

NOTE

from: Presidency
dated: 13 May 2004
to: Delegations

*Subject: IGC 2003
– Discussion at Ministerial Meeting, 17/18 May 2004*

1. The Presidency has circulated to delegations a series of draft texts on which there seems to be a likelihood of broad consensus in the context of overall agreement (CIG 76/04). The principle of nothing is agreed until everything is agreed applies. However, the Presidency does not believe that further discussion of these points at Ministerial level is necessary at this stage.
2. The Presidency would intend the Ministerial meeting on 17/18 May to focus on a number of other areas where it considers that further discussion would now be useful.
3. These include a small number of issues which were discussed by Focal Points at their meeting on 4 May on which further adjustments to the texts were considered necessary by some:
Formations of the Council of Ministers and Exercise of the Presidency of the Council of Ministers; Multiannual Financial Framework; Budget Procedure; Explanations relating to the Charter of Fundamental Rights; European Court of Justice control over procedural stipulations relating to Excessive Deficit; and the Common Commercial Policy. Texts in these areas are set out in Part I of the present document.

4. Outstanding issues also include the **scope of qualified majority voting**. While the Presidency is not yet making new proposals, relevant texts in this area produced by the Italian Presidency are included in Part II of this document for ease of reference.

5. The Presidency notes that the issue of **the future composition of the Commission** can only be finally resolved as part of a balanced outcome on the major institutional questions. However, the Presidency also considers that it would be useful for Ministers to address the future composition of the Commission and, to this end, presents some ideas set out in Part III of this document.

6. To facilitate the most efficient and productive discussion, the Presidency would ask delegations to intervene only on those issues of particular concern to them or where there is a particular point they wish to raise.

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PART I

Formations of the Council of Ministers and the Exercise of the Presidency of the Council of Ministers (see Annex 1)

1. The Presidency maintains the approach proposed by the Italian Presidency, after several discussions at Ministerial level, whereby three Member States, working together as a team, would provide the Presidency of the Council's different formations (other than Foreign Affairs) for a period of 18 months. In particular, it would welcome Ministers' views on whether, within this arrangement:
 - each Member State in the team should hold the Presidency of a number of formations for the full 18 month period, with the Presidency of the General Affairs Council and of Coreper rotating among them at six-monthly intervals; or
 - each Member State in turn, with assistance from the other Member States in the team, should chair all formations for a six month period; or
 - each Member State in the team should hold the Presidency of a number of formations within each six month period, with the Presidency of the Council's formations rotating among the members of the team at six-monthly intervals so that each Member State has an opportunity to chair each formation during the team's term in office.

In response to the wish of many to provide for greater flexibility in the future, the Presidency has proposed that it be possible to amend these provisions by QMV.

Multianual Financial Framework (see Annex 2)

2. The Presidency has proposed some clarification to the text of Article I-54. However some delegations wish to return to the rule of unanimity combined with a “passerelle” providing for the introduction of QMV. If this option were chosen, a Declaration which states that the "passerelle" will be used once there is a satisfactory decision on Own Resources could be envisaged.

Budget Procedure (see Annex 3)

3. In the current paper, the Presidency maintains for now the text it submitted to Focal Points, which is essentially a clarification of the proposal made by the Italian Presidency in its post-Naples document.

However, on the basis of discussion to date it appears that, while the proposal is acceptable to many delegations, it will not attract sufficient consensus. Conversely, while some delegations support a "tie-break" mechanism, it appears that others, including the European Parliament, find this unacceptable.

There is general agreement that the Constitution's provisions in regard to the budget must secure and maintain inter-institutional balance. However, proposed changes to other aspects of the Union's financial arrangements, including the giving of Treaty status to the multiannual financial framework and the abolition of the distinction between obligatory and non-obligatory expenditure, make it impossible to maintain the existing balance in the precise terms in which it is currently defined.

The Presidency is considering an approach which would be designed strongly to encourage and facilitate the achievement of agreement in the Conciliation Committee. It would be important in this context that both Council and Parliament be able as a general rule to endorse the outcome of the conciliation process. The Presidency sees that this could be more complex in the case of the Parliament and how it might be guaranteed could require further reflection. In the event of a failure to reach agreement in the Conciliation Committee, the Commission might be required to table a new draft budget. The situation which would apply if either or both institutions rejected or failed to adopt the Conciliation Committee's proposal would also need to be addressed. Should a new budget not be adopted in time, Article III-311 (provisional twelfths) would in any event apply.

Charter of Fundamental Rights (see Annex 4)

4. The texts as they stand appear to be broadly acceptable. However a small number of delegations wish to transfer the reference to the explanations concerning the Charter from the preamble to the body of the text. Those delegations also wish to clarify in the explanations that Article II-21 contains both rights and principles. The Presidency would welcome Ministers' views.

European Court of Justice control over procedural stipulations relating to Excessive Deficit (see Annex 5)

5. The Presidency notes that this issue will require further consideration. The text proposed by the Italian Presidency is included for ease of reference.

The Common Commercial Policy (see Annex 6)

6. To ensure legal consistency, the Presidency has proposed amendments to the existing text providing for parallelism between the voting rules for external agreements and internal legislation.

A number of delegations have particular concerns in relation to trade in educational, health and social services. The views of delegations on how these concerns can be addressed would be welcome.

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ANNEXES to PART I

THE FORMATIONS OF THE COUNCIL OF MINISTERS

Article I-23

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

The Presidency of each Council formation shall rotate between the members of the group so that each chairs each Council formation for one six-month period during the eighteen-month period. The other members of the group shall assist the Presidency in all its responsibilities, including through the assumption of certain functions of the Presidency, on the basis of a common programme. Members of the team may decide alternative arrangements among themselves.

Article 2

The Presidency of the preparatory bodies of the Council formations referred to in Article 1 shall fall to the Member State holding the Presidency of the related formation, unless decided otherwise in accordance with the procedure laid down in Article 4.

The Presidency of the Committee of Permanent Representatives shall be held by a representative of the Member State holding the Presidency of the General Affairs Council.

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

Article 3

The General Affairs Council shall ensure consistency and continuity in the work of the different Council 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.

Article 4

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

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

Declaration for incorporation into 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 the Constitution is signed and should give its political approval within six months.

* * *

MULTIANNUAL FINANCIAL FRAMEWORK

Article I-54

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

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

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

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

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

3. The Council shall adopt its position¹ on the draft budget and forward it to the European Parliament not later than 1 September of the year preceding that in which the budget is to be implemented. The Council of Ministers shall inform the European Parliament fully of the reasons which led it to adopt its position.

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

- (a) approves the position of the Council, the European law establishing the budget shall be adopted;
- (b) has not taken a decision, the European law establishing the budget shall be deemed to have been adopted;
- (c) adopts amendments by a majority of its component members, the amended draft shall be forwarded to the Council and to the Commission. The President of the European Parliament, in agreement with the President of the Council, shall immediately convene a meeting of the Conciliation Committee. However, if within ten days of the draft being forwarded the Council informs the European Parliament that it has approved all its amendments, the Conciliation Committee shall not meet.

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 members representing the European Parliament within twenty-one days of its being convened, on the basis of the positions of the European Parliament and the Council.

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, acting by a majority of the votes cast, and the Council¹ 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 finally** adopted in accordance with the joint text, **or**

(b) the European Parliament, acting by a majority of members and three-fifths of the votes cast, 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, either may ask for a new draft budget to be submitted by the Commission, or

(c) the European Parliament, acting by a majority of its members and three-fifths of the votes cast, rejects the joint text while the Council approves it, the European Parliament may ask for a new draft budget to be submitted by the Commission, or

(d) The European Parliament approves the joint text, whilst the Council rejects the joint text, the Parliament may, within fourteen days 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 of the Council on the budget heading which is the subject of the amendment shall be deemed to **be** adopted.

8. If, within the twenty-one days referred to in paragraph 5, the Conciliation Committee does not agree on a joint text, the European Parliament may, within fourteen days, acting by a majority of its component members and three fifths of the votes cast, decide to confirm all or some of its amendments. Where a Parliament amendment is not confirmed, the position of the Council on the budget heading which is the subject of the amendment shall be deemed to **be** adopted.

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

9. Where all or some of the amendments of the European Parliament are confirmed in accordance with paragraph 7(d) or paragraph 8, the Council may, within a period of fourteen days from the date of the European Parliament's decision, reject ¹ the amended text and request ¹ that a new draft budget be submitted by the Commission. If within that period, the Council does not take a decision, the European law establishing the budget shall be deemed to **be finally** adopted.

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

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

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

5th paragraph of the Preamble

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

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

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

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

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

Article III-76 (12)

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

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COMMON COMMERCIAL POLICY

Article III-217

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

3. Where agreements with one or more States or international organisations need to be negotiated and concluded, the provisions of Article III-227 shall apply subject to the special provisions of this Article.

The Commission shall make recommendations to the Council of Ministers, which shall authorise the Commission to open the necessary negotiations. The Council 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 to assist the Commission in this task and within the framework of such directives as the Council 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 the agreements referred to in paragraph 3, the Council shall act by qualified majority.

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, **as well as foreign direct investment**, the Council shall act unanimously where such agreements include provisions for which unanimity is required for the adoption of internal rules.

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.

5. The negotiation and conclusion of international 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.

6. The exercise of the competences conferred by this Article in the field of commercial policy shall not affect the delimitation of 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.

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PART II

The Scope of Qualified Majority Voting (see Annexes 8 to 14)

1. The Presidency notes the desire of all partners to find a balanced compromise which responds to the general wish for further extension of majority voting, while, at the same time, responding also to the wishes of some who prefer to see unanimity retained in a number of sensitive areas.

For ease of reference, and in order to assist the discussion, the Presidency has reproduced the draft texts proposed by the Italian Presidency in this area. It has had an opportunity to ascertain the views of delegations on these matters through extensive consultations, which are continuing. However, the Presidency considers that it would be appropriate for Ministers to have a collective discussion before it proceeds to propose new texts. The issues include: **judicial cooperation in criminal matters and the related question of the European Public Prosecutor; CFSP; taxation; social security; own resources; and the passerelle provision in enhanced cooperation** (the deletion of which was proposed by the Italian Presidency).

The Presidency would welcome Ministers' views on how a balanced outcome can best be ensured.

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ANNEXES to PART II

JUDICIAL COOPERATION IN CRIMINAL MATTERS

Article III-158

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

Article III-171

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

European laws or framework laws shall establish measures to:

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

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

They shall concern:

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

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

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

- (a) **refer the draft back to the Council, which shall terminate the suspension of the procedure referred to in Article III302, or**
- (b) **request the Commission or the group of Member States from which the draft framework law emanates to submit a new draft; in that case, the act originally proposed shall be deemed not to have been adopted.**

Article III-172

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

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

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

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

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

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

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EUROPEAN PUBLIC PROSECUTOR'S OFFICE

Article III-175

1. In order to combat crimes affecting the **financial** interests of the Union, a European law of the Council may establish a European Public Prosecutor's Office from Eurojust. The Council shall act unanimously after obtaining the consent of the European Parliament.

2. The European Public Prosecutor's Office shall be responsible for investigating, prosecuting and bringing to judgment, where appropriate in liaison with Europol, the perpetrators of and accomplices in offences against the Union's financial interests, as determined by the European law provided for in paragraph 1. It shall exercise the functions of prosecutor in the competent courts of the Member States in relation to such offences.

3. The European law referred to in paragraph 1 shall determine the general rules applicable to the European Public Prosecutor's Office, the conditions governing the performance of its functions, the rules of procedure applicable to its activities, as well as those governing the admissibility of evidence, and the rules applicable to the judicial review of procedural measures taken by it in the performance of its functions.

4. The European Council may adopt a European decision amending paragraph 1 in order to extend the powers of the European Public Prosecutor's Office to include serious crime having a cross-border dimension and amending accordingly paragraph 2 as regards the perpetrators of and accomplices in serious crimes affecting more than one Member State. The European Council shall act unanimously after consultation of the European Parliament and the Commission.

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

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<p style="text-align: center;">QUALIFIED MAJORITY VOTING IN THE FIELD OF THE COMMON FOREIGN AND SECURITY POLICY</p>
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Article III-201

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

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

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

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TAXATION

Article III-62 (2)

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

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SOCIAL SECURITY

Article III-21

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

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

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

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

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OWN RESOURCES

Article I-53

1. The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.
2. Without prejudice to other revenue, the Union's budget shall be financed wholly from its own resources.
3. A European law of the Council shall lay down the limit of the Union's own resources and may establish new categories of own resources or abolish an existing category. The Council shall act unanimously after consulting the European Parliament. That law shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements.
4. A European law of the Council shall lay down the modalities relating to the Union's own resources. The Council shall act after obtaining the consent of the European Parliament.

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ENHANCED COOPERATION

Article III-328

~~Where a provision of the Constitution which may be applied in the context of enhanced cooperation stipulates that the Council shall act unanimously, the Council, acting unanimously in accordance with the arrangements laid down in Article I-43(3), may, on its own initiative, decide to act by qualified majority.~~

~~Where a provision of the Constitution which may be applied in the context of enhanced cooperation stipulates that the Council of Ministers shall adopt European laws or framework laws under a special legislative procedure, the Council of Ministers, acting unanimously in accordance with the arrangements laid down in Article I-43(3), may, on its own initiative, decide to act under the ordinary legislative procedure. The Council of Ministers shall act after consulting the European Parliament.~~

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PART III

1. The Presidency is not for now proposing Treaty language on the key issue of the composition of the Commission.

2. However, it is assumed on the basis of previous discussions under the Italian Presidency and of bilateral contacts that the proposal made by the Convention for a system involving both European Commissioners and Commissioners does not represent a basis for consensus. Accordingly, a range of appropriate technical changes need to be made to the Convention text. A revised draft containing these changes is set out in Annex 15. Consequential changes will also need to be made to the related provisions of Part III.

3. The Presidency is also proposing, in view of the broad consensus on this point, to alter the Convention's proposal that Member States should list three possible candidates for the post of Commissioner.

4. Delegations will see that certain amendments previously proposed relating to the treatment of the Foreign Minister in Articles I-25 and I-26 have for ease of reference been consolidated into this text.

Composition of the Commission

5. The Presidency is aware that for many delegations this issue can only be resolved in the context of an overall settlement of the institutional issues. However, it believes that it may already be possible to identify likely elements of consensus, on the assumption that a satisfactory outcome is found to the other outstanding issues.

6. In its report to the March European Council, the Presidency stated that *“There is general agreement that the Commission has to be composed and organised in a manner which both underpins its political legitimacy across the Union, and enables it to act effectively. Many delegations, emphasising the first of these criteria, support the idea that there should be one national from each Member State in the Commission. Others, noting that the principle of a reduced Commission, on the basis of equal rotation, is already contained in the Treaty of Nice, argue that the Commission must be smaller if it is to function effectively, in the interests of the Union as a whole. The Presidency believes that the two perspectives can be reconciled.”*
7. In his oral presentation to his colleagues, and subsequently in his report to the European Parliament, the President of the European Council said that *“these two perspectives could be reconciled through maintaining for an extended period a Commission comprising one national of each Member State, moving thereafter to a reduced size on the basis of equal rotation.”*
8. The Presidency believes that it would be appropriate to maintain a Commissioner comprising one national of each Member State for two full terms from the present, that is until 2014.
9. The Presidency believes that, rather than defer until later a decision on the precise future composition of a smaller Commission, it would be preferable to resolve the matter now, with a view to avoiding further protracted debate in the future and to offering citizens the greatest possible clarity.
10. Various possible options have been mooted in regard to the size of the Commission, including the Convention’s proposal of a fifteen-member college (including the Commission President and the Minister for Foreign Affairs). Some have suggested that membership should be expressed not as a fixed number but as a proportion of the total number of Member States (for example, one-half or two-thirds). This has some attractions, but it would have the consequence that as the Union grew so too would the size of the Commission.

11. The Presidency recalls that in previous discussions several delegations have expressed interest in the concept of an eighteen-member college, which would in a Union of twenty-seven result in a situation where the nationals of any one Member State were present in two out of every three colleges.
12. Irrespective of which option is chosen, in the Presidency's view it will be essential to ensure, and to make entirely clear in the Constitution, as was agreed in the Treaty of Nice, that a reduced Commission would be appointed on the basis of strictly equal rotation among the Member States.

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Transitional Arrangements for the Commission and the Union Minister for Foreign Affairs

Ministers' attention is drawn to the need to complete the draft Constitution with provisions to secure the transition between the present and future institutional structure.

Part IV of the draft Constitution, as established by the Convention, provided for the repeal of the basic EU and EC Treaties, without providing for the necessary succession and legal continuity arrangements. The IGC Legal Experts Group accordingly drafted provisions to that effect (document CIG 50/03, Articles IV-3 and IV-3a, as well as "Protocol on the transitional provisions relating to the Institutions and bodies of the Union"); however, no suggestion was made by the Legal Experts Group for the **Commission** and the **Minister for Foreign Affairs**, given the political choices that such transitional provisions imply.

The draft Constitution as currently drafted envisages that the provisions regarding the Commission and the Minister for Foreign Affairs would take effect on 1 November 2009. Specific provisions will need to be put in place to cover the period from the entry into force of the Constitution and that date.

The Presidency will bring forward proposals in due course.

ANNEX to PART III

THE COMMISSION

Article I-25: The European Commission

1. The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Constitution, and measures adopted by the Institutions under the Constitution. It shall oversee the application of Union law under the control of the Court of Justice of the European Union. It shall execute the budget and manage programmes. It shall exercise coordinating, executive and management functions, as laid down in the Constitution. With the exception of the common foreign and security policy, and other cases provided for in the Constitution, it shall ensure the Union's external representation. It shall initiate the Union's annual and multiannual programming with a view to achieving interinstitutional agreements.
2. Except where the Constitution provides otherwise, Union legislative acts can be adopted only on the basis of a Commission proposal. Other acts are adopted on the basis of a Commission proposal where the Constitution so provides.
3. *[Text to be proposed in light of discussions.]*
4. In carrying out its responsibilities the Commission shall be completely independent. **Without prejudice to Article I-27(2)**, the Members of the Commission shall neither seek nor take instructions from any government or other institution, body, office or agency. They shall refrain from any action incompatible with their duties or the performance of their tasks.
5. The Commission, as a college, shall be responsible to the European Parliament. The Commission President shall be responsible to the European Parliament for the activities of the Commissioners. Under the procedures set out in Article III-243, the European Parliament may pass a censure motion on the Commission. If such a motion is passed, the Members of the Commission must all resign **and the Union Minister for Foreign Affairs must resign from the Commission**. The Commission shall continue to handle everyday business until a new college is nominated.

Article I-26: The President of the European Commission

1. Taking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, deciding by qualified majority, shall put to the European Parliament its proposed candidate for the Presidency of the Commission. This candidate shall be elected by the European Parliament by a majority of its members. If this candidate does not receive the required majority support, the European Council shall within one month propose a new candidate to the European Parliament, following the same procedure.

2. The Council, acting by a qualified majority and by common accord with the nominee for President, shall adopt the list of the other persons whom it intends to appoint as Members of the Commission, drawn up in accordance with the proposals made by each Member State.

The President and the other Members of the Commission thus nominated shall be subject as a body to a vote of approval by the European Parliament. After approval by the European Parliament, the President and the other Members of the Commission shall be appointed by the Council, acting by a qualified majority.

3. The President of the Commission shall:

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

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