

NOTE

from : Praesidium
to : Convention

Subject : Title X : Union membership

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Main elements

The provisions on Union membership lay down the criteria of eligibility and the procedure for becoming a member of the Union, the procedure for suspending Union membership rights where there is a serious breach by a Member State of the values on which the Union is founded, and the procedure for voluntary withdrawal from the Union by a Member State.

Article 43, which lays down the criteria to be eligible for Union membership, is new; eligibility is tested mainly by reference to Article 2 on the Union's values.

The procedure for applying for Union membership set out in Article 44 is modelled on the procedure in the current Treaties (Article 49 TEU); a new element has been added, namely, notification of the European Parliament and the national parliaments as soon as the membership application is made.

The procedure for suspending Union membership rights in Article 45 is identical to the current one (Article 7 TEU and Article 309 TEC).

Lastly, Article 46, which deals with a Member State's voluntary withdrawal from the Union, is a new provision. It explicitly recognises that any Member State may withdraw from the European Union if it so decides. The withdrawal procedure is partly based on the procedure under the Vienna Convention on the Law of Treaties, but at the same time it provides for the Union to conclude an agreement with the Member State concerned setting out the arrangements for its withdrawal and establishing the framework for their future relations.

**TABLE: THE PROPOSED ARTICLES ON UNION MEMBERSHIP
IN RELATION TO THE EXISTING TREATIES**

	New Articles	Articles reproducing provisions found in the existing Treaties, but only partially or with substantial amendments	Articles reproduced from the existing Treaties, slightly adapted or unchanged
<u>Article 43</u> : Criteria to be eligible for Union membership	✓		
<u>Article 44</u> : Procedure for applying for Union membership			✓
<u>Article 45</u> : Suspension of Union membership rights			✓
<u>Article 46</u> : Voluntary withdrawal from the Union	✓		

N.B. The comments in Section IV below describe to what extent each draft Article is based on one or more existing Articles, as well as any modifications or new elements. For an exact view of the basis of each Article, please refer to the comments.

TITLE X: UNION MEMBERSHIP

TEXT OF THE ARTICLES

Article 43: Criteria to be eligible for Union membership

The Union shall be open to all European States whose peoples share the values referred to in Article 2, and who respect them and are committed to promoting them together. Accession to the Union implies acceptance of its Constitution.

Article 44: Procedure for applying for Union membership

Any European State which wishes to become a member of the Union may address its application to the Council. The European Parliament and the national parliaments shall be notified of this application. The Council shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members. The conditions and arrangements for admission shall be the subject of an agreement between the Member States and the applicant State. That agreement shall be subject to ratification by all the contracting States, in accordance with their respective constitutional requirements.

Article 45: Suspension of Union membership rights

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

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

2. The European Council ¹, acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the assent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of values mentioned in Article 2, after inviting the Member State in question to submit its observations.

¹ Depending on the articles on the European Council in the section on the Institutions.

3. Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of this Constitution to the Member State in question, including the voting rights of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

The obligations of the Member State in question under the Constitution shall in any case continue to be binding on that State.

4. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken 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 shall act without taking into account the vote of the Member State in question. Abstentions by members present in person or represented shall not prevent the adoption of decisions referred to in paragraph 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, the European Parliament shall act by a two-thirds majority of the votes cast, representing a majority of its Members.

Article 46: 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 Council of its intention. Once that notification has been given, 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, acting by a qualified majority, after obtaining the assent of the European Parliament.

The withdrawing State shall not participate in the Council's discussions or decisions concerning it.

3. This Constitution shall cease to apply to the State in question as from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2.

TITLE X: UNION MEMBERSHIP
TEXT OF THE ARTICLES, WITH COMMENTS

Article 43: Criteria to be eligible for Union membership

The Union shall be open to all European States whose peoples share the values referred to in Article 2, and who respect them and are committed to promoting them together. Accession to the Union implies acceptance of its Constitution.

Comments:

This provision establishes the criteria which any European State must fulfil in order to apply for Union membership. The first sentence of this Article reproduces Article 1(3) of the Constitution, specifying that the values referred to are those in Article 2 of the Constitution.

Article 44: Procedure for applying for Union membership

Any European State which wishes to become a member of the Union may address its application to the Council. The European Parliament and the national parliaments shall be notified of this application. The Council shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members. The conditions and arrangements for admission shall be the subject of an agreement between the Member States and the applicant State. That agreement shall be subject to ratification by all the contracting States, in accordance with their respective constitutional requirements.

Comments:

This provision establishes the procedure for accession to the Union. The procedure corresponds to that laid down in Article 49 of the TEU. However, it introduces a new provision that the European Parliament and the national parliaments should be informed concurrently of any application for accession as soon as it has been received by the Council.

Article 45: Suspension of Union membership rights

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

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

2. The European Council ¹, acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the assent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of 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, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of this Constitution to the Member State in question, including the voting rights of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

The obligations of the Member State in question under the Constitution shall in any case continue to be binding on that State.

¹ Depending on the articles on the European Council in the section on the Institutions.

4. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken 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 shall act without taking into account the vote of the Member State in question. Abstentions by members present in person or represented shall not prevent the adoption of decisions referred to in paragraph 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, the European Parliament shall act by a two-thirds majority of the votes cast, representing a majority of its Members.

Comments:

This provision reproduces the content of Article 7 of the TEU, with the technical adjustments needed to take account of the merger of the Treaties. It replaces Article 7 of the TEU and Article 309 of the TEC. The only change in relation to those Articles is that the possibility for the Council to request a report from independent persons is not mentioned: self-evidently so.

Article 46: 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 Council of its intention. Once that notification has been given, 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, acting by a qualified majority, after obtaining the assent of the European Parliament.

The withdrawing State shall not participate in the Council's discussions or decisions concerning it.

3. This Constitution shall cease to apply to the State in question as from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2.

Comments:

This provision does not appear in the current Treaties. It establishes the procedure to be followed if a Member State were to decide to withdraw from the European Union. The procedure laid down in this provision draws on the procedure in the Vienna Convention on the Law of Treaties.

The Convention's attention is drawn to three points:

- *while it is desirable that an agreement should be concluded between the Union and the withdrawing State on the arrangements for withdrawal and on their future relationship, it was felt that such an agreement should not constitute a condition for withdrawal so as not to void the concept of voluntary withdrawal of its substance;*
- *the legal consequences of withdrawal where there is no agreement between the Union and the withdrawing State have to be examined and, if appropriate, provisions on this question could be added to this Article;*
- *the decision-making procedures for the conclusion of a withdrawal agreement (and above all the Council's voting method) need further consideration. The text foresees a qualified majority procedure within the Council. However, another solution might be to adopt the voting rule corresponding to the substantive content of the agreement. It is likely that if this withdrawal clause were currently in force, the Council's decision would require unanimity.*