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**EUROPEAN PARLIAMENT DELEGATION
TO THE CONVENTION
Secretariat**

Subject: Summary of the Constitution adopted by the European Council in Brussels
on 17/18 June 2004

Note

This note is for information only and aims to provide as concise a summary as possible of the draft Constitution finally adopted by the European Council on 17 and 18 June at the close of the IGC process. A number of points should therefore be emphasised:

- *this summary cannot but be incomplete, as the draft Constitution runs to several hundred pages. For more detailed information on a particular topic, please contact the Task Force;*
- *it in no way represents a political evaluation of the text adopted, which is the responsibility first of the Committee on Constitutional Affairs and then of the House;.*
- *for the sake of simplicity the note refers to 'the Constitution' (and the future tense is used); however, the reader should be aware that the provisions mentioned are not yet in force and that, until the Constitution is ratified, there is no guarantee that they will actually replace the provisions of the existing Treaties.*

INTRODUCTION.....	3
I. THE INSTITUTIONS.....	3
THE EUROPEAN PARLIAMENT.....	3
THE EUROPEAN COUNCIL.....	4
THE COUNCIL OF MINISTERS OF THE EU.....	4
QUALIFIED MAJORITY.....	4
THE EUROPEAN MINISTER FOR FOREIGN AFFAIRS.....	5
THE EUROPEAN COMMISSION.....	5
THE COURT OF JUSTICE.....	6
II. COMPETENCES AND HOW THE INSTITUTIONS WILL EXERCISE THEM.....	6
SYSTEM OF COMPETENCES.....	6
INSTRUMENTS AND THEIR ADOPTION PROCEDURE.....	6
<i>Legislative and regulatory measures.....</i>	<i>6</i>

<i>Budgetary and financial provisions</i>	7
Own resources.....	8
Multiannual financial framework	8
Annual budget.....	8
ENHANCED COOPERATION	9
III. POLICIES	9
EXTERNAL POLICIES	9
<i>External action</i>	9
Common foreign and security policy.....	9
Common commercial policy.....	10
Development cooperation	10
Humanitarian aid.....	11
INTERNAL POLICIES	11
<i>Area of freedom, security and justice</i>	11
<i>Other changes to internal policy (the following, highly selective extracts are taken in the order in which they appear in the text)</i>	12
Non-discrimination and citizenship	12
Internal market/taxation	12
Economic and monetary policy	12
Social policy.....	13
CAP.....	13
Research, technological development and space	14
Energy	14
Public health.....	14
IV. REVISION	14
CONCLUSION	15

Introduction

On 18 June the IGC adopted the 'Draft Treaty establishing a Constitution for Europe' drawn up by the Convention. Testament to its constitutional scope is provided by the following: its opening reference to the *values* on which the Union is founded (Article 2); the *inclusion of the entire Charter of Fundamental Rights* (Part II¹); and the *definition of the conditions for membership of the Union* (including conditions for voluntary withdrawal from the Union) and of the *symbols* of the Union (flag, anthem, etc. Article IV-1).

The Constitution explicitly discards the current system of 'pillars' and explicitly gives the Union legal personality. The initial objective of simplification is partly attained in Part I, which includes the main provisions of a wholly constitutional nature, with Part II consisting of the Charter. The Constitution is still a complex text, however, with the updated provisions from the current Treaties on policies and detailed provisions on how the institutions work forming Part III, whilst Part IV sets out the general and final provisions. The text opens with a preamble (which refers to the 'cultural, religious and humanist inheritance of Europe') and ends with an annex setting out a number of protocols (which therefore have constitutional status) and declarations.

On these general points the IGC has hardly corrected the text which emerged from the Convention. The following points should be mentioned:

- despite a fierce debate up until the end, the compromise text on the Preamble adopted by the Convention was essentially maintained;
- the listing of the Union's values was completed by a reference to the rights of people belonging to minorities, as well as equality between men and women (which previously was merely listed as an objective);
- currency stability now features among the Union's objectives with a view to 'a social market economy, highly competitive and aiming at full employment and social progress'.

I. The institutions

The draft Constitution clarifies the role of each of the institutions and bodies of the Union.

The European Parliament

The European Parliament will, jointly with the Council of Ministers, enact legislation and exercise the budgetary function, as well as functions of political control and consultation. It will elect the President of the European Commission on a proposal from the European Council (adopted by qualified majority), which will have to take into account the results of the elections; the EP will also approve the Commission as a whole. The number of MEPs will be limited to 750. The Constitution does not make provision for the allocation

¹ The Constitution also envisages the European Union's accession to the ECHR. The agreement on accession must be adopted by the Council by a qualified majority after approval by the EP.

of seats by Member State as is currently the case, but Article I-19 contains a legal basis giving the European Council, on a proposal from Parliament and with its consent, the responsibility to determine the allocation of seats before the elections scheduled for 2009, on the basis of the principle of '*degressively proportional*' representation of citizens, with a minimum threshold of six seats and a maximum of 96 per Member State (the Convention proposed a minimum threshold of four and no upper limit).

The European Council

The European Council is to become a full institution. The revolving presidency will be abolished and replaced by a permanent presidency with limited powers, elected by a qualified majority of its members for a renewable term of two and a half years. The general rule regarding the adoption of decisions will be consensus.

The European Council will provide impetus and define political priorities but will not exercise a legislative function. Respect for this principle was ensured during the negotiations in the IGC, despite an extremely difficult debate on the role of the European Council in the field of judicial cooperation in criminal matters (cf. the description of the compromise found on the definition of the 'emergency brake' mechanism given below).

The Council of Ministers of the EU

The Constitution provides for the creation of a Foreign Affairs Council chaired by the EU Minister for Foreign Affairs (see below), separate from the General Affairs Council. The latter will continue to ensure the coherence of the Council's deliberations with the aid of COREPER. The meetings of special formations of the Council will be split into two parts, one devoted to legislative - public - deliberations, the other to non-legislative deliberations, in order to meet the requirement of transparency.

The organisation of the Council's work was fiercely debated in the IGC until an advanced stage, with a majority of the Member States in favour of maintaining the rotation of the Council presidency (except for the Foreign Affairs Council). Finally, the Constitution states the principle of equal rotation in the context of a system of 'team' presidency defined by a European Council decision.

Qualified majority

This was the key issue throughout the debates in the Convention and the IGC, as regards both its definition and its sphere of application.

As regards its definition, the formula finally adopted by the IGC is still based on the double majority principle devised by the Convention. The thresholds have however been raised: 55% of the Member States (the Convention proposed a majority of the Member States) including at least 15 Member States (a requirement which in itself has no independent significance once there are 27 or more Member States); 65% of the population (the Convention proposed 60%). Nevertheless, the IGC added an extra clause specifying that a blocking minority (*a priori* 35% of the population) should include at least 4 Member States, failing which a decision is in any case considered to have been adopted². This system will apply as of 1 November 2009. In order to overcome the

² This may have the effect of lowering the population threshold and allow, for example, the adoption of a law by 22 Member States representing only around 55.5%

remaining reluctance of certain Member States, the Conference also adopted a decision containing a sort of revised 'Ioannina' compromise³.

When a Commission proposal is not required or when a decision is not adopted on the initiative of the Minister for Foreign Affairs, the qualified majority required will be enhanced: 72% of the Member States (2/3 according to the Convention) representing at least 65% of the population (60% according to the Convention).

Qualified majority will become the general rule for the adoption of decisions within the Council of Ministers. Unanimity remains the rule for taxation and partly in the fields of foreign and common security policy and social policy. Furthermore, it will also apply to the system of own resources and the multiannual financial framework. Finally, for cases in which the Convention has not achieved consensus on changing over to qualified majority voting, a general measure (known in French as a 'passerelle') is planned, whereby the European Council will have the opportunity to decide unanimously that the Council will in future act by qualified majority and, if necessary, according to the ordinary legislative procedure, without the need to amend the Constitution, which would in turn require ratification by each Member State. However, the formal opposition of a single national parliament is enough to block the application of the 'passerelle'.

The European Minister for Foreign Affairs

A great institutional innovation proposed by the Convention, the Minister for Foreign Affairs, appointed by the European Council by qualified majority with the agreement of the President of the Commission, will conduct the Union's common foreign and security policy, chair the Foreign Affairs Council and will also serve as Vice-President of the Commission (as such he or she is subject to a collective vote of approval by the European Parliament and, possibly, a vote of censure). In this 'two-hatted' role (Commission-Council), he or she will be responsible for carrying out the Union's external policy *as a whole*. He or she will have the power of proposal, represent the Union alone or with the Commission, and will be aided by a European External Action Service⁴.

The European Commission

The Commission's power of legislative initiative is clearly restated. However, the IGC did not take up the Convention's proposal regarding its composition: the final agreement reached means that the Commission will be made up of one Commissioner per Member State until 2014; from then on it will consist of a number of Members corresponding to 2/3 the number of Member States, chosen on the basis of equal rotation between the Member States.

³ If Council members representing at least 3/4 of the Member States or the percentage of the population required to block a decision indicate their opposition to the Council's adoption of an act by qualified majority, the Council will continue to debate the subject in order to achieve broader agreement within a reasonable period of time.

⁴ The Service will consist of officials from the relevant departments of the Council's Secretariat and the Commission, as well as staff seconded from national diplomatic services. Its organisation and operation will be determined by a Council decision after obtaining the opinion of the EP and the approval of the Commission.

The political role of the President of the Commission, elected by the European Parliament, will be reinforced, and will include the appointment of Commissioners, the allocation of portfolios and the right to request the resignation of a Commissioner.

The Court of Justice

The Court of Justice's competence will be broadened, particularly in the area of freedom, security and justice and certain aspects of foreign policy. There is also provision for a degree of individual access to the Court⁵.

II. Competences and how the institutions will exercise them

System of competences

The draft Constitution first of all defines essential principles regarding:

- the principle governing the allocation of the Union's powers;
- lawmaking in accordance with the principles of subsidiarity and the proportionality of the exercise of competences;
- the primacy of Union law, which is stated unambiguously;
- the obligation of Member States to implement Union law.

Distinctions are drawn between three categories of Union powers: areas of exclusive competence, of shared competence and areas where the Union may take supporting action, provided this conforms with the provisions of Part III relative to the area where action is to be taken. Particular cases that do not fit into the general classification are dealt with separately: for example the coordination of economic and employment policies (Article 14) and common foreign and security policy (Article 15).

The flexibility the system requires is guaranteed by a clause allowing the adoption of measures necessary to attain any of the objectives laid down by the Constitution where there is no provision for powers of action to that effect in the Constitution. Its scope is therefore wider than that of the current Article 308 of the EC Treaty, which is confined to the internal market, but the conditions for its implementation are stricter in that, as well as requiring unanimity in the Council, Parliament's approval will also be needed.

This provision is complemented by the Protocol on the application of the principles of subsidiarity and proportionality, which provides for an 'early-warning system' involving national parliaments in monitoring how the principle of subsidiarity⁶ is applied.

Instruments and their adoption procedure

Legislative and regulatory measures

The Constitution will work on the basis of a hierarchy of acts, clarifying the legal acts used by the institutions to put the Union's powers into practice and how they are adopted. It makes two successive distinctions:

⁵ The Constitution will give any natural or legal person the opportunity to institute proceedings against regulatory acts that are of direct concern to him or her and that do not entail implementing measures.

⁶ They will be informed of all new legislative initiatives and if at least one third of them consider that a proposal infringes the principle of subsidiarity, the Commission will have to reconsider its proposal.

- between legally binding acts (laws, framework laws, regulations and decisions) and non-binding acts (opinions and recommendations);
- in terms of legally binding acts, it distinguishes between legislative acts (laws and framework laws) and non-legislative acts (regulations and decisions⁷).

Legislative acts:

The power of legislative initiative lies with the Commission, although this is shared with at least a quarter of Member States as regards certain aspects of the area of freedom, security and justice.

The draft Constitution states that, as a general rule, laws and framework laws are to be adopted by codecision of the EP and the Council, the latter with a qualified majority, a procedure to be known as the ‘ordinary legislative procedure’⁸, which is practically a carbon copy of the current codecision procedure.

Non-legislative acts:

As far as implementing acts in the strict sense of the term are concerned, the draft Constitution states from the outset that it is the responsibility of Member States to implement legally binding acts of the European institutions. Where uniform conditions for implementing acts are required, the draft Constitution gives the Commission the power to take the necessary implementing measures, or, exceptionally, gives this power to the Council (in cases involving implementing acts based directly on the Constitution, apart from the CFSP). As regards ‘comitology’, a European law will lay down in advance the rules and general principles for the mechanisms for control by Member States of these implementing acts. The EP will therefore have a decisive role in this area in future.

The Constitution will also create *delegated regulations*, delegated to the Commission (NB: there are to be no delegated Council regulations) by the legislative authority: that is, the EP and the Council. These delegated regulations, which can amend or supplement certain aspects of laws or framework laws without changing their essential elements, will therefore require specific authorisation in the text on which they are based and will be subject to a specific system of control exercised by the colegislators: each of the two branches can revoke the delegation, and the delegated regulation can only enter into force if neither branch of the legislative authority raises an objection within a period set by the law or framework law.

Budgetary and financial provisions

The Constitution includes some fine-tuning of the institutional context of Community finances. The Convention's draft was not completely accepted by the Intergovernmental

⁷ It must also be pointed out that the term ‘decision’ covers both decisions in the sense of administrative acts and decisions of a political nature, a meaning also used in the draft Constitution: e.g. Council decision regarding the suspension of the rights of a Member State related to membership of the Union.

⁸ In exceptional cases provided for by the Constitution, laws and framework laws can be adopted either by the Council (e.g., law on own resources, law on the multiannual financial framework, law on elections to the EP, etc.) or by Parliament (three cases: law on the status of its members, law on the status of the Ombudsman and law on provisions governing the exercise of the right of inquiry), but always with the participation of the other branch, which can range from simple consultation to approval (currently assent).

Conference, but essentially we can say that the balance recommended by the Convention was respected, despite the attacks made on it, which required redoubled efforts on the part of the EP's representatives in the Conference in order to exclude proposals which would have seriously undermined the EP's role.

Own resources

A European law, adopted unanimously by the Council after consultation with the EP, will determine the limit on own resources and may establish new categories of resources or abolish existing resources. This law will not enter into force until approved by the Member States in accordance with their respective constitutional requirements. However, the actions taken to implement this law in practice will be determined by a Council law, adopted by a qualified majority after obtaining the consent of the EP⁹.

Multiannual financial framework

The multiannual financial framework (which will replace the current financial perspective) will control the development of Union expenditure over a (minimum) period of five years, within the own resources limits. It will determine the amounts of the ceilings for each category of expenditure. It will be adopted by means of a law of the Council acting unanimously, after obtaining the consent of the EP on the basis of a majority of its members. Nevertheless, in response to requests from a number of delegations and EP representatives, who opposed this return to unanimity (the Convention envisaged unanimity for the first multiannual financial framework adopted after the signing of the Constitution and a qualified majority for subsequent ones) the Constitution provides for a 'passerelle' allowing the European Council to adopt unanimously a decision authorising the Council to adopt the law establishing the multiannual financial framework by a qualified majority.

Annual budget

The law determining the annual budget, which must respect the multiannual financial framework, will be adopted jointly by the EP and the Council. The budget procedure is therefore greatly modified but, despite the attempts made by several delegations to call into question the agreement reached in the Convention, its essence will be maintained: there will no longer be a distinction between compulsory and non-compulsory expenditure and the European Parliament will have the final word on the budget as a whole¹⁰.

⁹ Currently known as 'assent'.

¹⁰ See Article III-310: the budgetary procedure will have only one reading in each institution. The Council will first give its position on the Commission's draft budget. If, within 42 days, the EP approves the Council position, the budget will be adopted. If the EP adopts, by a majority of its members, amendments to the Council position, the presidents of the two institutions will convene a meeting of the Conciliation Committee, unless the Council approves all the EP amendments within 10 days. If the Conciliation Committee adopts a joint text within 21 days, the EP and the Council will have 14 days to adopt the joint text, the Council by means of a qualified majority and the EP by a majority of votes cast (Article III-310 § 7).

If the Conciliation Committee does not succeed in adopting a joint text or if EP (or both institutions) rejects the joint draft by a majority of its members and by three fifths of the votes cast, the Commission will have to submit a new draft budget.

If the Council rejects the joint text and the EP approves it, the EP will have 14 days to confirm the amendments that it has adopted at first reading (by a majority of its members and by three fifths of the

The provisions that make up what is currently known as the 'Financial Regulation' will in future be covered by a law adopted under the ordinary legislative procedure (but until 2007 the Council will decide unanimously).

Enhanced cooperation

Enhanced cooperation will require the involvement of a third of the Member States. It will apply only to the Union's non-exclusive competences (but could from now on also cover defence policy). Authorisation to proceed with enhanced cooperation will be granted by the Council by a qualified majority, after obtaining the consent of the European Parliament, on a proposal from the Commission (except with regard to the CFSP, where it will require the opinion of the Minister for Foreign Affairs and of the Commission, in which case the European Parliament will simply be informed). Member States not participating in enhanced cooperation will take part in Council meetings even though they will not be involved in the decision-making.

As a result of efforts made by a number of delegations and the EP representatives in particular, the Conference also adopted a 'passerelle' provision, which was proposed by the Convention but was called into question during the negotiations, that will enable the countries taking part in enhanced cooperation to change over to qualified-majority voting or the ordinary legislative procedure by virtue of a decision adopted unanimously by these countries (however, this passerelle clause cannot be used in the field of defence).

III. Policies

Part III of the draft Constitution opens with a number of clauses of general application and is devoted to the Union's policies: on general consistency of policy; on the fight against discrimination; on the promotion of equality between men and women; on social protection; on the requirements of environmental protection; on consumer protection; and, finally, a clause acknowledging the existence of 'services of general economic interest', whose 'principles and conditions' of operation must be defined by law.

External policies

External action

It is in the area of external action that the draft Constitution makes the most radical changes, more by means of institutional modifications, notably in the creation of the post of Minister for Foreign Affairs (see above), than by improvement of procedures, which will remain practically unchanged. The role of the EP in foreign policy will not change fundamentally, although it will play a more prominent role in common commercial policy and the conclusion of international agreements.

Common foreign and security policy

The implementation of the CFSP - by unanimous European Council or Council decision, except in certain cases provided for by the Constitution or where the European Council

votes cast). If it does not succeed in confirming its amendments, the position agreed by the Conciliation Committee on the budgetary line concerned will be adopted.

decides otherwise - will not be subject to the 'ordinary legislative procedure'. The EP will from now on be consulted as a matter of course.

Some new legal bases will be created: a solidarity clause between Member States in the event of a terrorist attack or natural disaster, and international agreements with neighbouring countries.

Security policy will be modernised in a number of areas, since the IGC approved some important advances not envisaged by the Convention, in particular in the area of defence:

- updating the Petersberg tasks (addition of a reference to tasks involving disarmament, military advice, post-conflict stabilisation and the fight against terrorism, including actions carried out on the territory of third countries);
- creation of new forms of flexibility and cooperation in defence matters:
 - the possibility for the Council to entrust a group of Member States with a mission to uphold the Union's values;
 - the possibility of creating, by a Council decision adopted by a qualified majority, a permanent structure for cooperation between the countries that meet the criteria and subscribe to the commitments with regard to military capability contained in a Protocol annexed to the Constitution;
 - the introduction of closer cooperation in the sphere of reciprocal defence, envisaging in particular the obligation to aid and assist a Member State subjected to armed aggression on its own territory (without prejudice to the specific nature of the security and defence policy of certain Member States);
 - the creation of a start-up fund for military defence independent of the Union budget;
- the creation of a European Armaments, Research and Military Capabilities Agency;
- defining a procedure to allow rapid access to appropriations in the Union budget.

Common commercial policy

The scope of the common commercial policy as regards trade in services and intellectual property will be broadened.

The EP will be given a more prominent role, with the ordinary legislative procedure taking precedence in establishing measures to put the common commercial policy into practice; negotiations leading to international agreements will regularly be reported to the EP; such agreements will be concluded only with the consent of the European Parliament.

The Constitution retains a watered-down form of 'cultural exception'¹¹.

Development cooperation

The Constitution creates the conditions to enable the European Development Fund to be included in the budget.

¹¹ The Council will require unanimity regarding agreements in the field of cultural and audiovisual services (where these risk prejudicing the Union's cultural and linguistic diversity). This 'exception' has even been 'extended' by the IGC to trade in social, educational and health services, where these may seriously upset the organisation of these services at national level and jeopardise the competence of the Member States to provide such services. Furthermore, the Council will also act unanimously with regard to agreements in the field of services in general and aspects of intellectual property when they entail provisions for which unanimity is required for the adoption of internal rules.

Humanitarian aid

The Constitution will create a specific legal basis for humanitarian aid, which will include the creation of a Voluntary Humanitarian Aid Corps (using the ordinary legislative procedure).

Internal policies

Area of freedom, security and justice

Of all the policies referred to as internal policies, it is in the area of freedom, security and justice that the draft Constitution will make most changes to the status quo, not least as a result of the removal of the distinction between measures covered by the EC Treaty and those covered by the 'third pillar', and the general application of codecision (ordinary legislative procedure) and qualified majority voting.

The Union's political objectives will be clarified: from now on, the Union's actions are to be explicitly subordinate to fundamental rights; access to justice will be a general objective; the challenges posed by mutual recognition of different systems and approximation of legislation are to be brought together.

Policy-making will be deepened: asylum and immigration policy will be made common Union policy governed by the principles of solidarity and fair sharing of responsibility between Member States.

But it is with regard to the measures relating to judicial cooperation in criminal matters that the most innovative changes are to be found, above all because they will now broadly be subject to qualified majority voting: the draft Constitution calls for thorough approximation of criminal legislation (descriptions of criminal offences and punishments), partly in order to fight against crimes 'of European interest,' of which a list is given, and partly to ensure the implementation of a Union legislation.

This legislation must take into account the differences between legal traditions and the (judicial) systems of the Member States. Furthermore, in order to allay the fears of certain Member States, the IGC sanctioned a special 'emergency brake' procedure: if a Member State considers that a legislative proposal in this area may jeopardise fundamental aspects of its criminal justice system, it may request that the matter be referred back to the European Council and the procedure be suspended. The European Council must, within a period of 4 months, refer the matter back to the Council, so that the procedure may continue, or request that a new legislative proposal be submitted by the Commission or the group of countries that took the initiative. If the European Council has not taken the aforementioned decision within 4 months, or if the new legislative procedure initiated at its request does not produce a result within a twelve-month deadline, enhanced cooperation will automatically be initiated, provided at least one third of the Member States so wish.

The Court of Justice will have a general role in monitoring the Union's activities in this area.

Some specific institutional characteristics will remain, however, including: the definition by the European Council (and therefore by consensus) of strategic guidelines for legislative and operational planning, without European Parliament involvement; sharing of the legislative initiative between the Commission and a quarter of the Member States

(one Member State will no longer be able to submit a proposal on its own) in the area of judicial cooperation in criminal matters and police cooperation; unanimity will be retained in certain areas, particularly as regards cross-border aspects of family law and all forms of police cooperation; definition of a more prominent role for national parliaments, with particular regard to monitoring whether the principle of subsidiarity is being respected. However, the possibility of subsequent developments is left open by transitional ('passerelle') measures regarding family law and the list of serious crimes for which a European framework law may lay down minimum rules (the Council, acting unanimously following consent by the EP, may expand the list of crimes.

Finally and despite keen opposition from a number of delegations, the Constitution envisages the creation, by means of a European law adopted unanimously by the Council, of a European Public Prosecutor's Office, which will be competent to combat offences against the Union's financial interests and may prosecute those responsible for such infringements. A 'passerelle clause' provides for the possibility of extending the remit of the European Public Prosecutor's Office to combating serious crime with a cross-border dimension, by means of a European decision adopted unanimously by the Council, following consent by the EP (and after consulting the Commission).

Other changes to internal policy *(the following, highly selective extracts are taken in the order in which they appear in the text)*

The changes made by the Constitution in other sectoral policies are mainly a consequence of the enshrinement of codecision, and therefore qualified majority voting, as ordinary legislative procedure and of the clear distinction between legislative and non-legislative acts as they are now redefined.

However, a number of new legal bases will be created, particularly covering energy policy, sport, civil protection against natural or man-made disasters, and administrative cooperation to implement European law.

Non-discrimination and citizenship

Provisions relating to the following areas are grouped together under a separate title: action to combat discrimination (adoption, by the ordinary legislative procedure, of principles governing measures of encouragement to Member States in this area) and the promotion of rights deriving from European citizenship.

Internal market/taxation

Unanimity in the Council is retained on matters of taxation. The possibilities (somewhat limited) of changing over to qualified majority voting (law/framework law) proposed by the Convention for measures covering administrative cooperation and combating fraud and illegal tax evasion (by means of the Council stating unanimously that the measures proposed are related to these questions) were not accepted by the IGC.

Economic and monetary policy

The Constitution introduces few substantive changes. Significant changes include the elevation of the European Central Bank to the status of institution, the establishment of an explicit link between the coordination of economic policies and the coordination of

employment policies (although the IGC amended the Convention's text to emphasise the fact that it is the Member States who coordinate their policies in accordance with detailed rules laid down within the Union), and the strengthening of provisions specific to Member States in the euro zone: for example, the Council's decision on the accession of new Member States to the Euro Group (proposed by the Commission) must be preceded by a recommendation from a qualified majority of the Member States already belonging to the euro zone.

The arrangements covering the Euro Group are set out in an attached protocol and the IGC also adopted a Declaration on the Stability and Growth Pact. The Pact was the subject of fierce debate between certain delegations, which led to the adoption of a number of amendments to the Convention's text: thus, as regards the procedure for excessive deficits, the IGC reduced the role proposed by the Convention for the Commission (recommendations made by the Council to the Member State concerned have to be made on the basis of a recommendation from the Commission rather than a proposal).

Social policy

Although the Union objectives enshrined in the preamble to the Constitution include 'full employment' and 'social progress', it should be noted that the beginning of Part III introduces a horizontal social clause, according to which the Union must take into account, when defining and implementing its policies, requirements linked to promoting a 'high level of employment' (a concept which remains in Part III, despite the reference to 'full employment' among the Union's objectives) to guaranteeing adequate social protection' to the 'fight against social exclusion' and a 'high level of education, training and health protection'.

We should also note in this area the explicit recognition in Part I (which covers 'institutional' matters) of the role of the 'social partners', in particular the Tripartite Social Summit for Growth and Employment, which contributes to social dialogue. Unanimity will be retained in the areas where it is currently used. Only measures regarding social security involving paid and unpaid migrant workers' right to benefits are to be covered by the ordinary legislative procedure. But this was only possible at the price of providing for another 'emergency brake' in the event of a Member State considering that these measures may affect fundamental aspects of its social security system, especially its scope, cost or financial structure or affect its financial equilibrium, it may request that the matter be referred to the European Council (which will entail suspension of the legislative procedure). The European Council must, within a period of 4 months, either refer the matter back to the Council, so that the procedure may continue, or ask the Commission to submit a new legislative proposal (the Constitution remains silent about the consequences of inaction on the part of the Council...).

CAP

Currently, all decisions in this area are taken by qualified majority in the Council, and the European Parliament is simply consulted. The Constitution distinguishes between the following types of decision:

- acts of a legislative nature based on a European law or framework law, which therefore use the ordinary legislative procedure. These include the common organisation of

agricultural markets as well as other provisions necessary to pursue the objectives of the common agricultural and fisheries policies.

- non-legislative acts such as fixing prices, levies, aid and quantitative limitations, as well as the allocation of fishing opportunities. These come under the heading of European regulations or decisions taken *by the Council* on the basis of the draft Constitution, and in this case the EP is not consulted.

Research, technological development and space

A new section is to be added to technological research and development policy covering European space policy. The framework research programme, which will become European law, is to be adopted by a qualified majority. At the same time a European research area, in which researchers, scientific knowledge and technologies will circulate freely, will be introduced by means of laws adopted according to ordinary legislative procedure. A European space programme could be adopted by means of a law or a framework law. The safeguarding of the EP's legislative rights in this area, which were called into question during the IGC, was the outcome of a fierce struggle on the part of its representatives.

Energy

The aims of energy policy include ensuring the efficient functioning of the energy market and security of energy supply and promoting energy efficiency and the development of renewable energies. However, the IGC set a limit on the action of the Union, which must not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply. Furthermore, although the ordinary legislative procedure and qualified majority voting are the rule in this area, the IGC decided that any measure of a mainly fiscal nature must be taken by a Council law adopted unanimously and the EP will merely be consulted.

Public health

The IGC went a little farther than the Convention by adding, among the measures of supporting action conducted by the Union, not only the struggle against 'major cross-border health scourges' but also measures to monitor, issue warnings about and combat serious cross-border threats to health. The Union must, inter alia, draw up measures establishing high standards for the quality and safety of medicinal products and measures to safeguard public health as regards tobacco and alcohol. Finally, the Constitution specifies that Union action shall fully respect the responsibilities of the Member States for drawing up their health policy, including the organisation of health services and medical care and the allocation of the resources earmarked for them.

IV. Revision

The procedure for revising the Treaty is modified: the EP acquires the right of constitutional initiative, in the same way as the Commission and the Member States; the Convention becomes the standard forum for drawing up recommendations to be

submitted to the conference of representatives of the governments of the Member States, which must adopt amendments to the Constitution unanimously. However, the European Council may decide, by a qualified majority and after the EP has given its consent, that the extent of the proposed constitutional amendments does not justify convening the Convention.

A 'simplified' procedure for revising the Constitution is envisaged as regards amendments to the 'internal policies dealt with in Part III, provided that they do not entail an increase in the Union's powers: the European Council may adopt unanimously a decision to amend these policies, after consulting the EP and the Commission (or the European Central Bank). This decision will enter into force after being approved by all the Member States in accordance with their respective constitutional requirements.

Conclusion

Compared with the current Treaties, the Constitution represents a fourfold **reinforcement of the Union's democratic nature**:

- citizens will be able to initiate the drafting of European legislation, in the form of a citizens' initiative referendum; they will also have greater jurisdictional guarantees as a result of increases in the Court of Justice's competence.
- the particular contribution of national parliaments to the democratic life of the Union is explicitly recognised, above all in terms of the setting-up of a 'early-warning system' regarding the monitoring of the principle of subsidiarity;
- the EP's legislative and budgetary powers (codecision and the removal of the distinction between compulsory and non-compulsory expenditure), as well as its powers as a political watchdog (election of the President of the Commission) are to be firmly consolidated;
- the use of a Convention as a method for future revisions of the Constitution is to be made standard institutional practice.