their objectives and scope and the general conditions for their implementation. The Union Minister for Foreign Affairs, acting under the authority of the Council of Ministers and in close and constant contact with the Political and Security Committee, shall ensure coordination of the civilian and military aspects of such tasks.

Article III-211²⁰

1. Within the framework of the European decisions adopted in accordance with Article III-211, the Council of Ministers may entrust the implementation of a task to a group of Member States having the necessary capability and the desire to undertake the task. Those Member States in association with the Union Minister for Foreign Affairs shall agree between themselves on the management of the task.

2. The Council of Ministers shall be regularly informed by the Member States participating in the task of its progress. Should the completion of the task involve major new consequences or require amendment of the objective, scope and conditions for implementation adopted by the Council of Ministers under Article III-210, the Member States participating shall refer the matter to the Council of Ministers forthwith. In such cases, the Council of Ministers shall adopt the necessary European decisions.

Article III-212²¹

1. The European Armaments, Research and Military Capabilities Agency, subject to the authority of the Council of Ministers, shall have as its task to:

- (a) contribute to identifying the Member States' military capability objectives and evaluating observance of the capability commitments given by the Member States;
- (b) promote harmonisation of operational needs and adoption of effective, compatible procurement methods;
- (c) propose multilateral projects to fulfil the objectives in terms of military capabilities, ensure coordination of the programmes implemented by the Member States and management of specific cooperation programmes;

¹⁹ Para. 1 updates 'Petersberg tasks' in Art. 17(2) EU (changes are italicised). The separate decision-making provision of para. 2 is new.

²⁰ New; note that Art. 27b EU rules out application of enhanced cooperation to defence matters.

²¹ This is a new clause; but note that the EU is planning to establish such an agency in 2004, in advance of the Constitution coming into force: see the Thessaloniki summit conclusions.

(d) support defence technology research, and coordinate and plan joint research activities and the study of technical solutions meeting future operational needs;

(e) contribute to identifying and, if necessary, implementing any useful measure for strengthening the industrial and technological base of the defence sector and for improving the effectiveness of military expenditure.

2. The Agency shall be open to all Member States wishing to be part of it. The Council of Ministers, acting by qualified majority, shall adopt a European decision defining the Agency's statute, seat and operational rules. That decision should take account of the level of effective participation in the Agency's activities. Specific groups shall be set up within the Agency bringing together Member States engaged in joint projects. The Agency shall carry out its tasks in liaison with the Commission where necessary.

Article III-213²²

1. The Member States listed in the Protocol [*title*], which fulfil higher military capability criteria and wish to enter into more binding commitments in this matter with a view to the most demanding tasks, hereby establish structured cooperation between themselves within the meaning of Article I-40(6). The military capability criteria and commitments which those Member States have defined are set out in that Protocol.

2. If a Member State wishes to participate in such cooperation at a later stage, and thus subscribe to the obligations it imposes, it shall inform the European Council of its intention. The Council of Ministers shall deliberate at the request of that Member State. Only the members of the Council of Ministers that represent the Member States taking part in structured cooperation shall participate in the vote.

3. When the Council of Ministers adopts European decisions relating to matters covered by structured cooperation, only the members of the Council of Ministers that represent the Member States taking part in structured cooperation shall participate in the deliberations and the adoption of such decisions. The Union Minister for Foreign Affairs shall attend the deliberations. The representatives of the other Member States shall be duly and regularly informed by the Union Minister for Foreign Affairs of developments in structured cooperation.

4. The Council of Ministers may ask the Member States participating in such cooperation to carry out at Union level a task referred to in Article III-210.

5. Notwithstanding the previous paragraphs, the appropriate provisions relating to enhanced cooperation shall apply to the structured cooperation governed by this Article.

Article III-214²³

1. The closer cooperation on mutual defence provided for in Article I-40(7) shall be open to all Member States of the Union. A list of Member States participating in closer cooperation shall be set out in the Declaration [*title*]. If a Member State wishes to take part in such cooperation at a later stage, and thus accept the obligations it imposes, it shall inform the European Council of its intention and shall subscribe to that declaration.

²² New; note that Art. 27b EU rules out application of enhanced cooperation to defence matters.

²³ New; note that Art. 27b EU rules out application of enhanced cooperation to defence matters.

2. A Member State participating in such cooperation which is the victim of armed aggression on its territory shall inform the other participating States of the situation and may request aid and assistance from them. Participating Member States shall meet at ministerial level, assisted by their representatives on the Political and Security Committee and the Military Committee.

3. The United Nations Security Council shall be informed immediately of any armed aggression and the measures taken as a result.

4. This Article shall not affect the rights and obligations resulting, for the Member States concerned, from the North Atlantic Treaty.

SECTION 2 FINANCIAL PROVISIONS

Article III-215²⁴

1. Administrative expenditure which the provisions referred to in this Chapter entail for the institutions shall be charged to the Union budget.

2. Operating expenditure to which the implementation of those provisions gives rise shall also be charged to the Union budget, except for such expenditure arising from operations having military or defence implications and cases where the Council of Ministers decides otherwise.

In cases where expenditure is not charged to the Union's budget it shall be charged to the Member States in accordance with the gross national product scale, unless the Council of Ministers decides otherwise. As for expenditure arising from operations having military or defence implications, Member States whose representatives in the Council of Ministers have made a formal declaration under Article III-201, second subparagraph, shall not be obliged to contribute to the financing thereof.

3. The Council of Ministers shall adopt a European decision establishing the specific procedures for guaranteeing rapid access to appropriations in the Union budget for urgent financing of initiatives in the framework of the common foreign and security policy, and in particular for preparatory activities for tasks as referred to in Article I-40(1). It shall act after consulting the European Parliament

Preparatory activities for tasks as referred to in Article I-40(1) which are not charged to the Union budget shall be financed by a start-up fund made up of Member States' contributions.

The Council of Ministers shall adopt by a qualified majority on a proposal from the Union Minister for Foreign Affairs European decisions establishing:

- (a) the procedures for setting up and financing the start-up fund, in particular the amounts allocated to the fund and the procedures for reimbursement;
- (b) the procedures for administering the start-up fund;
- (c) the financial control procedures.

²⁴ Paras. 1 and 2 are Art. 27(2) and (3) EU, without amendment. Art. 27(4) EU has been deleted, presumably because it is no longer necessary following merger of the Treaties. Para. 3 is new.

When it is planning a task as referred to in Article I-40(1) which cannot be charged to the Union's budget, the Council of Ministers shall authorise the Union Minister for Foreign Affairs to use the fund. The Union Minister for Foreign Affairs shall report to the Council of Ministers on the implementation of this remit.

CHAPTER III COMMON COMMERCIAL POLICY

Article III-216²⁵

By establishing a customs union between the Member States, the Union aims to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers.

Article III-217²⁶

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

2. A European law or framework law shall establish the measures required to implement the common commercial policy.

3. Where agreements with one or more States or international organisations need to be negotiated and concluded, the relevant provisions of Article III-227 shall apply. The Commission shall make recommendations to the Council of Ministers, which shall authorise the Commission to open the necessary negotiations. The Council of Ministers and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Union policies and rules.

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

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

²⁵ Art. 131 EC, amended to refer to direct investment, to state that the *Union* (rather than the Member States) has created the customs union, and to delete reference to the corresponding abolition of internal customs duties. Arts. 132 and 134 EC would be deleted.

²⁶ Art. 133 EC, amended: to update the scope in para. 1 (including both WTO measures already within the scope, and foreign direct investment generally, which is not); to change the decision-making process for adoption of internal legislation; to require reports to the EP on negotiations; to provide implicitly for exclusive EC competence for all aspects of CCP (see also Art. I-12); to reduce the cases in which unanimous voting is required; to delete the Council's power to extend the CCP to other aspects of intellectual property; and apparently to extend the EU's CCP power to include *internal* legislation concerning external trade in services, intellectual property and direct investment.

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

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

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

CHAPTER IV

COOPERATION WITH THIRD COUNTRIES AND HUMANITARIAN AID

SECTION 1

DEVELOPMENT COOPERATION

Article III-218²⁷

1. Union policy in the sphere of development cooperation shall be conducted within the framework of the principles and objectives of the Union's external action. The Union's development cooperation policy and that of the Member States complement and reinforce each other.

Union development cooperation policy shall have as its primary objective the reduction and, in the long term, the eradication of poverty. The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries.

2. The Union and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.

Article III-219²⁸

1. A European law or framework law shall establish the measures necessary for the implementation of development cooperation policy, which may relate to multiannual cooperation programmes with developing countries or programmes with a thematic approach.

2. The Union may conclude with third countries and competent international organisations any agreement helping to achieve the objectives referred to in Article III-193. Such agreements shall be negotiated and concluded in accordance with Article III-227.

²⁷ Amended text of Arts. 177 and 178; parts of Art. 177 were moved to Art. III-193. Note the amendment to give priority to poverty reduction and eradication.

²⁸ Amended text of Art. 179 and part of Art. 181. The reference to programmes with a thematic approach is new (but reflects practice). The current Art. 179(3), specifying that cooperation with ACP countries within the ACP-EC Convention is separate, would be deleted.

The first subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

3. The European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures referred to in paragraph 1.

Article III-220²⁹

1. In order to promote the complementarity and efficiency of their action, the Union and the Member States shall coordinate their policies on development cooperation and shall consult each other on their aid programmes, including in international organisations and during international conferences. They may undertake joint action. Member States shall contribute if necessary to the implementation of Union aid programmes.

2. The Commission may take any useful initiative to promote the coordination referred to in paragraph 1.

3. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and the competent international organisations.

SECTION 2

ECONOMIC, FINANCIAL AND TECHNICAL COOPERATION WITH THIRD COUNTRIES

Article III-221³⁰

1. Without prejudice to the other provisions of this Constitution, and in particular those of Articles III-218 to III-220, the Union shall carry out economic, financial and technical cooperation measures, including financial aid in particular, with third countries other than developing countries. Such measures shall be consistent with the development policy of the Union and shall be carried out within the framework of the principles and objectives of its external action. The Union's measures and those of the Member State shall complement and reinforce each other.

2. A European law or framework law shall establish the measures necessary for the implementation of paragraph 1.

3. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and the competent international organisations. The arrangements for Union cooperation may be the subject of agreements between the Union and the third parties concerned, which shall be negotiated and concluded pursuant to Article III-227. The Council of Ministers shall act unanimously for the association agreements referred to in Article III-226(2) and for the agreements with the States which are candidates for accession to the Union.

The first subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

²⁹ Amended text of Art. 180 and part of Art. 181 (in para. 3). The reference to complementarity and efficiency is new.

³⁰ Art. 181a, amended to replace reference to human rights to a reference to general EU external objectives, which include human rights (see Art. III-193), to refer expressly to financial aid, and to change the decision-making procedure for internal measures to 'co-decision'.

Article III-222³¹

When the situation in a third country requires urgent financial aid from the Union, the Council of Ministers shall adopt the necessary European decisions on a proposal from the Commission.

SECTION 3 HUMANITARIAN AID

Article III-223³²

1. The Union's operations in the field of humanitarian aid shall be conducted within the framework of the principles and objectives of the external action of the Union. Such operations shall be intended to provide ad hoc assistance, relief and protection for people in third countries and victims of natural or man-made disasters, in order to meet the humanitarian needs resulting from these different situations. The Union's actions and those of the Member States shall complement and reinforce each other.

2. Humanitarian aid operations shall be conducted in compliance with the principles of international humanitarian law, in particular the principles of impartiality and non-discrimination.

3. A European law or framework law shall establish the measures defining the framework within which the Union's humanitarian aid operations shall be implemented.

4. The Union may conclude with third countries and competent international organisations any agreement helping to achieve the objectives referred to in Article III-193. Such agreements shall be negotiated and concluded pursuant to Article III-227.

The first subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

5. In order to establish a framework for joint contributions from young Europeans to the humanitarian actions of the Union, a European Voluntary Humanitarian Aid Corps shall be set up. European law shall determine the rules and operation of the Corps.

6. The Commission may take any useful initiative to promote coordination between actions of the Union and those of the Member States, in order to enhance the efficiency and complementarity of Union and national humanitarian aid measures.

7. The Union shall ensure that its humanitarian operations are coordinated and consistent with those of international organisations and bodies, in particular those forming part of the United Nations system.

³¹ New; the current practice is to use the 'residual powers' clause in Art. 308 EC (unanimous vote, consultation EP) for such measures.

³² New; the current practice is to adopt humanitarian aid rules as part of development policy.

CHAPTER V

RESTRICTIVE MEASURES

Article III-224³³

1. Where a European decision on a Union position or action adopted in accordance with the provisions on the common foreign and security policy in 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 of Ministers, 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. In the areas referred to in paragraph 1, the Council of Ministers may adopt restrictive measures under the same procedure against natural or legal persons and non-State groups or bodies.

CHAPTER VI

INTERNATIONAL AGREEMENTS

Article III-225³⁴

1. The Union may conclude agreements with one or more third countries or international organisations where the Constitution so provides or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives fixed by the Constitution, where there is provision for it in a binding Union legislative act or where it affects one of the Union's internal acts.

2. Agreements concluded by the Union are binding upon the institutions of the Union and on its Member States.

Article III-226³⁵

The Union may conclude association agreements with one or more third countries or international organisations. Such agreements shall establish an association involving reciprocal rights and obligations, common actions and special procedures.

³³ Para. 1 is Art. 301 EC, amended to include information for the EP and a requirement of a joint proposal of the Commission and Foreign Minister. Para. 2 is new; such measures are now adopted using in practice Art. 308 EC, but this is under challenge in pending cases.

³⁴ Para. 1 is new, but attempts to summarise the ECJ case law regarding the *existence* (not the nature) of external competence within EC law. Note that this clause would apply to all three 'pillars'. Para. 2 is taken from Art. 300(7) EC and Art. 24(6) EU, but the latter does not specify that agreements are binding on the Member States.

³⁵ Art. 310 EC, effectively not amended; but see Art. I-56.

Article III-227³⁶

1. Without prejudice to the specific provisions laid down in Article III-217, agreements between the Union and third states or international organisations shall be negotiated and concluded in accordance with the following procedure.
2. The Council of Ministers shall authorise negotiations to be opened, adopt negotiating directives and conclude agreements.
3. The Commission, or the Union Minister for Foreign Affairs where the agreement exclusively or principally relates to the common foreign and security policy, shall submit recommendations to the Council of Ministers, which shall adopt a European decision authorising the opening of negotiations.
4. In connection with the European decision authorising negotiation, depending on the subject of the future agreement, the Council of Ministers shall nominate the negotiator or leader of the Union's negotiating team.
5. The Council of Ministers may address negotiating directives to the Union's negotiator and may designate a special committee in consultation with which the negotiations must be conducted.
6. On a proposal from the negotiator, the Council of Ministers shall adopt a European decision authorising the signing of the agreement and, if necessary, its provisional application.
7. The Council of Ministers shall adopt a European decision concluding the agreement on a proposal by the agreement negotiator.

Except where agreements relate exclusively to the common foreign and security policy, the Council of Ministers shall adopt the decision referred to in the first subparagraph the European Parliament. The European Parliament shall deliver its opinion within a time-limit which the Council of Ministers may lay down according to the urgency of the matter. In the absence of an opinion within that time-limit, the Council of Ministers may act.

The European Parliament's consent shall be required for:

- (a) association agreements;
- (b) Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- (c) agreements establishing a specific institutional framework by organising cooperation procedures;
- (d) agreements with important budgetary implications for the Union;
- (e) agreements covering fields to which the legislative procedure applies.

³⁶ Merger of Art. 300 EC with Art. 24 EU (and in effect Art. 38 EU). Note that there are still separate rules within this article for second pillar treaties, but that third pillar treaty rules would now be covered by the first pillar rules (Art. 37 EU on third pillar representation during international conferences would also be deleted); that negotiating mandates and signature and conclusion of treaties would be adopted in the form of normal 'decisions' (confirming the case law permitting them to be subject to ECJ jurisdiction); that the EP would have assent power whenever the co-decision procedure applies (not just where legislation would have to be amended) and for accession to the ECHR; the EP has information rights throughout; and the Council must be unanimous to agree accession to the ECHR.

The European Parliament and the Council of Ministers may, in an urgent situation, agree upon a time-limit for consent.

8. When concluding an agreement, the Council of Ministers may, by way of derogation from paragraphs 6, 7 and 10, authorise the negotiator to approve on the Union's behalf modifications to the agreement where it provides for them to be adopted by a simplified procedure or by a body set up by the agreement; the Council of Ministers may attach specific conditions to such authorisation.

9. 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 for Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

10. The Council of Ministers, on a proposal from the Union Minister for Foreign Affairs or the Commission, shall adopt a European decision suspending application of an agreement and establishing the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.

11. The European Parliament shall be immediately and fully informed at all stages of the procedure.

12. A Member State, the European Parliament, the Council of Ministers or the Commission may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of the Constitution. Where the opinion of the Court of Justice is adverse, the agreement envisaged may not enter into force unless it is amended or the Constitution is revised in accordance with the procedure laid down in Article IV-6.

Article III-228³⁷

1. By way of derogation from Article III-227, the Council of Ministers, acting unanimously on a recommendation from the European Central Bank or from the Commission, following consultation with the European Central Bank with a view to reaching a consensus compatible with the objective of price stability and after consultation with the European Parliament in accordance with the procedure laid down in paragraph 3 for the arrangements there referred to, may conclude formal agreements on a system of exchange rates for the euro in relation to currencies other than those that are legal tender within the Union. The Council of Ministers, acting by a qualified majority either on a recommendation from the Commission and after consulting the European Central Bank, or on a recommendation from the European Central Bank and in an endeavour to reach a consensus consistent with the objective of price stability, may adopt, adjust or abandon the central rates of the euro within the exchange-rate system. The President of the Council of Ministers shall inform the European Parliament of the adoption, adjustment or abandonment of the central rates of the euro.

2. In the absence of an exchange-rate system in relation to one or more currencies other than those that are legal tender within the Union as referred to in paragraph 1, the Council of Ministers, acting either on a recommendation from the Commission and after consulting the European Central Bank or on a recommendation from the European Central Bank, may formulate general orientations for exchange-rate policy in relation to these currencies. These

³⁷ This is the current Art. 111 EC with no real amendments. The current Art. 111(4) on international positions and external representation would be moved to the monetary policy section of the Constitution, in Art. III-90. It would also be effectively unchanged.

general orientations shall be without prejudice to the primary objective of the European System of Central Banks, to maintain price stability.

3. By way of derogation from Article III-227, where agreements on matters relating to the monetary or exchange-rate system are to be the subject of negotiations between the Union and one or more States or international organisations, the Council of Ministers, acting on a recommendation from the Commission and after consulting the European Central Bank, shall decide the arrangements for the negotiation and for the conclusion of the agreements. These arrangements shall ensure that the Union expresses a single position. The Commission shall be fully associated with the negotiations.

4. Without prejudice to Union competence and agreements as regards economic and monetary union, Member States may negotiate in international bodies and conclude international agreements.

CHAPTER VII

THE UNION'S RELATIONS WITH INTERNATIONAL ORGANISATIONS AND THIRD COUNTRIES AND UNION DELEGATIONS

Article III-229³⁸

1. The Union shall establish all appropriate forms of cooperation with the United Nations, the Council of Europe, the Organisation for Security and Cooperation in Europe and the Organisation for Economic Cooperation and Development.

2. It shall also maintain such relations as are appropriate with other international organisations.

3. The Union Minister for Foreign Affairs and the Commission shall be instructed to implement this Article.

Article III-230³⁹

1. Union delegations in third countries and to international organisations shall represent the Union.

2. Union delegations shall operate under the authority of the Union Minister for Foreign Affairs and in close cooperation with Member States' diplomatic missions.

³⁸ This Article is based on current Arts. 302-304 EC. The new clause would apply to all pillars; a reference to the OSCE would be added; and the current reference in Art. 302 to Commission competence regarding relations with the UN and other international organisations would be removed.

³⁹ New clause; in practice the Commission has delegations which represent the *Community* and are subject to the Commission's authority.

CHAPTER VIII

IMPLEMENTATION OF THE SOLIDARITY CLAUSE

Article III-231⁴⁰

1. Acting on a joint proposal by the Commission and the Union Minister for Foreign Affairs, the Council of Ministers shall adopt a European decision defining the arrangements for the implementation of the solidarity clause referred to in Article I-42.
2. 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 of Ministers.
3. For the purposes of this Article, the Council of Ministers 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 provided for in Article III-162 which shall, if necessary, submit joint opinions.
4. The European Council shall regularly assess the threats facing the Union in order to enable the Union to take effective action.

⁴⁰This is a new clause. The Committee in Art. III-162 is the standing committee on internal security.