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EUROPEAN PARLIAMENT DELEGATION TO THE CONVENTION
Secretariat

Subject: Summary of the draft Constitution adopted by the Convention

Note

This note is for information only and aims to provide as concise a summary as possible of the draft Constitution adopted on 13 June and 10 July 2003. Two points should therefore be emphasised:

- *this summary cannot but be incomplete, as the draft Constitution runs to 240 pages. For more detailed information on a particular topic, please contact the secretariat of the EP Delegation;*
- *it in no way represents a political evaluation of the text adopted, which is the responsibility first of the Committee on Constitutional Affairs (adoption scheduled for 9 September 2003) and then of the House (adoption scheduled for September 2003).*

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Introduction

The text adopted by the Convention is entitled 'Draft Treaty establishing a Constitution for Europe'[1]. 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 II); 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 draft 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 draft Constitution is still a complex text, however, with the updated provisions from the current treaties on policy and how the institutions work forming Part III, while Part IV sets out the general and final provisions[2]. 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.

I. The institutions

The draft Constitution clarifies the roles 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 736. The draft Constitution does not make provision for the allocation of seats by Member State as is currently the case, but Article 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 four seats per Member State.

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[1] To make matters simpler, reference will subsequently be made to the 'draft Constitution' (and the future tense will be used); the reader must bear in mind, however, that the provisions referred to have not come into force and that, as the IGC has not yet given its verdict, there is no guarantee that they will in fact replace the provisions of the current treaties.

[2] A 'simple' numbering scheme is used in Part I. The numbering of articles in other parts consists first of the part concerned, in roman numerals, followed by the number of the article within that part, e.g. Article III-103.

The European Council

The European Council is to become a full institution. It will provide impetus and define political priorities but will not exercise legislative functions. The revolving presidency will be replaced by a permanent presidency, 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 Council of Ministers of the EU

A Legislative *and* General Affairs Council will be set up in order to ensure consistency in the Council's work. The draft Constitution also provides for a Foreign Affairs Council chaired by the EU Minister for Foreign Affairs. A specific legal basis will allow the European Council to set up other formations of the Council, chaired by representatives of Member States on the basis of equal rotation.

Qualified majority

Qualified majority will become the general rule for the adoption of decisions within the Council of Ministers and, from 1 November 2009, will be defined as consisting of a majority of states representing three fifths of the population of the Union. For cases in which the Convention has not achieved consensus on changing over to qualified majority voting, a transitional measure (known in French as a 'passerelle') is planned, by which the European Council will have the opportunity to decide unanimously that the Council will in future act by qualified majority and, as the case may be, by the ordinary legislative procedure, without the need to amend the Constitution, which would in turn require ratification by each Member State.

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 made up of *two thirds* of Member States representing three fifths of the population of the Union.

The European Minister for Foreign Affairs

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, as the case may be, 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 have authority over the external delegations[3].

The European Commission

The Commission's power of legislative initiative is clearly restated. From 2009, it is to be made up of 13 European Commissioners (not including the President and the Vice-President/Minister for Foreign Affairs) and 'non-voting' Commissioners on the basis of

[3] He or she may also be assisted by a 'European External Action Service' (see Declaration, attached).

equal rotation between the Member States. The political role of the President of the Commission, elected by the European Parliament, will be reinforced, and will include the appointment of Commissioners, 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 terms of 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 Court[4].

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 draft Constitution where there is no provision for powers of action to that effect in the draft 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 principles referred to are applied.

Instruments and their adoption procedure

Legislative and regulatory measures

The draft Constitution works 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:

[4] 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.

- 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 decisions[5]).

Legislative acts:

The power of legislative initiative lies with the Commission, though this is shared with at least a quarter of Member States regarding 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[6]', 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). Regarding '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 draft Constitution will also create *delegated regulations*, delegated to the Commission (NB: there are to be no regulations delegated by the Council) 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 of the branches of the legislative authority raises an objection within a period set by the law or framework law.

Budgetary and financial provisions

The draft Constitution includes some fine-tuning of the institutional context of Community finances.

[5] 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.

[6] 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).

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 determine the Union's resources in practice will be determined by a Council law, adopted by a qualified majority after obtaining the consent of the EP[7].

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 by qualified majority, after obtaining the consent of the EP on the basis of a majority of its members. Unanimity will, however, still be required for the adoption of the first financial framework after the entry into force of the draft Constitution.

Annual budget

The law determining the annual budget will be adopted jointly by the EP and the Council, with the European Parliament having the final word on all expenditure in the event of disagreement. Thus there will no longer be a distinction between compulsory and non-compulsory expenditure.

The budgetary procedure will be radically altered[8].

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; until 2007, however, the Council will decide unanimously.

Enhanced cooperation

Enhanced cooperation will require the involvement of a third of Member States. It will apply only to the Union's non-exclusive competences (but will from now on also cover defence policy). Authorisation to proceed with enhanced cooperation will be granted by

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[7] Currently known as 'assent'.

[8] 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 EP rejects the joint draft by a majority of its members and by three fifths of the votes cast, it can call for a new draft budget to be submitted.
If the Council rejects the joint text and the Conciliation Committee does not succeed in adopting a joint text, the EP will have 14 days to confirm the amendments that it has adopted (by a majority of its members and by three fifths of the votes cast). If it does not succeed in confirming its amendments, the Council position on the budgetary item that is the subject of the amendment will be deemed adopted.

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 this case the European Parliament will only 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 process.

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 the challenges of environmental protection; on consumer protection; and 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 structural modifications, most notably in the creation of the post of Minister for Foreign Affairs (see above), than by improvement of procedures; these 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 decides differently - 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 states.

Security policy will be modernised in a number of areas:

- 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 (setting up a mission by a group of Member States) and of a start-up fund for military defence independent of the Union budget;
- setting up 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 common commercial policy's scope regarding trade in services and intellectual property will be widened.

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'[9].

Development cooperation

The European Development Fund will be included in the budget.

Humanitarian aid

The draft 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 the fight against crimes 'of European interest,' of which a list is given, and partly in ensuring the implementation of a Union legislation.

The Court of Justice will be given a more general role in the monitoring of 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 Member States (one

[9] 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.

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 regarding 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, the list of serious crimes, and the institution of a European Public Prosecutor's Office (in the two last-named instances; European Parliament consent will be required).

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 draft 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 to be defined.

However, a number of new legal bases will be created, particularly covering energy policy (shared competence; ordinary legislative procedure of application, but with unanimity in the Council where Member States' choice between different sources of energy and the general structure of their energy supply are concerned), 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. However, there will be the possibility of a transition to qualified majority voting (law/framework law) on measures covering administrative cooperation and combating fraud and illegal tax evasion, provided that the Council states unanimously that the measures proposed are related to these questions.

Economic and monetary policy

There are few substantive changes to economic and monetary policy. 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, and the strengthening of provisions specific to Member States in the eurob area (arrangements covering the Euro Group are set out in an attached protocol).

Social policy

In terms of social policy, a significant change is the explicit recognition in Part I (which covers 'institutional' matters) of the role of the 'social partners', as well as the addition of the concept of 'full employment' to the Union's objectives. However, this is not echoed in the definition of policies (where the reference to a 'high level of employment' remains). Moreover, 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.

CAP

Currently, all decisions in this area are taken by qualified majority in the Council, with the European Parliament simply being consulted. The draft 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. A European space programme could be adopted by means of a law or a framework law.

Public health

The struggle against 'major cross-border health scourges' is added to the measures of supporting action.

Conclusion

Compared with the current treaties, the draft 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 any future revision of the Constitution is to be made standard institutional practice.