

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

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dated : 6 October 2003
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Subject : ***IGC 2003***
***– Editorial and legal comments on the draft Treaty establishing a Constitution
for Europe – Basic document***

Delegations will find attached the document from the IGC Secretariat intended to serve as a basis for the legal experts' examination of the text of the draft Treaty establishing the Constitution.

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Note to the reader:

For ease of use this document is to be printed recto-verso, so that comments and suggestions appear on the right-hand page, i.e. opposite the text of the draft Constitution which appears on the left-hand page.

Editorial and legal comments

on the draft

TREATY
ESTABLISHING
A CONSTITUTION
FOR EUROPE

based on: version of the text submitted by the Chairman

of the Convention in Rome on 18 July 2003

(CONV 850/03 of 18 July 2003)

GENERAL COMMENTS

INTRODUCTION

1. Delegations will find attached a document produced by the IGC Secretariat which is intended to serve as a basis for the examination by legal experts of the text of the draft *Treaty establishing a Constitution for Europe*.¹
2. On the left-hand page this document reproduces the text of the Convention's draft, with suggested changes being indicated in bold (changes to titles of Articles, which are already in bold, are italicised).
3. Opposite the text of the draft, on the right-hand page, are explanations of the suggested changes and observations on legal consistency, gaps, legally incorrect wording or ambiguities which might produce a legal risk.
4. Besides two preliminary comments, this introduction includes a number of technical remarks intended to facilitate the reading of the documents.

¹ The text used as a basis for the documents drawn up by the IGC Secretariat is the one given to the President of the European Council by the Chairman of the Convention in Rome on 18 July 2003, at the end of the Convention's proceedings (CONV 850/03 of 18 July 2003)

PRELIMINARY COMMENTS

Transitional provisions

5. Part IV of the draft Treaty establishing the Constitution provides for the repeal of the TEC and the TEU, and of other Treaties (amending and accession), of which the list is to be drawn up (Article IV-2). Implementing this approach will require provisions to be laid down to secure the succession and legal continuity. On this point, the IGC Secretariat suggests that some provisions should be added to Part IV, and in the "Protocol on the representation of citizens in the European Parliament and the weighting of votes in the European Council and the Council of Ministers", which it is suggested should be styled the "Protocol on the transitional provisions relating to the Institutions and bodies of the Union", given the expansion of its scope.
6. In cases which do not give rise to questions of political expediency (for example the continuing term in office of the members of certain Institutions or bodies), appropriate transitional provisions have been suggested.
7. For the Commission and the Union Minister for Foreign Affairs, the problem is more delicate. Firstly, both the Commission and the Secretary-General/High Representative for the CFSP in office on the date that the new Treaty enters into force will disappear on that date. Secondly, the text of the draft Constitution allows for a new Commission and the Union Minister for Foreign Affairs to be appointed only with effect from 1 November 2009. It is therefore clear that provisions must be amended to fill this gap for the period between the date when the Treaty establishing the Constitution enters into force and 1 November 2009.

However, these transitional provisions are not mechanical. They call for choices of political expediency. That is why no suggestion on this subject has been made.

Accession agreements, protocols and other primary legislation not examined by the Convention

8. This document does not deal with the approximately forty protocols which are an integral part of the current Treaties, and which have not been examined by the Convention; however, those protocols – some of which refer to Articles in the current Treaties and will therefore need technical changes – should be revised. Further, there is a need to clarify the question of the accession Treaties and other primary legislation not examined by the Convention. The Presidency has asked the Commission to assist the IGC Secretariat in this respect. The outcome of this work will subsequently be sent by the IGC Secretariat to legal experts (insofar as purely legal questions are concerned).

TECHNICAL REMARKS

Numbering and titles of Articles

9. At this stage, to avoid problems with references, Article numbers are preceded by the Roman number of the Part to which they belong (an "I" has been added for Articles in Part I). While understanding the reasoning behind this system of numbering, it should be noted that it is complicated. What is more, it risks creating confusion in several languages, particularly when the number is said aloud and then interpreted (thus "III-142" may be read out as "three – a hundred and forty two" which may lead to confusion with "three hundred and forty two"). Thus, from the point of view of legal certainty, transparency, simplicity and facility of use, it would be preferable to use continuous numbering in Arabic numerals throughout the text of the Constitution (from 1 to 465). This number could be reduced by about 30 if the suggested regrouping of Articles is carried out.

It should be noted that only the Articles in Parts I, II and IV have titles.

10. To make the texts easier to read, the numbers of the "ex Articles" in the TEC and TEU corresponding to the Articles in the draft have been indicated in brackets in Part III next to the new number of the Article, even when they have been amended by the Convention.

Abbreviations of names

11. Certain names recur frequently in the text: European Commission, Council of Ministers, names of legally binding acts (European law, European framework law, European regulation, European decision). It is suggested that their full name should be quoted once, in the Article defining them, and that for the rest of the text a shorter formulation should be used (Commission, Council, law, framework law, regulation, decision) which avoids making the wording unnecessarily cumbersome. Of course in the titles of acts the full name will be used (e.g. "*European law No .../.... of the European Parliament and of the Council of Ministers*"). On the other hand, "European Council" and "European Parliament" will be written in full throughout the text.

Terminology and drafting

12. In the interests of editorial consistency, it is suggested that the word "*proposal*" should be reserved for Commission proposals, with "*initiatives*" by the Member States or the Minister for Foreign Affairs, "*recommendations*" by the ECB, etc.
13. The term "*agencies*", which is used in many Articles in the draft, risks giving rise to difficulties of interpretation as to whether it covers all the bodies created by an act of secondary legislation since the Treaty of Rome, where the creating act grants legal personality and defines tasks, resources, etc. It is therefore suggested that the term "*agencies*" should be replaced by "**offices and agencies**", which would cover all Community bodies without ambiguity, including executive agencies, whereas the term "*agencies*" risks excluding bodies called Offices, Centres, Foundations, etc. In any case this is the wording used in the OLAF Regulation ² and in other provisions ³.

² Regulation No 1073/1999 of 25 May 1999, OJ L 136, 31.5.1999, p. 1 (see Article 1(3) of the Regulation).

³ See also the current text of the TEC, point (c) of the first paragraph of Article 234, and the second sentence of Article 248(1); and the decision of the Representatives of the Governments of the Member States of 29 October 1993 on the location of the seats of certain bodies and departments of the European Communities and of Europol (Selected Instruments 1999, p. 803).

14. An editorial choice has been made to use the wording "*the law shall determine [the status ...], [the conditions and restrictions], [the structure, functioning, tasks ...], etc.*" and "*the law shall establish ...[measures], [programmes], etc.*" to avoid variations in the verbs used to describe the contents of the laws ("*set*", "*determine*", "*establish*", "*adopt the provisions relating to*", "*define*").
15. Unnecessary adverbs ("*fully, etc.*") have not been remarked upon since in most cases they are already in the text of the current Treaties.

Repetition between the Parts

16. The four-part structure chosen for the draft leads to repetition between Parts I, II and III, sometimes in non-identical terms. This *modus operandi*, which does not comply with the rules on the drafting quality of a legal text, results from a political choice which has been respected. The most significant occurrences are indicated on the comments page. Suggestions have been made in cases where legal difficulties result.
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Title IV

For greater clarity, it is suggested that the words "*and bodies*" should be added to the heading of this Title. Currently the Title is called "*The Union's Institutions*" even though it contains provisions on the advisory bodies. It is also suggested that the headings of the two Chapters should be changed and that a new one should be added (new Chapter III) called "*The Union's advisory bodies*".

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Title I

It is suggested that "*clauses*" should be replaced by "*provisions*".

Section 7

In view of the contents of this section, which does not only contain provisions on the harmonisation of laws, it is suggested that the section heading should be renamed as a result (see comments on Section 7).

Sections 3a and 4

It is suggested that Sections 3a and 4 should be renumbered to become Sections 4 and 5, and that the name of Section 4 should be changed (see comments on Sections 4 and 5)

Chapter III

It is suggested that the word "*specific*" should be deleted.

Subsection 1

Given that there is only one subsection, and that furthermore it contains only one article (see suggestions re Articles III-113, III-114 and III-115), it is suggested that it should be deleted.

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Chapter II

Given that Articles III-195 to III-209 apply to the whole of the CFSP (i.e. including the ESDP, which is an integral part of it), it is suggested that these Articles should be made into a new Section entitled "*Common provisions*" (the current Sections 1 and 2 would become Sections 2 and 3).

Subsection 4

Change in accordance with the name given in Article I-18(2) and the heading of Article I-25.

Subsection 5

Suggested change in accordance with the change of name suggested in relation to Article I-28.

Subsection 5a

It is suggested that a new Subsection on the European Central Bank should be added (see comments re new Subsection 5a)

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

It is suggested that the heading of this Protocol should be amended to reflect the major changes to its scope and field of application which are needed.

Draft

TREATY ESTABLISHING A

CONSTITUTION FOR EUROPE

PREAMBLE

Χρώμεθα γὰρ πολιτεία... καὶ ὄνομα μὲν διὰ τὸ μὴ ἐς ὀλίγους ἀλλ' ἐς πλείονας οἰκεῖν δημοκρατία κέκληται.

Our Constitution ... is called a democracy because power is in the hands not of a minority but of the greatest number.

Thucydides II, 37

HIS MAJESTY THE KING OF THE BELGIANS, THE PRESIDENT OF THE CZECH REPUBLIC, HER MAJESTY THE QUEEN OF DENMARK, THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY, THE PRESIDENT OF THE REPUBLIC OF ESTONIA, THE PRESIDENT OF THE HELLENIC REPUBLIC, HIS MAJESTY THE KING OF SPAIN, THE PRESIDENT OF THE FRENCH REPUBLIC, THE PRESIDENT OF IRELAND, THE PRESIDENT OF THE ITALIAN REPUBLIC, THE PRESIDENT OF THE REPUBLIC OF CYPRUS, THE PRESIDENT OF THE REPUBLIC OF LATVIA, THE PRESIDENT OF THE REPUBLIC OF LITHUANIA, HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG, THE PARLIAMENT OF THE REPUBLIC OF HUNGARY, THE PRESIDENT OF MALTA, HER MAJESTY THE QUEEN OF THE NETHERLANDS, THE FEDERAL PRESIDENT OF THE REPUBLIC OF AUSTRIA, THE PRESIDENT OF THE REPUBLIC OF POLAND, THE PRESIDENT OF THE PORTUGUESE REPUBLIC, THE PRESIDENT OF THE REPUBLIC OF SLOVENIA, THE PRESIDENT OF THE SLOVAK REPUBLIC, THE PRESIDENT OF THE REPUBLIC OF FINLAND, THE GOVERNMENT OF THE KINGDOM OF SWEDEN, HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

Preamble

The standard arrangement should be used, i.e. the list of Heads of State and the list of their plenipotentiaries.

Conscious that Europe is a continent that has brought forth civilisation; that its inhabitants, arriving in successive waves from earliest times, have gradually developed the values underlying humanism: equality, freedom, respect for reason,

Drawing inspiration from the cultural, religious and humanist inheritance of Europe, the values of which, still present in its heritage, have embedded within the life of society the central role of the human person and his or her inviolable and inalienable rights, and respect for law,

Believing that reunited Europe intends to continue along the path of civilisation, progress and prosperity, for the good of all its inhabitants, including the weakest and most deprived; that it wishes to remain a continent open to culture, learning and social progress; and that it wishes to deepen the democratic and transparent nature of its public life, and to strive for peace, justice and solidarity throughout the world,

Convinced that, while remaining proud of their own national identities and history, the peoples of Europe are determined to transcend their ancient divisions and, united ever more closely, to forge a common destiny,

Convinced that, thus "united in its diversity", Europe offers them the best chance of pursuing, with due regard for the rights of each individual and in awareness of their responsibilities towards future generations and the Earth, the great venture which makes of it a special area of human hope,

Grateful to the members of the European Convention for having prepared **the draft of** this Constitution on behalf of the citizens and States of ~~Europe~~ **the European Union**,

Have designated as their plenipotentiaries:

(list...)

Who, having exchanged their full powers, found in good and due form, have agreed as follows:

Comments and suggestions

Preamble

Since not all the States of Europe are members of the Union, use of the name "*Europe*" suggests that the Union's actions extend beyond its borders "*on behalf of*" such other States of Europe.

It is proposed to make clear that the Convention drew up a "*draft*" of the Constitution and not the Constitution itself, which is the responsibility of the IGC.

On the use of the word "citizens" (masculine only in some language versions of the draft), see comments on Article 1-3(2).

It will be seen that there is there is no reference to the existing European Community and Union or to what is known as the "*acquis communautaire*". A recital on this point would be useful to make it clear at the outset that the new European Union will be the legal successor to the current European Union and Community.

PART I

TITLE I: DEFINITION AND OBJECTIVES OF THE UNION

Article I-1: Establishment of the Union

1. Reflecting the will of the **citizens** and States of Europe to build a common future, **this** Constitution establishes the European Union, on which the Member States **confer** competences to attain objectives they have in common. The Union shall coordinate the policies by which the Member States aim to achieve these objectives, and shall exercise in the Community way the competences they **confer** on it.
2. The Union shall be open to all European States which respect its values and are committed to promoting them together.

Article I-2: The Union's values

The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, solidarity and non-discrimination.

Comments and suggestions

Article I-1

Paragraph 1

On the use of the word "citizens" (masculine only in some language versions of the draft), see comments below on Article 1-3(2).

As this is the first time there is a reference to the Constitution, it is suggested that the words "*this Constitution*" (in French "*la présente Constitution*") be used. It will subsequently be referred to as "*the Constitution*" in accordance with the Convention's wishes.

The French text uses the verbs "*conférer*", "*transférer*" and (elsewhere) "*attribuer*" for the conferral of competences by the Member States of the Union. For the purposes of legal consistency, it is suggested that here and elsewhere only "*confer*"/"*attribuer*" be used as this corresponds to the idea of "*principle of conferral*"/"*principe d'attribution*" in Article I-9(1).

Paragraph 2

This text recurs almost word for word in Article I-57(1).

Article I-2:

We might prefer the wording proposed by the French Academy:

*~~The Union is founded on the values of~~ Respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights **are the values on which the Union is founded.** ~~These values~~ **They** are common to the Member States in a society of pluralism, tolerance, justice, solidarity and non-discrimination.*

Article I-3: The Union's objectives

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, and ~~a single~~ **an internal** market where competition is free and undistorted.
3. The Union shall work for ~~the~~ sustainable development of ~~Europe~~ based on balanced economic growth, a social market economy, highly competitive and aiming at full employment and social progress, and with a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of children's rights.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

The Union shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

4. In its relations with the wider world, the Union shall uphold and promote its values and interests. It shall contribute to peace, security, the sustainable development of the earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and protection of human rights and in particular children's rights, as well as to ~~strict~~ observance and **to** development of international law, including respect for the principles of the United Nations Charter.
5. ~~These objectives shall be pursued~~ **The Union shall pursue its objectives** by appropriate means, depending on the extent to which the relevant competences are ~~attributed to the Union~~ **are conferred upon it** in the Constitution.

Comments and suggestions

Article I-3

Paragraph 2

The use of the feminine form in some languages (e.g. in French "*à ses citoyennes et à ses citoyens*"), if not done systematically in all other cases (e.g. in French "*ressortissants*", "*travailleurs*", "*consommateurs*", "*président*", etc.) is illogical and could be interpreted as meaning that in cases where the feminine is not used the rule applies only to persons of the masculine sex (e.g. in French "*citoyens*" occurs in the masculine only in the final sentence of the Preamble or in Articles I-1(1), I-19(2), etc, or other nouns are used in the masculine only, e.g. "*travailleurs*", "*consommateurs*", "*ressortissants*", etc.). The French Academy makes largely the same point. There are two ways of avoiding this problem:

- either delete the feminine forms of the word, which is legally correct since total equality between men and women is already provided for by other Articles of the Constitution (e.g. Articles I-3(3), second subparagraph, II-21(1), III-104(1)(i) or III-108). This would also avoid cases where addition of the feminine forms results in a change in the legal significance of the rule (e.g. addition of the feminine form in Article I-44 would restrict the rule to equality between men and women and no longer signify the equality of all citizens as individuals);
- or make systematic use of the masculine and feminine forms not only in the case of citizens but also in other relevant cases in order to avoid suggesting that the latter concern only men ("*travailleuses*", "*consommatrices*", "*ressortissantes*", "*Présidente*", "*vice-présidente*", "*la Ministre*" "*la Commissaire*", "*la juge*", etc.). This solution would, however, make the wording of the text extremely clumsy (e.g., if it were decided to use both masculine and feminine forms in the wording of Article I-20(2), it would be necessary to write "*Le Conseil européen est composé des Chefs d'Etat ou de gouvernement des Etats membres, ainsi que de son Président ou sa Présidente et du Président ou de la Présidente de la Commission. Le ou la ministre des Affaires étrangères de l'Union participe à ses travaux.*").

For the moment no drafting suggestion has been made except for the addition of the feminine form "*citoyennes*" in cases where it had been forgotten in the draft Constitution.

The sake of legal consistency, it is suggested that the words "*single market*" be replaced by "*internal market*", which is now the usual term and is used both in Article I-12(1), and in the heading of Chapter I of Part III.

Paragraph 3

As indicated above with regard to the Preamble, since not all the States of Europe are members of the Union use of the name "*Europe*" or the adjective "*European*" suggests that the Union's actions extend beyond its borders on behalf of such other States of Europe.

In the last subparagraph, it will be seen that the first part of the sentence is similar to Article II-22.

Paragraph 4

It is suggested that the adjective "*strict*" in front of "*observance...of international law*" be deleted in order to avoid an *a contrario* effect in cases where only "*observance*" is concerned.

6. **The provisions of this Part shall apply under the conditions and within the limits defined by Part III.**

Article I-4: Fundamental freedoms and non-discrimination

1. **The Union shall guarantee** free movement of persons, **services, goods,**~~services~~ and capital, ~~and freedom of establishment shall be guaranteed within and by the Union,~~ in accordance with the provisions of the Constitution.
2. In the field of application of the Constitution, and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

Article I-5: Relations between the Union and the Member States

1. The Union shall respect the national identities of the Member States, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including those for ensuring the territorial integrity of the State, and for maintaining law and order and safeguarding internal security.
2. Following the principle of loyal cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Constitution.

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

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

Comments and suggestions

Article I-3 (continued)

Paragraph 6 (new)

Part I contains certain provisions which recur wholly or in part in Part III or which apply under the conditions and within the limits defined by Part III. In order to avoid the various cross-references to Part III in Part I (see Articles I-8(3), I-18(3), I-19(1), I-22(1), I-25(1), I-28 (3), etc.), which moreover have an *a contrario* effect in the case of provisions which do not include such cross-references, it is suggested that a general provision based on Article II-52(2) should be inserted in paragraph 6 explaining that Part I applies under the conditions and within the limits defined by Part III.

Article I-4

Paragraph 1

For the sake of legal consistency, it is suggested that for "*goods*" the customary French word "*marchandises*" should be used instead of "*biens*", as provided for in Section 3 of Chapter I of Part III. Similarly, it is suggested that the four freedoms be listed in the same order as the corresponding sections of Chapter I of Part III. It is suggested that the reference to freedom of establishment be deleted as this is an integral part of the freedoms of movement of persons and services.

Paragraph 2

It will be seen that the same rule recurs in Article II-21(2).

Article I-5

Paragraph 2

For "*any measure which could*", a French singular "*toute mesure susceptible*" is more correct (see the French Academy's suggestion).

For "*objectives*", it is legally more consistently in French to use "*objectifs*" rather than "*buts*" which does not occur in any other provision, except in the singular in Article I-3(1) where it is limited to the three elements listed.

It is suggested that paragraph 2 of Article I-10 would be more appropriate as the second subparagraph of the present paragraph. It has therefore been transferred here.

Article I-5a: Union law

The Constitution, and law adopted by the Union's Institutions in exercising competences conferred on it, shall have primacy over the law of the Member States.

Article I-6: Legal personality

The Union shall have legal personality.

TITLE II: FUNDAMENTAL RIGHTS AND CITIZENSHIP OF THE UNION

Article I-7: Fundamental rights

1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes Part II.
2. The Union shall seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Constitution.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Comments and suggestions

Article I-5a

It is suggested that Article I-10(1) would be more appropriate here. It has therefore become a new Article I-5a.

Article I-6

Clearer French wording, which is moreover identical with that used in Article 281 of the TEC ("*a*" instead of "*est dotée de*").

Article I-7

Paragraph 2

The wording of the legal basis in the Constitution for accession of the Union to the ECHR could be improved by replacing the words "*seek accession*" by "*accede*". That said, the only pertinent interpretation will be to regard paragraph 2, even as drafted by the Convention, as a legal basis, given Article III-227, point (a) under (ii).

Paragraph 3

It is noted that unlike Article 6(2) of the current TEU, the draft does not provide that "*The Union shall respect fundamental rights...as general principles of Union law*".

Article I-8: Citizenship of the Union

1. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship; it shall not replace it.
2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Constitution. They **shall have**:
 - (a) **the** right to move and reside freely within the territory of the Member States;
 - (b) **the** right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;
 - (c) **the** right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;
 - (d) **the** right to petition the European Parliament, to apply to the European Ombudsman, and to **write to** the Institutions and advisory bodies of the Union in any of the Constitution's languages and to obtain a reply in the same language.
- ~~3. — These rights shall be exercised in accordance with the conditions and limits defined by the Constitution and by the measures adopted to give it effect.~~

Comments and suggestions

Article I-8

The French text of this Article uses the terms "*citoyens*", "*ressortissants*" and "*nationaux*". This does not seem to have been done in order to distinguish different legal concepts. It is suggested that only "*citoyens*" and "*ressortissants*" be used.

Similar provisions will be found in Articles I-48, II-39, II-40, II-41, II-43, II-44, II-45, II-46 and III-237.

Paragraph 2

The indents should be replaced by letters (a,b,c,d) in accordance with drafting usage as this facilitates cross-referencing and quotation.

Paragraph 3

As a result of insertion of the general clause in Article I-3(6), this paragraph is no longer necessary.

TITLE III: UNION COMPETENCES

Article I-9: Fundamental principles

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.
2. Under the principle of conferral, the Union shall act within the limits of the competences conferred upon it by the Member States in the Constitution to attain the objectives set out in the Constitution. Competences not conferred upon the Union in the Constitution remain with the Member States.
3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The Union Institutions shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality, ~~annexed to the Constitution~~. National Parliaments shall ensure compliance with that principle in accordance with the procedure set out in the Protocol.

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Constitution.

The Institutions shall apply the principle of proportionality as laid down in the Protocol referred to in paragraph 3.

Article I-10: Union law

~~1.— The Constitution, and law adopted by the Union's Institutions in exercising competences conferred on it, shall have primacy over the law of the Member States.~~

~~2.— Member States shall take all appropriate measures, general or particular, to ensure fulfilment of the obligations flowing from the Constitution or resulting from the Union Institutions' acts.~~

Article I-11: Categories of competence

1. When the Constitution confers on the Union exclusive competence in a specific area, only **the Union** may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of acts adopted by the Union.
2. When the Constitution confers on the Union a competence shared with the Member States in a specific area, the Union and the Member States ~~shall have the power to~~ **may** legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised, or has decided to cease exercising, its competence.
3. The Union shall have competence to promote and coordinate the economic and employment policies of the Member States.
4. The Union shall have competence to **define and implement** a common foreign and security policy, including the progressive framing of a common defence policy.

Comments and suggestions

Article I-10

The content of this Article is transferred unchanged to Articles I-5 and I-5a; paragraph 1 becomes the new Article I-5a and paragraph 2 becomes Article I-5(2) (see above).

Article I-11

Paragraph 2

Consistency with paragraph 1 ("*may legislate*").

5. In certain areas ~~and in the conditions laid down in the Constitution~~, the Union **shall have** competence to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas.

Legally binding acts **of the Union** adopted ~~by the Union~~ on the basis of the provisions ~~specific to these areas~~ in Part III **relating to these areas** may not entail harmonisation of Member States' laws or regulations.

6. The scope of and arrangements for exercising the Union's competences shall be determined by the provisions specific to each area in Part III.

Article I-12: Areas of exclusive competence

1. The Union shall have exclusive competence ~~to establish the competition rules necessary for the functioning of the internal market, and~~ in the following areas:
- (a) customs union;
 - (b) **the establishing of the competition rules necessary for the functioning of the internal market;**
 - (c) monetary policy, for the Member States ~~which have adopted~~ **whose currency is the euro,**
 - ~~—— common commercial policy,~~
 - ~~—— customs union,~~
 - (d) the conservation of marine biological resources under the common fisheries policy;
 - (e) common commercial policy.
2. The Union shall **also** have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union, is necessary to enable it to exercise its internal competence, or affects an internal Union act.

Article I-11 (continued)

Paragraph 5

It is suggested that the words "*and in the conditions laid down in the Constitution*" should be deleted as they duplicate the new paragraph 6 suggested for Article I-3 and may, *a contrario*, introduce doubt as to whether, in the other paragraphs of the same article, competences are or are not exercised "*in the conditions laid down in the Constitution*".

The usefulness of the final words "*without thereby superseding their competence in these areas*" may be questioned, since this is no more or less than the rule laid down in Article I-16(2) whereby acts in such support areas "*may not entail harmonisation of Member States' laws or regulations*".

The second subparagraph is transferred almost word for word from Article I-16(3): see comment on Article I-16(3).

Particular case of health

Article III-179 (public health) is located in Chapter V of Part III (areas where the Union may take coordinating, complementary or supporting action), but paragraph 4 thereof is a legal basis making it possible *inter alia* to adopt measures to harmonise Member States' laws or regulations (probably the reason why there is a reference to "*common safety concerns in public health matters*" in Article I-13(2) on shared competence). It is therefore suggested that it be made clear in paragraph 4 of Article III-179 that it derogates from paragraph 5 of Article I-11 (see comment on Article III-179).

Article I-12

As in Articles I-13 and I-16, it is suggested that the words "*areas of*" should be inserted before "*exclusive competence*". It is suggested that the indents be replaced by points for ease of reference.

Paragraph 1

It is suggested that the paragraph be made more consistent in order not to give the impression that competence to establish rules of competition should be interpreted as differing in nature from the Union's other exclusive competences. It is moreover assumed that, on this point, the Convention made the political choice to establish a new exclusive competence, as competition is not at the present stage an exclusive competence.

In the indent on monetary policy, the expression "*Member States which have adopted the euro*" is legally incorrect as it suggests that the Member States have a right to adopt the euro or not, although this is not the case.

Without changing the text itself, the order in which the areas are listed has been aligned on the order in which the corresponding chapters and sections occur in Part III.

Paragraph 2

It should be noted that the final words of this paragraph are assumed to reflect a political choice by the Convention (it does not in fact reflect the legal situation resulting from existing case law, which could have been reflected as follows: "*...is indissolubly linked to the exercise of an internal competence of the Union, affects Union measures introducing common rules or alters their scope*" (see judgment of 5.11.2002 in Case C-468/98, *Commission v. Sweden*, [2002] ECR I-9583, paragraphs 58 and 73).

Article I-13: Areas of shared competence

1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles I-12 and I-16.
2. Shared competence applies in the following principal areas:
 - (a)** internal market,
 - ~~area of freedom, security and justice,~~
 - ~~agriculture and fisheries, excluding the conservation of marine biological resources,~~
 - ~~transport and trans-European networks,~~
 - ~~energy,~~
 - (b)** social policy, for aspects defined in Part III,
 - (c)** economic, social and territorial cohesion,
 - (d) agriculture and fisheries, excluding the conservation of marine biological resources,**
 - (e)** environment,
 - (f)** consumer protection,
 - (g) transport,**
 - (h) trans-European networks,**
 - (i) energy,**
 - (j) area of freedom, security and justice,**
 - (k)** common safety concerns in public health matters.
3. In the areas of research, technological development and space, the Union **shall have** competence to carry out actions, in particular to define and implement programmes; however, the exercise of that competence may not result in Member States being prevented from exercising theirs.
4. In the areas of development cooperation and humanitarian aid, the Union **shall have** competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member States being prevented from exercising theirs.

Comments and suggestions

Article I-13

Paragraph 2

Without changing the text itself, the order in which the principal areas are listed has been aligned on the order in which the corresponding chapters and sections occur in Title III of Part III. Transport and trans-European networks are mentioned separately because they are dealt with in two separate sections in Title III.

Article I-13

Paragraph 3 and 4

These two paragraphs contain the words *"however, the exercise of that competence may not result in Member States being prevented from exercising theirs"*, which is in legal contradiction with the definition of shared competence in Article I-11(2). It will be remembered that the definition of competence to support actions given in Article I-11(5) specifies that, in the areas concerned, *"the Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas."*

One solution would be to make paragraphs 3 and 4 into Articles I-13a and I-13b.

Article I-14: The coordination of economic and employment policies

1. The Union shall ~~adopt~~**take** measures to ensure coordination of the economic policies of the Member States, in particular by ~~adopting~~**defining** broad guidelines for these policies. The Member States shall coordinate their economic policies within the Union.
- ~~2.~~ Specific provisions shall apply to those Member States ~~which have adopted~~ **whose currency is** the euro.
2. The Union shall ~~adopt~~**take** measures to ensure coordination of the employment policies of the Member States, in particular by ~~adopting~~**defining** guidelines for these policies.
3. The Union may ~~adopt~~**take** initiatives to ensure coordination of Member States' social policies.

Article I-15: The common foreign and security policy

1. The Union's competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union's security, including the progressive framing of a common defence policy, which might lead to a common defence.
2. Member States shall actively and unreservedly support the Union's common foreign and security policy in a spirit of loyalty and mutual solidarity and shall comply with ~~the acts adopted by~~ the Union's **action** in this area. They shall refrain from action contrary to the Union's interests or likely to impair its effectiveness.

Comments and suggestions

Article I-14

As paragraph 2 is linked to paragraph 1, it is suggested that it be made into a subparagraph of the latter.

Article 1-15

Paragraph 2

The words "*and shall comply with the acts adopted by the Union in this area*" could lead to a *contrario* interpretations. The acts adopted by the Union's institutions in the CFSP area will in fact be decisions (e.g. Articles I-39(3) and (7), I-40(4), III-195(3), III-196(2), etc.). The definition of decisions is given by Article I-32(1), fifth subparagraph, which lays down that a European decision shall be "*binding in its entirety*". It is therefore suggested that the word "*acts*" be replaced by "*action*" (see also comments on Articles III-198(2) and III-199).

It should be noted that this paragraph is similar to Article III-195(2).

Article I-16: Areas of supporting, coordinating or complementary action

1. The Union ~~may take~~ **shall have competence to carry out** supporting, coordinating or complementary action. **Such action shall, at European level, be:**
2. ~~The areas for supporting, coordinating or complementary action shall be, at European level:~~
 - ~~— industry,~~
 - ~~–(a) protection and improvement of human health,~~
 - ~~–(b) industry,~~
 - ~~— education, vocational training, youth and sport,~~
 - ~~–(c) culture,~~
 - ~~–(d) education, vocational training, youth and sport,~~
 - ~~–(e) civil protection,~~
 - (f) administrative cooperation between the Member States.**
3. ~~Legally binding acts adopted by the Union on the basis of the provisions specific to these areas in Part III may not entail harmonisation of Member States' laws or regulations.~~

Article I-17: Flexibility clause

1. If action by the Union should prove necessary, within the framework of the policies defined in Part III, to attain one of the objectives set by the Constitution, and the Constitution has not provided the necessary powers, the Council ~~of Ministers~~, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall ~~take~~ **adopt** the appropriate measures.
2. ~~Using the procedure for monitoring the subsidiarity principle referred to in Article I-9(3), the Commission shall draw Member States' national Parliaments' attention to proposals based on this Article.~~

Comments and suggestions

Article I-16

Paragraphs 1 and 2

In order to harmonise the vocabulary of the introductory part with that of Articles I-12 and I-13, it is suggested that the first two paragraphs be merged and reworded.

It is necessary to add administrative cooperation between the Member States (Article III-185), which is missing from the list. It should also be noted that the order in which the areas are listed has been aligned on the order in which the corresponding Articles on support areas occur in Chapter V of Title III of Part III.

Paragraph 3

It is suggested that this paragraph be transferred to Article I-11(5): the paragraph concerns the defining of limits to this type of competence and not the listing of areas of competence.

Article I-17

Paragraph 1

As Union action has to be necessary "*to attain one of the objectives set by the Constitution*", commas should be placed round the words "*within the framework of the policies defined in Part III*".

With the abolition of the pillars, it is noted that this Article (which corresponds to Article 308 of the TEC) becomes applicable to all areas covered by Part III, even in those where the powers of the institutions concerned are different (e.g. the CFSP).

Paragraph 2

It is suggested that the substance of this paragraph (the obligation on the Commission to draw Member States' national Parliaments' attention to proposals based on Article I-17) be transferred to the text of the protocol itself, thus enabling the deletion of this paragraph.

3. ~~Provisions~~ **Measures** adopted on the basis of **based on** this Article may not entail harmonisation of Member States' laws or regulations in cases where the Constitution excludes such harmonisation.

TITLE IV: THE UNION'S INSTITUTIONS AND BODIES

Chapter I – The institutional framework

Article I-18: The Union's Institutions

1. The Union shall be served by ~~a single~~ **an** institutional framework which shall aim to:
 - advance ~~the~~ **its** objectives of the Union,
 - promote ~~the~~ **its** values of the Union,
 - serve ~~the~~ **its** interests of the Union, **and those of** its citizens and ~~its~~ **the** Member States,
 - ~~and ensure the consistency, effectiveness and continuity of the~~ **its** policies and actions ~~which it undertakes in pursuit of its objectives.~~
2. This institutional framework comprises:

The European Parliament,
The European Council,
The Council of Ministers,
The European Commission,
The Court of Justice **of the European Union.**
3. Each Institution shall act within the limits of the powers conferred on it in the Constitution, ~~and in conformity with the procedures and conditions set out in it.~~ The Institutions shall practice full mutual cooperation.

Comments and suggestions

Article I-18

It is suggested that the words "*and bodies*" be added to the heading of this Title. The Title is headed "*The Union's Institutions*" but includes provisions on the advisory bodies.

Paragraph 1

The structure of the Constitution no longer justifies the use of the word "*single*".

For the name of the Court of Justice, see explanation below re Article I-28.

At the end of the paragraph, it is suggested that the last part should become a final indent.

Paragraph 2

The fact that the European Council and the ECB will be institutions within the legal meaning of the term will have implications: loyal cooperation between institutions, competences of the Court of Justice (see Article III-274 and the proposed amendments to Articles III-270(1) and III-272, first paragraph) and of the Ombudsman, rules on transparency, rules on data protection, etc.

It will be seen that the ECB and the Court of Auditors, although they are institutions (see Articles I-29(3) and I-31(1)), do not form part of what is defined here as the "*institutional framework*". This will not have any legal consequences.

Paragraph 3

As a result of insertion of the general clause in Article I-3(6), the words "*and in conformity with the procedures and conditions set out in it*" can be deleted in order to avoid any risk of an *a contrario* legal effect.

Article I-19: The European Parliament

1. The European Parliament shall, jointly with the Council of ~~Ministers~~, enact legislation, and exercise the budgetary function, ~~as well as~~. **It shall exercise** functions of political control and consultation ~~as laid down in the Constitution~~. It shall elect the President of the ~~European~~ Commission.
2. **The members of the** European Parliament shall be elected **for a term of five years** by direct universal suffrage of ~~European~~ **the citizens of the Union** in free and secret ballot ~~for a term of five years~~. ~~Its members~~ **They** shall not exceed seven hundred and thirty-six in number. Representation of ~~European citizens~~ shall be degressively proportional, with **a** minimum ~~threshold~~ of four members per Member State.

Sufficiently in advance of the European Parliamentary elections in 2009, and, as necessary thereafter for further elections, the European Council shall adopt by unanimity, on the ~~basis of a proposal from~~ **initiative of** the European Parliament and with its consent, a decision establishing the composition of the European Parliament, respecting the principles ~~set out above~~ **referred to in the first subparagraph. Until the elections in 2009, the composition of the European Parliament shall be that laid down in Article 1 of the Protocol on the transitional provisions relating to the Institutions and bodies of the Union.**

3. The European Parliament shall elect its President and its officers from among its members.
4. Save as otherwise provided in the Constitution, the European Parliament shall act by a majority of the votes cast. The Rules of Procedure shall determine the quorum.

Article I-20: The European Council

1. The European Council shall provide the Union with the necessary impetus for its development, and shall define ~~its~~ the general political directions and priorities. It does not exercise legislative functions.
2. The European Council shall consist of the Heads of State or Government of the Member States, together with its President and the President of the Commission. The Union Minister for Foreign Affairs shall take part in its work.
3. The European Council shall meet quarterly, convened by its President. When the agenda so requires, **the European Council may decide that** ~~its members may decide to be~~ **shall be** assisted by a minister and, in the case of the President of the Commission, a European Commissioner. When the situation so requires, the President shall convene a special meeting of the European Council.

Comments and suggestions

Article I-19

Paragraph 1

Wording suggested to take account of the fact that the European Parliament also exercises functions of political control and consultation on its own and not jointly with the Council.

As a result of insertion of the general clause in Article I-3(6), the words "*as laid down in the Constitution*" can be deleted. They do not moreover occur in paragraph 1 of Article 25.

Paragraph 2

It should be noted that the first subparagraph provides for "*the citizens of the Union*" to elect the members of the European Parliament although there is not at present any such condition. On the addition in the French text of the word "*citoyennes*", see comments on Article I-3(2).

In order to clarify the legal situation regarding the composition of the European Parliament before November 2009, it is suggested that reference be made to the "*Protocol on the transitional provisions relating to the Institutions and bodies of the Union*". That Protocol will lay down the rules applicable to the institutions and bodies during the period before the entry into force of the Treaty establishing the Constitution up until 1 November 2009.

The point is made that the expression "*sufficiently in advance*" is legally imprecise.

Paragraph 4

It is suggested that the voting rules in Parliament be transferred to Part I, as is the case for voting rules in the Council (See also the suggestion on Article I-25(6) in relation to the Commission).

Article I-20

Paragraph 3

The aim seems to be that the European Council, and not each of its members individually, should decide that its members are to be assisted by a minister (or by a European Commissioner). The wording should therefore be "*...the European Council may decide that...*".

It should be noted that the wording of the first sentence means that the European Council, unlike the Council, cannot be convened at the request of one (or more) of its members.

4. Except where the Constitution provides otherwise, decisions of the European Council shall be taken by consensus.

Article I-21: The European Council Chair

1. The European Council **shall elect its President**, by qualified majority, for a term of two and a half years, renewable once. In the event of an impediment or serious misconduct, the European Council can end his or her mandate according to the same procedure.
2. The President of the European Council:
 - (a) shall chair it and drive forward its work,
 - (b) shall ensure its proper preparation and continuity in cooperation with the President of the Commission, and on the basis of the work of the General Affairs Council,
 - (c) **shall endeavour to facilitate** cohesion and consensus within the European Council,
 - (d) shall present a report to the European Parliament after each of ~~its~~**the** meetings **of the European Council**.

The President of the European Council shall at his or her level and in that capacity ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the **responsibilities** of the Union Minister for Foreign Affairs.

3. The President of the European Council may not hold a national mandate.

Comments and suggestions

Article I-20 (continued)

Paragraph 4

The concept of "*consensus*" is not legally defined. It has therefore been checked that, for the adoption of acts which have legal effects and which may therefore be brought before the Court, there is a voting rule in the relevant legal base (those closest to a consensus being common accord, which does not allow for abstention, and unanimity, which does allow for abstention).

Article I-21

Paragraph 2

It is preferable in the French text to use the term "*attributions*" in the second subparagraph and keep the term "*compétences*" exclusively for the competences of the Union (see Article I-18(3)).

Paragraph 3

Indication of an incompatibility with only a "*national mandate*" will allow the President of the European Council to exercise a European mandate and/or a regional and/or local mandate. No other condition (nationality, independence, exercise of another professional activity, etc.) is provided for (see also comment on Article III-251).

Article I-22: The Council of Ministers

1. The Council of ~~Ministers~~ shall, jointly with the European Parliament, enact legislation, ~~and~~ exercise the budgetary function ~~and~~. **It shall** carry out policy-making and coordinating functions, **and executive functions** ~~as laid down in the Constitution~~.
2. The Council of ~~Ministers~~ shall, for each of its formations, consist of a representative of each Member State at ministerial level ~~for each of its formations~~. Only this representative may commit **the government of** the Member State in question and cast its vote.
3. Except where the Constitution provides otherwise, decisions of the Council of ~~Ministers~~ shall be taken by qualified majority.
4. Where ~~the Constitution provides in Part III~~ **provides** for European laws and framework laws to be adopted by the Council of ~~Ministers~~ according to a special legislative procedure, the European Council can adopt, ~~on its own initiative and by unanimity, after a period of consideration of at least six months~~, a decision allowing for the adoption of such ~~European~~ laws or framework laws according to the ordinary legislative procedure. The European Council shall act after consulting the European Parliament **no less than six months after requesting the opinion of the European Parliament and informing the national Parliaments of the Member States**.

Where ~~the Constitution provides in Part III~~ **provides** for the Council of ~~Ministers~~ to act unanimously in a given area, the European Council can adopt, ~~on its own initiative and by unanimity~~, a ~~European~~ decision allowing the Council of ~~Ministers~~ to act by qualified majority in that area. Any initiative taken by the European Council under **this** subparagraph shall be sent to national Parliaments no less than four months before **any adoption of the** ~~decision is taken on it~~.

Comments and suggestions

Article I-22

Paragraph 1

Wording suggested to take account of the fact that the Council also carries out policy-making and coordinating functions as well as executive functions (CFSP, ESDP: see Article I-36(2)).

As a result of insertion of the general clause in Article I-3(6), the words "*as laid down in the Constitution*" can be deleted. They do not moreover occur in paragraph 1 of Article 25.

Paragraph 2

The words "*commit the Member State*" are replaced by the clearer wording "*commit the government of the Member State*" as in Article 203, first paragraph, of the TEC.

Paragraph 4 (transferred from paragraph 4 of Article I-24)

It is suggested that the two bridging subparagraphs of paragraph 4 of Article I-24 be transferred here as they have in common the modifying of a procedure which applies to the Council (move from the special legislative procedure to the ordinary legislative procedure and move from unanimity in the Council to qualified majority). They should not therefore be in an Article devoted to qualified majority (I-24), in particular the first subparagraph which concerns the move to "codecision".

The date of commencement of the minimum six-month examination period referred to in the first subparagraph has been specified.

The words "*on its own initiative*" are not necessary as the general rule of a Commission proposal laid down in Article I-25(2) applies only to legislative acts whereas the present text concerns a decision.

Article 23: Formations of the Council of Ministers

0. The Council shall meet in different formations.

1. The Legislative and General Affairs Council shall ensure consistency in the work of the **different formations of the Council of Ministers**.

When it acts in its General Affairs function, it shall, in liaison with the Commission, prepare, and ensure follow-up to, meetings of the European Council.

When it acts in its legislative function, the Council of Ministers shall consider and, jointly with the European Parliament, enact ~~European~~ laws and ~~European~~ framework laws, ~~in accordance with the provisions of the Constitution~~. In this function, each Member State's representation shall include one or two representatives at ministerial level with relevant expertise, reflecting the business on the agenda of the Council of Ministers.

2. The Foreign Affairs Council shall, on the basis of strategic guidelines laid down by the European Council, flesh out the Union's **external policies**~~action~~, and ensure that its actions are consistent. It shall be chaired by the Union Minister for Foreign Affairs.
3. The European Council shall adopt **unanimously** a ~~European~~ decision establishing further formations in which the Council of Ministers may meet.
4. The Presidency of Council of Ministers formations, other than that of Foreign Affairs, shall be held by Member State representatives ~~within the Council of Ministers~~ on the basis of equal rotation for periods of at least a year. The European Council shall adopt **unanimously** a ~~European~~ decision establishing the rules of such rotation, taking into account ~~European~~ political and geographical balance **in the Union** and the diversity of Member States.

Comments and suggestions

Article I-23

Paragraph 0 (new)

It is suggested that this new paragraph be inserted at the beginning of the Article in order to enshrine the legal principle of the unique characteristics of the Council. The Council is a unique institution which defines itself as such vis-à-vis the other institutions (European Parliament, Commission, Court, etc.).

Paragraph 2

Align the wording "*external policies*" on that in Title V of Part III ("*external action*").

Paragraph 3

On insertion of the word "*unanimously*", see comment on Article I-20(4).

Paragraph 4

In the interests of greater readability and to avoid Parts I and III repeating each other, it is suggested that it be made clear in the second sentence that the decision establishing the rules of Presidency rotation is adopted unanimously, making it possible to delete Article III-245(2), which differs from the present paragraph only in indicating that the decision concerned is adopted "*unanimously*".

Article I-24: Definition of qualified majority within the European Council and the Council

1. ~~When the European Council or the Council of Ministers takes decisions by A~~ qualified majority, ~~such a majority shall consist of~~ be defined as the majority of **the members of the Council, representing** the Member States, ~~representing~~ **comprising** at least three fifths of the population of the Union.
2. ~~When the Constitution does not require the European Council or the Council of Ministers to~~ **is not** acting on ~~the basis of~~ a proposal of the Commission, ~~or when the European Council or the Council of Ministers is not acting on~~ the initiative of the Union Minister for Foreign Affairs, the required qualified majority **shall be defined as** ~~consist of~~ the **majority** of two thirds of the **members of the Council, representing** the Member States ~~representing~~ **comprising** at least three fifths of the population of the Union.
- 2a. **Paragraphs 1 and 2 shall apply to the European Council when it is acting by a qualified majority.**
3. The provisions of paragraphs 1, ~~and 2~~ **and 2a** shall take effect on 1 November 2009, after the European Parliament elections have taken place, according to the provisions of Article 19. **Before 1 November 2009, a qualified majority shall be defined as laid down in Article 2 of the Protocol on the transitional provisions relating to the Institutions and bodies of the Union.**
4. ~~Where the Constitution provides in Part III for European laws and framework laws to be adopted by the Council of Ministers according to a special legislative procedure, the European Council can adopt, on its own initiative and by unanimity, after a period of consideration of at least six months, a decision allowing for the adoption of such European laws or framework laws according to the ordinary legislative procedure. The European Council shall act after consulting the European Parliament and informing the national Parliaments.~~

Comments and suggestions

Article I-24

Paragraphs 1 and 2

The wording in the draft, which reads "...*the majority of Member States*..." in the Council, is legally incorrect. The Council is an institution of the Union composed of members and not of Member States. It is the members of this institution which vote. Moreover, the negative wording in paragraph 2 ("*does not require*...") results in a very clumsy sentence. Finally, it is clearer to refer to the European Council in a separate paragraph.

Paragraph 3

In order to clarify the legal situation before November 2009, it is suggested that reference be made to the "*Protocol on the transitional provisions relating to the Institutions and bodies of the Union*" (see comment on Article I-19(2), second subparagraph).

Paragraph 4

It is suggested that these two subparagraphs be transferred as a new paragraph 4 of Article I-22 (see explanations above re Article I-22).

~~Where the Constitution provides in Part III for the Council of Ministers to act unanimously in a given area, the European Council can adopt, on its own initiative and by unanimity, a European decision allowing the Council of Ministers to act by qualified majority in that area. Any initiative taken by the European Council under this subparagraph shall be sent to national Parliaments no less than four months before any decision is taken on it.~~

5. Within the European Council, its President and the President of the Commission do not vote.

Article I-25: The European Commission

1. The European Commission shall promote the general ~~European~~ **interest of the Union** and take appropriate initiatives to that end. It shall ensure the application of the Constitution, and ~~steps taken~~ **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.

Comments and suggestions

Article I-24 (continued)

Paragraph 5

Article I-24 concerns only the qualified majority and not the three voting arrangements (unanimity, qualified majority and simple majority). It is therefore suggested that the rule whereby the President of the European Council and the President of the Commission do not vote should be transferred to a provision on the exercise of voting within the European Council (see Article III-244(1)).

Articles I-25, I-26 and I-27

Articles which are legally unclear on certain points, but should be discussed at political level. No suggestions are therefore made here.

3. The Commission shall consist of a College comprising its President, the Union Minister of Foreign Affairs/Vice-President, and thirteen European Commissioners selected on the basis of a system of equal rotation between the Member States. This system shall be established by a ~~European~~ decision adopted **unanimously** by the European Council on the basis of the following principles:

- (a) Member States shall be treated on a strictly equal footing as regards determination of the sequence of, and the time spent by, their **nationals** as Members of the College; consequently, the difference between the total number of terms of office held by **nationals** of any given pair of Member States may never be more than one;
- (b) subject to point (a), each successive College shall be so composed as to reflect satisfactorily the demographic and geographical range of all the Member States of the Union.

The Commission President shall appoint non-voting Commissioners, chosen according to the same criteria as apply for Members of the College and coming from all other Member States.

~~These~~ **The arrangements in this paragraph shall take effect on 1 November 2009. Before 1 November 2009, the rules applicable shall be those laid down in Article [...] of the Protocol on the transitional provisions relating to the Institutions and bodies of the Union.**

4. In carrying out its responsibilities, the Commission shall be completely independent. In the discharge of their ~~duties~~**functions**, the European Commissioners and Commissioners shall neither seek nor take instructions from any government or other body.

5. The Commission, as a College, shall be responsible to the European Parliament. The Commission President shall be responsible to the European Parliament for the activities of the Commissioners. Under the procedures set out in Article III-243, the European Parliament may pass a censure motion on the Commission. If such a motion is passed, the European Commissioners and Commissioners must all resign. The Commission shall continue to handle everyday business until a new College is nominated.

6. The Commission shall act by a majority of the members of the College. The Rules of Procedure shall determine the quorum.

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. Each Member State determined by the system of rotation shall establish a list of three persons, in which both genders shall be represented, whom it considers qualified to be a European Commissioner. By choosing one person from each of the proposed lists, the President-elect shall select the thirteen European Commissioners for their competence, European commitment, and guaranteed independence. The President and the persons so nominated for membership of the College, including the future Union Minister for Foreign Affairs, as well as the persons nominated as non-voting Commissioners, shall be submitted collectively to a vote of approval by the European Parliament. The Commission's term of office shall be five years.
3. The President of the Commission shall:
 - lay down guidelines within which the Commission is to work;
 - decide ~~its~~ **on the** internal organisation **of the Commission**, ensuring that it acts consistently, efficiently and on a collegiate basis;
 - appoint Vice-Presidents from among the members of the College.

A European Commissioner or Commissioner shall resign if the President so requests.

Article I-25

Paragraph 6 (new)

It is suggested that the voting rules in the Commission be transferred to Part I, as is the case for voting rules in the Council (See also the suggestion on Article I-19(4) in relation to the European Parliament).

Article I-27: The Union Minister for Foreign Affairs

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

Article I-28: The Court of Justice of the European Union

1. The Court of Justice **of the European Union** shall include the ~~European~~ Court of Justice, the High Court and specialised courts. It shall ensure respect for the law in the interpretation and application of the Constitution.

Member States shall provide rights of appeal sufficient to ensure effective legal protection in ~~the field of~~ **the fields covered by** Union law.

2. The ~~European~~ Court of Justice shall **consist** of one judge from each Member State, ~~and~~. It shall be assisted by Advocates-General.

The High Court shall include at least one judge per Member State. ~~the number shall be fixed by the Statute of the Court of Justice.~~

The judges and the Advocates-General of the ~~European~~ Court of Justice and the judges of the High Court shall be, chosen from ~~persons~~ **citizens of the Union** whose independence is beyond doubt and who satisfy the conditions set out in Articles III-260 and III-261. **They** shall be appointed by common accord of the governments of the Member States for a **renewable term** of six years. ~~renewable.~~

3. The Court of Justice **of the European Union** shall:
 - (a) rule on actions brought by a Member State, an Institution or a natural or legal person ~~in accordance with the provisions of Part III;~~
 - (b) give preliminary rulings, at the request of Member State courts, on the interpretation of Union law or the validity of acts adopted by the Institutions;
 - (c) rule ~~on the~~ **in** other cases provided for in the Constitution.

Comments and suggestions

Article I-28

Paragraph 1

For greater clarity and to avoid confusion with the European Court of Human Rights at Strasbourg, it is proposed that the institution be called "*Court of Justice of the European Union*" and that its components be called "*Court of Justice*", "*High Court*" and "*specialised courts*".

In the second subparagraph, a drafting suggestion because the expression "*in the field of Union law*" is incorrect.

Paragraph 2

It is suggested that the reference to the Statute of the Court of Justice in the second subparagraph be deleted as there is an identical reference in the first subparagraph of Article III-261.

Paragraph 3

Because of the insertion of the general clause in Article I-3(6) the words "*in accordance with the provisions of Part III*" may be deleted.

Article I-29: The European Central Bank

1. The European Central Bank, together with the national central banks, shall constitute the European System of Central Banks. The European Central Bank, together with the national central banks of the Member States ~~which have adopted the Union currency, the euro,~~ **the currency of which is the euro** shall conduct the monetary policy of the Union.
2. The European System of Central Banks shall be governed by the decision-making bodies of the European Central Bank. The primary objective of the European System of Central Banks shall be to maintain price stability. Without prejudice to ~~the objective of price stability,~~ **that objective,** it shall support general economic policies in the Union ~~with a view to contributing in order to contribute~~ to the achievement of the Union's objectives. It shall conduct other Central Bank tasks ~~according to the provisions of~~ **in accordance with** Part III and the Statute of the European System of Central Banks and the European Central Bank.
3. The European Central Bank is an Institution. ~~which has~~ **It shall have** legal personality. It alone may authorise the issue of the euro. ~~In the exercise of its powers and for its finances, it~~ **It shall be independent in the exercise of its powers and in the management of its finances.** Union Institutions, bodies, **offices** and agencies, and the governments of the Member States, shall ~~undertake to respect this principle~~ **that independence.**
4. The European Central Bank shall adopt such measures as are necessary to carry out its tasks in accordance with ~~the provisions of~~ Articles III-77 to III-83 and Article III-90, and with the conditions laid down in the Statutes of the European System of Central Banks and of the European Central Bank. In accordance with these same ~~provisions~~ articles, those Member States ~~which have not adopted the euro,~~ **with a derogation** and their central banks shall retain their powers in monetary matters.
5. Within ~~its~~ **the** areas of competence **falling within its responsibilities,** the European Central Bank shall be consulted on all proposed Union acts, and all proposals for regulation at national level, and may give an opinion.

Comments and suggestions

Chapter II

For greater clarity, it is suggested that the reference here to bodies be deleted and a heading entitled "*Chapter III – The Union's advisory bodies*" be inserted.

Article I-29

Paragraph 3

It should be noted that Article III-78 states that the European Central Bank shall have the exclusive right to authorise the issue of euro bank notes, but that Member States may issue euro coins subject to approval by the Bank of the volume of the issue. Having said that, in view of the general clause inserted in Article 1-3(6), it is considered unnecessary to change the second sentence of this paragraph.

Paragraph 4

It is suggested that the correct expression, "*Member States **with a derogation***", be inserted here (see explanations re Article III-88, Sections 4 and 5).

6. The decision-making organs of the European Central Bank, their composition and operating methods are set out in Articles III-84 to III-87, as well as in the Statute of the European System of Central Banks and of the European Central Bank.

Article I-30: The Court of Auditors

1. The Court of Auditors is ~~the~~ **an** Institution. ~~which~~ **It** shall carry out the **Union's** audit.
2. It shall examine the accounts of all Union income and expenditure, and shall ensure good financial management.
3. It shall consist of ~~one national~~ **one citizen** of each Member State. In the performance of their duties, its members shall be completely independent **in the Union's general interest**.

Comments and suggestions

Article I-30

Paragraph 3

The addition of "*in the Union's general interest*" makes it possible to delete the first subparagraph of Article III-291(3).

Chapter III – The Union's advisory bodies

Article I-31: The Committee of the Regions and the Economic and Social Committee

1. The European Parliament, the Council of Ministers and the Commission shall be assisted by a Committee of the Regions and an Economic and Social Committee, exercising advisory functions.
2. The Committee of the Regions shall consist of representatives of regional and local bodies who either hold a regional or local authority electoral mandate or are politically accountable to an elected assembly.
3. The Economic and Social Committee shall consist of representatives of organisations of employers, of the employed, and of others representative of civil society, notably in socio-economic, civic, professional and cultural areas.
4. The members of the Committee of the Regions and the Economic and Social Committee ~~must~~ **shall** not be bound by any mandatory instructions. They shall be completely independent, in the performance of their duties, in the Union's general interest.
5. Rules governing the composition of these Committees, the designation of their members, their powers and their operations, are set out in Articles III-292 to III-298. The rules governing their composition shall be ~~reviewed~~ **revised** at regular intervals by the Council of Ministers, ~~on the basis of a Commission proposal,~~ **in accordance with the procedure referred to in Articles III-292 and III-295 in the light to take account** of economic, social and demographic developments within the Union.

Comments and suggestions

Chapter III (new)

See comment re Chapter II above.

Article I-31

Change of title in order to avoid repeating the title of the new Chapter.

Paragraph 5

On the assumption that by using the word "*consist*" the Convention meant consist in the sense of the number of members per State, a reference can be made to Articles III-292, first paragraph, and III-295, which each provide for a procedure for adapting the decisions in question. Two inconsistencies will be noted, however; here the Council acts by a qualified majority, whereas in Articles III-292, first paragraph, and III-295, it acts unanimously; secondly, here the Council acts on a Commission proposal, which is not specified in Articles III-292 and III-295. It is suggested that a reference be added to the fact that the Council acts on a Commission proposal in Articles III-292 and III-295 and that the reference to unanimous voting be retained in those two Articles.

TITLE V: EXERCISE OF UNION COMPETENCE

Chapter I – Common provisions

Article I-32: The legal acts of the Union

1. ~~In exercising the competences conferred on it in the Constitution,~~ **To exercise** the Union's **competences the Institutions shall use** as legal instruments, ~~in accordance with the provisions of Part III,~~ European laws, European framework laws, European regulations, European decisions, recommendations and opinions.

A European law (**hereinafter "law"**) shall be a legislative act of general application. It shall be binding in its entirety and directly applicable in all Member States.

A European framework law (**hereinafter "framework law"**) shall be a legislative act binding, as to the result to be achieved, on the Member States to which it is addressed, but leaving the national authorities entirely free to choose the form and means of achieving that result.

A European regulation (**hereinafter "regulation"**) shall be a non-legislative act of general application for the implementation of legislative acts and of certain specific provisions of the Constitution. It may either be binding in its entirety and directly applicable in all Member States, or be binding, as regards the result to be achieved, on all Member States to which it is addressed, but leaving the national authorities entirely free to choose the form and means of achieving that result.

A European decision (**hereinafter "decision"**) shall be a non-legislative act, binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.

Recommendations and opinions ~~adopted by the Institutions~~ shall have no binding force.

2. When considering proposals for legislative acts, the European Parliament and the Council of ~~Ministers~~ shall refrain from adopting acts not provided for by this Article in the area in question.

Comments and suggestions

Article I-32

Paragraph 1, fourth subparagraph

It will be seen that the definition of "*European regulation*" henceforth covers two different types of act, one the conventional "regulation" (directly applicable) and the other a "directive" (normally measures for transposition). In the absence of any other details, this definition covers two possibilities: either a regulation that contains only "regulation"-type provisions or only "directive"-type provisions, the two types not being mixed in the same act (the "regulation" or "directive" nature of the act being identified in the act's final provisions), or a regulation that contains both types of provisions.

Article I-33: Legislative acts

1. ~~European laws~~ Laws and ~~European~~ framework laws shall be adopted, on the basis of proposals from the Commission, jointly by the European Parliament and the Council of ~~Ministers~~ under the ordinary legislative procedure as set out in Article III-302. If the two Institutions cannot reach agreement on an act, it shall not be adopted.

~~In the cases specifically provided for in Article III-165, European laws and European framework laws may be adopted at the initiative of a group of Member States in accordance with Article III-302.~~ **In the cases provided for in the Constitution, laws and framework laws may be adopted at the initiative of a group of Member States, on a recommendation from the European Central Bank or at the request of the Court of Justice of the European Union or the European Investment Bank.**

2. In the ~~specific~~ cases provided for by the Constitution, ~~European~~ laws and ~~European~~ framework laws shall be adopted by the European Parliament with the participation of the Council of ~~Ministers~~, or by the latter with the participation of the European Parliament, in accordance with special legislative procedures.

Article I-33

Paragraph 1

In connection with the second sentence of the first subparagraph, note that a law or a framework law may exceptionally be amended by the European Parliament alone or by the Council alone, without a Commission proposal or co-decision, in the specific case of revocation of a delegation of powers under Article I-35(2)(a).

It is suggested that in the second subparagraph the list of other initiatives be supplemented. Other cases are provided for in Part III where the ordinary legislative procedure is initiated without a Commission proposal (on a recommendation from the European Central Bank (Article III-79), at the request of the Court of Justice of the European Union (Articles II-264 and III-289) and at the request of the European Investment Bank (Article III-299)).

Article I-34: Non-legislative acts

- ~~1. — The Council of Ministers and the Commission shall adopt European regulations or European decisions in the cases referred to in Articles 35 and 36 and in the cases specifically provided for in the Constitution. The European Council shall adopt European decisions in the cases specifically provided for in the Constitution. The European Central Bank shall adopt European regulations and European decisions when authorised to do so by the Constitution.~~
- ~~2. — The Council of Ministers and the Commission, and the European Central Bank when so authorised in the Constitution, adopt recommendations.~~

In the cases provided for in the Constitution:

- (a) the European Council shall adopt decisions;**
- (b) the Council and the Commission shall adopt regulations and decisions;**
- (c) the European Central Bank shall adopt regulations and decisions.**

The Council, and the Commission and, in the cases provided for in the Constitution, the European Central Bank shall adopt recommendations.

Article I-35: Delegated regulations

- ~~1. European laws~~ **Laws** and ~~European~~ framework laws may delegate to the Commission the power to enact delegated regulations to supplement or amend certain non-essential elements of the ~~European~~ law or framework law.

The objectives, content, scope and duration of the delegation **of power** shall be ~~explicitly~~ defined in the ~~European~~ laws and framework laws. The essential elements of an area **shall be reserved for the law or framework law and accordingly** may not be the subject of a delegation **of power** ~~may not cover the essential elements of an area. These shall be reserved for the European law or framework law.~~

Comments and suggestions

Article I-34

Simpler and clearer wording.

2. The conditions of application to which the delegation is subject shall be ~~explicitly~~ determined in the ~~European~~ laws and framework laws. **They may** ~~consist of the following possibilities~~ **be** as follows:
 - (a) the European Parliament or the Council of ~~Ministers~~ may decide to revoke the delegation;
 - (b) the delegated regulation may enter into force only if no objection has been expressed by the European Parliament or the Council of ~~Ministers~~ within a period set by the ~~European~~ law or framework law.

For the purposes of ~~the preceding~~ **this** paragraph, the European Parliament shall act by a majority of its members, and the Council of ~~Ministers~~ by a qualified majority.

Article I-36: Implementing acts

1. Member States shall adopt all measures of national law necessary to implement legally binding Union acts.
2. Where uniform conditions for implementing **legally** binding Union acts are needed, those acts may confer implementing powers on the Commission, or, in specific cases duly justified and in the cases provided for in Article **I-39**, on the Council of ~~Ministers~~.
3. The ~~European~~ laws shall lay down ~~in advance~~ rules and general principles **for which shall govern** the mechanisms for control by Member States of Union implementing acts.
4. Union implementing acts shall take the form of ~~European~~ implementing regulations or ~~European~~ implementing decisions.

Comments and suggestions

Article I-35

Paragraph 2

It will be seen that this provision provides for revocation of the delegation of powers in future, which involves amendment of the basic act which may be adopted, without a Commission proposal, by the European Parliament alone or by the Council alone.

Article I-36

Paragraph 2

For the sake of consistency with the expression used in paragraph 1, it is suggested that "*legally*" be added to "*binding acts*" in the first line.

Paragraph 3

More precise wording.

Article I-37: Principles common to the Union's legal acts

1. ~~Unless the Constitution contains a specific stipulation, the Institutions shall decide, in compliance with the procedures applicable, the type of act to be adopted in each case, in accordance with the principle of proportionality set out in Article 9.~~ **Where the Constitution does not specify the type of act to be adopted, the Institutions shall select it on a case-by-case basis, in compliance with the procedures applying and with the principle of proportionality set out in Article I-9.**
2. ~~European laws, European framework laws, European regulations and European decisions~~ **Legal acts** shall state the reasons on which they are based and shall refer to any proposals, **initiatives, recommendations, requests** or opinions required by the Constitution.

Article I-38: Publication and entry into force

1. ~~European~~ Laws and framework laws adopted under the ordinary legislative procedure shall be signed by the President of the European Parliament and by the President of the Council of ~~Ministers~~.

In other cases they shall be signed by: **the President of the Institution which adopted them.**
~~the President of the European Parliament or by the President of the Council of Ministers.~~~~European~~

Laws and ~~European~~ framework laws shall be published in the Official Journal of the European Union and shall enter into force on the date specified in them or, in the absence of such a stated date, on the twentieth day following their publication.

2. ~~European~~ Regulations and ~~European~~ decisions which do not specify to whom they are addressed ~~or which are addressed to all Member States~~ shall be signed by the President of the Institution which **adopted** them.

Where regulations and decisions do not indicate to whom they are addressed, they shall be published in the Official Journal of the European Union and shall enter into force on the date specified in them or, in the absence of such a stated date, on the twentieth day following their publication.

3. Other decisions shall be notified to those to whom they are addressed and shall take effect upon such notification.

Comments and suggestions

Article 1-37

Paragraph 1

Legally more precise wording: the choice of the appropriate act does not exhaust all the effects of the principle of proportionality, hence the expression "*in compliance with*" rather than "*in accordance with*".

Paragraph 2

All legal acts must be referred to in this paragraph since all must give the reasons on which they are based and cite references, on pain of being null and void. The reference to "*proposals*" has been expanded since initiatives (by a group of Member States or the European Parliament), recommendations (by the European Central Bank) or requests (by the Court of Justice or the EIB) can also serve as a basis for a law or a framework law.

Article I-38

Paragraphs 1 and 2

It is suggested that the sentences be made into separate paragraphs to make them easier to read.

Paragraph 2

In the case of decisions, the words "*or which are addressed to all Member States*" are not appropriate since in future, with the new definition of "*decision*" in Article I-I-32(1), fifth subparagraph, it will no longer be necessary to designate the addressees of "legislative" decisions. Only individual decisions or those addressed to a few Member States will specify addressees.

It should also be noted that according to the suggested wording, even "directive"-type regulations addressed to a single Member State will be covered by the rules in this paragraph.

Chapter II – Specific provisions

Article I-39: Specific provisions for implementing common foreign and security policy

1. The European Union shall conduct a common foreign and security policy, based on the development of mutual political solidarity among Member States, the identification of questions of general interest and the achievement of an ever-increasing degree of convergence of Member States' actions.
2. The European Council shall identify the Union's strategic interests and determine the objectives of its common foreign and security policy. The Council of Ministers shall frame this policy within the framework of the strategic guidelines established by the European Council ~~and in accordance with the arrangements in Part III.~~
3. The European Council and the Council of Ministers shall adopt the necessary ~~European~~ decisions.
4. The common foreign and security policy shall be put into effect by the Union Minister for Foreign Affairs and by the Member States, using national and Union resources.
5. Member States shall consult one another within the European Council and the Council of Ministers on any foreign and security policy issue which is of general interest in order to determine a common approach. Before undertaking any action on the international scene or any commitment which could affect the Union's interests, each Member State shall consult the others within the European Council or the Council of Ministers. Member States shall ensure, through the convergence of their actions, that the Union is able to assert its interests and values on the international scene. Member States shall show mutual solidarity.

Comments and suggestions

Articles I-39 and I-40

These Articles lack legal clarity on certain points and require discussion at political level. Hence, apart from a few drafting changes which apply throughout the text, no suggestions are made here.

6. The European Parliament shall be regularly consulted on the main aspects and basic choices of the common foreign and security policy. ~~It and~~ shall be kept informed of how it evolves.
7. ~~European~~ Decisions relating to the common foreign and security policy shall be adopted by the European Council and the Council of ~~Ministers~~ unanimously, except in the cases referred to in Part III. The European Council and the Council of ~~Ministers~~ shall act on ~~a proposal~~ **an initiative** from a Member State, from the Union Minister for Foreign Affairs or from that Minister with the Commission's support. ~~European~~ Laws and ~~European~~ framework laws shall be excluded.
8. The European Council may unanimously ~~decide~~ **adopt a decision providing** that the Council of ~~Ministers~~ should act by qualified majority in cases other than those referred to in Part III.

Article I-40: Specific provisions for implementing the common security and defence policy

1. The common security and defence policy shall be an integral part of the common foreign and security policy. It shall provide the Union with an operational capacity drawing on assets civil and military. The Union may use them on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter. The performance of these tasks shall be undertaken using capabilities provided by the Member States.
2. The common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

The policy of the Union in accordance with this Article shall not prejudice the specific character of the security and defence policy of certain Member States; it shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation, under the North Atlantic Treaty, and be compatible with the common security and defence policy established within that framework.

3. Member States shall make civilian and military capabilities available to the Union for the implementation of the common security and defence policy, to contribute to the objectives defined by the Council of Ministers. Those Member States which together establish multinational forces may also make them available to the common security and defence policy.

Member States shall undertake progressively to improve their military capabilities.

A European Armaments, Research and Military Capabilities Agency **shall be established** to identify operational requirements, to promote measures to satisfy those requirements, to contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, to participate in defining a European capabilities and armaments policy, and to assist the Council of Ministers in evaluating the improvement of military capabilities.

4. ~~European~~ Decisions on the implementation of the common security and defence policy, including those initiating a mission as referred to in this Article, shall be adopted by the Council of Ministers acting unanimously on a ~~proposal~~ **an initiative** from the Union Minister for Foreign Affairs or from a Member State. The Union Minister for Foreign Affairs may propose the use of both national resources and Union instruments, together with the Commission where appropriate.
5. The Council of Ministers may entrust the execution of a task, within the Union framework, to a group of Member States in order to protect the Union's values and serve its interests. The execution of such a task shall be governed by Article III-211.
6. Those Member States whose military capabilities fulfil **higher** criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish structured cooperation within the Union framework. Such cooperation shall be governed by the provisions of Article III-213.

7. Until such time as the European Council has ~~acted~~ **taken a decision** in accordance with paragraph 2 ~~of this Article~~, closer cooperation shall be established, in the Union framework, as regards mutual defence. Under this cooperation, if one of the Member States participating in such cooperation is the victim of armed aggression on its territory, the other participating Member States shall give it aid and assistance by all the means in their power, military or other, in accordance with Article 51 of the United Nations Charter. In the execution of closer cooperation on mutual defence, the participating Member States shall work in close cooperation with the North Atlantic Treaty Organisation. The detailed arrangements for participation in this cooperation and its operation, and the relevant decision-making procedures, are set out in Article III-214.
8. The European Parliament shall be regularly consulted on the main aspects and basic choices of the common security and defence policy, ~~and~~. It shall be kept informed of how it evolves.

Article I-41: Specific provisions relating to ~~for implementing~~ the area of freedom, security and justice

1. The Union shall ~~constitute~~ **offer its citizens** an area of freedom, security and justice:
 - (a) by adopting ~~European~~ laws and framework laws intended, where necessary, to approximate national laws in the areas listed in Part III;
 - (b) by promoting mutual confidence between the competent authorities of the Member States, in particular on the basis of mutual recognition of judicial and extrajudicial decisions;
 - (c) by operational cooperation between the competent authorities of the Member States, including the police, customs and other services specialising in the prevention and detection of criminal offences.

Comments and suggestions

Article I-41

Title

It is suggested that the title be amended as this Article covers all aspects of JHA, not merely its "*implementation*".

Paragraph 1

The beginning of the introductory sentence has been amended to better express the link between the heading and the rest of the paragraph, using the same terminology as in Article I-3(2).

2. Within the ~~framework of the~~ area of freedom, security and justice, national parliaments may participate in the evaluation mechanisms foreseen in Article III-161, and shall be involved in the political monitoring of Europol and the evaluation of Eurojust's activities in accordance with Articles III-177 and III-174.
3. **Member States shall have a right of initiative** ~~in the field of police and judicial cooperation in criminal matters, Member States shall have a right of initiative~~ in accordance with Article III-165.

Article I-42: Solidarity clause

1. The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the victim of terrorist attack or natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to:
 - (a) – prevent the terrorist threat in the territory of the Member States;
– protect democratic institutions and the civilian population from any terrorist attack;
– assist a Member State in its territory at ~~the its request of its political authorities~~ in the event of a terrorist attack;
 - (b) – assist a Member State in its territory at ~~the its request of its political authorities~~ in the event of a disaster.
2. The detailed arrangements for implementing this ~~provision~~ **Article** are at Article III-231.

Comments and suggestions

Article I-42

This Article lacks legal clarity on certain points and requires discussion at political level. Hence no suggestions are made here.

Chapter III – Enhanced cooperation

Article I-43: Enhanced cooperation

1. Member States which wish to establish enhanced cooperation between themselves within the framework of the Union's non-exclusive competences may make use of its Institutions and exercise those competences by applying the relevant provisions of the Constitution, subject to the limits and in accordance with the procedures laid down in this Article and in Articles III-322 to III-329.

Enhanced cooperation shall aim to further the objectives of the Union, protect its interests and reinforce its integration process. Such cooperation shall be open **at any time** to all Member States ~~when it is being established and at any time~~, in accordance with Article III-324.

2. **The decision to authorise** ~~Authorisation to proceed with~~ enhanced cooperation shall be ~~granted~~ **adopted** by the Council of Ministers as a last resort, when it has ~~been~~ established ~~within the Council of Ministers~~ that the objectives of such cooperation cannot be attained within a reasonable period by the Union as a whole, and provided that ~~it brings together~~ at least one third of the Member States **participate in it**. The Council of Ministers shall act in accordance with the procedure laid down in Article III-325.

Comments and suggestions

Article I-43

Paragraph 1

Article III-325, which refers to "*one of the areas covered by the Constitution*", will need to be aligned on this paragraph, which excludes enhanced cooperation in relation the Union's exclusive competences.

Paragraph 2

More precise formulations.

The words "*within the Council of Ministers*" imply that this is an intergovernmental procedure, whereas it is the Council that adopts the decision granting authorisation to proceed with enhanced cooperation (this is conveyed indirectly by the words "*the Council ... shall act*" in the following sentence, and Article III-325 states clearly that it is a decision which is adopted). It is suggested that this point be clarified.

3. ~~All members of the Council may participate in its deliberations, but only~~ Only members of the Council of Ministers representing the **Member States** participating in enhanced cooperation shall take part in ~~the vote~~ the adoption of acts. ~~All Member States may, however, take part in the deliberations of the Council of Ministers.~~

~~Unanimity shall be constituted by the votes of the representatives of the participating States only.~~ **As from 1 November 2009, a** A qualified majority shall be defined as the majority of the **members of the Council**, representing the participating **Member States**, ~~representing~~ **comprising** at least three fifths of the population of ~~those~~ **the States whose representatives take part in the vote.** **Before 1 November 2009, a qualified majority shall be defined as laid down in Article 2(4) of the Protocol on the transitional provisions relating to the Institutions and bodies of the Union.**

As from 1 November 2009, w ~~Where the Constitution does not require the Council of Ministers to~~ **does not** act on the basis of a Commission proposal, ~~or where the Council of Ministers is not acting~~ **or at the** upon initiative of the Minister for Foreign Affairs **of the Union**, the required qualified majority **shall be defined as a majority** of two thirds of the **members of the Council**, representing the participating **Member States**, ~~representing~~ **comprising** at least three fifths of the population of ~~those~~ **the States whose representatives take part in the vote.** **Before 1 November 2009, a qualified majority shall be defined as laid down in Article 2(4) of the Protocol on the transitional provisions relating to the Institutions and bodies of the Union.**

4. Acts adopted in the framework of enhanced cooperation shall bind only participating States. They shall not be regarded as an *acquis* which has to be accepted by candidates for accession to the Union.

Comments and suggestions

Article I-43

Paragraph 3

It is suggested that the terminology describing the special voting procedures in the Council be amended to reflect the fact that it is the members of the Council who vote and deliberate, and not the Member States (see comments on Article I-24).

Assuming that it was not the intention of the authors of the draft Constitution that, in the specific cases referred to in Articles I-43(3), I-58(5), III-71(4), III-76(6) and (7), III-88(2), III-90(3) and III-91(4), the new definition of qualified majority should apply before the entry into force of the general rule laid down in Article I-24, it is suggested that a reference be inserted to the Protocol on transitional provisions applying prior to November 2009 (see also comments on Article I-19(2) and on the aforementioned articles).

TITLE VI: THE DEMOCRATIC LIFE OF THE UNION

Article I-44: The principle of democratic equality

In all its activities, the Union shall observe the principle of the equality of citizens, ~~who—All~~ shall receive equal ~~attention~~ **treatment** from ~~its the Union's~~ Institutions, **bodies, offices** and agencies.

Article I-45: The principle of representative democracy

1. The working of the Union shall be founded on ~~the principle of~~ representative democracy.
2. Citizens are directly represented at Union level in the European Parliament.

Member States are represented in the European Council and in the Council ~~of Ministers by their governments,~~ **either by their Head of State directly elected by their citizens or by their Head of Government or a representative of their Government**, themselves accountable to **their** national parliaments, **directly** elected by their citizens.

3. Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly as possible and as closely as possible to the citizen.
4. Political parties at European level contribute to forming European political awareness and to expressing the will of Union citizens.

Comments and suggestions

Article I-44

Note that the words "*in all its activities*" contribute no added value in legal terms.

On the use of the word "*citizens*" (only masculine here), see the comments on Article I-3(2). It would be legally impossible to add the feminine form here ("*citoyennes*" in French - does not apply to English text) as this would alter the meaning of the rule by restricting it to equality between men and women rather than signifying equality of all citizens as persons.

It is suggested (cf. Académie française) that the term "*equal attention*" be replaced by "*equal treatment*" in order to restore consistency between this provision and Article II-41 ("*Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the Institutions, bodies, offices and agencies of the Union*"). Otherwise the Article would have no legal significance.

It is suggested that consistency between Article I-44 and Article II-41, which refers to Institutions, bodies, offices and agencies, be restored by adding the words "*bodies, offices and agencies*" in Article I-44.

Article I-45

Paragraph 2

A new formulation is suggested as the second sentence of the draft ("*Member States are represented in the European Council and in the Council of Ministers by their governments, themselves accountable to national parliaments*") is legally incorrect in the light of the composition of the European Council defined in Article I-20 and of the constitutional system of certain Member States in which the Head of State is elected directly by the people and is not accountable to parliament.

Article I-46: The principle of participatory democracy

1. The ~~Union~~ Institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.
2. The ~~Union~~ Institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.
3. The Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.
4. **Not less than one million citizens coming from a significant number of Member States may take the initiative of inviting the Commission, within the framework of its powers,** to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Constitution. A ~~European~~ law shall determine the provisions for the ~~specific~~ procedures and conditions required for such a citizens' initiative.

Article I-47: The social partners and autonomous social dialogue

The European Union recognises and promotes the role of the social partners at Union level, taking into account the diversity of national systems; it shall facilitate dialogue between the social partners, respecting their autonomy.

Article I-48: The European Ombudsman

A European Ombudsman appointed by the European Parliament shall receive, ~~investigate~~ **examine** and report on complaints about maladministration ~~within~~ **in the activities of** the Union Institutions, bodies, **offices** or agencies. The European Ombudsman shall be completely independent in the performance of his or her duties.

Comments and suggestions

Article I-46

Paragraph 4

Clearer (Académie française). We suggest making it clear that a citizens' initiative may not invite the Commission to submit a proposal in an area where it has no powers to do so.

Article I-48

It is suggested that Article I-48, which refers to maladministration "within the Union Institutions, bodies, offices or agencies", be amended on the basis of Article III-237 which refers, more correctly, to "the activities of the Institutions, bodies, offices or agencies".

Since the European Council and the European Central Bank now become Institutions of the Union (Article I-18), the European Ombudsman will be competent to investigate any cases of maladministration by those Institutions.

Likewise, the European Ombudsman will – saving any specific provisions to the contrary - be competent to investigate cases of maladministration by the Union Institutions, bodies, offices and agencies acting in the CFSP (including the ESDP) and JHA areas.

Article I-49: Transparency of the proceedings of Union Institutions

1. In order to promote good governance and ensure the participation of civil society, the Union Institutions, bodies, **offices** and agencies shall conduct their work as openly as possible.
2. The European Parliament shall meet in public, as shall the Council ~~of Ministers~~ when ~~examining and adopting a legislative proposal~~ **considering and voting on a draft legislative act**.
3. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State shall have a right of access to documents of the Union Institutions, bodies, **offices** and agencies, **whatever their medium**. ~~in whatever form they are produced, in accordance with the conditions laid down in Part III.~~
4. A ~~European~~ law shall lay down the general principles and limits which, on grounds of public or private interest, govern the right of access to such documents.
5. Each Institution, body, **office** or agency ~~referred to in paragraph 3~~ shall determine in its own rules of procedure specific provisions regarding access to its documents, in accordance with the European law referred to in paragraph 4.

Article I-50: Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. A ~~European~~ law shall lay down the rules relating to the protection of individuals with regard to the processing of personal data by Union Institutions, bodies, **offices** and agencies, and by the Member States when carrying out activities which come under the scope of Union law, and the rules relating to the free movement of such data. Compliance with these rules shall be subject to the control of an independent authority.

Article I-49

Paragraph 2

Wording too restrictive: the terms "*legislative proposal*" suggests that only a Commission proposal can be meant; however, a legislative act can also be adopted on the initiative of a Member State (Article I-41) or of the European Parliament (Article III-232(2), third paragraph of Article III-235 and Article III-237(4), on the recommendation of the European Central Bank or at the request of the Court of Justice or the European Investment Bank (see comments on Article I-33). Furthermore, in the framework of the ordinary legislative procedure (Article III-302), legislative acts are adopted jointly by the Council and the European Parliament.

Paragraph 3

The correct term is "*medium*" not "*form*" of documents (cf. Article 3(a) of Regulation No 1049/2001).

Article I-50

With the disappearance of the "pillars", the rules on data protection will apply in the areas of CFSP and JHA, as well as to the European Council and the European Central Bank, which will be Institutions (see comments on Article I-18(2)).

Article I-51: Status of churches and non-confessional organisations

1. The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.
2. The Union equally respects the status of philosophical and non-confessional organisations.
3. Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.

TITLE VII: THE UNION'S FINANCES

Article I-52: Budgetary and financial principles

1. All items of Union revenue and expenditure shall be included in estimates drawn up for each financial year and shall be shown in the budget, ~~in accordance with the provisions of Part III.~~
2. The revenue and expenditure shown in the budget shall be in balance.
3. The expenditure shown in the budget shall be authorised for the annual budgetary period in accordance with the ~~European~~ law referred to in Article III-318.
4. The implementation of expenditure shown in the budget shall require the prior adoption of a binding legal act providing a legal basis for Union action and for the implementation of the **corresponding** expenditure in accordance with the European law referred to in Article III-318. ~~This act must take the form of a European law, a European framework law, a European regulation or a European decision.~~
5. With a view to maintaining budgetary discipline, the Union shall not adopt any act which is likely to have appreciable implications for the budget without providing an assurance that ~~the proposal or measure in question~~ **the expenditure arising from these acts** is capable of being financed within the limit of the Union's own resources and **in accordance with** the multiannual financial framework referred to in Article I-54.
6. The Union's budget shall be implemented in accordance with the principle of sound financial management. Member States shall cooperate with the Union to ensure that the appropriations entered in the budget are used in accordance with ~~this principles of sound financial management.~~
7. The Union and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Union in accordance with the provisions of Article III-321.

Article I-52

Paragraph 4

The second sentence is redundant. It already follows from the first sentence that the basic act must be legally binding, and such acts are defined in Article I-32.

The term "corresponding" is taken from Article 49(1) of Financial Regulation No 1605/2002.

Paragraph 5

It is the expenditure arising from an act that has to be financed, not the proposal or the measure.

Article I-53: The Union's *own* resources

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 of Ministers shall lay down the limit of the Union's **own** resources and may establish new categories of **own** resources or abolish an existing category. ~~That law shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements.~~ The Council of Ministers 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 of Ministers shall act after obtaining the consent of the European Parliament.

Article I-54: The multiannual financial framework

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 ~~for~~ of appropriations **for commitments** by category of expenditure in accordance with the provisions of Article III-308.
2. A ~~European~~ law of the Council of Ministers shall lay down the multiannual financial framework. The Council of Ministers 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 date of** the entry into force of **the Treaty establishing** the Constitution.

Comments and suggestions

Article I-53

Paragraph 3

The order of the sentences should be reversed to give a better indication of the chronological order.

Article I-54

Paragraph 4

Better legal drafting.

Article I-55: The Union's budget

The European Parliament and the Council of Ministers shall, on a proposal from the Commission and in accordance with the arrangements laid down in Article III-310, adopt the European law **establishing** the Union's annual budget.

TITLE VIII: THE UNION AND ITS IMMEDIATE ENVIRONMENT

Article I-56: The Union and its immediate environment

1. The Union shall develop a special relationship with neighbouring States, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation.
2. For this purpose, the Union may conclude ~~and implement~~ specific agreements with the countries concerned ~~in accordance with the provisions of Article III-227~~. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation.

Comments and suggestions

Article I-55

Note that the consequence of the word "*proposal*" is that the Council will act by an ordinary qualified majority (Article I-24(1)) and not by a special qualified majority, which applies when there is no proposal (Article I-24(2)) (see also comment re Article III-310).

Article I-56

Paragraph 2

The words "... *and implement* ..." are superfluous, since this refers to international agreements concluded by the Union.

The wording does not make it possible to distinguish clearly in what respect the legal nature of the agreements in question, as described in this paragraph, will differ from that of the association agreements provided for in Article III-226. If the objective is not to create a type of agreement different from an association agreement, it is suggested that this be clearly stated in the text and that the second sentence, which is somewhat confusing from the legal viewpoint, be deleted. Should the opposite be the case, agreements of this type should be better defined and the procedure for negotiating and concluding them precisely laid down in Article III-227.

The reference to Article III-227 is not legally necessary, since Article III-227(1) states that "*without prejudice to the specific provisions laid down in Articles III-217 [and III-228], agreements between the Union and third States or international organisations shall be negotiated and concluded in accordance with the following procedure.*" The same suggestion is made several times below.

TITLE IX: UNION MEMBERSHIP

Article I-57: Conditions of eligibility and procedure for accession to the Union

1. The Union shall be open to all European States which respect the values referred to in Article 2, and are committed to promoting them together.
2. Any European State which wishes to become a member of the Union shall address its application to the Council of Ministers. The European Parliament and the Member States' national Parliaments shall be notified of this application. The Council of Ministers shall act unanimously after consulting the Commission and after obtaining the consent of the European Parliament, **which shall act by a majority of its component members**. The conditions and arrangements for admission shall be the subject of an agreement between the Member States and the candidate State. That agreement shall be subject to ratification by each contracting State, in accordance with its respective constitutional requirements.

Article I-58: Suspension of *certain rights resulting from Union membership*

1. On ~~the~~ reasoned **initiative of** one third of the Member States ~~or of~~ the European Parliament or **on a proposal from** the Commission, the Council of Ministers, acting by a majority of four fifths of its members ~~after obtaining the consent of the European Parliament~~, may adopt, **after obtaining the consent of the European Parliament**, a ~~European~~ decision determining that there is a clear risk of a **serious breach of the values mentioned in Article 2** by a Member State ~~of the values mentioned in Article 2~~. Before making such a determination, the Council of Ministers shall hear the Member State in question and, acting in accordance with the same procedure, may address recommendations to that State.

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

Comments and suggestions

Article I-57

Paragraph 1

See comments regarding Article I-1(2).

Paragraph 2

Article I-57(2) omits the voting rule by which the European Parliament gives its consent (majority of its component members, see Article 49 TEU). This was assumed to be an oversight.

Article I-58

Paragraphs 1 and 2

The word "*proposal*" should preferably be kept solely for Commission proposals. The word "*initiative*" should be used for the Member States and, in paragraph 1, the European Parliament.

2. The European Council, acting by unanimity ~~on a proposal by~~ **on the initiative of** one third of the Member States or **on a proposal from** by the Commission ~~and after obtaining the consent of the European Parliament~~, may adopt, **after obtaining the consent of the European Parliament**, a ~~European~~ decision determining the existence of a serious and persistent breach by a Member State of the values mentioned in Article 2, after inviting the Member State in question to submit **its observations**.

3. Where a determination under paragraph 2 has been made, the Council ~~of Ministers~~, acting by a qualified majority, may adopt a ~~European~~ decision suspending certain of the rights deriving from the application of the Constitution to the Member State **in question**, including the voting rights ~~of that Member State in the Council of Ministers~~ **of the member of the Council representing that State**. ~~In so doing,~~ The Council ~~of Ministers~~ shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

In any case, that ~~Member State~~ shall ~~in any case~~ continue to be bound by its obligations under the Constitution.

4. **Subsequently**, the Council ~~of Ministers~~, acting by a qualified majority, may ~~subsequently~~ adopt a ~~European~~ decision varying or revoking measures ~~taken~~ **adopted** under paragraph 3 in response to changes in the situation which led to their being imposed.

5. For the purposes of this Article, ~~the Council of Ministers shall act without taking into account the vote of the member of the European Council or of the Council representing the~~ Member State in question **shall not take part in the vote**. ~~Abstentions by members present in person or represented shall not prevent the adoption of decisions referred to in paragraph 2.~~ **As from 1 November 2009, a qualified majority shall be defined as a majority of two thirds of the members of the Council, representing the participating Member States, comprising at least three fifths of the population of the States whose representatives take part in the vote. Before 1 November 2009, a qualified majority shall be defined as laid down in Article 2(4) of the Protocol on the transitional provisions relating to the Institutions and bodies of the Union.**

Comments and suggestions

Article I-58 (continued)

Paragraph 4

It is suggested that the word "*taken*" in the second line be replaced by "*adopted*" to take account of terminological usage elsewhere in the draft Constitution.

Paragraph 5

The terminology has been amended to reflect the fact that it is the members of the Council who vote (see comments on Article I-24).

It is not necessary to state that abstentions do not prevent the adoption of the decisions referred to; this follows from the general rule contained in Article III-246.

It is suggested that this paragraph be supplemented by a definition of the specific qualified majority vote necessary for adopting the decisions referred to in this Article: the proposed text contains the terminology used in Articles I-24 and I-43.

It is suggested that a reference be added to the European Council in which the representative of the Member State concerned also has no vote when the decision referred to in paragraph 2 is taken.

As regards the reference to the transitional provisions of the Protocol, see comments on Articles I-43(3) and I-19(2).

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

6. For the purposes ~~of paragraphs 1 and 2 of this Article~~, the European Parliament shall act by a two-thirds majority of the votes cast, representing the majority of its Members.

Article I-59: Voluntary withdrawal from the Union

1. Any Member State may decide to withdraw from the European Union ~~in accordance with its own constitutional requirements.~~
2. A Member State which decides to withdraw shall notify the European Council of its intention; ~~the European Council shall examine that notification.~~ In the light of the guidelines provided by the European Council, the Union shall ~~negotiate and~~ conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be concluded ~~on behalf of the Union~~ by the Council of Ministers, acting by a qualified majority, after obtaining the consent of the European Parliament.

~~The representative of the withdrawing Member State shall not participate in Council of Ministers or European Council discussions or decisions concerning it.~~

3. The Constitution shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, decides to extend this period.
- 3a. **For the purposes of paragraphs 2 and 3, the member of the Council representing the withdrawing Member State shall not participate in Council or European Council discussions or decisions concerning it.**
As from 1 November 2009, a qualified majority shall be defined as a majority of two thirds of the members of the Council, representing the participating Member States comprising at least three fifths of the population of the States whose representatives take part in the vote. Before 1 November 2009, a qualified majority shall be defined as laid down in Article 2(4) of the Protocol on the transitional provisions relating to the Institutions and bodies of the Union.
4. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article I-57.

Comments and suggestions

Article I-59

Paragraph 1

Stating that the Member State may decide "*in accordance with its own constitutional requirements*" could give the impression that it is a matter for the Union to check whether a Member State's internal rules have been observed or not. It is therefore suggested that this phrase be deleted.

Paragraph 2

It will be noted that the purpose and effect of concluding the agreement in question will be to change the Constitution.

In accordance with Article III-227, the Council acts unanimously when an agreement with a third State covers a field for which unanimity is required for the adoption of a Union act, whereas here the agreement laying down withdrawal arrangements is concluded by a qualified majority, even as regards those fields. Having said that, the essential aim of the agreement is to lay down the conditions on which all or part of the *acquis* will apply to the State in question without changing the substance of the *acquis*. Qualified majority might therefore present no problems.

The second subparagraph refers both to the decision to conclude the agreement to be taken in paragraph 2 and to the decision on a possible extension of the period referred to in paragraph 3. It would therefore be better to place it after paragraph 3 in a new paragraph 3a.

Paragraph 3

In practice, it is scarcely conceivable that the Constitution could cease to apply to the State in question in the absence of any agreement between it and the Union (rights of natural persons, undertakings, etc.).

It is suggested that this paragraph be supplemented by a definition of the specific qualified majority voting necessary for adopting the decisions referred to in this article; the proposed text takes over the terminology of Articles I-24 and I-43.

On the reference to the transitional provisions of the Protocol, see comment re Articles I-43(3) and I-19(2).

PART II

THE CHARTER OF FUNDAMENTAL RIGHTS OF THE UNION

PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, ~~goods~~, services, **goods** and capital, ~~and the freedom of establishment~~.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

Third paragraph

On the replacement of "*biens*" by "*marchandises*" in the French version and the order in which the freedoms are listed, see comment re Article I-4(1) above.

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.**

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

Fifth paragraph

The explanations "*prepared at the instigation of the Praesidium*" of the Convention which drafted the Charter of Fundamental Rights have been "*updated*" under the authority of the Praesidium of the European Convention (cf. CONV 828/1/03 of 18 July 2003).

Because these explanations are cited in the text of the Constitutional Treaty, they must be accessible to all. They should therefore be published in the "C" series of the OJ, or inserted into a declaration by the IGC in the Final Act, which will in turn be published in the "C" series of the OJ.

TITLE I: DIGNITY

Article II-1: Human dignity

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

Article II-2: Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Article II-3: Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - (a) the free and informed consent of the person concerned, according to the procedures laid down by law,
 - (b) the prohibition of eugenic practices, in particular those aiming at the selection of persons,
 - (c) the prohibition on making the human body and its parts as such a source of financial gain,
 - (d) the prohibition of the reproductive cloning of human beings.

Article II-4: Prohibition of torture and inhuman or degrading treatment or punishment

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

Article II-5: Prohibition of slavery and forced labour

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

TITLE II: FREEDOMS

Article II-6: Right to liberty and security

Everyone has the right to liberty and security of person.

Article II-7: Respect for private and family life

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

Article II-8: Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

3. Compliance with these rules shall be subject to control by an independent authority.

Article II-9: Right to marry and right to found a family

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

Article II-10: Freedom of thought, conscience and religion

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

Article II-11: Freedom of expression and information

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

Article II-12: Freedom of assembly and of association

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

Article II-12

Paragraph 2

On the use of the feminine in certain languages (e.g. in French "*des citoyens ou citoyennes*"), see comments above re Article I-3(2). It will be noted that in Part II, unlike in Part I, the feminine word ("*citoyennes*") follows the masculine word. (Does not apply to the English version).

Article II-13: Freedom of the arts and sciences

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

Article II-14: Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article II-15: Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article II-16: Freedom to conduct a business

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

Article II-17: Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

Article II-18: Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Constitution.

Article II-19: Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

TITLE III: EQUALITY

Article II-20: Equality before the law

Everyone is equal before the law.

Article II-21: Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

Article II-22: Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article II-23: Equality between men and women

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

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article II-24: The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private Institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article II-21

Paragraph 2

In the French version, this paragraph is almost identical to Article I-4(2) (except for the words "*fondée sur*") (the legal basis is contained in Article III-7). It is suggested that the French wording be aligned on Article I-4(2) (which corresponds to the wording of current Article 12 TEC). Since this involves repetition, it could, moreover, be deleted. (Does not affect the English version).

Article II-25: The rights of the elderly

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

Article II-26: Integration of persons with disabilities

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

TITLE IV: SOLIDARITY

Article II-27: Workers' right to information and consultation within the undertaking

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

Article II-28: Right of collective bargaining and action

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

Article II-29: Right of access to placement services

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

Article II-30: Protection in the event of unjustified dismissal

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

Article II-31: Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article II-32: Prohibition of child labour and protection of young people at work

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

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

Article II-33: Family and professional life

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

Article II-34: Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

Article II-35: Health care

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

Article II-36: Access to services of general economic interest

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

Article II-37: Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article II-35

It will be noted that the second sentence reproduces Article III-179(1) word for word.

Article II-37

This provision is similar to Article III-4 (as redrafted and renumbered III-1(2)(c)), but the latter does not refer to "*the improvement*" of the quality of the environment, or to "*ensuring*" environmental protection "*in accordance with the principle*" of sustainable development.

Article II-38: Consumer protection

Union policies shall ensure a high level of consumer protection.

TITLE V: CITIZENS' RIGHTS

Article II-39: Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Article II-40: Right to vote and to stand as a candidate at municipal elections

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

Article II-41: Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the Institutions, bodies, **offices** and agencies of the Union.
2. This right includes:
 - (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - (c) the obligation of the administration to give reasons for its decisions.

Article II-38

This provision is similar to Article III-5 (as redrafted and renumbered III-1(3)(c)).

Article II-39

Paragraph 1

Repetition of Article I-8(2)(b).

Paragraph 2

Paragraph 2 is almost identical to the first sentence of Article I-19(2) (which refers to "*direct universal suffrage*" in a "*free and secret ballot*").

Article II-40

Repetition of Article I-8(2)(b).

3. Every person has the right to have the Union make good any damage caused by its Institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every ~~citizen~~**person** may write to the Institutions of the Union in one of the languages of the Constitution and must have an answer in the same language.

Article II-42: Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the Institutions, bodies, **offices** and agencies of the Union, ~~in whatever~~ **their medium**~~form they are produced~~.

Article II-43: European Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the Institutions, bodies, **offices** or agencies of the Union, with the exception of the ~~European Court of Justice~~ **of the European Union** and the ~~High Court~~ acting in ~~its~~**their** judicial role.

Article II-44: Right to petition

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

Article II-41(4)

Paragraph 4

Under Articles I-8(2)(d) and III-12, the right to write to the Institutions (and advisory bodies – which are not mentioned here) of the Union in one of the languages of the Constitution and to obtain a reply in the same language is granted only to citizens of the Union, and not to "*every person*". As Article II-41 will in any event have to be read and interpreted in the light of Article II-52(2), it is suggested that the text be aligned as regards this point.

Article II-42

Repetition of Article I-49(3). (The wording should be aligned on that suggested for the latter Article: "*whatever their medium*").

Article II-43

This Article is identical in its substance to the second sentence of Article III-237(1). The right for citizens to have recourse to the Ombudsman is also mentioned in Article I-8(2)(d). For the Court of Justice of the European Union, see comment above re Article I-28.

Article II-44

This Article is almost identical to Article III-236 (except that the latter specifies that the petition must concern "*a matter which comes within the Union's fields of activity*" and which affects the petitioner directly). The right for citizens to petition the European Parliament is also mentioned in Article I-8(2)(d).

Article II-45: Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Constitution, to nationals of third countries legally resident in the territory of a Member State.

Article II-46: Diplomatic and consular protection

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

TITLE VI: JUSTICE

Article II-47: Right to an effective remedy and to a fair trial

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

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

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Article II-45

Paragraph 1

Paragraph 1 is identical in substance to Article I-8(2)(a).

Article II-46

This Article is identical in substance to Article I-8(2)(c). For the word "*nationaux*" in the French version, see comment above re the latter Article.

Article II-48: Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Article II-49: Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

Article II-50: Right not to be tried or punished twice in criminal proceedings for the same criminal offence

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

Article II-48

On the use of the feminine/masculine in the French version (here: "*Tout accusé*" instead of "*Tout accusé **ou toute accusée** ...*"), see comments re Article I-3(2). (Does not affect the English version).

TITLE VII: GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

Article II-51: Field of application

1. The provisions of this Charter are addressed to the Institutions, bodies, **offices** and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the other Parts of the Constitution.
2. This Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks defined in the other Parts of the Constitution.

Article II-52: Scope and interpretation of rights and principles

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by ~~law~~ **a legislative act** and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter for which provision is made in other Parts of the Constitution shall be exercised under the conditions and within the limits defined by these relevant Parts

Article II-52

Paragraph 1

It is suggested that the term "*law*" be replaced by "*a legislative act*" in order to avoid any confusion with the term "*law*" as used in Article I-32 as a legal act of the Union.

3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by Institutions, bodies, **offices and agencies** of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.
6. Full account shall be taken of national laws and practices as specified in this Charter.

Article II-53: Level of protection

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

Article II-54: Prohibition of abuse of rights

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

Article II-52

Paragraph 5

It is suggested that "*offices and agencies*" be inserted in the second line.

PART III

THE POLICIES AND FUNCTIONING OF THE UNION

TITLE I

CLAUSES PROVISIONS OF GENERAL APPLICATION

Article III-1/2/3/4/5 (ex Articles 3(2), 6, 127(2), 151(4), 152(1), 153(2), 157(3), 159, 178)

1. The Union shall ensure consistency between ~~the~~ **its** different policies and activities ~~referred to in this Part~~, taking all of ~~the Union's~~ **its** objectives into account and in accordance with the principle of conferring of powers.

~~Article III-2~~

2. The Union shall integrate the following requirements into the definition and implementation of its policies and activities:

(a) ~~In all the activities referred to in this Part, the Union shall aim to eliminate~~ **elimination of** inequalities; and ~~to promote~~ **promotion of** equality; between men and women;;

~~Article III-3~~

(b) ~~In defining and implementing the policies and activities referred to in this Part, the Union shall aim to combat~~ **combating** discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation;;

~~Article III-4~~

(c) **a high level of** ~~E~~environmental protection requirements ~~must be integrated into the definition and implementation of the Union policies and activities referred to in this Part~~, in particular with a view to promoting sustainable development;;

(d) **a high level of protection of human health.**

~~Article III-5~~

3. In the definition and implementation of its policies and activities, the Union shall take account of:

(a) **the objective of achieving a high level of employment;**

(b) **the objective of strengthening the Union's economic and social cohesion;**

(c) **the requirements of a high level of** ~~€~~consumer protection requirements ~~shall be taken into account in defining and implementing other Union policies and activities;~~

Articles III-1 to III-5

The requirement of consistency applies to all the Union's policies and activities and not only to Part III. The same is true for the horizontal provisions of Articles III-2 to III-5. It is therefore pointless to refer only to Part III. This requirement is, furthermore, not stipulated in Article III-5.

With regard to provisions of horizontal scope, it is suggested that they be combined in one article, adding to it the similar provisions dispersed over different chapters (see Articles III-99(2) (employment), Article III-117, first subparagraph (cohesion), Article III-179(1), first subparagraph (health), III-180(3) (industry), III-181(4) (culture) and III-218(1), second subparagraph (development) (see report of 5 March 2003 by the group of experts from the three Legal Services)).

With regard to environmental protection and consumer protection (Articles III-4 and III-5 or, according to the suggestion that provisions be combined, Article I-1/2/3/4/5(2)(c), and (3)(c), it is suggested ~~that~~ **stipulating** *"a high level of protection"* based on the wording of Articles III-129(2) and II-37 (environment) and III-132(1), and II-38 (consumer affairs).

- (d) **the objective of fulfilling the conditions required for the competitiveness of the Union's industry;**
- (e) **cultural aspects, in particular to respect and promote the diversity of cultures;**
- (f) **development cooperation objectives, where its policies and activities are likely to affect developing countries.**

Article III-6 (ex Article 16 TEC)

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

TITLE II

NON-DISCRIMINATION AND CITIZENSHIP

Article III-7 (ex Article 12 TEC)

~~European Union~~ Laws or framework laws may lay down rules to prohibit discrimination on grounds of nationality as referred to in Articles I-4(2) and **II-21(2)**.

Article III-8 (ex Article 13 TEC)

1. Without prejudice to the other provisions of the Constitution ~~and within the limits of the powers conferred~~ **assigned** by it ~~upon to the Union,~~ **and pursuant to Article II-21(1),** a ~~European law or framework law of the Council of Ministers~~ may establish the measures needed to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The Council of Ministers shall act unanimously after obtaining the consent of the European Parliament.
2. **By way of derogation from paragraph 1,** ~~European~~ laws or framework laws may establish basic principles for Union incentive measures and define such incentive measures, to support action taken by Member States **in order to contribute to the achievement of the objectives referred to in paragraph 1,** excluding any harmonisation of their laws and regulations.

Article III-9 (ex Article 18 TEC)

1. If action by the Union should prove necessary to facilitate the exercise of the right, referred to in Articles I-8(2)(a) and **II-45(1)**, of every Union citizen to move and reside freely and the Constitution has not provided the necessary powers, ~~European~~ laws or framework laws may establish measures for that purpose.
2. For the same purposes **as those referred to in paragraph 1** and unless the Constitution has provided for **the necessary** powers ~~of action in this area,~~ measures concerning passports, identity cards, residence permits or any other such document and measures concerning social security or social protection may be laid down by a ~~European~~ law or framework law of the Council of Ministers. The Council of Ministers shall act unanimously after consulting the European Parliament.

Articles III-7 to III-13

The references to Articles in Parts I and II in which the rights and measures referred to in Articles III-7 to III-13 have already been mentioned are not exhaustive. It is suggested that these references be complemented in order to improve the legal consistency of the text and to contribute towards greater transparency.

Article III-8

Paragraph 2

The deletion, at the beginning of paragraph 2, of the words "*By way of derogation from paragraph 1*", which appear in the existing Article 13(2) TEC, by abolishing the "rule/exception" principle, would lead to legal problems of interpretation regarding the applicability of paragraph 1 or paragraph 2. It is therefore suggested that they be reinstated.

It appears that the words "*in order to contribute to the achievement of the objectives referred to in paragraph 1*", which appear in the existing Article 13(2) TEC, have been deleted in error. It is suggested that they be reinstated.

Article III-9

Paragraph 1

Regarding the use of the feminine in certain languages (in French: "*des citoyens ou citoyennes*"), see remarks re Article I-3(2). It should be noted that here, contrary to Part I, the feminine form of the word ("*citoyennes*") comes after the masculine form.

Article III-10 (ex Article 19 TEC)

A ~~European~~ law or framework law of the Council of ~~Ministers~~ shall determine the detailed arrangements for exercising the right, referred to in Articles I-8(2)(b), **II-39 and II-40**, for every Union citizen to vote and to stand as a candidate in municipal elections and elections to the European Parliament in their Member State of residence without being a national of that State. The Council of ~~Ministers~~ shall act unanimously after consulting the European Parliament. These arrangements may provide for derogations where warranted by problems specific to a Member State.

The right to vote and to stand as a candidate in elections to the European Parliament shall be exercised without prejudice to Article III-232(21) and the measures adopted for its implementation.

Article III-11 (ex Article 20 TEC)

Member States shall adopt the necessary provisions to secure diplomatic and consular protection of citizens of the Union in third countries, as referred to in Articles I-8(2)(c) **and II-46**.

A ~~European~~ law of the Council of ~~Ministers~~ may establish the measures necessary to facilitate such protection. The Council of ~~Ministers~~ shall act after consulting the European Parliament.

Article III-12 (ex Article 21 TEC)

The languages in which every citizen of the Union has the right to address the institutions or advisory bodies under Articles I-8(2)(d) **and II-41(4)**, and to have an answer, are those listed in Article IV-10. The institutions and advisory bodies referred to in ~~this Article~~ **I-8(2)(d)** are those listed in Articles I-18(2), **I-29**, I-30 and I-31 and also the European Ombudsman.

Article III-13 (ex Article 22)

The Commission shall report to the European Parliament, to the Council of ~~Ministers~~ and to the Economic and Social Committee every three years on the application of ~~the provisions of~~ Article I-8 and of this Title. This report shall take account of the development of the Union.

On this basis, and without prejudice to the other provisions of the Constitution, a ~~European~~ law or framework law of the Council of ~~Ministers~~ may add to the rights laid down in Article I-8 **and in this Title**. The Council of ~~Ministers~~ shall act unanimously after obtaining the consent of the European Parliament. The law or framework law concerned shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements.

Article III-12

It is suggested that a reference to Article II-41(4) be included.

It is suggested that a reference to Article I-29 (European Central Bank) be included, as Article I-8(2)(d) refers to all the Institutions and therefore also includes the ECB, which is an Institution according to Article I-29(3), although it is not mentioned in Article I-18(2) relating to the "Institutional framework".

Article III-13

It is suggested that a reference to the current title be made in the 2nd paragraph. This reference also applies to the Articles of Part II, to which a reference has been added in Articles III-7 to III-12.

TITLE III
INTERNAL POLICIES AND ACTION

CHAPTER I
INTERNAL MARKET

SECTION 1
ESTABLISHMENT OF THE INTERNAL MARKET

Article III-14 (ex Articles 14 and 15 TEC)

1. The Union shall adopt measures with the aim of establishing the internal market, in accordance with this Article, Article III-15, Article III-26(1) and Articles III-29, III-39, III-62, III-65 and III-143 and without prejudice to the other provisions of the Constitution.
2. The internal market shall comprise an area without internal frontiers in which the free movement of ~~goods~~, persons, services, **goods** and capital is ensured in accordance with the Constitution.
3. The Council of ~~Ministers~~, on a proposal from the Commission, shall adopt ~~European~~ regulations and decisions determining the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned.

~~Article III-15 (ex Article 15 TEC)~~

4. When drawing up its proposals with a view to achieving the objectives set out in ~~Article III-14~~ **paragraphs 1 and 2**, the Commission shall take into account the extent of the effort that certain economies showing differences in development will have to sustain for the establishment of the internal market and it may propose appropriate measures.

If these measures take the form of derogations, they must be of a temporary nature and must cause the least possible disturbance to the functioning of the internal market.

Articles III-14 and III-15

It is suggested that these two Articles be combined into one.

Article III-14

Paragraph 1

It should be noted that the deadline of 31 December 1992 and the word "*progressively*", which appear in the existing Article 14 TEC ("*The Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992*") have been deleted.

Article III-16 (ex Article 297 TEC)

Member States shall consult each other with a view to taking together the steps needed to prevent the functioning of the internal market being affected by steps which a Member State may be called upon to take in the event of serious internal disturbances affecting the maintenance of law and order, in the event of war, serious international tension constituting a threat of war, or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security.

Article III-17 (ex Article 298 TEC)

If steps taken in the circumstances referred to in Articles III-16 and III-342 have the effect of distorting the conditions of competition in the internal market, the Commission shall, together with the **Member State** concerned, examine how these steps can be adjusted to the rules laid down in the Constitution.

By way of derogation from the procedure laid down in Articles III-265 and III-266, the Commission or any Member State may bring the matter directly before the Court of Justice if it considers that another Member State is making improper use of the powers provided for in Articles III-16 and III-342. The Court of Justice shall give its ruling in camera.

SECTION 2

FREE MOVEMENT OF PERSONS AND SERVICES

Subsection 1

Workers

Article III-18 (ex Article 39 TEC)

1. Workers shall have the right to move freely within the Union.
2. Any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment shall be prohibited.
3. Workers shall have the right, subject to limitations justified on grounds of public policy, public security or public health:
 - (a) to accept offers of employment actually made;
 - (b) to move freely within the territory of Member States for this purpose;

Article III-16

It should be noted that this Article, which has never been used, does not provide for the intervention of any Institution of the Union. In view of the highly exceptional nature of this provision, no suggestion is made, although it is hard to conceive how the measures mentioned could be taken jointly by the Member States alone, without the intervention of the competent Institutions.

- (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
 - (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in ~~European~~ regulations adopted by the Commission.
4. This Article shall not apply to employment in the public service.

Article III-19 (ex Article 40 TEC)

~~European~~ Laws or framework laws shall establish the measures needed to bring about freedom of movement for workers, as defined in Article III-18. They shall be adopted after consultation of the Economic and Social Committee.

Such ~~European~~ laws or framework laws shall aim, in particular, to:

- (a) ensure close cooperation between national employment services;
- (b) abolish those administrative procedures and practices and those qualifying periods in respect of eligibility for available employment, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to liberalisation of the movement of workers;
- (c) abolish all such qualifying periods and other restrictions provided for either under national legislation or under agreements previously concluded between Member States as impose on workers of other Member States conditions regarding the free choice of employment other than those imposed on workers of the State concerned;
- (d) set up appropriate machinery to bring offers of employment into touch with applications for employment and to facilitate the achievement of a balance between supply and demand in the employment market in such a way as to avoid serious threats to the standard of living and level of employment in the various regions and industries.

Article III-20 (ex Article 41)

Member States shall, within the framework of a joint programme, encourage the exchange of young workers.

Article III-20

It should be noted that this Article does not provide for the intervention of any Institution of the Union. It is probably for this reason that it has never been used. Unless it is amended to provide for intervention by the Institutions of the Union, it could be deleted (see report of 13 March 2003 by the group of experts of the three Legal Services). See comments re Article III-109.

Article III-21 (ex Article 42 TEC)

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.

Subsection 2

Freedom of establishment

Article III-22 (ex Article 43 TEC)

Within the framework of this Subsection, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

Nationals of a Member State shall have the right, in the territory of another Member State, to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article III-27, under the conditions laid down for its own nationals by the law of the Member State where such establishment is effected, subject to the provisions of ~~the~~ **Section 4 of this Chapter** relating to capital.

Article III-23 (ex Article 44 TEC)

1. ~~European~~ **Framework** laws shall establish measures in order to attain freedom of establishment as regards a particular activity. They shall be adopted after consultation of the Economic and Social Committee.
2. The European Parliament, the Council ~~of Ministers~~ and the Commission shall carry out the duties devolving upon them under paragraph 1, in particular:
 - (a) by according, as a general rule, priority treatment to activities where freedom of establishment makes a particularly valuable contribution to the development of production and trade;
 - (b) by ensuring close cooperation between the competent authorities in the Member States in order to ascertain the particular situation within the Union of the various activities concerned;

- (c) by abolishing those administrative procedures and practices, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to freedom of establishment;
- (d) by ensuring that workers from one Member State employed in the territory of another Member State may remain in that territory for the purpose of taking up activities therein as self-employed persons, where they satisfy the conditions which they would be required to satisfy if they were entering that State at the time when they intended to take up such activities;
- (e) by enabling a national of one Member State to acquire and use land and buildings situated in the territory of another Member State, insofar as this does not conflict with the principles laid down in Article III-123(2);
- (f) by effecting the progressive abolition of restrictions on freedom of establishment in every branch of activity under consideration, both as regards the conditions for setting up agencies, branches or subsidiaries in the territory of a Member State and as regards the conditions governing the entry of personnel belonging to the main establishment into managerial or supervisory posts in such agencies, branches or subsidiaries;
- (g) by coordinating to the necessary extent the safeguards which, for the protection of the interests of members and others, are required by Member States of companies or firms within the meaning of the second paragraph of Article III-27 with a view to making such safeguards equivalent throughout the Union;
- (h) by satisfying themselves that the conditions of establishment are not distorted by aids granted by Member States.

Article III-24 (ex Article 45 TEC)

This Subsection shall not apply, so far as any given Member State is concerned, to activities which in that State are connected, even occasionally, with the exercise of official authority.

~~European Union~~ Laws or framework laws may exempt certain activities from application of this Subsection.

Article III-25 (ex Article 46 TEC)

1. This Subsection and measures adopted in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action in Member States providing for special treatment for foreign nationals on grounds of public policy, public security or public health.

2. ~~European Union~~ Framework laws shall coordinate the national provisions referred to in paragraph 1.

Article III-26 (ex Article 47 TEC)

1. ~~European-L~~ Framework laws shall make it easier for persons to take up and pursue activities as self-employed persons. They shall cover:
- (a) the mutual recognition of diplomas, certificates and other evidence of formal qualifications;
 - (b) the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons.
2. In the case of the medical and allied and pharmaceutical professions, the progressive abolition of restrictions shall be dependent upon coordination of the conditions for their exercise in the various Member States.

Article III-27 (ex Article 48 TEC)

Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union shall, for the purposes of this Subsection, be treated in the same way as natural persons who are nationals of Member States.

"Companies or firms" means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.

Article III-28 (ex Article 294 TEC)

Member States shall accord nationals of the other Member States the same treatment as their own nationals as regards participation in the capital of companies or firms within the meaning of **the second paragraph of** Article III-27, without prejudice to the application of the other provisions of the Constitution.

Subsection 3

Freedom to provide services

Article III-29 (ex Article 49 TEC)

Within the framework of this Subsection, restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.

~~European-L~~ Laws or framework laws may extend this Subsection to nationals of a third country who provide services and who are established within the Union.

Article III-30 (ex Article 50 TEC)

Services shall be considered to be "services" within the meaning of the Constitution where they are normally provided for remuneration, insofar as they are not governed by the provisions relating to freedom of movement for goods, capital and persons.

"Services" shall in particular include:

- (a) activities of an industrial character;
- (b) activities of a commercial character;
- (c) activities of craftsmen;
- (d) activities of the professions.

Without prejudice to the Subsection relating to the right of establishment, the person providing a service may, in order to do so, temporarily pursue his or her activity in the Member State where the service is provided, under the same conditions as are imposed by that State on its own nationals.

Article III-31 (ex Article 51 TEC)

1. Freedom to provide services in the field of transport shall be governed by the Section relating to transport.
2. The liberalisation of banking and insurance services connected with movements of capital shall be effected in step with the liberalisation of movement of capital.

Article III-32 (ex Article 52 TEC)

1. A ~~European~~ framework law shall establish the measures in order to achieve the liberalisation of a specific service. It shall be adopted after consultation of the Economic and Social Committee.
2. As regards the ~~European~~ framework law referred to in paragraph 1, priority shall as a general rule be given to those services which directly affect production costs or the liberalisation of which helps to promote trade in goods.

Article III-33 (ex Article 53 TEC)

The Member States declare their readiness to undertake the liberalisation of services beyond the extent required by the ~~European~~ framework law adopted pursuant to Article III-32(1), if their general economic situation and the situation of the economic sector concerned so permit.

To this end, the Commission shall make recommendations to the Member States concerned.

Article III-33

It should be noted that this Article has never been used. Unless it is amended to provide for intervention by the Union Institutions other than mere recommendations, even though it concerns one of the four freedoms (services), it could be deleted. In any event, the words "*The Member States declare their readiness to*", which makes one think of a declaration by the Member States, could be replaced by more appropriate wording for a legislative text.

Article III-34 (ex Article 54 TEC)

As long as restrictions on freedom to provide services have not been abolished, ~~each~~ **the** Member States shall apply such restrictions without distinction on grounds of nationality or of residence to all persons providing services within the meaning of the first paragraph of Article III-29.

Article III-35 (ex Article 55 TEC)

Articles III-24 to III-27 shall apply to the matters covered by this Subsection.

Article III-34

It is suggested that the wording "*each Member State*" be brought into line with the wording used e.g. in Articles III-28, III-33, III-117: "*(the) Member States*".

SECTION 3
FREE MOVEMENT OF GOODS

Subsection 1

Customs union

Article III-36/~~37/38/39/40~~ (ex Articles 23/~~24/25/26/27~~ TEC)

1. The Union shall comprise a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries.
2. Article III-38 and Subsection 3 ~~of this Section~~ shall apply to products originating in Member States and to products coming from third countries which are in free circulation in Member States.

~~Article III 37 (ex Article 24 TEC)~~

3. Products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State, and if they have not benefited from a total or partial drawback of such duties or charges.

~~Article III 38 (ex Article 25 TEC)~~

4. Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature.

~~Article III 39 (ex Article 26 TEC)~~

5. The Council of Ministers, on a proposal from the Commission, shall adopt the European regulations and decisions fixing Common Customs Tariff duties.

Articles III-36, III-37, III-38, III-39 and III-40

It is suggested that these five Articles be amalgamated.

~~Article III-40 (ex Article 27 TEC)~~

6. In carrying out the tasks entrusted to it under this ~~Subsection~~ **Article** the Commission shall be guided by:

- (a) the need to promote trade between Member States and third countries;
- (b) developments in conditions of competition within the Union insofar as they lead to an improvement in the competitive capacity of undertakings;
- (c) the requirements of the Union as regards the supply of raw materials and semi-finished goods; in this connection the Commission shall take care to avoid distorting conditions of competition between Member States in respect of finished goods;
- (d) the need to avoid serious disturbances in the economies of Member States and to ensure rational development of production and an expansion of consumption within the Union.

Subsection 2

Customs cooperation

Article III-41 (ex Article 135 TEC)

Within the scope of application of the Constitution, ~~European~~ laws or framework laws shall establish measures in order to strengthen customs cooperation between Member States and between the latter and the Commission.

Subsection 3

Prohibition of quantitative restrictions

Article III-42 (ex Articles 28 and 29 TEC)

Quantitative restrictions on imports and exports and all measures having equivalent effect shall be prohibited between Member States.

Article III-43 (ex Article 30 TEC)

Article III-42 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

Article III-44 (ex Article 31 TEC)

1. Member States shall adjust any State monopolies of a commercial character so as to ensure that no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of Member States.

This Article shall apply to any body through which a Member State, in law or in fact, either directly or indirectly supervises, determines or appreciably influences imports or exports between Member States. It shall likewise apply to monopolies delegated by the State to others.

2. Member States shall refrain from any new step which is contrary to the principles laid down in paragraph 1 or which restricts the scope of the Articles dealing with the prohibition of customs duties and quantitative restrictions between Member States.

3. If a State monopoly of a commercial character has rules which are designed to make it easier to dispose of agricultural products or obtain for them the best return, steps should be taken in applying this Article to ensure equivalent safeguards for the employment and standard of living of the producers concerned.

Article III-44

Paragraph 1

It would be legally impossible to add the feminine form here ("*female nationals*") as this would change the meaning of the rule by confining it to equality between men and women rather than equality between all nationals as individuals (see also comments on Article I-3(2)).

SECTION 4

CAPITAL AND PAYMENTS

Article III-45 (ex Article 56 TEC)

Within the framework of this Section, restrictions both on the movement of capital and on payments between Member States and between Member States and third countries shall be prohibited.

Article III-46 (ex Article 57 TEC)

1. Article III-45 shall be without prejudice to the application to third countries of any restrictions which existed on 31 December 1993 under national or Union law adopted in respect of the movement of capital to or from third countries involving direct investment – including in real estate –, establishment, the provision of financial services or the admission of securities to capital markets.

2. ~~European~~ Laws or framework laws shall enact measures on the movement of capital to or from third countries involving direct investment – including investment in real estate –, establishment, the provision of financial services or the admission of securities to capital markets.

The European Parliament and the Council of Ministers shall endeavour to achieve the objective of free movement of capital between Member States and third countries to the greatest extent possible and without prejudice to other provisions of the Constitution.

3. Notwithstanding paragraph 2, only a ~~European~~ law or framework law of the Council ~~of Ministers~~ may enact measures which constitute a step back in Union law as regards the liberalisation of the movement of capital to or from third countries. The Council ~~of Ministers~~ shall act unanimously after consulting the European Parliament.

Article III-47 (ex Article 58 TEC)

1. Article III-45 shall be without prejudice to the right of Member States:

- (a) to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested;
- (b) to take ~~all~~ requisite steps to prevent infringements of national provisions laid down by law or regulation, in particular in the field of taxation and the prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information, or to take steps which are justified on grounds of public policy or public security.

Article III-47

Paragraph 1

Deletion of a legally superfluous word from subparagraph (b).

2. This Section shall be without prejudice to the applicability of restrictions on the right of establishment which are compatible with the Constitution.
3. The steps and procedures referred to in paragraphs 1 and 2 shall not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments as defined in Article III-45.

Article III-48 (ex Article 59 TEC)

Where, in exceptional circumstances, movements of capital to or from third countries cause, or threaten to cause, serious difficulties for the operation of economic and monetary union, the Council of Ministers, on a proposal from the Commission, may adopt ~~European~~ regulations or decisions introducing safeguard measures with regard to third countries for a period not exceeding six months if such measures are strictly necessary. It shall act after consulting the European Central Bank.

Article III-49 (ex Article 60 TEC)

Where necessary to achieve the objectives set out in Article III-158, in particular as regards preventing ~~on of~~ and **combatting** ~~fight against~~ organised crime, terrorism and trafficking in human beings, ~~European~~ laws may define a framework for measures with regard to capital movements and payments, such as the freezing of funds, financial assets or economic gains belonging to, or owned or held by, natural or legal persons, groups or non-state entities.

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

Article III-49

Suggested correction to the French version to bring "*groupements*" into line with "*groupes*" as used in Article III-224.

It might also be worth considering whether to amalgamate this Article with Article III-224 and move it to a new Title Va (see comments re III-224 below).

SECTION 5

RULES ON COMPETITION

Subsection 1

Rules applying to undertakings

Article III-50 (ex Article 81 TEC)

1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. Paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings;
- any decision or category of decisions by associations of undertakings;
- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article III-51 (ex Article 82 TEC)

Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market insofar as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article III-52 (ex Article 83 TEC)

1. The Council of Ministers, on a proposal from the Commission, shall adopt the European regulations to give effect to the principles set out in Articles III-50 and III-51. It shall act after consulting the European Parliament.

2. The European regulations referred to in paragraph 1 shall be designed in particular:

- (a) to ensure compliance with the prohibitions laid down in Article III-50(1) and in Article III-51 by making provision for fines and periodic penalty payments;
- (b) to lay down detailed rules for the application of Article III-50(3), taking into account the need to ensure effective supervision on the one hand, and to simplify administration to the greatest possible extent on the other;
- (c) to define, if need be, in the various branches of the economy, the scope of the provisions of Articles III-50 and III-51;
- (d) to define the respective functions of the Commission and of the Court of Justice in applying the provisions laid down in this paragraph;
- (e) to determine the relationship between national laws and this Section or the European regulations adopted pursuant to this Article.

Article III-53 (ex Article 84 TEC)

Until the entry into force of the ~~European~~ regulations adopted pursuant to Article III-52, the authorities in Member States shall rule on the admissibility of agreements, decisions and concerted practices and on abuse of a dominant position in the internal market in accordance with their internal law and Articles III-50, in particular paragraph 3, and Article III-51.

Article III-54 (ex Article 85 TEC)

1. Without prejudice to Article III-53, the Commission shall ensure the application of the principles laid down in Articles III-50 and III-51. On application by a Member State or on its own initiative, and in cooperation with the competent authorities in the Member States, which shall give it their assistance, the Commission shall investigate cases of suspected infringement of these principles. If it finds that there has been an infringement, it shall propose appropriate measures to bring it to an end.
2. If the infringement is not brought to an end, the Commission shall adopt a reasoned ~~European~~ decision recording the infringement of the principles. The Commission may publish its decision and authorise Member States to take the steps, the conditions and details of which it shall determine, needed to remedy the situation.
3. The Commission may adopt ~~European~~ regulations relating to the categories of agreement in respect of which the Council of Ministers has ~~acted~~ **adopted a regulation** pursuant to Article III-52(2)(b).

Article III-55 (ex Article 86 TEC)

1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any provision contrary to the provisions of the Constitution, in particular Article I-4(2) and Articles ~~III-55~~**50** to III-58.
2. Undertakings entrusted with the operation of services of general economic interest or having the character of a ~~revenue~~ income-producing monopoly shall be subject to the provisions of the Constitution, in particular to the rules on competition, insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the Union's interests.
3. The Commission shall ensure the application of this Article and shall, where necessary, adopt appropriate ~~European~~ regulations or decisions.

Article III-54

Paragraph 3

It is suggested that for reasons of clarity, "*acted*" should be replaced by "*adopted a regulation*".

The scope of the powers assigned to the Council and the Commission respectively, and whether or not Commission regulations are subordinate to Council regulations, is not clear from the wording of this paragraph.

Article III-55

Paragraph 1

The reference to Article III-55 (rather than Article III-50) does not correspond to the references in the existing Article 86(1) of the TEC. Although it is difficult to know whether or not the omission is intentional, it is more likely that it is not, and it is therefore suggested that the reference to Article III-55 be replaced by a reference to Article III 50..

Subsection 2

Aids granted by Member States

Article III-56 (ex Article 87 TEC)

1. Save as otherwise provided in the Constitution, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the internal market.
2. The following shall be compatible with the internal market:
 - (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
 - (b) aid to make good the damage caused by natural disasters or exceptional occurrences;
 - (c) aid granted to the economy of certain areas of the Federal Republic of Germany **still** affected by the division of Germany, insofar as such aid is required in order to compensate for the economic disadvantages caused by that division.
3. The following may be considered to be compatible with the internal market:
 - (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
 - (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
 - (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
 - (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest;
 - (e) such other categories of aid as may be specified by ~~European~~ regulations or decisions adopted by the Council of Ministers on a proposal from the Commission.

Article III-56

Paragraph 2

In (c), since the division of Germany came to an end before entry into force of the Treaty establishing the Constitution, it would be more accurate to amend this sentence (see also Article III-141).

Article III-57 (ex Article 88 TEC)

1. The Commission, in cooperation with Member States, shall keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the internal market.
2. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a Member State or through State resources is not compatible with the internal market having regard to Article III-56, or that such aid is being misused, it shall adopt a ~~European~~ decision requiring the **Member State** concerned to abolish or alter such aid within a period of time to be determined by the Commission.

If the **Member State** concerned does not comply with this ~~European~~ decision within the prescribed time, the Commission or any other interested Member State may, in derogation from Articles III-265 and III-266, refer the matter to the Court of Justice direct.

On application by a Member State, the Council of ~~Ministers~~ may adopt unanimously a ~~European~~ decision that aid which that State is granting or intends to grant shall be considered to be compatible with the internal market, in derogation from Article III-56 or from ~~European~~ regulations provided for in Article III-58, if such a decision is justified by exceptional circumstances. If, as regards the aid in question, the Commission has already initiated the procedure provided for in the first subparagraph of this paragraph, the fact that the **Member State** concerned has made its application to the Council of ~~Ministers~~ shall have the effect of suspending that procedure until the Council of ~~Ministers~~ has made its attitude known.

If, however, the Council of ~~Ministers~~ has not made its attitude known within three months of the said application being made, the Commission shall act.

3. The Commission shall be informed by the Member States, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the internal market having regard to Article III-56, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.
4. The Commission may adopt ~~European~~ regulations relating to the categories of State aid that the Council of ~~Ministers~~ has, pursuant to Article III-58, determined may be exempted from the procedure provided for by paragraph 3.

Article III-58 (ex Article 89 TEC)

The Council of ~~Ministers~~, on a proposal from the Commission, may adopt ~~European~~ regulations for the application of Articles III-56 and III-57 and for determining in particular the conditions in which Article III-57(3) shall apply and the categories of aid exempted from this procedure. It shall act after consulting the European Parliament.

Article III-57

Paragraph 4

The reference to Article III-55 in this paragraph is wrong; it should be replaced by a reference to Article III-58 [applies to the French version only].

The scope of the powers assigned to the Council and the Commission respectively, and whether or not Commission regulations are subordinate to Council regulations, is not clear from the wording of this paragraph.

SECTION 6

FISCAL PROVISIONS

Article III-59 /60/61 (~~ex Article 90/91/92 TEC~~)

1. No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.

Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.

Article III-60 (~~ex Article 91 TEC~~)

2. Where products are exported by a Member State to the territory of another Member State, any repayment of internal taxation shall not exceed the internal taxation imposed on them whether directly or indirectly.

Article III-61 (~~ex Article 92 TEC~~)

3. In the case of charges other than turnover taxes, excise duties and other forms of indirect taxation, remissions and repayments in respect of exports to other Member States may not be granted and countervailing charges in respect of imports from Member States may not be imposed unless the provisions contemplated have been previously approved for a limited period by a ~~European~~ decision adopted by the Council of Ministers on a proposal from the Commission.

Article III-62 (ex Article 93 TEC)

1. A ~~European~~ law or framework law of the Council of Ministers shall ~~establish~~**lay down** measures for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation provided that such harmonisation is necessary for **the establishment and** the functioning of the internal market and to avoid distortion of competition. The Council of ~~Ministers~~ shall act unanimously after consulting the European Parliament and the Economic and Social Committee.

2. Where the Council of ~~Ministers~~, acting unanimously on a proposal from the Commission, finds that the measures referred to in paragraph 1 relate to administrative cooperation or to combating tax fraud and tax evasion, it shall act, notwithstanding paragraph 1, by a qualified majority when adopting the ~~European~~ law or framework law adopting these measures.

Articles III-59, III-60 and III-61

It is suggested that these Articles be amalgamated.

Article III-62

Paragraph 1

The words "*the establishment and*" have been deleted from the existing Article 93 of the TEC ("*necessary to ensure the establishment and the functioning of the internal market*"). It is suggested that they be reinstated, given that the internal market has not been completely established and that Article III-14(1) states that "*The Union shall adopt measures with the aim of establishing the internal market, in accordance with*", amongst others, Article III-62. Moreover, the words have been retained in "*the establishment or functioning*" (Article III-64) and "*the establishment and functioning*" (Article III-65(1)) of the internal market.

Paragraph 2

The terms "*combating tax fraud and tax evasion*" (in French "*lutte contre la fraude fiscale et l'évasion fiscale illégale*") may create legal confusion, as the expression "*tax evasion*" is not found in the existing treaties, which use "*tax fraud*" and "*tax avoidance*" (in French "*fraude fiscale*" and "*évasion fiscale*" respectively).

It is usually held that "*tax evasion*" denotes an illegal activity corresponding to the French term "*fraude fiscale*", whereas the term "*tax avoidance*" denotes legal activity, translated into French as "*évasion fiscale*". Hence, the terms "*tax fraud*" and "*tax evasion*" are both covered by "*fraude fiscale*" in French. The English equivalent of "*évasion fiscale illégale*" would be "*unlawful tax avoidance*".

Article III-63 (new)

Where the Council of Ministers, acting unanimously on a proposal from the Commission, finds that measures on company taxation relate to administrative cooperation or combating tax fraud and tax evasion, it shall adopt, by a qualified majority, a European law or framework law laying down these measures, provided that they are necessary for the functioning of the internal market and to avoid distortion of competition.

That law or framework law shall be adopted after consultation of the European Parliament and the Economic and Social Committee.

SECTION 7

~~APPROXIMATION OF LEGISLATION~~ COMMON PROVISIONS

~~Article III-64 (ex Article 94 TEC)~~

~~Without prejudice to Article III-65, a European framework law of the Council of Ministers shall establish measures for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the internal market. The Council of Ministers shall act unanimously after consulting the European Parliament and the Economic and Social Committee.~~

Article III-65 (ex Article 95 TEC)

1. Save where otherwise provided in the Constitution, this Article shall apply for the achievement of the objectives set out in Article III-14. ~~European~~ Laws or framework laws shall establish measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market. Such laws shall be adopted after consultation of the Economic and Social Committee.
2. Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons or to those relating to the rights and interests of employed persons.
3. The Commission, in its proposals submitted under paragraph 1 concerning health, safety, environmental protection and consumer protection, shall ~~will~~ take as a base a high level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council of Ministers shall ~~will~~ also seek to achieve this objective.
4. If, after the adoption of a harmonisation measure by means of a ~~European~~ law, ~~or~~ framework law or **by means of a European** regulation of the Commission, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article III-43, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.
5. Moreover, without prejudice to paragraph 4, if, after the adoption of a harmonisation measure by means of a ~~European~~ law ~~or~~, framework law or **by means of a** regulation of the Commission, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure, it shall notify the Commission of the envisaged provisions and the reasons for them.

Article III-63

For the phrase "*combating tax fraud and tax evasion*", see the comments on Article III-62(2) above.

Section 7

Given that the title of the Section - "*Approximation of legislation*" - does not reflect its content (particularly following the addition of III-68, which does not provide for approximation), it is suggested that it be entitled "*Common provisions*".

Article III-64 (now Article III-65a) and III-65

In Article III-64 (the existing Article 94 TEC), the Convention has added "*Without prejudice to Article III-65*" (the existing Article 95 of the TEC). At the same time, in Article III-65(1), it has deleted the words "*By derogation from Article 94*" [III-64], which appear in the existing Article 95 TEC.

The Convention's intention was thus to reverse the order of priority and establish a clear hierarchy between these two legal bases. In order to clarify this point, it is first of all suggested that the order of Article III-64 and III-65 be reversed (Article III-64 would become Article III-65a). In addition, "*By derogation from Article 65*" should be inserted at the beginning of the Article now numbered III-65a. The fact that Article III-65 should take priority over Article III-65a would thus be clear and there would be no uncertainty as to which of the legal bases was being applied, their content being similar.

Article III-65

Paragraph 3

Replacement of "*compétences*" by "*attributions*", in line with the terminology of Article I-18(3) [change affecting the French only].

6. The Commission shall, within six months of the notifications referred to in paragraphs 4 and 5, adopt a ~~European~~ decision approving or rejecting the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they constitute an obstacle to the functioning of the internal market.

In the absence of a decision by the Commission within this period the national provisions referred to in paragraphs 4 and 5 shall be deemed to have been approved.

When justified by the complexity of the matter and in the absence of danger for human health, the Commission may notify the Member State concerned that the period referred to in this paragraph may be extended for a further period of up to six months.

7. When, pursuant to paragraph 6, a Member State is authorised to maintain or introduce national provisions derogating from a harmonisation measure, the Commission shall immediately examine whether to propose an adaptation to that measure.

8. When a Member State raises a specific problem on public health in a field which has been the subject of prior harmonisation measures, it shall bring it to the attention of the Commission which shall immediately examine whether to propose appropriate measures.

9. By way of derogation from the procedure laid down in Articles III-265 and III-266, the Commission and any Member State may bring the matter directly before the Court of Justice if it considers that another Member State is making improper use of the powers provided for in this Article.

10. The harmonisation measures referred to in this Article shall, in appropriate cases, include a safeguard clause authorising the Member States to take, for one or more of the non-economic reasons referred to in Article III-43, provisional steps subject to a Union control procedure.

Article III-65a (ex Article 94 TEC)

~~Without prejudice to~~ **By derogation from** Article III-65, a ~~European~~ framework law of the Council ~~of Ministers~~ shall establish measures for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the internal market. The Council ~~of Ministers~~ shall act unanimously after consulting the European Parliament and the Economic and Social Committee.

Article III-66 (ex Article 96 TEC)

Where the Commission finds that a difference between the provisions laid down by law, regulation or administrative action in Member States is distorting the conditions of competition in the internal market and that the resultant distortion needs to be eliminated, it shall consult the Member States concerned.

If such consultation does not result in agreement, ~~European~~ framework laws shall ~~eliminate~~ **establish the measures necessary to eliminate** the distortion in question. Any other appropriate measures provided for in the Constitution may be adopted.

Article III-66

It is suggested that "eliminate the distortion in question" be replaced by "establish the measures necessary to eliminate the distortion in question", since the distortion will not be eliminated by the framework law, but by the national provisions adopted in order to put it into effect.

Article III-67 (ex Article 97 TEC)

1. Where there is a reason to fear that the adoption or amendment of a national provision laid down by law, regulation or administrative action may cause distortion within the meaning of Article III-66, a Member State desiring to proceed therewith shall consult the Commission. After consulting the Member States, the Commission shall address to the Member States concerned a recommendation on such measures as may be appropriate to avoid the distortion in question.
2. If a Member State desiring to introduce or amend its own provisions does not comply with the recommendation addressed to it by the Commission, other Member States shall not be required, pursuant to Article III-66, to amend their own provisions in order to eliminate such distortion. If the Member State which has ignored the recommendation of the Commission causes distortion detrimental only to itself, Article III-66 shall not apply.

Article III-68 (new)

In establishing an internal market, measures for the introduction of European instruments to provide uniform intellectual-property rights protection throughout the Union and for the setting up of centralised Union-wide authorisation, coordination and supervision arrangements shall be established in European laws or framework laws.

A European law of the Council of Ministers shall establish language arrangements for the European instruments. The Council of Ministers shall act unanimously after consulting the European Parliament.

Article III-67

Paragraph 2

The reference to Article III-63 is incorrect; it should be replaced by a reference to Article III-66 (see existing Article 97(2) TEC) [change affecting the French only].

CHAPTER II

ECONOMIC AND MONETARY POLICY

Article III-69 (ex Article 4 TEC)

1. For the purposes set out in Article I-3, the activities of the Member States and the Union shall include, as provided in the Constitution, the adoption of an economic policy which is based on the close coordination of Member States' economic policies, on the internal market and on the definition of common objectives, and conducted in accordance with the principle of an open market economy with free competition.
2. Concurrently with the foregoing, and as provided in the Constitution and in accordance with the procedures set out therein, these activities shall include a single currency, the euro, and the definition and conduct of a single monetary policy and exchange-rate policy, the primary objective of both of which shall be to maintain price stability and, without prejudice to this objective, to support the general economic policies in the Union, in accordance with the principle of an open market economy with free competition.
3. These activities of the Member States and the Union shall entail compliance with the following guiding principles: stable prices, sound public finances and monetary conditions and a stable balance of payments.

SECTION 1

ECONOMIC POLICY

Article III-70 (ex Article 98 TEC)

Member States shall conduct their economic policies in order to contribute to the achievement of the Union's objectives, as defined in Article I-3, and in the context of the broad guidelines referred to in Article III-71(2). The Member States and the Union shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article III-69.

Article III-71 (ex Article 99 TEC)

1. Member States shall regard their economic policies as a matter of common concern and shall coordinate them within the Council of Ministers, in accordance with Article III-70.
2. The Council of Ministers, on a recommendation from the Commission, shall formulate a draft for the broad guidelines of the economic policies of the Member States and of the Union, and shall report its findings to the European Council.

The European Council, on the basis of the report from the Council of Ministers, shall discuss a conclusion on the broad guidelines of the economic policies of the Member States and of the Union. On the basis of this conclusion, the Council of Ministers shall adopt a recommendation setting out these broad guidelines. It shall inform the European Parliament of its recommendation.

3. In order to ensure closer coordination of economic policies and sustained convergence of the economic performances of the Member States, the Council of Ministers, on the basis of reports submitted by the Commission, shall monitor economic developments in each of the Member States and in the Union, as well as the consistency of economic policies with the broad guidelines referred to in paragraph 2, and shall regularly carry out an overall assessment.

For the purpose of this multilateral surveillance, Member States shall forward information to the Commission on important steps taken by them in the field of their economic policy and such other information as they deem necessary.

4. Where it is established, under the procedure referred to in paragraph 3, that the economic policies of a Member State are not consistent with the broad guidelines referred to in paragraph 2 or that they risk jeopardising the proper functioning of economic and monetary union, the Commission may address a warning to the Member State concerned. The Council of Ministers, on a recommendation from the Commission, may address the necessary recommendations to the Member State concerned. The Council of Ministers, on a proposal from the Commission, may decide to make its recommendations public.

Within the scope of this paragraph, the Council of Ministers shall act without taking into account the vote of the **member of the Council representing** ~~representative of~~ the Member State concerned, ~~and~~.

As from 1 November 2009, a qualified majority shall be defined as the majority of the ~~votes of the other members of the Council Member States~~, representing the **Member States comprising** at least three fifths of their population ~~of those the States whose representatives take part in the vote~~.

Before 1 November 2009, a qualified majority shall be defined as laid down in Article 2(4) of the Protocol on the transitional provisions relating to the Institutions and bodies of the Union.

5. The President of the Council of Ministers and the Commission shall report to the European Parliament on the results of multilateral surveillance. The President of the Council of Ministers may be invited to appear before the competent committee of the European Parliament if the Council of Ministers has made its recommendations public.

6. ~~European~~ **Laws** may lay down detailed rules for the multilateral surveillance procedure referred to in paragraphs 3 and 4.

Article III-72 (ex Article 100 TEC)

1. Without prejudice to any other procedures provided for by the Constitution, the Council of Ministers, on a proposal from the Commission, may adopt a ~~European~~ decision laying down the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products.

Article III-71

Paragraph 4

In the 2nd subparagraph, wording in line with Article I-24(1).

If there are no transitional provisions on a different qualified majority rule, to apply between entry into force of the Constitution and 1 November 2009 (date of entry into force of the new qualified majority rule laid down in Article I-24), the new rule would apply as soon as the Treaty entered into force (see also Article 2(1) of the Protocol on the transitional provisions relating to the Institutions and bodies of the Union). Presuming that this is not the intention, this paragraph has been amended to spell out that the new rule will apply as from 1 November 2009.

The same suggestion is made several times below.

2. Where a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council of Ministers, on a proposal from the Commission, may adopt a ~~European~~ decision granting, under certain conditions, Union financial assistance to the Member State concerned. The President of the Council of Ministers shall inform the European Parliament of the decision adopted.

Article III-73 (ex Article 101 TEC)

1. Overdraft facilities or any other type of credit facility with the European Central Bank or with the central banks of the Member States (hereinafter referred to as "national central banks") in favour of Union Institutions, bodies, **offices** or agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States shall be prohibited, as shall the purchase directly from them by the European Central Bank or national central banks of debt instruments.

2. Paragraph 1 shall not apply to publicly owned credit institutions which, in the context of the supply of reserves by central banks, shall be given the same treatment by national central banks and the European Central Bank as private credit institutions.

Article III-74 (ex Article 102 TEC)

1. Any measure or provision, not based on prudential considerations, establishing privileged access by Union Institutions, bodies, **offices** or agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States to financial institutions shall be prohibited.

2. The Council of Ministers, on a proposal from the Commission, may adopt ~~European~~ regulations or decisions specifying definitions for the application of the prohibition referred to in paragraph 1. It shall act after consulting the European Parliament.

Article III-75 (ex Article 103 TEC)

1. **Neither the Union nor the Member States** shall ~~not~~ be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project. ~~A Member State shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of another Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project.~~

2. The Council of Ministers, on a proposal from the Commission, may adopt ~~European~~ regulations or decisions specifying definitions for the application of the prohibitions referred to in Article III-73 and in this Article. It shall act after consulting the European Parliament.

Article III-74

Paragraph 2

The reference to the 1.1.1994 deadline in the existing Article 102(2) TEC has been deleted by the Convention.

Article III-75

Paragraph 1

To avoid repetition, it is suggested that the two sentences in this paragraph be amalgamated.

Article III-76 (ex Article 104 TEC)

1. Member States shall avoid excessive government deficits.
2. The Commission shall monitor the development of the budgetary situation and of the stock of government debt in the Member States in order to identify gross errors. In particular it shall examine compliance with budgetary discipline on the basis of the following two criteria:
 - (a) whether the ratio of the planned or actual government deficit to gross domestic product exceeds a reference value, unless:
 - (i) either the ratio has declined substantially and continuously and reached a level that comes close to the reference value;
 - (ii) or, alternatively, the excess over the reference value is only exceptional and temporary and the ratio remains close to the reference value;
 - (b) whether the ratio of government debt to gross domestic product exceeds a reference value, unless the ratio is diminishing sufficiently and approaching the reference value at a satisfactory pace.

The reference values are specified in the Protocol on the excessive deficit procedure.

3. If a Member State does not fulfil the requirements under one or both of these criteria, the Commission shall prepare a report. The report of the Commission shall also take into account whether the government deficit exceeds government investment expenditure and take into account all other relevant factors, including the medium-term economic and budgetary position of the Member State.

The Commission may also prepare a report if, notwithstanding the fulfilment of the requirements under the criteria, it is of the opinion that there is a risk of an excessive deficit in a Member State.

4. The Economic and Financial Committee shall formulate an opinion on the report of the Commission.
5. If the Commission considers that an excessive deficit in a Member State exists or may occur, it shall address an opinion to the Member State concerned.

Article III-76

Paragraph 5

This paragraph contains a change with respect to the current Article 104(5) TEC, under which the opinion is addressed to the Council and not to the Member State concerned. The question arises of whether the text should stipulate that the Council is informed of this opinion, since it is the Council which subsequently decides, in accordance with paragraph 6, whether an excessive deficit exists.

6. The Council of Ministers shall, on a proposal from the Commission, having considered any observations which the Member State concerned may wish to make and after an overall assessment, decide whether an excessive deficit exists. In that case it shall adopt, according to the same procedures, recommendations addressed to the Member State concerned with a view to bringing that situation to an end within a given period. Subject to paragraph 8, those recommendations shall not be made public.

Within the scope of this paragraph, the Council of Ministers shall act without taking into account the vote of the ~~representative of~~ **member of the Council representing** the Member State concerned, ~~and~~.

As from 1 November 2009, a qualified majority shall be defined as the majority of the votes of the other members of the Council Member States, representative of representing the Member States comprising at least three fifths of their the population of those the States whose representatives take part in the vote.

Before 1 November 2009, a qualified majority shall be defined as laid down in Article 2(4) of the Protocol on the transitional provisions relating to the Institutions and bodies of the Union.

7. The Council of Ministers, on a recommendation from the Commission, shall adopt the ~~European~~ decisions and recommendations referred to in paragraphs 8 to 11.

It shall act without taking into account the vote of the **member of the Council representing** ~~representative of~~ the Member State concerned, ~~and~~.

As from 1 November 2009, a qualified majority shall be defined as the majority of the votes of the other members of the Council Member States, representative of representing the Member States comprising at least three fifths of their the population of those the States whose representatives take part in the vote.

Before 1 November 2009, a qualified majority shall be defined as laid down in Article 2(4) of the Protocol on the transitional provisions relating to the Institutions and bodies of the Union.

8. Where it establishes that there has been no effective action in response to its recommendations within the period laid down, the Council of Ministers may make its recommendations public.

9. If a Member State persists in failing to put into practice the recommendations of the Council of Ministers, the Council of Ministers may adopt a ~~European~~ decision giving notice to the Member State to take, within a specified time-limit, steps for the deficit reduction which is judged necessary by the Council of Ministers in order to remedy the situation.

In such a case, the Council of Ministers may request the Member State concerned to submit reports in accordance with a specific timetable in order to examine the adjustment efforts of that Member State.

10. As long as a Member State fails to comply with a ~~European~~ decision adopted in accordance with paragraph 9, the Council of Ministers may decide to apply or, as the case may be, intensify one or more of the following measures:

- (a) to require the Member State concerned to publish additional information, to be specified by the Council of Ministers, before issuing bonds and securities;
- (b) to invite the European Investment Bank to reconsider its lending policy towards the Member State concerned;

Article III-76 (continued)

Paragraphs 6 and 7

In both cases, second subparagraphs reworded in accordance with Article I-24(1).

Same comment as for Article III-71(4).

- (c) to require the Member State concerned to make a non-interest-bearing deposit of an appropriate size with the Union until the Council of Ministers considers that the excessive deficit has been corrected;
- (d) to impose fines of an appropriate size.

The President of the Council of Ministers shall inform the European Parliament of the measures adopted.

11. The Council of Ministers shall abrogate some or all of the measures referred to in paragraph 6 and paragraphs 8 to 10 if it considers the excessive deficit in the Member State concerned to have been corrected. If the Council of Ministers has previously made public recommendations, it shall state publicly, as soon as the decision under paragraph 8 has been abrogated, that there is no longer an excessive deficit in the Member State concerned.

12. The rights to bring actions provided for in Articles III-265 and III-266 may not be exercised within the framework of paragraphs 1 to 6 or paragraphs 8 and 9.

13. Further provisions relating to the implementation of the procedure described in this Article are set out in the Protocol on the excessive deficit procedure.

A European law of the Council of Ministers shall lay down the appropriate measures to replace the said Protocol. The Council of Ministers shall act unanimously after consulting the European Parliament and the European Central Bank.

Subject to the other provisions of this paragraph, the Council of Ministers, on a proposal from the Commission, shall adopt European regulations or decisions laying down detailed rules and definitions for the application of the said Protocol. It shall act after consulting the European Parliament.

SECTION 2

MONETARY POLICY

Article III-77 (ex Article 105 TEC)

1. The primary objective of the European System of Central Banks shall be to maintain price stability. Without prejudice to this objective, the European System of Central Banks shall support the general economic policies in the Union in order to contribute to the achievement of its objectives as laid down in Article I-3. The European System of Central Banks shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article III-69.
2. The basic tasks to be carried out through the European System of Central Banks shall be:
 - (a) to define and implement the Union's monetary policy;
 - (b) to conduct foreign-exchange operations consistent with Article III-228;
 - (c) to hold and manage the official foreign reserves of the Member States;
 - (d) to promote the smooth operation of payment systems.
3. Paragraph 2(c) shall be without prejudice to the holding and management by the governments of Member States of foreign-exchange working balances.
4. The European Central Bank shall be consulted:
 - (a) on any proposed Union act in areas ~~its fields of competence~~ **within its powers**;
 - (b) by national authorities regarding any draft legislative provision in ~~its fields of competence~~ **areas within its powers**, but within the limits and under the conditions set out by the Council of Ministers in accordance with the procedure laid down in Article III-79(6).

The European Central Bank may submit opinions to the Union institutions, bodies, **offices** or agencies or to national authorities on matters ~~in its fields of competence~~ **within its powers**.

Article III-77

Paragraph 4

Replacement of "*competence*" by "*power*" as used in Article I-18(3).

5. The European System of Central Banks shall contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system.

6. ~~European~~ Laws may confer upon the European Central Bank specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings. Such laws shall be adopted after consultation of the European Central Bank.

Article III-78 (ex Article 106 TEC)

1. The European Central Bank shall have the exclusive right to authorise the issue of euro bank notes in the Union. The European Central Bank and the national central banks may issue such notes. Only the bank notes issued by the European Central Bank and the national central banks shall have the status of legal tender within the Union.

2. Member States may issue euro coins subject to approval by the European Central Bank of the volume of the issue.

The Council of ~~Ministers~~, on a proposal from the Commission, may adopt ~~European~~ regulations laying down measures to harmonise the denominations and technical specifications of ~~all~~ coins intended for circulation to the extent necessary to permit their smooth circulation within the Union. The Council of ~~Ministers~~ shall act after consulting the European Parliament and the European Central Bank.

Article III-79 (ex Article 107 TEC)

~~1. The European System of Central Banks shall be composed of the European Central Bank and of the national central banks.~~

~~2. The European Central Bank shall have legal personality.~~

3. The European System of Central Banks shall be governed by the decision-making bodies of the European Central Bank, which shall be the Governing Council and the Executive Board.

4. The Statute of the European System of Central Banks *is* laid down in the Protocol on the Statute of the European System of Central Banks and the European Central Bank.

5. Articles 5.1, 5.2, 5.3, 17, 18, 19.1, 22, 23, 24, 26, 32.2, 32.3, 32.4, 32.6, 33.1(a) and 36 of the Statute of the European System of Central Banks and the European Central Bank may be amended by ~~European~~ laws:

- (a) either on a proposal from the Commission **and** after consultation of the European Central Bank;
- (b) or on a recommendation from the European Central Bank **and** after consultation of the Commission.

Article III-79

Paragraphs 1 and 2

These paragraphs repeat, respectively, the content of the first sentence of paragraph 1 and part of the first sentence of paragraph 3 (now rewarded as the second sentence of paragraph 3) of Article I-29. It is therefore suggested that they be deleted.

6. The Council of Ministers shall adopt the ~~European~~ regulations and decisions laying down the measures referred to in Articles 4, 5.4, 19.2, 20, 28.1, 29.2, 30.4 and 34.3 of the Statute of the System of European Central Banks and the European Central Bank. It shall act after consulting the European Parliament:

- (a) either on a proposal from the Commission after consulting the European Central Bank;
- (b) or on a recommendation from the European Central Bank after consulting the Commission.

Article III-80 (ex Article 108 TEC)

When exercising the powers and carrying out the tasks and duties conferred upon them by the Constitution and the Statute of the European System of Central Banks and the European Central Bank, neither the European Central Bank, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Union institutions, bodies, **offices** or agencies, from any government of a Member State or from any other body. The Union institutions, bodies, **offices** or agencies and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the European Central Bank or of the national central banks in the performance of their tasks.

Article III-81 (ex Article 109 TEC)

~~Each~~ **The** Member States shall ensure that ~~its~~ **their** national legislation, including the statutes of ~~its~~ **their** national central banks, is compatible with the Constitution and the Statute of the European System of Central Banks and the European Central Bank.

Article III-82 (ex Article 110 TEC)

1. In order to carry out the tasks entrusted to the European System of Central Banks, the European Central Bank shall, in accordance with the Constitution and under the conditions laid down in the Statute of the European System of Central Banks and the European Central Bank, adopt:

- (a) ~~European~~ regulations to the extent necessary to implement the tasks defined in Article 3.1, first indent, Articles 19.1, 22 and 25.2 of the Statute of the European System of Central Banks and the European Central Bank and in cases which shall be laid down in ~~European~~ regulations and decisions as referred to in Article III-79(6);
- (b) ~~European~~ Decisions necessary for carrying out the tasks entrusted to the European System of Central Banks under the Constitution and the Statute of the European System of Central Banks and the European Central Bank;
- (c) recommendations and opinions.

2. The European Central Bank may decide to publish its ~~European~~ decisions, recommendations and opinions.

Article III-81

Streamlining of the wording "*each Member State*" is suggested (see comments on Article III-34).

3. The Council of Ministers shall, under the procedure laid down in Article III-79(6), adopt the ~~European~~ regulations establishing the limits and conditions under which the European Central Bank shall be entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its ~~European~~ regulations and decisions.

Article III-83 (ex Article 123(4) TEC)

Without prejudice to the powers of the European Central Bank, a ~~European~~ law or framework law shall lay down the measures necessary for use of the euro as the single currency of the ~~Member States~~. Such law or framework law shall be adopted after consultation of the European Central Bank.

Article III-83

It is suggested that the words "*single currency of the Member States*" be replaced by "*single currency*", which is the wording used in Article III-69(2).

SECTION 3

INSTITUTIONAL PROVISIONS

~~Article III-84 (ex Article 112 TEC)~~

~~1. The Governing Council of the European Central Bank shall comprise the members of the Executive Board of the European Central Bank and the Governors of the national central banks of the Member States without a derogation as referred to in Article III-91.~~

~~2. (a) The Executive Board shall comprise the President, the Vice-President and four other members.~~

~~(b) The President, the Vice-President and the other members of the Executive Board shall be appointed from among persons of recognised standing and professional experience in monetary or banking matters by common accord of the governments of the Member States at the level of Heads of State or Government, on a recommendation from the Council of Ministers, after it has consulted the European Parliament and the Governing Council of the European Central Bank.~~

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

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

~~Article III-85 (ex Article 113 TEC)~~

~~1. The President of the Council of Ministers and a member of the Commission may participate, without having the right to vote, in meetings of the Governing Council of the European Central Bank.~~

~~The President of the Council of Ministers may submit a motion for deliberation to the Governing Council of the European Central Bank.~~

~~2. The President of the European Central Bank shall be invited to participate in meetings of the Council of Ministers when it is discussing matters relating to the objectives and tasks of the European System of Central Banks.~~

~~3. The European Central Bank shall address an annual report on the activities of the European System of Central Banks and on the monetary policy of both the previous and the current year to the European Parliament, the Council of Ministers and the Commission, and also to the European Council. The President of the European Central Bank shall present this report to the Council of Ministers and to the European Parliament, which may hold a general debate on that basis.~~

~~The President of the European Central Bank and the other members of the Executive Board may, at the request of the European Parliament or on their own initiative, be heard by the competent committees of the European Parliament.~~

Articles III-84 and III-85

It is suggested that these two articles be moved to Title VI (the functioning of the Union), Chapter 1 (provisions governing the institutions), as a new subsection 5a (Articles provisionally renumbered III-289a and III-289b), since the European Central Bank is not mentioned in that chapter even though it is an institution within the meaning of Article I-29(3). The comments on these articles are to be found against Articles III-289a and III-289b.

Article III-86 (ex Article 114(2) to (4) TEC)

1. In order to promote coordination of the policies of Member States to the full extent needed for the functioning of the internal market, an Economic and Financial Committee is hereby set up.
2. The Committee shall have the following tasks:
 - (a) to deliver opinions at the request of the Council of Ministers or of the Commission, or on its own initiative, for submission to those institutions;
 - (b) to keep under review the economic and financial situation of the Member States and of the Union and to report on it regularly to the Council of Ministers and to the Commission, in particular with regard to financial relations with third countries and international institutions;
 - (c) without prejudice to Article III-247, to contribute to the preparation of the work of the Council of Ministers referred to in Article III-48, Article III-71(2), (3), (4) and (6), Articles III-72, III-74, III-75 and III-76, Article III-77(6), Article III-78(2), Article III-79(5) and (6), Articles III-83 and III-90, Article III-92(2) and (3), Article III-95, Article III-96(2) and (3) and Articles III-224 and III-228, and to carry out other advisory and preparatory tasks assigned to it by the Council of Ministers;
 - (d) to examine, at least once a year, the situation regarding the movement of capital and the freedom of payments, as they result from the application of the Constitution and of Union acts; the examination shall cover all measures relating to capital movements and payments; the Committee shall report to the Commission and to the Council of Ministers on the outcome of this examination.

The Member States, the Commission and the European Central Bank shall each appoint no more than two members of the Committee.

3. The Council of Ministers, on a proposal from the Commission, shall adopt a European decision laying down detailed provisions concerning the composition of the Economic and Financial Committee. It shall act after consulting the European Central Bank and the Committee. The President of the Council of Ministers shall inform the European Parliament of that decision.
4. In addition to the tasks set out in paragraph 2, if and as long as there are Member States with a derogation as referred to in Article III-91, the Committee shall keep under review the monetary and financial situation and the general payments system of those Member States and report regularly to the Council of Ministers and to the Commission on the matter.

Article III-87 (ex Article 115 TEC)

For matters within the scope of Article III-71(4), Article III-76 with the exception of paragraph 13, Articles III-83, III-90 and III-91, Article III-92(3) and Article III-228, the Council of Ministers or a Member State may request the Commission to make a recommendation or a proposal, as appropriate. The Commission shall examine this request and submit its conclusions to the Council of Ministers without delay.

SECTION 3a-4

PROVISIONS SPECIFIC TO MEMBER STATES ~~WHICH ARE PART OF THE EURO AREA~~ **WHOSE CURRENCY IS THE EURO**

Article III-88 (new)

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

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

2. For those measures set out in paragraph 1, only members of the Council of Ministers representing Member States ~~which are part of the euro area~~ **whose currency is the euro** shall vote.

As from 1 November 2009, a qualified majority shall be defined as the majority ~~of the votes of the other those members of the Council~~ **Member States, representative of representing the Member States comprising** at least three fifths of ~~their~~ **the** population of those States whose representatives may vote.

Before 1 November 2009, a qualified majority shall be defined as laid down in Article 2(4) of the Protocol on the transitional provisions relating to the Institutions and bodies of the Union. ~~Unanimity of those members of the Council of Ministers shall be required for an act requiring unanimity.~~

Article III-89 (new)

Arrangements for **informal** meetings between ministers of those Member States ~~which are part of the euro area~~ **whose currency is the euro** shall be laid down ~~in~~ **by** the Protocol on the Euro Group.

Article III-90 (new)

1. In order to secure the euro's place in the international monetary system, the Council ~~of Ministers~~, on a proposal from the Commission and after consulting the European Central Bank, shall adopt a ~~European~~ decision establishing common positions on matters of particular interest for economic and monetary union within the competent international financial institutions and conferences.

Sections 4 and 5

It is suggested that terms be harmonised and that "*Member States without a derogation*", be called "*Member States whose currency is the euro*", the other States being "*Member States with a derogation*".

Moreover, the distinction between the provisions which apply to "*Member States whose currency is the euro*" (Articles III-88 to III-90) and those which apply to "*Member States without a derogation*" set out in Article III-91 seems artificial. These provisions could be covered by the same arrangements and brought together in the same section.

Article III-88

Paragraph 1

As it stands this paragraph does not constitute a legal basis since it does not indicate which institution adopts the measures in question. Since paragraph 2 makes it clear that it is the Council, this should be laid down explicitly, with a reference to the applicable procedures.

Paragraph 2

Reworded in accordance with Article I-24(1). The reference to unanimity is unnecessary since the beginning of the paragraph states that only the members of the Council who are "in" may vote.

Same comments as for Article III-71(4).

Article III-89

The wording of this article ("*meetings between ministers of those Member States*") indicates that these are informal meetings outside the framework of the Council. If that is the case, as is confirmed by the Protocol on the Euro Group, it is suggested that it be made explicit.

2. The Council of Ministers, on a proposal from the Commission, may adopt appropriate measures to ensure unified representation within the international financial institutions and conferences. ~~The procedural provisions of paragraphs 1 and 2 shall apply.~~

3. For the measures referred to in paragraphs 1 **and 2**, only members of the Council of Ministers representing Member States ~~which are part of the euro area~~ **whose currency is the euro** shall vote.

As from 1 November 2009, a qualified majority shall be defined as the majority of the votes of the other those members of the Council Member States, representative of representing the Member States comprising at least three fifths of their the population of those States, whose representatives may vote.

~~Unanimity of those members of the Council of Ministers shall be required for an act requiring unanimity.~~

Before 1 November 2009, a qualified majority shall be defined as laid down in Article 2(4) of the Protocol on the transitional provisions relating to the Institutions and bodies of the Union.

SECTION 4-5

TRANSITIONAL PROVISIONS

Article III-91 (ex Article 122(1) and (3) to (5) TEC)

1. Member States which the Council of Ministers has decided do not fulfil the necessary conditions for the adoption of the euro shall hereinafter be referred to as "Member States with a derogation".

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

- (a) adoption of the parts of the broad economic-policy guidelines which concern the ~~euro area~~ **Member States whose currency is the euro** generally (Article III-71(2));
- (b) coercive means of remedying excessive deficits (Article III-76(9) and (10));
- (c) the objectives and tasks of the European System of Central Banks (Article III-77(1), (2), (3) and (5));
- (d) issue of the euro (Article III-78);
- (e) acts of the European Central Bank (Article III-82);
- (f) measures governing the use of the euro (Article III-83);
- (g) monetary agreements and other measures relating to exchange-rate policy (Article III-228);
- (h) appointment of members of the Executive Board of the European Central Bank (Article III-84(2)(b)).

In the Articles referred to above, "Member States" shall therefore mean Member States ~~without a derogation~~ **whose currency is the euro**.

Article III-90

Paragraph 2

The expression "*unified representation*" lacks legal precision. Does it mean representation of the Union, of the Member States whose currency is the euro, or of the "euro area" as an entity distinct from those Member States?

Paragraphs 2 and 3

In the interests of coherence it is suggested that the order of the two paragraphs be reversed since the paragraph on voting rules applies to the two paragraphs which constitute a legal basis. The paragraph has also been reworded in accordance with Article I-24(1). The reference to unanimity is unnecessary since the beginning of the paragraph states that only the members of the Council who are "in" may vote.

Furthermore, same comments as for Article III-71(4).

3. Under Chapter IX of the Statute of the European System of Central Banks and the European Central Bank, Member States with a derogation and their national central banks are excluded from rights and obligations within the European System of Central Banks.

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

As from 1 November 2009, a qualified majority shall be defined as the majority of the votes of the other members of the Council Member States, representative of representing the Member States comprising at least three fifths of their the population of those States whose representatives may vote.

Before 1 November 2009, a qualified majority shall be defined as laid down in Article 2(4) of the Protocol on the transitional provisions relating to the Institutions and bodies of the Union.
~~Unanimity of those members of the Council of Ministers shall be required for an act requiring unanimity.~~

Article III-92 (ex Articles 121, 122(2) and 123(5) TEC)

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

- (a) the achievement of a high degree of price stability; this will be apparent from a rate of inflation which is close to that of, at most, the three best performing Member States in terms of price stability;
- (b) the sustainability of the government financial position; this will be apparent from having achieved a government budgetary position without a deficit that is excessive as determined in accordance with Article III-76(6);
- (c) the observance of the normal fluctuation margins provided for by the exchange-rate mechanism for at least two years, without devaluing against the euro;
- (d) the durability of convergence achieved by the Member State with a derogation and of its participation in the exchange-rate mechanism, being reflected in the long-term interest-rate levels.

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

Article III-91

Paragraph 4

Paragraph reworded in accordance with Article I-24(1). The reference to unanimity is unnecessary since the beginning of the paragraph states that only the members of the Council who are "in" may vote.

Same comments as for Article III-71(4).

2. After consulting the European Parliament and after discussion in the European Council, the Council ~~of Ministers~~, on a proposal from the Commission, shall adopt a ~~European~~ decision establishing which Member States with a derogation fulfil the necessary conditions on the basis of the criteria set out in paragraph 1, and shall abrogate the derogations of the Member States concerned.

3. If it is decided, according to the procedure set out in paragraph 2, to abrogate a derogation, the Council ~~of Ministers~~ shall, on a proposal from the Commission, with the unanimity of the members representing Member States ~~without a derogation~~ **whose currency is the euro** and the Member State concerned, adopt the ~~European~~ regulations or decisions irrevocably fixing the rate at which the euro is to be substituted for the currency of the Member State concerned, and laying down the other measures necessary for the introduction of the euro as the single currency in that Member State. The Council ~~of Ministers~~ shall act after consulting the European Central Bank.

Article III-93 (ex Articles 123(3) and 117(2) TEC)

1. If and as long as there are Member States with a derogation, and without prejudice to Article III-79(3), the General Council of the European Central Bank referred to in Article 45 of the Statute of the European System of Central Banks and the European Central Bank shall be constituted as a third decision-making body of the European Central Bank.

2. If and as long as there are Member States with a derogation, the European Central Bank shall, as regards those Member States:

- (a) strengthen cooperation between the national central banks;
- (b) strengthen the coordination of the monetary policies of the Member States, with the aim of ensuring price stability;
- (c) monitor the functioning of the exchange-rate mechanism;
- (d) hold consultations concerning issues falling within the competence of the national central banks and affecting the stability of financial institutions and markets;
- (e) carry out the former tasks of the European Monetary Cooperation Fund, previously taken over by the European Monetary Institute.

Article III-94 (ex Article 124(1) TEC)

Each Member State with a derogation shall treat its exchange-rate policy as a matter of common interest. In so doing, it shall take account of the experience acquired in cooperation within the framework of the exchange-rate mechanism.

Article III-95 (ex Article 119 TEC)

1. Where a Member State with a derogation is in difficulties or is seriously threatened with difficulties as regards its balance of payments either as a result of an overall disequilibrium in its balance of payments, or as a result of the type of currency at its disposal, and where such difficulties are liable in particular to jeopardise the functioning of the internal market or the implementation of the common commercial policy, the Commission shall immediately investigate the position of the State in question and the action which, making use of all the means at its disposal, that State has taken or may take in accordance with the Constitution. The Commission shall state what measures it recommends the Member State concerned to adopt.

If the action taken by a Member State with a derogation and the measures suggested by the Commission do not prove sufficient to overcome the difficulties which have arisen or which threaten, the Commission shall, after consulting the Economic and Financial Committee, recommend to the Council ~~of Ministers~~ the granting of mutual assistance and appropriate methods.

The Commission shall keep the Council ~~of Ministers~~ regularly informed of the situation and of how it evolves.

2. The Council ~~of Ministers~~ shall grant such mutual assistance; it shall adopt ~~European~~ regulations or decisions laying down the conditions and details of such assistance, which may take such forms as:

- (a) a concerted approach to or within any other international organisations to which Member States with a derogation may have recourse;
- (b) measures needed to avoid deflection of trade where the Member State with a derogation which is in difficulties maintains or reintroduces quantitative restrictions against third countries;
- (c) the granting of limited credits by other Member States, subject to their agreement.

3. If the mutual assistance recommended by the Commission is not granted by the Council ~~of Ministers~~ or if the mutual assistance granted and the measures taken are insufficient, the Commission shall authorise the Member State with a derogation which is in difficulties to take protective measures, the conditions and details of which the Commission shall determine.

Such authorisation may be revoked and such conditions and details may be changed by the Council ~~of Ministers~~.

Article III-96 (ex Article 120 TEC)

1. Where a sudden crisis in the balance of payments occurs and an act within the meaning of Article III-95(2) is not immediately adopted, a Member State with a derogation may, as a precaution, take the necessary protective measures. Such measures must cause the least possible disturbance in the functioning of the internal market and must not be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen.

2. The Commission and the other Member States shall be informed of such protective measures not later than when they enter into force. The Commission may recommend to the Council ~~of Ministers~~ the granting of mutual assistance under Article III-95.

3. After the Commission has delivered an opinion and the Economic and Financial Committee has been consulted, the Council of Ministers may adopt a decision stipulating that the Member State concerned shall amend, suspend or abolish the protective measures referred to above.

CHAPTER III

POLICIES IN OTHER SPECIFIC AREAS

SECTION 1

EMPLOYMENT

Article III-97 (ex Article 125 TEC)

The Union and the Member States shall, in accordance with this Section, work towards developing a coordinated strategy for employment and particularly for promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change with a view to achieving the objectives defined in Article I-3.

Article III-98 (ex Article 126 TEC)

1. Member States, through their employment policies, shall contribute to the achievement of the objectives referred to in Article III-97 in a way consistent with the broad guidelines of the economic policies of the Member States and of the Union adopted pursuant to Article III-71(2).
2. Member States, having regard to national practices related to the responsibilities of the social partners, shall regard promoting employment as a matter of common concern and shall coordinate their action in this respect within the Council of Ministers, in accordance with Article III-100.

Article III-99 (ex Article 127 TEC)

- ~~1.—~~The Union shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action. In doing so, the competences of the Member States shall be respected.
- ~~2.—~~The objective of a high level of employment shall be taken into consideration in the formulation and implementation of Union policies and activities.

Article III-100 (ex Article 128 TEC)

1. The European Council shall each year consider the employment situation in the Union and adopt conclusions thereon, on the basis of a joint annual report by the Council of Ministers and the Commission.

Article III-99

Paragraph 2

It is suggested that this horizontal clause be moved to the beginning of Part III (see suggestion concerning Articles III-1 to III-5).

2. On the basis of the conclusions of the European Council, the Council of Ministers, on a proposal from the Commission, shall each year adopt guidelines which the Member States shall take into account in their employment policies. It shall act after consulting the European Parliament, the Committee of the Regions, the Economic and Social Committee and the Employment Committee.

These guidelines shall be consistent with the broad guidelines adopted pursuant to Article III-71(2).

3. Each Member State shall provide the Council of Ministers and the Commission with an annual report on the principal steps taken to implement its employment policy in the light of the guidelines for employment as referred to in paragraph 2.

4. The Council of Ministers, on the basis of the reports referred to in paragraph 3 and having received the views of the Employment Committee, shall each year carry out an examination of the implementation of the employment policies of the Member States in the light of the guidelines for employment. The Council of Ministers, on a recommendation from the Commission, may adopt recommendations which it shall address to Member States.

5. On the basis of the results of that examination, the Council of Ministers and the Commission shall make a joint annual report to the European Council on the employment situation in the Union and on the implementation of the guidelines for employment.

Article III-101 (ex Article 129 TEC)

~~European~~ Laws or framework laws may establish incentive measures designed to encourage cooperation between Member States and to support their action in the field of employment through initiatives aimed at developing exchanges of information and best practices, providing comparative analysis and advice as well as promoting innovative approaches and evaluating experiences, in particular by recourse to pilot projects. They shall be adopted after consultation with the Committee of the Regions and the Economic and Social Committee.

Such ~~European~~ laws or framework laws shall not include harmonisation of the laws and regulations of the Member States.

Article III-102 (ex Article 130 TEC)

The Council of Ministers shall, by simple majority, adopt a ~~European~~ decision establishing an Employment Committee with advisory status to promote coordination between Member States on employment and labour market policies. It shall act after consulting the European Parliament.

The tasks of the Committee shall be:

- (a) to monitor the employment situation and employment policies in ~~the Member States and the~~ Union **and the Member States;**

- (b) without prejudice to Article III-247, to formulate opinions at the request of either the Council of Ministers or the Commission or on its own initiative, and to contribute to the preparation of the Council of Ministers proceedings referred to in Article III-100.

In fulfilling its mandate, the Committee shall consult the social partners.

Each Member State and the Commission shall appoint two members of the Committee.

SECTION 2

SOCIAL POLICY

Article III-103 (ex Article 136 TEC)

The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between the social partners, the development of human resources with a view to lasting high employment and the combating of exclusion.

To this end the Union and the Member States shall act taking account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Union economy.

They believe that such a development will ensue not only from the functioning of the internal market, which will favour the harmonisation of social systems, but also from the procedures provided for in the Constitution and from the approximation of provisions laid down by law, regulation or administrative action.

Article III-104 (ex Article 137 TEC)

1. With a view to achieving the objectives of Article III-103, the Union shall support and complement the activities of the Member States in the following fields:

- (a) improvement in particular of the working environment to protect workers' health and safety;
- (b) working conditions;
- (c) social security and social protection of workers;
- (d) protection of workers where their employment contract is terminated;
- (e) the information and consultation of workers;
- (f) representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 6;
- (g) conditions of employment for third-country nationals legally residing in Union territory;

Article III-104

Paragraph 1

Point (g) concerns the conditions of employment for legally resident third-country nationals, when in fact any measures in this area are adopted on the basis of Article III-168(2)(b) (definition of the rights of third-country nationals residing legally in a Member State; see Article 63(4) TEC)). We could therefore consider either deleting point (g) or amending point (b) of Article III-168(2) to exclude measures concerning the conditions of employment for such nationals.

- (h) the integration of persons excluded from the labour market, without prejudice to Article III-183;
- (i) equality between men and women with regard to labour market opportunities and treatment at work;
- (j) the combating of social exclusion;
- (k) the modernisation of social protection systems without prejudice to point (c).

2. To this end:

- (a) ~~European laws~~ Laws or framework laws may establish measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States;
- (b) in the fields referred to in paragraph 1(a) to (i), ~~European~~ framework laws may establish minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such ~~European~~-framework laws shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

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

3. By way of derogation from paragraph 2, in the fields referred to in paragraph 1(c), (d), (f) and (g), ~~European~~ laws or framework laws shall be adopted by the Council of Ministers acting unanimously after consulting the European Parliament, the Committee of the Regions and the Economic and Social Committee.

The Council of Ministers may, on a proposal from the Commission, adopt a ~~European~~ decision making the ordinary legislative procedure applicable to paragraph 1(d), (f) and (g). It shall act unanimously after consulting the European Parliament.

4. A Member State may entrust the social partners, at their joint request, with the implementation of ~~European~~ framework laws adopted pursuant to paragraph 2.

In this case, it shall ensure that, no later than the date on which a ~~European~~ framework law must be transposed, the social partners have introduced the necessary measures by agreement, the Member State concerned being required to take any necessary step enabling it at any time to be in a position to guarantee the results imposed by that framework law.

5. The ~~European~~ laws and framework laws adopted pursuant to this Article:

- (a) shall not affect the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof;

(b) shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with the Constitution.

6. This Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs.

Article III-105 (ex Article 138 TEC)

1. The Commission shall ~~have the task of promoting~~ **promote** the consultation of the social partners at Union level and shall adopt any relevant measure to facilitate their dialogue by ensuring balanced support for the parties.
2. To this end, before submitting proposals in the social policy field, the Commission shall consult the social partners on the possible direction of Union action.
3. If, after such consultation, the Commission considers Union action desirable, it shall consult the social partners on the content of the envisaged proposal. The social partners shall forward to the Commission an opinion or, where appropriate, a recommendation.
4. On the occasion of such consultation, the social partners may inform the Commission of their wish to initiate the process provided for in Article III-106. The duration of the procedure shall not exceed nine months, unless the social partners concerned and the Commission decide jointly to extend it.

Article III-106 (ex Article 139 TEC)

1. Should the social partners so desire, the dialogue between them at Union level may lead to contractual relations, including agreements.
2. Agreements concluded at Union level shall be implemented either in accordance with the procedures and practices specific to the social partners and the Member States or, in matters covered by Article III-104, at the joint request of the signatory parties, by ~~European~~ regulations or decisions adopted by the Council of Ministers on a proposal from the Commission. The European Parliament shall be informed.

Where the agreement in question contains one or more provisions relating to one of the areas for which unanimity is required by virtue of Article III-104(3), the Council of Ministers shall act unanimously.

Article III-107 (ex Article 140 TEC)

With a view to achieving the objectives of Article III-103 and without prejudice to the other provisions of the Constitution, the Commission shall encourage cooperation between the Member States and facilitate the coordination of their action in all social policy fields under this Section, particularly in matters relating to:

Article III-105

Paragraph 1

Although the wording "*The Commission shall have the task of promoting*" is taken from the current Article 138(1) TEC, it is suggested that, in line with the style used for the Constitution, it should be replaced by the more direct "*The Commission shall promote*".

- (a) employment;
- (b) labour law and working conditions;
- (c) basic and advanced vocational training;
- (d) social security;
- (e) prevention of occupational accidents and diseases;
- (f) occupational hygiene;
- (g) the right of association and collective bargaining between employers and workers.

To this end, the Commission shall act in close contact with Member States by making studies, delivering opinions and arranging consultations both on problems arising at national level and on those of concern to international organisations, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament **and the Council** shall be kept fully informed.

Before delivering the opinions provided for in this Article, the Commission shall consult the Economic and Social Committee.

Article III-108 (ex Article 141 TEC)

1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.
2. For the purpose of this Article, "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.

Equal pay without discrimination based on sex means:

- (a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;
 - (b) that pay for work at time rates shall be the same for the same job.
3. ~~European Union~~ Laws or framework laws shall establish measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value. They shall be adopted after consultation of the Economic and Social Committee.

Article III-107

It is suggested that the Council be kept informed in the same way as the Parliament (open method of coordination).

Article III-108

Paragraph 1

Note that the principle of equal pay also appears in Article II-23.

4. With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

Article III-109 (ex Article 142 TEC)

Member States shall endeavour to maintain the existing equivalence between paid holiday schemes.

Article III-110 (ex Article 143 TEC)

The Commission shall draw up a report each year on progress in achieving the objectives of Article III-103, including the demographic situation in the Union. It shall forward the report to the European Parliament, the Council of Ministers and the Economic and Social Committee.

Article III-111 (ex Article 144 TEC)

The Council of Ministers shall, by a simple majority, adopt a ~~European~~ decision establishing a Social Protection Committee with advisory status to promote cooperation on social protection policies between Member States and with the Commission. The Council of Ministers shall act after consulting the European Parliament.

The tasks of the Committee shall be:

- (a) to monitor the social situation and the development of social protection policies in the Member States and the Union;
- (b) to promote exchanges of information, experience and good practice between Member States and with the Commission;
- (c) without prejudice to Article III-247, to prepare reports, formulate opinions or undertake other work within ~~its fields of competence~~ **the scope of its powers**, at the request of either the Council of Ministers or the Commission or on its own initiative.

In fulfilling its mandate, the Committee shall establish appropriate contacts with the social partners.

Each Member State and the Commission shall appoint two members of the Committee.

Article III-112 (ex Article 145 TEC)

The Commission shall include a separate chapter on social developments within the Union in its annual report to the European Parliament.

The European Parliament may invite the Commission to draw up reports on any particular problems concerning social conditions.

Article III-109

This Article does not provide for action by any of the Union institutions, which is probably why it has never been used. Unless it is amended to provide for action on the part of the Union institutions, it could be deleted (see the report of 13 March 2003 by the group of experts from the three Legal Services and the comment concerning Article III-20).

Article III-110

The French text erroneously referred to Article III-98 (see current TEC). Article III-110 corresponds to Article 143 TEC which in turn refers to Article 136 TEC and that Article corresponds to Article III-103.

Article III-111

It is suggested that in point (c) of the second paragraph "*its fields of competence*" be replaced by "*scope of its powers*" (see comment concerning Article I-21).

~~Subsection 1~~

~~The European Social Fund~~

Article III-113/114/115 (ex Articles 149/147/148 TEC)

1. In order to improve employment opportunities for workers in the internal market and to contribute thereby to raising the standard of living, a European Social Fund is hereby established; it shall aim to render the employment of workers easier and to increase their geographical and occupational mobility within the Union, and to facilitate their adaptation to industrial changes and to changes in production systems, in particular through vocational training and retraining.

~~Article III-114~~

2. The Commission shall administer the Fund. It shall be assisted in this task by a Committee presided over by a Member of the Commission and composed of representatives of Member States, trade unions and employers' organisations.

~~Article III-115~~

3. Implementing measures relating to the ~~European Social~~ Fund shall be enacted in ~~European~~ laws. Such laws shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

Articles III-113 to III-115

It is suggested that these three Articles be combined in a single Article. There would be no need to repeat the full name of the Fund in the new paragraph 3.

SECTION 3

ECONOMIC, SOCIAL AND TERRITORIAL COHESION

Article III-116 (ex Article 158 TEC)

In order to promote its overall harmonious development, the Union shall develop and pursue its action leading to the strengthening of its economic, social and territorial cohesion.

In particular, the Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions or islands, including rural areas.

Article III-117 (ex Article 159 TEC)

Member States shall conduct their economic policies and shall coordinate them in such a way as, in addition, to attain the objectives set out in Article III-116. ~~The formulation and implementation of the Union's policies and action and the implementation of the internal market shall take into account those objectives and shall contribute to their achievement.~~ The Union shall also support the achievement of these objectives by the action it takes through the Structural Funds (European Agricultural Guidance and Guarantee Fund, Guidance Section; European Social Fund; European Regional Development Fund), the European Investment Bank and the other existing financial instruments.

The Commission shall submit a report to the European Parliament, the Council of Ministers, the Committee of the Regions and the Economic and Social Committee every three years on the progress made towards achieving economic, social and territorial cohesion and on the manner in which the various means provided for in this Article have contributed to it. This report shall, if necessary, be accompanied by appropriate proposals.

~~European~~ Laws or framework laws may establish any specific measure outside the Funds, without prejudice to measures adopted within the framework of the Union's other policies. They shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

Article III-118 (ex Article 160 TEC)

The European Regional Development Fund is intended to help to redress the main regional imbalances in the Union through participation in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions.

Article III-117

It is suggested that the second sentence of the first paragraph (horizontal clause) be moved to the beginning of Part III (see suggestion concerning Articles III-1 to III-5).

Article III-119 (ex Article 161 TEC)

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

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

In all cases, such ~~European~~ laws shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee. The Council of ~~Ministers~~ shall act unanimously until ~~1 January 2007~~ **31 December 2006**.

Article III-120 (ex Article 162 TEC)

Implementing measures relating to the European Regional Development Fund shall be enacted in ~~European~~ laws. Such laws shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

With regard to the European Agricultural Guidance and Guarantee Fund, Guidance Section, and the European Social Fund, Articles III-127 and III-115 respectively shall apply.

Article III-119

The third paragraph provides for unanimous voting "*until 1 January 2007*", which includes that date. The suggested redraft assumes that the intention expressed in the current Article 161 TEC (qualified-majority voting "*from 1 January 2007*") remains unchanged.

SECTION 4

AGRICULTURE AND FISHERIES

Article III-121 (ex Article 32(1), second sentence, TEC)

The Union shall define and implement a common agriculture and fisheries policy.

"Agricultural products" means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products. References to the common agricultural policy or to agriculture, and the use of the term "agricultural", shall be understood as also referring to fisheries, having regard to the specific characteristics of this sector.

Article III-122 (ex Article 32(1), first sentence, and (2) to (4) TEC)

1. The internal market shall extend to agriculture and trade in agricultural products.
2. Save as otherwise provided in Articles III-123 to III-128, the rules laid down for the establishment of the internal market shall apply to agricultural products.
3. The products listed ~~in Annex I~~^{*} **the Protocol on the list of agricultural and fishery products** shall be subject to Articles III-123 to III-128.
4. The operation and development of the internal market for agricultural products must be accompanied by the establishment of a common agricultural policy.

Article III-123 (ex Article 33 TEC)

1. The objectives of the common agricultural policy shall be:
 - (a) to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;
 - (b) thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;
 - (c) to stabilise markets;
 - (d) to assure the availability of supplies;
 - (e) to ensure that supplies reach consumers at reasonable prices.

^{*} ~~This Annex, which corresponds to Annex I to the TEC, has yet to be drawn up.~~

Article III-122

Paragraph 3

In the interests of consistency, it is suggested that the term "*Annex*" be replaced by "*Protocol*" since there is no legal distinction between such annexes and protocols (see the same comment with regard to Article III-186).

Footnote

The Annex I "*to be drawn up*", as stated in a footnote, presumably corresponds to the current Annex I to the TEC, which could if necessary be amended to include cotton (see Protocol 4 to the 1979 Act of Accession and Protocol 14 to the 1985 Act of Accession).

2. In working out the common agricultural policy and the special methods for its application, account shall be taken of:

- (a) the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions;
- (b) the need to effect the appropriate adjustments by degrees;
- (c) the fact that in the Member States agriculture constitutes a sector closely linked with the economy as a whole.

Article III-124 (ex Article 34 TEC)

1. In order to attain the objectives set out in Article III-123, a common organisation of agricultural markets shall be established.

This organisation shall take one of the following forms, depending on the product concerned:

- (a) common rules on competition;
- (b) compulsory coordination of the various national market organisations;
- (c) a European market organisation.

2. The common organisation established in accordance with paragraph 1 may include all measures required to attain the objectives set out in Article III-123, in particular regulation of prices, aids for the production and marketing of the various products, storage and carryover arrangements and common machinery for stabilising imports or exports.

The common organisation shall be limited to pursuit of the objectives set out in Article III-123 and shall exclude any discrimination between producers or consumers within the Union.

Any common price policy shall be based on common criteria and uniform methods of calculation.

3. In order to enable the common organisation referred to in paragraph 1 to attain its objectives, one or more agricultural guidance and guarantee funds may be set up.

Article III-125 (ex Article 35 TEC)

To enable the objectives set out in Article III-123 to be attained, provision may be made within the framework of the common agricultural policy for measures such as:

- (a) an effective coordination of efforts in the spheres of vocational training, of research and of the dissemination of agricultural knowledge; this may include joint financing of projects or institutions;
- (b) joint measures to promote consumption of certain products.

Article III-123

Paragraph 2

French wording, repeating Article 33(2) TEC, has "sera" (will) for "est" (shall) and should be brought into line with legislators' drafting style.

Article III-126 (ex Article 36 TEC)

1. The Section relating to rules on competition shall apply to production of and trade in agricultural products only to the extent determined by ~~European~~ laws or framework laws in accordance with Article III-127(2), having regard to the objectives set out in Article III-123.
2. The Council of ~~Ministers~~, on a proposal from the Commission, may adopt a European regulation or decision authorising the granting of aid:
 - (a) for the protection of enterprises handicapped by structural or natural conditions;
 - (b) within the framework of economic development programmes.

Article III-127 (ex Article 37 TEC)

1. The Commission shall submit proposals for working out and implementing the common agricultural policy, including the replacement of the national organisations by one of the forms of common organisation provided for in Article III-124(1), and for implementing the measures referred to in this Section.

These proposals shall take account of the interdependence of the agricultural matters mentioned in this Section.

2. ~~European~~ Laws or framework laws shall establish the common organisation of the market provided for in Article III-124(1) and the other provisions necessary for the achievement of the objectives of the common agricultural policy and the common fisheries policy. They shall be adopted after consultation of the Economic and Social Committee.
3. The Council of ~~Ministers~~, on a proposal from the Commission, shall adopt the ~~European~~ regulations or decisions on fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities.
4. In accordance with paragraph 2, the national market organisations may be replaced by the common organisation provided for in Article III-124(1) if:
 - (a) the common organisation offers Member States which are opposed to this measure and which have an organisation of their own for the production in question equivalent safeguards for the employment and standard of living of the producers concerned, account being taken of the adjustments that will be possible and the specialisation that will be needed with the passage of time;
 - (b) such an organisation ensures conditions for trade within the Union similar to those existing in a national market.

5. If a common organisation for certain raw materials is established before a common organisation exists for the corresponding processed products, such raw materials as are used for processed products intended for export to third countries may be imported from outside the Union.

Article III-128 (ex Article 38 TEC)

Where in a Member State a product is subject to a national market organisation or to internal rules having equivalent effect which affect the competitive position of similar production in another Member State, a countervailing charge shall be applied by Member States to imports of this product coming from the Member State where such organisation or rules exist, unless that State applies a countervailing charge on export.

The Commission shall adopt ~~European~~ regulations or decisions fixing the amount of these charges at the level required to redress the balance; it may also authorise other measures, the conditions and details of which it shall determine.

SECTION 5

ENVIRONMENT

Article III-129 (ex Article 174 TEC)

1. Union policy on the environment shall contribute to pursuit of the following objectives:
 - (a) preserving, protecting and improving the quality of the environment;
 - (b) protecting human health;
 - (c) prudent and rational utilisation of natural resources;
 - (d) promoting measures at international level to deal with regional or worldwide environmental problems.
2. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional steps, for non-economic environmental reasons, subject to a procedure of inspection by the Union.
3. In preparing its policy on the environment, the Union shall take account of:
 - (a) available scientific and technical data;
 - (b) environmental conditions in the various regions of the Union;
 - (c) the potential benefits and costs of action or lack of action;
 - (d) the economic and social development of the Union as a whole and the balanced development of its regions.
4. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for the Union's cooperation may be the subject of agreements between the Union and the third parties concerned, ~~which shall be negotiated and concluded in accordance with Article III-272-227.~~

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

Article III-129

Paragraph 4

The reference to Article III-272 is incorrect and should be replaced by a reference to Article III-227. However, it is suggested that it should be deleted (see comments on Article I-56).

Article III-130 (ex Article 175/176 TEC)

1. ~~European~~ Laws or framework laws shall establish what action is to be taken in order to achieve the objectives referred to in Article III-129. They shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.
2. By way of derogation from paragraph 1 and without prejudice to Article III-65, the Council ~~of Ministers~~ shall unanimously adopt ~~European~~ laws or framework laws establishing:
 - (a) measures primarily of a fiscal nature;
 - (b) measures affecting:
 - (i) town and country planning;
 - (ii) quantitative management of water resources or affecting, directly or indirectly, the availability of those resources;
 - (iii) land use, with the exception of waste management;
 - (c) measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.

The Council ~~of Ministers~~ may unanimously adopt a ~~European~~ decision making the ordinary legislative procedure applicable to the matters referred to in the first subparagraph ~~of this paragraph~~.

In all cases, the Council ~~of Ministers~~ shall act after consulting the European Parliament, the Committee of the Regions and the Economic and Social Committee.

3. General action programmes which set out priority objectives to be attained shall be enacted by ~~European~~ laws. Such laws shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

The measures necessary for the implementation of these programmes shall be adopted under the terms of paragraph 1 or paragraph 2, according to the case.

4. Without prejudice to certain measures adopted by the Union, the Member States shall finance and implement the environment policy.
5. Without prejudice to the principle that the polluter should pay, if a measure based on paragraph 1 involves costs deemed disproportionate for the public authorities of a Member State, such measure shall provide in appropriate form for:
 - (a) temporary derogations, and/or
 - (b) financial support from the Cohesion Fund.

Article III-130

Paragraph 2

In subparagraph (b)(ii) of the French version, it is suggested that the term "*hydraulique*" be replaced by "*hydrique*", which is more accurate.

Unlike in the second paragraph of Article III-104(3), here the decision making the ordinary legislative procedure applicable to the matters referred to in the first subparagraph of this paragraph is not to be adopted on the basis of a Commission proposal (while the current "bridge" to the last subparagraph of Article 175(2) of the TEC provides for a Commission proposal).

~~Article III-131~~

6. The protective provisions adopted pursuant to ~~Article III-130~~ **this Article** shall not prevent any Member State from maintaining or introducing more stringent protective provisions. Such provisions must be compatible with the Constitution. They shall be notified to the Commission.

Article III-131

It is suggested that this Article, which has a direct link with Article III-130, should be incorporated in that Article as paragraph 6 (see also Article III-132 where a similar provision is found in paragraph 4).

SECTION 6

CONSUMER PROTECTION

Article III-132 (ex Article 153 TEC)

1. In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.
2. The Union shall contribute to the attainment of the objectives referred to in paragraph 1 through:
 - (a) measures adopted pursuant to Article III-65 in the context of the completion of the internal market;
 - (b) measures which support, supplement and monitor the policy pursued by the Member States.
3. The measures referred to in paragraph 2(b) shall be enacted by ~~European~~ laws or framework laws. Such laws shall be adopted after consultation of the Economic and Social Committee.
4. Acts adopted pursuant to paragraph 3 shall not prevent any Member State from maintaining or introducing more stringent protective provisions. Such provisions must be compatible with the Constitution. They shall be notified to the Commission.

SECTION 7

TRANSPORT

Article III-133 (ex Articles 70 and 71 TEC)

1. The objectives of the Constitution shall, in matters governed by this Title, be pursued within the framework of a common transport policy.

Article III-134 (~~ex Article 71~~)

2. ~~European~~ Laws or framework laws shall implement ~~Article III-133~~ **paragraph 1**, taking into account the distinctive features of transport. They shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

Such ~~European~~ laws or framework laws shall contain:

- (a) common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States;
- (b) the conditions under which non-resident carriers may operate transport services within a Member State;
- (c) measures to improve transport safety;
- (d) any other appropriate measure.

Article III-135 (ex Articles 72/73/74 TEC)

1. Until the ~~European~~ laws or framework laws referred to in the first paragraph of ~~Article III-134~~ **Article [number of preceding Article]** have been adopted, no Member State may, unless the Council of Ministers has unanimously adopted a ~~European~~ decision granting a derogation, make the various provisions governing the subject on 1 January 1958 or, for acceding States, the date of their accession less favourable in their direct or indirect effect on carriers of other Member States as compared with carriers who are nationals of that State.

Article III-136 (~~ex Article 73 TEC~~)

2. Aids shall be compatible with the Constitution if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service.

Articles III-133 and III-134

It is suggested that these two Articles should be made into one.

Articles III-135, III-136 and III-137

It is suggested that these three Articles should be made into one.

Article III-137 (~~ex Article 74 TEC~~)

3. Any measures adopted within the framework of the Constitution in respect of transport rates and conditions shall take account of the economic circumstances of carriers.

Article III-138 (ex Article 75 TEC)

1. In the case of transport within the Union, discrimination which takes the form of carriers charging different rates and imposing different conditions for the carriage of the same goods over the same transport links on grounds of the Member State of origin or of destination of the goods in question shall be prohibited.
2. Paragraph 1 shall not prevent the adoption of other ~~European~~ laws or framework laws pursuant to the first paragraph of Article III-134.
3. The Council of Ministers, on a proposal from the Commission, shall adopt ~~European~~ regulations or decisions for implementing paragraph 1. It shall act after consulting the European Parliament and the Economic and Social Committee.

The Council of Ministers may in particular adopt the ~~European~~ regulations and decisions needed to enable the institutions to secure compliance with the rule laid down in paragraph 1 and to ensure that users benefit from it to the full.

4. The Commission, acting on its own initiative or on application by a Member State, shall investigate any cases of discrimination falling within paragraph 1 and, after consulting any Member State concerned, adopt the necessary ~~European~~ decisions within the framework of the ~~European~~ regulations and decisions referred to in paragraph 3.

Article III-139 (ex Article 76 TEC)

1. The imposition by a Member State, in respect of transport operations carried out within the Union, of rates and conditions involving any element of support or protection in the interest of one or more particular undertakings or industries shall be prohibited, unless authorised by a ~~European~~ decision of the Commission.
2. The Commission, acting on its own initiative or on application by a Member State, shall examine the rates and conditions referred to in paragraph 1, taking account in particular of the requirements of an appropriate regional economic policy, the needs of underdeveloped areas and the problems of areas seriously affected by political circumstances on the one hand, and of the effects of such rates and conditions on competition between the different modes of transport on the other.

After consulting each Member State concerned, the Commission shall adopt the necessary ~~European~~ decisions.

3. The prohibition provided for in paragraph 1 shall not apply to tariffs fixed to meet competition.

Article III-140 (ex Article 77 TEC)

Charges or dues in respect of the crossing of frontiers which are charged by a carrier in addition to the transport rates shall not exceed a reasonable level after taking the costs actually incurred thereby into account.

Member States shall endeavour to reduce these costs.

The Commission may make recommendations to Member States for the application of this Article.

Article III-141 (ex Article 78 TEC)

The provisions of this Section shall not form an obstacle to the application of measures taken in the Federal Republic of Germany to the extent that such measures are required in order to compensate for the economic disadvantages **which continue to be** caused by the division of Germany to the economy of certain areas of the Federal Republic **which have been** affected by that division.

Article III-142 (ex Article 79 TEC)

An Advisory Committee consisting of experts designated by the governments of Member States shall be attached to the Commission. The Commission, whenever it considers it desirable, shall consult the Committee on transport matters.

Article III-143 (ex Article 80 TEC)

1. This Section shall apply to transport by rail, road and inland waterway.
2. ~~European~~ Laws or framework laws may lay down appropriate measures for sea and air transport. They shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

Article III-141

Same comment as on Article III-56(2)(c).

SECTION 8

TRANS-EUROPEAN NETWORKS

Article III-144 (ex Article 154 TEC)

1. To help achieve the objectives referred to in Articles III-14 and III-116 and to enable **citizens** of the Union, economic operators and regional and local communities to derive full benefit from the setting-up of an area without internal frontiers, the Union shall contribute to the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructures.
2. Within the framework of a system of open and competitive markets, action by the Union shall aim at promoting the interconnection and interoperability of national networks as well as access to such networks. It shall take account in particular of the need to link island, landlocked and peripheral regions with the central regions of the Union.

Article III-145 (ex Article 155 TEC)

1. In order to achieve the objectives referred to in Article III-144, the Union:
 - (a) shall establish a series of guidelines covering the objectives, priorities and broad lines of measures envisaged in the sphere of trans-European networks; these guidelines shall identify projects of common interest;
 - (b) shall implement any measures that may prove necessary to ensure the interoperability of the networks, in particular in the field of technical standardisation;
 - (c) may support projects of common interest supported by Member States, which are identified in the framework of the guidelines referred to in point (a), particularly through feasibility studies, loan guarantees or interest-rate subsidies; the Union may also contribute, through the Cohesion Fund, to the financing of specific projects in Member States in the area of transport infrastructure.

The Union's activities shall take into account the potential economic viability of the projects.

2. The guidelines and other measures referred to in paragraph 1 shall be enacted by ~~European~~ laws or framework laws. Such laws shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

Guidelines and projects of common interest which relate to the territory of a Member State shall require the agreement of the Member State concerned.

3. Member States shall, in liaison with the Commission, coordinate among themselves the policies pursued at national level which may have a significant impact on the achievement of the objectives referred to in Article III-144. The Commission may, in close cooperation with the Member States, take any useful initiative to promote such coordination.

4. The Union may cooperate with third countries to promote projects of mutual interest and to ensure the interoperability of networks.

SECTION 9

RESEARCH AND TECHNOLOGICAL DEVELOPMENT, AND SPACE

Article III-146 (ex Article 163 TEC)

1. The Union shall aim to strengthen the scientific and technological bases of Union industry and encourage it to become more competitive at international level, while promoting all the research activities deemed necessary by virtue of other Chapters of the Constitution.
2. For this purpose, the Union shall, throughout the Union, encourage undertakings, including small and medium-sized undertakings, research centres and universities in their research and technological development activities of high quality; it shall support their efforts to cooperate with one another, aiming, notably, at enabling researchers to cooperate freely across borders and undertakings to exploit the internal market potential, in particular through the opening-up of national public contracts, the definition of common standards and the removal of legal and fiscal obstacles to that cooperation.
3. All the Union's activities ~~under the Constitution~~ **in the area of research and technological development**, including demonstration projects, ~~in the area of research and technological development~~ shall be decided on and implemented in accordance with this Section, **with the exception of the research carried out in the framework of the European Armaments, Research and Military Capabilities Agency provided for in Article III-212.**

Article III-147 (ex Article 164 TEC)

In pursuing ~~these~~ **the** objectives **referred to in Article III-146**, the Union shall carry out the following activities, complementing the activities carried out in the Member States:

- (a) implementation of research, technological development and demonstration programmes, by promoting cooperation with and between undertakings, research centres and universities;
- (b) promotion of cooperation in the field of the Union's research, technological development and demonstration with third countries and international organisations;
- (c) dissemination and optimisation of the results of activities in the Union's research, technological development and demonstration;
- (d) stimulation of the training and mobility of researchers in the Union.

Article III-146

Paragraphs 1 and 3

The broad reference to other Chapters and to *"All the Union's activities under the Constitution in the area of research ..."* which *"shall be decided on and implemented in accordance with this Section"* could come into conflict with Article III-212 on the European Armaments, Research and Military Capabilities Agency (i.e. which is also competent to do research in these areas). To avoid this, it is suggested that paragraph 3 should be amended.

Article III-148 (ex Article 165 TEC)

1. The Union and the Member States shall coordinate their research and technological development activities so as to ensure that national policies and the Union's policy are mutually consistent.
2. In close cooperation with the Member States, the Commission may take any useful initiative to promote the coordination referred to in paragraph 1, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament **and the Council** shall be kept fully informed.

Article III-149 (ex Article 166 TEC)

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

The framework programme shall:

- (a) establish the scientific and technological objectives to be achieved by the activities provided for in Article III-147 and fix the relevant priorities;
 - (b) indicate the broad lines of such activities;
 - (c) fix the maximum overall amount and the detailed rules for the Union's financial participation in the framework programme and the respective shares in each of the activities provided for.
2. The framework programme shall be adapted or supplemented as the situation changes.
 3. The framework programme shall be implemented through specific programmes developed within each activity. Each specific programme shall define the detailed rules for implementing it, fix its duration and provide for the means deemed necessary. The sum of the amounts deemed necessary, fixed in the specific programmes, may not exceed the overall maximum amount fixed for the framework programme and each activity.
 4. The Council of Ministers, on a proposal from the Commission, shall adopt the ~~European~~ regulations or decisions establishing the specific programmes. It shall act after consulting the European Parliament and the Economic and Social Committee.

Article III-150 (ex Articles 167, **168, 169, 170** and ~~the 2nd second~~ paragraph of ex Article 172 TEC)

1. For the implementation of the multiannual framework programme, ~~European~~ laws or framework laws shall establish:
 - (a) the rules for the participation of undertakings, research centres and universities;
 - (b) the rules governing the dissemination of research results.

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

Article III-148

It is suggested that the Council should be informed in the same way as the Parliament (open method of coordination).

Articles III-150, III-151, III-152, III-153

It is suggested that these four Articles should be made into one.

~~Article III-151 (ex Article 68 and second paragraph of ex Article 172 TEC)~~

2. In implementing the multiannual framework programme, ~~European~~ laws may establish supplementary programmes involving the participation of certain Member States only, which shall finance them subject to possible participation by the Union.

Such laws shall determine the rules applicable to supplementary programmes, particularly as regards the dissemination of knowledge and access by other Member States. They shall be adopted after consultation of the Economic and Social Committee and with the agreement of the Member States concerned.

~~Article III-152 (ex Article 169 and second paragraph of ex Article 172 TEC)~~

3. In implementing the multiannual framework programme, ~~European~~ laws may make provision, in agreement with the Member States concerned, for participation in research and development programmes undertaken by several Member States, including participation in the structures created for the execution of those programmes.

Such laws shall be adopted after consultation of the Economic and Social Committee.

~~Article III-153 (ex Article 170 TEC)~~

4. In implementing the multiannual framework programme the Union may make provision for cooperation in the Union's research, technological development and demonstration with third countries or international organisations.

The detailed arrangements for such cooperation may be the subject of agreements between the Union and the third parties concerned, ~~which shall be negotiated and concluded in accordance with Article III-227.~~

Article III-154 (ex Article 171 and ~~second~~**first** paragraph of Article 172 TEC)

The Council of ~~Ministers~~, on a proposal from the Commission may adopt ~~European~~ regulations or decisions to set up joint undertakings or any other structure necessary for the efficient execution of the Union's research, technological development and demonstration programmes. It shall act after consulting the European Parliament and the Economic and Social Committee.

Article III-155 (new)

1. To promote scientific and technical progress, industrial competitiveness and the implementation of its policies, the Union shall draw up a ~~European~~ space policy. To this end, it may promote joint initiatives, support research and technological development and coordinate the efforts needed for the exploration and exploitation of space.

Article III-153

In the second paragraph (now second subparagraph of paragraph 4 of the regrouped Article III-150), the reference to Article III-227 is legally superfluous.

2. To contribute to attaining the objectives referred to in paragraph 1, ~~European~~ laws or framework laws shall establish the necessary measures, which may take the form of a ~~European~~ **Union** space programme.

Article III-156 (ex Article 173 TEC)

At the beginning of each year the Commission shall send a report to the European Parliament and the Council ~~of Ministers~~. The report shall include information on activities relating to research, ~~and~~ technological development activities, **the Union's space policy** and the dissemination of results during the previous year, and the work programme for the current year.

Article III-155

In paragraph 2

More legally exact wording.

Article III-156

It is suggested that the Commission's report should also cover the Union's space policy.

SECTION 10

ENERGY

Article III-157 (new)

1. In establishing an internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim to:

- (a) ensure the functioning of the energy market,
- (b) ensure security of energy supply in the Union, and
- (c) promote energy efficiency and saving and the development of new and renewable forms of energy.

2. The measures necessary to achieve the objectives in paragraph 1 shall be enacted in ~~European~~ laws or framework laws. Such laws shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

Such laws or framework laws shall not affect a Member State's choice between different energy sources and the general structure of its energy supply, without prejudice to Article III-130(2)(c).

CHAPTER IV

AREA OF FREEDOM, SECURITY AND JUSTICE

SECTION 1

GENERAL PROVISIONS

Article III-158 (ex Articles 29 TEU and 61 TEC)

1. The Union shall constitute an area of freedom, security and justice with respect for fundamental rights, taking into account the different legal traditions and systems of the Member States.
2. It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. For the purpose of this chapter, stateless persons shall be treated as third-country nationals.
3. The Union shall endeavour to ensure a high level of security by measures to prevent and combat crime, racism and xenophobia, and measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as by the mutual recognition of judgments in criminal matters and, if necessary, the approximation of criminal laws.
4. The Union shall facilitate ~~access to justice~~ **the development of judicial cooperation in civil matters**, in particular by the principle of mutual recognition of judicial and extrajudicial decisions ~~in civil matters~~.

Article III-159 (new)

The European Council shall define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice.

Article III-160 (new)

~~1.~~ Member States' national Parliaments shall ensure that the proposals and legislative initiatives submitted under Sections 4 and 5 of this Chapter comply with the principle of subsidiarity, in accordance with the arrangements in the Protocol on the application of the principles of subsidiarity and proportionality.

~~Member States' national Parliaments may participate in the evaluation mechanisms contained in Article III 161 and in the political monitoring of Europol and the evaluation of Eurojust's activities in accordance with Articles III 177 and III 174.~~

Article III-158

Paragraph 4

It is suggested that the expression "*access to justice*", which is only one of the eight points (point (e)) included in Article III-170(2), should be replaced by a wider expression appearing in the introductory phrase of Article III-170 "*[develop] judicial cooperation in civil matters*".

Article III-160

Almost identical replication of Article I-41(2).

Article III-161 (new)

Without prejudice to Articles III-265 to III-267, the Council of Ministers may, on a proposal from the Commission, adopt European regulations or decisions laying down the arrangements whereby Member States, in collaboration with the Commission, conduct objective and impartial evaluation of the implementation of the Union policies referred to in this Chapter by Member States' authorities, in particular in order to facilitate full application of the principle of mutual recognition. The European Parliament and Member States' national Parliaments shall be informed of the content and results of the evaluation.

Article III-162 (ex Article 36 TEU)

~~The Council shall establish a~~ **A standing committee shall be set up** within the Council of Ministers in order to ensure that operational cooperation on internal security is promoted and strengthened within the Union. Without prejudice to Article III-247, it shall facilitate coordination of the action of Member States' competent authorities. Representatives of the Union bodies, **offices** and agencies concerned may be involved in the proceedings of this committee. The European Parliament and Member States' national parliaments shall be kept informed of the proceedings.

Article III-163 (ex Article 33 TEU and ex Article 64 TEC)

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

Article III-164 (ex-Article 66 TEC)

The Council of Ministers shall adopt European regulations to ensure administrative cooperation between the relevant departments of the Member States in the areas covered by this Chapter, as well as between those departments and the Commission. It shall act on a Commission proposal, subject to Article III-165, and after consulting the European Parliament.

Article III-164a (ex Article 32 TEU)

A European law or framework law of the Council of Ministers shall lay down the conditions and limitations under which the competent authorities of the Member States referred to in Articles III-171 and III-176 may operate in the territory of another Member State in liaison and in agreement with the authorities of that State. The Council of Ministers shall act unanimously after consulting the European Parliament.

Article III-165 (new)

The acts referred to in Sections 4 and 5 of this Chapter, **together with the regulations referred to in Article III-164 which ensure administrative cooperation between the departments referred to in these sections**, shall be adopted:

- (a) on a proposal from the Commission, or
- (b) on the initiative of a quarter of the Member States.

Article III-161

The formulation "*objective and impartial evaluation*" is redundant.

Article III-162

It is suggested that this should be based on the current wording of Article 36 TEU and Article III-86 ("*... shall be set up*").

Article III-164

It is suggested that clarification be given of the relationship between this Article and Article III-165.

Article III-164a

It is suggested that this Article (currently Article III-178) should be transferred here, amongst the general provisions (Section 1), given that it also applies to Article III-171 (judicial cooperation in criminal matters).

SECTION 2

POLICIES ON BORDER CHECKS, ASYLUM AND IMMIGRATION

Article III-166 (ex Article 62 TEC)

1. The Union shall develop a policy with a view to:
 - (a) ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders;
 - (b) carrying out checks on persons and efficient monitoring of the crossing of external borders;
 - (c) the gradual introduction of an integrated management system for **checks on persons at the** external borders.
2. For this purpose, ~~European~~ laws or framework laws shall establish measures concerning:
 - (a) the common policy on visas and other short-stay residence permits;
 - (b) the controls to which persons crossing external borders are subject;
 - (c) the conditions under which nationals of third countries shall have the freedom to travel within the Union for a short period;
 - (d) any measure necessary for the gradual establishment of an integrated management system for **checks on persons at the** external borders;
 - (e) the absence of any controls on persons, whatever their nationality, when crossing internal borders.
3. This Article shall not affect the competence of the Member States concerning the geographical demarcation of their borders, in accordance with international law.

Article III-167 (points 1 and 2 of ex Article 63 and ex Article 64(1) of the TEC)

1. The Union shall develop a common policy on asylum, **subsidiary protection** and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of *non-refoulement*. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties.

Article III-166

Paragraphs 1 and 2

Changes are suggested to paragraphs 1(c) and 2(d) to avoid any ambiguity as to the extent of the future integrated system (it involves checks on persons and not on goods, which are covered by other provisions, notably those on the internal market).

[Comment on the French word "*ressortissants*" – does not apply to the English text]

Article III-167

Paragraph 1

For the sake of consistency, it is suggested that the introductory phrase of this paragraph should include a reference to subsidiary protection as well as temporary protection, since subsidiary protection is mentioned several times in paragraph 2.

2. For this purpose, ~~European~~ laws or framework laws shall lay down measures for a common European asylum system comprising:

- (a) a uniform status of asylum for nationals of third countries, valid throughout the Union;
- (b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;
- (c) a common system of temporary protection for displaced persons in the event of a massive inflow;
- (d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;
- (e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;
- (f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;
- (g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.

3. In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council ~~of Ministers~~, on a proposal from the Commission, may adopt ~~European~~ regulations or decisions comprising provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament.

Article III-168 (points 3 and 4 of ex Article 63 TEC)

1. The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.

2. To this end, ~~European~~ laws or framework laws shall establish measures in the following areas:

- (a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion;
- (b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;

Article III-168

Paragraph 2

See comments on Article III-104(1).

- (c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;
 - (d) combating trafficking in persons, in particular women and children.
3. The Union may conclude readmission agreements with third countries for the readmission of third-country nationals residing without authorisation to their countries of origin or provenance, ~~in accordance with Article III-227.~~
4. ~~European~~ Laws or framework laws may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.
5. This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.

Article III-169 (new)

The policies of the Union set out in this Section and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the acts of the Union adopted pursuant to this Section shall contain appropriate measures to give effect to this principle.

Article III-168

Paragraph 3

The reference to Article III-227 is legally superfluous.

SECTION 3

JUDICIAL COOPERATION IN CIVIL MATTERS

Article III-170 (ex Article 65 TEC)

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

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

SECTION 4

JUDICIAL COOPERATION IN CRIMINAL MATTERS

Article III-171 (ex Article 31(1) TEU)

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

~~European~~ Laws or framework laws shall establish measures to:

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

2. In order 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 concerning:

- (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 of Ministers has identified in advance by a ~~European~~ decision. The Council of Ministers shall act unanimously after obtaining the consent of the European Parliament.

Adoption of such minimum rules shall not prevent Member States from maintaining or introducing a higher level of protection for the rights of individuals in criminal procedure.

Article III-172 (new)

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 of Ministers 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. **They 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.**

~~Without prejudice to Article III-165, such framework laws shall be adopted by the same procedure as was followed for the adoption of the harmonisation measures referred to in the preceding subparagraph.~~

Article III-173 (new)

~~European~~ Laws or framework laws may establish measures to promote and support the action of Member States in the field of crime prevention. Such measures shall not include the approximation of Member States' legislative and regulatory provisions.

Article III-174 (ex Article 31(2) TEU)

1. Eurojust's mission shall be to support and strengthen coordination and cooperation between national prosecuting authorities in relation to serious crime affecting two or more Member States or requiring a prosecution on common bases, on the basis of operations conducted and information supplied by the Member States' authorities and by Europol.

2. ~~European~~ Laws shall determine Eurojust's structure, workings, scope of action and tasks. Those tasks may include:

- (a) the initiation and coordination of criminal prosecutions conducted by competent national authorities, particularly those relating to offences against the financial interests of the Union;
- (b) the strengthening of judicial cooperation, including by resolution of conflicts of jurisdiction and by close cooperation with the European Judicial Network.

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

3. In the prosecutions referred to in this Article, and without prejudice to Article III-175, **the application of measures constituting a formal acts of judicial procedure shall be carried out by fall exclusively to the competent national officials.**

Article III-172

Paragraph 2

Suggestion for clearer drafting.

Article III-175 (new)

1. In order to combat serious crime having a cross-border dimension, as well as crimes affecting the interests of the Union, a ~~European~~ law of the Council of ~~Ministers~~ may establish a European Public Prosecutor's Office from Eurojust. The Council of ~~Ministers~~ 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 serious crimes affecting more than one Member State and of 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.

Article III-175

Paragraphs 1 and 2

It should be noted that there is a contradiction between paragraph 1 (*"In order to combat ... crimes affecting the interests of the Union..."*) and paragraph 2 (*"The European Public Prosecutor's Office shall be responsible for ... offences against the Union's financial interests, as determined by the law provided for in paragraph 1"*). No suggestion is made here, since determining the scope of the competences of the European Public Prosecutor's Office is a matter of political expediency.

SECTION 5

POLICE COOPERATION

Article III-176 (ex Article 30(1) TEU)

1. The Union shall establish police cooperation involving all the Member States' competent authorities, including police, customs and other specialised law enforcement services in relation to the prevention, detection and investigation of criminal offences.
2. To this end, ~~European~~ laws or framework laws may establish measures concerning:
 - (a) the collection, storage, processing, analysis and exchange of relevant information;
 - (b) support for the training of staff, and cooperation on the exchange of staff, on equipment and on research into crime-detection;
 - (c) common investigative techniques in relation to the detection of serious forms of organised crime.
3. A ~~European~~ law or framework law of the Council of ~~Ministers~~ may establish measures concerning operational cooperation between the authorities referred to in this Article. The Council of ~~Ministers~~ shall act unanimously after consulting the European Parliament.

Article III-177 (ex Article 30(2) TEU)

1. Europol's mission is to support and strengthen action by the Member States' police authorities and other law enforcement services and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy.
2. ~~European~~ Laws shall determine Europol's structure, operation, field of action and tasks. These tasks may include:
 - (a) the collection, storage, processing, analysis and exchange of information forwarded particularly by the authorities of the Member States or third countries or bodies;
 - (b) the coordination, organisation and implementation of investigative and operational action carried out jointly with the Member States' competent authorities or in the context of joint investigative teams, where appropriate in liaison with Eurojust.

~~European~~ Laws shall also lay down the procedures for scrutiny of Europol's activities by the European Parliament, together with Member States' national parliaments.

3. Any operational action by Europol must be carried out in liaison and in agreement with the authorities of the Member States whose territory is concerned. The application of coercive measures shall be the exclusive responsibility of the competent national authorities.

Article III-178 (~~ex Article 32 TEU~~)

~~A European law or framework law of the Council of Ministers shall lay down the conditions and limitations under which the competent authorities of the Member States referred to in Articles III-171 and III-176 may operate in the territory of another Member State in liaison and in agreement with the authorities of that State. The Council of Ministers shall act unanimously after consulting the European Parliament.~~

Article III-178

It is suggested that this Article should be transferred to the first Section of this Chapter (see comment on Article 164a).

CHAPTER V
AREAS WHERE THE UNION MAY
TAKE COORDINATING,
COMPLEMENTARY OR SUPPORTING ACTION

SECTION 1

PUBLIC HEALTH

Article III-179 (ex Article 152 TEC)

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

Action by the Union, which shall complement national policies, shall be directed towards improving public health, preventing human illness and diseases, and obviating sources of danger to physical and mental health. Such action shall cover the fight against the major health scourges, by promoting research into their causes, their transmission and their prevention, as well as health information and education.

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

2. The Union shall encourage cooperation between the Member States in the areas referred to in this Article and, if necessary, lend support to their action.

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

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

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

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

Chapter V

It will be noted that the order of the sections here does not follow the order of the areas listed in Article I-16. For the sake of consistency, it is suggested that the order in Article I-16 be aligned on that followed in this chapter (see re Article I-16).

Article III-179

Paragraph 1

It is suggested that the horizontal clause in the first subparagraph be moved to the beginning of Part III (see suggestion re Articles III-1 to III-5).

Paragraph 2

In the second subparagraph, it is suggested that the Council be kept informed in the same way as the Parliament (open method of coordination).

Paragraph 4

The measures provided for by this paragraph might include harmonisation of the laws and regulations of the Member States. With regard to this aspect, it is therefore not a supporting competence. To avoid contradiction, it is therefore suggested that it be specified that this is a derogation from the general rule laid down in Article I-11(5) and that reference be made to point (k) (health) of the areas of shared competence.

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

5. ~~European laws~~ Laws or framework laws may also establish incentive measures designed to protect and improve human health and to combat the major ~~cross-border~~ health scourges **affecting more than one Member State**, excluding any harmonisation of the laws and regulations of the Member States. It shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

6. For the purposes set out in this Article, the Council of ~~Ministers~~, on a proposal from the Commission, may also adopt recommendations.

7. Union action in the field of public health shall fully respect the responsibilities of the Member States for the organisation and delivery of health services and medical care. In particular, measures referred to in paragraph 4(a) shall not affect national provisions on the donation or medical use of organs and blood.

Article III-179

Paragraphs 1 and 5

In the second subparagraph of paragraph 1, it is laid down that the Union's action shall cover "*the fight against the major health scourges*" (like the present Article 152(1) TEC) whereas the legal basis in paragraph 5 refers to "*the major cross-border health scourges*", limiting the scope of the competence compared with the current competence which has enabled the adoption of programmes to combat cancer, which, since it is not contagious, could be regarded as not "*cross-border*". To return to the present situation, it is suggested that "***affecting more than one Member State***" be inserted in paragraph 5 in place of "*cross-border*" (see report by the group of experts of the three Legal Services of 4 July 2003).

SECTION 2

INDUSTRY

Article III-180 (ex Article 157 TEC)

1. The Union and the Member States shall ensure that the conditions necessary for the competitiveness of the Union's industry exist.

For that purpose, in accordance with a system of open and competitive markets, their action shall be aimed at:

- (a) speeding up the adjustment of industry to structural changes;
- (b) encouraging an environment favourable to initiative and to the development of undertakings throughout the Union, particularly small and medium-sized undertakings;
- (c) encouraging an environment favourable to cooperation between undertakings;
- (d) fostering better exploitation of the industrial potential of policies of innovation, research and technological development.

2. The Member States shall consult each other in liaison with the Commission and, where necessary, shall coordinate their action. The Commission may take any useful initiative to promote such coordination, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament **and the Council** shall be kept fully informed.

3. ~~The Union shall contribute to the achievement of the objectives set out in paragraph 1 through the policies and activities it pursues under other provisions of the Constitution.~~ European laws or framework laws may establish specific measures in support of action taken in the Member States to achieve the objectives set out in paragraph 1, ~~excluding any harmonisation of the laws and regulations of the Member States.~~ They shall be adopted after consultation of the Economic and Social Committee.

This Section shall not provide a basis for the introduction by the Union of any measure which could lead to distortion of competition or contains tax provisions or provisions relating to the rights and interests of employed persons.

Article III-180

Paragraph 2

It is suggested that the Council be kept informed in the same way as the Parliament (open method of coordination).

Paragraph 3

It is suggested that the first sentence (horizontal clause) be moved to the beginning of Part III (see suggestion re Articles III-1 to III-5).

In general, in each Article concerning the areas of action covered in this chapter, it is repeated that any harmonisation of the laws and regulations of the Member States is excluded (Articles III-179(5), III-180(3), III-181(5), III-182(4), III-183(4), III-184(2), III-185(2)), whereas this is already laid down horizontally in Article I-16(3) (as redrafted and renumbered Article I-11(5), second subparagraph). It is therefore suggested that in each of the abovementioned provisions in Part III the words "*excluding any harmonisation of the laws and regulations of the Member States*" be deleted (except in Article III-179(5) in order to avoid confusion because such harmonisation is possible in the areas covered by paragraph 4).

SECTION 3

CULTURE

Article III-181 (ex Article 151 TEC)

1. The Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.
2. Action by the Union shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and complementing their action in the following areas:
 - (a) improvement of the knowledge and dissemination of the culture and history of the European peoples;
 - (b) conservation and safeguarding of cultural heritage of European significance;
 - (c) non-commercial cultural exchanges;
 - (d) artistic and literary creation, including in the audiovisual sector.
3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of culture, in particular the Council of Europe.
- ~~4. The Union shall take cultural aspects into account in its action under other provisions of the Constitution, in particular in order to respect and to promote the diversity of its cultures.~~
5. In order to contribute to the achievement of the objectives referred to in this Article:
 - (a) ~~European laws~~ Laws or framework laws shall establish incentive actions, ~~excluding any harmonisation of the laws and regulations of the Member States.~~ They shall be adopted after consultation of the Committee of the Regions;
 - (b) the Council of ~~Ministers~~, on a proposal from the Commission, shall adopt recommendations.

Article III-181

Paragraph 4

It is suggested that this horizontal clause be moved to the beginning of Part III (see suggestion re Articles III-1 to III-5).

Paragraph 5(a)

Phrase referring to the exclusion of harmonisation deleted (as explained re Article III-180(3)).

SECTION 4

EDUCATION, VOCATIONAL TRAINING, YOUTH, AND SPORT AND VOCATIONAL TRAINING

Article III-182 (ex Article 149 TEC)

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

The Union shall contribute to the promotion of European sporting issues, given the social and educational function of sport.

2. Union action shall be aimed at:

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

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

4. In order to contribute to the achievement of the objectives referred to in this Article,

- (a) ~~European laws~~ Laws or framework laws shall establish incentive actions, ~~excluding any harmonisation of the laws and regulations of the Member States~~. They shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.
- (b) the Council of Ministers, on a proposal from the Commission, shall adopt recommendations.

Section 4

Title

It is suggested that "*vocational training*" be placed at the end as the Article on this subject is the last one in the section.

Article III-182

Paragraph 4

Phrase referring to the exclusion of harmonisation deleted (as explained re Article III-180(3)).

Article III-183 (ex Article 150 TEC)

1. The Union shall implement a vocational training policy which shall support and complement the action of the Member States, while fully respecting the responsibility of the Member States for the content and organisation of vocational training.
2. Union action shall aim to:
 - (a) facilitate adaptation to industrial change, in particular through vocational training and retraining;
 - (b) improve initial and continuing vocational training in order to facilitate vocational integration and reintegration into the labour market;
 - (c) facilitate access to vocational training and encourage mobility of instructors and trainees and particularly young people;
 - (d) stimulate cooperation on training between educational or training establishments and firms;
 - (e) develop exchanges of information and experience on issues common to the training systems of the Member States.
3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of vocational training.
4. **To contribute to the achievement of the objectives referred to in this Article,**
 - (a) ~~European laws or framework laws shall contribute to the achievement of the objectives referred to in this Article, excluding any harmonisation of the laws and regulations of the Member States.~~ **They shall lay down the necessary measures** They shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee;
 - (b) **the Council, on a proposal from the Commission, shall adopt recommendations.**

Article III-183

Paragraph 4

For the sake of consistency with Article III-184(2), it is suggested that the wording be harmonised.

Phrase referring to the exclusion of harmonisation deleted (as explained re Article III-180(3)).

It is suggested that a phrase be added (see Article III-182(4)) enabling recommendations to be adopted (possible at present under Article 150(4) TEC by the use of the term "*measures*" which leaves open the choice of the type of act) as, in practice, the Council often adopts recommendations on the dual legal basis of "education" and "vocational training".

SECTION 5

CIVIL PROTECTION

Article III-184 (new)

1. The Union shall encourage cooperation between Member States in order to improve the effectiveness of systems for preventing and protecting against natural or man-made disasters ~~within the Union.~~

Union action shall aim to:

- (a) support and complement Member States' action at national, regional and local level in risk prevention, in preparing their civil-protection personnel and in responding to natural or man-made disasters **within the Union**;
- (b) promote swift, effective operational cooperation **within the Union** between national civil-protection services;
- (c) promote consistency in international civil-protection work.

2. The measures necessary to help achieve the objectives referred to in paragraph 1 shall be enacted in ~~European~~ laws or framework laws, ~~excluding any harmonisation of the laws and regulations of the Member States.~~

Article III-184

See also Article III-231 (solidarity clause).

Paragraph 1

Avoid a contradiction between the introductory sentence which says "*within the Union*" and the word "*international*" in point (c).

Paragraph 2

Phrase referring to the exclusion of harmonisation deleted (as explained re Article III-180(3)).

SECTION 6

ADMINISTRATIVE COOPERATION

Article III-185 (new)

1. Effective national implementation of Union law by the Member States, which is essential for the proper functioning of the Union, shall be regarded as a matter of common interest.
2. The Union may support the efforts of Member States to improve their administrative capacity to implement Union law. Such action may include facilitation of exchange of information and of civil servants as well as supporting training schemes. No Member State shall be obliged to avail itself of such support. ~~European laws~~ Laws shall establish the necessary measures to this end; ~~excluding any harmonisation of the laws and regulations of the Member States.~~
3. This Article shall be without prejudice to the obligations of the Member States to implement Union law or to the prerogatives and duties of the Commission. It shall also be without prejudice to other provisions of the Constitution providing for administrative cooperation among the Member States and between them and the Union.

Article III-185

Paragraph 1

Amendment does not affect English text. See also Articles III-56(3), III-71(1), III-94, III-98(2), III-145, III-177(1), III-300. To avoid problems of interpretation, it is therefore suggested that the same term be used here.

Paragraph 2

Phrase referring to the exclusion of harmonisation deleted (as explained re Article III-180(3)).

TITLE IV

ASSOCIATION OF THE OVERSEAS COUNTRIES AND TERRITORIES

Article III-186 (ex Article 182 TEC)

1. The non-European countries and territories which have special relations with Denmark, France, the Netherlands and the United Kingdom shall be associated with the Union. These countries and territories (hereinafter called the "countries and territories") are listed ~~in Annex II*~~ **in the Protocol on the list of overseas countries and territories.**

~~Articles III-186 to III-191 shall~~ This title shall apply to Greenland, subject to the specific provisions ~~set out in~~ of the Protocol on special arrangements for Greenland.

2. The purpose of association shall be to promote the economic and social development of the countries and territories and to establish close economic relations between them and the Union ~~as a whole.~~

Association shall serve primarily to further the interests and prosperity of the inhabitants of these countries and territories in order to lead them to the economic, social and cultural development to which they aspire.

Article III-187 (ex Article 183 TEC)

Association shall have the following objectives:

- (a) Member States shall apply to their trade with the countries and territories the same treatment as they accord each other pursuant to the Constitution;
- (b) Each country or territory shall apply to its trade with Member States and with the other countries and territories the same treatment as that which it applies to the European State with which it has special relations;
- (c) Member States shall contribute to the investments required for the progressive development of these countries and territories;
- (d) For investments financed by the Union, participation in tenders and supplies shall be open on equal terms to all natural and legal persons who are nationals of a Member State or of one of the countries and territories;
- (e) In relations between Member States and the countries and territories, the right of establishment of nationals and companies or firms shall be regulated in accordance with the provisions and procedures laid down in the Subsection relating to the right of establishment and on a non-discriminatory basis, subject to any ~~special measures~~ **legal acts** adopted pursuant to Article III-191.

* ~~This Annex, which corresponds to Annex II to the TEC, is to be drawn up.~~

Article III-186

It is suggested that the Article be divided into two paragraphs.

Paragraph 1, first subparagraph

In the interests of consistency, it is suggested that "*Annex*" be replaced by "*Protocol*", since there is no legal difference between these Annexes and the Protocols (see same comment concerning Article III-122).

2nd paragraph (new)

Article III-192 on Greenland has been moved here.

Paragraph 2

Redundant phrase deleted ("*as a whole*").

Article III-188 (ex Article 184 TEC)

1. Customs duties on imports into the Member States of goods originating in the countries and territories shall be prohibited in conformity with the prohibition of customs duties between Member States provided for by the Constitution.
2. Customs duties on imports into each country or territory from Member States or from the other countries or territories shall be prohibited in accordance with Article III-38.
3. The countries and territories may, however, levy customs duties which meet the needs of their development and industrialisation or produce revenue for their budgets.

The duties referred to in the first subparagraph may not exceed the level of those imposed on imports of products from the Member State with which each country or territory has special relations.

4. Paragraph 2 shall not apply to countries and territories which, by reason of the particular international obligations by which they are bound, already apply a non-discriminatory customs tariff.
5. The introduction of or any change in customs duties imposed on goods imported into the countries and territories shall not, either in law or in fact, give rise to any direct or indirect discrimination between imports from the various Member States.

Article III-189 (ex Article 185 TEC)

If the level of the duties applicable to goods from a third country on entry into a country or territory is liable, when Article III-188(1) has been applied, to cause deflections of trade to the detriment of any Member State, the latter may request the Commission to propose to the other Member States that they take the necessary steps to remedy the situation.

Article III-190 (ex Article 186 TEC)

Subject to the provisions relating to public health, public security or public policy, freedom of movement within Member States for workers from the countries and territories, and within the countries and territories for workers from Member States, shall be regulated by ~~measures~~ **legal acts** adopted in accordance with Article III-191.

Article III-191 (ex Article 187 TEC)

The Council of Ministers shall adopt unanimously, on the basis of the experience acquired under the association of the countries and territories with the Union, **laws, framework laws, European** regulations and decisions as regards the detailed rules and the procedure for the association of the countries and territories with the Union.

Article III-192 (~~ex Article 188 TEC~~)

~~Articles III-186 to III-191 shall apply to Greenland, subject to the specific provisions set out in the Protocol on special arrangements for Greenland.~~

Article III-191

The present Article 187 TEC refers to the adoption of "*provisions*" which may thus take the form of the different types of act provided for by the Treaty. This legal basis makes it possible to derogate from provisions of the Treaty or to amend laws or framework laws. Therefore, in view of the hierarchy of norms, it is suggested that provision be made for the use of the four types of binding act listed in Article I-32 (whilst retaining the same voting rule in the Council). It will also be noted that a Commission proposal is not laid down for regulations and decisions (whereas in practice the Council always acts on a proposal from the Commission in this area) (see report by the group of experts of the three Legal Services of 4 July 2003).

(See similar suggestion re Article III-330 concerning the outermost regions)

Article III-192

As Greenland is included in the Annex II TEC which will be taken over as Annex II to the Treaty establishing the Constitution, it is suggested that Article III-192 be deleted here and that its substance (reference to the Protocol) be moved to Article III-186 (see above).

TITLE V

THE UNION'S EXTERNAL ACTION

CHAPTER I

PROVISIONS HAVING GENERAL APPLICATION

Article III-193 (second paragraph of ex Article 3 and ex Article 11 TEU)

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~~ **and international law**.

The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations, which share ~~these values~~ **the principles referred to in the first subparagraph**. 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~~ **its** 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 **purposes and** 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.

Article III-193

Paragraph 1

There are some editorial suggestions in the first subparagraph. International law is applicable as such, not just in accordance with the principles of the United Nations Charter.

In the second subparagraph, it is suggested that "*these values*" should be replaced by "*the principles*" since they are those referred to in the first subparagraph, and that in the following Articles reference is always made to the principles of external action.

Paragraph 2

In point (c), it is suggested that reference should be made to the "*purposes and principles*" of the United Nations Charter, as in the title of Chapter I of that Charter.

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.

Article III-194 (new)

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 shall 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~~.

Article III-194

This Article raises questions of logic. However, given its politically delicate nature, no comments are being made at this stage.

CHAPTER II
COMMON FOREIGN AND SECURITY POLICY

SECTION 1

COMMON PROVISIONS

Article III-195 (ex Articles 11 and 12 TEC)

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~~ **defining:**
 - (i) ~~actions of the Union to be undertaken;~~
 - (ii) ~~positions of the Union to be taken;~~
 - (iii) ~~implementation of actions and positions~~ **arrangements for the implementation of the decisions referred to in points (i) and (ii);**
 - (c) strengthening systematic cooperation between Member States in the conduct of policy.

Article III-196 (ex Article 13 TEU)

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.

Section I (new)

Given that Articles III-195 to III-209 apply to the whole of the CFSP (i.e. including the ESDP, which is an integral part of it), it is suggested that these Articles should be made into a Section entitled "*Common provisions*").

Article III-195

Paragraph 2

It should be noted that this paragraph is largely similar to Article I-15(2).

Paragraph 3

The wording could be adopted in order to specify that it is not the Union but its relevant institutions which "*conduct*" the CFSP and adopt acts. It is therefore suggested that the wording should be changed. In addition, the classification of the various sorts of decisions by listing "*actions*", "*positions*" and "*implementation of actions and positions*" is not clear. It gives the impression that new types of act are being created as compared with those listed exhaustively in Article I-32. There is in fact only one legal type of "*decision*", of which the contents may vary, but not the legal classification. It is suggested that the wording should be clarified.

Article III-196

Same comment as on Article III-194 above as regards the consistency of the vocabulary used.

Article III-197 (ex Articles 18 and 26 TEU)

1. The Union Minister for Foreign Affairs, who shall chair the Council of Ministers for Foreign Affairs, shall contribute through his or her ~~proposals~~ **initiatives** 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. **The Minister for Foreign Affairs shall represent the Union** for matters relating to the common foreign and security policy, ~~the Union shall be represented by the Union Minister for Foreign Affairs.~~ He or she shall conduct political dialogue **with third parties** on the Union's behalf and shall express the Union's position in international organisations and at international conferences.
3. In fulfilling his or her mandate, the Union Minister for Foreign Affairs shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States ¹.

Article III-198 (ex Article 14 TEU)

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~~ **decision** 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.~~

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 **by the State concerned** 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 such decisions.** ~~of European decisions.~~

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

¹ ~~See the Declaration on the creation of a European External Action Service.~~

Article III-198

Paragraphs 1, 3 and 4

Suggestions for clearer drafting.

The last sentence of the second subparagraph of paragraph 1 is superfluous, since it states a general rule of law. Specifically recalling it in this article, and not in other Articles where it is equally applicable, would create an *a contrario* effect as regards those other articles.

Paragraph 2

As indicated in relation to Article I-15(2), this paragraph jeopardises the binding effect of decisions, the legal effects of which are defined in the fifth subparagraph of Article I-32(1) which states that the decision shall be "*binding in its entirety*". It is therefore suggested that it should be deleted (see report by the group of experts from the three Legal Services of 4 July 2003). In fact this paragraph replicates Article I-15(2) which provides that the Member States "*shall respect the Union's **action***" in the CFSP area.

5. Should there be any major difficulties in implementing a ~~European~~ decisions 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~~ **decision** or impair its effectiveness.

Article III-199 (ex Article 15 TEU)

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-200 (ex Article 22 TEU)

1. Any Member State, the Union Minister for Foreign Affairs, or that Minister with the Commission's support, may refer to the Council of ~~Ministers~~ any question relating to the common foreign and security policy and may submit ~~proposals~~ **initiatives** 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-201 (ex Article 23 TEU)

1. The ~~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. If the members of the Council of ~~Ministers~~ qualifying their abstention in this way represent at least one third of the Member States ~~representing~~ **comprising** 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 in Article III-194(1);
 - (b) when adopting a decision ~~on a Union action or position~~, on an **initiative** ~~proposal~~ which the **Union Minister for Foreign Affairs** has ~~put to it~~ **presented** following a specific request to him or her from ~~by~~ the European Council ~~made on its own initiative or that of the Minister;~~

Article III-199

As indicated in relation to Article III-198 above, the second sentence may jeopardise the binding effect of decisions, the legal effects of which are defined in the fifth subparagraph of Article I-32(1). It is therefore suggested that it should be deleted (see report from the group of experts from the three Legal Services of 4 July 2003). It also replicates Article I-15(2) which provides that the Member States "*shall respect the Union's **action***" in the CFSP area.

Article III-201

Paragraph 1

The rule on abstentions in the second sentence is superfluous, as it is already stated in Article III 246(3). It risks creating an *a contrario* effect.

Paragraph 2

It is suggested that the drafting should be simplified.

- (c) when adopting ~~any a European~~ decision implementing a **decision relating to 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-202 (new)

- 1. When ~~the Council the Union~~ has defined a common approach **of the Union** 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 **in third countries and to international organisations** shall cooperate ~~in third countries and in international organisations~~ and shall contribute to formulating and implementing **a the** common approach referred to in paragraph 1.

Article III-203 (ex Article 18(5) TEU)

The Council of Ministers ~~shall, may 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 or her mandate under the authority of the ~~Union Minister for Foreign Affairs~~.

Article III-204 (ex Article 24 TEU)

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

Article III-202

Paragraph 2

The expression "*a common approach*" is not clear. It is suggested that the text should clarify that it is the approach referred to in paragraph 1.

Wording aligned on Article III-207.

Article III-204

Suggestions to improve the drafting. The reference to Article 227 is superfluous.

Article III-205 (ex Article 21 TEU)

1. The Union Minister for Foreign Affairs shall consult the European Parliament **in accordance with Article I-39(6) and Article I-40(8)**. ~~on the main aspects and the basic choices of the common foreign and security policy, including the common security and defence policy, and~~ **He or she** 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-206 (ex Article 19 TEU)

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)~~ **to Article I-15(2)**, 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.

Article III-207 (ex Article 20 TEU)

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~~ **adopted by virtue of this Chapter** are complied with and implemented. They shall ~~step-up-cooperation~~ **cooperate** by exchanging information and carrying out joint assessments.

Article III-205

There is no point in repeating, almost in full, the contents of Articles I-39(6) and I-40(8) on the provision of information to the European Parliament. It is suggested that the text should be simplified, only retaining the parts which are different.

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 **as referred to in Article I-8(2)(c) and Article II-46** and the measures adopted pursuant to Article III-11.

Article III-208 (ex Article 25 TEU)

1. 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 latter, or of the Union Minister for Foreign Affairs, or on its own initiative. It shall also monitor the implementation of agreed policies **under this Chapter**, without prejudice to the responsibility of the Union Minister for Foreign Affairs.
2. Within the scope of this Chapter, the Committee **referred to in paragraph 1** shall exercise, under the responsibility of the Council of Ministers and of the Union Minister for Foreign Affairs, the political control and strategic direction of the crisis management operations, ~~as defined~~ **referred to** 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~~ **decisions** concerning the political control and strategic direction of the operation.

Article III-209 (ex Article 46(f) and 47 TEU)

The implementation of the common foreign and security policy shall not affect the **application of the procedures laid down by the Constitution for the exercise of the Union** competences listed in Articles I-12 to I-14 and I-16. **Similarly**, the implementation of the policies listed in those Articles shall not affect the ~~competence referred to in Article I-15.~~ **application of the procedures laid down by the Constitution for the exercise of Union competences under this Chapter.**

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

Article III-209

First subparagraph

It should be recalled that the rule in Article 47 of the current TEU is intended to prevent that, while observing the procedures governing its powers under the two CFSP and JHA "pillars", the Council does not adopt acts which "affect" the Community pillar, with this "no effect" rule being subject to monitoring by the Court. In the draft Constitution, despite the disappearance of the pillars, the procedures and powers of the institutions remain different for the CFSP and other policies. The same type of "no effect" rule has therefore been retained and is also subject to monitoring by the Court. It is suggested that the drafting should be clarified, without altering the meaning

Second subparagraph

For consistency's sake, it is suggested that this subparagraph on the jurisdiction of the Court should be transferred to Article III-282 on the limitation of the jurisdiction of the Court in relation to the CFSP.

SECTION 4 2

THE COMMON SECURITY AND DEFENCE POLICY

Article III-210 (ex Article 17 TEU)

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, advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks ~~of combat forces in~~ undertaken for 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-211 (new)

1. Within the framework of the ~~European~~ decisions adopted in accordance with Article III-210, the Council of Ministers may entrust the implementation of a task to a group of Member States **which are willing and** have ~~having~~ the necessary capability **for such a task.** ~~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 **kept** regularly informed by the Member States participating in the task ~~of its progress.~~ **Those States will inform it** immediately should the completion of **the** task ~~involve~~ **produce** major ~~new~~ consequences or require amendment of the objective, scope and conditions for **the task determined in the decisions referred to in paragraph 1.** ~~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-212 (new)

1. The European Armaments, Research and Military Capabilities Agency, **established by Article I-40(3) and** 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;

Article III-210

Paragraph 1

It is suggested that the word "*joint*", which creates some legal uncertainties, should be deleted: it could be interpreted as referring to joint actions between the Union and third countries or bodies.

To reflect the current situation, and for consistency with the first part of the sentence which provides that the EU "*may use civilian and military means*", it is suggested that the text be adapted accordingly.

Paragraph 2

There is no point in stipulating that the Council shall adopt decisions unanimously: this is already stipulated for all decisions adopted by virtue of the CFSP Chapter by Article III-201(1) (risk of an *a contrario* effect).

Article III-211

Clearer and more precise wording.

Article III-212

There should be a reference to Article I-40(3) which establishes the European Armaments, Research and Military Capabilities Agency.

- (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;
- (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-213 (new)

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-213

This Article raises questions of logic. However, given its delicate political nature, no comments are being made at this stage.

Article III-214 (new)

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~~ **The** list of **participating** 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.
2. A Member State participating in ~~such~~ **the** cooperation **referred to in paragraph 1** ~~which~~ **whose territory** is the victim of armed attack ~~aggression on its territory~~ shall inform the other participating States ~~of the situation~~ and may request **their** aid and assistance ~~from them~~. The **representatives of the** 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 attack ~~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.

Article III-214

This Article raises certain questions of consistency. However, given its delicate political nature, no comments are being made at this stage.

Paragraphs 2 and 3

It will be noted that in Article 51 of the United Nations Charter, "*armed attack*" corresponds to the French "*agression armée*".

SECTION 23

FINANCIAL PROVISIONS

Article III-215 (ex Article 28 TEU)

1. Administrative expenditure which ~~the provisions referred to in~~ **the implementation of** this Chapter entails for the institutions shall be charged to the Union budget.
2. Operating expenditure to which the implementation of ~~these provisions~~ **this Chapter** 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(1), 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 Articles I-40(1) **and III-210**. It shall act after consulting the European Parliament.

Preparatory activities for tasks as referred to in Articles I-40(1) **and III-210** 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 an **initiative 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 **their** reimbursement;
- (b) the procedures for administering the start-up fund;
- (c) the financial control procedures.

When it is planning a task as referred to in Articles I-40(1) **and III-210** 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.

Article III-215

Paragraph 3

On grounds of legal clarity a reference must also be made to Article III-210.

In the third subparagraph, point (a), the meaning of the words "*procedures for reimbursement*" is not clear. Since these are financial amounts allocated to the fund by the Member States, and which are not charged to the Union budget (as indicated in the second subparagraph), these amounts will therefore not be reimbursed to the Member States by the Union budget but will presumably be the subject of partial reimbursements between the Member States on the basis of criteria which remain to be established. Assuming that this is the case, it is suggested that the word "*their*" should be inserted.

Also, the difference in meaning between "*which are not charged to the Union budget*" in the second subparagraph and "*which cannot be charged to the Union's budget*" in the last subparagraph is not clear.

CHAPTER III

COMMON COMMERCIAL POLICY

Article III-216 (ex Article 131 TEC)

By establishing a customs union ~~between the Member States~~ **in accordance with Article III-36**, the Union ~~aims to~~ shall 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-217 (ex Article 133 TEC)

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 required to implement the common commercial policy.

3. **Under this Article the Union may conclude 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 **under this Article** 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.~~

Article III-216

Under Article III-136, the customs union between the Member States has already been established.

Article III-217

Paragraph 1

To clarify the fact that there are two blocks of competences, autonomous competences (customs tariffs, autonomous measures etc) and "contractual" competences (tariff and trade agreements relating to the subjects listed), that the latter could be listed after the autonomous competences in the following way: *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, and to the conclusion of tariff and trade agreements relating to trade in goods and services and the commercial aspects of intellectual property and foreign direct investment (...)*".

Paragraph 2

It should be noted that this paragraph will apply to all autonomous measures, including those to be taken on a case-by-case basis or as a matter of urgency. In order to make it clear that the law or framework law will, in accordance with Articles 1-35 and 1-36, need to provide for delegation to the Council or the Commission for these urgent cases, the wording used by the Convention for Article III-223(3) (humanitarian aid) could be inserted. ("*European laws or framework laws shall establish the measures **defining the framework within which the common commercial policy shall be implemented***"). If the IGC considers that it should be stipulated that such measures should be taken by the Council, a sentence could be inserted stating that "*the Council, on a proposal from the Commission, shall adopt the regulations or decisions relating [in particular] to measures to protect trade*".

Furthermore, it should be noted that reference to framework laws as instruments in the common commercial policy, an area of exclusive Union competence requiring rigorously uniform rules (only regulations are currently adopted), hardly seems appropriate.

Paragraph 3

A large part of the content of this paragraph would be better placed in Article III-227 which lays down the procedure applicable to the conclusion of international agreements. It is therefore suggested that the procedural elements of Article III-217 should be deleted and that those relating to trade agreements (i.e. role of the 133 Committee, Commission as negotiator, etc.) should be transferred to Article 227.

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~~ **For 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~~ **the** agreements include provisions for which unanimity is required for the adoption of internal rules.

The Council shall also act unanimously for ~~negotiation and conclusion of agreements~~ **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~~ This Article shall not apply to 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.~~

~~5-6.~~ 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.

Article III-217 (continued)

Paragraph 4

In order to clarify the fact that the general rule is qualified majority, it is suggested that this should be pointed out here. Otherwise, a mere reference to the cases of unanimity is not comprehensible, as it is out of context.

It should be noted that the second subparagraph would allow, for areas other than those specified in an exhaustive list here (services involving the movement of persons and the commercial aspects of intellectual property) and, contrary to the rule set out in the second subparagraph of paragraph 9 of Article III-227, for the voting rule to be qualified majority for the conclusion of an agreement in these other areas, even where unanimity was required for an internal act in these areas (e.g. Article III-46(3) on foreign direct investment). One can question the legal consistency of a rule which allows an international agreement to be concluded by a different voting rule at the Council from that laid down for the exercise of internal competence.

Paragraph 6

It should be noted that this paragraph, read in conjunction with paragraph 1, has the consequence that the exercise of the competences attributed to the Union by paragraph 1 (for example the conclusion of agreements relating to the commercial aspects of intellectual property and foreign direct investment) could have an impact on the internal law of the Union and of the Member States. Exercising those competences could, depending on the content of the agreements, entail harmonisation of the legislative or regulatory provisions of the Member States, even where the Union's competence at internal level has not been exercised or does not exist. Article III-217 will therefore allow an agreement to contain provisions for which the Union has not been attributed internal competence in the Constitution thus enabling the Union to conclude an international agreement in an area where it does not have internal competence (to be compared with Article 133(6) of the TEC: *"An agreement may not be concluded by the Council if it includes provisions which would go beyond the Community's internal powers, in particular by leading to harmonisation of the laws or regulations of the Member States in an area for which this Treaty rules out such harmonisation"*).

CHAPTER IV
COOPERATION WITH THIRD COUNTRIES
AND HUMANITARIAN AID

SECTION 1

DEVELOPMENT COOPERATION

Article III-218 (ex Article 177 TEC)

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 shall 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-219

1. ~~European~~ Laws or framework laws 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~~ **in Articles III-193 and III-218**. ~~Such agreements shall be negotiated and concluded in accordance with Article III-227.~~

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-218

Paragraph 1

It is suggested that the second sentence in the second subparagraph (horizontal clause) be moved to the beginning of Part III (cf. suggestion re Articles III-1 to III-5).

Article III-219

Paragraph 2

It is suggested that a reference to Article III-218 be added.

The reference to Article III-227 is legally superfluous.

Article III-220 (ex Articles 180 and 181 TEC)

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-221 (ex Article 181a TEC)

1. Without prejudice to the other provisions of the 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 States shall complement and reinforce each other.
2. ~~European~~ Laws or framework laws 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.

Article III-222

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.

Article III-221

Paragraph 1

The words "*other than developing countries*" present problems in that there is no legally agreed definition of the concept of "*developing country*". It would be best to delete them (as in the title of the section).

Paragraph 3

The reference to Article III-227 is legally superfluous.

As with Article III-227, it is suggested that the specific voting rules (here the unanimity rule concerning agreements with candidate countries, as the unanimity rule for association agreements is in any case already provided for in Article III-227(9)) be moved to Article III-227.

SECTION 3

HUMANITARIAN AID

Article III-223 (new)

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 operations 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. ~~European~~ Laws or framework laws 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 **paragraph 1 and 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~~ Laws shall determine the rules and **procedures for the 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.

Article III-223

Paragraph 2

It is suggested that the adjective "*humanitarian*" with regard to "*international law*" be deleted since international humanitarian law does not concern humanitarian aid, but rather (Geneva Conventions and Protocols) the law of armed conflicts (protection of civilians, prisoners, etc.).

Paragraph 4

It is suggested that a reference to paragraph 1 be added.

The reference to Article III-227 is legally superfluous.

CHAPTER V

RESTRICTIVE MEASURES

Article III-224 (ex Article 301 TEC)

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,~~ **adopted on the basis of** Chapter II of this Title, provides for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, the Council 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~~ **cases** 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.

Article III-224

See also Article III-49 (capital). Article III-49 and Article III-224 could be merged into a single article to group together the restrictive measures that may be adopted against third parties (countries or persons). This could be the subject of a Title Va.

Paragraph 2

This paragraph, which makes it possible to take action in an undefined and therefore very wide-ranging fashion ("*restrictive measures*") against persons (relating only to their assets, property? Does it also relate to visas, the right to move freely? Does it solely relate to administrative measures?), makes no mention of the kind of measures nor of the reasons for them, other than that of foreign policy (if it is assumed that the CFSP decision required by paragraph 1 is also required for paragraph 2; as the phrase "*In the areas referred to in paragraph 1*" is not clear in this respect, it is suggested that the word "*cases*" be inserted instead of "*areas*"). If the intention is to restrict a person's rights, it would seem appropriate to lay down conditions and limits (mentioning the types of economic and financial measures, visas? others?) and to refer to international law or the relevant human rights texts (cf. e.g. Article 1 paragraph 4 of the Council Common Position of 27.12.2001 on the application of specific measures to combat terrorism (OJ L 344, 28.12.2001, p. 93)).

A text merging Articles III-224 and III-49 could read as follows:

" (III-224)

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, adopted on the basis of Chapter II of this Title V, 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~~ **cases** referred to in ~~paragraph 1~~ **the first subparagraph**, the Council of ~~Ministers~~ may adopt restrictive measures **of the type referred to in paragraph 2** under the same procedure against natural or legal persons and non-State groups or bodies.

(III-49)

2. Where necessary to achieve the objectives set out in Article III-158, in particular as regards prevention of and fight against organised crime, terrorism and trafficking in human beings, ~~European~~ laws may define a framework for measures with regard to capital movements and payments, such as the freezing of funds, financial assets or economic gains belonging to, or owned or held by, natural or legal persons, groups or non-state entities.

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

3. **The measures referred to in this Article shall be adopted with due regard for fundamental rights."**

CHAPTER VI

INTERNATIONAL AGREEMENTS

Article III-225 (ex Article 300(7) TEC)

1. The Union may conclude **an** agreements with one or more third countries or international organisations where the Constitution so provides or where the conclusion of an agreement is **either** necessary in order to achieve, within the framework of the Union's policies, one of the objectives fixed by the Constitution, **or** where there is provision for it in a binding Union legislative act, **or where it is likely to 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-226 (ex Article 310 TEC)

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

Article III-227 (ex Article 300 TEC)

1. Without prejudice to the specific provisions laid down in Articles III-217 **and III-228**, 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 **envisaged** 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 negotiations **referred to in paragraph 3**, depending on the subject of the ~~future~~-agreement **envisaged**, 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.

As regards the tariff and trade agreements referred to in Article III-217, the Commission shall submit to the Council the recommendations referred to in paragraph 3. It shall conduct the negotiations in consultation with a special committee designated by the Council to assist it in that task, and within the framework of the directives which the Council may address to it. The Commission shall report regularly to the special committee ~~and~~ as well as to the European Parliament on the progress of ~~made in~~ the negotiations.

Article III-227

Paragraph 1

It is suggested that a reference to Article III-228 be added.

Paragraph 2

It is suggested that this superfluous paragraph be deleted because it is devoid of legislative content (and also incomplete: there is no reference to the authorisation to sign referred to in paragraph 6).

Paragraph 5

In accordance with the rearrangement suggested for Article III-217, specific elements of paragraph 3 of Article III-217 (i.e. according to paragraph 3 of Article III-217, it is the Commission which submits recommendations to the Council, it is the negotiator, it consults the 133 Committee and reports regularly to it and to the European Parliament) have been inserted in the second subparagraph.

6. ~~On a proposal from the negotiator, The Council of Ministers,~~ **on a proposal or initiative by the negotiator,** shall adopt a ~~European~~ decision authorising the signing of the agreement and, if necessary, its provisional application **before entry into force.**

7. The Council of ~~Ministers~~ shall adopt a ~~European~~ decision concluding the agreement on a proposal **or initiative** by the negotiator.

Except where agreements relate exclusively to the common foreign and security policy, **in which case it shall act without consulting the European Parliament,** ~~the Council of Ministers shall adopt the decision referred to in the first subparagraph after consulting 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:
the Council shall adopt the decision concluding the agreement:

(a) **after obtaining the consent of the European Parliament in the following cases:**

- (i) association agreements;
- (ii) Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- (iii) agreements establishing a specific institutional framework by organising cooperation procedures;
- (iv) agreements with important budgetary implications for the Union;
- (v) agreements covering fields to which the **ordinary** legislative procedure applies.

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

(b) **after consulting the European Parliament in other cases. The European Parliament shall deliver its opinion within a time-limit which the Council may set depending on the urgency of the matter. In the absence of an opinion within that time-limit, the Council may act.**

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, **the agreements referred to in Article III-221 with the States which are candidates for accession** and for Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms. **This paragraph shall not apply to the agreements referred to in Article III-217.**

Article III-227 (continued)

Paragraph 6

Since the negotiator may, depending on the case, be either the Commission or the Minister for Foreign Affairs, it is suggested that it be stipulated that the Council acts either on the basis of a "*proposal*" (from the Commission) or on the basis of an "*initiative*" (from the Minister) is suggested.

Paragraph 7

It is suggested that this paragraph be amended to indicate more clearly that most of the agreements will require the consent of the European Parliament.

In point (v), a clarification to the effect that the procedure in question is the "*ordinary*" legislative procedure is suggested (Article I-33(1), i.e. laws and framework laws of the European Parliament and of the Council).

10. The Council of Ministers, on a proposal from **the Commission or at the initiative of 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 until~~ it is amended or the Constitution is revised ~~in accordance with the procedure laid down in Article IV 6.~~

Article III-228 (ex Article 111 TEC)

1. By way of derogation from Article III-227, the Council of Ministers, ~~acting unanimously,~~ **either** on a recommendation from the European Central Bank ~~or~~ **or on a recommendation** from the Commission **and** 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 shall act unanimously after consultation with the European Parliament and in accordance with the procedure provided for in paragraph 3.**

~~The Council of Ministers, acting by a qualified majority,~~ **either on a recommendation from the European Central Bank** or 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.

Article III-227 (continued)

Paragraph 12

It is suggested that the last part of the sentence be deleted as it serves no purpose and is, moreover, incorrect (it should refer to Articles IV-7 and IV-8).

Article III-228

Paragraph 1

Drafting correction (alignment on the drafting of paragraph 2 (wording "*either...or*") and with the drafting of the current Article 111 TEC). Qualified majority does not need to be mentioned as it is the automatic voting rule in the Council pursuant to Article I-22(3).

Suspension of the voting rights of the "excluded" States is provided for by Article III-91(1) and (4).

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 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-229 (ex Articles 302 + 303 TEC)

1. The Union shall establish all appropriate forms of cooperation with the **organs of the United Nations and its specialised agencies**, the Council of Europe, the Organisation for Security and Cooperation in Europe and the Organisation for Economic Cooperation and Development.
2. ~~It~~ **The Union** 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-230 (new)

1. Union delegations in third countries and to international organisations shall represent the Union.
2. Union delegations shall ~~operate~~ **be placed** under the authority of the Union Minister for Foreign Affairs ~~and~~. **They shall act** in close cooperation with Member States' diplomatic **and consular** missions.

Article III-229

Paragraph 1

It is suggested to use the fuller wording of the current Article 302 TEC, which refers to the organs of the United Nations and its specialised agencies, which covers, for example, the WTO, FAO, ILO, UNESCO, WHO, etc.

Paragraph 3

Without going into detail, this provision confers joint responsibility on the Minister for Foreign Affairs and the Commission. Would possible agreements to be concluded on the basis of Article III-227 be negotiated by the two together or will Article III-227(4) prevail and, if so, how, in particular where all or part of the agreement will concern the CFSP? The drafting of this paragraph should be clarified to avoid friction in the future.

CHAPTER VIII

IMPLEMENTATION OF THE SOLIDARITY CLAUSE

Article III-231 (new)

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. The European Parliament shall be informed.
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~~ **its** 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 **and without prejudice to Article III-247**, 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~~ **referred to** 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.

Article III-231

See comments on Article I-42 and see Article III-184.

The first sentence of paragraph 2, which has roughly the same wording as the first sentence of paragraph 1 of Article I-42, refers to the assistance of the Member States, not to that of the Union.

Given its "inter-pillar" – CFSP and JHA – content (reference to the Article III-162 committee), this article could be placed in a new Title Va, with the possible "merged" article mentioned in connection with Article III-224 on restrictive measures (also "inter-pillar").

Paragraph 3

The phrase "*the structures developed in the context of the common security and defence policy*" is legally imprecise. Does it refer to the Military Committee? The Military Staff? The Committee for Civilian Aspects of Crisis Management? It is suggested that only one reference be left to the Political and Security Committee, which is more logical in view of the contents of this article, and that a reference be added to Article III-247 (role of Coreper).

TITLE VI
THE FUNCTIONING OF THE UNION

CHAPTER I
PROVISIONS GOVERNING THE INSTITUTIONS

SECTION 1

THE INSTITUTIONS

Subsection 1

The European Parliament

Article III-232 (ex Article 190 TEC)

1. A ~~European~~ law or framework law of the Council of ~~Ministers~~ shall establish the necessary measures for the election of the Members of the European Parliament by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States.

The Council of ~~Ministers~~ shall act unanimously on a proposal from and after obtaining the consent of the European Parliament, which shall act by a majority of its component members. This law or framework law shall ~~not~~ enter into force ~~until~~ **after** it has been approved by the Member States in accordance with their respective constitutional requirements.

2. A ~~European~~ law of the European Parliament shall lay down the regulations and general conditions governing the performance of the duties of its Members. The European Parliament shall act on its own initiative after seeking an opinion from the Commission and ~~with the~~ **after** approval ~~of by~~ the Council of ~~Ministers~~. The Council of ~~Ministers~~ shall act unanimously on all rules or conditions relating to the taxation of Members or former Members.

3. Throughout the 2004-2009 Parliament, the composition of the European Parliament shall be as ~~set out~~ **established** in **Article 1** of the Protocol on ~~the representation of citizens in the European Parliament~~ **the transitional provisions relating to the Institutions and bodies of the Union. The composition of the European Parliament as from the 2009 elections shall be that established by the Decision of the European Council referred to in Article I-19(2).**

Article III-233 (ex Article 191 TEC)

A ~~European~~ law shall lay down the regulations governing political parties at European level referred to in Article I-45(4), and in particular the rules regarding their funding.

Article III-232

Paragraph 3

For reasons of clarity, it is suggested that a reference be added concerning the way that the composition of the European Parliament will be defined as from the 2009 European elections.

Article III-234 (ex Article 192 TEC)

The European Parliament may, by a majority of its component Members, request the Commission to submit any appropriate proposal on matters on which it considers that a Union act is required for the purpose of implementing the Constitution. If the Commission does not submit a proposal, it shall inform the European Parliament of the reasons.

Article III-235 (ex Article 193 TEC)

In the course of its duties, the European Parliament may, at the request of a quarter of its component Members, set up a temporary Committee of Inquiry to investigate, without prejudice to the powers conferred by the Constitution on other Institutions or bodies, alleged contraventions or maladministration in the implementation of Union law, except where the alleged facts are being examined before a court and while the case is still subject to legal proceedings.

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

A ~~European~~ law of the European Parliament shall lay down the detailed provisions governing the exercise of the right of inquiry. The European Parliament shall act on its own initiative after obtaining the approval of the Council of ~~Ministers~~ and of the Commission.

Article III-236 (ex Article 194 TEC)

In accordance with Articles I-8 (2) (d) and II-44, Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right to address, individually or in association with other citizens or persons, a petition to the European Parliament on a matter which comes within the Union's fields of activity and which affects him **or her** directly.

Article III-237 (ex Article 195 TEC)

1. The European Parliament shall appoint a European Ombudsman. **In accordance with Articles I-8(2) (d), I-48 and II-43,** ~~The European Ombudsman~~ **he or she** shall be empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Union's institutions, bodies or agencies, with the exception of the Court of Justice acting in its judicial role.

In accordance with his or her duties, the ~~European~~ Ombudsman shall conduct inquiries for which he or she finds grounds, either on his or her own initiative or on the basis of complaints submitted to him or her direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where the ~~European~~ Ombudsman establishes an instance of maladministration, he or she shall refer the matter to the Institution, body, **office** or agency concerned, which shall have a period of three months in which to inform him or her of its views. The European Ombudsman shall then forward a report to the European Parliament and the Institution, body, **office** or agency concerned. The person lodging the complaint shall be informed of the outcome of such inquiries.

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

2. The ~~European~~ Ombudsman shall be appointed after each election of the European Parliament for the duration of its term of office. The European Ombudsman shall be eligible for reappointment.

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

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

4. A ~~European~~ law of the European Parliament shall lay down the regulations and general conditions governing the performance of the ~~European~~ Ombudsman's duties. The European Parliament shall act on its own initiative after seeking an opinion from the Commission and with the approval of the Council of Ministers.

Article III-238 (ex Article 196 TEC)

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

The European Parliament may meet in extraordinary part-session at the request of a majority of its component Members or at the request of the Council of Ministers or of the Commission.

Article III-239 (ex Articles 197 and 242 TEC)

~~1. The Commission may attend all meetings of the European Parliament and shall, at its request, be heard.~~

~~The Commission shall reply orally or in writing to questions put to it by the European Parliament or by its Members.~~

~~2.1.~~ The European Council and the Council of Ministers shall be heard by the European Parliament in accordance with the conditions laid down in the ~~procedural rules~~ **Rules of Procedure** of the European Council and ~~the Rules of Procedure~~ **those** of the Council of Ministers.

2. The Commission may attend all the meetings of the European Parliament and shall, at its request, be heard. It shall reply orally or in writing to questions put to it by the European Parliament or by its Members.

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

Article III-240 (~~ex Article 198 TEC~~)

~~Save as otherwise provided in the Constitution, the European Parliament shall act by a majority of the votes cast. The Rules of Procedure shall determine the quorum.~~

Article III-239 and III-242

It is suggested that these two Articles, the content of which is related, be combined.

Article III-240

On grounds of consistency, it is suggested that the voting rules of the Institutions be moved to Part I (see comment re Article I-19).

Article III-241 (ex Article 199 TEC)

The European Parliament shall adopt its Rules of Procedure, by a majority of its component Members.

The proceedings of the European Parliament shall be published in the manner laid down in the Constitution and its Rules of Procedure.

Article III-242 (~~ex Article 200 TEC~~)

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

Article III-243 (ex Article 201 TEC)

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

If the motion of censure is carried by a two-thirds majority of the votes cast, representing a majority of the component Members of the European Parliament, the Commission shall resign. It shall continue to deal with current business until it is replaced in accordance with Articles I-25 and I-26. In this case, the term of office of the Commission appointed to replace it shall expire on the date on which the term of office of the Commission which was obliged to resign would have expired.

Subsection 2

The European Council

Article III-244 (new)

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

Abstentions by members present in person or represented shall not prevent the adoption by the European Council of decisions which require unanimity.

2. The President of the European Parliament may be invited to be heard by the European Council.

3. The European Council shall ~~establish its procedural rules by a simple majority.~~ **act by simple majority for procedural questions and for the adoption of its rules of procedure.**

4. The European Council shall be assisted by the General Secretariat of the Council of Ministers.

Article III-242

It is suggested that this Article be combined with Article III-239.

Article III-243

This Article may have to be revised in the light of the wording of Article I-25 (including, in the French version, the term "abandonner ses fonctions", where Article I-25 uses "démissionne").

Article III-244

Paragraph 1

The addition of "*having a voting right*" in the first subparagraph is necessary as two members of the European Council (the President of the European Council and the President of the Commission) have no voting rights. The second sentence is taken from Article I-24(5).

Paragraph 3

It seems worth specifying that procedural decisions are taken by simple majority, failing which the applicable rule would be consensus (Article I-20(4)) (see also Article III-247(3) for the Council).

Subsection 3

The Council of Ministers

Article III-245 (ex Articles 203 and 204 TEC)

1. The Council of ~~Ministers~~ shall meet when convened by its President on his or her own initiative, or at the request of one of its members or of the Commission.
2. ~~The European Council shall adopt by unanimity a European decision establishing the rules governing the rotation of the Presidency of the formations of the Council of Ministers.~~

Article III-246 (ex Articles 205 and 206 TEC)

1. Where a vote is taken, any member of the Council of ~~Ministers~~ may act on behalf of not more than one other member.
2. Where it is required to act by a simple majority, the Council of ~~Ministers~~ shall act by a majority of its members.
3. Abstentions by members present in person or represented shall not prevent the adoption by the Council of ~~Ministers~~ of acts which require unanimity.

Article III-247 (ex Article 207 TEC)

1. A committee consisting of the Permanent Representatives of the Member States shall be responsible for preparing the work of the Council of ~~Ministers~~ and for carrying out the tasks assigned to it by the latter. The Committee may adopt procedural decisions in cases provided for in the Rules of Procedure of the Council of ~~Ministers~~.
2. The Council of ~~Ministers~~ shall be assisted by a General Secretariat, under the responsibility of a Secretary-General appointed by the Council of ~~Ministers~~.

The Council of ~~Ministers~~ shall decide on the organisation of the General Secretariat by a simple majority.

3. The Council of ~~Ministers~~ shall act by a simple majority regarding procedural matters and for the adoption of its Rules of Procedure.

Article III-248 (ex Article 208 TEC)

The Council of ~~Ministers~~, by a simple majority, may request the Commission to undertake any studies the Council of ~~Ministers~~ considers desirable for the ~~attainment of the common objectives~~ **implementation of the Constitution**, and to submit to it any appropriate proposals. If the Commission does not submit a proposal, it shall inform the Council of ~~Ministers~~ of the reasons.

Article III-245

Paragraph 2

Since this legal basis is set out above in Article I-23(4), it can be deleted here.

Article III-248

It is suggested that the terms used in Article III-234 be replicated.

Article III-249 (ex Article 209 TEC)

The Council of Ministers shall adopt ~~European~~ decisions laying down the rules governing the committees provided for in the Constitution. It shall act by a simple majority after consulting the Commission.

Subsection 4

The European Commission

Article III-250 (ex Articles 213(1) and 214 TEC)

European Commissioners and Commissioners shall be appointed for a period of five years, subject, if need be, to Article III-243. Only nationals of Member States may be European Commissioners or Commissioners.

Article III-251 (ex Article 214(2) TEC)

European Commissioners and Commissioners shall refrain from any action incompatible with their duties. ~~Each Member States undertakes to~~ **shall respect their independence this principle and shall not to seek to influence them the European Commissioners and Commissioners** in the performance of their tasks.

European Commissioners and Commissioners may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. In the event of any breach of these obligations, the Court of Justice **of the European Union** may, on application by the Council of Ministers, acting by a simple majority, or the Commission, rule that the person concerned be, according to the circumstances, either compulsorily retired in accordance with Article III-253 or deprived of his or her right to a pension or other benefits in its stead.

Article III-252 (ex Article 215 TEC)

1. Apart from normal replacement, or death, the duties of a European Commissioner or Commissioner shall end when he or she resigns or is compulsorily retired. A European Commissioner or Commissioner shall resign if the President so requests.

Subsection 4 (Articles III-250 to III-257)

This subsection will have to be revised in the light of the wording of Articles I-25, I-26 and I-27.

The suggestions that follow are solely concerned with drafting.

Article III-251

A sentence could be added to the second subparagraph reflecting the political will of the Convention that the roles of the President of the European Council and of the President of the Commission should not be incompatible, e.g. "*European Commissioners and Commissioners may not ... engage in any other occupation, whether gainful or not, except in a Union Institution where the rules concerning that Institution do not prohibit it.*"

2. A vacancy caused by resignation, compulsory retirement or death shall be filled for the remainder of the European Commissioner or Commissioner's term of office by a new European Commissioner or Commissioner appointed by the President of the Commission in accordance with Articles I-25 and I-26.
3. In the event of resignation, compulsory retirement or death, the President shall be replaced for the remainder of his or her term of office, **by a Decision taken** in accordance with Article I-26(1).
4. In the case of the resignation of all European Commissioners and Commissioners, they shall remain in office until they have been replaced, for the remainder of their term of office, in accordance with Articles I-25 and I-26.

Article III-253 (ex Article 216 TEC)

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

Article III-254 (ex Article 217 TEC)

The responsibilities incumbent upon the Commission shall be structured and allocated among its members by its President, in accordance with Article I-26(3) of the Constitution. The President may reshuffle the allocation of those responsibilities during the Commission's term of office. European Commissioners and Commissioners shall carry out the duties devolved upon them by the President under his or her authority.

Article III-255 (~~ex Article 219 TEC~~)

~~The Commission shall act by a majority of the members of the College. The Rules of Procedure shall determine the quorum.~~

Article III-256 (ex Articles 212 and 218 TEC)

1. The Commission shall adopt its Rules of Procedure so as to ensure both its own operation and that of its departments. ~~It shall ensure that these rules are published.~~

Article III-257 (~~ex Article 212 TEC~~)

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

Article III-255

For sake of consistency, it is suggested that the voting rules of the Institutions be moved to Part I (see comment re Article I-25).

Articles III-256 and III-257

It is suggested that these two Articles be combined.

There is no provision for publication of the rules of procedure for the European Council, the European Parliament and the Council, that being automatic (see Article I-38(2)). It is therefore suggested that this reference be deleted.

Subsection 5

The Court of Justice **of the European Union**

Article III-258 (ex Article 221 TEC)

The ~~European~~ Court of Justice shall sit in chambers, as a Grand Chamber or as a full Court, in accordance with the Statute of the Court of Justice **of the European Union**.

Article III-259 (ex Article 222 TEC)

The ~~European~~ Court of Justice shall be assisted by eight Advocates-General. Should the ~~European~~ Court of Justice so request, the Council ~~of Ministers~~ may, acting unanimously, adopt a European decision to increase the number of Advocates-General.

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

Article III-260 (ex Article 223 TEC)

The Judges and Advocates-General of the ~~European~~ Court of Justice shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence; they shall be appointed by common accord of the governments of the Member States after consulting the panel provided for in Article III-262.

Every three years there shall be a partial replacement of the Judges and Advocates-General, in accordance with the conditions laid down in the Statute of the Court of Justice **of the European Union**.

The Judges shall elect the President of the ~~European~~ Court of Justice from among their number for a term of three years. He or she may be re-elected.

The ~~European~~ Court of Justice shall adopt its Rules of Procedure. Those Rules shall require the approval of the Council ~~of Ministers~~.

Article III-261 (ex Article 224 TEC)

The number of Judges of the High Court shall be determined by the Statute of the Court of Justice **of the European Union**. The Statute may provide for the High Court to be assisted by Advocates-General.

The members of the High Court shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high judicial office. They shall be appointed by common accord of the governments of the Member States after consultation of the panel provided for in Article III-262.

The membership of the High Court shall be partially renewed every three years. Retiring members may be reappointed.

The Judges shall elect the President of the High Court from among their number for a term of three years. He or she may be re-elected.

The High Court shall establish its Rules of Procedure in agreement with the European Court of Justice. The Rules shall be subject to the approval of the Council of Ministers.

Unless the Statute of the Court of Justice **of the European Union** provides otherwise, the provisions of the Constitution relating to the ~~European~~ Court of Justice shall apply to the High Court.

Article III-262 (new)

A panel shall be set up in order to give an opinion on candidates' suitability to perform the duties of Judge and Advocate-General of the ~~European~~ Court of Justice and the High Court before the governments of the Member States take the decisions referred to in Articles III-260 and III-261.

The panel shall comprise seven persons chosen from among former members of the ~~European~~ Court of Justice and the High Court, members of national supreme courts and lawyers of recognised competence, one of whom shall be proposed by the European Parliament. The Council of Ministers shall adopt a ~~European~~ decision establishing the panel's operating rules and a ~~European~~ decision appointing its members. It shall act on the initiative of the President of the ~~European~~ Court of Justice.

Article III-263 (ex Article 225 TEC)

1. The High Court shall have jurisdiction to hear and determine at first instance actions or proceedings referred to in Articles III-270, III-272, III-275, III-277 and III-279, with the exception of those assigned to a specialised court and those reserved in the Statute for the ~~European~~ Court of Justice. The Statute may provide for the High Court to have jurisdiction for other classes of action or proceeding.

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

2. The High Court shall have jurisdiction to hear and determine actions or proceedings brought against decisions of the specialised courts set up under Article III-264.

Decisions given by the High Court under this paragraph may exceptionally be subject to review by the ~~European~~ Court of Justice, under the conditions and within the limits laid down by the Statute **of the Court of Justice of the European Union**, where there is a serious risk of the ~~unity~~-uniformity or consistency of Union law being affected.

3. The High Court shall have jurisdiction to hear and determine questions referred for a preliminary ruling under Article III-274, in specific areas laid down by the Statute of the Court of Justice **of the European Union**.

Where the High Court considers that the case requires a decision of principle likely to affect the ~~unity~~-uniformity or consistency of Union law, it may refer the case to the ~~European~~ Court of Justice for a ruling.

Decisions given by the High Court on questions referred for a preliminary ruling may exceptionally be subject to review by the ~~European~~ Court of Justice, under the conditions and within the limits laid down by the Statute **of the Court of Justice of the European Union**, where there is a serious risk of the ~~unity~~ **uniformity** or consistency of Union law being affected.

Article III-264 (ex Article 225a TEC)

1. ~~European~~ **L**aws may establish specialised courts attached to the High Court to hear and determine at first instance certain classes of action or proceeding brought in specific areas. They shall be adopted either on a proposal from the Commission after consultation of the Court of Justice **of the European Union** or at the request of the Court of Justice **of the European Union** after consultation of the Commission.
2. The ~~European~~ law establishing a specialised court shall lay down the rules on the organisation of the court and the extent of the jurisdiction conferred upon it.
3. Decisions given by specialised courts may be subject to a right of appeal on points of law only or, when provided for in the ~~European~~ law establishing the specialised court, a right of appeal also on matters of fact, before the High Court.
4. The members of the specialised courts shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office. They shall be appointed by the Council ~~of Ministers~~, acting unanimously.
5. The specialised courts shall establish their Rules of Procedure in agreement with the Court of Justice. Those Rules shall require the approval of the Council ~~of Ministers~~.
6. Unless the ~~European~~ law establishing the specialised court provides otherwise, the provisions of the Constitution relating to the Court of Justice **of the European Union** and the provisions of the Statute of the Court of Justice **of the European Union** shall apply to the specialised courts.

Article III-265 (ex Article 226 TEC)

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

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

Article III-266 (ex Article 227 TEC)

A Member State which considers that another Member State has failed to fulfil an obligation under the Constitution may bring the matter before the Court of Justice **of the European Union**.

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

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

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

Article III-267 (ex Article 228 TEC)

1. If the Court of Justice **of the European Union** finds that a Member State has failed to fulfil an obligation under the Constitution, the State shall be required to take the necessary measures to comply with the judgment of the Court ~~of Justice~~.

2. If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the ~~Court's~~ judgment **of the Court of Justice of the European Union**, it may bring the case before the Court ~~of Justice~~ after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

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

This procedure shall be without prejudice to Article III-266.

3. When the Commission brings a case before the Court of Justice **of the European Union** pursuant to Article III-265 on the grounds that the State concerned has failed to fulfil its obligations to notify measures transposing a ~~European~~ framework law, it may, when it deems appropriate, request that, in the course of the same proceedings, the Court ~~of Justice~~ impose the payment of a lump sum or penalty if the Court finds that there has been such a failure. If the Court ~~of Justice~~ complies with the Commission's request, the payment in question shall take effect within the time limit laid down by the Court ~~of Justice~~ in its judgment.

Article III-268 (ex Article 229 TEC)

~~European~~ Laws and ~~European~~ regulations of the Council of ~~Ministers~~ may give the Court of Justice of the **European Union** unlimited jurisdiction with regard to the penalties provided for in them.

Article III-269 (ex Article 229 A TEC)

Without prejudice to the other provisions of the Constitution, a ~~European~~ law may confer on the Court of Justice of the **European Union**, to the extent that it shall determine, jurisdiction in disputes relating to the application of acts adopted on the basis of the Constitution which create European intellectual property rights.

Article III-270 (ex Article 230 TEC)

1. **Subject to Article III-282,** ~~t~~The Court of Justice of the **European Union** shall review the legality of ~~European~~ laws and framework laws, of acts of the Council of ~~Ministers~~, of the Commission and of the European Central Bank, other than recommendations and opinions, and of acts of the European Parliament **and of the European Council** intended to produce legal effects vis-à-vis third parties. It shall also review the legality of acts of bodies, **offices** or agencies of the Union intended to produce legal effects vis-à-vis third parties.
2. It shall for this purpose have jurisdiction in actions brought by a Member State, the European Parliament, the Council of ~~Ministers~~ or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Constitution or of any rule of law relating to its application, or misuse of powers.
3. The Court of ~~Justice~~ shall have jurisdiction under the same conditions in actions brought by the Court of Auditors, by the European Central Bank and by the Committee of the Regions for the purpose of protecting their prerogatives.
4. Any natural or legal person may, under the same conditions, institute proceedings against an act addressed to that person or which is of direct and individual concern to him or her, and against a ~~regulatory act~~ **Regulation or decision having no addressees** which is of direct concern to him or her and does not entail implementing measures.
- 5.2. Acts setting up bodies, **offices** and agencies of the Union may lay down specific conditions and arrangements concerning actions brought by natural or legal persons against acts of these bodies, **offices** or agencies intended to produce legal effects **in relation to them**.
- 6.3. The proceedings provided for in this Article shall be instituted within two months of the publication of the act, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

Article III-270

Structure

It is suggested that the Article be restructured for clarity to reflect its systematic character.

Paragraph 1

For clarity it is suggested that a reference to Article III-282 (CFSP) be added.

Insofar as the European Council is an Institution (Article I-18) and adopts acts which have legal effects (see for instance the second subparagraph of Article I-19(2), Articles I-23(3) and (4) and I-25(3)), such acts must be included among those mentioned as being subject to challenge before the Court of Justice.

Paragraph 4

It will be noted that "*regulatory acts*" is not a term defined by the Constitution and does not correspond to the classification of acts in Article I-32. Presumably, the intention of the authors of this provision was to refer to obligatory non-legislative acts having general application, i.e. regulations and decisions having no addressees. It is therefore suggested that these references be inserted.

Paragraph 5

It is suggested that it be stipulated that only those acts of the bodies, offices and agencies which are designed to have legal effects in respect of a legal or natural person can be the subject of an appeal brought by such a person. Failing such clarification, the right of appeal against the acts of bodies, offices and agencies would be broader than that against the acts of Institutions, which would seem not to be very logical.

Article III-271 (ex Article 231 EC)

If the action is well founded the Court of Justice **of the European Union** shall declare the act concerned to be void.

However, the Court of Justice shall, if it considers this necessary, state which of the effects of the act which it has declared void shall be considered as definitive.

Article III-272 (ex Article 232 EC)

Should the European Parliament, **the European Council**, the Council ~~of Ministers~~, the Commission or the European Central Bank, in infringement of the Constitution, fail to act, the Member States and the other Institutions of the Union may bring an action before the Court of Justice **of the European Union** to have the infringement established. This provision shall apply, under the same conditions, to bodies, **offices** and agencies of the Union which fail to act.

The action shall be admissible only if the Institution, body, **office** or agency concerned has first been called upon to act. If, within two months of being so called upon, the Institution, body, **office** or agency concerned has not defined its position, the action may be brought within a further period of two months.

Any natural or legal person may, under the conditions laid down in the preceding paragraphs, complain to the Court ~~of Justice~~ that an Institution, body, **office** or agency of the Union has failed to address to that person any act other than a recommendation or an opinion.

Article III-273 (ex Article 233 EC)

The Institution ~~or Institutions~~, body, **office** or agency whose act has been declared void, or whose failure to act has been declared contrary to the Constitution, shall be required to take the necessary measures to comply with the judgment of the Court of Justice **of the European Union**.

This obligation shall not affect any obligation which may result from the application of the second paragraph of Article III-337.

Article III-272

Since the European Council is an Institution (Article I-18) which adopts acts having legal effects (see e.g. the second subparagraph of Articles I-19(2), Articles I-23(3) and (4) and I-25(3)), provision must be made for the other Institutions to be able to bring an action before the Court of Justice to have any failing of the European Council in this connection established.

It follows from Articles I-29 and I-30 that the term "*other Institutions of the Union*" also covers the European Central Bank and the Court of Auditors.

Article III-273

The deletion of the plural "*Institutions*" changes nothing.

Article III-274 (ex Article 234 EC)

The Court of Justice **of the European Union** shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of the Constitution;
- (b) the validity and interpretation of acts of the Institutions of the Union.

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

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

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court ~~of Justice~~ shall act with the minimum of delay.

Article III-275 (ex Article 235 EC)

The Court of Justice **of the European Union** shall have jurisdiction in disputes relating to compensation for damage provided for in the second paragraph of Article III-337.

Article III-276 (ex Article 46 (e) TEU)

~~At the request of the Member State concerned by a determination made by the European Council or the Council of Ministers pursuant to Article I-58, The provisions of the Constitution relating to the jurisdiction of the European Court of Justice of the European Union and to the exercise of that jurisdiction, shall have jurisdiction solely on~~ apply only to the procedural stipulations contained in Article **I-58 under the terms laid down in the second paragraph.**

The Court of Justice **of the European Union** shall act at the request of the Member State concerned by a determination made by the European Council or the Council pursuant to Article I-58. The request must be made within [...] weeks from the date of that determination.

Article III-277 (ex Article 236 EC)

The Court of Justice **of the European Union** shall have jurisdiction in any dispute between the Union and its servants within the limits and under the conditions laid down in the Staff Regulations of Officials and the Conditions of Employment of other servants of the Union.

Article III-278 (ex Article 237 EC)

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

- (a) the fulfilment by Member States of obligations under the Statute of the European Investment Bank. In this connection, the Board of Directors of the Bank shall enjoy the powers conferred upon the Commission by Article III-265;

Article III-276

This Article lays down that the Court must rule within one month "*from the date of that determination*", but does not lay down the time-limit within which the Member State concerned must bring the court action. This fact could make it impossible to comply with the one-month time limit. In the interests of expeditious procedure, it is therefore suggested that provision be made for a time-limit for referral to the Court of Justice by the Member State concerned (which could be approximately two weeks - to be decided).

Moreover, in the absence of a provision expressly ruling out Court of Justice jurisdiction over the acts provided for in Article I-58, the draft Constitution would, in contrast with the current TEU, subject Article I-58 to the judicial control of the Court at the request of others in addition to the Member State concerned. It is therefore suggested that the wording be clarified in this respect.

- (b) measures adopted by the Board of Governors of the European Investment Bank. In this connection, any Member State, the Commission or the Board of Directors of the Bank may institute proceedings under the conditions laid down in Article III-270;
- (c) measures adopted by the Board of Directors of the European Investment Bank. Proceedings against such measures may be instituted only by Member States or by the Commission, under the conditions laid down in Article III-270, and solely on the grounds of non-compliance with the procedure provided for in Article 21(2), (5), (6) and (7) of the Statute of the Bank;
- (d) the fulfilment by national central banks of obligations under the Constitution and the Statute of the European System of Central Banks and the European Central Bank. In this connection, the powers of the **Governing** Council of the European Central Bank in respect of national central banks shall be the same as those conferred upon the Commission in respect of Member States by Article III-265. If the Court of Justice **of the European Union** finds that a national central bank has failed to fulfil an obligation under the Constitution, that bank shall be required to take the necessary measures to comply with the judgment of the Court ~~of Justice~~.

Article III-279 (ex Articles 238 and 239 EC)

The Court of Justice **of the European Union** shall have jurisdiction to give judgment:

- (a) pursuant to any arbitration clause contained in a contract concluded by or on behalf of the Union, whether that contract be governed by public or private law;
- (b) **in any dispute between Member States which relates to the subject-matter of the Constitution if the dispute is submitted to it under a special agreement.**

Article III-280 ~~(ex Article 239 EC)~~

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

Article III-281 (ex Articles 240 and 292 EC)

1. Save where jurisdiction is conferred on the Court of Justice by the Constitution, disputes to which the Union is a party shall not on that ground be excluded from the jurisdiction of the courts or tribunals of the Member States.
2. **Member States undertake not to submit a dispute concerning the interpretation or application of the Constitution to any method of settlement other than those provided for therein.**

Article III-278

Drafting clarification in point(d).

Articles III-279 and III-280

It is suggested that these two Articles be combined.

Articles III-281 and III-284

It is suggested that these two Articles be combined.

Article III-282 (new)

The Court of Justice **of the European Union** shall not have jurisdiction with respect to Articles I-39 and I-40 and the provisions of Chapter II of Title V ~~of Part III~~ concerning the common foreign and security policy.

However, the Court ~~of Justice~~ shall have jurisdiction to **monitor compliance with Article III-209 and to rule on proceedings, brought in accordance with the conditions laid down in Article-III-270(4),** reviewing the legality of **decisions providing for** restrictive measures against natural or legal persons, adopted by the Council on the basis ~~of Article III-224, and brought in accordance with the conditions laid down in Article III-270(4) of Chapter II of Title V.~~

Article III-283 (new)

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

Article III-284 (ex Article 292 EC)

~~Member States undertake not to submit a dispute concerning the interpretation or application of the Constitution to any method of settlement other than those provided for therein.~~

Article III-285 (ex Article 241 EC)

Notwithstanding the expiry of the period laid down in Article III-270(6), any party may, in proceedings in which a ~~European~~ law or a ~~European~~ regulation of the Council ~~of Ministers~~, of the Commission, or of the European Central Bank is at issue, plead the grounds specified in Article III-270(2) in order to invoke before the Court of Justice **of the European Union** the inapplicability of that act.

Article III-286 (ex Article 242 EC)

1. Actions brought before the Court of Justice **of the European Union** shall not have suspensory effect. The Court ~~of Justice~~ may, however, if it considers that circumstances so require, order that application of the contested act be suspended.

Article III-287 (ex Article 243 EC)

2. The Court of Justice **of the European Union** may in any cases before it prescribe any necessary interim measures.

Article III-288 (ex Article 244 EC)

The judgments of the Court of Justice **of the European Union** shall be enforceable under the conditions laid down in Article III-307.

Article III-282

In the 2nd paragraph, the second paragraph of Article III-209 on the Court of Justice monitoring compliance with the first paragraph of the same Article been transferred.

The referral to Article III-193 is incorrect as this is not a legal basis for adopting CFSP-based decisions providing for restrictive measures which will subsequently be adopted on the basis of Article III-224 (which is entirely subject to the monitoring of the Court). It is therefore suggested to refer to Chapter II of Title V.

Article III-284

It is suggested that this Article be amalgamated with Article III-281 (see above).

Articles III-286 and III-287

It is suggested that these two Articles be amalgamated.

Article III-289 (ex Article 245 EC)

The Statute of the Court of Justice **of the European Union** shall be laid down in a Protocol.

A ~~European~~ law may amend the provisions of the Statute, with the exception of Title I and Article 64. It shall be adopted either at the request of the Court of Justice **of the European Union** and after consultation of the Commission, or on a proposal from the Commission and after consultation of the Court of Justice **of the European Union**.

Subsection 5a

The European Central Bank

Article III-289a (ex Article 112 TEC)

1. The Governing Council of the European Central Bank shall comprise the members of the Executive Board of the European Central Bank and the Governors of the national central banks of the Member States without a derogation as referred to in Article III-91.
2. (a) The Executive Board shall comprise the President, the Vice-President and four other members.
- (b) The President, the Vice-President and the other members of the Executive Board shall be appointed from among persons of recognised standing and professional experience in monetary or banking matters by common accord of the governments of the Member States at the level of Heads of State or Government, on a recommendation from the Council ~~of Ministers~~, after it has consulted the European Parliament and the Governing Council of the European Central Bank.

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

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

Article III-289b (ex Article 113 TEC)

1. The President of the Council ~~of Ministers~~ and a member of the Commission may participate, without having the right to vote, in meetings of the Governing Council of the European Central Bank.

The President of the Council ~~of Ministers~~ may submit a motion for deliberation to the Governing Council of the European Central Bank.

Suggestion for a new subsection 5a

The European Central Bank is an Institution (see Article I-29(3)). Accordingly, it cannot be omitted from Section 1 of this Chapter, which is entitled "The Institutions". It is therefore suggested that a new subsection be inserted, containing institutional provisions for the European Central Bank (and deleting Articles III-84 and III-85).

2. The President of the European Central Bank shall be invited to participate in meetings of the Council ~~of Ministers~~ when it is discussing matters relating to the objectives and tasks of the European System of Central Banks.

3. The European Central Bank shall address an annual report on the activities of the European System of Central Banks and on the monetary policy of both the previous and the current year to the European Parliament, the Council ~~of Ministers~~ and the Commission, and also to the European Council. The President of the European Central Bank shall present this report to the Council ~~of Ministers~~ and to the European Parliament, which may hold a general debate on that basis.

The President of the European Central Bank and the other members of the Executive Board may, at the request of the European Parliament or on their own initiative, be heard by the competent committees of the European Parliament.

Subsection 6

The Court of Auditors

Article III-290 (ex Article 248 EC)

1. The Court of Auditors shall examine the accounts of all revenue and expenditure of the Union. It shall also examine the accounts of all revenue and expenditure of **any body, office or agency** ~~all bodies~~ set up by the Union insofar as the ~~relevant constituent~~ instrument **establishing that body, office or agency** does not preclude such examination.

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

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

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

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

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

3. The audit shall be based on records and, if necessary, performed on the spot in the other Institutions, **or** on the premises of any body, **office or agency** which manages revenue or expenditure on behalf of the Union and in the Member States, including on the premises of any natural or legal person in receipt of payments from the budget. In the Member States the audit shall be carried out in liaison with national audit bodies or, if these do not have the necessary powers, with the competent national departments. The Court of Auditors and the national audit bodies of the Member States shall cooperate in a spirit of trust while maintaining their independence. These bodies or departments shall inform the Court of Auditors whether they intend to take part in the audit.

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

In respect of the European Investment Bank's activity in managing Union **revenue and expenditure**~~expenditure and revenue~~, rights of access by the Court of Auditors to information held by the Bank shall be governed by an agreement between the Court, the Bank and the Commission. In the absence of an agreement, the Court shall nevertheless have access to information necessary for the audit of Union expenditure and revenue managed by the Bank.

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

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

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

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

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

The Court of Auditors shall adopt its Rules of Procedure. Those rules shall require the approval of the Council ~~of Ministers~~.

Article III-291 (ex Article 247 EC)

1. The Members of the Court of Auditors shall be chosen from among persons who belong or have belonged in their respective ~~countries~~**States** to external audit bodies or who are especially qualified for this office. Their independence must be beyond doubt.

2. The Members of the Court of Auditors shall be appointed for a term of six years. Their term of office shall be renewable. The Council ~~of Ministers~~ shall adopt a ~~European~~ decision establishing the list of Members drawn up in accordance with the proposals made by each Member State. It shall act after consulting the European Parliament.

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

3. ~~The Members of the Court of Auditors shall, in the Union's general interest, be completely independent in the performance of their duties.~~ In the performance of ~~these~~ **their** duties, ~~they~~ **Members of the Court of Auditors** shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties.

Article III-291

Paragraph 3

It is suggested that the first sentence be deleted : the rule appears in Article I-30(3).

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

5. Apart from normal replacement, or death, the duties of a Member of the Court of Auditors shall end when he or she resigns, or is compulsorily retired by a ruling of the Court of Justice **of the European Union** pursuant to paragraph 6.

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

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

6. A Member of the Court of Auditors may be deprived of his or her office or of his or her right to a pension or other benefits in its stead only if the Court of Justice **of the European Union**, at the request of the Court of Auditors, finds that he or she no longer fulfils the requisite conditions or meets the obligations arising from his or her office.

SECTION 2

THE UNION'S ADVISORY BODIES

Subsection 1

The Committee of the Regions

Article III-292 (ex Article 263 TEC)

The number of members of the Committee of the Regions shall not exceed 350. The Council ~~of Ministers shall~~, **acting unanimously on a proposal from the Commission**, shall adopt a ~~European~~ decision determining the Committee's composition.

The members of the Committee and an equal number of alternate members shall be appointed for five years. Their term of office shall be renewable. **No member of the Committee shall at the same time be a Member of the European Parliament.**

The Council ~~of Ministers~~ shall adopt the ~~European~~ decision establishing the list of members and alternate members drawn up in accordance with the proposals made by each Member State.

When the mandate referred to in Article I-31(2) on the basis of which they were proposed comes to an end, the term of office of members of the Committee shall terminate automatically and they shall then be replaced for the remainder of the said term of office in accordance with the same procedure.

~~No member of the Committee shall at the same time be a Member of the European Parliament.~~

Article III-293 (ex Article 264 TEC)

The Committee of the Regions shall elect its chairman and officers from among its members for a term of two and a half years.

~~It shall adopt its Rules of Procedure.~~

The Committee shall be convened by its chairman at the request of the European Parliament, of the Council ~~of Ministers~~ or of the Commission. It may also meet on its own initiative.

It shall adopt its Rules of Procedure.

Article III-294 (ex Article 265 TEC)

The Committee of the Regions shall be consulted by the European Parliament, by the Council ~~of Ministers~~ or by the Commission where the Constitution so provides and in all other cases **in which one of these Institutions considers it appropriate**, in particular those which concern cross-border cooperation, ~~in which one of these Institutions considers it appropriate.~~

Article III-292

See comments on Article I-31 for first paragraph.

The European Parliament, the Council of Ministers or the Commission shall, if it considers it necessary, set the Committee, for the submission of its opinion, a time-limit which may not be less than one month from the date on which the chairman receives notification to this effect. Upon expiry of the time-limit, the absence of an opinion shall not prevent further action.

Where the Economic and Social Committee is consulted pursuant to Article III-298, the Committee of the Regions shall be informed by the European Parliament, the Council of Ministers or the Commission of the request for an opinion. Where it considers that specific regional interests are involved, the Committee of the Regions may issue an opinion on the matter. It may **also** issue an opinion on its own initiative ~~in cases in which it considers such action appropriate.~~

The opinion of the Committee, together with a record of ~~the~~ its proceedings, shall be forwarded to the European Parliament, to the Council of Ministers and to the Commission.

Subsection 2

The Economic and Social Committee

Article III-295 (ex Article 258 TEC)

The number of members of the Economic and Social Committee shall not exceed 350. The Council of Ministers shall, **acting unanimously on a proposal from the Commission, shall** adopt a ~~European~~ decision determining the Committee's composition.

Article III-296 (ex Article 259 TEC)

The members of the Economic and Social Committee shall be appointed for five years. Their term of office shall be renewable. The Council of Ministers shall adopt the ~~European~~ decision establishing the list of members drawn up in accordance with the proposals made by each Member State.

The Council of Ministers shall act after consulting the Commission. It may obtain the opinion of European bodies which are representative of the various economic and social sectors and of civil society to which the Union's activities are of concern.

Article III-297 (ex Article 260 TEC)

The Economic and Social Committee shall elect its chairman and officers from among its members for a term of two and a half years.

~~It shall adopt its Rules of Procedure.~~

It shall be convened by its chairman at the request of the European Parliament, of the Council of Ministers or of the Commission. It may also meet on its own initiative.

It shall adopt its Rules of Procedure.

Article III – 295

See comments on Article I-31.

Article III-298 (ex Article 262 TEC)

The Economic and Social Committee ~~must~~ **shall** be consulted by the European Parliament, by the Council of Ministers or by the Commission where the Constitution so provides. ~~In all other cases,~~ **It** may be consulted by these Institutions **in all cases in which they consider it appropriate**. It may also issue an opinion on its own initiative.

The European Parliament, the Council of Ministers or the Commission shall, if it considers it necessary, set the Committee, for the submission of its opinion, a time-limit which may not be less than one month from the date on which the chairman receives notification to this effect. Upon expiry of the time-limit, the absence of an opinion shall not prevent further action.

The opinion of the Committee together with a record of ~~the~~ **its** proceedings shall be forwarded to the European Parliament, to the Council of Ministers and to the Commission.

SECTION 3

THE EUROPEAN INVESTMENT BANK

Article III-299 (ex Article 266 TEC)

The European Investment Bank shall have legal personality.

Its members of the European Investment Bank shall be the Member States.

The Statute of the ~~European Investment Bank~~ is laid down in a Protocol. ~~European~~ Laws may amend Articles 4, 11 and 12 and Article 18(5) of ~~the that Statute of the Bank~~, either at the request of the ~~European Investment Bank~~ **itself** and after consultation of the Commission, or on a proposal from the Commission and after consultation of the ~~European Investment Bank~~.

Article III-300 (ex Article 267 TEC)

The task of the ~~European Investment Bank~~ shall be to contribute, by having recourse to the capital market and utilising its own resources, to the balanced and steady development of the internal market in the Union's interest. For this purpose the Bank shall, operating on a non-profit-making basis, grant loans and give guarantees which facilitate the financing of the following projects in all sectors of the economy:

- (a) projects for developing less-developed regions;
- (b) projects for modernising or converting undertakings or for developing fresh activities called for by the progressive establishment of the internal market, where these projects are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States;
- (c) projects of common interest to several Member States which are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States.

In carrying out its task, the Bank shall facilitate the financing of investment programmes in conjunction with assistance from the Structural Funds and other Union financial instruments.

SECTION 4

PROVISIONS COMMON TO UNION INSTITUTIONS, BODIES, **OFFICES** AND AGENCIES

Article III-301 (ex Article 250 TEC)

1. Where, pursuant to the Constitution, the Council of Ministers ~~acts~~ **adopts an act** on a proposal from the Commission, unanimity shall be required for an act constituting an amendment to that proposal, **except in the cases referred to in subject to** Articles I-54, **I-55**, III-302(10) and (13), ~~and III-310 and III-311(2).~~
2. As long as the Council of Ministers has not acted, the Commission may alter its proposal at any time during the procedures leading to the adoption of a Union act.

Article III-302 (ex Article 251 TEC)

1. Where, pursuant to the Constitution, ~~European~~ laws or framework laws are adopted under the ordinary legislative procedure the following provisions shall apply.
2. The Commission shall submit a proposal to the European Parliament and the Council ~~of Ministers.~~

First reading

3. The European Parliament shall adopt its position at first reading and communicate it to the Council ~~of Ministers.~~
4. If the Council of Ministers approves the European Parliament's position, the ~~proposed~~ act **concerned** shall be adopted **in the wording which corresponds to the position of the European Parliament.**
5. If the Council of Ministers does not approve the European Parliament's position, it shall adopt its position at first reading and communicate it to the European Parliament.
6. The Council of Ministers shall inform the European Parliament fully of the reasons which led it to adopt its position at first reading. The Commission shall inform the European Parliament fully of its position.

Second reading

7. If, within three months of such communication, the European Parliament:
 - (a) approves the position of the Council of Ministers at first reading or has not taken a decision, the ~~proposed~~ act **concerned** shall be deemed to have been adopted **in the wording which corresponds to the position of the Council;**
 - (b) rejects, by a majority of its component members, the position of the Council ~~of Ministers~~ at first reading, the proposed act shall be deemed not to have been adopted;

Article III-301

It is suggested that the list of articles to which the rule laid down in this article does not apply be supplemented to cover all cases in which the Commission provides, in the budget field, for the Council to act on a Commission proposal.

Article III-302

Paragraphs 4 and 7

The wording "*proposed act*" is legally incorrect: it is not the act in the wording proposed by the Commission which is adopted, but the act concerned in the wording suggested by the Institution (European Parliament or Council) which previously took a position.

(c) proposes, by a majority of its component members, amendments to the position of the Council ~~of Ministers~~ at first reading, the text thus amended shall be forwarded to the Council ~~of Ministers~~ and to the Commission, which shall deliver an opinion on those amendments.

8. If, within three months of receiving the European Parliament's amendments, the Council ~~of Ministers~~, acting by a qualified majority,

(a) approves all those amendments, the act in question shall be deemed to have been adopted;

(b) does not approve all the amendments, the President of the Council ~~of Ministers~~, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.

9. The Council ~~of Ministers~~ shall act unanimously on the amendments on which the Commission has delivered a negative opinion.

Conciliation

10. The Conciliation Committee, which shall be composed of the members of the Council ~~of Ministers~~ 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 ~~of Ministers~~ or their representatives and by a majority of the members representing the European Parliament within six weeks of its being convened, on the basis of the positions of the Parliament and the Council ~~of Ministers~~ at second reading.

11. 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 ~~of Ministers~~.

12. If, within six weeks of its being convened, the Conciliation Committee does not approve the joint text, the proposed act shall be deemed not to have been adopted.

Third reading

13. If, within that period, the Conciliation Committee approves a joint text, the European Parliament, acting by a majority of the votes cast, and the Council ~~of Ministers~~, acting by a qualified majority, shall each have a period of six weeks from that date in which to adopt the act in question in accordance with the joint text. If they fail to do so, the proposed act shall be deemed not to have been adopted.

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

Special provisions

15. Where, in the cases ~~specifically~~ provided for in the Constitution, a law or framework law is submitted to the ordinary legislative procedure on the initiative of a group of Member States, on a recommendation by the European Central Bank, or at the request of the Court of Justice **of the European Union** or the European Investment Bank, paragraph 2, the second sentence of paragraph 6, and paragraph 9 shall not apply.

In such cases, the European Parliament and the Council of Ministers shall communicate the proposed act to the Commission with their positions at first and second readings. The European Parliament or the Council of Ministers may request the opinion of the Commission throughout the procedure, **which** the Commission may **also** deliver ~~an opinion~~ on its own initiative. It may **also**, if it deems it necessary, take part in the Conciliation Committee on the terms laid down in paragraph 11.

Article III-303 (ex Article 218 TEC + new provision)

The European Parliament, the Council of Ministers and the Commission shall consult each other and by common agreement make arrangements for their cooperation. To that end, they may, in compliance with the Constitution, conclude interinstitutional agreements which may be of a binding nature.

Article III-304 (new)

1. In carrying out their missions, the Institutions, bodies, **offices** and agencies of the Union shall have the support of an open, efficient and independent European administration.
2. **In compliance with the Staff Regulations and the Conditions of Employment adopted on the basis of** ~~Without prejudice to Article III-333, European~~ laws shall establish specific provisions to that end.

Article III-305 (ex Article 255 TEC)

1. The Institutions, bodies, **offices** and agencies of the Union shall ~~recognise the importance of~~ **ensure** transparency in their work and shall, in application of Article I-49, lay down in their rules of procedure the specific provisions for public access to documents. The Court of Justice **of the European Union** and the European Central Bank shall be subject to the provisions of Article I-49(3) **and to the present Article, only** when exercising their administrative tasks.
2. The European Parliament and the Council of Ministers shall ensure publication of the documents relating to the legislative procedures **under the terms laid down by the law referred to in Article I-49(4).**

Article III-306 (ex Articles 210 and 247(8) TEC)

1. The Council of Ministers shall adopt ~~European~~ regulations and decisions determining:
 - (a) the salaries, allowances and pensions of the President of the European Council, the President of the Commission, the Union Minister for Foreign Affairs, the European Commissioners, **the** ~~and~~ Commissioners, the President, Members and Registrar of the European Court of Justice, ~~and the President, the~~ Members and Registrar of the High Court, **the members of specialised courts and the Secretary-General of the Council.**

Article III-302 (continued)

Paragraph 15

Drafting suggestions with a view to clarifying the text. For the same reason, it is suggested that the first and second subparagraphs should be merged.

Article III-304

Paragraph 2

We would suggest clarifying that this law cannot impinge upon the scope of, and must comply with, the law establishing the Staff Regulations of officials and the Conditions of Employment of other servants, which is subject to a different procedure.

Article III-305

Paragraph 1

The question arises whether the second sentence should not contain a reference to the European Investment Bank on the same grounds as underlie the restriction of the right of access to documents of the Court of Justice and the European Central Bank with regard to the exercise of their administrative functions.

Article III-306

It is suggested that the list of persons referred to should be extended to include the President of the High Court, the members of specialised courts and the Secretary-General of the Council.

(b) the conditions of employment, in particular the salaries, allowances and pensions, of the President and Members of the Court of Auditors.

(c) ~~It shall also determine~~ any payment to be made instead of remuneration **to the persons referred to in subparagraphs (a) and (b) above.**

2. The Council of ~~Ministers~~ shall adopt ~~European~~ regulations and decisions determining the allowances of the Members of the Economic and Social Committee.

Article III-307 (ex Article 256 TEC)

Acts of the Council of ~~Ministers~~, of the Commission or of the European Central Bank which impose a pecuniary obligation on persons other than **Member** States shall be enforceable.

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

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

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

CHAPTER II

FINANCIAL PROVISIONS

SECTION 1

THE MULTIANNUAL FINANCIAL FRAMEWORK

Article III-308 (new)

1. The multiannual financial framework shall be established for a period of at least five years in accordance with Article I-54.
2. The financial framework shall determine the amounts of the annual ceilings on commitment appropriations by category of expenditure and of the annual ceiling on payment appropriations. The categories of expenditure, few in number, shall correspond to the Union's major sectors of activity.
3. The financial framework shall lay down any other provisions required for the annual budgetary procedure to run smoothly.
4. Where no ~~European~~ law of the Council of Ministers ~~establishing~~ **determining** a new financial framework has been adopted by the end of the previous financial framework, the ceilings and other provisions corresponding to the last year of that framework shall be extended until such time as that law is adopted.
5. Throughout the procedure leading to the adoption of the financial framework, the European Parliament, the Council of Ministers and the Commission shall take any measure necessary to facilitate the successful completion of the procedure.

Article 308

Paragraph 4

The transition problem posed by the fact that on the date of entry into force of the Treaty establishing a Constitution the new financial framework will not have been adopted is solved by Article IV-3(4), which also refers to the interinstitutional agreements and therefore covers the financial perspective.

SECTION 2

THE UNION'S ANNUAL BUDGET

Article III-309 (ex Article 272 EC)

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

Article III-310 (ex Article 272 EC)

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

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

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

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.

2. The Commission shall submit the draft budget to the European Parliament and to the Council ~~of Ministers~~ not later than 1 September of the year preceding that in which the budget is to be implemented.

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

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

- (a) approves the position of the Council ~~of Ministers~~ or has not taken a decision, the ~~European~~ budget law shall be deemed to have been adopted;
- (b) proposes amendments to the position of the Council ~~of Ministers~~ by a majority of its component members, the amended text shall be forwarded to the Council ~~of Ministers~~ and to the Commission. The President of the European Parliament, in agreement with the President of the Council ~~of Ministers~~, shall immediately convene a meeting of the Conciliation Committee.

If, within ten days, the Council ~~of Ministers~~ informs the European Parliament that it has approved all its amendments, the Conciliation Committee shall not meet.

Article III-310

A budget-procedure simulation indicates that the budget will be adopted (after conciliation, which is the most likely) on 26 December, which is not very practical from the point of view of the Institutions' normal functioning. The periods allowed to the European Parliament and the Council could therefore be reduced by equal amounts (by three days each, for example) in order to produce a more reasonable deadline for the conclusion of the proceedings (20 December, for example).

In addition, the provisions concerning the procedure for the adoption of the budget (Articles I-55 and III-310) are ambiguous regarding the question whether, in the context of the budget procedure, the Council must act by an ordinary qualified majority (Article I-24(1)) or by a special qualified majority (Article I-24(2)): Article I-55 provides that the Parliament and the Council shall adopt the law establishing the budget on a Commission proposal, while Article III-310 consistently speaks of "the draft budget". The text ought to be clarified on this point.

5. The Conciliation Committee, which shall be composed of the members of the Council of Ministers 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 of Ministers 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 of Ministers.

6. 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 of Ministers.

7. If, within the twenty-one days referred to in paragraph 5, the Conciliation Committee approves a joint text, the European Parliament, acting by a majority of the votes cast, and the Council of Ministers, acting by a qualified majority, shall each have a period of fourteen days from that date in which to adopt the joint text.

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

However, if the Parliament, acting by a majority of its component members and three fifths of the votes cast, rejects the joint text, it may ask for a new draft budget to be submitted.

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

Article III-311 (ex Article 273)

1. If ~~no European budget law has been adopted~~ at the beginning of a financial year **no budget law has been finally adopted**, a sum equivalent to not more than one twelfth of the budget appropriations entered in the ~~European budget law~~ **chapter in question of the** budget for the preceding financial year may be spent each month in respect of any chapter ~~or other subdivision of the budget~~ in accordance with the provisions of the European law referred to in Article III-318; ~~this arrangement shall not, however, have the effect of placing at the disposal of the Commission appropriations in excess of that sum~~ **may not, however, exceed one twelfth of those the appropriations provided for in the same chapter of the draft budget under consideration being prepared.**

2. The Council of Ministers, on a proposal by the Commission and in compliance with the other conditions laid down in paragraph 1, may adopt a ~~European~~ decision authorising expenditure in excess of one twelfth, **in accordance with the law referred to in Article III-318**. The Council of Ministers shall forward the decision immediately to the European Parliament.

Article III-311

Paragraph 1

The expression "*this arrangement*" is not appropriate as the "automatic twelfth" arises under the wording of this provision. Otherwise, some clarifications.

Paragraph 2

It will be noted that the expression "on a proposal" means that Article III-301 will apply, i.e. that the Commission proposal could be amended by the Council only when acting unanimously. In order to avoid such an outcome, it is suggested that Article III-301(1) (see above) refer to Article III-311(2). It will also be noted that the use of "proposal" also means that the Council will act by ordinary qualified majority (Article I-24(1)) rather than by special qualified majority when there is no proposal (Article I-24(2)).

It is also suggested that express reference be made to the law referred to in Article III-318, which lays down the rules for the implementation of the provisional-twelfths system (see the end of Article 13(4) of Council Regulation No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, where it is provided that where additional provisional twelfths are authorised "*the available overall total of the appropriations in the budget of the preceding financial year may in no circumstances be exceeded*").

The ~~European~~ decision shall lay down the necessary measures relating to resources to ensure application of this Article, **in accordance with the law referred to in Article I-53(3)**.

It shall enter into force thirty days following its adoption if the European Parliament, acting by a majority of its component members, has not decided to reduce this expenditure within that time-limit.

Article III-312 (ex Article 271 EC)

In accordance with the conditions laid down by the ~~European~~ law referred to in Article III-318, any appropriations, other than those relating to staff expenditure, that are unexpended at the end of the financial year may be carried forward to the next financial year only.

Appropriations shall be classified under different chapters grouping items of expenditure according to their nature or purpose and subdivided in accordance with the ~~European~~ law referred to in Article **III-318**.

The expenditure of

- the European Parliament,
- **the European Council and the Council of Ministers**,
- the Commission
- and the Court of Justice **of the European Union**

shall be set out in separate ~~parts~~ **sections** of the budget, without prejudice to special arrangements for certain common items of expenditure.

Article 311 (continued)

Paragraph 2

According to the second subparagraph, the decision by the Council – as an arm of the budget authority – provided for in the preceding subparagraph can include the "*necessary measures*" relating to resources concerning its application. The text does not, however, define the content of those measures.

At the moment, Council Decision 2000/597/EC, Euratom of 29 September 2000 on the system of the European Communities' own resources includes a provision to the effect that "*If, at the beginning of the financial year, the budget has not been adopted, the previous uniform VAT rate and rate applicable to Member States' GNPs shall remain applicable until the entry into force of the new rates*". It is suggested that it be specified, by means of an express reference to the law that will be based on Article II-53(3) (and which will enter into force only after approval by the Member States, in accordance with their respective constitutional rules), that the measures that the Council takes regarding resources for the financing of provisional twelfths must submit to this "safety catch".

Article III-312

It is suggested that the third subparagraph be reorganised to make it clear that expenditure of the European Council, which henceforth will be an Institution, forms part of the Council's budget. (Under Article III-244(4) the European Council is assisted by the Council General Secretariat.)

SECTION 3

IMPLEMENTATION OF THE BUDGET AND DISCHARGE

Article III-313 (ex Article 274 EC)

The Commission shall implement the budget in cooperation with the Member States, in accordance with the ~~European~~ law referred to in Article ~~III~~-318, on its own responsibility and within the limits of the appropriations allocated, having regard to the principles of sound financial management. Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with those principles.

The ~~European~~ law referred to in Article ~~III~~-318 shall establish the control and audit obligations of the Member States in the implementation of the budget and the resulting responsibilities. ~~The European law referred to in Article III-318~~ It shall establish the responsibilities and detailed rules for each Institution concerning its part in effecting its own expenditure.

The Commission may, subject to the limits and conditions laid down by the ~~European~~ law referred to in Article III-318, make transfers of appropriations between chapters or between subdivisions within the budget.

Article III-314 (ex Article 275 EC)

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

The Commission shall also submit to the European Parliament and to the Council ~~of Ministers~~ an evaluation report on the Union's finances based on the results achieved, in particular in relation to the indications given by the European Parliament and the Council ~~of Ministers~~ pursuant to Article III-315.

Article III-315 (ex Article 276 EC)

1. The European Parliament, on a recommendation from the Council ~~of Ministers~~, shall give a discharge to the Commission in respect of the implementation of the budget. To this end, the Council ~~of Ministers~~ and the European Parliament in turn shall examine the accounts, the financial statement and the evaluation report referred to in Article III-314, the annual report by the Court of Auditors together with the replies of the Institutions under audit to the observations of the Court of Auditors, the statement of assurance referred to in the second subparagraph of Article III-290(1) and any relevant special reports by the Court of Auditors.

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

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

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

SECTION 4

COMMON PROVISIONS

Article III-316 (ex Article 277 EC)

The multiannual financial framework and the annual budget shall be drawn up in euro.

Article III-317 (ex Article 278 EC)

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

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

Article III-318 (ex Article 279 EC)

1. ~~European laws~~ **Laws** shall **establish**:

- (a) ~~lay down~~ the financial rules which determine in particular the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts;
- (b) ~~lay down rules concerning~~ **providing for** checks on the responsibility of financial ~~controllers~~ **actors, in particular** authorising officers and accounting officers.

They shall be adopted after consultation of the Court of Auditors.

2. The Council of ~~Ministers~~ shall, on a proposal from the Commission, adopt a ~~European~~ regulation laying down the methods and procedure whereby the budget income provided under the arrangements relating to the Union's own resources shall be made available to the Commission, and the measures to be applied, if need be, to meet cash requirements. The Council of Ministers shall act after consulting the European Parliament and the Court of Auditors.

3. The Council of ~~Ministers~~ shall act unanimously until 1 January 2007 in all the cases referred to by this Article.

Article III-317

It will be noted that this article is very technical. It might be better placed in the law referred to in Article III-318 (the "Financial Regulation") rather than in the text of the Constitution.

Article III-318

Paragraph 1

The term "*financial controllers*" has been overtaken by the new Financial Regulation, which uses the expression "*financial actors*". The internal auditor is not a financial actor in the broad sense of the term, which is why "*in particular*" has been added.

Article III-319 (new)

The European Parliament, the Council of Ministers and the Commission shall ensure that the financial means are made available to allow the Union to fulfil its legal obligations in respect of third parties.

Article III-320 (new)

Regular meetings between the Presidents of the European Parliament, the Council of Ministers and the Commission shall be convened on the initiative of the Commission under the budgetary procedures referred to in this Chapter. The Presidents shall take all the necessary steps to promote consultation and the reconciliation of the positions of the Institutions ~~positions~~ **over which they preside** to facilitate the implementation of the provisions of this Chapter.

Article III-320

It ought to be stated expressly that it is for the three Presidents to bring the Institutions' positions closer together.

SECTION 5

COMBATING FRAUD

Article III-321 (ex Article 280 EC)

1. The Union and the Member States shall counter fraud and any other illegal activities affecting the Union's financial interests through measures adopted in accordance with this Article. These measures shall act as a deterrent and be such as to afford effective protection in the Member States **and in all the Union's Institutions, bodies, offices and agencies**.
2. Member States shall take the same steps to counter fraud affecting the Union's financial interests as they take to counter fraud affecting their own financial interests.
3. Without prejudice to other provisions of the Constitution, the Member States shall coordinate their action aimed at protecting the Union's financial interests against fraud. To this end they shall organise, together with the Commission, close and regular cooperation between the competent authorities.
4. ~~European laws or~~ **Laws and** framework laws shall lay down the necessary measures in the fields of the prevention of and fight against fraud affecting the Union's financial interests with a view to affording effective and equivalent protection in the Member States **and in all the Union's Institutions, bodies, offices and agencies**. They shall be adopted after consultation of the Court of Auditors.
5. The Commission, in cooperation with Member States, shall each year submit to the European Parliament and to the Council of Ministers a report on the measures and provisions adopted for the implementation of this Article.

Article III-321

Paragraphs 1 and 4

In order to prevent any misunderstanding, it is suggested that in the second sentence of paragraph 1 and the first sentence of paragraph 4 the words "*and in the Union's Institutions, bodies, offices and agencies*" be added. Regulation No 1073/1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) also covers the fight against fraud and all other illegal activities detrimental to the Communities' financial interests in all the Institutions, bodies, offices and agencies established by or on the basis of the Treaties (Regulation of 25 May 1999, OJ L 136, 31.5.1999, p. 1).

CHAPTER III

ENHANCED COOPERATION

Article III-322 (ex Article 43 TEU)

Any enhanced cooperation ~~proposed~~ shall comply with the Union's Constitution and law.

Such cooperation shall not undermine the internal market or economic, social and territorial cohesion. It shall not constitute a barrier to or discrimination in trade between Member States, nor shall it distort competition between them.

Article III-323 (ex Articles 43(h) and 44(2) TEU)

Any enhanced cooperation ~~proposed~~ shall respect the competences, rights and obligations of those Member States which do not participate in it. Those Member States shall not impede its implementation by the participating Member States.

Article III-324 (ex Article 43B TEU + new provisions)

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

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

2. The Commission and, where appropriate, the Union Minister for Foreign Affairs shall keep **the European Parliament and** ~~all members of the Council of Ministers and the European Parliament~~ regularly informed regarding developments in enhanced cooperation.

Article III-325 (ex Article 27 C TEU)

1. Member States which wish to establish enhanced cooperation between themselves in one of the areas covered by the Constitution, with the exception of **fields of exclusive competence and** the common foreign and security policy, shall address a request to the Commission, specifying the scope and objectives of the enhanced cooperation proposed. The Commission may submit a proposal to the Council ~~of Ministers~~ to that effect. In the event of the Commission not submitting a proposal, it shall inform the Member States concerned of the reasons for not doing so.

Authorisation to proceed with enhanced cooperation shall be granted by a ~~European~~ decision of the Council ~~of Ministers~~, **which shall act** on a proposal from the Commission and after obtaining the consent of the European Parliament.

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

Authorisation to proceed with enhanced cooperation shall be granted by a ~~European~~ decision of the Council ~~of Ministers~~.

Article III-326 (ex Article 27 E TEU)

1. Any Member State which wishes to participate in enhanced cooperation **in progress** in one of the areas referred to in Article III-325(1) shall notify its intention to the Council ~~of Ministers~~ and the Commission.

The Commission shall, within four months of the date of receipt of the notification, confirm the participation of the Member State concerned. It shall note where necessary that any conditions of participation have been fulfilled and shall adopt any transitional measures ~~deemed~~ necessary with regard to the application of the acts already adopted within the framework of enhanced cooperation.

However, if the Commission considers that ~~any~~ **the** conditions of participation have not been fulfilled, it shall indicate the arrangements to be adopted to fulfil those conditions and shall set a deadline for re-examining the request ~~for participation~~. **On the expiry of that deadline, it** ~~it~~ shall re-examine the request, in accordance with the procedure set out in the ~~preceding~~ **second** subparagraph. If the Commission considers that any conditions of participation have still not been met, the Member State concerned may refer the matter to the Council ~~of Ministers~~, **which shall decide on the request**. ~~which~~ **The Council** shall act in accordance with Article I-43(3). ~~The Council of Ministers~~ **It** may also adopt the transitional measures referred to in the second subparagraph on a proposal from the Commission.

Article III-325

Paragraph 1

It ought to be stated that enhanced cooperation is excluded in fields within the Union's exclusive competence (see Article I-43(1)).

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

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

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

Article III-327 (ex Article 44 A TEU)

Expenditure resulting from implementation of enhanced cooperation, other than administrative costs entailed for the Institutions, shall be borne by the participating Member States, unless ~~all members of the Council of Ministers~~, acting unanimously after consulting the European Parliament, ~~decide~~ **decides** otherwise.

Article III-328 (new)

1. Where a provision of the Constitution which may be applied in the context of enhanced cooperation stipulates that the Council of Ministers shall act unanimously, 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 by qualified majority.

2. 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.

Article III-329 (ex Article 45 TEU)

The Council ~~of Ministers~~ and the Commission shall ensure the consistency of activities undertaken in the context of enhanced cooperation and the consistency of such activities with the policies of the Union, and shall cooperate to that end.

TITLE VII

COMMON PROVISIONS

Article III-330 (ex Article 299 TEC)

Taking account of the structural economic and social situation of the French overseas departments, the Azores, Madeira and the Canary Islands, which is compounded by their remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development, the Council ~~of Ministers~~, on a proposal from the Commission, shall adopt ~~European~~ **laws, framework laws, regulations and decisions** aimed, in particular, at laying down the conditions of application of the Constitution to those regions, including common policies. It shall act after consulting the European Parliament.

The measures referred to in the first paragraph concern in particular areas such as customs and trade policies, fiscal policy, free zones, agriculture and fisheries policies, conditions for supply of raw materials and essential consumer goods, State aids and conditions of access to structural funds and to horizontal Union programmes.

The Council ~~of Ministers~~ shall adopt the measures referred to in the first paragraph taking into account the special characteristics and constraints of the outermost regions without undermining the integrity and the coherence of the Union legal order, including the internal market and common policies.

Article III-331 (ex Article 295 TEC)

The Constitution shall in no way prejudice the rules in Member States governing the system of property ownership.

Article III-332 (ex Article 282 TEC)

In each of the Member States, the Union shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. To this end, the Union shall be represented by the Commission. However, it shall be represented by each of the Institutions, by virtue of ~~their~~ **its** administrative autonomy, in matters relating to ~~their~~ **its** respective operation.

Article III-333 (ex Article 282 TEC)

The Staff Regulations of officials and the Conditions of Employment of other servants of the Union shall be laid down by a ~~European~~ law. It shall be adopted after consultation of the Institutions concerned.

Article III-330

The suggestion takes account of the fact that the "*specific measures*" referred to in Article 299(2), second subparagraph, TEC can be taken under any of the forms of legally binding acts referred to in Article I-32 (see the similar question relating to Article III-191).

Article III-333

The French text ought to speak of the Institutions "*concernées*", which is more precise legally than "*intéressées*".

Article III-334 (ex Article 284 TEC)

The Commission may, within the limits and under conditions laid down by a ~~European~~ regulation or decision adopted by a simple majority by the Council of ~~Ministers~~, collect any information and carry out any checks required for the performance of the tasks entrusted to it.

Article III-335 (ex Article 285 TEC)

1. Without prejudice to Article 5 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, measures for the production of statistics shall be laid down by a ~~European~~ law or framework law where necessary for the performance of the Union's activities.
2. The production of statistics shall conform to impartiality, reliability, objectivity, scientific independence, cost-effectiveness and statistical confidentiality; it shall not entail excessive burdens on economic operators.

Article III-336 (ex Article 287 TEC)

The members of the Union's Institutions, the members of committees **and of working parties**, and the officials and other servants of the Union shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

Article III-337 (ex Article 288 EC)

The Union's contractual liability shall be governed by the law applicable to the contract in question.

In the case of non-contractual liability, the Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its Institutions or by its servants in the performance of their duties.

~~The second paragraph shall apply under the same conditions to damage caused by the European Central Bank or by its servants in the performance of their duties.~~

The personal liability of its servants towards the Union shall be governed by the provisions laid down in their Staff Regulations or in the Conditions of Employment applicable to them.

Article III-337

The third paragraph is no longer necessary as the ECB is an Institution and is therefore covered by the second paragraph.

Article III-338 (ex Article 289 TEC)

The seat of the Union's Institutions shall be determined by common accord of the governments of the Member States.

Article III-339 (ex Article 290 TEC)

The Council of Ministers shall adopt unanimously a ~~European~~ regulation laying down the rules governing the languages of the Union's Institutions, without prejudice to the Statute of the Court of Justice **of the European Union**.

Article III-340 (ex Article 291 TEC)

The Union shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the Protocol of ~~8 April 1965~~ on the privileges and immunities of the European ~~Communities~~ **Union**. The same shall apply to the European Central Bank and the European Investment Bank.

Article III-341 (ex Article 307 TEC)

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

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

In applying the agreements referred to in the first paragraph, Member States shall take into account the fact that the advantages accorded under the Constitution by each Member State form an integral part of the Union and are thereby inseparably linked with the creation of ~~common~~ Institutions, ~~the conferring of powers upon them~~ **on which powers have been conferred by the Constitution** and the granting of ~~the same identical~~ advantages by all the other Member States.

Article III-342 (ex Article 296 TEC)

1. The Constitution shall not preclude the application of the following rules:
 - (a) no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security;
 - (b) any Member State may take such steps as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such steps shall not adversely affect the conditions of competition in the internal market regarding products which are not intended for specifically military purposes.
2. The Council of ~~Ministers~~, on a proposal from the Commission, may unanimously adopt a ~~European~~ decision making changes to the list, which it drew up on 15 April 1958, of the products to which the provisions of paragraph 1(b) apply.

PART IV

GENERAL AND FINAL PROVISIONS

Article IV-1 (new)
The symbols of the Union ¹

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

The anthem of the Union shall be based on the Ode to Joy from the Ninth Symphony by Ludwig van Beethoven.

The motto of the Union shall be: United in diversity.

The currency of the Union shall be the euro.

9 May shall be celebrated throughout the Union as Europe day.

Article IV-2 (new)
Repeal of earlier Treaties

1. The Treaty establishing the European Community, **the Single European Act**, the Treaty on European Union, **the Treaty of Amsterdam and the Treaty of Nice, including the Protocols annexed to those Treaties, [and ...] shall be repealed, with the exception of those provisions of the said treaties, acts and protocols which amended the Treaty establishing the European Atomic Energy Community.** ~~and the acts and treaties which have supplemented or amended them and are listed in the Protocol annexed to the Treaty establishing the Constitution shall be repealed: as from the date of entry into force of the Treaty establishing the Constitution.~~

[2. Without prejudice to the second subparagraph, the Treaties on the Accession:

- **of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland,**
- **of the Hellenic Republic,**
- **of the Kingdom of Spain and the Portuguese Republic, and**
- **of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden,**
- **of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic,**

shall be repealed.

The provisions of these Accession Treaties set out in Protocol [X] shall remain in force and their legal effects shall be preserved under the conditions laid down in that Protocol.]

¹ The Convention considers that this Article would be better situated in Part I.

Article IV-2

ONGOING WORK BY THE COMMISSION ON THE PROTOCOLS, THE ACCESSION TREATIES AND OTHER ACTS OF PRIMARY LAW – TO BE PRESENTED TO THE IGC LEGAL EXPERTS AT A LATER STAGE

There is a general suggestion that references to "*Treaty establishing the Constitution*" be replaced by references to "*this Treaty*" – also in the other articles of Part IV – as it is clearer in legal terms for the final provisions.

Paragraph 1

The repeal of the initial Treaties will do away with the existing European Union and European Community to create, in accordance with Article I-1(1), a new legal entity which will nevertheless have the same name as the current European Union. This will have consequences for the future of the institutions and secondary legislation in particular (see comments on Article IV-3); succession should be mentioned from the start, in the Preamble (see comments on the Preamble to the Treaty establishing the Constitution).

For the sake of transparency it is suggested that all the repealed Treaties be mentioned explicitly, while nevertheless excluding those of their provisions which amended the EURATOM Treaty (see comments on the Preamble to the Protocol amending the Treaty establishing the European Atomic Energy Community). The list of repealed Treaties and acts will have to be supplemented, where appropriate, on the basis of the outcome of ongoing work at the Commission.

It is also suggested that express reference should be made to the fact that those Protocols which form an integral part of the repealed Treaties (see, for instance, Article 311 TEC) will consequently also be repealed. Nevertheless, in most cases the Protocols will have to be reinstated, following adjustments, and annexed to the Treaty establishing the Constitution (see Article IV-6).

Lastly, it is suggested that the part of the sentence stating that the Treaties will be repealed "*as from the date of entry into force of the Treaty establishing the Constitution*" should be deleted: Article IV-2 will take effect on the date of entry into force, in accordance with Article IV-8.

Paragraph 2 (new – this paragraph is in square brackets as it is provisional)

It is suggested that the Accession Treaties be mentioned explicitly in a new paragraph referring to a Protocol to the Treaty establishing the Constitution. The Accession Treaties must be examined to ascertain whether they can, for the main, be repealed, while deciding which of their provisions should be retained and in what form.

With regard to the last Accession Treaty (signed in 2003 in Athens), thought will have to be given to what approach to take in view of its content and timetable.

Article IV-3 (new)
Succession and legal continuity
~~in relation to the European Community and the European Union~~

1. The European Union **established by this Treaty** shall succeed ~~to all the rights and obligations of the European Community and of the European Union established by the Treaty on European Union, and the European Community.~~ **whether internal or resulting from international agreements, which arose before the entry into force of the Treaty establishing the Constitution by virtue of previous treaties, protocols and acts, including all the assets and liabilities of the Community and of the Union, and their archives.**
2. **Until new provisions have been adopted in implementation of this Treaty or until the end of their term of office, the Institutions, with the exception of the Commission, bodies, offices and agencies existing on the date of the entry into force of this Treaty shall exercise their powers within the meaning of this Treaty in their composition on that date and under the conditions laid down in the Protocol on the transitional provisions relating to the Institutions and bodies of the Union.**
3. ~~The provisions of the acts of the Institutions, bodies, offices and agencies adopted by virtue on the basis of the treaties, protocols and acts mentioned in the first paragraph repealed by Article IV-2, shall remain in force. Their legal effects shall be preserved under the conditions laid down in the Protocol annexed to the Treaty establishing the Constitution. The case law of the Court of Justice of the European Communities shall be maintained as a source of interpretation of Union law until they are repealed or amended in implementation of this Treaty. The same shall apply to agreements concluded between Member States on the basis of the treaties, protocols and acts repealed by Article IV-2.~~
4. **The other components of the *acquis* of the Community, and of the Union existing at the time of the entry into force of this Treaty, in particular the Interinstitutional agreements, decisions and agreements agreed on by the Representatives of the Governments of the Member States, meeting within the Council, agreements concluded by the Member States on the functioning of the Union or of the Community or linked to action by the Union and by the Community, declarations, resolutions or other positions adopted by the European Council or the Council as well as those relating to the Union or to the Community adopted by common accord by the Member States, shall also be preserved until they have been deleted or amended.**

The case law of the Court of Justice of the European Communities on the interpretation and application of the treaties, protocols and acts repealed by Article IV-2 shall remain, *mutatis mutandis* and without prejudice to the future development of the case law of the Court of Justice of the European Union, the authentic source of interpretation of the comparable provisions of the Constitution.

Article IV-3

It is suggested that this Article be structured in four paragraphs dealing with succession (1), the future of the Institutions (2), secondary legislative acts (3) and other components of the Community and Union *acquis* (4).

Paragraph 1

The Convention's wording of this paragraph is not satisfactory in that it states that "*The European Union shall succeed to... the Union*". Since, according to Article I-1(1), the "*Constitution establishes the European Union*", which will therefore be a different entity from the current European Union, a different wording is suggested.

It is also suggested that the restrictive list of the consequences of succession, which risks being incomplete, be deleted.

Paragraph 2

It is essential to spell out the future of the Union's Institutions, bodies, offices and agencies. Otherwise we risk seeing certain Institutions and bodies "disappear" over a period. This would be the fate of the Commission, which would "disappear" on the date of the entry into force of the Treaty establishing the Constitution without it being possible, in the absence of rules applicable in the interval, to appoint a new one before 1 January 2009 (see Article I-25(3), last subparagraph). As for the members of the ECJ, the CFI, the Court of Auditors, the CoR, the ESC, the Ombudsman, etc., they would have to be appointed or re-appointed, in some cases following the adoption of a decision establishing the arrangements for their appointment, which would thus entail a certain delay. This general clause covers the European Parliament, the Council, the ECJ, the Court of Auditors, the Ombudsman, the ECB, and the EIB (for the latter two, see the Court of Justice judgments of 10 July 2003, cases C-11/00 and C-15/00). The question of whether or not to include the Commission in this clause has been left open as this is a political decision, as indicated in the introduction to this document. The clause also covers the continuity of the bodies set up by secondary legislative acts such as Europol, Eurojust, the Satellite Centre, the Institute for Security Studies and all "agencies", "foundations", "offices" and "centres" created by legislative acts and having their own legal personality.

Paragraph 3

It is suggested that the part of the sentence stating that acts and decisions of the Institutions shall remain in force "*under the conditions laid down in the Protocol annexed to the Treaty...*" be deleted and that it be specified that they will only remain in force until they are repealed or amended by secondary legislative acts adopted in implementation of the Constitution.

It is suggested that the sentence regarding the Court of Justice's case law be deleted, since its content is not legally clear, and that a second subparagraph be included in the new paragraph 4 to present the case law of the Court of Justice.

It is suggested that it be added that agreements concluded between Member States, such as JHA agreements, remain in force under the same conditions as acts of the Institutions. That would mean that where such agreements (or their protocols) confer powers upon the Institutions which differ from those provided for by the Constitution, for instance limited jurisdiction of the Court of Justice, such special provisions will continue to apply until the agreements have been amended or replaced by a law. If it is considered desirable for the Constitution's articles on the jurisdiction of the Court of Justice to apply immediately to such cases, it should be expressly provided for.

Paragraph 4 (new)

The addition of a new paragraph 4 is suggested to preserve the other components of the Community and Union *acquis*, as has been the practice hitherto in all accession treaties.

Article IV-4 (ex Article 299 TEC)

Scope

1. ~~The This Treaty establishing the Constitution~~ shall apply to the Kingdom of Belgium, **the Czech Republic**, the Kingdom of Denmark, the Federal Republic of Germany, **the Republic of Estonia**, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, **the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania**, the Grand Duchy of Luxembourg, **the Republic of Hungary, the Republic of Malta**, the Kingdom of the Netherlands, the Republic of Austria, **the Republic of Poland**, the Portuguese Republic, **the Republic of Slovenia, the Slovak Republic**, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.
 2. ~~The This Treaty establishing the Constitution~~ shall apply to the French overseas departments, the Azores, Madeira and the Canary Islands in accordance with Article III-329**330** ~~of Part III~~.
 3. The special arrangements for association set out in Title IV of Part III of ~~the this Treaty establishing the Constitution~~ shall apply to the overseas countries and territories listed in Annex II ~~to the TEC~~.
- ~~The This Treaty establishing the Constitution~~ shall not apply to overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not included in that list.
4. ~~The This Treaty establishing the Constitution~~ shall apply to the European territories for whose external relations a Member State is responsible.
 5. ~~The This Treaty establishing the Constitution~~ shall apply to the Åland Islands in accordance with the provisions set out in Protocol 2 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.
 6. Notwithstanding the preceding paragraphs:
 - (a) ~~the this Treaty establishing the Constitution~~ shall not apply to the Faeroe Islands;
 - (b) ~~the this Treaty establishing the Constitution~~ shall not apply to the sovereign base areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus;
 - (c) ~~the this Treaty establishing the Constitution~~ shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community, signed on 22 January 1972.

Article IV-4

Paragraph 3

Since the TEC is to be repealed by virtue of Article IV-2, reference to it must be deleted. An annex corresponding to Annex II to the TEC should be drawn up and annexed to the Treaty (see Article III-186 and the relevant footnote).

Paragraph 5

The reference to "*Protocol 2 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden*" should be reviewed in the light of the outcome of the proceedings mentioned in relation to Article IV-2.

Paragraph 6

Protocol 3 to the 2003 Act of Accession should be taken into account in point (b) as it will amend the current Article 299(6)(b) TEC.

In point (c) the reference to the "*Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community, signed on 22 January 1972*" should be reviewed in the light of the outcome of the proceedings mentioned in relation to Article IV-2.

Article IV-5 (ex Article 306 TEC)
Regional unions

~~The~~ **This** Treaty ~~establishing the Constitution~~ shall not preclude the existence or completion of regional unions between Belgium and Luxembourg, or between Belgium, Luxembourg and the Netherlands, to the extent that the objectives of these regional unions are not attained by application of the said Treaty.

Article IV-6 (ex Article 311 TEC)
Protocols

The protocols annexed to this Treaty shall form an integral part thereof.

Article IV-7 (ex Article 48 TEU)
Procedure for revision ~~ion revising the Treaty establishing the Constitution~~

1. The government of any Member State, the European Parliament or the Commission may submit to the **European Council of Ministers** proposals for the amendment of ~~the~~ **this** Treaty ~~establishing the Constitution~~. The national Parliaments of the Member States shall be notified of these proposals.
2. If the European Council, after consulting the European Parliament and the Commission, adopts by a simple majority a decision in favour of examining the proposed amendments, the President of the European Council shall convene a Convention composed of representatives of the national Parliaments of the Member States, of the Heads of State or Government of the Member States, of the European Parliament and of the Commission. The European Central Bank shall also be consulted in the case of institutional changes in the monetary area. The European Council may decide by a simple majority, after obtaining the consent of the European Parliament, not to convene the Convention should this not be justified by the extent of the proposed amendments. In the latter case, the European Council shall define the terms of reference for the conference of representatives of the governments of the Member States.

The Convention shall examine the proposals for amendments and shall adopt by consensus a recommendation to the conference of representatives of the governments of the Member States provided for in paragraph 3.

3. The conference of representatives of the governments of the Member States shall be convened by the President of the Council ~~of Ministers~~ for the purpose of determining by common accord the amendments to be made to ~~the~~ **this** Treaty ~~establishing the Constitution~~.

The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.

4. If, two years after the signature of the treaty amending ~~the~~ **this** Treaty ~~establishing the Constitution~~, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter shall be referred to the European Council.

Article IV-7

A new paragraph 5 could be added referring to cases in which the Treaty may be amended, in some cases by a "simplified" procedure, within the limits and for the purposes provided for in such special cases (i.e. "crossover" clauses (e.g. Article I-24(4) transferred to Article I-22(4)), changing the composition of the ESC (Article I-31(5)), amendments to the Statute of the Court of Justice, accession agreements (Article I-57(2)), agreements in the event of withdrawal from the Union (Article I-59(2)), etc.).

Paragraph 1

It is suggested that the text be modified to the effect that proposals for the amendment of the Treaty establishing the Constitution should be addressed to the European Council, not the Council. According to paragraph 2, it is the European Council and not the Council which decides to convene a Convention and, where appropriate, also define its terms of reference.

Article IV-7a (ex Articles 51 TEU and 312 TEC)

Duration

This Treaty is concluded for an unlimited period.

Article IV-8 (ex Articles 52 TEU and 313 TEC)

~~Adoption, ratification and eEntry into force of the Treaty establishing the Constitution~~

1. ~~The This Treaty establishing the Constitution~~ shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the Italian Republic.
2. ~~The This Treaty establishing the Constitution~~ shall enter into force on, provided that all the instruments of ratification have been deposited, or, failing that, on the first day of the month following the deposit of the instrument of ratification by the last signatory State to take this step.

~~Article IV-9~~

~~Duration~~

~~The Treaty establishing the Constitution is concluded for an unlimited period.~~

Article IV-10 (ex Articles 53 TEU and 314 TEC)

~~Languages~~² **Authentic texts**

~~The This Treaty establishing the Constitution~~, drawn up in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish, Swedish, Czech, Estonian, Latvian, Lithuanian, Hungarian, Maltese, Polish, Slovak and Slovenian languages, the texts in each of these languages being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which will transmit a certified copy to each of the governments of the other signatory States.

In witness whereof, the undersigned plenipotentiaries have signed this Treaty.

Done at ... this ...

² ~~To be adjusted in accordance with the Act of Accession.~~

Article IV-7a

It is suggested that Article IV-9 be moved here to follow the order "duration / entry into force / languages" as in previous Treaties.

Article IV-8

The statement concerning possible ratification problems could perhaps be included, adding a second subparagraph to paragraph 2 and a new paragraph 3:

"2. ...

Paragraph 3 shall apply provisionally on the date of signature of this Treaty."

"3. *If, two years after the signature of this Treaty, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties proceeding with ratification, the matter shall be referred to the European Council.*"

Article IV-9

See comments re Article IV-7a.

Article IV-10

It is suggested that wording identical to that of the corresponding article of the Vienna Convention (Article 85 of the Vienna Convention) be used for the title of this article.

DRAFT
PROTOCOLS

drawn up by the Convention

PROTOCOL
ON THE ROLE OF MEMBER STATES'
NATIONAL PARLIAMENTS IN THE EUROPEAN UNION

THE HIGH CONTRACTING PARTIES,

RECALLING that the way in which ~~individual~~ national Parliaments scrutinise their own governments in relation to the activities of the Union is a matter for the particular constitutional organisation and practice of each Member State,

DESIRING, ~~however~~, to encourage greater involvement of national Parliaments in the activities of the European Union and to enhance their ability to express their views on legislative proposals as well as on other matters which may be of particular interest to them,

HAVE AGREED UPON the following provisions, which shall be annexed to **the Treaty establishing a the Constitution for Europe**:

SECTION 1

I.—Information for ~~Member States'~~ national Parliaments

Article 1

~~1.—All~~ Commission consultation documents (green and white papers and communications) shall be forwarded ~~directly~~ by the Commission to ~~Member States'~~ national Parliaments upon publication. The Commission shall also send ~~Member States'~~ national Parliaments the annual legislative programme as well as any other instrument of legislative planning or policy strategy ~~that it submits to the European Parliament and to the Council of Ministers~~, at the same time as to ~~those Institutions~~ **the European Parliament and the Council**.

Article 2

~~2.—All Legislative Proposals~~ **for legislative acts** sent to the European Parliament and to the Council of Ministers shall simultaneously be sent to ~~Member States'~~ national Parliaments.

Article 3

~~3.—Member States'~~ National Parliaments may send to the Presidents of the European Parliament, the Council of Ministers and the Commission a reasoned opinion on whether a ~~legislative~~ proposal **for a legislative act** complies with the principle of subsidiarity, according to the procedure laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

Article 4

4.—A six-week period shall elapse between a ~~legislative~~ proposal **for a legislative act** being made available by the Commission to the European Parliament, the Council ~~of Ministers~~ and the ~~Member States'~~ national Parliaments in the official languages of the European Union and the date when it is placed on an agenda for the Council ~~of Ministers~~ for its adoption or for adoption of a position under a legislative procedure. ~~subject to~~ **Exceptions shall be possible in cases on grounds** of urgency, the reasons for which shall be stated in the act or position of the Council ~~of Ministers~~. Save in urgent cases for which due reasons have been given, no agreement may be established on a ~~legislative~~ proposal **for a legislative act** during those six weeks. A ten-day period shall elapse between the placing of a proposal **for a legislative act** on the **provisional** agenda for the Council ~~of Ministers~~ and the adoption of a position of the Council ~~of Ministers~~.

Article 5

5.—The agendas for and the outcome of meetings of the Council ~~of Ministers~~, including the minutes of meetings where the Council ~~of Ministers~~ is deliberating on ~~legislative~~ proposals **for legislative acts**, shall be transmitted ~~directly to Member States'~~ national Parliaments, at the same time as to Member States' governments.

Article 6

6.—When the European Council intends to make use of the provision of the first subparagraph of Article I-24(4) of the Constitution, national Parliaments shall be informed in advance.

When the European Council intends to make use of the provision of Article I-24(4), second subparagraph, of the Constitution, national Parliaments shall be informed at least four months before any decision is taken.

Article 7

7.—The Court of Auditors shall send its annual report to ~~Member States'~~ national Parliaments, for information, at the same time as to the European Parliament and to the Council ~~of Ministers~~.

Article 8

8.—In the case of bicameral national Parliaments, ~~these~~ **the** provisions of **Articles 1 to 7** shall apply to both chambers.

Article 4

It needs to be made clear that the proposal will be placed on the Council's provisional agenda. The final agenda is not adopted until the beginning of the Council meeting.

Article 6

This Article could be deleted as the substance of it already appears in the first and second subparagraphs of Article I-24(4).

Article 8

This wording is clearer from a legal point of view.

SECTION 2

H.—Interparliamentary cooperation

Article 9

9.—The European Parliament and the national Parliaments shall together determine ~~how the~~ **the organisation and promotion of effective and regular** interparliamentary cooperation ~~may be effectively and regularly organised and promoted~~ within the European Union.

Article 10

10.—The Conference of European Affairs Committees may submit any contribution it deems appropriate for the attention of the European Parliament, the Council ~~of Ministers~~ and the Commission. That Conference shall in addition promote the exchange of information and best practice between ~~Member States'~~ national Parliaments and the European Parliament, including their special committees. ~~The Conference~~ **It** may also organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, **including** ~~and of~~ common security and defence policy. Contributions from the Conference shall ~~in no way~~ **not** bind national Parliaments ~~or~~ **and shall not** prejudice their positions.

PROTOCOL
ON THE APPLICATION OF THE PRINCIPLES OF
SUBSIDIARITY AND PROPORTIONALITY

THE HIGH CONTRACTING PARTIES,

WISHING to ensure that decisions are taken as closely as possible to the citizens of the Union,

RESOLVED to establish the conditions for the application of the principles of subsidiarity and proportionality, as enshrined in Article I-9 of the Constitution, and to establish a system for monitoring the application of those principles by the Institutions,

HAVE AGREED UPON the following provisions, which shall be annexed to the **Treaty establishing a Constitution for Europe**:

Article 1

~~1.~~—Each Institution shall ensure constant respect for the principles of subsidiarity and proportionality, as laid down in Article I-9 of the Constitution.

Article 2

~~2.~~—Before proposing legislative acts, the Commission shall consult widely. Such consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged. In cases of exceptional urgency, the Commission shall not conduct such consultations. It shall give reasons for the decision in its proposal.

Article 3

3.—The Commission shall send ~~all its legislative proposals~~ **for legislative acts** and its amended proposals to the national Parliaments of the Member States at the same time as to the Union legislator. Upon adoption, legislative resolutions of the European Parliament and positions of the Council ~~of Ministers~~ shall be sent to the national Parliaments ~~of the Member States~~.

The Commission shall draw Member States' national Parliaments' attention to proposals based on Article I-17 of the Constitution.

Article 4

4.—The Commission shall justify its proposal with regard to the principles of subsidiarity and proportionality. Any ~~legislative proposal~~ **for a legislative act** should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact and, in the case of a framework law, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level ~~must~~ **shall** be substantiated by qualitative and, wherever possible, quantitative indicators. The Commission shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens to be minimised and commensurate with the objective to be achieved.

Article 5

5.—Any national Parliament or any chamber of a national Parliament of a Member State may, within six weeks from the date of transmission of ~~the Commission's legislative~~ **a Commission** proposal **for a legislative act**, send to the Presidents of the European Parliament, the Council ~~of Ministers~~ and the Commission a reasoned opinion stating why it considers that the proposal in question does not comply with the principle of subsidiarity. It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers.

Article 3

Subparagraph transferred from Article I-17(2) (flexibility clause)(see comments on Article I-17).

Article 6

6.—The European Parliament, the Council of Ministers and the Commission shall take account of the reasoned opinions issued by ~~Member States'~~ national Parliaments or by a chamber of a national Parliament.

~~The national Parliaments of Member States with unicameral Parliamentary systems shall have two votes, while each of the chambers of a bicameral Parliamentary system shall have one vote.~~

Where reasoned opinions on a Commission proposal's non-compliance with the principle of subsidiarity represent at least one third of all the votes allocated to the ~~Member States'~~ national Parliaments and their chambers, the Commission shall review its proposal. This threshold shall be at least a quarter in the case of a Commission proposal or an initiative emanating from a group of Member States ~~under the provisions~~ **submitted on the basis** of Article III-165 of the Constitution on the area of freedom, security and justice.

The national Parliaments of Member States with unicameral Parliamentary systems shall have two votes, while each of the chambers of a bicameral Parliamentary system shall have one vote.

After such review, the Commission may decide to maintain, amend or withdraw its proposal. The Commission shall give reasons for its decision.

Article 7

7.—The Court of Justice **of the European Union** shall have jurisdiction to hear actions on grounds of infringement of the principle of subsidiarity by a legislative act, brought in accordance with the rules laid down in Article III-270 of the Constitution by Member States, or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber of it.

Article 6

For reasons of logic and readability, it is suggested that the current second paragraph should be placed after the third paragraph.

It should be noted that what is now the second paragraph contains the only mention in the Protocol of initiatives from Member States. If the intention is that such initiatives should be subject to the rules in the Protocol, then appropriate rules should be drawn up.

In accordance with the same Article of the Constitution, the Committee of the Regions may also bring such actions as regards legislative acts for the adoption of which the Constitution provides that it be consulted.

Article 8

8.—The Commission shall submit each year to the European Council, the European Parliament, the Council of Ministers and the national Parliaments of the Member States a report on the application of Article I-9 of the Constitution. This annual report shall also be forwarded to the Committee of the Regions and to the Economic and Social Committee.

PROTOCOL

ON THE REPRESENTATION OF CITIZENS IN THE EUROPEAN PARLIAMENT AND THE
WEIGHTING OF VOTES IN THE EUROPEAN COUNCIL AND THE COUNCIL OF
MINISTERS THE TRANSITIONAL PROVISIONS RELATING TO THE INSTITUTIONS
AND BODIES OF THE UNION

THE HIGH CONTRACTING PARTIES,

WHEREAS, in order to organise the transition between the European Union established by the Treaty establishing a Constitution for Europe, and the European Union and the European Community to which it is the successor, it is necessary to lay down transitional provisions which will apply before all the provisions of the Constitution and the instruments necessary for their implementation take full effect,

HAVE ADOPTED the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe:

General comments

As has already been stressed (paragraph 5 of the general comments), it is important that transitional provisions should be laid down to ensure the legal continuity of the Union's activities. It is suggested that such provisions should be brought together in this Protocol and that its title should be changed to take account of the widening of its scope.

In general, the legal continuity of the Institutions, bodies, offices and agencies of the Union is guaranteed by Article IV-3(2) as suggested above (see comments re Article IV-3).

However, the wording of the transitional provisions necessitated by the fact that the new rules on the composition of the Commission, including those on the Minister for Foreign Affairs, will not be applicable until 1 November 2009, will depend on the answers to a number of political questions (see point 8 of the general comments at the beginning of the document). No specific suggestions have therefore been made for these provisions.

New recital

It is suggested that a recital be inserted to explain the Protocol's objective.

~~ARTICLE TITLE 1~~
Provisions concerning the European Parliament

Article 1

1. ~~Throughout~~ **During** the 2004-2009 parliamentary term, the number of representatives elected to the European Parliament in each Member State shall be as follows:

Belgium	24
Czech Republic	24
Denmark	14
Germany	99
Estonia	6
Greece	24
Spain	54
France	78
Ireland	13
Italy	78
Cyprus	6
Latvia	9
Lithuania	13
Luxembourg	6
Hungary	24
Malta	5
Netherlands	27
Austria	18
Poland	54
Portugal	24
Slovenia	7
Slovakia	14
Finland	14
Sweden	19
United Kingdom	78

Article 1

With the general clause suggested (Article IV-3(4)), this Article is not strictly necessary. However, it would be useful to keep it for the sake of transparency and readability of the text.

The wording has been changed to align it on Article III-232(3).

ARTICLE TITLE 2

Provisions concerning ~~the weighting of votes in~~ the European Council and the Council of Ministers

Article 2

1. The following provisions shall remain in force until ~~1 November 2009~~ **31 October 2009**, without prejudice to Article I-24 of the Constitution.
2. For deliberations of the European Council and of the Council of Ministers requiring a qualified majority, members' votes shall be weighted as follows:

Belgium	12
Czech Republic	12
Denmark	7
Germany	29
Estonia	4
Greece	12
Spain	27
France	29
Ireland	7
Italy	29
Cyprus	4
Latvia	4
Lithuania	7
Luxembourg	4
Hungary	12
Malta	3
Netherlands	13
Austria	10
Poland	27
Portugal	12
Slovenia	4
Slovakia	7
Finland	7
Sweden	10
United Kingdom	29

Decisions shall be adopted if there are at least 232 votes in favour representing a majority of the members where, under the Constitution, they must be adopted on a proposal from the Commission. In other cases decisions shall be adopted if there are at least 232 votes in favour representing at least two thirds of the members.

A member of the European Council or the Council of Ministers may request that, where a decision is taken by the European Council or the Council of Ministers by a qualified majority, a check is made to ensure that the Member States comprising the qualified majority represent at least 62% of the total population of the Union. If that proves not to be the case, the decision shall not be adopted.

Article 2

Paragraph 1

Given that the new qualified majority rules will enter into force on 1 November 2009, the last day on which the existing system will apply should logically be set at 31 October 2009.

3. For subsequent accessions, the threshold referred to in paragraph 2~~4~~ shall be calculated to ensure that the qualified majority threshold expressed in votes does not exceed that resulting from the table in the Declaration on the enlargement of the European Union in the Final Act of the Conference which adopted the Treaty of Nice.

4. In the cases referred to in Articles I-43(3), I-58(5), III-71(4), III-76(6) and (7), III-88(2), III-90(3) and III-91(4) of the Constitution, the qualified majority shall be defined as the same proportion of the weighted votes and the same proportion of the number of the Council members concerned as laid down in paragraph 2 of this Article.

Article 3

Until entry into force of the decision referred to in Article I-23(3) of the Constitution, the Council may meet in the configurations laid down in Article I-23(1) and (2) and in the other configurations on the list established by a decision of the General Affairs Council, acting by a simple majority.

Article 2 (continued)

Paragraph 4

It is suggested adding to this Article an indication of the qualified majority threshold applicable if one or more Member States do not vote.

It was presumably not the Convention's intention that, in the specific cases referred to in Articles I-43(3), I-58(5), III-71(4), III-76(6) and (7), III-88(2), III-90(3) and III-91(4), the new definition of a qualified majority should apply before entry into force of the general rule laid down in Article I-24 (see also comments on the aforementioned Articles). It is therefore suggested that a transitional provision be included to make the current system applicable during the transitional period. The text is similar to that of Article 44 of the existing TEU.

Article 3

It is suggested that a transitional provision be included for Council configurations. The list referred to is that in Annex I to the Council's Rules of Procedure.

Provisions on the Presidency of the Council

The countries holding the Presidency of the Foreign Affairs Council during the transitional period from the date of entry into force of the Treaty establishing the Constitution until 31 October 2009 will need to be established.

The system of rotating Presidencies for other Council configurations should normally apply as from the date of entry into force of the Treaty establishing the Constitution, following adoption of the decision provided for in Article I-23(4). Having said that, given that Member States need to start preparing for a presidency well before it commences, the question arises of whether it would be appropriate to insert transitional provisions in the Constitution (for 2006 and possibly for 2007, for example).

TITLE 3

Provisions concerning the Commission

Article 4

Article 4

As pointed out in paragraphs 5 to 7 of the general comments, transitional provisions must be laid down to ensure the continuity of the Commission's operation during the period between entry into force of the new Treaty and 1 November 2009. However, given that the nature of such transitional arrangements raises questions of political expediency, no suggestion has been made at this stage

TITLE 4

Provisions concerning advisory bodies

Article 5

Until entry into force of the decision referred to in Article III-292, the allocation of members of the Committee of the Regions shall be as follows:

Belgium	12
Czech Republic	12
Denmark	9
Germany	24
Estonia	7
Greece	12
Spain	21
France	24
Ireland	9
Italy	24
Cyprus	6
Latvia	7
Lithuania	9
Luxembourg	6
Hungary	12
Malta	5
Netherlands	12
Austria	12
Poland	21
Portugal	12
Slovenia	7
Slovakia	9
Finland	9
Sweden	12
United Kingdom	24

Title VI

With the general clause in Article IV-3(2), it would not be strictly necessary to lay down specific provisions for the Committee of the Regions and the Economic and Social Committee. That said, they would be useful in terms of transparency and readability of the text..

Article 5

On terminology ("*allocation of members*") see comments on Article I-31.

Article 6

Until entry into force of the decision referred to in Article III-295, the allocation of members of the Economic and Social Committee shall be as follows:

Belgium	12
Czech Republic	12
Denmark	9
Germany	24
Estonia	7
Greece	12
Spain	21
France	24
Ireland	9
Italy	24
Cyprus	6
Latvia	7
Lithuania	9
Luxembourg	6
Hungary	12
Malta	5
Netherlands	12
Austria	12
Poland	21
Portugal	12
Slovenia	7
Slovakia	9
Finland	9
Sweden	12
United Kingdom	24

Article 6

On terminology ("*allocation of members*") see comments on Article I-31.

PROTOCOL

ON THE EURO GROUP

The High Contracting Parties,

Desiring to promote conditions for stronger economic growth ~~in Europe~~ **in the European Union** and, to that end, to develop ever-closer coordination of economic policies within the euro area,

Conscious of the need to lay down special provisions for enhanced dialogue between the Member States ~~which have adopted~~ **whose currency is the euro**, pending **the euro becoming the currency** ~~accession~~ of all Member States of the Union ~~to the euro area~~,

Have agreed upon the following provisions, which are annexed ~~to the Treaty~~ **establishing a Constitution for Europe**:

Article 1

The Ministers of the Member States ~~which have adopted~~ **whose currency is the euro** shall meet informally. Such meetings shall take place, when necessary, to discuss questions related to the specific responsibilities they share with regard to the single currency. The Commission and the European Central Bank shall be invited to take part in such meetings, which shall be prepared by the representatives of the Ministers with responsibility for finance of the Member States ~~which have adopted~~ **whose currency is the euro**.

Article 2

The Ministers of the Member States ~~which have adopted~~ **whose currency is the euro** shall elect a president for two and a half years, by **simple** majority ~~of those Member States~~.

The expression "*accession to the euro area*" is legally incorrect, since it suggests that there is a separate treaty to which Member States may accede separately, whereas the provisions on monetary policy are an integral part of the Treaty.

PROTOCOL
AMENDING THE ~~EURATOM~~-TREATY
ESTABLISHING THE EUROPEAN ATOMIC
ENERGY COMMUNITY

THE HIGH CONTRACTING PARTIES,

RECALLING the necessity that the provisions of the Treaty establishing the European Atomic Energy Community should continue to have full legal effect,

DESIROUS ~~however~~ to adapt that Treaty to the new rules established by the Treaty establishing a Constitution for Europe, ~~in particular~~ in the institutional and financial fields,

HAVE ADOPTED the following provisions, which are annexed to the Treaty establishing a Constitution for Europe and amend the Treaty establishing the European Atomic Energy Community **in its version in force at the time of entry into force of the Treaty establishing a Constitution for Europe** as follows:

Article 1

Article 3 shall be ~~repealed~~. **replaced by the following text:**

1. The tasks entrusted to the Community shall be carried out by the following Union Institutions:

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

2. Each Institution shall act within the limits of the powers conferred upon it by this Treaty, in accordance with the procedures and under the conditions laid down by the latter.

3. The Council and the Commission shall be assisted by the Economic and Social Committee referred to in Articles I-31 and III-295 to III-298 of the Constitution, which shall act in an advisory capacity.

4. The provisions of the Treaty establishing a Constitution for Europe shall not derogate from the stipulations of this Treaty.

General comment

It is apparent from the recitals of this Protocol that the Convention's political intention was not to make substantial amendments to the Euratom Treaty, but to adapt it only to the extent needed to make it compatible with the new institutional and financial provisions of the Constitution. The suggestions made below comply with that aim.

Preamble

Under Article IV-2 of the Constitution, the Single European Act, the Treaty on European Union, the Treaty of Amsterdam and the Treaty of Nice are repealed. Each of these treaties also amended the Euratom Treaty. In order to preserve these amendments, it is suggested that it be stipulated that the provisions of the Protocol concern the Euratom Treaty in its version in force at the time of entry into force of the Treaty establishing a Constitution for Europe and specifying in Article IV-2 of the Constitution that the parts of the abovementioned treaties which amend the Euratom Treaty are not repealed.

Article 1

Paragraph 1

Listing the Institutions of the European Atomic Energy Community makes it possible to avoid referring to Article I-18, which would not be appropriate as that Article also refers to the Union's objectives, which differ from those of Euratom (Article 2 of the Euratom Treaty).

Paragraph 2

This paragraph clarifies that the Institutions act in accordance with the procedures and under the conditions laid down by the Euratom Treaty (and not those laid down by the Constitution). The reference to Article I-18 would not be appropriate in this respect.

Paragraph 3

This provision reproduces the text of Article 3(2) of the Euratom Treaty. It is not necessary to mention the Committee of the Regions, which has no role in the framework of the Euratom Treaty (see also the comments on Article 3).

Paragraph 4

Under this Protocol, the European Atomic Energy Community will continue to co-exist as a separate entity of the Union. It is suggested that it be clarified, by means of a provision taking over the concept of Article 305 of the current EC Treaty, that the Euratom Treaty is a *lex specialis* in relation to the treaty establishing a Constitution.

Article 2

The heading of Title III "Institutional provisions" shall be replaced by the following: "Institutional and financial provisions".

Article 3

~~1.~~—Article 107 shall be replaced by the following:

~~"Article 107~~

~~The institutional and financial provisions of the Treaty establishing a Constitution for Europe (Articles I-18 to I-38, Articles I-52 to I-55 and Articles III-227 to III-316) and Article I-58 of that Treaty shall apply to this Treaty without prejudice to the specific provisions laid down in Articles 134, 135, 144, 145, 157, 171, 172, 174 and 176.~~

1. Article I-5a, Articles I-19 to I-21, Article I-22(1) and (2), Articles I-23 to I-28, Articles I-30 and I-31, Article I-48, Articles I-52 to I-55, Article I-58, Articles III-232 to III-291, Articles III-295 to III-298, with the exception of Articles III-289a and 289b, Article III-301, Articles III-303 and III-304, Articles III-306 to III-316, Articles III-318 to III-321, Article III-333, Article III-339 and Articles IV-4 and IV-7 of the Treaty establishing a Constitution for Europe and the Protocol on the transitional provisions relating to the Institutions and bodies of the Union shall apply to this Treaty.

2. Within the framework of this Treaty, the references in the aforementioned provisions to the Union and to the Constitution shall be taken, respectively, as references to the European Atomic Energy Community and to the Treaty that established it.

Article 3a

~~2.~~—Articles 107a to 117, Article 118(2) and (3), Articles 119 to ~~133~~132, Articles 136 to 143, Articles 146 to 156, Articles 158 to 160C, Articles 164 to 170, Articles 173 and 173aA, Article 175, Articles 177 to 181, Articles ~~182~~183 and 183aA, and Articles 190, 198 and 204 shall be repealed.

Articles 3 and 3a

It is not in keeping with the rules of good legislative drafting to retain a provision the sole function of which is to repeal certain provisions of a treaty in the text of the latter. It is therefore suggested that paragraph 2 be turned into a new Article 3a of the Protocol.

It is suggested that a reference be added to Article I-5a (primacy of the law adopted by the Community) in accordance with case law.

It is suggested that Article I-18 be deleted for the reasons given in the comments on Article 1 of the Protocol (see above).

With the reference to Article I-22(3), which replaces Article 118(1) of the Euratom Treaty, the voting rule in the Council which would apply by default in the framework of the Euratom Treaty would become a qualified majority, whereas it is currently a simple majority. Still assuming that no substantive amendments were to be made to the Euratom Treaty, it is suggested that this rule be retained.

It is suggested that no reference be made to Article I-29, Articles III-292 to III-294 and Articles III-299 and III-300, as currently the European Central Bank, the Committee of the Regions and the European Investment Bank have no role in the framework of the Euratom Treaty.

The reference to Articles I-32 to I-38 and the repeal of Articles 161 to 163 of the Euratom Treaty would result in the acts of the institutions provided for by the Euratom Treaty having to be adopted in the forms and according to the procedures laid down by the Constitution, i.e. – in the case of laws and framework laws – the co-decision procedure referred to in Article III-302 (also made applicable) or a special legislative procedure with the participation of Parliament. Still assuming that no substantive amendments were wanted by the Convention, it is suggested that Articles 161 to 163 of the Euratom Treaty be left untouched and that no reference be made to Articles I-32 to I-38 or to Article III-302.

The Ombudsman is referred to in Article III-237, which will replace the current Article 107 D of the Euratom Treaty; for the sake of consistency, it is suggested that Article I-48, also relating to the Ombudsman, also be referred to.

Articles III-227 to III-231 contain no institutional and financial provisions; the correct reference in the Convention's draft should have read "*Articles III-232 to III-320*". In addition, it is suggested that reference be made to Article III-321, which succeeds Article 183 A of the Euratom Treaty.

With the reference to Article III-305, which refers back to Article I-49, the rules on transparency and access to documents would become applicable in the framework of the Euratom Treaty, which at present contains no such rules.

Paragraphs 3 to 6 of Article 182 of the Euratom Treaty contain provisions which are not in Article III-317, and which it might be useful to retain.

It is necessary to refer to Article III-333 to ensure that the unique nature of the Staff Regulations of Officials is retained.

Article III-339 replaces Article 190 of the Euratom Treaty (see below, Article 6 of the Protocol).

Article IV-4 replaces Article 198 of the Euratom Treaty (see below, Article 7 of the Protocol).

It is necessary to provide for a procedure for revising the Euratom Treaty, which should be the same as that for the revision of the Constitution. It is therefore suggested that Article IV-7 of the Constitution be referred to.

Article 133 of the Euratom Treaty has already been repealed, and so it need not be referred to in the list of provisions to be repealed by this Protocol.

The content of Article 204 of the Euratom Treaty is covered by Article I-58, made applicable by the Protocol. It cannot therefore be repealed.

Article 4

The heading of Title IV "Financial provisions" shall be replaced by the following:

"Specific financial provisions".

Article 5

1. In the third paragraph of Article 38 and the third paragraph of Article 82 the references to Articles 141 and 142 shall be replaced by references to Articles III-265 and III-266 respectively of the Treaty establishing a Constitution for Europe.

2. In Article 171(2), ~~the first paragraph of Article 175,~~ and Article 176(3) the references to Article 183 shall be replaced by references to Article III-318 of the Treaty establishing a Constitution for Europe.

3. In Article 172(4) the reference to Article 177(5) shall be replaced by a reference to Article III-310 of the Treaty establishing a Constitution for Europe.

4. In the last paragraph of Article 18 and in Article 83(2) the references to Article 164 shall be replaced by references to Article III-307 of the Treaty establishing a Constitution for Europe.

~~**5.** In Articles 38 and 82 the word "directive" shall be replaced by "European decision".
In the Treaty the word "decision" shall be replaced by "European decision".~~

5. In Articles 144, 145 and 157, the expression "Court of Justice" shall be replaced by "Court of Justice of the European Union".

Article 6

~~Article 190 shall be replaced by the following:~~

~~"The rules governing the languages of the Institutions shall, without prejudice to the provisions contained in the Statute of the Court of Justice, be determined by the Council of Ministers, acting unanimously".~~

Article 5

In order to facilitate citations, it is suggested that the unnumbered paragraphs be converted into numbered ones.

Paragraph 2

The reference to Article 175 is wrong: this provision has - rightly - been repealed by Article 3 of the Protocol, since its content has been taken over by Articles I-52(2) and II-312 of the Constitution, made applicable by that same article.

Paragraph 5

Since the existing categories of acts have been preserved (Article 161 of the Euratom Treaty - see the comments on Article 3 above), this paragraph may be deleted.

Paragraph 5 (new)

The references to the Court of Justice must be adapted to the new terminology.

Article 6

It is suggested that Article 190 of the Euratom Treaty be repealed and that Article III-339 be made applicable.

~~Article 7~~

~~Article 198 shall be amended as follows:~~

~~"(a) This Treaty shall not apply to the Faeroe Islands".~~

~~Article 8~~

~~Article 201 shall be amended as follows:~~

~~"The Community shall establish close cooperation with the Organisation for Economic Cooperation and Development, the details of which shall be determined by common accord".~~

Article 9

In the third paragraph of Article 206 shall be amended as follows:, the reference to Article N of the Treaty on European Union shall be replaced by a reference to Article IV-7 of the Treaty establishing a Constitution for Europe.

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

~~These agreements shall be concluded by the Council of Ministers, acting unanimously after consulting the European Parliament.~~

~~Where such agreements call for amendments to this Treaty, these amendments shall first be adopted in accordance with the procedure laid down in Article IV-7 of the Treaty establishing a Constitution for Europe."~~

Article 10 (new)

Accession to the Union involves accession to the European Atomic Energy Community.

Article 11 (new)

Withdrawal from the Union involves withdrawal from the European Atomic Energy Community.

Article 7

It is suggested that this article be deleted and replaced with a reference to Article IV-4 (see above, Article 1(4)).

Article 8

With the additions suggested to the preamble to this Protocol and to Article IV-2 (see the comment on the heading of the Protocol), this article may be deleted.

Article 9

It is not necessary to re-write the whole of Article 206 of the Euratom Treaty. The only amendment that should be made is to replace the reference to Article N of the TEU (since become Article 48 TEU) with a reference to Article IV-7 of the Treaty establishing a Constitution for Europe.

Articles 10 and 11 (new)

Currently, accession to the Union is indissociable from accession to the Communities on which it is based (see Article 1 and Article 49 of the TEU). However, the text proposed by the Convention would have the effect of breaking that link because the Union and the European Atomic Energy Community are two separate entities. Supposing that that result does not correspond to the Convention's political will, an assumption that is backed up by the lack of specific provisions on accession to the European Atomic Energy Community, it is suggested that provisions be inserted which clarify that accession to the Union and withdrawal from it automatically involve accession to and withdrawal from the European Atomic Energy Community.

DRAFT

DECLARATIONS

drawn up by the Convention

DECLARATION OF THE CONFERENCE

ATTACHED TO ON THE PROTOCOL ON ~~THE REPRESENTATION OF CITIZENS IN THE EUROPEAN PARLIAMENT AND THE WEIGHTING OF VOTES IN THE EUROPEAN COUNCIL AND THE COUNCIL OF MINISTERS~~ **THE TRANSITIONAL PROVISIONS RELATING TO THE INSTITUTIONS AND BODIES OF THE UNION**

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

1. If the accession to the ~~European~~ Union of Romania and/or Bulgaria takes place before the entry into force of the European Council decision foreseen in Article I-19(2) of the Constitution, the number of their elected representatives to the European Parliament shall be calculated on the basis of the figures of 33 and 17 respectively, corrected according to the same formula as that which determined the number of representatives in the European Parliament for each Member State as indicated in the Protocol on ~~the representation of citizens in the European Parliament and the weighting of votes in the European Council and the Council of Ministers~~ **the transitional provisions relating to the institutions and bodies of the Union**. The Treaty of Accession to the ~~European~~ Union may **therefore**, by way of derogation from Article I-19(2) of the Constitution, stipulate that the number of members of the European Parliament may temporarily exceed 736 for the remainder of the 2004 to 2009 Parliamentary term.
2. Without prejudice to Article I-24(2) of the Constitution, the weighting of the votes of Romania and Bulgaria in the European Council and the Council ~~of Ministers~~ **shall be fixed at** 14 and 10 respectively until ~~1 November 2009~~ **31 October 2009**.
3. At the time of each accession, the threshold referred to in the Protocol on ~~the representation of citizens in the European Parliament and the weighting of votes in the European Council and the Council of Ministers~~ **the transitional provisions relating to the Institutions and bodies of the Union shall be** decided by the Council.

DECLARATION
OF THE CONFERENCE

ON THE CREATION OF A EUROPEAN
EXTERNAL ACTION SERVICE

"To assist the ~~future~~ Union Minister for Foreign Affairs, ~~introduced in Article I-27 of the Constitution,~~ to perform his or her duties, the ~~Convention~~ **Intergovernmental Conference** agrees on the need for the Council of ~~Ministers~~ and the Commission to agree, without prejudice to the rights of the European Parliament, to establish under the Minister's authority one joint service (European External Action Service) composed of officials from relevant departments of the General Secretariat of the Council of ~~Ministers~~ and of the Commission and staff seconded from the national diplomatic services **of the Member States**.

The staff of the Union's delegations, as defined in Article III-230 **of the Constitution**, shall be provided from this joint service.

The ~~Convention~~ **Intergovernmental Conference** is of the view that the necessary arrangements for the establishment of the joint service should be made ~~within the first year after entry into force of the Treaty establishing a Constitution for Europe~~ **before [.....]."**

DECLARATION
~~IN THE FINAL ACT OF SIGNATURE OF THE CONFERENCE~~

ON THE
~~THE TREATY ESTABLISHING THE~~ A CONSTITUTION FOR EUROPE

If, two years after the signature of the Treaty establishing the Constitution, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter will be referred to the European Council.

=====