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REPORT

on the draft European Council decision amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro
(00033/2010 – C7-0014/2011 – 2010/0821(NLE))

Committee on Constitutional Affairs

Rapporteurs: Elmar Brok and Roberto Gualtieri

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
ANNEX TO THE MOTION FOR A RESOLUTION.....	11
OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS.....	12
ANNEX: LETTER OF THE COMMITTEE ON BUDGETS.....	19
RESULT OF FINAL VOTE IN COMMITTEE	22

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the draft European Council decision amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro
(00033/2010 – C7-0014/2011 – 2010/0821(NLE))**

The European Parliament,

- having regard to Article 48(6) and 48(2) of the Treaty on European Union (TEU),
 - having regard to the final report of the Task Force to the European Council on "Strengthening Economic Governance in the EU",
 - having regard to the draft European Council decision amending Article 136 of the Treaty on the Functioning of the European Union (TFEU), as submitted to the European Council on 16 December 2010 (00033/2010 – C7-0014/2011),
 - having regard to Rule 74b of its Rules of Procedure,
 - having regard to the letter of 18 February 2011 from the Committee on Budgets to the Committee on Constitutional Affairs,
 - having regard to the report of the Committee on Constitutional Affairs and the opinion of the Committee on Economic and Monetary Affairs (A7-0052/2011)
- A. whereas Article 3(4) TEU states: "The Union shall establish an economic and monetary union whose currency is the euro";
- B. whereas the United Kingdom has opted out of the single currency;
- C. whereas under Article 3(1) TFEU the "monetary policy for the Member States whose currency is the euro" is an exclusive competence of the Union;
- D. whereas Article 5(1) TFEU provides: "The Member States shall coordinate their economic policies within the Union", with specific provisions applying to those Member States whose currency is the euro;
- E. whereas the draft European Council decision, if adopted, might lead to the constitution of a mechanism completely outside the Union's sphere, without any role being assigned to the Union institutions as such;
- F. whereas participation by the Union institutions in the mechanism should be fully ensured and permanently safeguarded and a link should be established for the possible intervention of the European budget in the guarantee system;
- G. whereas all possibilities should be explored with a view to bringing the mechanism fully into the institutional framework of the Union and providing for the involvement in it of those Member States whose currency is not the euro; whereas this may include recourse

to Article 20 TEU on enhanced cooperation, where this is appropriate in order to ensure the consistency of the Union's economic policy;

- H. whereas the rules governing the stability mechanism should preferably be *proposed* by the Commission;
 - I. whereas the rules governing the stability mechanism should ensure appropriate audit, accountability and transparency arrangements;
 - J. whereas the stability mechanism should be accompanied by the strengthening of the preventive and corrective arm of the Stability and Growth Pact (SGP), and by measures relating to medium and long-term competitiveness and tackling macro-economic imbalances between Member States;
 - K. whereas, as a complement to the stability mechanism, the Union should promote a consolidated Eurobonds market;
 - L. whereas the Commission should present proposals for legislation and where necessary Treaty revision, with a view to building, over the medium term, a system of economic government for the Union, and in particular for the euro area, which would strengthen the cohesion and competitiveness of the economy and stabilise the financial system;
 - M. whereas Article 48(6) TEU allows the European Council, after consulting Parliament, to adopt a decision amending all or part of the provisions of Part Three of the TFEU without affecting the balance of competences between the Union and its Member States;
 - N. whereas any increase or decrease of the Union competences would require an ordinary revision procedure;
 - O. whereas any further revision of the TFEU should be conducted under the ordinary revision procedure;
 - P. whereas the proposed decision can only enter into force once it has been approved by the Member States in accordance with their respective constitutional requirements,
1. Emphasises that the monetary policy for the Member States whose currency is the euro is a Union exclusive competence and has been a Community policy since the Maastricht Treaty;
 2. Stresses the importance of the euro for the European political and economic project, and underlines the importance of the commitment made by all Member States in favour of the stability of the euro area and the sense of responsibility and solidarity they have shown;
 3. Stresses that the European stability mechanism constitutes an important part of a global package of measures which are designed to define a new framework, reinforcing budgetary discipline and coordination of economic and financial policies of the Member States which should include the promotion of a joint European response to growth challenges, concomitantly overcoming economic and social imbalances and improving

competitiveness;

4. Notes that the Council has not used all the possibilities provided for by the Treaties to fully enforce the SGP and to improve economic coordination at European level;
5. Considers that it is essential to go beyond the temporary measures aiming at stabilising the euro area, and that the Union should build up its economic governance, including by means of policies and instruments designed to promote sustainable growth in Member States; takes the view that the reinforcement of the SGP, the European semester, the EU 2020 strategy and the amendment of Article 136 TFEU concerning the stability mechanism are only a first step in that direction;
6. Stresses that the European stability mechanism, and the strict conditionality incorporated therein, involves all Member States whose currency is the euro, even the small ones whose economy may be seen as not "indispensable" for the purposes of safeguarding the euro area as a whole;
7. Warns that the intention to establish the permanent stability mechanism outside the EU institutional framework poses a risk to the integrity of the Treaty-based system; considers that the Commission must be a member of the board of this Mechanism, and not simply an observer; considers, moreover, that in this context the Commission should be entitled to take the appropriate initiatives in order to achieve, with the consent of the Member States concerned, the objectives of the ESM; underlines that Member States must at any rate respect Union law and the prerogatives of the institutions laid down therein;
8. Stresses that the establishment and functioning of the permanent stability mechanism must fully respect the core principles of democratic decision-making such as transparency, parliamentary scrutiny and democratic accountability; emphasises that the mechanism should closely involve the Union institutions and bodies responsible for monetary issues - the European Commission, European Central Bank and European Investment Bank; underlines that the mechanism must not give rise to a new model of European governance which falls short of the level of democratic standards achieved in the Union;
9. Regrets that the European Council has not explored all the possibilities contained in the Treaties for establishing a permanent stability mechanism; considers in particular that, in the framework of the present Union competences with regard to economic and monetary union (Article 3(4) TEU) and monetary policy for Member States whose currency is the euro (Article 3(1)(c) TFEU), it would have been appropriate to make use of the powers conferred on the Council *in* Article 136 TFEU, or in the alternative to have recourse to Article 352 TFEU in conjunction with Articles 133 and 136 TFEU;
10. Calls on the Commission to look for other mechanisms to ensure the financial stability and sustainable and adequate economic growth of the euro area, and to make the necessary legislative proposals; underlines the need for the stability mechanism to include measures used to reduce risks to financial, economic and social stability, including effective regulation of financial markets, revision of the SGP and better economic coordination, the introduction of instruments for the reduction of macroeconomic imbalances inside the euro area and measures directed at ecological reconstruction;

11. Considers moreover that the setting-up and functioning of the permanent stability mechanism should be brought into the European Union framework also making use, by analogy, of the institutional mechanism of an enhanced cooperation as a means of involving the Union institutions at all stages and of encouraging the participation in the mechanism of those Member States whose currency is not yet the euro;
12. States that, in order for the proposed draft European Council decision to be properly scrutinised, supplementary information is needed, notably concerning the envisaged design of the stability mechanism and the relations which it is intended to have with the Union institutions, with the proposed European Monetary Fund and with the International Monetary Fund; accordingly, calls on the European Council to fulfil the following conditions in the process of establishing the new European stability mechanism:

- (a) a redrafting of the European Council draft decision as proposed in the amendments annexed hereto¹, it being understood that, by involving the EU institutions in the establishment of the permanent stability mechanism and in the definition of the conditionality of financial assistance, the ESM, notwithstanding its intergovernmental character, would be placed in the framework of the Union, e.g. in the form of an agency; Calls for the stability mechanism to be open from the outset to Member States whose currency is not the euro, but who wish to participate;

or

- (b) a clear commitment by the European Council ensuring that:
- the operational features of the permanent stability mechanism and the conditionality measures, involving a programme of economic and fiscal adjustment, will be decided on the basis of a proposal by the Commission, in accordance with the ordinary legislative procedure, and that the Commission will be responsible for ensuring full respect of these measures and for the precautionary use of the mechanism, regularly reporting back to Parliament;
 - the European Commission will carry out all the necessary tasks in implementing and monitoring the permanent mechanism and in assessing the financial situation of all the Member States whose currency is the euro, regularly reporting back to the European Parliament;
 - the financial assistance under the mechanism will be subject to rigorous analysis and to a programme of economic and financial recovery; those Member States whose currency is the euro and those representing Member States participating in and contributing to the permanent stability mechanism will act, when deciding to grant financial assistance, on the

¹

basis of an evaluation provided by the Commission, the European Central Bank and, in so far as it may be involved, the International Monetary Fund; with regard to the analysis and the conditions for financial and economic recovery, the Commission will report back to Parliament; and

- no Member State whose currency is the euro and which has contributed to the permanent stability mechanism should be excluded from accessing it on the grounds of its size;
 - the secretariat of the permanent stability mechanism will be provided by the Commission;
13. Recalls that the future permanent stability mechanism should make use of the Union institutions, since this would avoid the setting-up of double structures which would prove detrimental to European integration;
14. Demands that the lending conditions to be applied for the repayment of funds to the permanent stability mechanism in the event of its being activated be similar to those applied to the Balance-of-Payments Facility (BoP) and Macro-financial Assistance (MFA) instruments used by the European Commission, i.e. strictly back-to-back without a margin over borrowing costs; furthermore considers that the interest rates to be used by the permanent stability mechanism should be offered on favourable terms;
15. Insists that compliance by Member States with the economic guidelines set up by the Commission and with the conditions imposed by the stability mechanism needs to be scrutinised by Parliament, and stresses that each national parliament shall be fully involved, in accordance with their budgetary and control rights, at all stages, especially in the context of the European semester, in order to increase the transparency, ownership and accountability of any decision taken;
16. Endorses the Commission's intention to "ensure consistency between the future mechanism and the Union's economic governance in the euro area in particular, while respecting the competences conferred on the Union and its institutions by the Treaty";
17. Underlines that the draft European Council decision as amended would not increase the competences of the Union and would therefore remain within the scope of the simplified Treaty revision procedure; notes, conversely, that that decision cannot reduce the competences of the Union institutions in the fields of economic and monetary policy and of monetary policy for Member States whose currency is the euro, and cannot in any event prejudice the correct application of Union law, in particular Articles 122 and 143 TFEU, and of the Union *acquis*;
18. Reaffirms that the use of Article 48(6) TEU is an exceptional procedure, and recalls Parliament's right pursuant to Article 48(3) TEU to call for a Convention in order to reshape the institutions, procedures and policies that make up the economic governance of the Union;

19. Instructs its President to forward this resolution to the Council, the Commission and the European Central Bank as the opinion of the European Parliament pursuant to the second subparagraph of Article 48(6) TEU.

ANNEX TO THE MOTION FOR A RESOLUTION

Amendment to the draft European Council decision

The following *subparagraphs are* added to *Article 136(1) TFEU*:

“On a recommendation from the Commission and after consulting the European Parliament, the Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area. The granting of any required financial assistance under the mechanism will be ***decided on the basis of a European Commission proposal and be*** made subject to strict conditionality ***criteria in accordance with the principles and objectives of the Union, as laid down in the Treaty on European Union and in this Treaty.***

The principles and rules for conditionality of financial assistance under the mechanism and its control shall be laid down in a regulation in accordance with the ordinary legislative procedure.

Article 136(2) is amended as follows:

“For those measures set out in **points (a) and (b)** of paragraph 1, only members of the Council representing Member States whose currency is the euro shall take part in the vote.

A qualified majority of the said members shall be defined in accordance with Article 238(3)(a).

For those measures set out in point (c) of paragraph 1, only members of the Council representing Member States participating in the mechanism shall take part in the vote.”.

14.2.2011

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on Constitutional Affairs

on the draft European Council decision amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro
(00033/2010 – C7-0014/2011 – 2010/0821(NLE))

Co-Rapporteurs: Jean-Paul Gauzès, Edward Scicluna

AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Draft decision

Recital 1

Text proposed by the European Council

(1) Article 48(6) of the Treaty on European Union (TEU) allows the European Council, acting by unanimity after consulting the European Parliament, the Commission and, in certain cases, the European Central Bank, to adopt a decision amending all or part of the provisions of Part Three of the Treaty on the Functioning of the European Union (TFEU). Such a decision may not increase the competences conferred on the Union in the Treaties and its entry into force is conditional upon its subsequent approval by the Member States in accordance with their respective constitutional requirements.

Amendment

(1) Article 48(6) of the Treaty on European Union (TEU) allows the European Council, acting by unanimity after consulting the European Parliament, the Commission and, in certain cases, the European Central Bank, to adopt a decision amending all or part of the provisions of Part Three of the Treaty on the Functioning of the European Union (TFEU). Such a decision may not increase the competences conferred on the Union in the Treaties and its entry into force is conditional upon its subsequent approval by *all* the *EU* Member States in accordance with their respective constitutional requirements.

Justification

This amendment seeks to clarify which Member States of the European Union will have to approve the proposed Treaty change.

Amendment 2

Draft decision

Recital 3 a (new)

Text proposed by the European Council

Amendment

(3a) At its meeting on 16 December 2010 the European Council also agreed that Member States whose currency is not the euro may decide to participate in operations conducted by the mechanism on an ad hoc basis.

Justification

This amendment is in line with conclusions of the European Council meeting from December 2010.

Amendment 3

Draft decision

Recital 4

Text proposed by the European Council

Amendment

(4) The stability mechanism will provide ***the*** necessary tool for dealing with such cases of risk to the financial stability of the euro area ***as a whole*** as have been experienced in 2010, and ***hence*** help preserve the economic and financial stability of the Union itself. At its meeting of 16 December 2010, the European Council agreed that, as this mechanism is designed to safeguard the financial stability of the euro area as whole, Article 122(2) of the TFEU will no longer be needed for such purposes. ***The Heads of State or Government therefore agreed that it should not be used for such purposes.***

(4) The stability mechanism will provide ***a*** necessary tool for dealing with such cases of risk to the financial stability of the euro area, ***composed of the Member States whose currency is the euro***, as have been experienced in 2010, and help preserve the economic and financial stability of the Union itself. At its meeting on 16 December 2010, the European Council agreed that, as this mechanism is designed to safeguard the financial stability of the euro area as whole, Article 122(2) TFEU will no longer be needed for such purposes ***as from the date of entry into force of this Decision.***

Amendment 4

Draft decision Recital 4 a (new)

Text proposed by the European Council

Amendment

(4a) The stability mechanism will supplement additional measures used to reduce risks to financial stability including the strengthening of the preventive and corrective arm of the Stability and Growth Pact, stronger surveillance of national budgets, and the use of new macro-economic imbalances procedures.

Amendment 5

Draft decision Recital 4 b (new)

Text proposed by the European Council

Amendment

(4b) The Member States, particularly those whose currency is the euro, need to work together in a spirit of solidarity to tackle issues relating to medium and long-term competitiveness and macro-economic imbalances between Member States.

Amendment 6

Draft decision Recital 4 c (new)

Text proposed by the European Council

Amendment

(4c) The Commission should draw up as a proposal for adoption under the ordinary legislative procedure a detailed set of rules laying down the way in which the stability mechanism will be governed and operated, and should specify which instruments are to be used within its remit.

Amendment 7

Draft decision Recital 4 d (new)

Text proposed by the European Council

Amendment

(4d) The Commission should also look at other mechanisms to ensure the financial stability of the euro area, and should make the necessary legislative proposals.

Amendment 8

Draft decision Recital 4 e (new)

Text proposed by the European Council

Amendment

(4e) The Commission should investigate the potential of a future system of eurobonds, as an additional mechanism for preserving the stability of the euro area, and in particular should look into the conditions under which such a system would be beneficial to all participating Member States and to the euro area as a whole.

Amendment 9

Draft decision Recital 4 f (new)

Text proposed by the European Council

Amendment

(4f) The crisis has highlighted the need to speed up a balanced, sustainable and fully fledged economic convergence process and policy coordination going beyond the current framework and thus contributing to the strengthening of the Union method. Accordingly, any further revision of the TFEU under the normal procedure should contain proposals aimed at ensuring that provisions relating to the

establishment and functioning of any stability mechanism are integrated and implemented under the Union method.

Amendment 10

Draft decision Article 1

Text proposed by the European Council

The following **paragraph** shall be added to **Article 136** of the Treaty on the Functioning of the European Union:

"3. The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality."

Amendment

The following **point** is added to **Article 136(1)** TFEU:

"(c) to establish a permanent stability mechanism to safeguard the stability of the euro area composed of the Member States whose currency is the euro. Member States whose currency is not the euro may decide to participate in the mechanism. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality consistent with the principles and objectives of the Union, as laid down in the Treaty on European Union and in this Treaty. The permanent stability mechanism shall be designed in such a way as to foster budgetary discipline and to contribute to long-term sustainable public finances."

Amendment 11

Draft decision Article 1 a (new)

Text proposed by the Council

Amendment

Article 1a

In Article 136(2) TFEU, the first subparagraph is replaced by the following:

"For those measures set out in points (a)

and (b) of paragraph 1, only members of the Council representing Member States whose currency is the euro shall take part in the vote. As regards point (c) of paragraph 1, only members of the Council representing Member States whose currency is the euro and those representing Member States participating in and contributing to the permanent stability mechanism shall take part in the vote."

Amendment 12

Draft decision

Article 2 – paragraph 1

Text proposed by the European Council

Member States shall notify the Secretary-General of the Council without delay of the completion of the procedures for the approval of this Decision in accordance with their respective constitutional requirements.

Amendment

All EU Member States shall notify the Secretary-General of the Council without delay of the completion of the procedures for the approval of this Decision in accordance with their respective constitutional requirements.

Justification

This amendment seeks to clarify which Member States of the European Union shall notify the Secretary-General of the Council about the completion of the procedures for the approval of this Decision.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	14.2.2011
Result of final vote	+: 35 -: 6 0: 0
Members present for the final vote	Burkhard Balz, Sharon Bowles, Udo Bullmann, Pascal Canfin, Nikolaos Chountis, George Sabin Cutaş, Leonardo Domenici, Derk Jan Eppink, Diogo Feio, Elisa Ferreira, Vicky Ford, Ildikó Gáll-Pelcz, Sven Giegold, Sylvie Goulard, Liem Hoang Ngoc, Gunnar Hökmark, Wolf Klinz, Jürgen Klute, Philippe Lamberts, Werner Langen, Hans-Peter Martin, Íñigo Méndez de Vigo, Ivari Padar, Alfredo Pallone, Anni Podimata, Antolín Sánchez Presedo, Olle Schmidt, Peter Simon, Peter Skinner, Theodor Dumitru Stolojan, Ivo Strejček, Kay Swinburne, Ramon Tremosa i Balcells, Corien Wortmann-Kool
Substitute(s) present for the final vote	Sophie Auconie, Elena Băsescu, Arturs Krišjānis Kariņš, Sirpa Pietikäinen, Andreas Schwab, Catherine Stihler
Substitute(s) under Rule 187(2) present for the final vote	Roberto Gualtieri

ANNEX: LETTER OF THE COMMITTEE ON BUDGETS

Letter from Mr Lamassoure, Chair of the Committee on Budgets, to Mr Casini, Chair of the Committee on Constitutional Affairs

Committee on Budgets
The Chairman

Ref.:D(2011) 8060

303128 18.02.2011

Mr C. Casini
Chairman of the Committee on
Constitutional Affairs
ASP09E205 Brussels

Dear Mr Casini,

At its last meeting on the 7 February, the Committee on Budgets had the opportunity to discuss the proposal for a modification (addition of a new paragraph (3))of article 136 of the TFEU via the simplified procedure foreseen in article 48(6) TEU, currently in discussion in the Committee of Constitutional Affairs, in the presence of your two co-rapporteurs, Mr. Elmar Brok and Roberto Gualtieri. Following this discussion, the committee decided to address the opinion expressed during the debate by a large majority of its members via a letter of its Chair.

The proposal under discussion concerns a modification of article 136 TFEU in order to allow those Member States interested to constitute a stability mechanism for the euro-zone, which could be activated if "indispensable to safeguard the stability of the euro area as a whole".

The committee on budgets welcomes the recognition in the treaties of the possibility of the creation of such a stability mechanism. However, it is concerned that the drafting proposed paves the way for the constitution of a mechanism completely outside of the Union's sphere, be it via intergovernmental mechanisms or even under private law, without any role attributed to the European institutions as such.

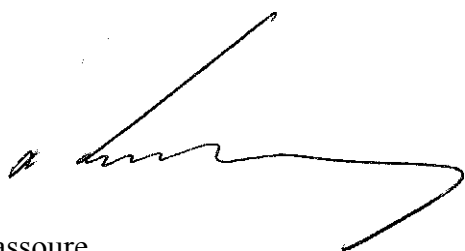
The committee on budgets considers that the credibility of any stability mechanism would be enhanced should the participation of the European Union, notably via the possible intervention of the European budget as part of the guarantee mechanism, be foreseen at a given stage, as it happens with the current EFSM. Recent experience seems to abundantly confirm this thesis.

On the other hand, it is also clear that the intervention of the European institutions would allow for a greater democratic scrutiny over the mechanism, notably to the exercise by the European Parliament of its powers as part of the budgetary authority.

In this context, the committee on budgets considers essential that the European institutions be given a role in the mechanism, allowing thus for a certain degree of democratic scrutiny to be exercised over the management of the fund. Furthermore, the possibility of a future participation of the EU in the mechanism should be safeguarded and a link should be established for the possible intervention of the European budget in the guarantee system.

Lastly, referring to the wider on-going debate on economic governance, the committee on budgets would like to stress that, although it agrees with the need for reinforced enforcement mechanisms for the non-respect of the criteria of the Stability and Growth Pact, it considers that these sanctions should not include measures concerning expenditure instruments foreseen in the European budget for the implementation of the European policies, all the more since they would derive from procedures conducted via predominantly intergovernmental mechanisms.

Best regards,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke ending in a sharp hook.

Alain Lamassoure

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RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	7.3.2011
Result of final vote	+ : 17 - : 4 0 : 0
Members present for the final vote	Andrew Henry William Brons, Andrew Duff, Ashley Fox, Matthias Groote, Roberto Gualtieri, Enrique Guerrero Salom, Zita Gurmai, Gerald Häfner, Daniel Hannan, Stanimir Ilchev, Constance Le Grip, David Martin, Algirdas Saudargas, György Schöpflin, Søren Bo Søndergaard, Indrek Tarand, Rafał Trzaskowski, Guy Verhofstadt, Luis Yáñez-Barnuevo García
Substitute(s) present for the final vote	Elmar Brok, Marietta Giannakou, Alain Lamassoure, Íñigo Méndez de Vigo, Vital Moreira, Helmut Scholz, Alexandra Thein