

# EUROPEAN PARLIAMENT

1999



2004

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*Session document*

FINAL  
**A5-0299/2003**

10 September 2003

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## **REPORT**

on the draft Treaty establishing a Constitution for Europe and the European Parliament's opinion on the convening of the Intergovernmental Conference (IGC)  
(11047/2003 – C5-0340/2003 – 2003/0902(CNS))

Committee on Constitutional Affairs

Rapporteurs: José María Gil-Robles Gil-Delgado

Dimitris Tsatsos

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

## CONTENTS

	<b>Page</b>
PROCEDURAL PAGE .....	4
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION.....	5
EXPLANATORY STATEMENT .....	14
MINORITY OPINION .....	22
MINORITY OPINION .....	23
OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS, HUMAN RIGHTS, COMMON SECURITY AND DEFENCE POLICY .....	24
OPINION OF THE COMMITTEE ON BUDGETS .....	29
OPINION OF THE COMMITTEE ON BUDGETARY CONTROL .....	32
OPINION OF THE COMMITTEE ON CITIZENS' FREEDOMS AND RIGHTS, JUSTICE AND HOME AFFAIRS.....	36
OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS.....	40
OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET.....	43
OPINION OF THE COMMITTEE ON INDUSTRY, EXTERNAL TRADE, RESEARCH AND ENERGY.....	46
OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND CONSUMER POLICY .....	51
OPINION OF THE COMMITTEE ON AGRICULTURE AND RURAL DEVELOPMENT	53
OPINION OF THE COMMITTEE ON FISHERIES .....	57
OPINION OF THE COMMITTEE ON REGIONAL POLICY, TRANSPORT AND TOURISM.....	60
OPINION OF THE COMMITTEE ON DEVELOPMENT AND COOPERATION .....	62
OPINION OF THE COMMITTEE ON WOMEN'S RIGHTS AND EQUAL OPPORTUNITIES.....	65
OPINION OF THE COMMITTEE ON PETITIONS .....	68

## PROCEDURAL PAGE

By letter of 10 July 2003 the President of the Council of the European Union consulted Parliament, pursuant to Article 48(2) of the EC Treaty, on the draft Treaty establishing a Constitution for Europe and the European Parliament's opinion on the convening of the Intergovernmental Conference (IGC) (11047/2003 – 2003/0902(CNS)).

At the sitting of 1 September 2003 the President of Parliament announced that he had referred this matter to the Committee on Constitutional Affairs as the committee responsible and all the committees concerned for their opinions (C5-0340/2003).

The Committee on Constitutional Affairs had appointed José María Gil-Robles Gil-Delgado and Dimitris Tsatsos rapporteurs at its meeting of 19 June 2003.

After having held a first exchange of views at its meeting of 7 July 2003, the committee considered the draft report at its meetings of 25 August 2003 and 8 and 9 September 2003.

At the last meeting it adopted the motion for a resolution by 18 votes to 6, with 4 abstentions.

The following were present for the vote: Giorgio Napolitano (chairman), Jo Leinen (vice-chairman), Ursula Schleicher (vice-chairman), José María Gil-Robles Gil-Delgado and Dimitris Tsatsos (rapporteurs), Teresa Almeida Garrett, Anne André-Léonard (for Lone Dybkjær pursuant to Rule 153(2)), Georges Berthu, Guido Bodrato (for Jean-Louis Bourlanges), Jens-Peter Bonde, Elmar Brok (for Luigi Ciriaco De Mita), Giorgio Calò (for Paolo Costa pursuant to Rule 153(2)), Carlos Carnero González, Richard Corbett, Jean-Maurice Dehousse, Giorgos Dimitrakopoulos, Andrew Nicholas Duff, Olivier Duhamel, Gerhard Hager, Sylvia-Yvonne Kaufmann, Sir Neil McCormick (for Monica Frassoni), Hanja Maij-Weggen, Luís Marinho, Hans-Peter Martin, Gérard Onesta, Jacques F. Poos (for Enrique Barón Crespo), Reinhard Rack (for Daniel J. Hannan), José Ribeiro e Castro (for Mariotto Segni), Konrad K. Schwaiger (for Lord Inglewood).

When the vote was taken on the text as a whole, Georges Berthu and José Ribeiro e Castro declared their intention of having a minority opinion within the meaning of Rule 161(3) of the Rules of Procedure annexed to the explanatory statement.

The opinions of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy; Committee on Budgets; Committee on Budgetary Control; Committee on Citizens' Freedoms and Rights, Justice and Home Affairs; Committee on Economic and Monetary Affairs; Committee on Legal Affairs and the Internal Market; Committee on Industry, External Trade, Research and Energy; Committee on the Environment, Public Health and Consumer Policy; Committee on Agriculture and Rural Development; Committee on Fisheries; Committee on Regional Policy, Transport and Tourism; Committee on Development and Cooperation; Committee on Women's Rights and Equal Opportunities and the Committee on Petitions are attached. The Committee on Employment and Social Affairs and the Committee on Culture, Youth, Education, the Media and Sport decided on 2 July 2003 and 8 July 2003 respectively not to deliver an opinion.

The report was tabled on 10 September 2003.

## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

**on the draft Treaty establishing a Constitution for Europe and the European Parliament's opinion on the convening of the Intergovernmental Conference (IGC) (11047/2003 – C5-0340/2003 – 2003/0902(CNS))**

### **(Consultation procedure)**

*The European Parliament,*

- having been consulted by the Council, pursuant to Article 48(2) of the Treaty on European Union, on the convening of an intergovernmental conference (IGC) to consider the changes to be made to the treaties on which the Union is founded (11047/2003 – C5-0340/2003),
- having regard to the draft Treaty establishing a Constitution for Europe<sup>1</sup> prepared by the Convention on the Future of Europe,
- having regard to its resolution of 31 May 2001 on the Treaty of Nice and the future of the European Union<sup>2</sup>,
- having regard to its resolution of 29 November 2001 on the constitutional process and the future of the Union<sup>3</sup>,
- having regard to its resolutions of 16 May 2002 on the distribution of competences<sup>4</sup>, of 14 March 2002 on the Union's legal personality<sup>5</sup>, of 7 February 2002 on the role of the national parliaments<sup>6</sup> and of 14 January 2003 on the role of the regions in European integration<sup>7</sup>,
- having regard to the Charter of Fundamental Rights of the European Union,
- having regard to the report of the Committee on Constitutional Affairs and the opinions of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy; Committee on Budgets; Committee on Budgetary Control; Committee on Citizens' Freedoms and Rights, Justice and Home Affairs; Committee on Economic and Monetary Affairs; Committee on Legal Affairs and the Internal Market; Committee on Industry, External Trade, Research and Energy; Committee on the Environment, Public Health and Consumer Policy; Committee on Agriculture and Rural Development; Committee on Fisheries; Committee on Regional Policy, Transport and Tourism; Committee on Development and Cooperation; Committee on Women's Rights and Equal Opportunities and the Committee on Petitions (A5-0299/2003),

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<sup>1</sup> CONV 850/03, OJ C 169, 18.7.2003, p. 1.

<sup>2</sup> OJ C 47 E, 21.2.2002, p. 108.

<sup>3</sup> OJ C 153 E, 27.6.2002, p. 310.

<sup>4</sup> OJ C 180 E, 31.7.2003, p. 491.

<sup>5</sup> OJ C 47 E, 27.2.2003, p. 594

<sup>6</sup> OJ C 284 E, 21.11.2002, p. 322

<sup>7</sup> P5\_TA (2003)0009

Whereas

- A. the Citizens, the Parliaments, the Governments, the Political Parties - in both the Member States and at the European level - as well as the institutions of the Union are entitled to take part in the democratic process of drawing up a Constitution for Europe; therefore, this resolution constitutes the European Parliament's evaluation of the draft Constitutional Treaty produced by the Convention on the Future of Europe,
- B. the preparation for the conduct and above all the outcome of the Nice Conference definitively demonstrated that the intergovernmental method for the revision of the Union's treaties has reached its limits and that pure diplomatic negotiations are not capable of giving solutions to the needs of a European Union with twenty-five Member States,
- C. the quality of the Convention's work on the preparation of the draft Constitution and the reform of the Treaties fully vindicates the decision of the Laeken European Council to move away from the intergovernmental method by adopting Parliament's proposal for the setting up of a constitutional Convention; the result of the Convention, in which the representatives of the European Parliament and of national Parliaments played a central role, shows that open discussions within the Convention are by far more successful than the method followed up to now of intergovernmental conferences held in camera,
- D. it demands to be actively and continually involved not only in the Intergovernmental Conference but also in the future phases of the constitutional process,
- E. important progress has been made by the Convention's proposals, but the new provisions will have to be tested with respect to the challenges presented by the enlarged Union; the method of the Convention should apply for all future revisions,
- F. the Convention on the Future of Europe, as well as its predecessor on the Charter of Fundamental Rights, has initiated a new phase in the European integration, during which the European Union will consolidate its legal order into a constitutional order binding its states and citizens, even if the final approval of the Constitution will be given in the form of an international Treaty,
- G. despite the originally many different opinions of the Conventioneers, a large majority of all four component parts of the Convention, including that of the European Parliament, supported the Convention's final proposal, which is therefore based on a fresh and large consensus, even if not all of Parliament's demands concerning democracy, transparency and efficiency in the European Union were met; to reopen the important compromises reached within the Convention would not only jeopardise the progress made by the Convention in re-founding the Union on a more efficient and democratic constitutional basis but would also subvert the whole Convention method,
- H. the draft Treaty establishing a Constitution for Europe should be evaluated on the basis of the following criteria:

- a. respect for the preservation of peace, democracy, freedom, equality, the rule of law, social justice, solidarity and cohesion, all of which can never be deemed to have been achieved but must always be subject to a review of their meanings and be fought for anew through historical developments and over generations;
  - b. respect for the European Union as an entity united in diversity;
  - c. confirmation of the unique nature and of the dual legitimacy of the Union drawn from its states and citizens;
  - d. commitment to the preservation of the equivalence principle between the states and the interinstitutional balance, which guarantees the Union's double legitimacy;
  - e. efficiency to cope with a Union of twenty-five or more Member States while enhancing the democratic functioning of its Institutions;
  - f. development of a system of values with cultural, religious and humanist roots which, beyond a common market and in the framework of a social market economy, aims at a better quality of life for Europe's citizens and society at large, as well as economic growth, stability and full employment, the stronger promotion of sustainable development and better implementation of the citizenship of the Union;
  - g. strong political legitimacy among the Union's citizens and through the European political parties;
  - h. overall constitutional settlement which should lead to the restoration of the Union's credibility and its enhanced role at home and abroad,
1. Welcomes the progress in the European integration and democratic development represented by the Convention's proposed "Constitution for Europe", to be established through an appropriate Treaty establishing a Constitution for Europe, this one being the text expressing the political will of the European citizens and the Member States in a solemn and comprehensive way;
  2. Notes with satisfaction that the draft Constitution has entrenched to an important extent the values, objectives, principles, structures and institutions of Europe's constitutional heritage and has in that way given to the Draft to a great degree not only the quality of a constitutional text but also the capability of its continuous evolution;
  3. Welcomes the inclusion of the symbols of the Union in the draft Constitution;

### **Important steps towards a more democratic, transparent and efficient European Union**

#### ***Democracy***

4. Greatly welcomes the installation of the Charter of Fundamental Rights as an integral, legally binding part of the Constitution (Part II) and stresses the importance of the

person's dignity and fundamental rights as crucial elements of a civic, social and democratic Union;

5. Regards as positive the election of the President of the European Commission by the European Parliament and stresses that this is in any case an important step towards an improved system of parliamentary democracy at the European level;
6. Acknowledges the possibilities for increased participation of the European citizens and the social partners and, especially, the introduction of the Citizens' legislative initiative;
7. Regards as important the increased role of the national parliaments in the Union's activities;
8. Supports national parliaments in their efforts to carry out more effectively their task of guiding and monitoring their respective governments as members of the Council, which is the effective way of ensuring the participation of national parliaments in the legislative work of the Union, as well as in shaping the common policies;
9. Invites its competent Committee to organise joint meetings with representatives of national Parliaments to ensure the follow-up and the evaluation of the proceedings of the Intergovernmental Conference;

### ***Transparency***

10. Considers of fundamental importance that the Union will acquire a single legal personality and that the pillar structure has formally disappeared, even if the community method does not fully apply to all Common Foreign and Security Policy and Justice and Home Affairs decisions;
11. Welcomes the introduction of a hierarchy and the simplification of the legal acts of the Union and the explicit recognition of the primacy of the Constitution and of the Union law over the law of the Member States;
12. Recognises the steps made towards greater transparency and a clearer categorisation as far as the competencies of the Member States and of the Union are concerned, with the retention of a certain level of flexibility to allow for future adaptations in an evolving Union with twenty-five or more Member States;
13. Welcomes the separation of the Euratom Treaty from the legal structure of the future Constitution; urges the IGC to convene a Treaty revision conference in order to repeal the obsolete and outdated provisions of the Treaty, notably concerning the promotion of nuclear energy and the lack of democratic decision making procedures;
14. Welcomes the commitment given by the President of the European Convention that the entire text of the Constitution will be written in gender-neutral language and calls on the Intergovernmental Conference to arrange for the necessary editorial changes to be made to the draft Constitution in this respect;



## *Efficiency*

15. Welcomes the new "legislative procedure", which will become the general rule, as an essential progress towards an increased democratic legitimacy of the Union's activities, acknowledges this noticeable extension of codecision and underlines that the latter will have to be pursued further;
16. Attaches great importance to the extension of qualified majority voting (QMV) in the Council, as far as legislation is concerned; welcomes the improvement of the system, while underlining the need for further extensions of QMV or for the use of special QMV in the future, without prejudice to the possibilities provided in article I - 24.4 of the draft Constitution;
17. Stresses that the European Parliament must be the responsible parliamentary body with respect to the CFSP and ESDP in so far as EU competence is concerned;
18. Appreciates that the draft Constitution makes some other important improvements in decision- and policy-making, such as:
  - the fact that the Union has now acquired a clearer social identity as expressed in its values and objectives, stressing inter alia the importance of gender equality and non-discrimination as well as socially and environmentally sustainable development,
  - although not as a wholly separate Legislative Council, the General Affairs and Legislative Council will in the future always meet in public when performing its legislative duties,
  - the expanded application of qualified majority voting and co-decision notably to the area of freedom, security and justice and the extension of the general system of jurisdiction of the European Court of Justice to justice and home affairs,
  - the fact that for international agreements and the Common Commercial Policy the assent of the European Parliament is now required as a general rule,
  - the provisions on transparency and access to documents, the simplification of the legislative and non legislative procedures and the use of language commonly understood by the citizens,
  - the abolition of the distinction between obligatory and non-obligatory expenditure in the budget and the extension of co-decision to the Common Agriculture and Fisheries policies,
  - the introduction of a multi-annual strategic programme of the Union,
  - the recognition of the growing importance of the regional dimension to European integration,
  - the modification of the rules concerning access to the Court of Justice,

- the provisions on delegated regulations adopted by the Commission with "call-back" rights for Parliament and Council,
  - the provision under which those countries which have undertaken enhanced cooperation can introduce, among themselves, qualified majority voting where unanimity is otherwise stipulated by the draft Constitution, and adopt the legislative procedure where other procedures would normally apply,
19. Endorses the solidarity clause regarding the fight against terrorism and the possibility of structural cooperation in security and defence policy while respecting the Alliance commitments;

### **Aspects requiring further monitoring during their implementation**

20. Believes that the election of the President of the European Council cannot solve in itself all the current problems of the functioning of this Institution and could entail unforeseeable consequences on the institutional balance of the Union; the role of the President must be strictly limited to that of a chair in order to avoid possible conflicts with the President of the Commission or the Union Minister for Foreign Affairs and not to endanger their status or encroach in any way on the Commission's role in external representation, legislative initiative, executive implementation or administration;
21. Emphasises that the provisions concerning the Presidencies of Council of Ministers formations other than the Foreign Affairs Council leaves the details to a subsequent decision, which should be carefully assessed, bearing in mind the requirement of coherence, efficiency and accountability and the need to address the problem of the Presidency of the Council preparatory bodies;
22. Welcomes that the link between the weighting of votes in the Council and the distribution of seats in the European Parliament, established in the Protocol on the enlargement of the European Union annexed to the Nice Treaty, disappears; supports the system set out in the draft Constitution as regards the future composition of the European Parliament and suggests it to be implemented without delay, because it is a core element of the global balance between the Member States in the different institutions;
23. Understands that the creation of a Union Minister for Foreign Affairs will enhance the Union's visibility and capacity for action on the international stage but stresses that it is indispensable that the Union Minister for Foreign Affairs is supported by a joint administration within the Commission;
24. Suggests that the European Ombudsman, who is elected by the European Parliament, and the national ombudsmen might propose a more comprehensive system of non-judicial remedies in close cooperation with the European Parliament's Committee on Petitions;
25. Considers that the Intergovernmental Conference should adopt a decision on the repeal, upon entry into force of the Members' Statute adopted by the European Parliament on 4 June 2003, of Articles 8, 9 and 10 of the Protocol on Privileges and Immunities and of

Article 4(1) and (2) of the Act on direct elections;

26. Welcomes the introduction of the 'passerelle' clause which allows the European Council to decide to move to the ordinary legislative procedure where special procedures apply, after consulting the European Parliament and informing national parliaments;
27. Believes that Parliament ought, within the budgetary procedure, to retain the rights it currently has, and that its powers ought not to be weakened; considers that the satisfactory functioning of Parliament's power of approval over the multiannual financial framework presupposes the rapid opening of interinstitutional negotiation, in addition to the Intergovernmental Conference, on the structure of this framework and the nature of the constraints on the budgetary procedure; believes that the multiannual financial framework should leave the budgetary authority significant room for manoeuvre during the annual procedure;
28. Expresses its concern regarding the unsatisfactory answers to some fundamental questions, which were clearly pointed out in the European Parliament's previous resolutions, such as :
  - further consolidation of economic and social cohesion policy, closer coordination of Member States economic policies in view of an effective economic governance, and a more explicit integration of environmental aspects in all EU policies,
  - appointment of the members of the Court of Justice and the Court of first instance by qualified majority voting and with the European Parliament's assent,
  - the suppression of unanimity being required in the Council in some vital areas, including notably the Common Foreign and Security Policy (at least as regards the proposals from the Union Minister for Foreign Affairs with the Commission's support), and some areas of the social policy;
29. Understands that the solution proposed for the Commission by the draft Constitution, is an important part of the global institutional compromise; hopes that the reform of the European Commission will not weaken its collegiality or create discontinuity; considers that the increased powers of the President of the Commission are sufficient to assure an efficient work of that Institution; regrets that the system envisaged makes it difficult to keep a good European Commissioner for a second term;

### **General assessment**

30. Notes that as the draft Constitution prepared by the Convention represents the result of a large democratic consensus, involving the European Parliament and the national Parliaments of the Union, it expresses the will of the citizens who will not be represented in the IGC;
31. Welcomes the provision that the European Parliament now also has the right to propose constitutional amendments and, furthermore, will have to give its approval to any endeavour to amend the Constitution without convening a Convention, thereby exerting a

de facto control over the use of this new instrument of constitutional revision; regrets, however, that the unanimity of the Member States and ratification by national parliaments will both still be required to allow the entry into force even of constitutional amendments of a minor importance; strongly deplores the fact that the European Parliament's approval is not systematically required for the entry into force of newly adopted constitutional texts;

32. Resolves that notwithstanding some limits and contradictions, the result of the Convention should be endorsed, representing as it does an historic step towards a European Union which is more democratic, efficient and transparent;
33. Believes that in the light of the experience of two Conventions this method ensures democratic legitimacy and, through its working methods, guarantees openness and participation; nevertheless, for future revisions the election of the Convention Presidium by the Convention itself could be useful;

### **Convening of the Intergovernmental Conference and ratification process**

34. Approves the convening of the Intergovernmental Conference (IGC) on the 4th of October 2003;
35. Urges the IGC to respect the consensus reached by the Convention, to avoid negotiations on the fundamental decisions reached by the Convention and to approve the draft Treaty establishing a Constitution for Europe without altering its basic balance while aiming at reinforcing its coherence;
36. Calls on the political parties - in both the Member States and at European level -, the representative associations and the civil society to reflect comprehensively not only on the outcome of the European Convention but also on the European Parliament's views as expressed in this resolution;
37. Strongly welcomes the Italian Presidency's assurance that the European Parliament will be closely and continually involved in the IGC at both levels, Heads of State or Government and Foreign Affairs Ministers, and supports its intention to close the conference by December 2003;
38. Considers that the Treaty establishing a Constitution for Europe must be signed by all the twenty-five Member States on the 9th of May 2004, immediately after the accession of the new members to the Union;
39. Considers that all states should hold referenda on the draft Constitution if permitted by their Constitution and organise them if possible on the same day as the European elections;
40. Instructs its President to forward this resolution constituting its opinion on the convening of the Intergovernmental Conference to the Council, the Commission, the European Central Bank, the Heads of State or Government and the Parliaments of the Member States and of the acceding and candidate States.

## EXPLANATORY STATEMENT

### *The road to a European Constitution*

The European constitutional debate has a history of ups and downs. The European Parliament has always been one of the most active participants in this debate, as is demonstrated by the Spinelli draft Constitution of 1984 and the Herman report of 1994. In 2000, several heads of state and foreign ministers reinvigorated these constitutional deliberations, highlighting once more the need to make the Union's decision mechanisms more effective and transparent and to emphasise the several elements of constitutional quality of the Treaties. For its part, the Court of Justice has found on numerous occasions that, taken as a whole, the Treaties form a 'constitutional charter' for the Union. Hence, we already have a kind of Constitution in the form of the Treaties, but that Constitution is piecemeal, nameless, unreadable and invisible. Calling for the adoption of a Constitution which would gradually replace the Treaties thus has the intention of making both terminology and texts reflect legal reality more closely.

Due to the above-mentioned series of political statements given by national political leaders and formalised in the European Council's Laeken declaration in December 2001, the question 'Does the European Union need a Constitution?', which was a rather contentious subject for EU specialists and political leaders, is now in the core of institutional development. The Laeken declaration still presented the problem as an open question ('The question ultimately arises as to whether this simplification and reorganisation [*of the Treaties*] might not lead in the long run to the adoption of a constitutional text in the Union. What might the basic features of such a Constitution be?'), but under the heading 'Towards a Constitution for European citizens'. The work of the Convention on the future of Europe, also created at Laeken, has given an important answer to the question posed at Laeken.

Ever since it was directly elected for the first time, in 1979, Parliament has continually supported the constitutionalisation of the European order: a modern and enlightened restatement of its basic objectives, a renewed statement of shared values, a definition of rights and responsibilities and of the institutions, their interaction and the checks and balances of European governance based on democracy, the rule of law and the social justice system. On a more practical level, Parliament has been consistent over the years in asking for the abolition of the pillar structure of the Treaty on European Union (thereby extending legal personality to the Union, or its successor), the integration of the Charter of Fundamental Rights into the future Treaty, the further expansion of qualified majority voting in the Council and co-decision between Council and Parliament in European legislation. Three years ago, the European Parliament underlined that a European Constitution would be a unique act in the same way as the European Union constitutes a unique legal order<sup>8</sup>.

### *The Convention on the future of Europe*

The European Parliament can be considered as the point of origin of the concept of a Convention<sup>9</sup>. When it first suggested creating such a Convention, it was quite isolated. Later

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<sup>8</sup> Resolution on the constitutionalisation of the Treaties (adopted on 25.10.2000 - Olivier Duhamel report), OJ C 197, 12.7.2001, p. 111 and 186.

<sup>9</sup> Resolution on the Amsterdam Treaty (adopted on 19.11.1997 - Iñigo Méndez de Vigo and Dimitris Tsatsos report), OJ C 371, 8.12.1997, p.99.

on, it received the full backing of the European Commission, and, eventually, its proposal began to emerge as conventional wisdom. The Convention came about for two reasons: firstly, it was widely considered that the previous convention on drafting a Charter of Fundamental Rights was a good exercise in open dialogue involving many players; secondly, it was generally felt that there had to be a better way than the road to the Nice Treaty to discuss and develop thinking about the future of Europe. In Laeken, the Convention was thus confirmed as the preferred method of preparing a draft of a Treaty containing the European Constitution.

According to the Laeken declaration, the Convention had as its objective 'to pave the way for the next Intergovernmental Conference as broadly and openly as possible'. Its launch is a radical break with the tradition of EU treaty-making. While final decisions will still be taken by Member States' governments at the Intergovernmental Conference (IGC), the preparation stage for the first time involved a wide and open consultation process, including citizens, in particular young people, and NGOs. The Convention opened in Brussels on 28 February 2002 and finished its work on 10 July 2003, handing over a Draft Treaty establishing a Constitution for Europe in four parts (I - principles and institutions, II - Charter of fundamental rights, III - policies and IV - final provisions).

### ***Evaluation of the draft Constitution***

The draft Constitution presented by President Valéry Giscard d'Estaing to the Thessaloniki European Council (parts I and II), on 20 June 2003, and to the Italian Presidency (parts III and IV), on 18 July 2003, contains a number of positive elements which make the shortcomings that inevitably persist acceptable for the time being. The text is innovative and meets a number of Parliament's long-standing demands to enhance the efficiency, transparency and democratic legitimacy of the EU.

First and foremost, the very success of the convention method as such, continuing the process of constitutionalising the Union, marks a fundamental step forward. The result of the Convention's deliberations makes great strides towards:

- clarifying the complex system left behind by three successive intergovernmental conferences,
- strengthening the position of the citizens in the Union (e.g., through the inclusion of the Charter of Fundamental Rights as a binding legal text and the introduction of the citizen's right of legislative initiative, which allows citizens to submit proposals for legal acts without adversely affecting the Commission's monopoly of initiative),
- advancing the process of European integration in a number of fields, notably the area of freedom, security and justice.

Other positive elements include the formal abolition of the pillar structure, a clarification of Union competences, the simplification of legal instruments of the Union, the enhanced role of the national parliaments, especially in monitoring respect for the principle of subsidiarity, the creation of a Foreign Minister of the Union, which will enhance its visibility on the international stage, the extension of qualified majority voting in the Council to some 30

matters currently decided by unanimity<sup>10</sup>, and a simplification of the system for calculating this majority, which will, as of 1 November 2009, consist of a 'double majority' of at least half the Member States and three-fifths of the population of the Union.

As to the European Parliament's institutional role, its legislative and budgetary authority is fully recognised and strengthened. In addition, the new 'ordinary legislative procedure', which corresponds to codecision, becomes the general rule for adopting legislation. The President of the Commission will be elected by the European Parliament, and the entire college of Commissioners, including the Foreign Minister, will be subject to a vote of approval by Parliament. For international agreements and the Common Commercial Policy, the consent of the European Parliament is required as a general rule. In addition to that, the range of exceptions where qualified majority voting applies is extended in some Part III articles on CFSP.

On the other hand, certain shortcomings inevitably persist: the extension of codecision, as well as of qualified majority voting, still does not cover all legislation. The same concern applies to the failure to extend judicial control by the Court of Justice to all Union acts. Finally, questions about the complexity of the institutional system remain. The activities of the new European Council President, who will be elected by qualified majority for a term of two and a half years by the European Council, will have to be monitored closely by the European Parliament. Much will depend on practical implementation. In any case, it is essential that the President acts as a standing chair and not as an executive body.

### ***Some specific comments on new provisions***

#### *Clarification of responsibilities*

The clarification and delimitation of the Union's competences represent one of the more innovative aspects of the Constitution, aiming at specifying clearly 'who does what' while preserving the necessary degree of flexibility needed to ensure the efficiency of the Union. Many of the issues addressed here have been repeatedly debated by the European Parliament and were also raised by the Laeken Declaration.

The draft Constitution provides that Union competences will be governed by the principles of conferral, subsidiarity and proportionality (the latter two are underpinned and made legally enforceable by the Protocol on the application of the principles of subsidiarity and proportionality). The competences of the Union are divided into exclusive competences, shared competences, and areas of supporting, coordinating or supplementary action. A flexibility clause (former Article 308 TEC) is retained which allows for the adoption of all appropriate measures to achieve the objectives of the Union where this has not been foreseen by the Constitution. It operates by unanimity in the Council with the consent of the European Parliament. Finally, Union law is explicitly given primacy over national law.

#### *Institutional innovations*

The European Parliament is formally recognised as the legislative and budgetary power of the

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<sup>10</sup> See annex for a list of articles.

Union, together with the Council. The President of the Commission will be elected by the European Parliament, the investiture of the College as a whole will be kept. This will, it is hoped, increase citizens' interest in the European elections.

The creation of a Foreign Minister of the Union, merging the positions of the High Representative for the CFSP and the Commissioner for External Relations under the so-called 'double hat', could be an important step towards a more coordinated European foreign policy, although the preservation of the unanimity principle in CFSP greatly hampers the minister's room for manoeuvre. Nevertheless, being appointed by the European Council, he is also a Vice-President of the Commission and as such responsible to the European Parliament, and he will possess considerable powers of initiative and representation on the international stage. Moreover, consultation of the European Parliament in the implementation of CFSP has been strengthened.

### *Decision-making*

The considerable further extension and simplification (from 2009) of qualified majority voting in the Council will obviously enhance decision-making efficiency in the Union of 25. An additional '*passerelle*' clause (Article I-24) moreover allows the European Council to decide unanimously to move to the ordinary legislative procedure where special procedures previously applied, after consulting the European Parliament and informing national parliaments.

The Commission's executive functions, its quasi-exclusive right for legislative initiative and its powers of external representation are more explicitly recognised than has previously been the case. In addition, a clearer distinction between the legislative and executive functions of the Union, notably through the 'General Affairs and Legislative Council', which will meet in public when performing its legislative duties, has been achieved.

Two major problems persist: the first is the new regime for the composition of the Commission. The two-tier system of voting and non-voting members of the Commission does not seem to be a sustainable solution. If a significant reduction of the college is not feasible, it would probably be much more efficient to increase the powers of the Commission President over the organisation and appointment of members, thereby enabling him to appoint the college according to his political priorities. The second problem is the loss of the coordinating powers of the General Affairs and Legislative Council.

### *Legislative and non-legislative acts*

The number of legal acts is now limited to six instruments: laws (currently 'regulations'), framework laws (currently 'directives'), regulations, decisions, recommendations and opinions. Among these acts, a hierarchy is established between the legislative and the implementation levels. The 'codecision procedure' is henceforth replaced by the 'ordinary legislative procedure', which becomes the general rule for adopting legislation. Parliament now also has equal rights with the Council in determining the general conditions for the control and exercise of implementing acts (comitology), a step for which Parliament has fought for many years.



However, the provision that in special cases a law may be adopted by the Council alone or, less frequently, by the European Parliament alone, after consulting the other institution, reduces the general progress towards simplification. There is also a risk of reducing the Commission's right of initiative.

#### *Budget and own resources*

In accordance with the European Parliament's demands, the distinction between compulsory and non-compulsory expenditure has finally been abolished, and the annual budget will be adopted by genuine codecision. A new article introduces the multiannual financial framework, replacing the current financial perspectives, which is adopted by the Council by qualified majority and requires the consent of the European Parliament. However, the first multiannual financial framework after entry into force of the Constitution will still be adopted by unanimity.

The Union has not made progress on the question of own resources. The limit of own resources, as well as the establishment of new categories or abolition of existing categories of resources, will still be decided by unanimity in the Council, with only consultation of the European Parliament and ratification by national parliaments. Specification of the 'detailed arrangements' related to own resources still requires the consent of the European Parliament.

#### *National and regional Parliaments*

One of the important problems facing the Union, identified in the Laeken Declaration, concerned the role of the national parliaments. A protocol attached to the Constitution spells out in greater detail the requirements for informing the parliaments and provides for enhanced interparliamentary cooperation. Moreover, the Protocol on the Application of the Principles of Subsidiarity and Proportionality renders the principles of subsidiarity and proportionality enforceable and provides not only for wide-ranging consultation and information of all levels of government by the Union's institutions, but also establishes two novel mechanisms:

- the 'early warning system': this mechanism allows at least one third of national parliaments to send a reasoned opinion that the Commission review a proposal if they consider that subsidiarity has not been ensured; however, the Commission may decide to maintain its proposal as long as it justifies its decision;
- where the principle of subsidiarity has been breached by a legislative act, the national parliaments (via their national governments) and the Committee of the Regions (for those acts on which it is consulted) may bring actions to the Court of Justice, which is given jurisdiction to rule in this domain.

#### *Justice and home affairs*

While the Convention was generally circumspect in extending the Union's powers, this is not true for justice and home affairs. The former third pillar can now be said to be widely integrated in the Union's legal and institutional framework. There is now a general awareness of the role the Union has to play in matters such as justice and police cooperation, protection of the Union's financial interests, border protection, immigration and asylum policies. This

has led to a number of groundbreaking changes.

The essential points can be summarised as follows:

- the provisions covering justice and home affairs are now grouped in a single title called 'Area of Freedom, Security and Justice',
- the same legal instruments apply to all policy issues covered by justice and home affairs,
- the principle of mutual recognition has been accepted as the basis for judicial cooperation in civil and criminal matters,
- the general system of jurisdiction of the European Court of Justice (ECJ) is extended to the area of freedom, security and justice; an exception is included with respect to the maintenance of law and order and the safeguard of public security, for police cooperation and judicial cooperation in criminal matters;
- qualified majority voting and co-decision become the rule; however, unanimity is still applied in specifically defined and limited circumstances;
- a new legal basis establishes mandates for Europol and Eurojust; operational power for Europol is also established;
- a European Public Prosecutor's Office can be created by European law.

### ***The forthcoming IGC***

The Italian Presidency intends to convene the IGC on 4 October 2003 and to bring it to an end by December 2003. It has also assured the European Parliament that it will be 'permanently and closely' involved in the IGC. Parliament will endeavour to give its constructive contributions to the IGC to the largest possible extent and in the interest of the European Union as a whole. It underlines, however, its position that any significant departure from the carefully crafted compromises established at the Convention will risk the unravelling of the draft Constitution. Should the dialogue open up nevertheless, the European Parliament will draw the IGC's attention to the shortcomings of the draft Treaty as noted in this resolution.

Parliament notes with great interest some recent developments with regard to the proceedings of the IGC: Convention delegates from the national Parliaments have announced that they will meet informally during the IGC to analyse and, if necessary, comment on the deliberations of the conference, particularly with respect to the positions of their own governments. The European Parliament's Committee on Constitutional Affairs will provide for joint meetings with national MPs to facilitate this monitoring. The President and the Vice-Presidents of the Convention have also signalled their willingness to advise the members of the IGC. Finally, there seems to be a consensus among Member States to keep the conference at the highest political level, refraining from negotiations among national diplomatic services. Above all, inability on the part of the IGC to adopt swiftly the result of 16 months of work by a body comprising a large majority of parliamentarians from the present Member States and from the acceding states will lead to great disappointment with the citizens. Many of them will be

called upon to give their opinion in a referendum. It is against this background that the European Parliament invites Member States where referenda will be held to organise them on the same day as the European elections.

### ***Beyond the IGC***

Europe can only derive its democratic vitality from a dual legitimisation: the direct legitimisation coming from the European citizens and the legitimacy of the Member States, which in turn is based on democratic national elections. The European Parliament, as the expression of Europe-wide direct universal suffrage, is the institution specifically dedicated to representing the Union of the people of Europe. It is from its endorsement that the Commission derives its democratic legitimacy. This then complements the other source of legitimacy, namely the Member States represented in the Council. Enhancing the intergovernmental model at the expense not only of the Commission but also, ultimately, of the Council, which is also a Community institution, would therefore undermine the democratic nature of the whole European enterprise.

The draft Constitution proposed by the Convention is innovative and indecisive at the same time: innovative in its abolition of the present treaty structure and its many institutional and procedural innovations, indecisive in not tackling some big constitutional issues which will stay with the Union for the foreseeable future. Assuming that the IGC will adopt the draft Constitution without major changes to its main tenets, two problems will certainly require future revisions of the European Constitution:

- the revision procedure: with an ever increasing number of Member States it will become more and more destructive that unanimity and national ratification are still required, even for small policy changes in part III;
- own resources: with a view to the upcoming budgetary negotiations in 2006 it is very likely that the present instruments to manage and control the Union's budget (annual budget and multiannual financial framework) will lead to deadlock and bitter conflicts. In the medium term, the Union will need resources which are not dependent on contributions from the Member States in order to carry out its extensive tasks.

## Annex:

### **Main areas transferred to qualified majority voting in the Council**

- Comitology (Article I-36 (3): former Article 202)
- Arrangements for own resources (in part) (Article I-53 (4): former Article 269)
- Services of general interest (Article III-6 : former Article 16)
- Diplomatic and consular protection (Article I-8 and III-11: former Article 20)
- Free movement of workers (Article III-21: former Article 42)
- Administrative cooperation and measures to combat tax fraud (following a unanimous decision by the Council) (Article III-63(2))
- Intellectual property (except language arrangements) and other centralised procedures (Article III-68(1))
- New tasks for the ECB (Article III-77 (6): former Article 105 (6))
- From 2007: Structural and Cohesion Funds (Article III-119: former Article 161)
- Administrative cooperation on justice and internal affairs (Article III-164: former Article 66)
- Border controls (Article III-166: former Article 67)
- Asylum and immigration (Article III-167 and 168: former Article 67)
- Judicial cooperation in civil matters apart from family law (Article III-170(2): former Articles 65 and 67)
- Judicial cooperation in criminal matters (Article III-171: former Article 31 EU)
- Harmonisation of legislation on criminal proceedings, sanctions and offences (Article III-172 (1): former Article 31 EU)
- Eurojust (Article III-174: former Article 31 (2) EU)
- Police cooperation (except operational cooperation (paragraph 2)) (Article III-176 (1): former Article 30 (1) EU)
- Europol (Article III-177: former Article 30 (2) EU)
- Culture (Article III-181 (5): former Article 151 (5))
- Civil protection (Article III-184)
- Initiatives by the CFSP Foreign Affairs Minister at the request of the European Council (Article III-201 (2))
- Statute and seat of the Armaments Agency (Article III-212 (2))
- Commercial policy (Article III-217(2) and III-227: former Articles 133 and 300)
- Urgent financial aid to non-member States (Article III-222)
- Establishment of specialised courts (Article III-264: former Article 225A)
- Giving the Court of Justice jurisdiction with regard to intellectual property rights (Article III-269: former Article 229A)
- Amendment of the Statute of the Court of Justice (Article III-289: former Article 245)

## **MINORITY OPINION**

pursuant to Rule 161(3) of the Rules of Procedure  
Georges Berthu

The report on the draft Treaty establishing a European Constitution welcomes the prospect of a new constitutional order, binding on the Member States, based on supranational decision-making procedures and, for the first time, the enshrinement in the Treaty of the superiority of Community law over the national constitutions and laws.

Instead of seeking to overcome the democratic deficit by resuming closer ties with national democracies, the draft Constitution continues along the course of constructing a unitary superstate, checked by a largely artificial 'European democracy' which is granted no more than secondary legitimacy by its citizens.

The European Parliament's report repeatedly states that this draft reflects the 'political will of the European citizens'. There is nothing less certain, and this anticipation of as yet hypothetical public ratification provides a potent signal of the indoctrination processes which threaten to be targeted at the peoples.

In reality the Convention was not representative of public opinions as a whole; it was dominated by the influence of the European institutions; and the alleged 'consensus' which emerged clearly reflects the preferences of federalist groups, but not those of the peoples. The governments which are soon to meet in the IGC would do well to remember this.

9 September 2003

## **MINORITY OPINION**

pursuant to Rule 161(3) of the Rules of Procedure  
José Ribeiro e Castro

Even though I am aware of the prevailing tide of opinion in this House, some statements continue to alarm me. One such statement is that made by Mr Carnero González during the debate on this report to the effect that we must welcome the Convention's courage in going beyond the mandate set and establishing a Constitution.

This is a frank statement which corresponds to the substantial facts of the matter. However, I was of the opinion that, on recognising this fact, we should be condemning it rather than welcoming it. As a trained lawyer and member of a Committee on Constitutional Affairs, I believe that this is what we should have done if we wished to make a real contribution to the rule of law.

When I heard Mr Méndez de Vigo say last week in Strasbourg that, in future, we should act as 'guardians of the Constitution' (the European Constitution, of course ...), I could not but smile. If we intend to play the role of 'guardians' as little and badly as we have guarded the national constitutions - the only ones by which we are currently bound - the fortune of citizens and the rule of law in Europe will indeed be at a low ebb.

It is basically for this reason that I voted against the report - because it corroborates and reinforces a mistaken methodology for constructing the new European State.

Furthermore, I regret that the principle of equality among the Member States and the corresponding institutional parity have been so badly served in the draft of the new Treaty.

9 July 2003

## **OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS, HUMAN RIGHTS, COMMON SECURITY AND DEFENCE POLICY**

for the Committee on Constitutional Affairs

on the Draft Treaty establishing a Constitution for Europe and the European Parliament's opinion on the convening of the Intergovernmental Conference (IGC)  
(11047/2003 – C5-0340/2003 – 2003/0902(CNS))

Draftsman: Elmar Brok

### **PROCEDURE**

The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy appointed Elmar Brok draftsman at its meeting of 18 June 2003.

It considered the draft opinion at its meetings of 30 June 2003 and 8 July 2003.

At the latter meeting it adopted the following conclusions by 25 votes in favour to 4 against, with 2 abstentions.

The following were present for the vote Elmar Brok (chairman and draftsman), Baroness Nicholson of Winterbourne, Geoffrey Van Orden and Christos Zacharakis (vice-chairmen), Per-Arne Arvidsson, Alexandros Baltas, Bastiaan Belder, Bob van den Bos, André Brie, John Walls Cushnahan, Véronique De Keyser, Nirj Deva (for Franco Marini pursuant to Rule 153(2)), Rosa M. Díez González, Michael Gahler, Gerardo Galeote Quecedo, Jas Gawronski, Willi Görlach (for Klaus Hänsch), Alfred Gomolka, Richard Howitt, Joost Lagendijk, Catherine Lalumière, Jo Leinen (for Magdalene Hoff), Pedro Marset Campos, Arie M. Oostlander, Jannis Sakellariou, José Ignacio Salafranca Sánchez-Neyra, Ioannis Souladakis, Ursula Stenzel, Charles Tannock, Karl von Wogau and Joan Vallvé.

## SHORT JUSTIFICATION

1. There is a broad consensus within the European Parliament that the Draft Constitutional Treaty is, in general, a radical improvement on the existing Treaties. It exceeds the original expectations of the EP and also goes well beyond the progress made at previous Intergovernmental Conferences. President Cox, in his speech to the European Council in Thessaloniki on 19 June 2003, referred to at least eleven of the improvements contained within the Draft Constitutional Treaty:
  - it proposes a legal personality for the Union;
  - it incorporates the Charter for Fundamental Rights;
  - it simplifies decision-making and removes the artificial 'pillar' structure,
  - it provides adequate controls to respect subsidiarity;
  - it stipulates that when Council discusses and adopts legislation, it must do so in public;
  - it clarifies better than before who does what;
  - it provides for a unified Foreign Affairs structure under a Minister responsible to the European Council, but accountable to Parliament;
  - it extends qualified majority voting;
  - it strengthens the legitimacy of the Commission;
  - it broadens parliamentary control over legislation - by national parliaments and the EP;
  - it simplifies the language, and consolidates the rulebook in a manageable form.

### I. The Draft Constitutional Treaty and the CFSP

2. As far as the CFSP is concerned, there are, on the one hand, a number of **major improvements**:
  - a) Provisions defining "principles and objectives" of EU external action (*Articles I-3 and Article III-188*);
  - b) Grouping of the relevant articles of the current Treaties, which cover the different aspects of EU external policy, under Title V (*External Action*) of Part Three (*The policies and functioning of the Union*);
  - c) The attribution of a legal personality to the Union (*Article I - 6*);
  - d) The suggested Union Minister for Foreign Affairs constitutes one of the major achievements in the field of the CFSP (*Article I - 27*), although as a "double-hatted" figure strongly linked to the Council, this means that the intergovernmental approach prevails.
3. However, there are also **very relevant shortcomings**:
  - a) Though formally removing the artificial 'pillar' structure, the Draft Constitutional Treaty has failed in fully applying to the CFSP the Community's procedures;
  - b) Instead of an improved external representation of the Union by one person, supported by a single administration within the Commission and a single diplomatic service, as proposed by the EP, the current wording of the Draft Constitutional Treaty brings a greater risk of confusion. Regarding the administration supporting the Foreign Minister



(Art III 192), it is of utmost importance that it is established within the Commission, while it works on CFSP matters as mandated by the Council;

- c) The Draft Constitutional Treaty has particularly failed as far as progress in decision-making in the field of the CFSP is concerned (*Article I - 39 par. 7, Art III 9*). At a minimum, the decision by the European Council to move certain matters to QMV should be taken by QMV or Super QMV and not as currently proposed by unanimity;
- d) *Article I -43* extends the scope of enhanced co-operation in the field of the CFSP, subject to the limits and procedures laid down in this Article and in *Articles III - 318 to III - 325*.

## II. Special Reference to the ESDP

- 4. In the field of the ESDP, the envisaged provisions (*Article I - 40*) contain a certain number of **major improvements**, although Defence, as such, continues to be a national issue and NATO remains the basis of the collective defence of EU Member States:
  - a) Updating of the Petersberg tasks (par. 1);
  - b) Multinational forces set up by Member States available to the ESDP (par. 3-1);
  - c) Compromise to progressively improving military capabilities and setting up of a European Armaments, Research and Military Capabilities Agency (par. 3 -2);
  - d) European decisions as a new instrument for the implementation of the ESDP (par. 4);
  - e) Execution of an ESDP task, within the Union framework, for a group of Member States (par. 5 & Article III - 206);
  - f) Structured co-operation between Member States within the Union framework with a view to the most demanding tasks (par. 6 & Article III - 208);
  - g) Closer cooperation on mutual defence between Member States until the European Council has decided a common defence (par. 7& Article III - 209);
  - h) Solidarity Clause for mutual assistance to prevent terrorist threats or terrorist attacks or in the event of a disaster (Article I - 42 & Article III - 226).

## III. The Draft Constitutional Treaty and the Financing of the CFSP/ESDP

- 5. The EP suggested a revision of Article 28 of the TEU, in the sense that the joint costs for military operations within the framework of ESDP should be funded from the Community budget (this already occurs in the civil sphere in the case of police operations) and not from a subsidiary budget of the Member States, as provided for at present. Unfortunately, the current wording of *Article III - 210* does not correspond to the recommendations of the EP. The same must be said about the start-up fund made up of Member States' contributions for preparatory activities for the renewed Petersberg Tasks referred to in Article I - 40 par. 1.

## IV. Some Remarks on the Parliamentary Dimension of CFSP/ESDP

- 6. The current wording of *Article I-39 par. 6* of the Draft Constitutional Treaty confirms the existing "status quo" and is therefore totally unsatisfactory. The same applies to the parliamentary dimension of ESDP which at least is explicitly referred to, for the first time and with exactly the same wording "mutatis mutandis", in *Article I-40 par. 8* of the Draft

## CONCLUSIONS

The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

1. Stresses that although improvements are necessary, the existing Draft Constitutional Treaty as a whole is an important step forward and should therefore be supported as part of the process towards an integrated Europe;
2. Asks therefore that the forthcoming IGC considers the Draft Constitutional Treaty as the only basis for the negotiations, and that it respects in general the impressive work carried out by the Convention, thereby avoiding a situation where officials and diplomats could put into question the legitimacy of the future Constitutional Treaty by making void the political compromises already agreed upon by Members of elected Governments and Parliaments of the Union;
3. Regrets that in spite of the lessons to be learnt from the war in Iraq, the Draft Constitutional Treaty presents some of its most striking shortcomings precisely in the field of the CFSP, in particular confirming unanimity plus constructive abstention instead of QMV as the general rule for the CFSP, by failing to fully extend the Community's procedures to the CFSP, maintaining confusion in the field of the external representation of the CFSP, and by recommending totally insufficient democratic parliamentary accountability;
4. Stresses that while the establishment of a Foreign Minister of the Union is a major achievement of the Convention, it is indispensable that the Foreign Minister is supported by a single administration within the Commission which works as mandated by the Council in CFSP;
5. Considers that, despite encouraging achievements in the field of ESDP, remarkable shortcomings also remain due to the fact that, on the one hand, unanimity continues to be the rule and that, on the other hand, parliamentary dimension of both CFSP and ESDP remains one of their current main weaknesses;
6. Recommends the IGC to improve the ESDP dimension of the Union by establishing that:
  - (a) Crisis management operations within the context of the renewed Petersberg tasks, as well as all other operations with a military dimension, should be decided by the Council only after consultation of the EP;
  - (b) the EP should be responsible for approving the mandate and objectives of any crisis management operation under the ESDP and would be responsible for the common costs incurred by EU joint actions;

7. Welcomes this proposal of the Convention to set up an European Armaments Research and Military Capabilities Agency; is of the opinion that its primary function should be to coordinate large-scale common projects and that the Commission and the European Parliament should be closely involved in all aspects of implementation;
8. Stresses that the current wording of *Article III - 210* of the Draft Constitutional Treaty on the financial provisions for the CFSP/ESDP should be entirely revised by the IGC bearing in mind that the EP could not accept that the Council has the last word in the sphere of the CFSP and advocates co-decision for the budgetary procedure also in this field;
9. Recalls to the IGC that the current wording of *Article I-39 par. 6* of the Draft Constitutional Treaty on the parliamentary dimension of both CFSP/ESDP confirms the existing "statu quo" and is therefore unsatisfactory, and that the European Parliament asks for consultation, including in particular for Strategic Guidelines and European decisions;
10. Proposes a closer relationship between the EP and the national parliaments taking into account possible upcoming interparliamentary agreements on CFSP/ESDP issues by convening on regular basis, through its AFET Committee, a Joint Parliamentary Committee assembling the Chairmen of the Committees responsible for foreign affairs and defence of the national parliaments of the Members States and of the applicant countries, the European Parliament as well as other Members of the various committees on the basis of equal representation for the EP. Parliaments of the non-EU NATO members together with the Parliamentary Assembly of NATO would also be involved as observers, under certain conditions. On the contrary, the WEU Parliamentary Assembly should be discontinued.

2 September 2003

## **OPINION OF THE COMMITTEE ON BUDGETS**

for the Committee on Constitutional Affairs

on the draft Treaty establishing a Constitution for Europe and the European Parliament's opinion on the convening of the Intergovernmental Conference (IGC)  
(11047/2003 – C5-0340/2003 – 2003/0902(CNS))

Draftsman: Terence Wynn

### **PROCEDURE**

The Committee on Budgets appointed Terence Wynn draftsman at its meeting of 10 July 2003.

It considered the draft opinion at its meeting of 1 September 2003.

At this meeting it adopted the following conclusions unanimously.

The following were present for the vote Terence Wynn (chairman), Reimer Böge (vice-chairman), Anne Elisabet Jensen (vice-chairman), Franz Turchi (vice-chairman), Terence Wynn (draftsman), Kathalijne Maria Buitenweg, Den Dover, James E.M. Elles, Anne-Karin Glase (for Ioannis Averoff), Catherine Guy-Quint, Wolfgang Ilgenfritz, Wilfried Kuckelkorn, Jan Mulder, Joaquim Píscarreta, Giovanni Pittella, Paul Rübig (for Markus Ferber), Esko Olavi Seppänen (for Chantal Cauquil), Per Stenmarck, Rijk van Dam (for Michel Raymond), Kyösti Tapio Virrankoski, Ralf Walter and Brigitte Wenzel-Perillo.

**Budgetary aspects**1. Stresses that the constructive cooperation between the committee on budgets and EP's representatives in the Praesidium, has allowed the improvement of the Convention's initial position towards budgetary matters.

2. Considers that the principles stated in part I of the draft constitution generally maintain the status quo in terms of balance, as granted by the existing Treaty to the Parliament as arm of the Budgetary Authority, in order to guarantee a democratic control over EU expenditure; Considers that the procedure for the multiannual financial framework, foreseen by art. III-308, should not weaken EP involvement in agreeing the financial perspectives: considers also that some progress has been achieved in particular concerning the classification of expenditure, the simplification of the budgetary procedure and the promotion of the Financial Regulation to the status of a Community law.
3. However, points out that the contents of part III of the draft constitution could have been improved in order to give more clarity and transparency to the text; is particularly concerned about the following issues:

Concerning the financial framework

- a reference to the flexibility mechanism should be set up in order to allow unforeseen circumstances and to compensate the new rigidity introduced in the revision process (part III - article 308, para 2);
- a reference to the cooperation developed between the Parliament and the Council over the last decade should be clearly formalised (part III, article 308, para 5).

Concerning the budgetary procedure

- the shortened deadline for Parliament's second reading is not practical and should be maintained at 45 days or else the deadline of 21 days foreseen for the conciliation, should be shortened (part III, article 310, para 4);
- the Parliament should keep the fundamental right to confirm or modify its first reading amendment in order to avoid a significant reduction of powers towards the current situation (part III, article 310, para 8, 1<sup>st</sup> part);
- the Parliament should also maintain the right to reject the initial draft budget of the Council and not only the joint text resulting from the conciliation (part III, article 310, para 8, second part).

Concerning own resources

- the Convention has failed to improve the transparency of the current system;
  - the Parliament should be able to approve Council's law by laying down the ceiling of the Union's own resources of which the detailed arrangements should be ruled by codecision.
5. Is aware that most of the remaining improvements aim at clarifying the text without actually changing the balance of the Budgetary powers; therefore, is determined to formulate its requests in the context of the IGC in order to complete the outcome of the Convention and to provide the enlarged Union with more democratic, transparent and workable methods to set up its revenues and expenditure.

8 September 2003

## **OPINION OF THE COMMITTEE ON BUDGETARY CONTROL**

for the Committee on Constitutional Affairs

on the draft Treaty establishing a Constitution for Europe and the European Parliament's opinion on the convening of the Intergovernmental Conference (IGC)  
(11047/2003 – C5-0340/2003 – 2003/0902(CNS))

Draftsman: Diemut R. Theato

## **PROCEDURE**

The Committee on Budgetary Control appointed Diemut R. Theato draftsman at its meeting of 30 June 2003.

It considered the draft opinion at its meeting of 8 September 2003.

At the last meeting it adopted the following conclusions by 12 votes to 1.

The following were present for the vote Diemut R. Theato (chairman and draftsman), Paulo Casaca (vice-chairman), María Antonia Avilés Perea, Juan José Bayona de Perogordo, Rijk van Dam, Michiel van Hulten, Helmut Kuhne, Brigitte Langenhagen, John Joseph McCartin (for Gabriele Stauner), Heide Rühle (for Bart Staes), Francisca Sauquillo Pérez del Arco (for Herbert Bösch), Michel Ange Scarbonchi and Ole Sorensen.

## SHORT JUSTIFICATION

While it considers the draft constitutional Treaty to be an improvement on the existing Treaties, the Committee on Budgetary Control believes that two clarifications it considers essential could be usefully included, namely that:

- Parliament, as a budgetary authority, has powers of control over the implementation of the budget; this should be spelled out in the budgetary and financial principles so as to ensure that the general public is aware of the existence of such democratic control;
- Parliament is also involved in action to combat fraud affecting the Community budget; it has on several occasions called for the establishment of a European Public Prosecutor's Office to combat cross-border fraud affecting the European Union's financial interests; Article III.170(1) in Section 4 (Judicial Cooperation in Criminal Matters - Article III.170) stipulates that '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'.

Parliament's delegation to the Convention unanimously adopted an amendment replacing the unanimity procedure within Council with the legislative procedure (qualified majority). This proposal was made with a view to setting up the European Public Prosecutor's Office at the earliest opportunity, given that the secondary legislation required for the Office to operate would take a long time to introduce.

## CONCLUSIONS

The Committee on Budgetary Control calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

### Shortcomings of the draft Constitution

1. Title IV: The Union's Institutions
2. This institutional framework comprises:
  - The European Parliament,
  - The European Council,
  - The Council of Ministers,
  - The European Commission,
  - The Court of Justice,
  - The Court of Auditors

### Aspects requiring further monitoring

Article 30: The Court of Auditors

2. It shall examine the accounts of all Union revenue and expenditure and ***verify that sound financial practices are in place.***
3. Article 1-55 of Title VII (The Union's Finances) of the current draft constitutional treaty:  
***'The European Parliament, acting on a recommendation of the Council, shall give discharge to the European Institutions and agencies in respect of the implementation of the budget.'***

#### JUDICIAL COOPERATION IN CRIMINAL MATTERS

4. It should also consider the spirit of the amendment tabled by Parliament's delegation to the Convention, concerning Article III.175:
  1. In order to combat serious crimes having a cross-border dimension, as well as illegal activities affecting the interests of the Union, ***the European Parliament and the Council shall, under the legislative procedure,*** adopt a European law creating a European Public Prosecutor's Office from Eurojust.
  2. The European Public Prosecutor's Office shall be responsible for investigating, prosecuting and bringing to justice, where appropriate in liaison with Europol, the perpetrators 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.  
  
***The Council, acting unanimously, may extend the responsibilities of the European Public Prosecutor's Office to cover other crimes and offences.***
  3. The 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 in the performance of its functions.

#### IMPLEMENTATION OF THE BUDGET AND DISCHARGE

##### Article III-315

5. The European Parliament, on a recommendation from the Council of Ministers, shall give a discharge to the ***European Institutions and agencies*** 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.

6. Before giving a discharge to the *Institutions and agencies*, 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 *representatives of the Institutions or agencies* give evidence with regard to the execution of expenditure or the operation of financial control systems. The *Institutions and agencies* shall submit any necessary information to the European Parliament.

2 September 2003

## **OPINION OF THE COMMITTEE ON CITIZENS' FREEDOMS AND RIGHTS, JUSTICE AND HOME AFFAIRS**

for the Committee on Constitutional Affairs

on the draft Treaty establishing a Constitution for Europe and the European Parliament's  
opinion on the convening of the Intergovernmental Conference (IGC)  
(11047/2003 - C5-0340/2003 - 2003/0902(CNS))

Draftsman: Elena Ornella Paciotti

### **PROCEDURE**

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Elena Ornella Paciotti draftsman at its meeting of 9 July 2003.

It considered the draft opinion at its meetings of 10 July 2003 and 1 September 2003.

At the last meeting it adopted the following conclusions unanimously.

The following were present for the vote: Giacomo Santini (acting chairman), Elena Ornella Paciotti (draftsman), Giuseppe Brienza, Marco Cappato (for Mario Borghezio), Carlos Coelho, Giuseppe Di Lello Finuoli, Monica Frassoni (for Alima Boumediene-Thiery), Adeline Hazan, Pierre Jonckheer, Margot Keßler, Eva Klamt, Baroness Ludford, Bernd Posselt, Martine Roure, Heide Rühle, Ole Sørensen (for Francesco Rutelli), Anna Terrón i Cusí, Maurizio Turco and Christian Ulrik von Boetticher.

## SHORT JUSTIFICATION

In its opinion of 11 April 2001 the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs called for, inter alia:

- a. full integration of the Charter of Fundamental Rights of the European Union in the Treaties, in order to make it legally binding and enhance Union citizenship;
- b. substantial simplification of the legislative and institutional framework through the incorporation in the Community sphere of judicial and police cooperation in criminal matters alongside judicial cooperation in civil matters and measures concerning the movement of persons;
- c. greater democracy and effectiveness in decision-making procedures by transferring to the codecision procedure and qualified majority voting all measures concerning the creation of the area of freedom, security and justice (AFSJ);
- d. full application in the Union of the principle of the rule of law (Article 6 of the TEU), by means of:
  - recognition of the full jurisdiction of the European Court of Justice in respect of all measures relating to the creation of the area of freedom, security and justice (AFSJ);
  - the recognition, for any natural or legal person, of the right of referral to the Court of Justice in the event of a violation of their fundamental rights caused by actions on the part of Union institutions or bodies;
  - the introduction of appropriate jurisdictional guarantees with regard to the work of the future European Public Prosecutor's Office competent to bring proceedings in the area of safeguarding the Community's financial interests or in other cases envisaged in the Treaties;
  - recognition, for the authority referred to in Article 286 of the TEC and for the Ombudsman, of the right of referral to the Court in the spheres of competence assigned to them;
- e. renunciation by the Member States of their right of legislative initiative, or at least its reduction, in order to avoid the proliferation and inconsistency of initiatives;
- f. the establishment of common European principles on immigration, asylum measures and the protection of displaced persons and refugees;
- g. the incorporation of EUROPOL in the Union's institutional framework, in order to ensure appropriate monitoring by the European Parliament and jurisdictional control by the European Court of Justice.

The European Parliament to a great extent took up these requests in its resolution of 29

November 2001.

## CONCLUSIONS

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

1. Expresses satisfaction at the major progress made in the draft Treaty towards creating an area of freedom, security and justice: it is precisely in this sphere that the draft achieves the most advanced results and establishes a supranational legal area capable of actually guaranteeing the fundamental rights of European citizens;
2. Welcomes the provisions increasing transparency in the Union's legislative process and developing democratic participation in the Union, in particular those relating to the right of initiative for the people; regrets, however, that the provisions of Title VI ('The democratic life of the Union') refer solely to Union 'citizens' and not also to long-term residents, and that the Convention made no further progress towards recognising the right to be consulted of civil society and the social partners, at least in their respective fields of activity;
3. Regrets that the Commission does not have an exclusive right of initiative and believes that the fact that it shares the right of initiative with one quarter of the Member States may lead to a proliferation of potentially conflicting initiatives, but considers that the provisions concerning collaboration between national parliaments and the European Parliament contribute to strengthening integration between national and European levels in building an area of freedom, security and justice;
4. Notes that the requests made by the European Parliament have been almost completely satisfied, in particular:
  - (a) the Charter of Fundamental Rights has been almost fully incorporated in the draft European Constitution, albeit with a number of unnecessary additional phrases of little legal value;
  - (b) the institutional and legislative framework has been substantially simplified, the Union's decision-making procedures have been reduced to the essential and the relevant legal instruments have been defined;
  - (c) the Community method has been extended to judicial and police cooperation in criminal matters and hence a large proportion of measures concerning the AFSJ have been transferred to the codecision procedure and qualified majority voting;
  - (d) the jurisdiction of the Court of Justice has been recognised for all measures concerning the application of Union law and the right of referral to the Court of Justice has been extended in cases of violation of the fundamental rights recognised by the Union;
  - (e) policies concerning immigration, asylum, border controls and visas have become

common policies and the Constitution establishes the principle of solidarity and the fair distribution of responsibilities as a general rule;

- (f) Europol and Eurojust are fully integrated in the Union's institutional framework, so as to guarantee respect for the Charter of Fundamental Rights, jurisdictional control by the Court of Justice and parliamentary scrutiny;
  - (g) provision is made for the legal basis for creating a European Public Prosecutor's Office to combat the most serious forms of crime, as well as Community fraud;
5. Regrets, nevertheless, the persisting restrictions on the full adoption of the codecision procedure and qualified majority voting for all measures concerning the area of freedom, security and justice; regrets, in particular, the retention of unanimous voting - a requirement with a paralysing effect in a union of 25 States - for the establishment of the European Public Prosecutor's Office (Article III-175), for judicial cooperation in the field of family law (Article III-170), for the identification of new areas of judicial cooperation in criminal matters (Article III-172) and for the adoption of other instruments of judicial cooperation in criminal matters (Article III-171) and police cooperation (Articles III-176, III-178);
6. Regrets the limits imposed on the competences of the Court of Justice, with particular reference to citizens' access to the Court.

2 September 2003

## **OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS**

for the Committee on Constitutional Affairs

on the draft Treaty establishing a Constitution for Europe and the European Parliament's opinion on the convening of the Intergovernmental Conference (IGC)  
(11047/2003 - C5-0340/2003 - 2003/0902(CNS))

Draftsman: Christa Randzio-Plath

### **PROCEDURE**

The Committee on Economic and Monetary Affairs appointed Christa Randzio-Plath draftsman at its meeting of 2 July 2003.

It considered the draft opinion at its meetings of 8 July 2003 and 2 September 2003.

At the latter meeting it adopted the following conclusions by 39 votes with 3 abstentions.

The following were present for the vote Christa Randzio-Plath (chairman and draftsman), Philippe A.R. Herzog (vice-chairman), and John Purvis (vice-chairman), , Pervenche Berès, Roberto Felice Bigliardo, Hans Blokland, Jean-Louis Bourlanges (for Brice Hortefeux), Renato Brunetta, Richard Corbett (for David W. Martin), Benedetto Della Vedova, Bert Doorn (for Mónica Ridruejo), Manuel António dos Santos (for Helena Torres Marques), Harald Ettl (for Hans Udo Bullmann), Jonathan Evans, Ingo Friedrich, Carles-Alfred Gasòliba i Böhm, Robert Goebbels, Lisbeth Grönfeldt Bergman, Mary Honeyball, Christopher Huhne, Othmar Karas, Christoph Werner Konrad, Wilfried Kuckelkorn (for a full member to be nominated), Werner Langen (for Hans-Peter Mayer), Alain Lipietz, Astrid Lulling, Thomas Mann (for Ioannis Marinos), Helmuth Markov (for Armonia Bordes), Peter Michael Mombaur (Piia-Noora Kauppi), Gérard Onesta (for Miquel Mayol i Raynal pursuant to Rule 153(2)), Ioannis Patakis, Fernando Pérez Royo, José Javier Pomés Ruiz (for José Manuel García-Margallo y Marfil), Alexander Radwan, Bernhard Rapkay, Karin Riis-Jørgensen, Olle Schmidt, Peter William Skinner, Charles Tannock (for Generoso Andria), Bruno Trentin, Ieke van den Burg (for Giorgos Katiforis) and Theresa Villiers.

## CONCLUSIONS

The Committee on Economic and Monetary Affairs calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

### **The Draft Treaty and the Lamfalussy Procedure**

1. Recalls that the European Parliament set out a number of conditions for agreeing to the Lamfalussy Process; welcomes therefore Article I-35 as it corresponds to the demands made by Parliament; considers however that the delimitation between Articles I-35 and I-36 need to better defined so that it is made clear that Level II legislation within the Lamfalussy framework is to be considered delegated regulations; considers that it is necessary to conclude an Inter Institutional Agreement before the entry into force of the Treaty in order to define a clear framework for the application of the two Articles and to manage the transition from today's Comitology system, in particular in order to ensure that the Level II *acquis* is properly transferred to the new system;

### **Section III**

2. Welcomes the great progress towards increasing the number of areas of legislative competence subject to the co-decision procedure, but recalls that many key European Policies are still only subject to consultation, in particular on capital and payments (III-43.3), measures with regard to capital movements and payments, as regards prevention of and fight against organised crime, terrorism and trafficking in human beings, competition policy (III-49 and III-55), taxation (III-59.1, III-59.2 and III-60), approximation of legislation (III-61), and monetary policy (III-75.2 and III.90.2); considers that co-decision should be extended to also these areas; deplores especially the move from cooperation procedure to consultation of the European Parliament in Articles III 71, 72 and 75;
3. Calls for application of the codecision procedure in the field of competition policy wherever the law is affected; calls further for application of the codecision procedure in the field of taxation in so far as there is immediate single market relevance;
4. Points out that there still are a number of areas where the Council or the Commission can adopt European regulations and decisions where no consultation of the European Parliament is foreseen, e.g. the establishment of the Internal Market (III-11.3), the free movement of workers (III-15.3.d) , customs union (article III-36), capital and payments (III-45) and competition policy (III-52.3 and III-53.3.e); recalls that decisions taken on the basis of these articles may have a significant economic impact, and as a consequence, Parliament should at least be consulted;
5. Considers that the introduction of a Minister for Economic Affairs, modelled on the creation of the Minister for Foreign Affairs, would have enabled the Union, and in particular the euro zone, to make the qualitative leap that it so badly needs to ensure that the economic union works alongside the monetary union and that Europe gives itself the means to implement the Lisbon strategy;
6. Deplores the fact that the Convention has not in the case of the broad economic policy guidelines made provision in Article III-85 for the same arrangement as that proposed for

safeguarding the euro's place in the international monetary system with, in particular, the Commission power of proposal;

### **Protocol on the Eurogroup**

7. Considers that the proposed protocol is unnecessary as the Group is already meeting informally; calls for the designation of a single representative of the euro area to ensure that the eurogroup can work efficiently to achieve better coordination of economic and employment policies; calls for a proposal on how to reach the best formulation for this institutional role, one possibility being to formalise it in the person of a vice-president of the Commission who would also need to be the Commissioner responsible for Economic and Monetary Affairs, entrusted with the power to act as euro area representative; considers that a provision to this effect should be incorporated in the future Constitutional Treaty;
8. Welcomes the fact that the draft Constitution provides that only the Member States of the euro zone will have the right to vote on adoption of the euro-zone part of the broad economic policy guidelines; regrets, however, that this provision is not being extended to all measures concerning the multilateral surveillance of the euro-zone countries, and to all measures concerning excessive public deficits; wishes this restriction of voting rights to euro-zone Member States alone also to apply to the decision to bring a new member into the euro zone;
9. Calls for an 'enabling clause' in the Treaty that provides for a legal base for prudential supervision of large pan-European financial entities at European level, be it by modifying Article 105(6) of the EC Treaty or by inserting a new chapter to allow for the possible future creation of one or more European financial services supervisory agencies.



2 September 2003

## **OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET**

for the Committee on Constitutional Affairs

on the draft Treaty establishing a Constitution for Europe and the European Parliament's opinion on the convening of the Intergovernmental Conference (IGC)  
(11047/2003 – C5-0340/2003 – 2003/0902(CNS))

Draftsman: Willi Rothley

### **PROCEDURE**

The Committee on Legal Affairs and the Internal Market appointed Willi Rothley draftsman at its meeting of 17 June 2003.

It considered the draft opinion at its meetings of 8 July 2003 and 1 September 2003.

At the latter meeting it adopted the following conclusions by 21 votes to 0, with 1 abstention.

The following were present for the vote: Giuseppe Gargani (chairman), Willi Rothley (vice-chairman and draftsman), Ioannis Koukiadis (vice-chairman), Ward Beysen, Bert Doorn, Raina A. Mercedes Echerer (for Ulla Maija Aaltonen), Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, José María Gil-Robles Gil-Delgado (without taking part in the vote, as co-rapporteur for the committee responsible), Malcolm Harbour, Lord Inglewood, Hans Karlsson (for Maria Berger), Piia-Noora Kauppi (for Kurt Lechner), Klaus-Heiner Lehne, Sir Neil MacCormick, Manuel Medina Ortega, Anne-Marie Schaffner, Astrid Thors (for Toine Manders), Marianne L.P. Thyssen, Diana Wallis and Joachim Wuermeling.

## SHORT JUSTIFICATION

The committee's discussions on the working documents on the Convention<sup>11</sup> that were submitted by your draftsman have produced broad support for the following views.

1. The Convention has not considered the issues of changes to primary legislation which must be resolved in connection with adoption of the Members' Statute<sup>12</sup>. The Intergovernmental Conference which is now to be convened provides an opportunity to repeal Articles 8, 9 and 10 of the Protocol on Privileges and Immunities and Article 4 (1) and (2) of the Act on direct elections, so that the Members' Statute, after the Council has given its approval, can enter into force with all its provisions together with the Union Constitution.

### 2. Individual judicial protection

Actions for annulment by natural or legal persons against Community acts are admissible under European jurisdiction only if such persons are *directly and individually* concerned (EC Treaty, Article 230, fourth paragraph). The *individual-concern* condition is met, according to European case law, where '*the measure in question (here, a regulation) affects specific natural or legal persons by reason of certain attributes peculiar to them, or by reason of a factual situation which differentiates them from all other persons and distinguishes them individually in the same way as the addressee*', or, in other words, where the measure has the character of a decision in respect of the addressee<sup>13</sup>. This restrictive interpretation has often been regarded as '*creating a serious gap in the system of judicial remedies established by the EC Treaty*'<sup>14</sup>. Today it is no longer contested that judicial protection must be guaranteed in these cases as well.

Article I-28 Paragraph 1 of the Convention's draft constitution provides as follows:

'Member States shall provide rights of appeal sufficient to ensure effective legal protection in the field of Union law.'

Thus it is for the Member States to establish a system of legal remedies and procedures which ensure respect for the right to effective judicial protection. This should be set out clearly in an explanatory protocol when the Treaty is adopted.

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<sup>11</sup> - Working document on reforms to the European Court of Justice sought in the context of the Convention Part 1: term of office and appointment of judges, accession of the Union to the European Convention on Human Rights, judicial protection against measures by agencies (PE 327.258); Part 2: Designation of judicial bodies and individual judicial protection (PE 327.258)

- Working document on reforms relating to the Statute for Members sought in the context of the Convention (PE 327.260)

<sup>12</sup> Minutes of the part-session of 4 June 2003, texts adopted by Parliament (2003) 0241, in particular Paragraph 3 of the resolution

<sup>13</sup> ECJ, Judgment of 25.7.2002, Case C-50/00 P, Reports of Cases 2002, I-6719 (para. 36)

<sup>14</sup> Opinion in Case C-50/00 P, Reports of Cases 2002, I-6681 (para. 2)

## **CONCLUSIONS**

The Committee on Legal Affairs and the Internal Market calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

1. Paragraph 23 a (new)

- Considers that the Intergovernmental Conference should adopt a decision on the repeal, upon entry into force of the Members' Statute adopted by the European Parliament on 4 June 2003, of Articles 8, 9 and 10 of the Protocol on Privileges and Immunities and of Article 4(1) and (2) of the Act on direct elections.

2. Paragraph 23 b (new)

- Considers that the provisions of Article I-28 (1)(2) should be complemented by an explanatory protocol when the Constitution is adopted, in which the Member States state their intention to establish a system of legal remedies and procedures which ensure respect for the right to effective judicial protection against generally applicable EU legislation.

8 September 2003

## **OPINION OF THE COMMITTEE ON INDUSTRY, EXTERNAL TRADE, RESEARCH AND ENERGY**

for the Committee on Constitutional Affairs

on the Draft Treaty establishing a Constitution for Europe and the European Parliament's  
opinion on the convening of the Intergovernmental Conference (IGC)  
(11047/2003 – C5-0340/2003 – 2003/0902(CNS))

Draftsman: Luis Berenguer Fuster

### **PROCEDURE**

The Committee on Industry, External Trade, Research and Energy appointed Luis Berenguer Fuster, draftsman at its meeting of 10 July 2003.

It considered the draft opinion at its meeting of 25 August 2003 and 8 September 2003.

At the latter meeting it adopted the following amendments by 25 votes to 1, with 0 abstentions.

The following were present for the vote Willy C.E.H. De Clercq (acting chairman), Gordon J. Adam (for Luis Berenguer Fuster), Sir Robert Atkins, Ward Beysen (for Marco Cappato), Gérard Caudron, Giles Bryan Chichester, Dorette Corbey (for Massimo Carraro), Norbert Glante, Alfred Gomolka (for Guido Bodrato), Michel Hansenne, Roger Helmer (for Concepció Ferrer), Hans Karlsson, Dimitrios Koulourianos (for Konstantinos Alyssandrakis), Peter Liese (for Bashir Khanbhai), Rolf Linkohr, Hans-Peter Martin (for Harlem Désir), Bill Newton Dunn (for Nicholas Clegg), Angelika Niebler, Paolo Pastorelli, Samuli Pohjamo (for Colette Flesch), John Purvis, Bernhard Rapkay (for Erika Mann), Imelda Mary Read, Esko Olavi Seppänen, Alejo Vidal-Quadras Roca, Olga Zrihen Zaari.

## CONCLUSIONS

The Chairman of the Committee on Industry, External Trade, Research and Energy suggests that the following points, after being approved and possibly amended by the Committee, be included in the motion for a resolution of the lead committee:

### Common Commercial Policy (CCP)

1. Calls on the next Intergovernmental Conference to consider improving the competitiveness of the European Union as a key element in the promotion of growth and the creation of employment, which will result in higher levels of prosperity and wellbeing for all Europeans.

2. Expresses satisfaction with a number of modifications proposed by the Convention to the current TEC articles on the CCP, notably:

a. the fact that CCP falls in the exclusive competence of the Union, implying equal participation of all institutions of the Union in the decision-making and implementation of this Union policy,

b. the application of the legislative procedure (ie. QMV and co-decision with the EP) to the autonomous legislative proposals seeking to implement the CCP,

c. the inclusion of foreign direct investment in the scope of CCP and trade agreements concerning trade in services and the commercial aspects of intellectual property in the autonomous proposals,

d. the fact that the CCP will be conducted in the context of the principles and objectives of the Union's external action;

3. Notes with concern the retention of certain provisions of the Treaty of Nice concerning international trade agreements, which should not be altered so that trade negotiations do not undermine EU internal rules in those areas:

a. maintaining the unanimity rule for the negotiation and conclusion of agreements concerning the movement of persons and the commercial aspects of intellectual property rights and cultural and audio-visual services,

b. the retention of exemptions to the Union's exclusive competence agreements that concern trade in cultural and audio-visual services, educational services and social and human health services, which fall within shared competence and thus will require ratification by at least 26 bodies (ie. Member States and EP),

c. the possible exclusion of the EP from any legal involvement in these controversial areas of decision-making, relegating thus an institution of the Union, the EP, to the level of an intergovernmental consultative committee when regular reporting to both bodies by the Commission is held,

### International agreements concerning CCP

4. Welcomes the recognition by the Convention of the exclusive competence of the Union in areas of explicit external competence (such as CCP, monetary policy, research, environment, development co-operation, etc.) but also implicit competence when the conclusion of an agreement is necessary to achieve a Union objective;

5. Is however puzzled by the procedural article of the Convention (article III-227), which is unclear, complex, and possibly inconsistent with Part I of the Constitutional Treaty endorsed by the Thessaloniki European Council; calls upon the forthcoming IGC to clarify, in the case of the CCP:

a. whether the EP's consent (assent) as laid down in Article III-227(7)(e) applies only to the autonomous legislative proposals or also to the other proposals referred to in Article III-217(4),

b. whether or not reference to the avoidance of prejudicing the 'specific provisions laid down' in the relevant procedural article of the CCP (as referred to in Art. III-227(1)), namely unanimity by the Council for a host of areas, is consistent with the consultation procedure granted to the EP by Article III-227 (7) second subparagraph;

c. whether in the cases of horizontal agreements (such as competition, public procurement or trade in non-organic goods) the EP's consent or simple consultation would be required;

6. Is of the view that in the areas such as research and technological development and space or development co-operation, where the shared competence applies but the legislative procedure (co-decision and QMV) also applies, there should be clarification over the question of whether or not the EP's consent (assent) would be required prior to concluding an agreement;

7. Believes that reference to the provision laid down in article III-227(11) by which the EP 'shall be immediately and fully informed at all stages of the procedure' is empty of content and further increases the democratic deficit in this sensitive field in need of democratic legitimacy; requests therefore the forthcoming IGC to concretely define the role of the EP in all stages leading to the conclusion of an international agreement;

#### Energy and EURATOM Treaty

8. Notes the proposal by the Convention to provide for a Union policy on energy, having a legal base of its own that provides for co-decision and QMV, falling in the shared competence area, and aiming at ensuring the efficient functioning of the energy market and security of energy supply while promoting energy efficiency and renewables;

9. Is of the view that clarification of the scope and application is needed for the provision of the relevant article (III-157(2) second subparagraph), which borrows from the environment chapter the unanimity rule for the Council and consultation for the EP, when treating the case of "a Member State's choice between different energy sources and the general structure of its energy supply";

10. Takes the view that energy policy will, to an increasing extent, be a function of climate policy and calls therefore for climate policy to be given constitutional status by incorporating the following sentence in Article III-157:

1a. to reduce greenhouse gas emissions in accordance with the requirements of climate policy.

11. Is rather bewildered by the opting of the Convention to keep the Euratom Treaty as a separate Treaty, slightly amended by a Protocol annexed to Part III of the Constitutional Treaty; this opting of the Convention is not consistent with the position of the EP of 13 April 2000, stating that “a new consolidated chapter should be inserted in the EC Treaty; Parliament should be given a role in legislation on nuclear matters”;

12. Reiterates its view that the Euratom Treaty:

- a) being intergovernmental in nature may not conform to the Convention's logic,
- b) setting up its own common customs tariff may not be compatible with the Union's exclusive competence in this area,
- c) implementing its own external relations is not consistent with the Union's external action,
- d) retaining its own institutional provisions and separate actions and policies over research and co-operation may not be compatible with the logic of the Constitutional Treaty,
- e) negotiating and concluding its own international agreements may not be consistent with the procedure laid down by Art. III-227.

13. Calls upon the forthcoming IGC to clarify the above mentioned pitfalls and to transfer the research aspects of the EURATOM Treaty to the appropriate section of the Constitutional Treaty;

#### Research and technological development and space

14. Expresses satisfaction that the Convention has added a new article on a European space policy (III-155) to the current Treaty; however, is of the view that the Convention has missed a window of opportunity to amend the relevant articles and render this section more effective, reflecting the logic of the shared competence; hence the forthcoming IGC should address the following:

- a. basic research should be included,
- b. the protocol on the European Coal and Steel Community (ECSC) annexed to the Treaty of Nice should be re-examined in view of linking the newly created 'Research Fund for Coal and Steel' to the framework programme under the legislative procedure (i.e. co-decision and QMV),
- c. specific programmes and the framework programme need better co-ordination and a new

mechanism of incentives should be proposed transforming research financed by public funds (EC budget) into industrial products;

15. Calls upon the forthcoming IGC to introduce in the Constitutional Treaty the concept of a European Research Area, in which researchers, scientific knowledge and technologies move freely, and to allocate the resources necessary for the implementation of the European Research Area as a complement to the actions provided for in the multiannual framework programme.

#### Other policies

16. Expresses satisfaction that some issues of scope, means and procedure concerning the trans-European networks, economic financial and technical co-operation with third countries and section on industry have been dealt with by the Convention.



15 July 2003

## **OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND CONSUMER POLICY**

for the Committee on Constitutional Affairs

on the Draft Treaty establishing a Constitution for Europe and the European Parliament's  
opinion on the convening of the Intergovernmental Conference (IGC)  
(11047/2003 – C5-0340/2003 – 2003/0902 (CNS))

Draftsman: Caroline F. Jackson

### **PROCEDURE**

The Committee on the Environment, Public Health and Consumer Policy appointed Caroline F. Jackson draftsman at its meeting of 8 July 2003.

It considered the amendments at its meeting of 8 July 2003.

At this meeting it adopted the following conclusions by 23 votes to 1, with 1 abstention.

The following were present for the vote Alexander de Roo (acting chairman), Mauro Nobilia and Guido Sacconi (vice-chairmen), Jean-Louis Bernié, Hans Blokland, David Robert Bowe, John Bowis, Dorette Corbey, Robert Goodwill, Cristina Gutiérrez Cortines, Jutta D. Haug (for Bernd Lange), Marie Anne Isler Béguin, Hedwig Keppelhoff-Wiechert (for Marialiese Flemming), Eija-Riitta Anneli Korhola, Peter Liese, Jules Maaten, Minerva Melpomeni Malliori, Jorge Moreira da Silva, Rosemarie Müller, Ria G.H.C. Oomen-Ruijten, Dagmar Roth-Behrendt, María Sornosa Martínez, Astrid Thors, Peder Wachtmeister and Phillip Whitehead.

## CONCLUSIONS

The Committee on the Environment, Public Health and Consumer Policy calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

### Paragraph 1

1. Welcomes the fact that both the Union's objective of sustainable development and the principle of environmental integration were finally restored in the draft Constitution and supports Commissioner Wallstrom's proposal to add a Protocol on Sustainable Development to the future Constitution;

### Paragraph 2

2. Believes that Part III of the draft Constitution on the Policies of the Union needs to be updated and made consistent with the principle of sustainable development, especially in the field of agriculture, cohesion, transport and trade policies; moreover, stresses that it is crucial that all environmental measures, including those of fiscal nature and land use, are to be adopted by qualified majority voting in the Council pursuant to the co-decision procedure with the Parliament (Art. III-125, part.2) to allow the EU to deal with new environmental challenges;

### Paragraph 3

3. Underlines the importance of the accountability of the EU institutions to the EU's citizens and the need for access to the European courts for citizens and their organisations, especially in the environmental field in line with the Aarhus UN-ECE convention.

8 September 2003

## **OPINION OF THE COMMITTEE ON AGRICULTURE AND RURAL DEVELOPMENT**

for the Committee on Constitutional Affairs

on the Draft Treaty establishing a Constitution for Europe and the European Parliament's opinion on the convening of the Intergovernmental Conference (IGC)

Draftsman: Joseph Daul

### **PROCEDURE**

The Committee on Agriculture and Rural Development appointed Joseph Daul draftsman at its meeting of 10 July 2003.

It considered the draft opinion at its meetings of 10 July 2003 and 8 September 2003.

At the last meeting it adopted the following conclusions unanimously.

The following were present for the vote: Friedrich-Wilhelm Graefe zu Baringdorf (chairman), Albert Jan Maat (vice-chairman), Lutz Goepel (for Joseph Daul, draftsman), Gordon J. Adam, Niels Busk, Ilda Figueiredo (for Christel Fiebiger), Willi Görlach, María Izquierdo Rojo, Salvador Jové Peres, Heinz Kindermann, Dimitrios Koulourianos, Astrid Lulling (for Elisabeth Jeggle), Véronique Mathieu, Xaver Mayer, Agnes Schierhuber and Eurig Wyn (for Danielle Auroi).

## SHORT JUSTIFICATION

1. The Committee on Agriculture considered Part III of the Draft Constitution with regard to the articles relating to the CAP. It welcomes the extension of the codecision procedure to this policy and the abandoning of the distinction between compulsory and non-compulsory expenditure. However, the committee feels that some articles of the Draft Constitution could be updated to take account of the development of the CAP since the adoption of the Treaty of Rome in 1957, while others require clarification so that the respective powers of each of the EU institutions are clearly defined.
2. The drafting of the Constitution should have provided the opportunity to separate agriculture from fisheries (**Article III-121**), given that there has been a common fisheries policy since 1976.
3. The committee also considers that the wording chosen to define the scope of the law and the framework law is sufficiently broad to enable an extensive application of codecision (**Article III-127**). It nevertheless remains to be seen how that provision will be applied in practice.

As this article relates to the objectives of the CAP, it is to be regretted that the Convention was not able to address the updating of these objectives, since **Article III-123** simply reproduces in full the wording used in the EC Treaty. The Committee on Agriculture proposes a rewording that takes into account the new orientations set out in the Mid-term Review on which Parliament adopted a position on 5 June 2003. Paragraph 1 of that article could be redrafted to read as follows:

*"1. The objectives of the common agricultural policy shall be:*

- a) to **support in the European Union multifunctional, environment-friendly and landscape-sensitive agriculture by promoting biological diversity, ensuring the rational development of agricultural production through judicious recourse to technical progress and encouraging** an optimum utilisation of the factors of production, in particular labour,*
- b) to ensure **comparable living conditions and a fair level of income for the agricultural and rural community, in particular by implementing a rural development policy and by increasing the individual earnings of those engaged in agriculture;***
- c) to **regulate and stabilise markets and prevent crises;***
- d) to assure the availability of supplies;*
- e) to ensure that supplies reach consumers at reasonable prices;*
- f) to **promote the quality and safety of agricultural products and foodstuffs.**"*

5. With regard to **Article III-124**, the Committee on Agriculture considers that the second sub-paragraph of paragraph 2 should be amplified in order to emphasise that Community preference is a key element of the CAP, which *"shall be limited to pursuit of the objectives set out in Article III-123, **including respect for Community preference, and shall exclude any discrimination between producers or consumers within the Union**".*
6. As a consequence of the extension of the codecision procedure to over 79 areas (including

agriculture), as compared to 34 previously, the simple consultation procedure that was the general rule for the CAP ceases to exist. Therefore, the matters which were subject to it, such as the fixing of prices, levies, aid and quantitative limitations, are now the sole competence of the Council, acting on a proposal from the Commission. The latter will draw up European regulations or decisions in respect of these measures. The Committee on Agriculture therefore proposes that **Paragraph 3 of Article 127** be redrafted to read as follows:

*"3. The European Parliament and the Council may delegate to the Commission, in accordance with Article 35, powers to enact laws and framework laws with regard to fixing prices, levies, aid and quantitative limitations... "*

Parliament or the Council will therefore be able to repeal the powers delegated to the Commission, within the time limit set by law, if they do not agree with the measures it has brought forward. That being the case, the same procedure should also apply to **Article III-126(2)**, regarding the granting of aid to agricultural enterprises:

*"2. The granting of aid may be authorised, in accordance with the procedure laid down in the third paragraph of Article III-127:*

- a) for the protection of enterprises handicapped by structural or natural conditions,*
- b) within the framework of economic development programmes*
- c) for rural development."*

7. Other minor adjustments are also required, such as deletion of the last paragraph of Article III-127 concerning inward processing, which is out of place in a constitution. Likewise, **Annex I** referred to in Article III-122, Paragraph 3 could include other traditional agricultural products such as salt. It must be possible for this annex to be revised in a more flexible manner than formal revision of the Constitution.

## CONCLUSIONS

The Committee on Agriculture and Rural Development calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

The Committee on Agriculture and Rural Development:

1. Welcomes the European Convention's proposal to extend the European Parliament's power of codecision to the common organisation of agricultural markets and the other provisions that are necessary in order to attain the objectives of the common agricultural policy; calls, however, for the remaining gaps in codecision in the agricultural sector, particularly in the second paragraph of Article III-126 and in Article III-127(3) to be closed in the course of the Intergovernmental Conference;
2. Calls, in this context, for it to be permissible in future for matters which previously were subject to simple consultation and which, under the provisions of the Convention's Draft Constitution on the agricultural sector, particularly Article III-127(3), are presently

regarded as being the subject of Council decisions or regulations, to be brought within the scope of the Commission's implementing powers only if such powers are delegated in advance by Parliament and the Council via a legislative act adopted by codecision;

3. Hopes that the objectives of the CAP will be updated to take account of the recent development of that policy and, in particular, its multifunctional role vis-à-vis farmers themselves, rural development, the environment and consumers; calls also for reference to be made in the Constitution to Community preference;
4. Hopes that it will be possible to update Annex I, listing the products covered by the CAP, via a more flexible procedure than formal revision of the Constitution, and that it will be supplemented, for example, to include salt produced using traditional methods;
5. Calls on the Intergovernmental Conference to adopt the European Convention's proposal to give the European Parliament broader budgetary powers by abolishing the existing distinction in budgetary matters between compulsory expenditure, which hitherto has chiefly related to the agricultural sector, and non-compulsory expenditure.

8 September 2003

## **OPINION OF THE COMMITTEE ON FISHERIES**

for the Committee on Constitutional Affairs

on the draft Treaty establishing a Constitution for Europe and the European Parliament's opinion on the convening of the Intergovernmental Conference (IGC)  
(11047/2003 - C5-0340/2003 - 2003/0902(CNS))

Draftsman: Struan Stevenson

## **PROCEDURE**

The Committee on Fisheries appointed Struan Stevenson draftsman at its meeting of 8 July 2003.

It considered the draft opinion at its meetings of 9 July and 8 September 2003.

At the last meeting it adopted the following conclusions by 7 votes to 1, with 2 abstentions.

The following were present for the vote: Struan Stevenson (chairman and draftsman), Brigitte Langenhagen (vice-chairman), Elspeth Attwooll, Ian Stewart Hudghton, Salvador Jové Peres, Carlos Lage, Giorgio Lisi, Ioannis Marinos, Manuel Pérez Álvarez and Daniel Varela Suanzes-Carpegna.

## CONCLUSIONS

The Committee on Fisheries calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

1. Considers that the common fisheries policy has evolved greatly over the last twenty years and that it now constitutes a fully-fledged sectoral Community policy with specific objectives;
2. Deplores the fact that the draft Constitution contains no section or group of separate provisions relating specifically to the common fisheries and aquaculture policy;
3. Rejects the approach contained in particular in paragraph 2 of Article III-121 of the draft Constitution, in which the above policy continues to be downgraded by being made a mere accessory to the common agricultural policy instead of being openly acknowledged as having a separate existence;
4. Regrets the fact that the draft Constitution does not define the specific objectives of the common fisheries policy and points out that some of the aims mentioned in Article III-123 relate only to the common agricultural policy, even though the article is supposed to apply both to agriculture and to fisheries;
5. Considers that the major common fisheries policy objectives must be incorporated into the text of the future Constitution, in particular the one intended to enable living aquatic resources and the products of aquaculture to be exploited on a long-term basis within a context of sustainable development, whilst ensuring that the social, economic and environmental aspects are all suitably balanced;
6. Welcomes the fact that the ordinary legislative procedure (codecision) is to be extended to the provisions needed in order to enable the objectives of the common fisheries policy to be pursued, since this may constitute a suitable basis for assigning Parliament a proper role in the decision-making procedure relating to the main guidelines applicable to the sector, with particular reference to the conservation, management and exploitation of living aquatic resources, the monitoring and implementation arrangements, the terms and conditions governing both access to waters and to resources and the marketing of fisheries products, structural policy and fleet-capacity management policy, the common organisation of markets and aquaculture;
7. Points out nonetheless that the wording of paragraph 2 of Article III-127 is too vague (in view of the fact that the specific common fisheries policy objectives are not defined) and calls for the scope of that provision to be clarified;
8. Expresses its concern at the inclusion of aid in the scope of paragraph 3 of Article III-127 of the draft Constitution (Council regulations or decisions), which constitutes a retrograde step in relation to the existing procedure; insists that the adoption of measures relating to aid to be granted to the fisheries and aquaculture sector be subject to the ordinary legislative procedure (codecision);
9. Regrets the fact that, under the draft Constitution, decisions relating to the setting and



allocation of fishing opportunities are to be taken by the Council alone, since this restriction of executive power to the Council is currently based on an act of secondary law which may be amended by means of the legislative procedure; calls, therefore, for this reference to be deleted from paragraph 3 of Article III-127;

10. Calls for the Financial Instrument for Fisheries Guidance (FIFG) to be mentioned amongst the structural funds referred to in Article III-117 of the draft Constitution;
11. Insists that its approval (assent) be a requirement for the adoption of any international fisheries agreement and considers that paragraph 7 of Article III-227 of the draft Constitution could constitute significant progress as regards strengthening Parliament's role in the conclusion of such agreements.

15 July 2003

## **OPINION OF THE COMMITTEE ON REGIONAL POLICY, TRANSPORT AND TOURISM**

for the Committee on Constitutional Affairs

on the Draft Treaty establishing a Constitution for Europe and the European Parliament's opinion on the convening of the Intergovernmental Conference (IGC)  
(11047/2003 – C5-0340/2003 – 2003/0902(CNS))

Draftsman: Rijk van Dam

### **PROCEDURE**

The Committee on Regional Policy, Transport and Tourism appointed Rijk van Dam draftsman at its meeting of 8 July 2003.

It considered the draft opinion at its meeting of 8 July 2003.

At that meeting it adopted the following conclusions by 24 votes to 5, with 2 abstentions.

The following were present for the vote: Rijk van Dam (vice-chairman, acting chairman and draftsman), Sylviane H. Ainardi, Rolf Berend, Philip Charles Bradbourn, Felipe Camisón Asensio, Christine de Veyrac, Jean-Maurice Dehousse (for Danielle Darras), Jan Dhaene, Jacqueline Foster, Mathieu J.H. Grosch, Catherine Guy-Quint (for Ewa Hedkvist Petersen), Konstantinos Hatzidakis, Georg Jarzembowski, Giorgio Lisi, Nelly Maes, Emmanouil Mastorakis, Erik Meijer, Enrique Monsonís Domingo, Francesco Musotto, Joaquim Píscarreta (for James Nicholson), Samuli Pohjamo, Reinhard Rack, Dana Rosemary Scallon, Agnes Schierhuber (for Dieter-Lebrecht Koch), Ingo Schmitt, Renate Sommer, Dirk Sterckx, Hannes Swoboda (for Wilhelm Ernst Piecyk), Ari Vatanen, Herman Vermeer and Mark Francis Watts.

## **CONCLUSIONS**

The Committee on Regional Policy, Transport and Tourism calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following point in its motion for a resolution:

### **Conclusion 1**

The European Parliament has examined the draft Treaty establishing a Constitution for Europe prepared by the European Convention. With respect to tourism the Convention has omitted to address this important future policy area and the Parliament calls on the Convention to rectify this shortcoming in its Chapter I and Chapter III.

10 July 2003

## **OPINION OF THE COMMITTEE ON DEVELOPMENT AND COOPERATION**

for the Committee on Constitutional Affairs

on the Draft Treaty establishing a Constitution for Europe and the European Parliament's opinion on the convening of the Intergovernmental Conference (IGC)  
(11047/2003 – C5-0340/2003 – 2003/0902(CNS))

Draftsman: Anders Wijkman

### **PROCEDURE**

The Committee on Development and Cooperation appointed Anders Wijkman draftsman at its meeting of 1 July 2003.

It considered the draft opinion at its meeting of 9 July 2003.

At the last meeting it adopted the following conclusions unanimously.

The following were present for the vote: Joaquim Miranda (chairman), Margrietus J. van den Berg (vice-chairman), Anders Wijkman (vice-chairman and draftsman), , Jean-Pierre Bebear, Yasmine Boudjenah, John Bowis, John Alexander Corrie, Nirj Deva, Colette Flesch, Michael Gahler (for Jürgen Zimmerling), Georges Garot (for Marie-Arlette Carlotti), Bashir Khanbhai (for Luigi Cesaro), Glenys Kinnock, Karsten Knolle, Wolfgang Kreissl-Dörfler, Paul A.A.J.G. Lannoye, Miguel Angel Martínez Martínez, Hans Modrow, Luisa Morgantini, Didier Rod, Ulla Margrethe Sandbæk, Francisca Sauquillo Pérez del Arco, Agnes Schierhuber (for Fernando Fernández Martín) and Maj Britt Theorin.

## CONCLUSIONS

The Committee on Development and Cooperation calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

1. Welcomes that the European Council of Thessaloniki has accepted the Draft Constitution provisionally accepted by the Convention on 13 June 2003 as basis for the discussion of the governments of the Member States in the Intergovernmental Conference and urges the Member States' governments only to agree on limited changes in order to improve the text of the Convention;
2. Calls on the IGC to replace the present title of Part III, Title V, Chapter IV with 'Common Development Cooperation Policy, Cooperation with Third Countries and Humanitarian Aid' in order to make it consistent with the other titles, 'Common Foreign and Security Policy' and 'Common Commercial Policy';
3. Considers it of the highest importance that the *eradication of poverty* has been included in the Draft Constitution as primary objective of the EU development policy;
4. Considers that the Constitution should also explicitly include the fundamental principles of EU development cooperation policy, namely equality between partners, appropriation of development strategies by the countries and populations concerned, and involvement of all sections of society, including civil society;
5. Welcomes the establishment in the Draft Constitution of the principle that there must be consistency between different areas of external action and coherence between external action and internal policies, and that policies implemented by the European Union, which are likely to affect developing countries, must be coherent with its development co-operation objectives;
6. Underlines the importance of humanitarian aid for the external relations of the European Union and welcomes the inclusion of a specific section on humanitarian aid in the Draft Constitution; however considers that humanitarian aid should be conducted in compliance with the principle of neutrality, regrets that the Convention does not make reference to this, and asks the IGC to modify this provision accordingly; considers that the involvement of military and civil defence resources in humanitarian tasks should be limited to exceptional circumstances, when it is deemed necessary to support humanitarian organisations to facilitate the delivery of aid;
7. Stresses that development policy must continue to be a shared competence between the Union and the Member States so that the Union's and the Member States' development policies complement and reinforce each other and that implementation procedures are harmonised in relation to specific countries or regions; welcomes the provision of the Draft Constitution promoting the principle of complementarity; stresses that Union programmes and resources allocations should be designed and managed according to a long-term and strategic approach, based on development objectives;
8. Notes that the Convention has given a clear signal in favour of the inclusion of the EDF in

the EU general budget, a longstanding demand of the European Parliament, and welcomes the Commission's intention to present a Communication on budgetisation; but urges the Commission to present without delay the necessary legislative and budgetary proposals to allow this inclusion in the budget while guaranteeing that funds will not be diverted to other regions or purposes;

9. Calls on the IGC to clarify the scope of EU development cooperation policy by referring to 'all developing countries';
10. Regrets that the Convention has created a provision that seeks to set up a *European Voluntary Humanitarian Aid Corps*, which may lead to sending inexperienced and inadequately trained young people to regions where they would be faced with tasks and situations they could not cope with, and asks the IGC to delete or modify this provision of the Draft Constitution;
11. Points out that for humanitarian aid operations the important principle of neutrality should also be complied with;
12. Urges the IGC to include, in the provisions having general application for the Union's external actions, "good governance" and the "provision of global public goods" as part of the common objectives of the EU external actions;
13. Urges the IGC to include in the development co-operation section "the principle of partnership" exercised on the fundamental principles of equality of the partners; ownership of the development strategies by the countries and populations concerned; and participation in order to encourage integration of all sections in society, including civil society organisations;
14. Calls on the IGC to add as primary objectives of commercial policy sustainable development and the eradication of poverty;
15. Urges the IGC to consider the appropriate measures to obtain a situation where the EU, as a general principle, speaks with one voice in multilateral institutions;
16. Urges the IGC to include in the Constitution the obligation for the Member States and the Union to actively promote the implementation of the objectives agreed in the context of the UN and other international organisations, and for the Commission to promote coordination between actions of the Union and the Member States in the sector of humanitarian aid.

3 September 2003

## **OPINION OF THE COMMITTEE ON WOMEN'S RIGHTS AND EQUAL OPPORTUNITIES**

for the Committee on Constitutional Affairs

on the Draft Treaty establishing a Constitution for Europe and the European Parliament's opinion on the convening of the Intergovernmental Conference (IGC)  
(11047/2003 - C5-0340/2003 - 2003/0902(CNS))

Draftsperson: Lone Dybkjær

### **PROCEDURE**

The Committee on Women's Rights and Equal Opportunities appointed Lone Dybkjær draftsperson at its meeting of 9 July 2003.

It considered the draft opinion at its meeting of 1 September 2003

At the last meeting it adopted the following conclusions unanimously

The following were present for the vote Anna Karamanou (chairperson), Marianne Eriksson, Olga Zrihen Zaari and Jillian Evans (vice-chairpersons), Marie-Hélène Gillig (for Helena Torres Marques), Lissy Gröner, Karin Jöns (for Mary Honeyball), Christa Klauf, Astrid Lulling, Maria Martens, Christa Prets, María Rodríguez Ramos, Miet Smet, Patsy Sørensen, Joke Swiebel, Elena Valenciano Martínez-Orozco, Anne E.M. Van Lancker (for Fiorella Ghilardotti)

## CONCLUSIONS

The Committee on Women's Rights and Equal Opportunities calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

1. Emphasises that the Convention has completed its task and that gender equality is an integral part of the draft Constitutional Treaty;
2. Welcomes that equality is part of the European Union's values, stated in Article I-2, that the promotion of equality between women and men is part of Article I-3, that the principle of gender mainstreaming is rightly placed as an horizontal article III-1 and that the fight against all forms of discrimination, including sex-based discrimination, is also rightly inserted as an horizontal article III-1a;
3. Emphasises, that these achievements took a great deal of work from a small amount of people and that the gender composition of the Convention has been completely unacceptable. 17% women is far from enough to ensure a gender balance. Likewise, the composition of the Presidium consisting of 12 men and one woman is utterly unacceptable;
4. Regrets however that 'gender equality and the fight against all forms of gender discrimination' has not been inserted as a shared competence of the EU in the Draft Treaty on the European Constitution;
5. Regrets also that the Convention did not incorporate an article in the institutional chapter requiring a balanced representation of women and men in EU institutions. Although each Member State shall present three candidates for the post of Commissioner, in which both genders have to be represented, there is still a long way to go;
6. Also regrets that no legal basis has been approved to combat all forms of violence against women and children;
7. Stresses that the work to ensure gender equality in the draft Constitutional Treaty, very often consisted in ensuring that the draft Constitutional Treaty did not weaken the EU acquis on gender equality;
8. Welcomes the statement made by the President of the Convention that the entire text should be written in a gender neutral language, and urges the European Parliament to ensure that this promise is upheld;
9. Insists that the European Parliament, as the front-runner for democracy, equality and human rights, ensures that these achievements are withheld or improved during the IGC;
10. Warns that if gender equality is not high on the agenda during the IGC and when finalising the Constitutional Treaty, women in all Member States are likely to look upon the result very sceptically;



11. Finally reminds that a European Constitutional Treaty, even with well-integrated gender equality provisions, is not sufficient to achieve gender equality. The Constitutional Treaty, as well as all other gender equality provisions, needs to be applied to become reality. The European Parliament therefore has to support the Commission in its efforts to draw up legislation in this area, just as qualified majority is a prerequisite for action.

11 July 2003

## **OPINION OF THE COMMITTEE ON PETITIONS**

for the Committee on Constitutional Affairs

on the draft Treaty establishing a Constitution for Europe and the European Parliament's opinion on the convening of the Intergovernmental Conference (IGC)  
(11047/2003 – C5-0340/2003 – 2003/0902(CNS))

Draftsman: Vitaliano Gemelli

## **PROCEDURE**

The Committee on Petitions appointed Vitaliano Gemelli draftsman at its meeting of 9 July 2003.

It considered the draft opinion at its meetings of 9 and 10 July 2003.

At the last meeting it adopted the following conclusions unanimously.

The following were present for the vote: Roy Perry (vice-chairman), Felipe Camisón Asensio, Marie-Hélène Descamps, Janelly Fourtou, Laura González Álvarez, Margot Keßler, Ioannis Koukiadis, Jean Lambert, Ioannis Marinos and María Sornosa Martínez

## SHORT JUSTIFICATION

1. The primary concerns of the Committee on Petitions that the right of the European Citizen to effectively petition the Parliament have been respected. Citizenship of the Union will "enjoy certain rights and be subject to the duties provided for in this Constitution" including the right to petition the European Parliament. (Article I-8,2 third indent) The Charter of Fundamental Rights, - Part two of the Draft Constitution states in Article II-44:

*"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."*

2. The Draft Constitution recognises other fundamental rights in Title II, which accords alongside the right to petition; the right to table such petitions in one's own language and receive a reply in the same language. But a reply is one thing, a solution to a particular problem is another. The Draft Constitution remains silent regarding the form of redress that may be provided to a European citizen as a result of a petition.

### Infringement:

3. Infringement proceedings remain one of the possible avenues which the Petitions Committee is able to explore in cases where member states have not properly enacted or applied EU legislation into national law. In the new Draft Constitution more detailed provisions are identified for different types of legal acts of the Union ranging from European laws which are binding and directly applicable in the member states to recommendations and opinions which are not; delegated regulations are also prescribed in the new Treaty.
4. The former Article 226 provisions concerning infringement, now Article III-261, remain unchanged however. They are intended to ensure compliance rather than redress, and the procedures may only be initiated by the European Commission, presumably, as is now the case on a discretionary basis. The Commission may request that the European Court impose a fine or penalty on a member state which fails to comply with framework legislation.
5. As necessary and important as this may be, for the petitioner it may not count for very much because he will be obliged in many cases to seek redress through the national legal systems only after the conclusion of an infringement procedure, if it is concluded in the European Court. Apart from the time this will take, there are also the eventual costs to be considered which in many cases would be prohibitive and prevent effective redress. Infringement proceedings which terminate before they reach the Court of Justice are of even less potential use for the individual petitioner.
6. Were the Parliament able to have the right, under certain circumstances, to bring infringement - or some other related procedure - to bear for lack of compliance by a member state for his Constitutional obligations, then the ability of the petitions process to provide effective remedies would be strengthened. This could be, for example, by being able to instruct the Commission to open the infringement procedure and thus remove the discretionary element.

#### Parliamentary cooperation:

7. Most of the issues which are regularly raised by petitioners fall under the heading of shared competence in the current text, for example environmental issues, safety and public health, social policy, freedom, security and justice, internal market and so on. Given the more explicit role given to national parliaments, and indeed the regional assemblies, by the Convention in the new draft treaty, more scope may be found to develop in common with these parliaments an effective means of resolving the issues raised through petitions to the satisfaction of the European citizen.
8. However the main means of achieving redress, where there is no clear breach of European law, will remain at the political level, by convincing authorities over which the European Parliament may have no direct authority, of the advantages of pursuing a particular course of action.
9. The new Draft Constitution makes several commitments and undertakings about the fundamental rights of the citizen; a lot of statements from the Preamble and in the substantive part emphasizes the need for transparency and democracy, the right to good administration and so on. An original provision is contained within the new Constitution, Article I-46,4, which allows for laws to be introduced on the basis of a petition providing it has the support of no less than one million people from a broad range of EU countries, which is certainly an advance for citizens' rights. But instead of addressing their request through Parliament it is to the Commission they are being asked to turn. This is misguided and should be redirected through the democratically elected assembly which has the cardinal responsibility of representation.

#### Ombudsman.

10. Although the European Ombudsman and his office are retained with its rights and duties in the new draft Constitution, the existing text refers merely to his appointment by the European Parliament, Article I-48, rather than his election by the members of the Parliament which our procedures provide for. Election is a preferable term for an office which is based upon legitimacy, integrity and trust.

### **CONCLUSIONS**

11. But, the main omission is the direct right of redress, through non-judicial remedies as a commensurate element of the right of petition. Parliament might wish to consider this more closely in Part III of the Draft Constitution for Europe.